



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

Summary Report

1. INTRODUCTION

Violence against children who are deprived of their liberty is a severe violation of their rights. There is reliable and consistent evidence from many countries that children are at significant risk of violence in police and pre-trial detention and that violence in these settings is widespread and in some cases normalised. And yet this violence remains largely invisible. This report seeks to draw attention to the issue of such manifestations of violence against children, focusing on the situation in Bangladesh, and highlighting key concerns and recommendations for change.

Context in Bangladesh

Most of Bangladesh's existing legislation on juvenile justice predates current international standards on juvenile justice. The Children Act 1974 and Children Rules 1976, intended to protect the child's best interests during all legal proceedings, do put in place some basic safeguards. They also provide for separate juvenile courts and forbid the joint trial of an adult and a child offender. The Act covers both children in conflict with the law and those in need of care and protection, often with little differentiation between the two. The protections available to children in conflict with the law are often not enforced due to infrastructural deficiencies. For instance, although there are 44 dedicated posts for probation officers, less than half of them have been appointed and District Social Welfare officers function as probation officers in addition to carrying out their general functions. The Children Policy 2011 also addresses violence against children in detention.

The United Nations Committee on the Rights of the Child (the 'Child Rights Committee') has repeatedly raised concerns about the administration of the juvenile justice system and made specific recommendations to the Government of Bangladesh aimed to bring juvenile justice in line with the Convention on the Rights of the Child (the 'CRC'). The Children Act, 1974 has been under review for several years, and amendments to it have recently been approved by the Cabinet but not yet adopted.

2. FINDINGS AND RECOMMENDATIONS

Evidence available on the issue

Under Sections 20 and 49 of the Children Act 1974, the police and the courts have powers to send children under arrest or in detention to remand homes and ‘places of safety’ respectively. The courts can also send such children to Child Development Centres ('CDCs'); there are three nationally at present, one for girls at the CDC at Konabari, Gazipur, and two for boys at Tongi, Gazipur and Pulerhaat, Jessore.

Number of children detained in police and pre-trial detention

No accurate statistical information is available on the number of children who are detained in police custody overnight and in pre-trial detention. Following a recent High Court Division judgment, the number of children in detention has reportedly fallen considerably.

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

Physical abuse, force and torture are often applied during arrest and interrogation and children are frequently sexually abused or face ill-treatment in detention.

RECOMMENDATIONS TO IMPROVE EVIDENCE AND DATA GATHERING

- More studies must be undertaken to establish the extent of the problem.
- More effective and transparent data collection and publication is needed on indicators that can help to address violence, covering the following:
 - 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 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 and
 - Existence of specialised standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty.

Use of detention as a last resort

Comprehensive law and policy on children in criminal justice

Bangladesh has not established a comprehensive juvenile justice policy that ensures children's rights while in detention. The Child Rights Committee has expressed concern at Bangladesh's not revising the Children Act in line with the CRC. However, the Act is currently under review.

Minimum age of criminal responsibility

The Children Act states that in order for an individual to get benefits under the provision of the Act, he or she must be 16 years of age. However, it does not define the minimum age of criminal responsibility. The minimum age of criminal responsibility in Bangladesh is defined under the Penal Code at nine years (cite). In cases of children aged between 9 to 12 years, it is necessary to prove that they have the required maturity to be deemed criminally responsible (cite).

Concerns have been expressed that in practice, children who are under these ages remain at risk of arrest, given performance targets for police apparently being based on the number of arrests made. There is a lack of clear legal procedure for determining age. It is difficult for children without adequate documentation to prove their age, particularly as birth registrations remain low in Bangladesh. Minor girls face additional problems in the form of invasive medical examinations. There are also concerns that police may also estimate a child's age upwards to avoid the regulations to be followed when dealing with a child.

Abolishing status offences

Status offences include conduct would not be a criminal offence if committed by an adult such as truancy, running away or possessing alcohol or tobacco. These offences should be abolished. The Police have wide discretionary powers including power to 'arrest' and detain children in need of protection on grounds of status offences.

Availability of police bail

Courts and police officers are mandated to grant bail to a child in respect of bailable offences. Section 48 of the Children Act further allows for a child to be released on bail, even if arrested for a non-bailable offence. However, there is a wide caveat appended to this section limiting its use in practice.

Diversionary measures available

The idea of diverting children away from the formal justice system towards care and support services is not a matter of practice in Bangladesh. Under the Children Act, the court can make an order discharging a child or releasing him/her on probation. However, these provisions are rarely invoked.

