



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

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PRI has been working in the Central Asia region since 2001, and has an office based in Astana, Kazakhstan. It carries out projects in Kazakhstan and Kyrgyzstan and works with partners in Uzbekistan and Tajikistan.

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1. INTRODUCTION

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

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

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

In the context of detention, violence against children can take many forms including torture, beatings, isolation, restraints, rape, harassment, self-harm and humiliation. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment states that 'Violence in places of detention, including special institutions for children, is manifest in several ways, mainly through physical and sexual violence, as well as through verbal abuse. In addition, children are also subjected to violence as a result of conditions of detention, or as a form of discipline or punishment'.²

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

States that are parties to the UN Convention on the Rights of the Child (CRC) have a clear obligation to take all appropriate legislative, administrative and educational measures to protect children in detention from all forms of physical or mental violence, injury or abuse,

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

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

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

neglect or negligent treatment or exploitation, including sexual abuse.⁴ Furthermore, under Article 40 (1) of the CRC states are obliged to: 'recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.' In their General Comment on Children's Rights in Juvenile Justice (General Comment No. 10) the CRC Committee asserts that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.⁵ The right of children to freedom from violence is also found in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under Article 24 of the ICCPR, children enjoy the right 'to such measures of protection as are required by [their] statuses as minors'. In addition, both the ICCPR and CAT prohibit cruel, inhuman, or degrading treatment.

Penal Reform International (PRI) has carried out a review that aims to increase our understanding of the specific legal and policy measures that can work to prevent and remedy violence against children in detention in Kazakhstan. 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, Pakistan, Russia, Tanzania and Uganda.

For each country the review aims to:

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

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

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

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

2. BACKGROUND TO THE REVIEW

Definitions

For this review, children are defined as all those under 18⁶. In the context of detention, violence against children can take many forms including torture, beatings, isolation, restraints, rape, harassment, self-harm and humiliation. This review draws on definitions of violence provided by the CRC: 'all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'.⁷ This includes torture which is defined by the Committee on the Rights of the Child in a recent General Comment as 'violence in all its forms against children in order to extract a confession, to extra-judicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law enforcement officers, staff of residential and other institutions and persons who have power over children, including non-State armed actors'.⁸ The Committee on the Rights of the Child has emphasised that the term violence 'must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, *inter alia*, neglect and psychological maltreatment)'.⁹

Methodology used

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

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

⁶ CRC, Article 1.

⁷ CRC, Article 19.

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

⁹ *Ibid.* para 4.

- protecting children when they are in detention by separating children from adults, having properly trained, qualified and remunerated employees working in detention facilities, and ensuring contact with families, lawyers and civil society;
- having an effective independent complaints and monitoring mechanism; and
- holding those responsible for violence against children accountable through investigation of allegations, prosecution of those implicated by the evidence, and imposition of proportionate penalties where applicable.

A desk review was conducted to assess whether the above pre-defined law and policy measures were in place in Kazakhstan 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 Kazakhstan's current law and policy relating to the indicators identified. It drew upon a wide range of sources including information and reports from international agencies such as UNICEF, UN and regional human rights mechanisms such as the Universal Periodic Review (UPR), 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 Kazakhstan 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

There are no figures available regarding the number of children detained in police stations each year. The number of children in pretrial detention has declined significantly in Kazakhstan in recent years from 546 in 2007 to 86 in 2012¹⁰ and this is testament to important reforms that have been implemented in the justice system for children to bring policy into line with international standards. According to PRI statistics received from the Prison Committee, during the last seven years there has been a strong trend for the number of children involved in criminal justice to fall.

| Number of juveniles in prison facilities | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|--|------|------|------|------|------|------|------|------|
| Pre-trial detention | 278 | 202 | 546 | 494 | 232 | 170 | 105 | 86 |
| Prisons | 561 | 487 | 425 | 427 | 449 | 386 | 153 | 167 |
| Total | 839 | 689 | 791 | 921 | 681 | 556 | 258 | 253 |

