



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

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ISBN: 978-1-909521-02-5

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

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## 1. INTRODUCTION

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

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

Violence against children who are deprived of their liberty is a severe violation of their rights and is frequently invisible and under-researched. This is despite the fact that the 2006 UN Study on Violence found that children in care and justice institutions may be at higher risk of violence than nearly all other children.<sup>1</sup> It is very difficult to get a full and clear picture of the prevalence of violence against children in detention. Nonetheless, there is reliable and consistent evidence that children are at significant risk of violence in police and pre-trial detention in both developed and developing countries and that violence in these settings is widespread and in some cases normalised.

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>

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

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

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

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

protect children in detention from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse.<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 their General Comment on Children's Rights in Juvenile Justice (General Comment No. 10) the CRC Committee asserts that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.<sup>5</sup> The right of children to freedom from violence is also found in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under Article 24 of the ICCPR, children enjoy the right 'to such measures of protection as are required by [their] statuses as minors'. In addition, both the ICCPR and CAT prohibit cruel, inhuman, or degrading treatment.

Penal Reform International (PRI) has carried out a review that aims to increase our understanding of the specific legal and policy measures that can work to prevent and remedy violence against children in detention in Russia. This is part of a larger piece of work which reviews legal and policy measures to prevent and remedy violence against children in detention in seven other countries, selected because they are countries where PRI has a presence and/or relative influence to follow up recommendations: Bangladesh, Georgia, Jordan, Kazakhstan, Pakistan, Tanzania and Uganda.

For each country the review aims to:

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

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

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<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.

## 2. BACKGROUND TO THE REVIEW

### Definitions

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

### Methodology used

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

- having systematic information and data gathering in place to determine the scale and character of the problem;
- having a comprehensive policy on children's law and justice that makes it clear that children in conflict with the law are rights holders, violence against children in detention is unacceptable, and that perpetrators will be held accountable;
- ensuring that deprivation of liberty is used as a measure of last resort by having in place an appropriate minimum age of criminal responsibility, diversion measures and alternative measures to detention;
- ensuring that children are detained for the shortest appropriate period of time by implementing effective legal limits on time spent in police and pre-trial detention;

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

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

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

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

- 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 Russia 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 Russia's current law and policy relating to the indicators identified. It drew upon a wide range of sources including information and reports from international NGOs such as UNICEF, UN and regional human rights mechanisms such as the Universal Periodic Review (UPR), National Human Rights Institutions, civil society and, in some instances, media reports.

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

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

## **Challenges and limitations**

This review is designed to provide a snapshot of the state of play of existing law and policy measures to prevent and reduce violence against children in Russia and as such provide a useful springboard for further action on the ground. However, it has limitations: for example, it doesn't consider primary and secondary crime prevention measures for children; it doesn't examine violence by police which doesn't result in arrest and detention (for example against children living or working on the street); and doesn't look at law and policy in place for



children who are in post-trial detention. It also does not cover administrative or immigration detention or detention of children who are held with their mothers.

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

## 3. FINDINGS AND RECOMMENDATIONS

### Evidence available on the issue

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

In 2010 a total number of 46,954 children were convicted of a crime in Russia, with 8,644 (18.4 per cent) sentenced to deprivation of liberty.<sup>10</sup> The number of children in pre-trial detention centres at the end of 2011 was 1,781, decreasing from 2,827 at the end of 2009, and 2,092 at the end of 2010.<sup>11</sup> Figures for the number of children held in police detention were not available as part of this desk review.

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

It is difficult to secure reliable and transparent data on the extent of the use of violence against children in detention. This is problematic because when the government does not have sufficient and relevant information about how the criminal justice system is working in practice then there is an increased risk that children may be exposed to violence, that perpetrators will not be held accountable and that the ill-treatment of children in detention remains invisible and unreported. Research uncovered reference in the US Department of State Human Rights Report 2010 to 'numerous, credible reports' that law enforcement personnel engaged in torture, abuse, and violence to coerce confessions from suspects, including against children. They further report allegations that authorities did not consistently hold officials accountable for such actions.

