



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

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1. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

Penal Reform International (PRI) with the assistance of Dost Welfare Foundation (DOST) 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 Pakistan. This is part of a larger piece of work which reviews legal and policy measures to prevent and remedy violence against children in detention in seven other countries, selected because they are countries where PRI has a presence and/or relative influence to follow up recommendations: Bangladesh, Georgia, Jordan, Kazakhstan, 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 Pakistan.

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

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

2. BACKGROUND TO THE REVIEW

Definitions

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

Methodology used

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

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

⁶ CRC, Article 1.

⁷ CRC, Article 19.

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

⁹ *Ibid.* para 4.

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

A desk review was conducted to assess whether the above pre-defined law and policy measures were in place in Pakistan 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 Pakistan's current law and policy relating to the indicators identified. It drew upon a wide range of sources including information and reports from international NGOs such as UNICEF, UN and regional human rights mechanisms such as the Universal Periodic Review (UPR), National Human Rights Institutions, civil society and, in some instances, media reports. The findings and recommendations from the review were then distributed to DOST, a national NGO working on children and justice in Pakistan, which then provided additional information on the topic, filled any remaining gaps and commented on the accuracy, credibility and relevance of the information provided.

This review focuses on police and pre-trial detention based on the assumption that these settings are particularly dangerous for children. Children can be vulnerable when in contact 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 Pakistan 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 and DOST 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

According to the NGO the Society for the Protection for the Rights of the Child (SPARC), as of December 2011 there were a total of 1,421 children detained in Pakistan prisons, of whom 1,256 were in pre-trial detention and 165 had been convicted.¹⁰ At the time of publication of the Juvenile Justice System Ordinance of 2000 (JJSO) there were a reported 4,979 children in prisons indicating a fall in numbers since the introduction of the legislation (although these numbers do not include children in police or military detention).¹¹

Regionally, the majority of detained children in the country are in the Punjab region and are held in child cells within Punjab's 29 prisons, although there are two Borstal Institutes and Juvenile Jails in the region where children are also held. In Khyber Pakhtunkhwa children are kept in juvenile cells of the 22 prisons as there are no separate Borstal Jails; some children are held at the Adolescent Training Centre at Central Prison Haripur. In Sindh, a majority of children were detained in Youthful Offenders Industrial Schools (YOIS) of which there are four in the region. In Balochistan, children are held in child wards/cells in the 11 jails of the region.

The Government of Pakistan recorded in its response to issues raised by the UN Committee on the Rights of the Child, published 1 September 2009, that: 'At a given time approximately 9,000 to 10,000 children remain in criminal litigation with the majority of them released on bail at their first appearance in the court.'¹² This suggests that many thousands of children are detained in police custody each year.

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

In 2009, the Committee on the Rights of the Child produced Concluding Observations for Pakistan in which they stated their concern at levels of violence against children in police and pre-trial detention: 'The committee remains deeply concerned at reports of torture and ill-treatment of children by police officers in detention facilities and other State institutions'.¹³ The complementary report to the CRC Committee produced by SPARC and Save the Children also reports a problem of children being sexually abused by older inmates, and sometimes by adult prisoners.¹⁴

¹⁰ SPARC, *Administration of Juvenile Justice in Pakistan*, 2011, Available at: <http://sparcpk.org/PA-JJ.html> (accessed 14 November 2012).

¹¹ International Crisis Group: Working to Prevent Conflict Worldwide, *Reforming Pakistan's Prison System*, 2011, Available at: <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/212%20-%20Reforming%20Pakistans%20Prison%20System> (accessed 14 November 2012).

¹² Written replies by the government of Pakistan to the list of issues (CRC/C/PAK/Q/3-4) prepared by the Committee on the Rights of the Child in connection with the consideration of the third and fourth periodic reports of Pakistan (CRC/C/PAK/3-4) para 87.

¹³ UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child : concluding observations : Pakistan*, 15 October 2009, CRC/C/PAK/CO/3-4, para 45.

¹⁴ SPARC/Save the Children, *Alternative Report on the State of Child Rights in Pakistan*, 2009.

The Human Rights Commission of Pakistan noted in its report on the State of Human Rights in 2009 that 'juvenile offenders were not only maltreated but were also forced to undertake various kinds of strenuous labour. The justice system often condemned them to unnecessary trial over prolonged periods of time, and in jails they were faced with sexual abuse and physical torture. According to research collected through media reports, around 70 per cent of all children who came under the juvenile justice system were abused. Due to inadequate capacity of jails and lack of detention cells children were forced to share detention cells with older offenders. Lack of resources and their inefficient management made the juveniles suffer'.¹⁵

Individual reports of violence against children are numerous, for example, the Human Rights Commission of Pakistan reported a criminal case against 14 policemen for illegally detaining a 12-year-old boy at a police station.¹⁶ The police had raided the boy's house to arrest his father who was a suspect in a robbery. When the father could not be found, they brought his young son to the police station; a court bailiff recovered the boy from police custody and a medical report stated that he had been subjected to torture. Further, according to media reports, 30 children below 7 years of age were arrested, tortured, or involved in false cases in Pakistan, with Sindh Police being top among the provinces that mistreated children in conflict with the law. Media reports highlighted a further 48 cases of children aged 8 to 18, of which 38 were encountered/murdered, implicated in false cases, raped, tortured or illegally detained.¹⁷

