



# Positive behaviour management and children in detention

## The way forward in Kazakhstan, Kyrgyzstan and Tajikistan

This briefing looks at the international standards regarding disciplinary measures for children in detention and their use in different settings. It also examines the current law and policy regarding disciplinary measures in Kazakhstan, Kyrgyzstan and Tajikistan. It concludes with some recommendations which emphasise the need to maintain security in detention facilities for children through conflict resolution, reward based approaches and constructive and positive relationships between children and staff.

### Introduction

International standards are clear that children should only be detained as a last resort and for the minimum period necessary. The vast majority of children who are in conflict with the law should be diverted from the formal criminal justice system at the earliest stage possible, and alternative measures and sanctions which promote their rehabilitation and reintegration into society should be used. Pre-trial detention should only be used for limited periods of time and in exceptional circumstances – where it is necessary to ensure the child's appearance at the court proceedings or where the child is an immediate danger to himself/herself or others. Detention following conviction must also only be used as a last resort and for the shortest possible time in situations where a child is convicted of a violent offence or has been involved in persistent serious offending and there is no other appropriate response. Institutions where children are detained should have their rehabilitation and reintegration as the main objective of all policies and processes and the best interests of the child should be a primary consideration at all stages of the criminal justice system.

In reality, in both developing and developed economies, children are not detained as a measure of last resort. They are often arrested for minor offences committed for survival, such as begging or selling soft tissues by the roadside, or indeed for behaviour that does not meet the threshold of a criminal offence at all. Some children are detained outside the criminal justice system for 'reformatory education', for their own protection – particularly an issue for girls, or as a means of regulating migration. This may not be officially classified as detention, even though children may not be permitted to leave the facility of their own volition and live in conditions that are in effect similar if not identical to detention facilities.<sup>1</sup> Once in detention, children have exactly the same rights as their peers in the community including the right to education, to participation, to non-discrimination and to life, survival and development. Article 19 of the UN Convention on the Rights of the Child (CRC) requires States Parties to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence...'. It is very important that detention facilities are safe and secure places where children can be successfully engaged in education and rehabilitative activities.

The day-to-day safety of children in detention facilities can be achieved through a combination of different measures such as the kind of architecture used, the purposeful activities, education and training on offer, the positive and respectful nature of relationships between staff and children and appropriate classification of children by age and security risk. The disciplinary system is also an essential part of ensuring children's

1. The definition of detention used in this paper comes from the UN Rules on the Protection of Juveniles deprived of their Liberty (hereafter the Havana Rules), Rule 11b, and is defined as: 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority'.

safety and security. Children placed away from their homes in detention can become angry or aggressive, damage property or buildings, hurt themselves, or hurt other people, and become involved in fights. Or they may just refuse to engage with the staff and institutional structures. Under certain circumstances, and within specific limits discussed further below, the use of disciplinary sanctions is permissible and even necessary to ensure their safety.

In many jurisdictions the main focus and intent of detention regimes is not on safety and rehabilitation but on the punishment of children. This is frequently the shared cultural understanding, whether explicit or implicit, amongst staff working in facilities, the general public, justice systems, the media and governments. This can create a climate where harsh disciplinary sanctions become an integral part of ongoing punishment. Furthermore, the criminal justice and penal systems in many countries treat children in the same way as they do adults, thereby exposing them to harsh disciplinary measures that are designed to control adults but are wholly inappropriate for children.

The five-year update to the 2006 UN Study on Violence against Children commented that '[w]hile there is no inevitability, it is often children who are victims of violence who become future bullies, perpetrators of dating and partner violence, and violent parents'.<sup>2</sup> Children in detention will almost always be released back into their communities. The treatment they receive whilst in detention should not make them more likely to be violent or to commit crime, and nor should they learn that violence or cruelty is an acceptable way in which to respond to disputes and conflict. Therefore the maintenance of security in detention facilities should be based on constructive and positive relationships between children and staff rather than on punitive disciplinary regimes. When it is necessary for disciplinary measures to be used, they should contribute to a child's sense of justice and dignity and ultimately to the process of their rehabilitation and reintegration.

This briefing explores what this means in practice in the context of three Central Asian countries – Kazakhstan, Kyrgyzstan and Tajikistan. First it sets out the international standards relating to the use of disciplinary measures, then it examines the current law, policy and practice in these countries. It concludes with recommendations for implementation of discipline systems that: reward good behaviour; deal with unacceptable behaviour in a fair, consistent and transparent manner; build positive relationships between children and staff; and address incidents through conflict resolution and de-escalation.