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

This research did not find up-to-date secondary sources of information regarding the use of violence against children in police and pre-trial detention. However, UN reports, from before reforms were undertaken, pointed to the use of violence by police against children in conflict with the law. In 2008, the Committee against Torture found that *'law enforcement bodies sometimes use illegal investigation methods during interrogations of minors, such as threats, blackmailing and sometimes even physical abuse. Such interrogations are allegedly often conducted in the absence of the parents or teacher of the minor, although their presence is required by law. The Committee is further concerned at reports that juveniles may be held in pre-trial detention for prolonged periods and that they are often not granted the right to receive relatives during that period'*¹¹.

In 2009, the UN Special Rapporteur on Torture visited the juvenile prison in Astana and a centre for temporary isolation, adaptation and rehabilitation of minors.¹² He reported that practically all the children deprived of their liberty interviewed *'reported that they had been*

¹⁰ Data provided to PRI by the Prison Committee

¹¹ UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Kazakhstan*, 12 December 2008, CAT/C/KAZ/CO/2

¹² Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak – Mission to Kazakhstan, A/HRC/13/39/Add.3, 2009, para 40

http://www2.ohchr.org/english/bodies/hrcouncil/docs/13specialsession/A.HRC.13.39.Add.3_en.pdf

beaten by police officers with police truncheons in order to extract confessions' while in police custody.¹³ He concluded, based on confidential interviews with convicted juveniles, that the use of beatings by police to extract confessions was widespread.

Use of detention as a last resort

Comprehensive law and policy on children in criminal justice

In 2008, Kazakhstan approved a Juvenile Justice System Development Concept and Plan of Action. According to UNICEF, the main components of this new system were¹⁴:

- specialised juvenile courts throughout the national territory;
- specialised juvenile legal offices throughout the national territory;
- a juvenile criminal police having both preventive and investigative functions;
- a specialised service for supervising non-custodial sentences;
- an efficient system for the coordination of child protection institutions, including 'special schools' and 'centres for temporary isolation, adaptation and rehabilitation of minors';
- social-psychological services in the juvenile justice system; and
- postgraduate programmes for the training of judges and other staff of the juvenile justice system.

UNICEF reports that many components of the Plan have not been fully implemented to date but that significant and positive changes have taken place including the following.

- Responsibility for operating the centres for temporary isolation, adaptation and rehabilitation of minors was transferred from the Ministry of Internal Affairs to the Ministry of Education and Science. New regulations were adopted, and prosecutors no longer have authority to place children in these centres.
- Monitoring of juvenile justice by the Ombudsman has been strengthened.
- The process of expanding the number of groups providing specialised legal services to children has begun.
- A law authorising mediation has been adopted.¹⁵

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 Child¹⁶) is an important preventive measure since it reduces the number of children in detention overall. According to Article 15 of the Criminal Code, criminal responsibility for serious crimes applies to those aged 14

¹³ *Ibid.*

¹⁴ This summary taken from UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Assessment of Juvenile Justice Reform Achievements in Kazakhstan*, July 2009, p7 Available at: <http://unicef.kz/files/00000135.pdf?sid=uptqp7proqr77iar5l74s1bj2> (Accessed on 25 February 2013)

¹⁵ This summary of recent changes is taken from UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Juvenile Justice in Central Asia, Reform Achievements and Challenges in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan And Uzbekistan*, April 2012, p11, Available at: http://www.unicef.org/ceecis/UNICEF_JJ_Synthesis_2012_Web.pdf (Accessed on 25 February 2013)

¹⁶ General Comment No 10, para 32.

years onward; for other crimes, as of 16. Twenty-one crimes are classified as serious for this purpose, ranging from terrorism, murder, rape, kidnapping and felony assault to theft and vandalism. In 2010, the Code was amended to allow children under the age of 16 to be prosecuted for theft, robbery and extortion only when aggravating circumstances, such as use of violence, are present.