Although our research does not extend to consideration of the use of violence as a sentence, it is striking that the principle of protecting children from violence is not upheld in Pakistan's sentencing legislation. The JJSO forbids the death penalty for crimes committed by persons when they were under the age of 18, however the provisions that this law is 'in addition to and not in derogation of, any other law for the time in force', means that children are still liable to the death penalty under other laws in Pakistan, specifically under the Anti-Terrorism Law (1997, amended 2002), the Army Act, and the Control of Narcotics and Substance Act. Under the Actions (in Aid for Civil Power) Regulation Act 2011, armed forces in FATA are given the power to detain anyone for any number of days without trial.¹⁸ Furthermore, prior to the JJSO children were liable to be punished by solitary confinement under Pakistan Penal Code, Section 73 for crimes which carry a punishment of 'rigorous imprisonment', however, despite this being overruled by the JJSO, there is clear evidence that these punishments are invoked in practice.¹⁹

¹⁵ Human Rights Commission of Pakistan, State of Human Rights in 2009, 2010

¹⁶ Human Rights Commission of Pakistan, State of Human Rights in 2010, 2011

¹⁷ Abdullah Khoso, Administration of Juvenile Justice in 2011 (draft) in SPARC (2012) State of Pakistan's Children in 2011 (draft), 2012.

¹⁸ Ibid.

¹⁹ In June 2010 SPARC met with two prisoners in Balochistan who were sentenced to death as teenagers, the first, Mewal Shah, aged 13 at the time of the offence, was sentenced to death by the Anti-Terrorism Court in Mastung. After four years in solitary confinement his sentence was commuted by the High Court in Balochistan to 25 years rigorous imprisonment. The other, Sarfaraz, was 16 or 17 at the time of a murder for which he was sentenced to death in 2009. His appeal is pending in Balochistan High Court. More recently, in January 2011, SPARC met three juveniles in Mach Jail under sentence of death for murder. Bhai Khan (now 18 years old), Naseerullah (now 17 years old) and Zahoor Ahmed (now 17 years old) were sentenced to death in March 2010. As at April 2011, the appeals of all three boys are pending in Balochistan High Court. Khoso, A. (2010), The JJSO: Caught in Quagmire of Non-Implementation, Chapter 2, in the State of Pakistan's Children, Islamabad; See www.sparckpk.org for more information.

RECOMMENDATIONS TO IMPROVE EVIDENCE AND DATA GATHERING

- Existing studies and research are not sufficient to give us a clear overview of the use of violence against children in the criminal justice system, therefore, more studies must be undertaken to establish the extent of the problem.
- Pakistan needs to have more effective and more transparent data collection and publication on indicators that can help to address violence covering the following:²⁰
- Time spent in detention before sentence
 - Time spent in detention after sentence
 - Number of child deaths in detention during 12 months
 - Percentage of children not wholly separated from adults
 - Percentage of children visited by family member in last 3 months
 - Percentage who enter a pre-trial or pre-sentence diversion scheme
 - Number of children in detention per 100,000 child population
 - Number of child deaths in detention during a 12-month period, per 1,000 children detained
 - Percentage of children in detention who are victims of self-harm during a 12-month period
 - Percentage of children in detention who are victims of sexual abuse during a 12-month period
 - Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12 month period
 - Existence of a system guaranteeing regular independent inspection of places of detention
 - Existence of specialised standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty
 - Existence of specialised standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty

The UNODC-UNICEF Manual suggests that data should be disaggregated by gender, ethnicity, offence and district of origin. It also suggests that data on juveniles deprived of liberty be disaggregated by the kind of facility in which they are confined. The proposed categories are police stations, juvenile detention facilities, 'juvenile rehabilitation facilities/schools' and 'prison', defined as 'detention facility housing both children and adults.'

²⁰ These indicators are based upon those recommended by UNODC and UNICEF in their *Manual for the measurement of juvenile justice indicators, 2007*, United Nations: New York and also on indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*, 2008, Amsterdam, Defence for Children International.

Use of detention as a last resort

Children should only be detained as a matter of last resort and keeping children out of police and pre-trial detention in the first place will reduce the numbers of children exposed to violence in these settings.

Comprehensive law and policy on children in criminal justice

The development of a comprehensive law and policy on juvenile justice in line with the core elements set out in the Committee on the Rights of the Child's General Comment No 10 can help to establish a climate where children in conflict with the law are treated with dignity, where all forms of violence are prohibited and prevented and where detention is used as a last resort.

The most comprehensive policy for dealing with children (from seven to below 18 years of age in conflict with law) in Pakistan is the JJSO, which was adopted in 2000. However, a 2004 Lahore High Court judgment declared the JJSO unconstitutional, with effect for the whole country. Despite the JJSO being restored by the Supreme Court as it deliberates on its final decision regarding the legislation, there are two main issues with the JJSO: firstly, it does not repeal any other laws but is in addition to them; and does not override laws that came or were amended after it came into force, which includes legislation in relation to Hudood offences and cases in special courts dealing with drug and terrorism offences. Secondly, it is yet to be properly implemented nationally.

Since the JJSO is still pending in the Supreme Court no amendments can be made until the Court comes to its final decision. However, this has been bypassed by the President who signed the Juvenile Justice System (Amendment) Ordinance in May 2012, which allows for joint trials of children with adults in Anti-Terrorism Courts. Previously, children tried by anti-terrorism courts would still be subject to all their rights given under the JJSO, implying that joint trials would not be allowed. Civil society in Pakistan, notably the coalition of child rights organisations 'the Child Rights Movement Pakistan', has been advocating against this amendment and for the Supreme Court to come to a final decision regarding the JJSO without delay so that in future positive amendments to the JJSO can be made.²¹

There are a number of draft laws awaiting adoption that offer additional protections for children in conflict with the law including: the Charter of Child Rights Bill 2009; the Child Protection (Criminal Laws Amendment) Bill 2009; and the National Commission on the Rights of Children (NCRC) Bill 2001.²² The draft Child Protection (Criminal Law) Amendment Bill 2009 makes legal provisions for:

- Definition of child sexual abuse and sexual exploitation with penalties.
- Revising the minimum age of criminal responsibility from seven to 10 years.
- Definition of internal trafficking of children with penalties.

