



**A review of laws and policies to prevent and remedy violence against children in police and pre-trial detention in Bangladesh**

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ISBN: 978-1-909521-09-4

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This review was undertaken by Frances Sheahan, Child Rights Expert and PRI Associate and Becky Randel, Research Assistant, PRI. A wide range of people provided invaluable input and comments on different drafts of this review and PRI and BLAST wishes to acknowledge the contribution of Ishita Dutta, Research Consultant, along with Rezaul Karim, Legal Advisor, and Hamidul Hillol, Project Coordinator. BLAST is also grateful to comments from reviewers Justice M. Imman Ali, of the Appellate Division, as well as Anita Ghazi, Barrister and Syed Ziaul Hasan, Advocate.

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.

**‘We need awareness in all those who deal with children as to their rights and needs and a benevolent attitude towards children and their plight. We should not forget the obvious truth that children, who become victims or come into conflict with the law, do not do so of their own volition. A little circumspection would reveal that they come into contact with the law due to actions or failures of adults around them.’**

Md. Imman Ali, J. *State v Secretary, Ministry of Law Justice & Parliamentary Affairs* reported in 29 BLD (2009) 656

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.<sup>1</sup> It is very difficult, therefore, 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’.*<sup>2</sup>

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

<http://www.unicef.org/violencestudy/1.%20World%20Report%20on%20Violence%20against%20Children.pdf>

<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.

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.'*<sup>3</sup>

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 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, 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 its 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 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.

## Context in Bangladesh

The Committee on the Rights of the Child in its Concluding Observations on Bangladesh has repeatedly raised concerns about the administration of the juvenile justice system, particularly with regard to the minimum age of criminal responsibility, the number of children in jails, ill-treatment of children in custody by police, the length of police custody and the absence of juvenile courts. While appreciating the efforts made by the State to improve the juvenile justice system, the Committee has made specific recommendations aimed to bring juvenile justice in line with the Convention, including raising the minimum age of criminal responsibility to 12 years from 9 years, considering the establishment of specialised juvenile courts, setting legal limits on the length of pre-trial detention of children, continuing efforts to ensure that children are placed in detention separately from adults, adopting policies to

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

<sup>4</sup> Convention on the Rights of the Child (CRC), Article 19.

<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.

promote alternative measures to detention, providing children with adequate legal assistance and establishing an independent body for the monitoring of detention conditions.<sup>6</sup>

Most of Bangladesh's existing legislation on juvenile justice predates current international standards on juvenile justice such as the CRC; the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); the UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines); and the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (the Havana Rules); and thus does not reflect and comply with these principles.<sup>7</sup>

The Constitution of Bangladesh provides for fundamental rights in Part III. Rights relevant to protection of children are enshrined in:

- Article 27, guaranteeing equality before the law and equal protection of law for all citizens,
- Article 28(1), prohibiting discrimination on grounds of sex, race, religion, caste or place of birth,
- Article 28(4), enabling the State to make special provision in favour of women or children or for the advancement of any backward section of citizens, and
- Article 31, guaranteeing right to protection of the law.

Rights relating to protection of children in detention include:

- Article 32, protecting the right to life and personal liberty of a person,
- Article 33, requiring that no person under arrest shall be denied the right to consult and be defended by a legal practitioner of his choice, and
- Article 35, providing for protections in respect of speedy trial and punishment, and expressly prohibiting torture and cruel, degrading, inhuman treatment or punishment.

The right to enforce fundamental rights by way of a writ petition filed before the High Court Division of the Supreme Court under Article 102(1) of the Constitution is itself a fundamental right (Art. 44(1)).

The Constitution in Part II contains fundamental principles which, although non-justiciable, may act as a guide to the interpretation of the law. Articles 15, 17 and 25(1) contain the fundamental principles that may have an impact on protection of children's rights in general. These include the State's responsibility to provide to its citizens the basic necessities of life including food, clothing, shelter, education and medical care, the right to work, the right to reasonable rest, recreation and leisure, the right to social security (Art. 15), establishing a system of free and compulsory education (Art. 17), and promoting international peace, security and solidarity (Art. 25).

The Children Act 1974 and Children Rules 1976 state that they are intended to protect the child's best interests during all kinds of legal processes. They require the court to have regard for the age and character of the child and other related factors before passing any order under the Act. The Act provides for separate juvenile courts and forbids the joint trial of

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<sup>6</sup> Committee on the Rights of the Child, *Concluding Observations: Bangladesh's Second Periodic Report and Concluding Observations*, 27 October 2003.

<sup>7</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010, Available at [http://www.crin.org/docs/UNICEF\\_JusticeForChildrenBangladesh\\_2010\\_EN.pdf](http://www.crin.org/docs/UNICEF_JusticeForChildrenBangladesh_2010_EN.pdf)

an adult and a child offender even where the offence has been jointly committed. The Act lays down measures for the care and protection of destitute and neglected children, including children under the care of parents or guardians who habitually neglect, abuse or ill-treat them. Section 4(1) of the Probation of Offenders Ordinance 1960 (amended 1973) requires the Court to take into consideration the age, character, physical and mental condition of offender before granting 'conditional release of [an] offender' on probation.<sup>8</sup>

The Children Act defines a child as person under the age of sixteen years. However, it does not define the minimum age of criminal responsibility which is governed by the Penal Code 1860. The Penal Code states in Section 82 that nothing is an offence that is done by a child below the age of nine years. Section 83 provides that criminal responsibility between the ages of nine and twelve is subject to judicial assessment of their capacity to understand the nature and consequences of their actions at the time of the occurrence.<sup>9</sup>

The Children Act, 1974 has been under review for several years, and amendments to it have recently been approved by the Cabinet but not yet adopted.<sup>10</sup> The Government of Bangladesh also adopted the National Children Policy 2011. This contains specific provisions, Articles 4.2, 4.3 and 6.7 concerning protection of children from all kinds of violence, abuse and discrimination. Further, a recent judgment of the High Court Division of the Supreme Court<sup>11</sup> contains observations regarding nine existing laws that currently authorise the imposition of corporal punishment on children; and the Law Commission has now made recommendations for repeal of the relevant provisions.<sup>12</sup>

A particularly pertinent issue in Bangladesh is the use of 'safe custody' or 'protective custody' for children. According to a 2001 report by a human rights organisation in Bangladesh, as many as 1,029 children were at that time languishing in 65 jails across the nation, typically the victims of crimes or circumstances that left them with no place to go.<sup>13</sup> The Special Rapporteur on violence against women, its causes and consequences has documented the following grounds of 'safe custody':

- Girls marrying outside their religious community or against their parents' will;
- Victims of rape;
- Women and female children rescued from brothels;
- Victims of domestic violence;
- Victims of trafficking;
- Lost children; and
- Children with intellectual disabilities.

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<sup>8</sup> [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=302](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=302)

<sup>9</sup> [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=11](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=11), Penal Code 1860 as amended in 2004; Also see Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF, 2010.

<sup>10</sup> 'Cabinet gives final approval to Children Act, 2013', *Bangladesh Sangbad Sangstha*, 25 February, 2013.

Available at: <http://www1.bssnews.net/newsDetails.php?cat=0&id=315573&date=2012-12-13>

<sup>11</sup> *BLAST and another v Bangladesh and others*, 63 DLR 643.

<sup>12</sup> <http://www.lawcommissionbangladesh.org/reports/114-Corporal%20Punishment.pdf> (Bangla version).

<sup>13</sup> Odhikar, *Our Children in Jail: Year Book on the State of Juvenile Justice and Violence Against Children in Bangladesh*, 2001.