In January 2012, there were media reports of the case of a 15 year old boy beaten to death during interrogation in police custody in St. Petersburg for which the perpetrator admitted guilt.<sup>12</sup> In another 2010 report, militia officers and a local police officer arrested a 15 year old in his home, refused to inform his family of the reason for his arrest and proceeded to beat him in an attempt to force him to admit to a theft offence.<sup>13</sup>

In relation to the treatment of adults in detention, the Committee against Torture in its 2012 Concluding Observations raised concerns over 'persistent reports of the widespread practice in the State party of torture and ill-treatment of detainees, including as a means to extract confessions'<sup>14</sup>, building on its 2007 comments that there were 'particularly numerous, on-going and consistent allegations of acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel, including in police

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<sup>10</sup> Judicial Department at the Supreme Court of the Russian Federation, Available at <http://www.cdep.ru/index.php?id=79&item=837> (accessed 13 November 2012).

<sup>11</sup> Federal Service of Execution of Punishments of Russia, Available at <http://fsin.su/structure/inspector/iao/statistika/Xar-ka%20v%20CIZOit/> (accessed 13 November 2012).

<sup>12</sup> News report from *gazeta.ru* *Teenager beaten to death in police station to get admission of guilt*, 23 January 2012 Available at [http://en.gazeta.ru/news/2012/01/23/a\\_3971629.shtml](http://en.gazeta.ru/news/2012/01/23/a_3971629.shtml) (accessed 13 November 2012).

<sup>13</sup> News reports from *memo.ru* July 27 2010 Available at: <http://www.memo.ru/eng/news/2010/07/28/2807101.htm> (accessed 13 November 2012).

<sup>14</sup> UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture: Russian Federation*, November 2012, CAT/C/CO/RUS/5

custody'.<sup>15</sup> Concern was expressed that because the system of promotion for law enforcement officials is measured on the number of crimes solved, it creates conditions that promote the use of torture or ill-treatment in police custody and during interrogation in order to obtain confessions. Overall, it highlighted a culture of impunity among law enforcement officials with regards to torture.

## RECOMMENDATIONS TO IMPROVE EVIDENCE AND DATA GATHERING

- Existing studies and research are not sufficient to give us a clear overview of the use of violence against children in the criminal justice system, therefore, more studies must be undertaken to establish the extent of the problem.
- Russia needs to have more effective and more transparent data collection and publication on indicators that can help to address violence covering the following:<sup>16</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 personnel to physical restraint and use of force with respect to children deprived of liberty
  - Existence of specialised standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty

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

<sup>15</sup> UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture : Russian Federation*, 6 February 2007, CAT/C/RUS/CO/4 para 9.

<sup>16</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.

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

## Use of detention as a last resort

Children should only be detained as a matter of last resort and 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

Currently there is no separate system of juvenile justice in the Russian Federation and no comprehensive law or policy relating to children in conflict with the law which expressly states that detention should be a matter of last resort. Children are considered as a separate group in so far as acts of criminal legislation contain sections with specific reference to them.

### 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>17</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 stated age of criminal responsibility in Russia is 16. However, for a wide variety of crimes ranging from homicide, kidnapping, rape, and terrorism to vandalism, theft and possession of narcotics, among others, children can be criminally liable from the age of 14. In spring 2012, media sources reported that the State Duma was drafting a bill that would lower the age of criminal responsibility to 14 for all crimes and to 12 for the crimes listed above.<sup>18</sup> As of November 2012 no further information on the draft Bill had appeared in the media, however, from unofficial sources it was learnt that the State Duma had ordered an expert opinion from the Institute of Forensic Psychiatry.

In addition, according to Article 27 of the Code of Criminal Procedure (and Article 20 of the Criminal Code), if a juvenile has reached the age of criminal responsibility but there is evidence of slow mental development which has not been connected with a mental disorder then he or she is not held criminally liable. This is provided the child concerned committed a socially dangerous act but couldn't fully understand the actual character and public danger of their actions.

Currently, the 1999 law on 'the Principles of Prevention of Neglect and Juvenile Delinquency' allows for the placement of children younger than 14 in centres for temporary confinement, either by order of a judge (in response to 'social dangerous acts', in effect criminal offences if they were over the age of criminal responsibility) or as a judicial sentence. Children may be

<sup>17</sup> General Comment No 10, para 32.