²¹ Information provided by Abdullah Khoso, Save the Children.

²² In the Concluding Observations and Recommendations (October 2009), the Bill is from 2001 whereas in the NCCWD's documents, the Bill was drafted in 2009.

Currently the abolition of corporal punishment is being considered at a provincial level as a provision in the Prohibition of Corporal Punishment Bills, which is being reviewed by the respective provincial governments.

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 Child²³) is an important preventive measure since it reduces the number of children in detention overall. Pakistan's 1860 Penal Code (and subsequent amendments), states that the minimum age of criminal responsibility is seven years. In addition, the principle of *doli incapax* is applied for children aged between seven and 12 years under Section 83 of the Pakistan Penal Code, 'nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion'. However, there is no further information available regarding the process for deciding if a child has attained 'sufficient maturity of understanding'. The Child Protection (Criminal Laws) Amendment Bill 2009 has proposed to increase the age from seven to 10 years²⁴ and while, if passed, this would be an important step, it is recommended it be raised to 12, in line with recommendations from the Committee on the Rights of the Child.

In 1979, the Zia regime Islamised the Pakistan Penal Code and enacted the Hudood Ordinances, prescribing punishments according to orthodox Islamic law that covered theft, highway robbery, intoxication, blasphemy, rape, adultery and extra-marital sex. The definition of a child in Hudood law is 'a person who has not attained puberty'. Thus, a girl of 12 who has attained puberty is legally adult, and could be sentenced to punishment under the Hudood laws. The JJSO does not legally override the Hudood Laws.

Despite government efforts, birth registration of children in Pakistan is still low with 73 per cent of children not registered.²⁵ This creates problems for children in conflict with the law in Pakistan who may struggle to prove that they are below the age of criminal responsibility and hence, must not be taken through the formal court process; that they are under 12 years and must have *doli incapax* applied in their trial; or that they are under the age of 18 and must be tried as a child and not an adult. The courts are duty bound to order age tests on a child's first appearance before the court, however, often this is only done if a child's lawyer requests that medical age determination tests be carried out, which is not always the case. In cases where age determination does occur, it is often not done in a timely manner and therefore, children are held in the criminal justice system whilst awaiting these tests.²⁶

Under the Frontier Crimes (Amendment) Regulation 2011, which covers the Federally Administered Tribal Areas (FATA), a child is defined as below 16 years of age, not 18 as stated under the JJSO and the CRC and no procedure is specified for determining the age of a child.²⁷

²³ General Comment No 10, para 32.

²⁴ Information provided by Abdullah Khoso, Save the Children.

²⁵ Committee on the Rights of the Child, *Concluding Observations: Pakistan, 2009*; UNICEF (2012) *State of the World's Children 2012*.

²⁶ Abdullah Khoso, *Administration of Juvenile Justice in 2011 (draft)* in SPARC (2012) *State of Pakistan's Children in 2011 (draft)*, 2012.

²⁷ *Ibid.*

Abolishing status offences

Status offences include truancy, running away, violating curfew laws or possessing alcohol or tobacco. Such conduct would not be a criminal offence if committed by an adult but a child can be arrested and detained simply on the basis of their age. Status offences focus disproportionately on regulating the actions of girls as well as boys who are poor, disadvantaged or who work or live in the streets and therefore spend much of their time outside of the home. These offences should be abolished and the related conduct should be addressed instead through multi-agency child protection mechanisms. This will ensure that children are not held in detention and exposed to the risk of violence for behaviour which does not represent a serious risk to the child or others.

Pakistan retains status offences for vagrancy and being exposed to moral danger. Street children and child sex workers are particularly vulnerable to arbitrary arrest under these provisions.

Diversionsary measures

Diverting children away from the formal criminal justice system is an important way of ensuring they are not exposed to violence within detention settings. There are no provisions for diverting children away from formal prosecution through cautioning, mediation or other kinds of informal dispute resolution in Pakistan.

Alternatives to pre-trial detention

The JJSO allows more lenient conditions for bail to be met for children who are in conflict with the law and attempts to ensure that they are not kept in detention. For example, Article 10 states that 'a child accused of a bailable offence shall, if already not released under Section 496 of (Criminal Procedure) Code, be released by the Juvenile Court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation officer or a suitable person or institution dealing with the welfare of the children if parents or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.' Further to this, if a child under the age of 15 is accused of an offence that is punishable with less than ten years imprisonment, the JJSO states that he or she should be treated in the same way as a child for a regular bailable offence.

However, for children over the age of 15 years, the law is less lenient stating that 'the court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.'

According to SPARC, while the JJSO has helped to release some children on bail, as of May 2011, 83 per cent of children in Pakistan's jails were in pre-trial detention across the

country.²⁸ UNICEF has also reported that bail for minor crimes is not widely used due to a lack of awareness of the provision by judicial officers and poor communication between police, judiciary and probation officers. Further, when bail with surety is offered, the cost is often far higher than the majority of families are able to afford.²⁹

RECOMMENDATIONS TO ENSURE DETENTION IS USED AS A LAST RESORT

- The Frontier Crime Regulations must be abolished, or fully amended to contain provisions that protect children's rights, and be in line with the CRC, and with the national legislation of the rest of Pakistan including the JJSO.
- Steps must be taken to implement the JJSO nationally, including increasing awareness of its provisions among the police, judiciary, prosecutors and other professionals.
- Steps should also be taken to encourage a final decision regarding the JJSO at the Supreme Court so that proper revisions can be made to the JJSO in line with the CRC, including those made by the Juvenile Justice Working Group.³⁰
- It is strongly recommended that Pakistan raise the age of criminal responsibility for all children to at least 12 years in line with guidance from the Committee on the Rights of the Child.
- Status offences such as begging and prostitution should be identified as welfare issues and children engaging in these activities should be dealt with by the social welfare system and not the child justice system.
- Birth registration must be encouraged across the country and proper age determination procedures established and implemented in the Court system.
- Measures for diverting children out of the formal justice system, such as the use of cautions, mediation and alternative dispute resolutions should be explored, developed and implemented. Police and prosecutors should be trained in these methods.
- Legislation should be introduced that imposes greater restrictions on the use of pre-trial detention so it is only used as a last resort and for the shortest possible period of time where there is a risk of absconding and/or if a child is a danger to themselves or others.