Additionally, the uneducated and the poor are especially likely to be subjected to 'safe custody'; documented examples include young boys rendered homeless by their families' poverty.<sup>14</sup>

Once put into 'safe custody', children endure conditions that are anything but 'safe'. Prisons are notoriously overcrowded and lacking in proper food, ventilation, health care, and clothing. There are no provisions made for recreation or education.<sup>15</sup>

The Bangladesh National Women's Lawyers Association (BNWLA) reports that those detained in prisons in 'safe custody' are virtually treated as convicts or under-trial prisoners; they are not segregated from the general prison population, and innocent children find themselves sharing cells with convicted criminals. As a result, they are often further victimised in prison and subject to physical and sexual abuse at the hands of prison guards and adult prisoners.<sup>16</sup>

The protections available to children in conflict with the law are often not enforced due to infrastructural deficiencies. For instance, although there are 44 dedicated posts for probation officers, less than half of them have been appointed and District Social Welfare officers function as probation officers.<sup>17</sup>

**Penal Reform International (PRI)** and the **Bangladesh Legal Aid and Services Trust (BLAST)** have carried out this review in order to increase the understanding of the specific legal and policy measures that can work to prevent and remedy violence against children in detention in Bangladesh. This is part of a larger piece of work by PRI 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. These seven countries are Georgia, Jordan, 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 gaps between law and practice;
- 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 Bangladesh.

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<sup>14</sup> Commission on Human Rights, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, E/CN.4/1998/54, 26 January 1998 Available at:

[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.54.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.54.En?Opendocument)

<sup>15</sup> Odhikar, *Annual Activity Report*, 2003, available at: [http://www.odhikar.org/report/pdf/activity\\_report\\_2003.pdf](http://www.odhikar.org/report/pdf/activity_report_2003.pdf)

Also see: US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices*, Bangladesh, 2003. Available at: <http://www.state.gov/j/drl/rls/hrrpt/2003/27944.htm>

<sup>16</sup> Alternate report submitted by the Asian Legal Resource Centre to the United Nations Commission on Human Rights, 2003

<http://www.unhcr.ch/huridocda/huridoca.nsf/f247c38438f0ddcdc12569910037e669/4b1e83c9136147c9c1256d04003541fb?OpenDocument>

<sup>17</sup> Information provided by Justice M. Imman Ali

## 2. BACKGROUND TO THE REVIEW

### Definitions

This review draws on the CRC, as well as the General Comments of the Committee on the Rights of the Child to define violence. According to the CRC, States Parties are obligated to take all appropriate legislative, administrative, social and educational measures to protect the child from ‘all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse’.<sup>18</sup> This basic definition has been supplemented by General Comment No. 13 of the Committee on the Rights of the Child to include torture, which is defined 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>19</sup> The Committee on the Rights of the Child has further 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>20</sup>

For the purposes of this review, children are defined as all those under 18. However, children are not uniformly defined as persons aged under 18 in Bangladesh law, and the definitions vary depending on the context and law concerned.<sup>21</sup>

### Methodology

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), the UN Office on Drugs and Crime (UNODC) and the Special Representative of the Secretary General on Violence against Children entitled *Joint Report on Prevention of and Responses to Violence Against Children within the Juvenile Justice System*.<sup>22</sup> They were also based on the research plan used by UNICEF in the Central and Eastern Europe

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<sup>18</sup> CRC, Article 19.

<sup>19</sup> UN Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13 para 26.

<sup>20</sup> *Ibid.* para 4.

<sup>21</sup> CRC, Article 1. In Bangladesh, which ratified the CRC in 1990, there is no uniform definition of a ‘child’. According to Section 3 of the Majority Act, 1875, every person domiciled in Bangladesh will be deemed to have attained majority at the age of eighteen years except minors for whom guardians have been appointed, in which case they shall be deemed to have attained majority at the age of 21 years. Under Section 2 of the Majority Act, 1875 this age of majority also does not apply in cases of marriage, divorce, dower and adoption. In contrast, the Suppression of Violence against Women and Children Act, 2000 (Nari o Shishu Nirjaton Domon Ain) and the Children Act 1974 define a child as a person under the age of sixteen years. The National Children Policy 2011 defines a child as an individual under 18 years of age. Further, when the term is used with reference to a child sent to a certified home, approved home or placed in the custody of a relative or a fit person by judicial order, the person would be considered to be a child during the whole period of his or her detention even if he or she attains the age of sixteen during that period.

<sup>22</sup> Available at: [http://srsg.violenceagainstchildren.org/document/a-hrc-21-25\\_505](http://srsg.violenceagainstchildren.org/document/a-hrc-21-25_505)

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;
- 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 Bangladesh 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 Bangladesh's current law and policy relating to the indicators identified. It drew upon a wide range of sources including information and reports from international agencies such as UNICEF, UN and regional human rights mechanisms such as the Universal Periodic Review (UPR) and state and shadow reports to treaty bodies, National Human Rights Institutions, international NGOs<sup>23</sup>, regional and national<sup>24</sup> civil society and, in some instances, media reports. The findings and recommendations from the report were then reviewed by various national child rights and legal experts including Justice Muhammad Imman Ali, Judge of the Appellate Division of the Supreme Court of Bangladesh and national child rights expert, who provided additional information on the topic, filled any remaining gaps and commented on the accuracy, credibility and relevance of the information provided.

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

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<sup>23</sup> Shahdeen Malik, *Impact of State Intervention on Children in Conflict with the Law*, Save the Children Dhaka, 2007.

<sup>24</sup> Ain O Shalish Kendro, *Human Rights in Bangladesh*, 2009, Available at: [http://www.askbd.org/web/wp-content/uploads/2010/09/HR\\_summary\\_09.pdf](http://www.askbd.org/web/wp-content/uploads/2010/09/HR_summary_09.pdf), Ain O Shalish Kendro, *Human Rights in Bangladesh*, 2008, Available at: [http://www.askbd.org/hr\\_report2008/20\\_Child.pdf](http://www.askbd.org/hr_report2008/20_Child.pdf) Ain O Shalish Kendro, *Human Rights in Bangladesh*, 2007, Available at: [http://www.askbd.org/web/wpcontent/uploads/2008/11/ASK\\_Human%20Rights%20Report\\_07.pdf](http://www.askbd.org/web/wpcontent/uploads/2008/11/ASK_Human%20Rights%20Report_07.pdf); Ain O Shalish Kendro, *Human Rights in Bangladesh*, 2006, Available at [http://www.askbd.org/web/?page\\_id=490](http://www.askbd.org/web/?page_id=490) Odhikar, *Our Children in Jail: Year Book on the State of Juvenile Justice and Violence Against Children in Bangladesh*, 2001.

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 may often not be 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, including Bangladesh, 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. In Bangladesh, there is one dedicated Child Development Centre for girls in Konabari, Gazipur. There are no reports regarding the situation of girls in detention. This is sometimes because the children's guardians seek their detention in adult facilities closer to their homes to enable easier contact and also because authorities may record children as adults in order to avoid the additional responsibility that has to be undertaken in juvenile cases. 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 laws and policy measures to prevent and reduce violence against children in Bangladesh and as such provide a useful springboard for further action on the ground. However, it has limitations: for example, it does not consider primary and secondary crime prevention measures for children<sup>25</sup>; it does not examine violence by police which does not result in arrest and detention (for example against children living or working on the street); and it does not look at the laws and policies 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. In addition, the study does not address the particular difficulties faced by children with disabilities in detention in Bangladesh, who have an increased vulnerability to, and risk of, sexual abuse and exploitation.<sup>26</sup>

This review is not original research and is therefore limited by its reliance on secondary data sources on the issue. Although every effort was made by PRI and BLAST 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.

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<sup>25</sup> For example, where children are deprived of their liberty in children's homes or other educational establishments for the prevention of criminal activity.

<sup>26</sup> Karin Heissler, *Background paper on Good Practices and Priorities to Combat Sexual Abuse and Exploitation of Children in Bangladesh*, UNICEF, Dhaka, 2001.