## What are the international standards for the use of disciplinary measures for children in detention?

### Children must be treated with dignity

The CRC provides that children who are in conflict with the law have a right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth.<sup>3</sup> The UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) provide that '[a]ny disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person'.<sup>4</sup> This implies that disciplinary measures should not just be for punishment or for the maintenance of order and safety but should also have an educative purpose.<sup>5</sup> The UN Model Strategies to Eliminate Violence against Children within the Criminal Justice System also call for states 'to adopt clear and transparent disciplinary policies and procedures that encourage the use of positive and educational forms of discipline'.<sup>6</sup>

### Appropriate and fair procedures must be followed

International standards require that there must be written rules on measures of discipline in institutions.<sup>7</sup> Children should be told of these rules on arrival at the institution in a language that they understand. Children who are unable to read should be helped to ensure that they are also aware of these rules. The Havana Rules state that written rules on disciplinary measures should cover the following: '(a) Conduct constituting a disciplinary offence; (b) Type and duration of disciplinary sanctions that may be inflicted; (c) The authority competent to impose such sanctions; (d) The authority competent to consider appeals'. The conduct constituting a disciplinary offence must be clearly defined and the punishment must be proportionate to any breach.

Once the relevant authority has been notified of a disciplinary infraction, they should then examine the case and give the child 'a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings'.<sup>8</sup> Hearings should be on an individual basis to avoid the risk of collective

2. *Five years on: A global update on violence against children*, NGO Advisory Council for Follow-up to the UN Study on Violence against Children, 2011.

3. Article 40 (1) of the Convention on the Rights of the Child (CRC).

4. Havana Rules, Rule 66.

5. See, for example, Liefwaard T, *Deprivation of liberty of children in the Netherlands*, 2008, Section Four.

6. *UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, A/C.3/69/L.5, September 2014, para. 39.

7. Havana Rules, Rule 68.

8. Havana Rules, Rule 70.

punishments and no child should be sanctioned more than once for the same infraction.<sup>9</sup> The UN Model Strategies also call on states to: 'establish in law the duty of managers and personnel of detention facilities to record, review and monitor every instance in which disciplinary measures or punishment are used'.<sup>10</sup>

The framework for how and when disciplinary measures can be used with children are usually contained either in operating rules for all facilities within a jurisdiction or for specific individual institutions. Operating rules and regulations often impose disciplinary measures for contraventions such as drug taking, threatening staff or causing damage to property. Many detention facilities have tiered levels of disciplinary measures, starting with verbal warnings and apologies and building up to restrictions on sport or recreational activities, fines of pocket money, or having to do extra duties. In some very serious instances, criminal proceedings may be initiated.

Whatever the operating rules and regulation state, in practice staff may be granted a wide degree of discretion when responding to difficult or challenging behaviour. For example, it may be usual practice for staff to issue informal warnings before resorting to formal action against a child. The exercise of this discretion needs careful monitoring since it can result in disproportionate disciplinary sanctions for relatively minor infractions. For example, many children who responded to PRI's 2014 survey of children in detention in Central Asia complained of being punished simply for complaining about the poor quality of the food. One boy explained: 'I do not eat the food, the potatoes have worms and bird feathers. If you complain about the food, staff give you a reprimand or insult you. Each reprimand is accompanied by a beating'.<sup>11</sup>

### Children should not be asked to impose discipline on others

The Havana Rules state that: '[n]o juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes'.

### Disciplinary measures should be gender-sensitive

The international standards regarding disciplinary measures for children are largely gender neutral; however they do focus on the need for special attention to be paid to girls in conflict with the law. The UN Standard

Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state that: '[y]oung female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured'.<sup>12</sup> The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) state that 'prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners'.<sup>13</sup> In 2009, the UN Human Rights Council passed a resolution calling on states to 'address the gender dimension of all forms of violence against children and incorporate a gender perspective in all policies adopted and actions taken to protect children against all forms of violence, acknowledging that girls and boys face varying risks from different forms of violence at different ages and in different situations'.<sup>14</sup>

**“For children who have been victims of abuse in the past, restraint can be a highly traumatic experience, as illustrated by this girl and others we interviewed. “One member of staff grabbed my neck and then others pushed me to the ground and held me there telling me to calm down. While I was on the floor a male member of staff was holding my head almost between his knees. I have been sexually abused in the past so you can imagine how that made me feel. I was terrified.” ”**

Source: *Thematic report by HM Inspectorate of Prisons Behaviour management and restraint of children in custody*, November 2015.

Girls may respond to the use of disciplinary measures differently to boys. Many girls in detention have experienced abuse prior to their involvement with the criminal justice system, but very few detention facilities holding girls have the resources and capacity to identify and respond to prior abuse and the use of certain forms of disciplinary measures can exacerbate existing vulnerabilities and problems.

9. Havana Rules, Rule 37.

10. *UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, A/C.3/69/L.5, September 2014, para. 39.