²⁸ Alternative Report on the State of the Child Rights in Pakistan, 2009.

²⁹ UNICEF, *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, 2006.

³⁰ Recommendations can be found in the Law and Justice Commission of Pakistan Reports No 103-116, 2009, Available at: <http://www.ljcp.gov.pk/Menu%20Items/Publications/Reports%20of%20the%20LJCP/Final%20report%20103-116.pdf> (accessed 14 November 2012).

Detention for the shortest possible time

Limiting time in police detention

The UN Committee on the Rights of the Child has indicated in General Comment No 10 that no child should be detained by the police for more than 24 hours without a judicial order.³¹ The longer the period spent in police custody without the knowledge of the court system and possibly without the knowledge of family or guardian, the greater the risk of violence taking place.

The Constitution of Pakistan, Article 10 (2) explicitly states that the police must bring a suspect (either adult or child) in front of a magistrate within 24 hours of arrest. However, in 2010, the Pakistan-based NGO 'AGHS Child Rights Unit' interviewed children who had been detained in police custody in the Punjab region, which revealed that the vast majority of those interviewed (95 per cent) had been kept longer than the prescribed 24 hours before being produced before a judicial authority. Two children had been detained for as long as two months in police custody.³² Furthermore, the Criminal Procedure Code allows for a magistrate to authorise the detention of a suspect, whether adult or child, in police detention for a maximum of 15 days. It is reported that it is routine practice for judicial officers to not look closely into the case at hand but to use information solely provided by police officials and to remand children in police custody for between seven and 14 days.³³

Of serious concern is the Actions (in Aid of Civil Power) Regulation (AACPR), which is applicable in the FATA, and allows for the detention of a person or child for 120 days under internment. Children may be kept in internment before being handed over to prosecuting authorities. This law overrides all other laws, including the Constitution.³⁴

Limiting time in pre-trial detention

The maximum time spent in pre-trial detention should be no longer than six months according to the Committee on the Rights of the Child General Comment no.10.³⁵ 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.

The JJSO states 'on taking cognizance of an offence, the Juvenile Court shall decide the case within four months'. It requires children to be released immediately on bail if, for offences punishable by death the trial is not completed within a year, for offences punishable by life imprisonment, if the trial is not completed within six months, and for all other offences, if the trial is not completed within four months.

³¹ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 83.

³² AGHS Child Rights Unit, *Children in Prisons: Punjab Report, January to December 2010, 2011*.

³³ Information provided to PRI by Abdullah Khoso, Save the Children.

³⁴ Abdullah Khoso, *Administration of Juvenile Justice in 2011 (draft) in SPARC, State of Pakistan's Children in 2011, (draft)*, 2012.

³⁵ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 83.

However, an exception is made to these time limits permitting the court to refuse bail if a child is over the age of 15 years and is accused of an offence which is 'serious, heinous, gruesome, brutal, sensational in character or shocking to public morality'. Therefore, while the provisions of the JJSO in general do have the potential to reduce the length of time children will spend in pre-trial detention, they allow for a wide interpretation and for a more punitive court to detain children for a lengthy amount of time.

RECOMMENDATIONS FOR ENSURING CHILDREN ARE DETAINED FOR THE SHORTEST POSSIBLE TIME

- The time limit of 24 hours for detaining a child in police custody must be strictly enforced and the law amended so that children can no longer be detained by the police for 15 days.
- The Frontier Crime Regulations and the Actions (in Aid of Civil Power) Regulations must be fully amended to contain provisions that protect children's rights.
- The legal time limits that children can be held in pre-trial detention must be enforced. or others.

Prevention measures at the police station

Proper registering of detainees within a time limit

Registering of detainees is an important preventive measure since it establishes that the police station has responsibility and is accountable for the treatment of a child detainee. The only procedure stated under the JJSO for when a child is arrested, is that the officer in charge of the police station where the child is held shall, 'as soon as may be', inform a child's guardian of his or her arrest and the date and time that he or she will be produced before the Juvenile Court. Secondly, the police officer must inform the Probation Officer in order for him or her to obtain information for a social inquiry report for the court. In the KPK Districts a separate register for children is supposed to be maintained at every police station, known as register 26-A; while civil society try to keep it maintained, in practice this does not always occur³⁶. The register, under Article 85 of the Qanun-e-Shahadat Order 1984, is a public document, hence everybody has legal access to it.

Access to medical care

Children should have access to medical treatment if they have been injured or are in a state of psychological trauma. There is no specific reference to children's access to medical care after arrest or in police custody in Pakistan's law and policy.

Specialist police officers to deal with children

International standards³⁷ encourage specialisation within the police to deal with child offenders and a child should be referred to the relevant specialised officer as soon as possible following arrest. There are no specialist police officers to work with children in Pakistan.

³⁶ Information provided by Abdullah Khoso, Save the Children.

³⁷ Beijing Rule 12.1; Riyadh Guideline 58.