### 3. FINDINGS AND RECOMMENDATIONS

#### Evidence available on the issue

##### Number of children detained in police and pre-trial detention

No accurate statistical information is available on the number of children who are detained in police custody overnight (this only applies to boys as girls are not permitted by law to be kept in police cells overnight)<sup>27</sup> or held in pre-trial detention. Bangladesh has a National Taskforce for Releasing Children from Jails and the number of children held in jails has reportedly fallen significantly in recent years. According to UNICEF, in 2009, there were still 205 children aged under 18 years being held in jails in Bangladesh - 98 of whom were under the age of 16.<sup>28</sup> More recently, following a decision of the High Court Division<sup>29</sup> the number of children aged under 18 being held in jails has now fallen to below 10.<sup>30</sup> In a recent reported case, it was found that three children were illegally placed by the Magistrate in the women's and children's wings of a District Jail, terming it a 'place of safety'.<sup>31</sup>

Under Section 20 of the Children Act 1974, both the police and the courts have the power to send children to remand homes (the power of the police to do this is limited up to the time when the child is produced before a court, which must be within 24 hours of arrest). Under Section 49, the police and courts are empowered to place children not enlarged on bail in remand homes or 'places of safety'. The courts can also send children to Child Development Centres (CDCs) both as a sentence and for pre-trial detention.<sup>32</sup> Currently there are three centres in existence nationally, which operate under the Department of Social Services of the Ministry of Social Welfare, with the centre for girls located at Konabari, Gazipur, and two centres for boys located at Tongi, Gazipur and Pulerhaat, Jessore. Children can also be held in detention when, as victims or witnesses,<sup>33</sup> they are placed in 'safe custody' or have been referred to centres for being 'uncontrollable'.<sup>34</sup>

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

UNICEF has reported that 'physical abuse, force and torture are often applied during arrest and interrogation and children are frequently sexually abused. Detained children can be below the age of criminal responsibility and kept with adult prisoners, exposing them to abuse, violence and negative social attitudes'.<sup>35</sup> The Committee on the Rights of the Child has expressed its concern at 'ill-treatment of children in custody by police, the length of police detention, and the absence of Juvenile Courts'. The Committee has also expressed its

<sup>27</sup> Section 2(j), Children Act 1974.

<sup>28</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010, available at [http://www.crin.org/docs/UNICEF\\_JusticeForChildrenBangladesh\\_2010\\_EN.pdf](http://www.crin.org/docs/UNICEF_JusticeForChildrenBangladesh_2010_EN.pdf) (accessed 1 November 2012)

<sup>29</sup> *State v Secretary, Ministry of Home Affairs*, 19 BLT 376 (Suo Motu Rule No. 15 of 2010).

<sup>30</sup> Information provided by Justice M. Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh.

<sup>31</sup> *State v Secretary, Ministry of Home Affairs* (Suo Motu Rule No. 1 of 2010), 16 MLR 254, also cited in Justice M Imman Ali *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF 2010.

<sup>32</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF 2010, p 228.

<sup>33</sup> *Jahanara Begum alias Jotsna Rani Saha v State and Snandra Nath Saha*, 15 DLR (1963) 39.

<sup>34</sup> Section 33, Children Act, 1974.

<sup>35</sup> UNICEF, *Bangladesh Justice for Children Factsheet*, 2010.

concern regarding legislation which allows for children aged 16 and over to be subject to adult trials and sentences (including the death penalty).<sup>36</sup>

In 2008, the police commissioned a study of the situation of children in conflict with the law by an independent group of consultants who interviewed over 500 children who had contact with the law or were at risk of doing so. The study concluded that 'Once under police custody, the children face grave situations and are treated harshly very often. Tying the children with ropes and placing handcuffs on them is common even though the latter is against police regulations. In order to find clues for crimes and to trace criminals, the police often verbally and physically abuse the children.'<sup>37</sup> They also found that children in CDCs are often not separated according to whether they are pre-trial or convicted, in conflict with the law or in need of protection, nor according to different age categories.

### RECOMMENDATIONS TO IMPROVE EVIDENCE AND DATA GATHERING

- More studies must be undertaken to establish the extent of the problem.
- Bangladesh needs to have more effective and transparent data collection and publication on indicators that can help to address violence covering the following<sup>38</sup>:
  - 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

<sup>36</sup> UN Committee on the Rights of the Child, *concluding observations: Bangladesh*, 26 June 2009, CRC/C/BGD/CO/4 para 92.

<sup>37</sup> *Bangladesh Police Assessment Study for Children*, 2009, Available at: <http://www.police.gov.bd/index5.php?category=230> (accessed 1 November 2012)

<sup>38</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, *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*, 2008, Amsterdam, Defence for Children International.

personnel to physical restraint and use of force with respect to children deprived of liberty and

- 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. In addition, it is proposed that data should also include disability specific information. The Manual 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 'prisons', defined as 'detention facilities housing both children and adults.' In addition, 'safe homes' may be included.

## Use of detention as a last resort

Children should only be detained as a matter of 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.

## 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 construct a context 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 and it can also help to establish that detention should only be used as a last resort.

The Children Act, 1974 and the Children Rules, 1976 which supplement the Act provide the core legal framework governing the treatment of children in the criminal justice system in Bangladesh. They deal with both children in conflict with the law and children in need of protection, often with a lack of differentiation between these two groups. Although there has been impetus for reform in recent years, Bangladesh has not established a comprehensive juvenile justice policy that ensures children are separated and treated differently from adults at all stages of the criminal proceedings. For children in conflict with the law, rehabilitation instead of punishment is yet to become the main aim.

The Committee on the Rights of the Child has noted with concern that the Bangladesh Government has not revised the Act in line with the provisions laid out in the CRC.<sup>39</sup> This was echoed by Justice M. Imman Ali (Judge of the Appellate Division of the Supreme Court of Bangladesh) who said in 2010 'The provisions on children in conflict with the law focus on trial and punishment of the child...punishment of children in conflict with the law is geared toward correction of the child rather than rehabilitation'.<sup>40</sup> As stated above, the Children Act, 1974 is currently in the process of being amended. However, while the suggestion for the new legislation was made by the High Court Division in 2006, the draft is still under scrutiny

<sup>39</sup> Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, 2009 available at [http://www.unicef.org/bangladesh/knowledgecentre\\_5809.htm](http://www.unicef.org/bangladesh/knowledgecentre_5809.htm).

<sup>40</sup> Justice M Imman Ali *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF, 2010.

(See Section 1, above). The Cabinet was reported to have given final approval to the amendments to the Children Act in February 2013.<sup>41</sup>

### 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 Child<sup>42</sup>) is an important preventive measure since it reduces the number of children in detention overall. A minimum age for detention set higher than that for criminal responsibility can also reduce the numbers of children detained.

The age of criminal responsibility in Bangladesh is very problematic being extremely low at 9 years old.<sup>43</sup> The provision of *doli incapax* (where it must be proved that children within a certain age bracket above the minimum age of criminal responsibility have the required maturity to be deemed criminally responsible) may be applied for children between 9 and 12.<sup>44</sup> This low age can result in high numbers of children being held in police and pre-trial detention, including very young and vulnerable children. Secondly, due to performance targets for police often being based on the number of arrests they make (particularly regarding drug offences), there is an incentive for police to deliberately increase the age of an arrested child when it is known that they are below the minimum age of criminal responsibility, which may also increase the numbers in detention.<sup>45</sup>

The Children Act, 1974 defines children as those below the age of 16, with those above this age subject to all the provisions of the Penal Code and Code of Criminal Procedure and other criminal laws. There is also a lack of clear procedure for determining age under the Act, and Courts are instructed that if it 'appears to the Court that [the accused] is a child' then it may take evidence regarding this and determine his or her age<sup>46</sup>. It can be hard for children to prove that they are under 9 or under 16, whichever is the case, since, although birth registrations are increasing, by 2010, such registration had not taken place in respect of around 46% of children under 5.<sup>47</sup> Minor girls face additional problems as age determination procedures often include invasive medical examinations, assessing the extent of their bodily growth and development.<sup>48</sup> Consequently, it is more difficult for children without adequate documentation to gain access to the additional protections laid out in the Children Act.<sup>49</sup> An additional issue that has been reported is that police tend to estimate a child's age upwards in order to avoid having to implement the additional regulations required when dealing with a child.<sup>50</sup>

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<sup>41</sup> 'Cabinet gives final approval to Children Act, 2013', *Bangladesh Sangbad Sangstha*, 25 February, 2013. Available at: <http://www1.bssnews.net/newsDetails.php?cat=0&id=315573&date=2012-12-13>

<sup>42</sup> General Comment No 10, para 32.

<sup>43</sup> Section 82, Penal Code, 1860

<sup>44</sup> Section 83, Penal Code, 1860

<sup>45</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF 2010.