11. *Voice of the child: Findings from a survey of children detained in closed institutions in Kazakhstan, Kyrgyzstan and Tajikistan*, Penal Reform International, 2015, <http://www.penalreform.org/wp-content/uploads/2015/09/voice-of-the-child-english-v4-WEB.pdf> <accessed 5 April 2016>.

12. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 26.

13. UN Bangkok Rules, Rule 36.

14. UN General Assembly Resolution 63/241, 'Rights of the Child', 13 March 2009, A/RES/63/241, para. 27(k).

### Developing legislation to protect girls in detention in the Philippines

In the Philippines, the Juvenile Justice and Welfare Act (2006) includes special provisions for the protection of female children.

#### Sec. 47. Female children

Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

#### Sec. 48. Gender-sensitivity training

No personnel of rehabilitation and training facilities shall handle children in conflict with the law without having undergone gender sensitivity training.

Juvenile Justice and Welfare Act 2006, Republic Act No. 9344, 28 April 2006 (Philippines).

degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child'.<sup>16</sup> The Committee prohibits its use in all settings, including penal institutions,<sup>17</sup> and this is reinforced by the Havana Rules.<sup>18</sup> The Commission on Human Rights has also held that 'corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture'.<sup>19</sup> General Comment No. 8 is clear that there is no 'room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them'.<sup>20</sup> In practice, official rules and regulations in place in many detention facilities are not in conformity with these international standards and globally, corporal punishment remains legal as a disciplinary measure in penal institutions in 62 countries.<sup>21</sup>

### Solitary confinement is prohibited as a disciplinary measure and amounts to cruel, inhuman or degrading punishment

The Havana Rules state that: 'All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned'.<sup>22</sup> The internationally accepted definition of solitary confinement is: 'confinement of prisoners for 22 hours or more a day without meaningful human contact'.<sup>23</sup> It should be emphasised that the use of solitary confinement as a disciplinary measure is a very different proposition to separating children temporarily from others as a behaviour management device to stop an incident taking place and allowing children to calm down. It is expressly prohibited for children to be placed in solitary confinement. The UN Special Rapporteur against Torture has also found that the use of solitary confinement for children amounts to cruel, inhuman or degrading punishment.<sup>24</sup>

In giving evidence to the UK's All Party Parliamentary Group on Women in the Penal System in 2012, the Centre for Mental Health noted: 'Most mixed custodial regimes (eg. in secure training centres) can still be based on more male orientated need; some searching and control and restraint practices, for example, have been seen to be highly counterproductive for females with high histories of abuse and trauma leading to flashbacks and exacerbating distress'.<sup>15</sup>

## Prohibited disciplinary measures

### Corporal punishment is prohibited as a disciplinary measure and its use can amount to cruel, inhuman or degrading treatment or even torture

The UN Committee on the Rights of the Child defines corporal or physical punishment as 'any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light ... In the view of the Committee, corporal punishment is invariably

15. All Party Parliamentary Group on Women in the Penal System (UK), *Inquiry on Girls: From Courts to Custody*, 2012.

16. UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia)*, 2 March 2007, CRC/C/GC/8, para. 11.

17. UN Committee on the Rights of the Child, *General Comment 10, CRC/C/GC/10*, 25 April 2007, para. 89, which states that disciplinary measures in violation of Article 37 of the CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.

18. Havana Rules, Rule 67.

19. Commission on Human Rights, Resolution 2001/62, Torture and other cruel, inhuman or degrading treatment or punishment (2001).

20. UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia)*, 2 March 2007, CRC/C/GC/8, para. 18.

21. 'Countdown to Universal Prohibition', Global Initiative to End all Corporal Punishment of Children, March 2016 [http://www.endcorporalpunishment.org/assets/pdfs/legality-tables/Global%20progress%20table%20\(commitment\).pdf](http://www.endcorporalpunishment.org/assets/pdfs/legality-tables/Global%20progress%20table%20(commitment).pdf) <accessed 5 April 2016>.

22. Havana Rules, Rule 67.

23. Rule 44, UN Standard Minimum Rules on the Treatment of Prisons (2015 Rev) ('Nelson Mandela Rules')

24. UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68, March 2015, para. 44.



Despite being prohibited for use as a disciplinary measure for children, there is evidence that solitary confinement is used in many different settings as a disciplinary measure. This is an issue for states across the world, from the widespread use of solitary confinement in the USA,<sup>25</sup> to Tanzania, where research by the Commission for Human Rights and Good Governance revealed in 2011 that: ‘punishments ... in Karanga and Maweni Prisons included confinement to special cells for disobedient prisoners and remandees. Observations found that the state of these cells is unpleasant. At Segerea prison, three punishment facilities were observed in the boys’ dormitories where children are placed in solitary confinement’.<sup>26</sup>