Protection from abuse when taking samples and during searches

The process of taking samples and searching children in order to obtain evidence or for security purposes can be abused by police. The UN Study for example found that male staff often engage in 'sanctioned sexual harassment such as improper touching during searches'. The international instruments do not provide any specific protection for children in the course of searches although Rule 10.3 of the Beijing Rules requires contact between law enforcement officials and children to be managed in such a way as to respect the legal status of the child, promote the well-being of the child and avoid harm to him or her. This could be read to imply that a child in detention should only be searched by an officer of the same sex. Intimate searches (such as taking of blood, saliva or pubic hair) should only be taken in limited circumstances and carried out by a medical practitioner. No information about this was available for Pakistan.

Separation from adults during police detention

Under the JJSO children are prohibited from being kept in a police station for longer than 24 hours, although as stated above children are often held for much longer. However, during this time the JJSO does not contain an obligation for children to be detained separately from adults in police custody, and while the Prison Act and Prison Rules require the separation of male children from adults, and girls from male detainees in pre-trial detention, this is not extended to police facilities. UNICEF has reported that children are often kept in the same quarters as adults, usually locked up for 24 hours a day.³⁸

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.'³⁹ Such contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report violence.

The Constitution of Pakistan states 'No person who is arrested....shall be denied the right to consult and be defended by a legal practitioner of his choice' and with specific regard to children, the JJSO also states that 'every child who is accused of the commission of an offence...shall have the right of legal assistance at the expense of the State'.

However, neither of these pieces of legislation detail at what points of the criminal justice system this legal assistance should or must be provided, or who is responsible for informing a child of this right and ensuring it is fulfilled. It is only mentioned that the legal assistance must be provided by someone with at least five years standing at the Bar. In addition, as children are not normally given access to free legal aid or legal representation at the pre-trial

³⁸ UNICEF, *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, 2006.

³⁹ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para 52(b).

stage, many are unable to apply for bail or to report or challenge any illegal acts committed against them, for example, the length of detention. While the JJSO ensures that a child's guardian and a probation officer are informed of a child's arrest, it does not give either the right to be present when the child is being questioned by the police.

RECOMMENDATIONS TO PREVENT VIOLENCE AT THE POLICE STATION

- Proper procedures for registering children and admissions at the police station should be developed and implemented.
- Proper procedures should be in place to ensure that a child is given access to medical care as required at the police station.
- Amendments to legislation should be made that explicitly require the separation of children and adults at all stages of detention (including during transportation to court or other facilities), including police and pre-trial detention. The legislation should also require girls to be separated from women at all times – currently an omission.
- Given the very low minimum age of criminal responsibility, efforts should be made to separate older and younger children whilst held in detention. Similarly, boy and girl children must be properly separated whilst in detention in police cells.
- 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.

Prevention measures during court proceedings

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

The JJSO requires that a Probation Officer assist the court by producing a social inquiry report on each accused child's 'character, educational, social and moral background'. To this end, it is required that the police officer in charge at the time of a child's arrest and detention in police custody must inform the responsible Probation Officer of the child's arrest and the date and time of their hearing in front of the Juvenile Court.

Provision of legal assistance during court proceedings

The JJSO states that 'every child who is accused of the commission of an offence...shall have the right of legal assistance at the expense of the State'. However, it does not detail who is responsible for informing a child of this right or ensuring it is fulfilled. Further, as of 2011, despite the fact that 27 District Panels of Lawyers were so far established (11 in Punjab, 11 in Khyber Pakhtunkhwa, 5 in Sindh) to be used to provide the required legal assistance to juveniles under the JJSO, they have not been functioning due to funding not being allocated

⁴⁰ AGHS Child Rights Unit, *Children in Prisons: Punjab Report, January to December 2010, 2011*.

for them.⁴¹ Worryingly there have reports of cases of groups of lawyers protesting against the provision of legal aid by NGOs or other organisations, claiming that they are taking away cases (and therefore, business) from lawyers.⁴²

Exclusion of evidence obtained through torture or threats

Courts which allow evidence that has been obtained through torture or threats add to the problems of impunity that make these practices so common in the investigation phase of the juvenile justice system. The Evidence Act 1984 envisages that a confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to be caused by any inducement or threat (Article 37).

RECOMMENDATIONS FOR COURTS

- More juvenile courts should be created that can hear children's cases on a priority basis.
- Courts must be supported in their decision-making by social workers, probation officers or other suitable persons who can liaise with family and community and identify community-based alternatives to pre-trial detention.
- Policy and regulations should be developed that require the presence of legal assistance during court proceedings.
- Clear legal provisions should be adopted that prescribe measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment.

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. General Comment no 10 states that: 'There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being and their future ability to remain free of crime and to reintegrate.'⁴³

⁴¹ CRIN: inhuman Sentencing Campaign www.crin.org/violence/search/closeup.asp?infoID=23610; Abdullah Khoso, *Administration of Juvenile Justice in 2011 (draft) in SPARC, State of Pakistan's Children in 2011 (draft)*, 2012.

⁴² Ibid.

⁴³ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 85.

The JJSO does not mention the separation of juveniles from adults in pre-trial detention facilities. However, the Prison Act and Prison Rules require the separation of male children from adults. Under these regulations as well as Section 10 of the Juvenile Justice Rules, it is required for girls to be detained separately from male detainees in a facility exclusively established for the purpose. There is no requirement in this legislation that girls must be separated from adult female detainees.⁴⁴ In the Punjab region, AGHS have observed the lack of separate wards for female children and hence, all girl children are detained alongside adult women.⁴⁵

UNICEF has reported that there is only one specific juvenile remand home in Pakistan (in Karachi) and that many children held in pre-trial detention in adult facilities, often not separated from adults.⁴⁶ However, according to the NGO SPARC, detained children have always been kept in separate barracks (on the same detention site) to adults. Despite this, there is an on-going problem of child prisoners being sexually abused by the older inmates in the same living quarters, and sometimes by the adult prisoners, as during their imprisonment children are mixed with the general prison population and adult prisoners have easy and frequent access to juvenile wards.⁴⁷

Regular visits by parents/guardians/ family members and others

The Juvenile Justice Rules allow for each child to meet with relatives, friends or legal counsel at least twice a week and in 'reasonable facilities'.⁴⁸ However, SPARC reports that the time allocated for these meetings is usually short, and that as opposed to the reasonable facilities required under the legislation, the child is separated from family members by bars and wire gauze.