Diversory measures

Provided children admit their responsibility for committing an offence, diverting children away from the formal criminal justice system is an important way of ensuring they are not exposed to violence within detention settings.

There are a number of different measures that are available to be used at court-level in Kazakhstan.

- Article 67 of the Criminal Code authorises the closure of cases without prosecution when the victim and the offender have reconciled and the victim has been compensated. It applies to minor offences and offences of ‘medium gravity’ committed by any person, regardless of age. UNICEF reports that additions were made to this Article in 2010 and now juvenile first time offenders may be released from liability for grave offences, provided death or serious bodily harm was not caused. Furthermore, cases may be closed on these grounds when the victim is society or the state, rather than a private individual.¹⁷ Recent data from the children’s court in Astana indicate that 22 per cent of the cases of accused juveniles prosecuted between 2008 and 2010 were resolved by reconciliation.¹⁸
- A Law ‘On mediation’ came into force in August 2011. It authorises mediation in cases involving minor crimes and crimes of medium gravity committed by juveniles, ie. intentional crimes punishable by a prison sentence of less than five years, or crimes of negligence punishable by a prison sentence of more than five years.¹⁹ An arresting office or prosecutor may allow such offenders the opportunity to participate in victim-offender mediation on a strictly voluntary basis aiming at a consensual settlement agreement. Mediation can take place before legal proceedings have begun, during the preliminary stage of criminal proceedings, or during trial. An agreement to mediate does not stay criminal proceedings, but a settlement agreement allows the prosecutor to close the case.²⁰

Alternatives to pre-trial detention

Keeping children out of pre-trial detention in the first place will reduce the numbers of children exposed to violence in these settings and in practice relatively small numbers of children are held in pre-trial detention in Kazakhstan. In principle, juveniles may not be detained before trial unless accused of an offence that carries a sentence of five years of imprisonment. The pre-trial detention of a juvenile may be ordered ‘in exceptional cases only, when a grave crime or felony is committed’ and may not exceed six months. One of

¹⁷ UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Assessment of Juvenile Justice Reform Achievements in Kazakhstan*, July 2009, p13 Available at: <http://unicef.kz/files/00000135.pdf?sid=uptqp7proqr77iar5l74s1jbj2> (Accessed on 25 February 2013)

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

the alternatives to pre-trial detention in Kazakhstan legislation for children is supervision over minors (article 147 of the Criminal Procedural Code). In 2009 this measure was used 709 times, in 2010, it was used 636 times and in 2011, 631 times.

RECOMMENDATION TO ENSURE DETENTION IS USED AS A LAST RESORT

- Kazakhstan should continue to implement a range of pre-trial diversion measures and alternatives to pre-trial detention including supervision and mediation.

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. 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 Kazakhstan, an individual may be kept in custody by the police for questioning without a court order for 72 hours, regardless of his/her age. After 72 hours, deprivation of liberty must be authorised by a court. This standard applies to juveniles and adults alike. This law far exceeds the suggested limit of 24 hours.

Limiting time in pre-trial detention

International guidelines require that the maximum time spent in pre-trial detention should be no longer than six months. Enforcing time limits will ensure that the numbers of children in pre-trial detention are reduced and therefore the risk of violence is lessened. Detention should be reviewed at least every 14 days. Information on the length of trials in Kazakhstan regarding children in practice is not available although UNICEF suggests that it seems likely that most cases of accused juveniles are adjudicated within six months.²¹

RECOMMENDATIONS TO LIMIT TIME CHILDREN ARE HELD IN DETENTION

- The time limit for detaining a child in police custody must be reduced from 72 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.