Solitary confinement is not only used as a punishment for children in conflict with the law. UNICEF’s research on administrative detention found that girls in social rehabilitation centres in Libya face prolonged periods of solitary confinement and that in Saudi Arabia, girls in social observation homes may be punished by being placed in isolation if it is considered necessary – ‘[t]his includes girls who are found to have, even treatable or minimally infectious, sexually transmitted diseases’.<sup>27</sup>

### Other prohibited disciplinary measures

Contact with families is an integral component of rehabilitation and reintegration. It is a fundamental right and should not be withheld or granted as a measure of discipline or encouragement. The Havana Rules are clear that denial of contact with family members is prohibited as a disciplinary measure and this is reinforced by the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice which state that, ‘[c]hildren in particular should have the right to maintain regular and meaningful contact with parents, family and friends through visits and correspondence ... restrictions on this right should never be used as a punishment’.<sup>28</sup> Unfortunately, it is not unusual for institutions to use denial of visits as a disciplinary sanction for children; in the Netherlands, for example, the child’s right to receive visits can be limited for a maximum period of four weeks.

Reduction of diet is also prohibited as a disciplinary measure in the Havana Rules, as is any kind of interference with a child’s work or training: ‘[I]t should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction’.<sup>29</sup>

### Restraint and force can never be used as a disciplinary measure

The risks that children in detention sometimes pose to themselves and others mean that it is sometimes necessary to restrain them physically. The UN Committee on the Rights of the Child states that restraint or force: ‘can only be used when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment’.<sup>30</sup> The Havana Rules add that restraint and force may be used to prevent serious destruction of property.<sup>31</sup>

The Committee draws ‘a clear distinction between the use of force motivated by the need to protect a child or others and the use of force to punish. The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. Detailed guidance and training is also required, both to minimise the necessity to use restraint and to ensure that any methods used are safe and proportionate to the situation and do not involve the deliberate infliction of pain as a form of control’.<sup>32</sup> Staff may not carry weapons in any institutions where children are deprived of their liberty.<sup>33</sup>

Measures of force and restraint are not always used in circumstances which meet the strict criteria of an imminent threat of injury or serious destruction of property and when no other alternatives are available. In effect they are used – illegally – as a means of punishment. In 2004, two children died in detention in the UK as a consequence of the use of restraint. In subsequent independent scrutiny of the circumstances of these deaths, it emerged that until 2007, the rules applied in Secure Training Centres where children were held restricted the use of physical restraint to cases where it was necessary for the prevention of escape, damage to property, and injury either to the person restrained or another. However, in 2007, these rules were amended to also allow restraint to ensure good order and discipline. The inquiry found that this terminology of ensuring ‘good order and discipline’ was too imprecise, and led to situations where force was used when children failed to comply with orders such as to tidy up, clean kitchen equipment, attend class or prepare for bed.

25. Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons across the United States*, 2012.

26. Commission for Human Rights and Good Governance (Tanzania), *Inspection Report for Children in Detention Facilities in Tanzania*, June 2011.

27. UNICEF, *Administrative Detention of Children: A Global Report*, 2011.

28. Havana Rules, Rule 67.

29. Havana Rules, Rule 67.

30. UN Committee on the Rights of the Child, *General Comment 10*, CRC/C/GC/10 25 April 2007, para. 89.

31. Havana Rules, Rule 64.

32. UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia)*, 2 March 2007, CRC/C/GC/8, para. 15.

33. Havana Rules, Rule 65.

Staff interpreted such actions as meeting the criteria of being a threat to good order or discipline and used physical restraint unnecessarily.<sup>34</sup> In 2008, the English Court of Appeal found that the use of restraint in Secure Training Centres amounted to inhuman and degrading treatment.<sup>35</sup>

## Overview of disciplinary measures currently in use in Kazakhstan, Kyrgyzstan and Tajikistan

### Kazakhstan

The legal framework regulating the use of disciplinary measures in Kazakhstan varies depending on the type of facility where children are detained. There is a Special Boarding School in East Kazakhstan Province for boys who have committed offences and been placed there by the court in order to receive educational measures or because of their behaviour when they are under the age of criminal responsibility. While this institution holds boys who are in conflict with the law and boys in need of care and protection, there is no distinction in their treatment. The institution is small (accommodating just 20 boys during a PRI survey visit in 2015). In the Special Boarding School, the only disciplinary measures permitted are: warning, reprimand, discussion at a general meeting, and extraordinary duties such as cleaning rooms.<sup>36</sup> Corporal punishment is expressly forbidden as a disciplinary measure.