<sup>46</sup> Section 66, Children Act, 1974.

<sup>47</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010.

<sup>48</sup> Sara Hossain, 'Wayward Girls' and 'Well-Wisher Parents': *Habeas Corpus, Women's Rights to Personal Liberty, Consent to Marriage and the Bangladeshi Courts* in Aisha Gill and Sundari Anitha, *Forced Marriage: Introducing a Social Justice and Human Rights Perspective*, Zed Press, London, 2011.

<sup>49</sup> *Ibid.*

<sup>50</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF 2010, p 69.

## 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.<sup>51</sup> Status offences focus disproportionately on regulating the actions of girls as well as boys who are poor, disadvantaged or who work or live on the streets and therefore spend much of their time outside of the home.<sup>52</sup> 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.

Another issue of importance in Bangladesh is that the Children Act, 1974 covers both children in conflict with the law and those in need of care and protection. As such, police are given wide discretionary powers that include the power to ‘arrest’ and detain children in need of protection on grounds of a range of status offences including vagrancy, begging, sex work, smoking and dropping out of school.<sup>53</sup> In 2011, the Vagrant and Homeless People (Rehabilitation) Act was passed which grants the police broad powers to arrest those engaged in begging, although children are not specifically referred to in the Act. The Committee on the Rights of the Child, in its 2003 Concluding Observations, expressed its concern at ‘the extensive discretionary powers of the police, reportedly resulting in incarceration of street children and child prostitutes’.<sup>54</sup> Later, in its 2007 Concluding Observations<sup>55</sup> under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), it noted that child sex workers are sometimes charged with the crime of immoral behaviour and held in pre-trial detention and that on conviction many are placed in child correctional centres (especially boys).

## Availability of police bail

A Court or police officer shall grant bail to any person accused of a bailable offence.<sup>56</sup> The Court may grant bail to *inter alia* persons under the age of 16 even where they stand accused of non-bailable offences.<sup>57</sup> Section 48 of the Children Act, 1974 also allows for a senior police officer to release a child on bail (even if arrested for a non-bailable offence) if the child cannot be brought before a Court expediently and ‘if sufficient security is forthcoming’. However, the Children Act, 1974 also states that the police ‘shall not do so [grant bail] where the release of the person shall bring him into association with any reputed criminal or expose him to moral danger or where his release would defeat the ends of justice’, and instead can remand him or her to a home or ‘place of safety’.<sup>58</sup> This wide caveat does not promote the use of police bail and the failure to implement the provisions enabling

<sup>51</sup> Beijing Rules, Commentary to Rule 3; Child Rights International Network, *Global Report on Status Offences*, 2009

<sup>52</sup> Committee on the Rights of the Child, *General Comment No.10*, 2007

<sup>53</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010.

<sup>54</sup> Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, 2003 CRC/C/15/Add.221 Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/446/27/PDF/G0344627.pdf?OpenElement>

<sup>55</sup> Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, 2007, CRC/C/OPSC/BGD/CO/1, Available at:

<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/89e6367c3ac1ba6fc12567b70027d9fb/3c7985b7f1e14235c125734d003c3e24?OpenDocument>

<sup>56</sup> Section 496, Code of Criminal Procedure, 1898.

<sup>57</sup> Section 497 (1) Code of Criminal Procedure, 1898

<sup>58</sup> Sections 48-49, Children Act 1974.

bail for children is widely evident. The opportunity to use police bail is limited to the period until the child is produced before a court, which under the Constitution must be within 24 hours.<sup>59</sup>

### Diversory measures available

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 idea of diverting children away from the formal justice system towards care and support services is not a matter of practice in Bangladesh.<sup>60</sup> Under the Children Act, 1974 (Section 15, read with Section 53), the court can make an order of discharge after having considered the age of the child, the circumstances where he or she lives and the report from the probation officer as to the child's background and family history. The court may also impose an order of release on probation under the supervision of a probation officer for a period up to three years (Section 53, the Children Act, 1974). In practice, these provisions are rarely invoked.

### Alternatives to pre-trial detention

Keeping children out of pre-trial detention in the first place will reduce the numbers of children exposed to violence in these settings. In Bangladesh it seems that the only two options available to the court at the pre-trial stage are bail or detention in a remand home or 'place of safety'. The legislation regarding the availability of bail does not promote the use of detention of children as a last resort and, despite legislation and policy being in place, police fail to implement bail provisions adequately.

## RECOMMENDATIONS TO ENSURE DETENTION IS USED AS A LAST RESORT

- Steps must be taken to implement the Children Act, 1974 nationally, including increasing awareness of its provisions among the police, judiciary, prosecutors, social welfare officers and other professionals. Steps should also be taken to revise the Children Act and the Children Rules, 1976 in line with the CRC and other international treaties and human rights standards. As a priority, it must be revised to include children between the age of 16 and 18 years, who are currently not protected under the legislation.
- All children currently held in adult prisons should be removed with the utmost expedience to a remand home or place of safety in conformity with the Children Act. The National Taskforce for Releasing Children from Jails must be properly supported and resourced in order to contribute to this result.
- It is strongly recommended that Bangladesh raise the age of criminal responsibility for all children from 9 to at least 12 years in line with guidance from the Committee on the Rights of the Child.
- Birth registration must be encouraged across the country and proper age determination procedures established and implemented in the Court system. Where a child claims to be under the age of 9 / 16 / 18 years (in differing scenarios), an approach should be taken which gives 'the benefit of the doubt' to

<sup>59</sup> Article 33 (2), Constitution of Bangladesh.

<sup>60</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010.

the child and affords them all the relevant protection that this brings under the legislation.

- A clearer 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 sex work should be identified as welfare issues and children engaging in these activities should be addressed through the social welfare system and not the juvenile justice system.
- Measures for diverting children out of the formal justice system, such as the use of cautions, mediation and alternative dispute resolution should be explored, developed and implemented and where appropriate incorporated in the law. Police and prosecutors should be trained in these methods.
- Positive steps should be taken to set up a system whereby police have the discretion, in cases where prosecution is likely, to hand over custody of a child to persons considered to be fit for the purpose; either by granting bail with those persons as security or simply imposing responsibility on such person to ensure the child's appearance before the Court on the date of the trial. (This would require a change in the law in order to allow custody to 'fit persons', which could be explicitly incorporated in Section 2(j) of the Children Act 1974). There will be a need to engage 'fit persons' officially, train them and monitor their activities. To this end, fostering would be an idea to explore and consider in the country. Specifically, lessons may be drawn from the system of kinship fostering practiced in other jurisdictions whereby family members of a juvenile are encouraged to take the child into foster care.
- 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.
- Penal sanctions must be introduced for state officials who detain children in police custody in contravention of the law, in addition to provisions regarding false imprisonment or malicious prosecution.
- Legislation should be introduced that penalises adults who assist children in committing crime.
- Awareness should be raised among professionals who work with children, as well as the general public, on the rights of children in police or pre-trial detention.
- Reports of corruption within the police department and justice system must be investigated and properly addressed.
- Policymakers and stakeholders should consider the development of a probation system as an alternative to detention.

## **Detention for the shortest possible time**

### Limiting time in police detention

The UN Committee on the Rights of the Child has indicated in its 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.

Article 33 (2) of the Constitution of Bangladesh states that 'every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest...and no such person shall be detained in custody beyond the said period without the authority of a magistrate'. However, this does not apply to those considered an 'enemy alien' or those under arrest in preventive detention.

### Limiting time in pre-trial detention

The maximum time spent in pre-trial detention should be no longer than six months.<sup>61</sup> Enforcing time limits ensures that the number of children in pre-trial detention is reduced and therefore the risk of violence is lessened. Detention should be reviewed at least every 14 days.

There are no time limits as to the period during which children or adults may be kept in pre-trial detention in Bangladesh. The only fixed time is that specified in the Code of Criminal Procedure 1898 for the conclusion of trial (for a magistrate, within 180 days from the date on which the case is received by him or her for trial; and for a Sessions Judge, Additional Sessions Judge or an Assistant Sessions Judge, within 360 days from the date on which he or she receives the case for trial).<sup>62</sup> It is reported that these time frames are seldom met.<sup>63</sup> In the best interests of the child, the time between arrest for the offence and the final response of the court should be as short as possible. However, due to the backlog of cases in the courts, trials are often not completed until several years after the offence has been committed. Therefore, there are cases where children charged with minor offences such as theft are detained pre-trial in prisons or child development centers for years.<sup>64</sup>

### RECOMMENDATIONS TO ENSURE DETENTION IS USED FOR THE SHORTEST POSSIBLE TIME

- 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.