<sup>18</sup> *Too young for jail? Russian MPs want 12-year-olds tried as adults*, 1 March 2012 Available at: <http://rt.com/news/prime-time/russia-jail-age-juvenile-637/> (accessed 13 November 2012).

deprived of their liberty in these centres for up to 30 days under the following conditions: if it is necessary to protect the child's health, prevent them from committing another crime (in the case of a criminal offence), if there is no information about the child, if the child has no place to live or his home is outside the region where he committed the act or is so far that the child's parents are not able to collect the child from the police station within 3 hours. However, it is PRI's experience that judges often place children in these centres in the wrong instances.

### Diversionsary measures

Diverting children away from the formal criminal justice system is an important way of ensuring they are not exposed to violence within detention settings. Russia has a number of options for diversion. Article 427 of the Code for Criminal Procedure states that 'if during preliminary investigation of criminal case about a crime of small or medium degree it is established that correction of the accused juvenile can be reached without application of punishment, the investigator with the consent of the head of investigative body, and also the person conducting the initial inquiry with the consent of the prosecutor shall have the right to pass a resolution on the termination of the criminal prosecution and on entering a petition to the court on applying towards the minor accused a forcible measure of an educational impact, stipulated by the second part of Article 90 of the Criminal Code of the Russian Federation, which shall be directed by the public prosecutor to the court together with the criminal case'. The measures that are stipulated in Article 90 of the Criminal Code referred to above include a warning, transfer to supervision of parents or guardians, an obligation to reconcile the harm caused, restriction of leisure activities and establishment of special behavioural requirements.

According to Article 432 of the Code for Criminal Procedure, if the case concerns a crime of ordinary gravity or certain grave crimes then the investigator, with the consent of the head of the investigative body, and the person conducting the initial inquiry, with the consent of the prosecutor has the power to discontinue the criminal proceedings and to petition the court to impose compulsory re-education measures on the child.

### Alternatives to pre-trial detention

The Code of Criminal Procedure<sup>19</sup> allows for the supervision of minors who are suspected or accused of a criminal offence rather than pre-trial detention. Supervision includes parents or guardians who must provide a written obligation to ensure the child in their care's proper behaviour and attendance at trial. 'Proper behaviour' is defined under Article 102 of the Code which states that they must not leave their place of residence without permission, must attend court and not to interfere with the criminal case or proceedings.

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

→ Russia should create separate, comprehensive legislation protecting children throughout the criminal justice system that addresses all elements of the system

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<sup>19</sup> Article 105

from prevention of crime through to reintegration. An inter-agency approach should be adopted and clear responsibilities and timeframes allocated to each.

- The Russian State Duma should be mindful of Russia's obligations under the CRC and not lower the age of criminal responsibility further.
- Far more attention must be given to developing and implementing measures for diverting children out of the formal justice system through the use of police cautions, mediation and alternative dispute resolutions. Police and prosecutors should be trained in these methods and judges should be involved in their development so they have confidence in their effectiveness.
- 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.

## Limiting the time children are held in police and pre-trial detention

### Limiting time in police detention

The UN Committee on the Rights of the Child has indicated in General Comment No 10 that no child should be detained by the police for more than 24 hours without a judicial order.<sup>20</sup>

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. In Russia, a child, as with an adult, if suspected or accused of committing a crime may be arrested and remanded in custody for 48 hours before a judicial order is made. The court may then decide to prolong custody for up to 72 hours.<sup>21</sup>

### Limiting time in pre-trial detention

The Code of Criminal Procedure states that children may be detained in pre-trial centres only when suspected of committing a grave or especially grave crime.<sup>22</sup> Children, as with adults, may be held for up to two months from arrest. The court may then extend this limit for up to six months in cases classified as complex. Further extension of up to 12 months may be made for suspects accused of committing grave crimes, where the case is specified as complex and with the consent of the prosecutor of the Subject of the Russian Federation. Finally, the term may be extended by the High Court of the Subject of the Russian to 18 months in exceptional cases, if the extension is requested with the consent of the chair of the investigation committee of the Russian Federation or the Subject of the Russian Federation. The maximum period of pre-trial detention allowed by law in Russia, for both adults and children, is therefore 18 months, considerably longer than the CRC-recommended six months limit.<sup>23</sup>

<sup>20</sup> UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 83.

<sup>21</sup> Code of Criminal Procedure, Article 108, 7(3).