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

Corporal punishment is still currently used as a disciplinary measure, despite the JJSO prohibiting it. However, as previously noted, the JJSO does not override contradictory legislation and is not implemented throughout the country. For example, Article 46 of the Prisons Act allows for whipping as a punishment within the prison system for male prisoners, and the only difference for children is stated that 'in case of prisoners under the age of sixteen...in the way of school discipline, with a lighter rattan'.⁴⁹ Regionally, in the Punjab (the most populous region in Pakistan), the Borstal Act also permits corporal punishment for males in the institutions under its jurisdiction.⁵⁰

⁴⁴ UNICEF, *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, 2006.

⁴⁵ AGHS Child Rights Unit, *Children in Prisons: Punjab Report, January to December 2010, 2011*.

⁴⁶ *Ibid.*

⁴⁷ Abdullah Khoso, *Administration of Juvenile Justice in 2011 (draft) in SPARC, State of Pakistan's Children in 2011 (draft)*, 2012.

⁴⁸ Section 11, Juvenile Justice Rules 2001.

⁴⁹ Prisons Act, Article 53.

⁵⁰ Global Initiative to End Corporal Punishment of Children, <http://www.endcorporalpunishment.org/pages/frame.html> (accessed 14 November 2012).

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

If children are to be searched then 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. Under the Juvenile Justice Rules, Section 8, each juvenile is required to be 'thoroughly searched' on admission to a Borstal institution. While there are no specific procedural rules for how this should be conducted with regards to children, there are rules for searches of women under Article 52 of the Criminal Procedure Code, which require them to be carried out by a member of the same sex.

Appropriately qualified, trained and remunerated staff

Obtaining information on this issue was difficult. In the Punjab region (and elsewhere in Pakistan) there is no proper authority within the system which is exclusively responsible for the protection of children in police custody and detention and for arranging legal assistance for them.⁵¹ However, at the remand home for children based in Karachi, the staff have been properly trained in the treatment of children.⁵²

Medical assistance

Section 13 of the Juvenile Justice Rules 2001 provides for the health, hygiene and medical care of children detained in Borstal institutions. The Rules require each child to have a medical file that is maintained by the institution along with any medical history. In addition children should have regular medical check-ups whilst in the Borstal institution every three months, and any medical facilities or medicines required by the child should be arranged from the Borstal institution. Where a child is suffering from a serious illness including TB, HIV/AIDS, Asthma, Hepatitis, Epilepsy, they may be brought before the Juvenile Court for a judge to decide whether to grant the child bail.

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

Institutions where children are detained do not have a clear overarching child protection policy that includes a clear statement that every child has the right to be protected from all forms of violence, abuse, neglect and exploitation, and it is the duty of every police officer and detention facility employee to ensure that children are so protected and where everyone has a duty to immediately report any concerns, suspicions or disclosures of to the appropriate authorities.

⁵¹ AGHS Child Rights Report, Children in Prisons: Punjab Report, January to December 2010, 2011.

⁵² Information provided by Abdullah Khoso, Save the Children.

RECOMMENDATIONS TO PREVENT VIOLENCE DURING PRE-TRIAL DETENTION

- Amendments to legislation should be made that explicitly require the separation of children and adults at all points of detention or deprivation of liberty (including during transportation to court or other facilities), including police and pre-trial detention.
- 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 they should occur 'in principle once a week and not less than once a month'.⁵³
 - 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.⁵⁴ To ensure that children are able to be placed near their families, the Havana Rules encourage States to decentralise institutions.⁵⁵
 - Children should be provided with help in communicating with their families and their right to privacy should be respected.⁵⁶
 - Children should be allowed to communicate with other persons or representatives of reputable outside organisations who can help to expand the range of activities and support that the child can access while detained, supporting their development and encouraging their reintegration into society.
- Specific regulations must be drawn up and implemented concerning the use of disciplinary measures in all detention facilities where children are held. This must be in line with the Havana Rules and in particular must prohibit corporal punishment, solitary confinement and restriction or denial of contact with family members. These regulations must be known about by children and staff.
- Staff should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages.
- Staff must be trained in child rights and non-violent disciplinary measures.
- Efforts should be made to improve the status of individuals working with children in detention to ensure high-calibre employees.
- Staff must be trained to immediately report any concerns, suspicions or disclosures of violence against children to the appropriate authorities.
- Establish a clear child protection policy with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions.
- The use of any form of corporal punishment or physical violence by staff against a child in detention should be prohibited in law - this includes the placement of a child in solitary confinement - and staff should face severe sanctions for using violence against children in detention. This includes a prohibition on corporal punishment permitted against girls under the Hudood Ordinance 1979.

⁵³ Havana Rules, Rule 60.

⁵⁴ General Comment No 10, para 60.

⁵⁵ Havana Rules, Rule 30.

⁵⁶ Havana Rules, Rule 61 and 87(e).

Independent monitoring of police and pre-trial detention facilities

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

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

Pakistan has ratified the CRC and ratified the CAT and ICCPR as late as 2010, although with reservations on some articles of the ICCPR. Pakistan has yet to be visited by the Committee against Torture, and a visit request from the UN Special Rapporteur on Torture has been pending since 2011. Pakistan has not signed the OPCAT. Pakistan was subject to the UPR first cycle in 2008 and will be subject to the second cycle in October-November 2012.