<sup>61</sup> UN Committee on the Rights of the Child (CRC), *General Comment No. 10: Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 83.

<sup>62</sup> Section 339C, Code of Criminal Procedure, 1898.

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

<sup>64</sup> *Ibid.*

## Prevention measures at the police station

### Proper registration of detainees within a time limit

Registration 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 Children Act, 1974 is silent on this issue and there is no clear legislation regarding the proper registration of children on arrest and within a specified time limit.

However, the Children Act does demand that ‘immediately after the arrest of a child, it shall be the duty of the police officer, or any other person effecting the arrest to inform the Probation Officer of such arrest’.<sup>65</sup> Information regarding the arrest of a child also must be given to the parent or guardian of the child, if he or she can be found.<sup>66</sup>

### Access to medical care

Children should have access to medical treatment whilst in police detention if they have been injured or are in a state of psychological trauma. There is no provision requiring access to medical care at the police station in the Children Act, 1974. The Bangladesh Police assessment found that: ‘If a child falls sick while in custody, denial of medical treatment is....very common’<sup>67</sup>. Under the Children Rules, 1976, if a child is brought to the Court and is found to be ‘suffering from a disease requiring prolonged medical treatment, or a physical or mental complaint that is likely to respond to treatment’ the Court *may* (it is not mandatory) send the child to a hospital as long as it deems treatment necessary.<sup>68</sup> The Act does not require affirmation from a medical officer or doctor, or require the court to provide a medical assessment of a child on admittance to police custody or when brought before court. However, the High Court in a judgment concerning the abuse of police powers to arrest without warrant under Section 54 of the Code of Criminal Procedure, laid down guidelines concerning medical examination of an accused before being taken into custody which should also be applied to children in such situations.<sup>69</sup>

### Specialist police officers to deal with children

International standards<sup>70</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. There are some examples of specialised child police units or police officers being established in Bangladesh, such as those being piloted by UNICEF in two districts, Cox’s Bazar and Jessore. There is also an office order of the Bangladesh Police stating that every district is required to have child-friendly police. The draft Children Act 2013 reportedly contains mandatory provisions in this regard. However, a lack of human and financial resources limits their ability to be effective or to properly carry out their roles, for example in determining the age of a child or tracing family members.<sup>71</sup> The Committee on

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<sup>65</sup> Section 50, Children Act, 1974.

<sup>66</sup> Section 13 (2), Children Act, 1974.

<sup>67</sup> Supra at 37.

<sup>68</sup> Section 16(1), Children Rules, 1976

<sup>69</sup> *BLAST & Ors. v. Bangladesh & Ors.*, 55 DLR (2003) 363.

<sup>70</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985, Rule 12.1; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990 Guideline 58.

<sup>71</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children In Bangladesh*, UNICEF, 2010.

the Rights of the Child notes that there has been an increase in training for law enforcement officials (as well as magistrates and judges) who are concerned with juvenile justice.<sup>72</sup>

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

The process of taking samples from and searching children in order to obtain evidence or for security purposes can be abused by police. The UN Study<sup>73</sup> for example found that male staff often engage in 'sanctioned sexual harassment such as improper touching during searches'. 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. This could be read to imply that a child in detention should only be searched by an officer of the same sex. 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. Under Bangladesh's Criminal Procedure Code, women should be searched by women,<sup>74</sup> but there is no legislation or policy with specific reference to how searches of children are to be conducted, or when samples for evidence may be taken.

### Separation from adults during police detention

Children's separation from adults in police custody is unclear under Bangladeshi legislation. While a boy child may only be held in a police cell if he can be kept separately from adult offenders, there is no requirement for this for girl children and the law does not prescribe regulations for the eventuality of a girl child being held overnight in a police station at all.<sup>75</sup> Unfortunately, girls are detained in police custody and in some cases have been subjected to egregious violations of rights.<sup>76</sup> In practice, the police often simply do not mention where the child was kept prior to bringing her or him before the Magistrate, which has to be done within 24 hours of arrest.<sup>77</sup>

### 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 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 2012 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>78</sup> Such contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report violence.

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<sup>72</sup> UN Committee on the Rights of the Child, *Concluding observations: Bangladesh*, 26 June 2009, CRC/C/BGD/CO/4.

<sup>73</sup> United Nation's Secretary General's Report on Violence Against Children, World Report on Violence Against Children. Available at: [http://www.crin.org/docs/UNVAC\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf)

<sup>74</sup> Section 52, Code of Criminal Procedure, 1898.

<sup>75</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF 2010.

<sup>76</sup> One of the most notorious of such cases was that of Shima Choudhury, a 17 year old girl who was raped and subsequently died in police custody <http://ipsnews2.wpengine.com/1997/07/bangladesh-police-role-in-rape-case-triggers-huge-protests/>

<sup>77</sup> Information provided by Justice M Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh.

<sup>78</sup> UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para 52(b).

The Constitution of Bangladesh, Article 33 (1) requires that no person under arrest 'shall be denied the right to consult and be defended by a legal practitioner of his choice' and legal aid is available for children in all criminal cases. The Legal Aid Services Act 2000 establishes the National Legal Aid Services Organisation (NLASO), and mandates it to set up a legal aid scheme and establish eligibility criteria, policies and procedures to provide persons 'incapable of seeking justice' with legal assistance.<sup>79</sup> However, the Children Act, 1974 does not contain any special provisions regarding how police should question children, including any measures that may protect children from intimidation, abuse or ill-treatment during police questioning (for example, the law does not require the mandatory presence of a parent, probation officer or lawyer).<sup>80</sup>

Further, under the Criminal Procedure Code 1898, magistrates may place a suspect in interrogative custody (known as "remand") where the suspect may be questioned with no requirements for a lawyer to be present. This law may be applied in the case of children who are over 16 years of age.<sup>81</sup>

After a child is arrested, the Children Act (Sections 13 and 50) requires 'the officer in charge of the police-station to which he or she is brought to inform the parent or guardian and to inform the probation officer of such arrest in order to enable the probation officer to proceed forthwith in obtaining information regarding his or her antecedents and family history and other material circumstances likely to assist the Court in making its order'. The Bangladesh Police assessment<sup>82</sup> found that 55 percent of the time probation officers are not notified by the police of the arrest of a child. Furthermore, the authorities contact parents only 52 percent of the time and, this is allegedly often in order to get payment from them in exchange for the release of their children.

## RECOMMENDATIONS TO PREVENT VIOLENCE AT THE POLICE STATION

- Proper procedures for registering children and admissions at the police station should be developed and implemented.
- The number of police cells should be increased and these cells should be categorised based on age, sex and gravity of the offence. Model police stations are introducing the concept of children's corners but this practice is neither widespread nor implemented properly.
- Legal obligations for police officers, under the Children Act, 1974 and Code of Criminal Procedure, 1898, must be strictly complied with so that they inform parents or guardians of the arrest of the child as soon as possible.
- Proper procedures should be in place to ensure that a child is given access to medical care at the police station.
- The 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.

<sup>79</sup> Section 7, Legal Aid and Services Act, 2000.

<sup>80</sup> Adolescent Development Fund, *Alternative Report to the CRC*, 2008.

<sup>81</sup> US Department of State, *Human Rights Report on Bangladesh*, 2012.

<sup>82</sup> *Supra* at 37.

- Adequate budgetary allocations should be made for creation of specialised child police units and the appointment of trained police officers, including women.
- 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), including police and pre-trial detention.
- Given the very low minimum age of criminal responsibility, efforts should be made to separate older and younger children whilst held in detention. Similarly, boy and girl children must be properly separated whilst detained in police cells. Policy and regulations should be developed that require the presence of legal advisors and the mandatory presence of a parent/guardian/legal representative/appropriate adult during the interrogation of a child at a police station.