In 2014 and 2015, PRI and its partner organisations (the NGO CREDO and the Kazakh Ombudsperson) conducted research with children held in the Special Boarding School which included asking them about their experiences of disciplinary measures. None of the staff interviewed said that they supported the use of corporal punishment and no boys reported the use of corporal punishment. Thirteen boys out of nineteen said they had been subject to disciplinary measures, such as warnings, reprimands or making an oral or written apology.

In the colonies for boys and girls (for those convicted of criminal offences), temporary detention and pre-trial detention facilities, the disciplinary regime reflects their stricter security classification. A revised Criminal Executive Code<sup>37</sup> came into force on 1st January 2015 which sets out disciplinary measures that may be used and includes: warning, reprimand, strong reprimand and placement in a cell for 'temporary isolation for 72 hours'. Such measures are used when children violate rules such

as refusing to work for no reason; use of drugs or alcohol; threatening staff or receiving prohibited goods.<sup>38</sup> A third of boys involved in the survey in 2015 had been subject to disciplinary measures and these were all reprimands, verbal warnings or apologies. None said they had been placed in temporary isolation which is an encouraging development since, in the 2014 survey, five boys in the detention facility had been subject to solitary confinement.

### Kyrgyzstan

In 2014 and 2015, PRI and its partner organisations (the NGO Youth Human Rights Group and the National Centre for the Prevention of Torture) conducted research with children held in police stations, temporary isolation, pre-trial detention and the colonies. They found that children in pre-trial detention centres are subject to violence – both physical and psychological – from staff. The permitted disciplinary measures are: reprimand, deprivation of the right to watch films, and placement in a 'disciplinary isolator' for up to seven days but with continued attendance in education classes. During the 2015 survey, 36 per cent of children said they had been subject to disciplinary measures including reprimand, warnings and apologies. Six children out of 23 who participated in the survey in the pre-trial detention facilities also said that they had been placed in solitary confinement. Three members of staff also confirmed in the survey that solitary confinement was used in pre-trial detention facilities. One boy said he was placed there because he asked for longer recreation outside.

**“ If you often go to the medical unit, they start to threaten that they will put you in solitary confinement. ”**

Boy aged 16 years old in the SIZO (pre-trial detention facility), Kyrgyzstan.

Ten boys out of 25 who participated in the survey in the boys' colony stated that they had been placed in solitary confinement. Placement in solitary confinement has serious consequences for these boys as it reduces their chance of being eligible for early release. In the latest draft of the Kyrgyz Executive Criminal Code (the Code is yet to be approved by Parliament), the use of solitary confinement for children is permitted but has been reduced from seven days to 72 hours with continued attendance in education. This is similar in wording to the legislation now in force in Kazakhstan.

34. *The Use of Restraint in Secure Training Centres Inquiry* – 11 MILLION Submission of Evidence to the Joint Committee on Human Rights, 19 September 2007.

35. *R(C) v Secretary of State for Justice* [2008] EWCA Civ 882, 28 July 2008.

36. Order of the Kazakhstan Minister for Education and Science 'On Approval of the Regulation on Educational Institutions with Special Detention Regime', paragraph 6 states: 'For violation of the regime and rules of conduct with regard to minors, the following sanctions may be applied: 1) warning; 2) oral reprimand or reprimand issued as an order of the director of the educational organization with a special regime of detention before the formation of inmates; 3) discussion at a general meeting of minors, group or class, or the teachers' council of the educational organization with a special regime of detention; and 4) extraordinary duty of cleaning the rooms or grounds of the educational organization with a special regime of detention (except for public spaces) in their free time and during non-study time before going to bed (no more than one hour). Application of penalties not covered by these Regulations is prohibited'.

37. The Criminal Executive Code is focused on the implementation of punishment, including conditions of detention.

38. Procedures for disciplinary measures for minors in detention centres with medium security, Article 154(2) revised Criminal Executive Code in Kazakhstan.

## Tajikistan

The law regulating disciplinary measures for children in detention is found in the Tajik Criminal Executive Code (adopted August 2001). The measures applied to children differ only slightly from those imposed upon adults and include: reprimand; repeal of privileged conditions of detention; cancellation of contact with families or friends for up to one month; revocation of the right to watch films for up to a month, and placement in a 'disciplinary isolator' for up to seven days with release for periods of study.<sup>39</sup>

During 2014 and 2015, PRI conducted research in the boys' colony, the Special Vocational School and Special School. None of the children who participated in the survey stated that they were subject to solitary confinement, although it is interesting to note that the Special Rapporteur on torture in 2013 asserted that '[a]ccording to credible reports, in the juvenile colony and in the basement of a special school for underage offenders run by the Ministry of Education, children were reportedly kept in disciplinary isolation cells for up to 15 days as a disciplinary measure for breaking the establishment's rules'.<sup>40</sup>

**“ Anyone can be sent to the disciplinary cell (DIZO), mainly for riot. In DIZO you are locked up alone. I think all the time about what will happen tomorrow and how to protect myself from threats. In the first unit I was in the DIZO twice. ”**

Boy aged 17 in the boys' colony, Kyrgyzstan.