<sup>22</sup> *Ibid.*

<sup>23</sup> UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 83.

## RECOMMENDATIONS TO LIMIT THE TIME HELD IN DETENTION

- The time limit for detaining a child in police custody must be reduced from 48 hours to 24 hours for all children under the age of 18 years, in line with the recommendations of the Committee on the Rights of the Child.
- The maximum time limit for children to be detained in pre-trial detention should be no more than six months regardless of the severity of the alleged offence.

## Prevention measures at the police station

### Proper registering of detainees within a time limit

Registering of detainees is an important preventive measure since it establishes that the police station has responsibility and is accountable for the treatment of a child detainee. Under the Federal Law of Police<sup>24</sup>, after arrest and delivery to the nearest police station, police are required to record in writing the date, time and place of where the arrest record is made and the initials of the police officer recording the arrest as well as the time, place, and grounds of detention of the suspect and the fact of notification of relatives of the detainee. This arrest record must be signed by both the police officer and the detainee within three hours of detention. In their submission to the Universal Periodic Review (UPR) in 2008, Russian NGOs reported that police often denied the procedural rights of detainees, including a refusal to register the exact time or date of detention.<sup>25</sup> The position for children was not explicitly covered.

### Specialist police officers to deal with children

International standards<sup>26</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. Russia currently has a special police division to deal with children, the Division on Affairs of Minors.

### Separation from adults during police detention

Article 33 of the Federal Law 'On the detention of suspects and accused of committing crimes' states that children must be held in separate cells from adults, which refers to those both in detention isolators of the Ministry of Internal Affairs (police) as well as pre-trial detention centres of the Federal Penitentiary Service (FSIN). The rights of those suspected and accused of committing an administrative offence is covered by the Code of Administrative Offences, which also provides for separate accommodation.

### Presence of lawyers, parents and others during questioning

Contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report violence. Under Article 423 of the Criminal Procedural Code, legal representatives (defined as guardians / adopters / representatives of the

<sup>24</sup> Code of Criminal Procedure, Article 14.

<sup>25</sup> OHCHR, *Summary of Stakeholder Information, Human Rights Council, Working Group of the Universal Periodic Review*, 2008.

<sup>26</sup> Beijing Rule 12.1; Riyadh Guideline 58.

institution caring for the minor) of a suspect under 18 years of age must be immediately informed when the child is taken in to custody and similarly, when there has been an extension of the term for holding him or her under arrest. Article 426 allows the legal representatives 'to take part in an interrogation of the minor suspect or accused', but does not require it.

Also, under the Federal Law on Police, Article 14 requires a police officer to inform the person detained of their right to counsel. In addition, for children under 16 years of age (or 16-18 years and suffering from a mental disorder or disability), there is the obligatory participation of a pedagogue or psychologist at the interrogation. However, there have been reports that police have obtained defence counsel friendly to the prosecution who have subsequently agreed to the interrogation of their clients in their presence while making no effort to defend their clients' legal rights.<sup>27</sup>

### **RECOMMENDATIONS TO PREVENT VIOLENCE AGAINST CHILDREN IN POLICE DETENTION**

- There should be legislation requiring the mandatory presence of legal counsel during the interrogation of a child at the police station.
- A more comprehensive system of police officers specialised in children's rights should be set up.

## **Prevention measures during court proceedings**

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

Under the Criminal Code, the court is required to take into consideration a juvenile's history, life, education, level of mental development and 'also the influence of older people on him', and in some courts, social workers are employed whose responsibilities include investigating this and providing a judge with a pre-sentence report. Since 1999, the St Petersburg City Court has included social workers in its staff for this reason, and since 2001 this pilot was extended to two other regions of the country.<sup>28</sup> Currently, courts in almost 30 of the 83 regions of Russia use so called 'juvenile technologies', including specialised judges and the use of pre-sentence reports to influence alternative sanctions.

<sup>27</sup> US Department of State *Human Rights Report 2010: Russia*, 2011, Available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154447.htm> (accessed 13 November 2012).

<sup>28</sup> Peter Roudik, *Law Library of Congress – Russian Federation: Children's Rights, international and national laws and practice*, 2007, Available at: <http://www.loc.gov/law/help/child-rights/pdfs/childrensrights-russia.pdf> (accessed 13 November 2012).