## Prevention measures during court proceedings

### Courts specialising in children's cases

The Children Act 1974, requires a separate trial system for youthful offenders. Sections 3 and 4 state that 'the government may by notification in the official gazette establish one or more juvenile courts for any local area and the powers conferred on a juvenile court can be exercised by the High Court Division or by a Court of Sessions or by a Court of an Additional Sessions Judge or by an Assistant Sessions Judge or by a Magistrate of the first class'.<sup>83</sup> The proceedings must be conducted in as simple a manner as possible in a 'home-like atmosphere'.<sup>84</sup>

However, in practice, there are few juvenile courts at the district level meaning that police may have to send children from remote villages to the divisional headquarters to access juvenile courts. This can increase the possibility of lengthy contact with police and raise the risk of violence. In 2010, there were only three specialised juvenile courts<sup>85</sup> although UNICEF reports that the Government is considering establishing four more. However, as a result of a decision by the High Court,<sup>86</sup> the then Chief Justice issued a Circular in December 2010 directing that in every district, at every tier (i.e. District Judge, Joint District Judge, Assistant Judge, Magistrate) there must be a court dealing with children's cases on a priority basis. If properly implemented, this would mean in every district there will be at least four (and in some districts five to six) courts which may hear children's cases, which could considerably reduce the number of pending cases.<sup>87</sup>

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

Under the Children Act, 1974, the Court while passing orders has to have regard to a child's character, age, living circumstances, any report made by the Probation Officer, and any

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<sup>83</sup> Section 3, Children Act 1974.

<sup>84</sup> Rule 4, Children Rules, 1976.

<sup>85</sup> Information received from stakeholder

<sup>86</sup> *State vs. Secretary, Ministry of Law, Justice and Parliamentary Affairs* 29 BLD 656.

<sup>87</sup> Information provided by Justice M Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh.

other factors that the Court deems relevant in the interest of the child.<sup>88</sup> The Probation Officer should be informed by the police officer on the arrest of a child, in order to begin putting together a report on the child's background, family history and other circumstances that may assist a court in deciding what sentence to give a child (if the child is tried and found guilty).<sup>89</sup> However, in many cases it is seen that no attempt is made to contact the Probation Officer to make the report.<sup>90</sup> An additional problem is the lack of Probation Officers available. As of 2010 there were only 23 probation officers covering 64 districts.<sup>91</sup> As noted above, 44 dedicated posts have been created for probation officers even though less than half of them have been appointed. District Social Welfare Officers are functioning as probation officers in areas where such appointments have not been made; they carry out their duties as probation officers in addition to their general duties.<sup>92</sup> 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>93</sup>

### Provision of legal assistance during court proceedings

The Legal Aid Services Act provides for legal representation to be provided at trial, including for children.<sup>94</sup> In practice however, children are often not represented by defence counsel, or are represented by inadequate counsel. UNICEF has noted that children are frequently tried in adult courts without any legal representation.<sup>95</sup> Odhikar reports that particularly vulnerable groups of children such as street children are never properly represented and do not receive proper hearings, and as such, magistrates are prone to deciding cases based on the version of events reported by the police.<sup>96</sup> Where parents of a child do not have adequate financial resources and a child has legal representation assigned through government funding, it is reported that lawyers are often assigned on 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>97</sup>

### Exclusion of evidence obtained through torture or threats

When courts allow evidence that has been obtained through torture or threats, impunity for such practices increases. Article 35(4) of the Constitution provides that no person accused of an offence shall be compelled to be a witness against himself/herself (cannot be made to confess).<sup>98</sup> The High Court has held that confessions made by children are of no legal effect.<sup>99</sup> In a later case it was felt by the High Court that 'prudence demands that when

<sup>88</sup> Section 15, Children Act, 1974.

<sup>89</sup> Section 50, Children Act 1974.

<sup>90</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF, 2010.

<sup>91</sup> *Ibid.* p 86.

<sup>92</sup> Information provided by stakeholder.

<sup>93</sup> *Ibid.*

<sup>94</sup> Section 2 (1) (a), Legal Aid Services Act, 2000

<sup>95</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010.

<sup>96</sup> Odhikar, *Child Rights Report*, 2001 Available at: <http://www.odhikar.org/report/pdf/child.pdf>

<sup>97</sup> Justice M Imman Ali, *Towards a Justice Delivery System for Children in Bangladesh*, UNICEF 2010.

<sup>98</sup> Section 164, Code of Criminal Procedure, 1898.

<sup>99</sup> *Bangladesh Legal Aid and Services Trust vs. Bangladesh and others*, 22 BLD (HCD) (2002) 206. at para 12 'The confession made by a child is of no legal effect, more so, when the child (convict hereof) in his written statement under section 342 Cr.P.C. categorically stated that the confessional statement was procured through coercion, threat and false promise to release him...'

children are taken to record their confessional statements, they must be accompanied by a parent, guardian, custodian or legal representative'.<sup>100</sup>

## RECOMMENDATIONS FOR COURTS

- More juvenile courts should be created that can hear children's cases on a priority basis in compliance with Section 7 of the Children Act, 1974.
- More probation officers should be recruited and the infrastructural development of the probation department must be ensured.
- Courts must be supported in their decision-making by social workers, probation officers or other suitable persons, such as from service providers with a track record of working with children in detention, who can liaise with the family and community and identify community-based alternatives to pre-trial detention.
- Policy and regulations should be developed that require the mandatory presence of legal assistance for children, through legal aid services, 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.

## Prevention measures in pre-trial detention facilities

### Separation from adults in pre-trial detention

This is a vital protective mechanism and the international instruments are clear on the importance of separation of children from adults. Section 51(2) of the Children Act, 1974 states that 'a youthful offender sentenced to imprisonment shall not be allowed to associate with adult prisoners'. However, 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'). The Prisons Act, 1894 in Section 6 provides for separation of prisoners while arranging their accommodation, and Section 27 deals with separation of prisoners on the basis of gender and age. It is often the case, however, that parents request that their child be held in the local District Jail rather than a CDC, since they are more accessible to them. The High Court has held such custody to be illegal and ordered the children to be removed from the jails.<sup>101</sup> In another judgement, the High Court has also directed the Government to provide places of safety for children in every district.<sup>102</sup>

The Government has set up 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 jails including referring them to CDCs or reintegrating them back to their families.<sup>103</sup> The National Taskforce is currently under the Cabinet Division. Reportedly,

<sup>100</sup> Per M. Imman Ali, J. in *Jaibar Ali Fakir v. The State*, 28 BLD 627.

<sup>101</sup> *State v Secretary, Ministry of Home Affairs* 16 MLR 254.

<sup>102</sup> Information provided by Justice M Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh.

<sup>103</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010.

the only activity it currently undertakes is a monthly monitoring system whereby each jail has to send reports to the Taskforce.<sup>104</sup>

Despite these efforts by the State to remove children from adult institutions, the Committee on the Rights of the Child has expressed its concern that there still remain a number of children who are held in jails.<sup>105</sup> UNICEF has also reported that detained children (including those below the age of criminal responsibility) are held with adult prisoners.<sup>106</sup> In addition, children detained in ‘certified institutes’ are required by the Children Rules, 1976, 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.

### Regular visits by parents/guardians/ family members and others

The regularity of visits by parents/guardians to children is dictated by Rule 22 of the Children Rules, 1976, which categorises children into three ‘Grades’ depending on their behaviour and conduct. Any child in the General Grade (where all children begin when detained) may write and receive one letter and have two meetings with his or her parent or guardian each month. A child in the Star Grade (for good behaviour) may write and receive two letters and meet with his or her parents or guardian every 10 days. Any child in the Penal Grade (for bad conduct) ‘shall forfeit all privileges’, which implies that he or she is not allowed any correspondence or meetings with parents or guardians. The regulations which govern visits to children in detention by parents or guardians identify this as a privilege rather than a right, and as such children under punishment are not allowed correspondence with their family. Even those who are in 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.<sup>107</sup> In addition, the distance of the remand homes from family members make the possibility of visits for the children very difficult.

Suggestions have been made to introduce video-conferencing in the CDCs to facilitate more regular communication between children and their families.