## Recommendations for a way forward

The disciplinary systems currently in place for children in detention in Kazakhstan, Kyrgyzstan and Tajikistan are not in compliance with international standards. The following recommendations focus on positive action to ensure that discipline becomes more constructive and positive in future for all children who are deprived of their liberty. These recommendations focus on specific aspects of a disciplinary system, but it is important to understand that the culture of an institution will usually set the parameters for the policy and practice.

In these three countries, there is no separate legislation relating to children in conflict with the law and an unsatisfactory tendency to 'add on' issues relating to children to existing adult laws. There are significant challenges in the management of the closed institutions where children are held and high levels of violence are reported in police and pre-trial detention. The significant

strength these institutions do have is that they hold small numbers of children and often have high levels of staffing relative to the numbers of children. Ultimately, the responsibility for creating and sustaining an institutional culture where children feel safe and are actively engaged in their own rehabilitation and reintegration lies with the managers and staff. Therefore resources should be directed towards the recruitment and retention of highly skilled front-line staff to work with these children and engage with them in order to build positive relationships. They should be supported by other practitioners such as medical staff, teachers, social workers and psychologists but it is the daily interaction with front-line staff that can ensure a culture where the disciplinary system becomes more positive than negative.

## Prohibit the use of solitary confinement

The use of solitary confinement is clearly in decline in these three countries and there were no reports of solitary confinement being used as a disciplinary measure for children in any of the closed institutions where the survey was administered in Kazakhstan or Tajikistan. However, a number of boys reported that they had been placed in solitary confinement in Kyrgyzstan. In both Kyrgyzstan and Kazakhstan, it is still possible, even with the revised provision reducing the length of time from seven days to three days, that children could be placed in an isolation cell for up to 22 hours a day. A much stricter and absolute prohibition of solitary confinement is therefore required in the respective Criminal Executive Codes.

Article 144 of the current Tajik Criminal Executive Code (adopted August 2001) stipulates that children serving a sentence in a colony can be placed in a 'disciplinary isolator for a period of up to seven days with release for period of study'. In Tajikistan, a Working Group has been set up to reform the Criminal Code and once this process is complete a working group will be established for reforming the Criminal Executive Code and Criminal Procedure Code. It is vitally important that the revised Codes have a clear and absolute prohibition on the use of solitary confinement for children at all stages of detention.

## End restrictions on contact with family and friends as a disciplinary sanction

In Kyrgyzstan<sup>41</sup> and Kazakhstan, restricting communication with family and friends is used as a disciplinary measure in practice. In Tajikistan, this is also permitted by the Criminal Executive Code. Contact with family and friends is a vital part of rehabilitation and will aid reintegration when the child leaves the institution and should not either be withheld or granted as a measure of discipline or encouragement.

39. Article 120 read in conjunction with Article 144 and 145 of the Criminal Executive Code, 2001.

40. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment*, Mission to Tajikistan, A/HRC/22/53/Add.1, 28 January 2013, para. 73.

41. See, for example, the Shadow report of NGOs on compliance of obligations in respect of children under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Kyrgyz Republic, 2013.

## Introduce a reward-based behaviour management policy

### A culture of positive methods of discipline

Positive, rather than negative, methods of discipline should be used. As well as education and vocation training, participation in sport, leisure and religious observance are particularly important in this regard, as is healthy nutrition. Positive discipline should be promoted by ensuring that staff, and all adults who they come into contact with such as medical professionals, are role models for positive behaviour in all of their interactions with children. Children should be rewarded for appropriate behaviour, for example, by access to privileges such as watching TV.

Disciplinary action should be a measure of last resort. A culture in which children can have their views heard and are listened to with respect is one that will encourage a positive approach to good behaviour. Staff should seek to avoid conflict by engaging with children and developing a positive relationship, explaining what the consequences of their actions may be, so the children develop a more mature approach. Having a disciplinary record may have a long term impact after the immediate punishment is served. If a child understands in advance that an impulsive or thoughtless act may have long term consequences, he or she may be more aware of the consequences of their action later on.

## Transparent rules and regulations are clearly explained to children (and staff)

There should be a clear set of procedures in place which set out how breaches of rules and regulations will be dealt with. Children must be provided with these clear and unambiguous rules and regulations upon their arrival in detention, both orally and in writing and in a language that they understand.