²¹ UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Assessment of Juvenile Justice Reform Achievements in Kazakhstan*, July 2009, p14. Available at: <http://unicef.kz/files/00000135.pdf?sid=uptqp7proqr77iar5l74s1jbj2> (Accessed on 25 February 2013)

Prevention measures at the police station

Proper registering of detainees within a time limit

Registering 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. In Kazakhstan, this should happen; however, in 2009, the Special Rapporteur on Torture reported that this safeguard was respected only formally and that beatings of minors by the police with fists and police truncheons upon apprehension were common, mostly before detention was formally recorded.²²

Specialist police officers to deal with children

International standards²³ encourage specialisation within the police to deal with child offenders and that a child should be referred to the relevant specialised officer as soon as possible following arrest. In Almaty and Astana, teams of specialised police investigators have been established to investigate crimes committed by juveniles, as well as crimes against children. A recent Ministerial Order calls for such teams to be established throughout the country.

Separation from adults during police detention

This is a vital protective mechanism and the international instruments are clear on the importance of separation of children from adults. UNICEF reports that in some police stations in Kazakhstan, a special room has been set aside for the questioning of children taken into custody but this is not routine practice.²⁴

Presence of lawyers, parents and others during questioning

Article 37 (d) of the CRC requires states to provide children with 'prompt access to legal and other appropriate assistance'. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems assert that states should establish child-friendly legal aid systems that 'enable children, who are arrested, deprived of personal liberty, suspected or charged with a crime, to contact their parents/guardians at once and to prohibit any interview in the absence of a parent/guardian, and lawyer or other legal aid provider'. Such contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report violence.

In Kazakhstan, when the suspect is under age 18, a parent or other responsible guardian must be notified within 12 hours of arrest. The presence of an attorney is obligatory from the moment he/she is taken into custody or accused, and during any interrogation as a suspect or accused. Children and juveniles may not be interrogated for more than two hours at a time or more than four hours a day, nor at night.²⁵

²² Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak – Mission to Kazakhstan, A/HRC/13/39/Add.3, 2009, para 40.

²³ Beijing Rule 12.1; Riyadh Guideline 58.

²⁴ UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Assessment of Juvenile Justice Reform Achievements in Kazakhstan*, July 2009, p16

²⁵ UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Juvenile Justice in Central Asia, Reform Achievements and Challenges in Kazakhstan*,

RECOMMENDATIONS TO PREVENT VIOLENCE AT THE POLICE STATION

- Proper procedures for registering children and admissions at the police station should be developed and implemented.
- Amendments to legislation should be made that explicitly require the separation of children and adults at all points of detention or deprivation of liberty (including during transportation to court/other facilities), including police and pre-trial detention.
- Policy and regulations should be developed that require the presence of legal assistance and the mandatory presence of a parent/guardian/legal representative/appropriate adult during the interrogation of a child at a police station.
- Provisions in the Juvenile Justice System Development Concept approved by Presidential Decree on 18 August 2008 regarding specialised police officers should be implemented nationally.

Prevention measures during court proceedings

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

This is not currently the practice in Kazakhstan.

Provision of legal assistance during court proceedings

In Kazakhstan, children have the right to be represented by defence counsel, including the right to free legal assistance if necessary. Although the right to free legal assistance is recognised, the fees paid to lawyers appointed to assist poor offenders are low and the quality of the services provided by lawyers who are not specialised is often inadequate. In Almaty and Astana, specialised groups of lawyers defend juvenile suspects and accused juveniles who are not represented by a private lawyer.²⁶

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. Article 77(9) of the Constitution and Article 116(1)(1) of the Criminal Code outlaw the use of evidence obtained under torture in judicial proceedings. In 2008, the Committee against Torture referred to reports that judges often ignore the complaints of torture and ill-treatment, do not order independent medical investigations, and often proceed

Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, April 2012, p12. Available at: http://www.unicef.org/ceecis/UNICEF_JJ_Synthesis_2012_Web.pdf (Accessed on 25 February 2013)

²⁶ UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Juvenile Justice in Central Asia, Reform Achievements and Challenges in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan*, April 2012, p14. Available at: http://www.unicef.org/ceecis/UNICEF_JJ_Synthesis_2012_Web.pdf (Accessed on 25 February 2013)

with the trials, therefore not respecting the principle of non-admissibility of such evidence in every instance.²⁷

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 that should be taken by courts if evidence appears to have been obtained through torture or ill-treatment.