Is there a system guaranteeing regular independent inspection of places of detention

Detention facilities where children are held are not systematically monitored. UNICEF reports that in some areas, judges and magistrates have been very proactive in visiting the juvenile section of the jails monthly or weekly to release children charged with petty offences. An Inspector General of Prisons also makes visits to facilities to monitor conditions, but these are not regular, and according to officials, the visits are based on complaints filed by individual detainees reporting misbehaviour of civil servants, rather than an organised system of visits. Some human rights groups have been permitted by local, provincial and national authorities to monitor conditions specifically for children and female prisoners. The International Committee of the Red Cross (ICRC) reported difficulties in accessing detention sites, in particular those detaining persons for security-related offences. The Human Rights Commission of Pakistan conducts some prison monitoring, receives complaints regarding prisoner abuse, and also documents case of police abuses.

RECOMMENDATIONS TO ENSURE INDEPENDENT MONITORING

- It is strongly recommended that Pakistan allow independent monitoring bodies that are trained to monitor the conditions of children in detention full and unannounced access to detention facilities in a way that allows them to fulfil their mandate for inspection and visiting detainees.
- It is recommended that Pakistan remove its reservations from the ICCPR and take steps to sign and ratify the OPCAT. It is also recommended that they begin to engage with the Committee against Torture including submitting periodic reports.

⁵⁷ 'The Government of the Islamic Republic of Pakistan declares that the provisions of Article 3 of the International Covenant on Civil and Political Rights shall be so applied as to be in conformity with Personal Law of the citizens and Qanoon-e-Shahadat.'

'The Government of the Islamic Republic of Pakistan states that the application of Article 25 of the International Covenant on Civil and Political Rights shall be subject to the principle laid down in Article 41 (2) and Article 91 (3) of the Constitution of Pakistan.'

⁵⁸ Ibid.

⁵⁹ US Department of State *Human Rights Report 2010*, 2011.

Measures to ensure accountability

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

In the first instance there should be clear avenues for children or adults to make complaints of ill-treatment whilst in detention. The reporting of violence against children in any setting (not just while detained by the State) is not required under any legislation and the majority of cases of abuse against children go unreported.⁶⁰ According to the NGO SHARP, a complaints system does exist which allows for prisoners to submit grievances and by law authorities must allow those detained to submit complaints without censorship and to request an investigation into allegations of inhumane conditions. However, in practice it does not function effectively.⁶¹

The Juvenile Justice Rules, under Rule 18 state that 'each and every complaint and request made by the juveniles shall be properly attended to by the in-charge of the Borstal institution and every grievance shall be redressed as is necessary for the purposes of the Juvenile Justice System within the shortest possible time'. However, the latter section then states that 'any false or malingered report made by a juvenile may however, be discouraged for the sake of maintenance of the institution order and discipline'.

Child Complaint Offices (CCO) were established at the Federal Ombudsman's Office in Islamabad in 2009 to hear complaints of child rights violations by any government authority but the National Human Rights Commission reports that their progress has been slow and during 2011, they only received 85 complaints.⁶² CCOs were also set up at the provincial level at the offices of the Provincial Ombudsman. The Punjab CCO in Lahore also faced criticism for its slow progress. It released its 2010 annual report in December 2011, according to which it had only received 274 applications in two years despite having been allocated a substantial budget; of these complaints, 18 were against police. The CCOs only receive reports but do not follow through with investigation of these cases or provide remedies or further action except for a letter to the relevant authorities to resolve the issue.⁶³

The Constitution of Pakistan prohibits torture under Article 14, 'No person shall be subjected to torture for the purpose of extracting evidence'. However, neither the Constitution, nor other legislative acts define torture. In addition, under this provision only torture which is applied to extract evidence is expressly forbidden, not torture under any other premise.⁶⁴

⁶⁰ Save the Children, *Stepping up Child Protection: An Assessment of Child Protection Systems from all countries of South Asia, including reflections from Central Asia*, 2010.

⁶¹ US Department of State *Human Rights Report 2010: Pakistan*, 2011.

⁶² NHRC, 2011 <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf> (accessed 14 November 2012).

⁶³ Information provided by Abdullah Khoso, Save the Children.

⁶⁴ *Ibid.*

Furthermore, there are no independent procedures in Pakistan to properly investigate allegations of torture and hence, it often occurs with impunity.⁶⁵

Pakistan's criminal laws regarding assault and violence against the person are out of date and poorly implemented. The legal framework for criminal trials is provided in three bodies of law inherited from the British colonial regime: substantive law is contained in the Pakistan Penal Code of 1860; principles and procedures for evidence in the Evidence Act of 1872 (amended and renamed Qanune-Shahadat in 1984); and criminal procedures for registration, investigation and trial in the Criminal Procedure Code of 1898. It should be noted that parts of the country are excluded from the procedures and protections of these texts, such as the FATA.

- The Police Order of 2002 includes several safeguards against the use of torture and/or violence:
- Police officers who make entry or searches without lawful authority, detain or arrest persons, or inflict torture or use violence on any person in their custody, are punishable with imprisonment for a term which may extend to five years and with a fine under section 156 of this order.
- Article 4(1)(c) of this order makes it obligatory for police officers to prevent harassment of women and children and to ensure that the rights and privileges of a person taken in custody are protected.
- Specific provisions to eliminate torture are included under Articles 155, 156 and 157 of the 2002 Order.
- Chapter II deals with the responsibilities and duties of the police, and clearly lays down that it shall be the duty of every police officer to: behave with the members of the public with due decorum and courtesy; protect the life, property and liberty of citizens; ensure that the rights and privileges of a person taken in custody are protected; ensure that the information about the arrest of a person is promptly communicated to a person of his or her choice; and bring information before the competent court and to apply for a summon, warrant/search warrant or such other legal process as may, by law, be issued against any person suspected of committing an offence.