### Provision of legal assistance during court proceedings

Article 51 of the Criminal Procedural Code states that ‘participation of the counsel for the defence in the criminal court proceedings shall be obligatory, if...the suspect or the accused is a minor’. Where a child or his or her parents or legal representatives do not or cannot appoint a defence lawyer, the lawyer must be appointed by the inquirer or investigator and paid from the federal budget. Further, Article 18 of the Federal Code ‘On the detention of persons suspected or accused of committing a crime’ allows a meeting with an accused or suspect’s defence counsel from the moment of detention, ‘without limitation of the number and duration’.

### Exclusion of evidence obtained through torture or threats

Courts which allow evidence that has been obtained through torture or threats add to the problems of impunity that make these practices so common in the investigation phase of the juvenile justice system. The Code of Criminal Procedure states that evidence obtained by torture is inadmissible as evidence. However, as noted by the Committee against Torture, in practice confessions coerced through torture were often admitted as evidence in the absence of a proper investigation into the allegations. They also stated concern at the ‘lack of information received on cases in which courts ordered investigations into allegations made by a defendant that he or she confessed to a crime under duress, or postponed criminal proceedings pending such an investigation, and/or deemed such confessions or other evidence inadmissible’. In 2007 the Committee had reported that there is little guidance provided to the courts in how to rule that the evidence is inadmissible, or to order an immediate and independent investigation<sup>29</sup>

## RECOMMENDATIONS FOR COURTS

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

Article 33 of the Federal Law ‘On the detention of suspects and accused of committing crimes’ states that children must be held in separate cells from adults in pre-trial detention centres of FSIN. However, ‘in exceptional circumstances’ with the consent of a prosecutor, children may be housed with adults of ‘positive character’, convicted for the first time of a

<sup>29</sup> UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture : Russian Federation*, November 2012, CAT/C/RUS/CO/5 [advance unedited version]; UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture : Russian Federation*, February 2007, CAT/C/RUS/CO/4, para 21.

minor or average offence; the Ministry of Justice Order of 2005 states that the judgment of this 'positive character' must be made by an inspector for education and a psychologist.

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

Article 55 of the Family Code states that a 'child in an emergency situation', which includes arrest and detention, has the right to communicate with his or her parents and other relatives. The Federal Law 'On detention of persons suspected or accused of committing a crime' allows for two visits per month of a pre-trial (adult) detainee from relatives or other persons for up to three hours. However, it does require the detainee to obtain written permission from the body or person overseeing the criminal case. Correspondence via letters is allowed without limitations, at the expense of the detained individual. According to the Ministry of Justice Order 'On the rules of procedure of remand prison system' (2005), children suspected or accused of committing a crime have no limit to the number of letters, telegrams or packages they are allowed to receive or send. However, the post is subject to censorship and all stationary must be purchased by the detainee.

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

Under the Federal Law 'On detention of those persons suspected or accused of committing a crime' children may be sanctioned to a reprimand, or placement in solitary confinement for a period of up to seven days. For the latter, the penalty must be given in writing. Suspects and defendants have the right to appeal to a higher official, prosecutor or court regarding the penalty, although this appeal does not suspend the execution of the measure. Children may be placed in solitary confinement for a range of infractions: abuse of other detainees; attacking staff; disobedience; possession of alcohol or drugs; possession of prohibited items; gambling; and disorderly conduct. During solitary confinement visits with all except their counsel is prohibited. Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there appears to be no explicit prohibition. Article 44 of the Federal Law allows for the use of physical force in detention against accused or suspected persons to prevent them committing an offence or to overcome their opposition to the 'legitimate demands of detention', if non-violent ways do not stop the actions of the detainee.

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

Under the Ministry of Justice Order 'On the rules of procedure of remand prison system', suspects and accused persons are subjected to a body search, fingerprinting and photographing on entrance into a remand prison; where the suspect is required to undergo a full body search this includes the complete undressing of the accused; where the suspect is only subject to a partial body search only clothing and footwear is searched and the suspect is not required to undress. Personal searches are required by the Order to be made by a person of the same gender, and full body searches should not be made in the presence of a person of the opposite sex.

### 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 status of staff in juvenile detention facilities in Russia remains low.