Prevention measures in pre-trial detention facilities

Separation from adults in pre-trial detention

This is a vital protective mechanism and the international instruments are clear on the importance of separation of children from adults. It was difficult to obtain up to date information on this issue during this desk review. A report on conditions in an isolator in Astana prepared by UNICEF staff in 2009 indicated that the four male juveniles confined there at the time of the visit were housed in a separate cell but on a floor where there were cells for adults. The centre has facilities for men and women, but no adolescent girls were detained there at the time of the visit. As there was no separate area outside the cell, either indoors or outdoors, reserved for the use of juvenile detainees, they were confined in their cell for most of the day.²⁸

Regular visits by parents/guardians/family members and others

The situation for pre-trial detainees is not clear, however, for convicted children, the Special Rapporteur on Torture reports that there are extensive restrictions on family visits (the norm was three two-day visits and three short-term visits a year).²⁹

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

If children are to be searched then international standards state that this should be conducted by an officer of the same sex as the child and should be conducted in a way that does not humiliate, or degrade the humanity and dignity of a child. In Kazakhstan, the internal regulations of remand centres issued by the Ministry of Internal Affairs specify that searches should be carried out by an officer of the same sex.

²⁷ UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: Kazakhstan*, 12 December 2008, CAT/C/KAZ/CO/2, para 29.

²⁸ Study cited in UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States, *Juvenile Justice in Central Asia, Reform Achievements and Challenges in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan*, April 2012, p12.

²⁹ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak – Mission to Kazakhstan, A/HRC/13/39/Add.3, 2009, Para 42.

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 Kazakhstan remains low although the Juvenile Justice System Development Concept calls for the provision of social-psychological services in the juvenile justice system; and postgraduate programmes for the training of judges and other staff of the juvenile justice system.

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 in Kazakhstan 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 that it is the duty of every police officer and detention facility employee to ensure that children are so protected and where everyone has a duty to immediately report any concerns, suspicions or disclosures to the appropriate authorities.

RECOMMENDATIONS TO REDUCE VIOLENCE IN PRE-TRIAL DETENTION

- Amendments to legislation should be made that explicitly require the separation of boys and girls from adults at all points of detention or deprivation of liberty (including during transportation to court or other facilities), including police and pre-trial detention.
- Regulations relating to visits by parents, family members and others to children in detention should be developed taking into account the following issues:
 - The Havana Rules state that visits should occur 'in principle once a week and not less than once a month'.³⁰
 - 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.³¹ To ensure that children are able to be placed near their families, the Havana Rules encourage States to decentralise institutions.³²
 - Children should be provided with help in communicating with their families and their right to privacy should be respected.³³
 - 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

³⁰ Havana Rules, Rule 60.

³¹ General Comment No 10, para 60.

³² Havana Rules, Rule 30.

³³ Havana Rules, Rule 61 and 87(e).

disciplinary measures in all detention facilities where children are held. This must be in line with the Havana Rules and in particular must prohibit corporal punishment, solitary confinement and restriction or denial of contact with family members. These regulations must be known about by children and staff.

- Staff should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages.
- Staff must be trained in child rights and non-violent disciplinary measures.
- Efforts should be made to improve the status of individuals working with children in detention to ensure high-calibre employees.
- They must be trained to immediately report any concerns, suspicions or disclosures of violence against children to the appropriate authorities.
- A clear child protection policy should be established as part of the national Juvenile Justice Action Plan, which includes step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions.
- The Juvenile Justice System Development Concept should be implemented with specific emphasis on the training of staff working within the juvenile justice system.