Girls in particular are vulnerable to sexual abuse in detention in Pakistan and in a number of cities there are women police stations run by female officers. Ordinary police stations are not allowed to detain women overnight. Furthermore, the Women's Protection Bill was passed by the National Assembly of Pakistan in 2006, under which, rape cases (earlier tried only under Hadd/Shari'ah law) are dealt with under normal criminal courts.

⁶⁵ Asian Human Rights Committee: <http://www.humanrights.asia/countries/pakistan/torture-in-pakistan> (accessed 14 November 2012).

So in practice, a child or group of children who have been subject to violence in detention at the hands of a police officer or detention facility employee can file a complaint. The inspectors general, district police officers, district nazims (a chief elected official of a local government or mayor equivalent), provincial interior or chief ministers, federal interior minister, prime minister, or courts can then order internal investigations into abuses and order administrative sanctions. Executive branch and police officials can recommend, and the courts can order, criminal prosecution.

The obstacles for a child in this position to receive remedy, whether through criminal or civil proceedings, are enormous. A report from the Asian Human Rights Commission of 2009 states that 'The police are the main perpetrators of torture against ordinary citizens. The lack of police reform mechanisms has perpetuated the cycle of torture in Pakistan. Anyone who is arrested is likely to endure ill-treatment or torture. No police officer has ever been sufficiently punished for the act of torture, although in rare cases some have been suspended or transferred for committing torture in the rare cases where it has been proven. The absence of criminalisation of torture provides impunity to the police and engenders further abuse. Corruption in the administration of justice is rampant. Transparency International's National Corruption Perception Survey shows that the police are the second most corrupt institution in Pakistan with the judiciary not far behind.'⁶⁶

The International Crisis Group⁶⁷ has produced a report outlining the challenges facing Pakistan's criminal justice system overall and finds that: 'The low conviction rate, between 5 and 10 per cent at best, is unsurprising in a system where investigators are poorly trained and lack access to basic data and modern investigation tools. Prosecutors, also poorly trained, are not closely involved in investigations. Corruption, intimidation and external interference in trials, including by the military's intelligence agencies, compromise cases before they even come to court. Given the absence of scientific evidence collection methods and credible witness protection programs, police and prosecutors rely mostly on confessions by the accused, which are inadmissible in court.'

⁶⁶ Transparency International Pakistan website, National Corruption Perception Survey – TI, 2011.

⁶⁷ Reforming Pakistan's Criminal Justice System, International Crisis Group, Asia Report N°196 – 6 December 2010.

Right of victims of torture, ill-treatment or abuse of authority to reparations

Under existing legal framework in Pakistan, claims for reparation for an act of torture would be settled under Shari'ah law. However, the existing situation in the country often benefits the perpetrator due to the high degree of authority enjoyed by law enforcement officers. The Asian Human Rights Commission note that the possibility of using the civilian court proceedings to obtain compensation is undermined as often the proceedings require a police report to substantiate a claim against torture, which is understandably very difficult for victims, especially children, to obtain.⁶⁸ The Asian Legal Resource Centre/ACAT France in their submission to the UPR stated that the government of Pakistan has failed to take any effective action to ensure that victims have access to protection and redress.⁶⁹

RECOMMENDATIONS TO ENSURE INDEPENDENT MONITORING

- Pakistan should legislate for the definition of torture and ill-treatment in line with the definition in the CAT.
- Deliver a firm message of 'zero tolerance' of ill-treatment, including through on-going training activities, to all police and prison staff. As part of this message, it should be made clear that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions.
- Ensure that allegations of violence and ill-treatment including torture are impartially and adequately investigated.
- It is recommended that an independent body for receiving and processing complaints by children in detention be established in order for any instances of abuse, ill-treatment or torture to be properly reported and followed-up.

⁶⁸ Asian Human Rights Committee: <http://www.humanrights.asia/countries/pakistan/torture-in-pakistan> (accessed 14 November 2012).

⁶⁹ Asian Legal Resource Centre/ACAT France, Stakeholder's Submission to the Universal Periodic Review of Pakistan, 2012, Available at: <http://www.alrc.net/PDF/ALRC-UPR-14-002-2012.pdf> (accessed 14 November 2012).

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 3 months
- Percentage of children receiving a custodial sentence
- Percentage who enter a pre-trial or pre-sentence diversion scheme
- Percentage of children in detention who are victims of self-harm during a 12-month period
- Percentage of children in detention who are victims of sexual abuse during a 12-month period
- Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12-month period
- Percentage of children released from detention receiving confidential exit interviews by independent authority

2. Overarching law and policy

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

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

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

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

- Are there alternatives to arrest such as issuing a police warning/caution or written notice to appear?
- What are the legal requirements regarding the presence of lawyers, appropriate

adults, parents or guardians during questioning in a police station? What are the sanctions for breach of these requirements?

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

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

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

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

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

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

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

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

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

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

9. Measures to prevent violence by adult detainees

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

10. Measures to prevent violence by other children

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

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

11. Measures to ensure accountability

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

12. Provision for complaints

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

13. Inspection and monitoring

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

14. Data collection

- Is data relevant to violence against children collected in line with the recommended UNODC and UNICEF indicators, and disaggregated by gender?⁷⁰

⁷⁰ UNODC and UNICEF, *Manual for the measurement of juvenile justice indicators, 2007*, United Nations: New York; and also indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*, 2008, Amsterdam, Defence for Children International.

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?