## 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 of to the appropriate authorities.

### RECOMMENDATIONS

- Legislation allowing for the placement of children with adults 'in exceptional circumstances' with the consent of a prosecutor in both police and pre-trial detention should be repealed.
- Legislation and policy relating to visits by parents and relatives specifically to children should be developed including the omission of the provision that requires a detainee to obtain written permission from the person overseeing the criminal case. These regulations should take into account the following issues:
  - The Havana Rules state that they should occur 'in principle once a week and not less than once a month'.<sup>30</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>31</sup> To ensure that children are able to be placed near their families, the Havana Rules encourage States to decentralise institutions.<sup>32</sup>
  - Children should be provided with help in communicating with their families and their right to privacy should be respected.<sup>33</sup>
  - 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.
- The use of any form of corporal punishment or physical violence by staff against

<sup>30</sup> Havana Rules, Rule 60.

<sup>31</sup> UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 60.

<sup>32</sup> Havana Rules, Rule 30.

<sup>33</sup> Havana Rules, Rule 61 and 87(e).

a child in detention should be prohibited in law - this includes the placement of a child in solitary confinement - and staff should face severe sanctions for using violence against children in detention.

- Staff should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages.
- Staff must be trained in child rights and non-violent disciplinary measures.
- Efforts should be made to improve the status of individuals working with children in detention to ensure high-calibre employees.
- Staff must be trained to immediately report any concerns, suspicions or disclosures of violence against children to the appropriate authorities.
- Establish a clear child protection policy with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions.

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

According to the UN 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**

Russia is State Party to the CRC, ICCPR, CAT, the ECHR and the ECPT, all of which prohibit the use of torture. Russia has not ratified OPCAT. The CPT has made regular visits to Russia (most recently in 2012 and 2010) although the latest report to be made public was from a 2001 visit. The Committee against Torture has noted that representatives of international organisations (other than the European Committee for the Prevention of Torture) are only permitted to talk to prisoners when accompanied by representatives of the administration.

### **System guaranteeing regular independent inspection of places of detention**

The Law On Public Control for Ensuring Human Rights in Detention Facilities and Assisting Persons in Detention Facilities provides for the independent inspection of all types of detention facilities for juveniles including pre-trial detention centres (SIZO) and colonies (subordinate to FSIN), centres of temporary detention of juvenile offenders (under the Ministry of Interior), and closed correctional schools for juvenile offenders (under the Ministry of Education). The Committee against Torture in its 2012 Concluding Observations criticised the work of the Public Oversight Committees that are tasked with independent monitoring in Russia due to their inability to undertake unannounced visits, because they are denied access to some detention facilities and because there have been reports of reprisals against members of the inspection team, there is a lack of funding and their reports are not made public.

Furthermore, the children's ombudsman of Russia and the children's ombudsmen of the regions of Russia have the right to visit the institutions where minors are held, without any special permission. As of 2012, 82 of the 83 regions of Russia had established a regional Children's Rights Ombudsman. It was not possible through this desk review to determine how frequently inspections take place in practice or how effective they are. However, Russian NGOs have reported that the penitentiary system has become less transparent than previously as national NGO representatives are now not allowed to visit prisons in many regions.<sup>34</sup>

## RECOMMENDATIONS

- It is recommended that Russia take steps to sign and ratify the OPCAT.
- Ensure that independent inspections and monitoring of detention facilities by qualified bodies take place on a regular basis, at times unannounced, with full access to the facilities and freedom to interview children and staff in private.

## Measures to ensure accountability

Under international human rights law, Russia 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.

The Russian Constitution states that 'The rights of victims of crimes and of abuse of office shall be protected by law. The State shall provide access to justice for them and a compensation for sustained damage. Everyone shall have the right for a state compensation for damages caused by unlawful actions (inaction) of bodies of state authority and their officials'. The Criminal Procedure Code states that 'the damage inflicted upon the person as a result of a violation of his rights and freedoms by the court or by the officials conducting the criminal prosecution, shall be subject to recompense', and reiterates later under Article 139 where 'the damage, inflicted upon legal entities by the illegal actions (or lack of action) and decisions of the court, the public prosecutor, the investigator, the inquirer and the body of inquiry, shall be compensated by the state in full volume'.