Independent monitoring of police and pre-trial detention facilities

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

- Independent (meaning not part of the administration of the detention facility)
- Well qualified teams of inspectors that include medically trained inspectors as part of the team
- Inclusion of women as part of inspection team particularly where detention facilities are being inspected which hold girls and women
- Regular visits
- Liberty to make unannounced visits
- Access to all places under a state's jurisdiction where children are deprived of their liberty
- Access to all information and records about the treatment and conditions of detention
- Access to conduct interviews with children in detention on a confidential basis
- Liberty to choose which detention facilities they visit and which children to interview
- Access to all employees of a detention facility where children are held
- Reports of inspectors must be made available publicly
- Systematic follow-up to reports
- Ability to follow up allegations of abuse or violence.

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

Kazakhstan has ratified the ICCPR, CAT, OPCAT and the CRC and has received visits from the Special Rapporteur on the independence of judges and lawyers (11 to 17 June 2004) and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (5 to 14 May 2009). In July 2009, Kazakhstan extended a standing invitation to all UN Special Procedures.

System guaranteeing regular independent inspection of places of detention

There are a variety of different bodies that have a mandate to inspect places of detention where children are held in Kazakhstan and these are highlighted below.

- **Commissions on Juvenile Affairs and Protection of Minors**

These are collegial bodies that operate under regional and local governments. They have a broad mandate that includes the inspection of residential facilities for child offenders but they do not monitor the detention of children at police stations. Their reports are not made public and their work is not transparent so it is difficult to assess their effectiveness.

- **Public Monitoring Commissions**

These have been in existence in all regions of Kazakhstan since 2005 and they have the right to monitor pre-trial detention facilities including those where children are held. The Penal Executive Code states that the Commissions can have access to all prisons in their region. At present each Commission is working independently although there are plans to establish a Coordinative Council of Public Monitoring Commissions, which would be known as KSONK.

There are currently 13 public monitoring commissions in Kazakhstan, with each group including human rights defenders, journalists, lawyers and academics. They usually visit one prison or pre-trial detention facility a month but do not visit police stations. They have confidential access to inmates but there are concerns about a lack of protection from reprisals for those inmates who meet and talk to them. Their visits are announced in advance and their reports are published publicly. They do not monitor the situation of children separately.

- **Civil society**

In 2011, the Human Rights Ombudsman, UNICEF and PRI signed a Memorandum of Understanding to train civil society organisations to monitor the situation of children in closed facilities, including detention and correctional facilities for juveniles, and educational facilities for offenders and children at risk. To date, 16 NGOs have been trained and have conducted monitoring visits although not to children detained in police stations.

- **National Human Rights Council**

In law both the Presidential Human Rights Commission and the Office of the Ombudsman have the right to unimpeded, unlimited and unannounced access to all detention facilities. However, both institutions lack adequate resources. Shortages of staff and the absence of regional offices seriously impede regular inspections and follow-up visits. Furthermore, the National Human Rights Council has only received a 'B' accreditation by the ICC Sub-

Committee on Accreditation.³⁴ This is because of concerns about lack of independence. The National Human Rights Council does monitor prison and pre-trial facilities but not children held in police stations. They prepare recommendations which are communicated to responsible ministers but there is not clear information available regarding their overall effectiveness nor whether these recommendations are implemented.

- **Forthcoming - the National Preventative Mechanism (NPM)**

Kazakhstan ratified the Optional Protocol to the UN Convention against Torture in 2008 with a declaration under Article 24 (OPCAT) postponing the establishment of its NPM for a few years. However, discussions have been on-going in the country since the ratification on how to better implement the human rights treaty. Several NPM proposals have been discussed, including making use of existing structures which monitor places of detention. Currently Parliament is considering the draft law on NPM and debating the issue of including juvenile facilities within its mandate. The model to be used is described as 'Ombudsman plus' which means that the Office of the Ombudsperson is designated as the NPM but carries out their function in conjunction with civil society. The current draft law has no specific recommendations regarding children. In other countries, the creation of the NPM has meant that other forms of public oversight in places of detention have disappeared and it is vital that other monitoring bodies such as the Public Monitoring Commissions continue to complement and supplement the work of the NPM.