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

There are no specific rules in Bangladesh regarding children in pre-trial detention and police custody. Corporal punishment is still considered lawful as a disciplinary measure in detention in certified institutes and prisons.<sup>108</sup> The Children Rules, 1976 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 there are no more details as to the conditions of this confinement or the length of time allowable. Legislation is being reviewed to end these practices with the draft Children Act explicitly stating that children should not be subject to inhuman and degrading punishment.<sup>109</sup>

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<sup>104</sup> Information provided by stakeholders

<sup>105</sup> Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, 2009.

<sup>106</sup> UNICEF, *Bangladesh: Justice for Children Factsheet*, 2010.

<sup>107</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 60.

<sup>108</sup> Global Initiative to End All Corporal Punishment of Children, Bangladesh Country Report, 2010

(<http://www.endcorporalpunishment.org/pages/pdfs/states-reports/Bangladesh.pdf>)

<sup>109</sup> Global Initiative to End Corporal Punishment, *Country Report: Bangladesh*, 2012.

In a recent judgment, the High Court 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>110</sup>*

The grading system under the Children Rules, 1976 also works as a disciplinary system. For the purpose of discipline a child may be placed in Penal Grade where he or she must be employed in 'hard and laborious work'. 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, 1976, 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.

### Procedural rules regarding searches of children which respect their privacy and dignity

If children are to be searched, this should be conducted by an officer of the same sex as the child and should be conducted in a way that does not humiliate or degrade the humanity and dignity of a child. There are no specific provisions in the Children Act, 1974 or the Children Rules, 1976 regarding searches of children which respect their privacy and dignity.

### Implementation of a clear child protection policy in place with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions

Institutions where children are detained do not have a clear 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 and where everyone has a duty to immediately report any concerns, suspicions or disclosures to the appropriate authorities.

### 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.' The qualification level and status of staff in juvenile detention facilities in Bangladesh remains low.<sup>111</sup>

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<sup>110</sup> per M. Imman Ali, J. in *Bangladesh Legal Aid and Services Trust (BLAST) and another v Secretary, Ministry of Education and others*, 31 BLD 201.

<sup>111</sup> UNICEF Regional Office for South Asia, *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, 2006, Available at: [http://www.unicef.org/rosa/Juvenile\\_Justice\\_in\\_South\\_Asia.pdf](http://www.unicef.org/rosa/Juvenile_Justice_in_South_Asia.pdf)

## RECOMMENDATIONS TO PREVENT VIOLENCE DURING PRE-TRIAL DETENTION

- 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), including police and pre-trial detention. In particular, children must be kept in safe homes and not jails and housed separately according to their age with children above 14 years held separately from children below this age.
- Legislation and policy relating to visits by parents and relatives should be developed so that it becomes a right and not a privilege. These regulations should take into account the following issues:
  - United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules) 1990 state that they should occur 'in principle once a week and not less than once a month';<sup>112</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>113</sup> To ensure that children are able to be placed near their families, the Havana Rules encourage States to decentralise institutions;<sup>114</sup>
  - Children should be provided with help in communicating with their families and their right to privacy should be respected<sup>115</sup> and
  - 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.
- 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 including members of the police force, probation officers, court officers and staff of detention facilities should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages.
- Staff including members of the police force, probation officers, court officers and staff of detention facilities must be trained in child rights and non-violent

<sup>112</sup> Havana Rules, Rule 60.

<sup>113</sup> General Comment No 10, para 60.

<sup>114</sup> Havana Rules, Rule 30.

<sup>115</sup> Havana Rules, Rule 61 and 87(e).

disciplinary measures and be fully aware of all the provisions outlined in the Children Act, 1974, Children Rules, 1976 and other relevant legislation and international standards.

- 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.
- The use of any form of corporal punishment or physical violence by staff against a child in detention should be prohibited in law and staff should face severe sanctions for using violence against children in detention.
- Establish a clear child protection policy with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions.
- Specific provision on searches which respect a child's privacy and dignity should be added in the Children Act, 1974 or the Children Rules, 1976.
- Measures should be adopted to allow children to be reintegrated with their families and with the society at large.
- National taskforces should play an active role in ensuring violence against children whilst in detention is prevented and addressed.
- More remand homes should be established and must be set up in places which are easily accessible for families and others to visit.

## Independent monitoring of police and pre-trial detention facilities

According to the UN Standard Minimum Rules for 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

Bangladesh has ratified the Conventions on the Right of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of Persons with Disabilities, International Covenant on Civil & Political Rights and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, as well as the Optional Protocol to CEDAW but has not yet signed OPCAT or 1<sup>st</sup> or the 2<sup>nd</sup> Optional Protocol to the ICCPR or the 3<sup>rd</sup> Optional Protocol to the CRC. Bangladesh is yet to be visited by any member of the Committee against Torture or the Special Rapporteur on Torture. Bangladesh's cooperation with international human rights mechanisms is limited. No report has been submitted by Bangladesh to the CAT in its first to third rounds, nor to the Human Rights Council to date (despite the lapse of over 12 years since ratification). It has however submitted reports to the Committee on the Rights of the Child.<sup>116</sup>

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<sup>116</sup> Bangladesh has submitted three reports each to the CRC Committee and the CEDAW Committee respectively. In addition, Bangladesh has submitted one report each under the CRC Optional Protocol on Sale of

### System guaranteeing regular independent inspections of places of detention

The Children Act 1974 provides for the inspection of 'certified institutes' (which includes CDCs). Each institute 'shall be liable to inspection at all times and in all its departments by the Chief Inspector, Inspector or Assistant Inspector...and shall be so inspected at least once in every six months'.<sup>117</sup>

Where this inspection is of a girls' facility, then the inspection team should include a woman.<sup>118</sup> In addition, any registered medical practitioner (who is empowered by the Government) may also visit any certified institute or approved home without notice in order to report to the Chief Inspector on the health of inmates and the hygiene conditions of the institution.<sup>119</sup> The Child Development Centre in Gazipur is regularly visited by doctors; however, the same is not true of the centre in Jessore.<sup>120</sup>

According to reports, government-appointed committees composed of lay citizens in each region monitor prisons on a monthly basis, but do not release their findings. Similarly, district judges also visit prisons but did not disclose their findings.<sup>121</sup> It has been reported that in general the Government of Bangladesh did not allow visits to places of imprisonment by independent monitors, including the International Committee of the Red Cross.<sup>122</sup> With regard to police detention facilities, 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>123</sup> Effective measures to curtail torture and other forms of custodial violence and acts of impunity by law enforcement officers are not in place.<sup>124</sup> The Committee on the Rights of the Child in its Concluding Observations in 2009 recommended that Bangladesh 'establish an independent body for the monitoring of detention conditions and receiving and processing complaints by children in detention'.<sup>125</sup>

### RECOMMENDATIONS TO ENSURE INDEPENDENT MONITORING

- Ensure that independent inspections and monitoring of detention facilities including police stations by qualified bodies takes place on a regular basis, at times unannounced, with full access to the facilities and freedom to interview children and staff in private.
- Ensure that inspection of girls' facilities is undertaken by teams including women and with a track record in women's rights.
- Existing national monitors, such as Jail Visitors, should disclose their findings.
- It is recommended that Bangladesh take steps to sign and ratify the OPCAT. It is

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Children, Child Prostitution and Child Pornography, and the CRC Optional Protocol on Children in Armed Conflict and to the CRC Committee.

<sup>117</sup> Section 29, Children Act 1974.

<sup>118</sup> *Ibid.*

<sup>119</sup> Section 24, Children Act, 1974

<sup>120</sup> Information provided by stakeholder

<sup>121</sup> US Department of State, *Human Rights Report*, 2012

<sup>122</sup> *Ibid.*

<sup>123</sup> Adolescent Development Fund, *Alternative Report to the CRC*, 2008.

<sup>124</sup> Odhikar, Human Rights Monitoring Report July 1-31, 2012 Available at:

[http://www.odhikar.org/documents/2012/HRR\\_2012/07\\_HRR\\_July\\_EN\\_2012.pdf](http://www.odhikar.org/documents/2012/HRR_2012/07_HRR_July_EN_2012.pdf)

<sup>125</sup> Available at: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-BGD-CO-4.pdf>

also recommended that Bangladesh engages with the Committee against Torture including submitting initial and periodic reports.