Acts of violence against children in detention, like any violent crime against a person, are punishable under Part VII of the Russian Criminal Code (crimes against the person):

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<sup>34</sup> Summary of Stakeholders Submission to the UPR (2009) A/HRC/WG.6/4/RUS/3, para 22, Available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/RU/A\\_HRC\\_WG6\\_4\\_RUS\\_3\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/RU/A_HRC_WG6_4_RUS_3_E.PDF) (accessed 13 November 2012).

- Article 111/112 (intentional causing of serious/average gravity harm to health, both of which take into consideration as an aggravating circumstance the fact of inflicting harm to a minor);
- Article 115 (intentional causing of minor harm to health);
- Article 116 (beating); and
- Article 119 (threat of homicide or of causing grave harm to health).

Article 117 of the Russian Criminal Code (torture, the causing of physical or mental suffering by means of the systematic infliction of beatings or other forcible actions) takes into consideration the following aggravating circumstances: if the victim is a minor; or apparently helpless 'or materially or otherwise dependent on the guilty person'. However, this article is rarely invoked and the Committee against Torture has noted that officials suspected of torture are prosecuted under articles 286 or 302 which concern the abuse of power and extorting confessions as opposed to article 117 concerning the use of torture.

The sanction for the use of torture is imprisonment for up to three years, although against a child, this is increased to between three and seven years.<sup>35</sup> In addition, Article 302 of the Criminal Code states that for compelling a suspect or defendant to give evidence 'through the application of threats, blackmail, or other illegal actions, by an investigator or a person conducting inquests' is punishable with imprisonment up to three years, and where this is 'joined with the use of violence, mockery or torture' is punishable by imprisonment from two to eight years.

The challenge is that of implementation and the often insurmountable obstacles children face in ensuring that criminal investigations are initiated and impartially and adequately investigated. In the first instance there should be clear avenues for children to make complaints of ill-treatment. There are no special measures to facilitate the lodging of complaints by children whilst in detention, and so children are subject to the same procedures as adults. The Federal Law 'On detention of persons suspected or accused of committing a crime' allows for the submission of requests and complaints by suspects and defendants to the prosecutor, the court and other public authorities who have the right to monitor places of detention (e.g. Commission for Human Rights, the European Committee for the Prevention of Torture or the European Court of Human Rights) through the administration of the detention facility without subject to censorship. It also outlines how and when responses to complaints must be made by the administration, ranging from five to 10 days. However, the Committee against Torture has expressed concern at documented reports which state that those who do lodge complaints are often subject to abuse and reprisals.<sup>36</sup>

The Children's Commissioner is also mandated to receive complaints directly from children in detention (although children in detention is a small part of the Ombudsman's work and, therefore, often not identified as a priority), however there are seldom complaints lodged by children in detention either due to their lack of knowledge about procedures to do so or a fear of reprisals.

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<sup>35</sup> Article 117, Criminal Code.

<sup>36</sup> UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture : Russian Federation*, 6 February 2007, CAT/C/RUS/CO/4 para 10.

Furthermore, there are challenges surrounding the current definition of torture. The Constitution states 'No one shall be subject to torture, violence or other severe or humiliating treatment or punishment'. Torture is defined as 'the infliction of physical or mental suffering for the purpose of compelling to give evidence or to commit other actions against a person's will, as well as for the purpose of punishing, or for other purposes'. However, the Committee against Torture have stated that this definition does not adequately reflect the definition provided for by the CAT, which includes the involvement of a public official or other person acting in an official capacity in inflicting, instigating, consenting to or acquiescing to torture. The definition, moreover, does not address acts aimed at coercing a third person as torture. Several Russian NGOs and Amnesty International, have raised concerns that the current definition does not reflect the gravity of the offence or its consequences.<sup>37</sup>

There are also significant challenges for children in 'proving' that they have been criminally assaulted either by their peers, by other adult detainees or by police or detention officials. Under the Federal Law 'On detention of persons suspected or accused of committing crimes', those in poor health or with injuries should be examined by the detention facility's medical personnel without delay. The results of the examination should be recorded properly and told to the detainee. With the request of the head of the detention facility, the person in charge of the criminal case, or at the request of the detainee or his legal counsel, a medical examination may be carried out in other health facilities and a failure to do this can be appealed to the prosecutor or the court.