RECOMMENDATIONS REGARDING INDEPENDENT INSPECTIONS

In theory, each of the above mechanisms can provide different perspectives and insight and complement each other. However, the special status of children in detention demands either a separate monitoring body or special arrangements within an existing body to reflect the specific nature and gravity of rights violations they experience and in Kazakhstan there is no one body with this specialised expertise. Kazakhstan needs to develop a stand-alone mechanism for children or to integrate the monitoring of children in an existing mechanism. Such a mechanism will need to have employees who are knowledgeable and experienced in children's rights and who have the necessary profile, powers and duties.

No one mechanism in Kazakhstan has the mandate to monitor the conditions and treatment of children held in police stations. Kazakhstan must ensure that all child facilities, including police stations, are explicitly included in the mandate of the forthcoming NPM and that other monitoring bodies monitor all places of detention where children are deprived of their liberty including police stations.

³⁴ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Sub-Committee on Accreditation*, March 2012. <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202012%20FINAL%20REPORT%20ENG%20WITH%20ANNEXURES.pdf> (Accessed on 25 February 2013)

Measures to ensure accountability

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

In order to fulfil this obligation, children must have access to safe avenues to make complaints of violence whilst they are in detention. One avenue is via the Human Rights Commissioner (a position established by a presidential decree in 2002) who may receive complaints, which he can refer to the competent authorities, asking them to initiate administrative measures or criminal proceedings against the alleged perpetrators. In 2008, the Commissioner received 38 complaints about police officers humiliating the dignity of detainees, which were forwarded to the Internal Security Department under the Ministry of the Interior. According to analysis, in about 8 out of 10 cases the allegations were not confirmed. There is currently work underway to make complaint procedures more child-friendly.

Another avenue is for children to bring a complaint under the criminal law. Torture is prohibited under Article 141(1) of the (amended) Criminal Code and concerns allegations of violence inflicted by a law enforcement official. There are a number of other provisions of the Criminal Code under which law enforcement officials can be prosecuted for ill-treatment. Articles 307 and 308 criminalise the 'abuse of official power' and 'excess of authority or official powers' and provide for various penalties, including imprisonment of up to two and five years, respectively.

Article 192, para 4 of the Criminal Procedure Code provides that, in cases falling under Article 141(1) of the Criminal Code, preliminary investigation is carried out by the body of internal affairs or financial police. A system of 'alternative' investigation is used: this means that police investigate allegations against financial police and vice versa. However sometimes the system of alternative investigation does not work well, and the police investigate torture allegedly perpetrated by its own officials. The Kazakhstani Criminal Procedural Code does not explicitly call for a prompt and impartial investigation into a complaint of torture or other ill-treatment. Instead it requires the competent authorities to register a complaint and to open a criminal case into the complaint if 'sufficient evidence is presented that a criminal offence has been committed', and to inform the complainant of the decision.

There is no legal obligation in Kazakh domestic legislation for financial compensation or rehabilitation of torture victims. Furthermore, a civil procedure can only be initiated once criminal proceedings against the perpetrator or offender have started.

RECOMMENDATIONS TO ENSURE ACCOUNTABILITY

- Ensure that allegations of violence and ill-treatment including torture are impartially and adequately investigated to end the current culture of impunity.
- 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 in the criminal justice system.

ANNEX 1. COUNTRY STUDY TEMPLATE

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

1. Baseline information

NB where possible this information should be disaggregated by gender

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

2. Overarching law and policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Measures to prevent violence by adult detainees

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

10. Measures to prevent violence by other children

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

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

11. Measures to ensure accountability

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

12. Provision for complaints

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

13. Inspection and monitoring

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

14. Data collection

- Is data relevant to violence against children collected in line with the recommended UNODC and UNICEF indicators, and disaggregated by gender?³⁵

³⁵ UNODC and UNICEF, *Manual for the measurement of juvenile justice indicators*, United Nations: New York, 2007; and also indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*. Amsterdam, Defence for Children International, 2008.

15. Other relevant information

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