## Measures to ensure accountability

Under international human rights law, Bangladesh 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 avenues for children to make complaints of ill-treatment whilst in detention. The National Human Rights Commission addresses specific human rights complaints including violations of children's rights. However, concerns remain with respect to having child-specific and child sensitive procedures for individual complaints<sup>126</sup> (The Commission has to date not set up a child-specific complaints mechanism). The Committee had also noted that while a law to establish a Children's Commissioner was drafted in 2006 and has since been reviewed by the Cabinet, little progress has been made and it is yet to be enacted.<sup>127</sup> The Children Rules 1976 are silent on access to complaints mechanisms for children in detention.

Article 35 (5) of the Constitution of Bangladesh states that 'no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment'. However, it does not define the term torture. Bangladesh is yet to criminalise torture in its domestic legislation, although a private members' bill titled 'Torture and Custodial Death (Prohibition) Bill 2009' has been pending consideration before the National Parliament since September 2010.<sup>128</sup>

The Penal Code 1860, the Code of Criminal Procedure 1898 and Suppression of Violence Against Women and Children Act 2000 (amended 2003), among others, all contain provisions punishing those who assault children in custody. Section 34 of the Children Act, 1974 further provides that

*'If any person over the age of sixteen years, who has the custody, charge or care of any child assaults, ill-treats, neglects, abandons or exposes such child or causes such child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering or injury to his health, including loss of sight or hearing or injury to limb or organ of the body and any mental*

<sup>126</sup> Committee on the Rights of the Child, *Concluding Observations: Bangladesh*, 2009.

<sup>127</sup> *Ibid.*

<sup>128</sup> Amnesty International, Annual Report- The State of the World's Human Rights, 2012

Available at: <http://www.amnesty.org/en/region/bangladesh/report-2012>

Amnesty International, Annual Report- The State of the World's Human Rights, 2011

Available at: <http://www.amnesty.org/en/region/bangladesh/report-2011>

Asian Human Rights Commission, Bangladesh: The State of Human Rights in Bangladesh, 2012, AHRC-SPR-003-2012, Available at: <http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-003-2012.pdf/view>

Asian Human Rights Commission, Bangladesh: The State of Human Rights in Bangladesh, 2011 AHRC-SPR-003-2011 Available at: <http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-003-2011/view/>

*derangement, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Taka one thousand or with both.'*

Under Bangladeshi law, the Government must provide sanction for courts to consider any offence by a public servant on official duty, including members of the police and other security forces.<sup>129</sup> In 2007, the draft Bangladesh Police Ordinance was prepared to replace the Police Act of 1861; it aimed to redefine the roles and responsibilities of police, recommend pay increases and improved allowances for police personnel, and provide for specialised training of officers. It also proposed the establishment of a Police Complaints Commission, as well as a Summary Court for quick adjudication of cases against police personnel accused of abuse of power or other irregularities. However, there appear to have been no further steps to review this draft legislation in the past few years.

While some of the legislative framework is in place to ensure accountability for violence against children in detention, the use of this legislation is another matter. According to Human Rights Watch, 'Human rights violations frequently go unreported. Victims, family members, and potential witnesses are discouraged by the very slim prospect that a formal complaint will eventually lead to those responsible being punished. Often they are also warned that any efforts they make to find justice will come at great personal risk'.<sup>130</sup> The impunity enjoyed by law enforcement agencies is stated to be a legal barrier.<sup>131</sup> Corruption in the police force is reportedly also a disincentive to filing a criminal complaint against a police officer or detention centre employee.<sup>132</sup> Finally, no provisions were found for providing compensation to a child who has suffered from ill-treatment or abuse other than a provision under the Suppression of Violence Against Women and Children Act, 2000 which empowers the court to impose a fine upon any person convicted of committing rape and to award compensation to the victim out of the fine levied.<sup>133</sup> The court has the power to place ill-treated children in alternative custody with a relative or other fit person under Section 57 of the Children Act, 1974.

## RECOMMENDATIONS TO COUNTER IMPUNITY

- Bangladesh should legislate for the definition of torture and ill-treatment in line with the definition in the CAT.
- The Government should deliver on its message of 'zero tolerance' to torture and ill-treatment, including through training of police and prison staff.
- The Government should ensure that all allegations of violence and ill-treatment including of children are impartially and adequately investigated and prosecuted.
- It is recommended that an independent body for receiving and processing complaints by children in detention be established in order for any instances of

<sup>129</sup> Section 132 and Section 197, Code of Criminal Procedure, 1898

<sup>130</sup> Human Rights Watch, *Ignoring Executions and Torture Impunity for Bangladesh's Security Forces*, 2009.

<sup>131</sup> Odhikar, *Human Rights Monitoring Report*, August 01-31, 2012 Available at:

[http://www.odhikar.org/documents/2012/HRR\\_2012/08\\_HRR\\_August\\_EN\\_2012.pdf](http://www.odhikar.org/documents/2012/HRR_2012/08_HRR_August_EN_2012.pdf)

<sup>132</sup> 'Bangladesh: People pay more to the police than to their government', *Asian Human Rights Commission*, August 2012 Available at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-160-2012>

<sup>133</sup> Section 9 (3) Suppression of Violence Against Women and Children Act, 2000.

abuse, ill-treatment or torture to be properly reported and followed-up.

- The National Human Rights Commission now has a Child Rights Committee which could be entrusted to deal with problems faced by children in contact with the law, at least until a fully-fledged independent Children's Commission is set up.<sup>134</sup>
- Provision should be made in the law for ensuring compensation and redress to any child who has suffered ill-treatment or abuse in police or pre-trial detention.

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<sup>134</sup> Information provided by Justice M Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh.

#### **4 YEAR OLD ARIFUL AND HIS GRANDPARENTS RELEASED AFTER 10 MONTH LONG ILLEGAL DETENTION**

Hachimuddin Sheikh, and Mafroza Khatun from Behrampore village in Murshidabad, West Bengal, India, apparently came to visit an ailing relative in Doulatpur District, Kushtia. On 15 April 2011 while returning to India, they were arrested as they were travelling without passports. They were produced in Court in connection with charges filed under the Bangladesh Control of Entry Act, 1952. After Hachimuddin and Mafroza Khatun gave evidence confirming that they had indeed entered the country without passports, the Court sentenced them to pay a fine of Tk. 500 each (USD 6) and in default to serve two months imprisonment.

On learning about this, Ariful's mother, Kajal Rekha made desperate and untiring efforts to contact her family and arrange for their release. She wrote to the Superintendent of Kushtia Jail and the District Magistrate in Berhampore but no action was taken. She collected documents confirming the identity of her child and parents from various governmental agencies in India, including the Election Commission of India. These certified and confirmed Ariful and his family's nationality, address and permanent place of residence, as well as their status as living 'Below the Poverty Line'. On 30 December 2011, Kajal Rekha also wrote to the Indian High Commission in Bangladesh, and informed them about the police enquiry. By now six months had passed and her child still remained in jail.

On 14 March 2012, BLAST received information from its Kushtia Office about Ariful's situation. BLAST immediately contacted the High Commission of India, the Ministry of Home Affairs and the Ministry of Foreign Affairs to request their assistance. They also informed BLAST's partner organization, the Commonwealth Human Rights Initiative (CHRI) based in New Delhi. CHRI contacted local legal services organisations in West Bengal (including Justice Mr. D.K Basu the chairman of the Legal Aid Services, West Bengal (LASWEB) and also pursued all relevant authorities at state and national level, including the National Human Rights Commission of India and the Indian High Commission in Bangladesh.

**On 27 March 2012, the Ministry of Home Affairs in Bangladesh finally issued a memo directing repatriation of all three individuals. The release order stated that Ariful and his grandparents must be repatriated through Darshana Check Post. Ariful and his grandparents were finally released from Kushtia District Jail on 29 April 2012 and returned to India.**

## 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?<sup>135</sup>

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<sup>135</sup> 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.

**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?

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