According to the Internal Rules of pre-trial detention institutions, all suspects and accused persons entering an investigation isolator must first undergo a medical check-up, the results of which have to be registered in their medical registers. If there is any suspicion that injuries resulted from unlawful treatment in the investigation isolator, the medical worker provides a written report to the head of the investigation isolator, and the operative unit must then conduct an examination, which, if it is found that a crime may have been committed, the matter is sent to the prosecutor's office.<sup>38</sup> However, it is unclear whether children are covered under these Rules and whether they are appropriately informed of their right to request a medical assessment. The European Court of Human Rights found in 2010 that Russia had violated Article 3 in the case of an 18 year old who was arrested and beaten whilst in police detention and that the police failed to properly investigate the ill-treatment owing to delay and loss of crucial medical evidence.<sup>39</sup>

The Committee against Torture have noted with concern 'the failure of the authorities to carry out prompt, effective and independent investigations into allegations of torture and ill-treatment by public officials'<sup>40</sup>, building on their previous Concluding Observations that 'hundreds of reports that investigations are inadequate or absent, and that despite thousands of officers charged with such offences, there is widespread impunity'. Amnesty International have echoed these concerns that too often crimes of torture remain unpunished as allegations are not properly investigated, and are not independent or impartial. The

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<sup>37</sup> *Summary of Stakeholders' Submission to the UPR*, 2009 A/HRC/WG.6/4/RUS/3, para 4, Available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/RU/A\\_HRC\\_WG6\\_4\\_RUS\\_3\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/RU/A_HRC_WG6_4_RUS_3_E.PDF) (accessed 13 November 2012).

<sup>38</sup> Manfred Novak, *Report of the Special Rapporteur on Torture, Follow-up recommendations*, 2008.

<sup>39</sup> Tigran Ayrapetyan v. Russia ECHR (2010).

<sup>40</sup> UN Committee Against Torture (CAT), *Conclusions and recommendations of the Committee against Torture: Russian Federation*, November 2012, CAT/C/CO/RUS/5

Committee did note the creation of a separate Investigate Committee independent of the Prosecutor's office including a sub-division working solely on crimes allegedly committed by law enforcement officials, however, it reported that this was lacking in the human resources needed to adequately investigate complaints made and questioned its impartiality and effectiveness.

Worryingly, the Committee against Torture in 2007 also reported reprisals against defence lawyers who alleged that their client had been subject to torture or ill-treatment. The Committee against Torture has expressed concern at the lack of proper compensation for victims of torture and ill-treatment as well as an absence of proper rehabilitation measures in Russia.

## **RECOMMENDATIONS**

- Russia should amend the definition of torture to be fully compliant with the internationally recognised definition of torture, in order to properly protect those subject to violence.
- Russia should properly ensure that allegations of violence and ill-treatment including torture are impartially and adequately investigated to prevent the culture of impunity that currently occurs.
- Establish effective, confidential and child-friendly complaint procedures for children and their families and ensure that complaints are promptly and thoroughly investigated by an independent authority.
- Develop and implement a policy on the provision of adequate compensation and rehabilitation programmes for children who have been subject to violence whilst in contact with the criminal justice system.



## ANNEX I: COUNTRY STUDY TEMPLATE

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

#### 1. Baseline information

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

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

#### 2. Overarching law and policy

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

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

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

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

- Are there alternatives to arrest such as issuing a police warning/caution or written notice to appear?

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

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

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

parent/guardian/other appropriate adult, close supervision in the community, foster care etc?

- Are courts allowed to use evidence that has been obtained through torture or threats to be presented to the court or used against a child to lead to a conviction?

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

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

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

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

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

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

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

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

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

- Are children assessed on admission to determine the type and level of care required for each child?

- Are children placed within the facility according to the outcome of the assessment, in accordance with their particular needs, status and special requirements?

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

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

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

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

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

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

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

- Is data relevant to violence against children collected in line with the recommended UNODC and UNICEF indicators, and disaggregated by gender?<sup>41</sup>

#### **15. Other relevant information**

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<sup>41</sup> UNODC and UNICEF *Manual for the measurement of juvenile justice indicators*, 2007, United Nations: New York and also indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, 2008, *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*, 2008, Amsterdam, Defence for Children International.

- 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?