### Administering a disciplinary system

A fair and consistent disciplinary system should be put in place that rewards good behaviour and introduces a proportionate hierarchy of consequences for negative behaviour. If a staff member believes that a child has breached the institution's rules, he or she should notify their manager of the misbehaviour and of the circumstances surrounding it. The manager should explain the allegation to the child and allow them to express their views about the event. Staff should be encouraged to deal with the situation in a formal manner only when necessary.

If, after careful consideration, they are satisfied that a breach has taken place, the line manager may then order one or more from the following range of proportionate measures:

- a warning or reprimand;
- an oral or written apology;
- discussion at a general meeting of children, group or class;

### The importance of well-trained staff: Woodlands Juvenile Justice Centre, Northern Ireland

In 2008, this centre had the capacity to hold 48 children in pre-trial and post-trial detention aged between ten and 16 years old. It was subject to an inspection in 2008, during which the following strengths were noted with regards to the disciplinary system in place.

- New children were given information about the centre and its rules, including a copy of the complaints leaflet. The information comprised essential 'need to know' details, rather than swamping children with too much information at a difficult time. Inspectors were told by both staff and children that the reception procedures worked well, and children said they received the right amount of information.
- A five level progressive regime (Bronze to Platinum Plus) system of rewards, privileges and incentives was in operation for children. Each child had a report record and any staff member could make an entry regarding positive or negative behaviour.

- Unit Managers and Team Leaders reviewed the reports on a weekly basis and regime decisions were related to the number of adverse reports. Three outcomes were possible – promotion, no change or demotion – which could be appealed. The policy and procedure provided guidance to staff and indicated that young people should see their report and be permitted to comment on it.

- All staff had received initial training in Therapeutic Crisis Intervention and Physical Control in Care and regular refresher training was also prioritised. This training, combined with individual planning for each child, represented a major change in the underlying philosophy and approach to managing juveniles in custody. It had contributed significantly to staff skills and confidence in understanding and addressing challenging behaviours, and most staff suggested they preferred to use their relationships with children rather than resort to physical restraint. Staff were also observed to be vigilant about the potential for bullying, harassment and scape-goating.

Inspection of Woodlands Juvenile Justice Centre, Criminal Justice Inspection May 2008 <http://www.cjini.org/CJINI/files/dd/dd10f7eb-30f6-4519-9838-33946097ee62.pdf>.



- extraordinary duty of cleaning the rooms or grounds in their free time and during non-study time before going to bed (no more than one hour);
- transfer of the child to a different room or living unit in the facility.

The use of any disciplinary procedures should be properly registered and recorded, and data from all disciplinary procedures should be monitored on a routine basis to ensure emerging patterns and trends are identified and acted on if necessary. The following disciplinary measures are expressly prohibited:

- physical punishment;
- group punishment for individual behaviour;
- humiliation, emotional abuse or sustained verbal abuse;
- deprivation of or reduction in basic rights and needs, such as food, clothing and medical care;
- denial of or restrictions on visits, telephone calls or correspondence with family members and significant other persons;
- exclusion from educational or vocational training programmes;
- solitary confinement;
- the use of physical force or restraints.

Children should have the opportunity to submit complaints regarding any issue, including the use of disciplinary measures, to the director of the detention centre, the central administration, judicial authority or other independent authority overseeing the facility or to an outside body such as the public prosecutor or an Ombudsperson. The complaints procedure must be accessible, safe, effective and appropriate for a child in view of their evolving capacities. Measures must be in place to protect children from reprisals arising from making a complaint. Independent monitoring bodies must closely scrutinise the use of disciplinary measures – both informal and formal – as part of the inspection process.

Staff should be obliged to report any concerns, suspicions or disclosures of ill-treatment of children to the appropriate authorities, whether in the context of disciplinary measures or otherwise. Any allegation of violence, abuse, neglect or exploitation or violation of a staff code of conduct should be investigated and responded to in a timely and appropriate manner. Violence against children should be treated as serious misconduct and grounds for dismissal.

### Staff as educators and role models in Spain

The youth justice system in Spain is based on the Young Offenders Act (2000). Its aim is to ensure that decisions made about children in the youth justice system are based on their best interests, and to offer them a process of 're-education'. The system is operated at the local level in Spain's 17 Autonomous Communities by local judges, prosecutors and local authorities. Community sanctions may also include a custodial element, such as weekend custody. Judges and prosecutors are advised on individual cases by 'a team of professionals specialised in sciences other than legal ones', usually consisting of social workers and psychologists. The team assess the child's circumstances and advise on a plan to best serve the child's interests. The establishments for children are commissioned or provided by the Autonomous Communities: some are publicly operated, others by voluntary sector organisations such as the Diagrama Foundation, but none can be run for profit.

The Diagrama Foundation runs a number of different institutions. A researcher visited some of their centres and concluded that: 'This idea of doing things together is central to the Educators within Diagrama's establishments in Spain. Their role is to be with their assigned children during

their whole shift: eating with them, joining in their classroom activities, playing football with them, maintaining the building and grounds together, watching TV together. The children live in groups of about 12 within the larger establishment, and have a full programme of activities every day, usually in smaller groups of 6-7 with 1-2 educators. The Educators act as positive role models and constantly interact with the children to solve problems, support them to achieve and to avert disputes. The atmosphere is remarkably relaxed: neither staff nor children wear uniforms and there is a great deal of physical affection and laughter. This is not at the expense of boundaries, however. Children are not allowed to swear, are expected to participate in activities whether they want to or not and must behave respectfully towards each other. There are sanctions if they break these rules and the regime is based on a system of progression through levels known as Induction, Adaptation, Association and Autonomy. The children physically move through these levels depending on their progress, gaining more freedom and better resources as they go. The units take both boys and girls, and are fully integrated apart from some separate living space. The belief is that the biggest safeguard for the children is good relationships with adults, who are a constant presence throughout their day'.<sup>42</sup>

42. Hart D, *Correction or Care?*, Prison Reform Trust, 2015.

### Exceptional use of physical force and restraint

It must be made clear to staff that the behaviour of a child can never be used as a justification for the use of torture or ill-treatment. When force is used, it must be in accordance with agreed and transparent procedures, and then only to the extent that it is essential to prevent a child from injuring himself or others or causing serious damage to property, and when all other means of dealing with the child without the use of force have been exhausted or are not proportionate in the circumstances. Procedures must specify when restraint and force may be used, who may authorise this, how they will be used and who will monitor their use. All incidents of the use of restraint and force should be recorded. Only staff members who have been trained in the use of physical force and restraint may utilise such measures.

### Implement a behaviour management policy

Disciplinary procedures for children in detention must have an educative and rehabilitative function for the child or children involved and must be fairly, transparently and proportionately applied with adequate accountability in place for when it goes wrong. To implement such disciplinary procedures requires a highly specialised workforce.<sup>43</sup> Working with children in detention demands a highly specific set of capacities and skills, not least because staff must be able to both maintain safety and order and support children to mature and develop and ultimately reintegrate back into their communities. It is vital that staff are specially selected for this purpose, including by way of rigorous background checks, and that they are well remunerated, trained and given help with dealing with the challenges they face in their daily work.

They should be given training in behaviour management techniques that focus on de-escalating potentially violent situations. Where staff have a degree of discretion when responding to children's behaviour, this use of discretion must be carefully monitored to avoid a separate and informal system of punishments which bypasses official procedures. Above all, they should be trained on children's rights and encouraged to work towards the rehabilitation of children in their care in every interaction.

Girls should be supervised exclusively by female staff who have been selected carefully to ensure they have the correct professional skills, and who have received special training in working with girls in a way that is sensitive to their emotional and developmental needs.

### Conclusion

Justice systems for children across the world are populated by children who are poor and face many disadvantages including poor housing, educational deficits and mental and physical ill-health.<sup>44</sup> The way in which children in conflict with the law are so often demonised and socially isolated can enable abusive and punitive attitudes and culture to flourish in detention facilities, resulting in unjust, arbitrary and frequently violent disciplinary systems.

As well as introducing clear, fair and transparent disciplinary systems in closed institutions, there is also much work to be done by civil society, independent monitoring bodies, government agencies and others to address misconceptions about children involved in the justice system. This can help to reduce unfounded public confidence that a harsh, punitive sentencing and disciplinary regime for children will always result in a reduction in crime. The media, for example, can be a very useful resource for disseminating information and positive stories about children's rehabilitation after offending. Above all, staff themselves should be trained and confident that they can maintain a safe, secure environment in which children can receive individualised treatment and attention, enabling them to be rehabilitated and reintegrate into their communities upon release.

43. Havana Rules, Rule 82.

44. Goldson B, 'Differential justice? A critical introduction to youth justice policy in UK jurisdictions' in McGhee J, Mellon M and Whyte B (eds), *Meeting Needs, Addressing Deeds – Working with Young People Who Offend*. Cited in Goldson B and Muncie J, 'Towards a global child friendly juvenile justice?', *International Journal of Law, Crime and Justice*, 2012, 40(1): 47-64.

## About this paper

This briefing paper emerged from a three-year project (October 2013-October 2016) managed by PRI Central Asia and funded by the European Union, which is working towards the progressive abolition of violence against children in closed institutions in Kazakhstan, Kyrgyzstan and Tajikistan, and in particular, towards ending the use of solitary confinement for children and ensuring the effective separation of children from adult detainees at all times.

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