Alternatives to pre-trial detention

At the pre-trial stage, the only two options available to the court are bail or detention in a remand home or 'place of safety'.

RECOMMENDATIONS TO ENSURE DETENTION IS USED AS A LAST RESORT

- The Children Act should be properly implemented and disseminated. The Children Act and Rules should be revised in line with the CRC. Most pressingly, they must be revised to include children between the ages of 16 and 18 years.
- All children currently held in adult prisons should be removed with the utmost expedience to a remand home or place of safety.
- It is strongly recommended that Bangladesh raise the age of criminal responsibility for all children from 9 to at least 12 years.
- Birth registration must be more encouraged across the country and proper age determination procedures established and implemented in the Court system. Where a child claims to be under the age of 9/16/18 years old (in differing scenarios), the benefit of the doubt should be given to the child.
- A clearer distinction must be made between measures for children in need of protection and those in conflict with the law.
- Measures for diverting children out of the formal justice system, such as the use of cautions and alternative dispute resolution, should be used.
- Steps should be taken to set up a system whereby police have the discretion, in cases where prosecution is likely, to hand over custody to persons considered to be fit for the purpose, imposing responsibility on such person to ensure the child's appearance before the Court on the date fixed.
- The idea of kinship fostering may be explored whereby family members of a juvenile are encouraged to take the child into foster care.
- Legislation should be introduced to restrict use of pre-trial detention.
- Penal sanctions must be introduced for state officials who detain children in police custody in contravention of the law.
- Awareness should be raised among professionals who work with children, as well as the general public, on the rights of children in police or pre-trial detention.
- The development of a probation system should be considered.

Detention for the shortest possible time

Limiting time in police detention

The Committee on the Rights of the Child have expressed their concern about the length of time children actually spend in police detention where they may be subject to ill-treatment.

Limiting time in pre-trial detention

Time frames set by the Cr.P.C for concluding proceedings are seldom met, meaning that in the worst cases, children charged with minor offences may be detained pre-trial in prisons or juvenile centres for years.

RECOMMENDATIONS TO ENSURE DETENTION IS USED FOR THE SHORTEST POSSIBLE TIME

- The time limit of 24 hours for detaining a child must be strictly enforced.
- The length of time children can be held in pre-trial detention must be limited by legislation to ensure that the time during which they are deprived of their liberty is kept to a minimum.

Prevention measures at the police station

Proper registration of detainees within a time limit

Though the Children Act is silent on the issue of registration of detainees, it does demand that the Probation Officer and the child's parents or guardians (where they can be found) be informed of the arrest of a child immediately upon his arrest. This rarely occurs in practice.

Access to medical care

There is no provision requiring access to medical care at the police station in the Children Act. The Act however, grants discretionary power to the Court to send a child, brought before the court and requiring treatment, to hospital. If a child falls sick while in custody, denial of medical treatment is very common.

Specialist police officers to deal with children

Specialised child police units or police officers are being introduced on a pilot basis by UNICEF in Cox's Bazar and Jessore districts. There is also an office order of the Bangladesh Police requiring every district to have child-friendly police. However, lack of resources limits their ability carry out their duties effectively.

Protection from abuse when taking samples and during searches

Reportedly, male staff engage in 'sanctioned sexual harassment such as improper touching during searches' cite. While the Cr.P.C expressly provides that women should be searched by women, there is no such legislation or policy with respect to children.

Separation from adults during police detention

The law is not clear on whether children should be separated from adults in police custody. While a male child may only be held in a police cell if he can be kept separately from adult offenders, the law does not prescribe regulations in case a girl child is detained at a police station over night. The police often simply do not mention where the child was kept prior to production before the Magistrate.

Presence of lawyers, parents and others during questioning

Article 33 (1) of the Constitution protects the right of legal counsel. However, the Children Act does not contain any special provisions regarding police questioning of children. Cr.P.C provisions regarding remand, where the suspect may be questioned in the absence of a lawyer, may be applied in the case of children who are over 16 years of age. Further,

probation officers and parents or guardians are informed about the arrest of a child only in some cases.

RECOMMENDATIONS TO PREVENT VIOLENCE AT THE POLICE STATION

- Proper procedures for registering children and admissions at the police station should be developed and implemented.
- The number of police cells should be increased and these cells should be categorised based on age, sex and gravity of the offence.
- Legal obligations for police officers under the Children Act, 1974 and Code of Criminal Procedure, 1898 must be strictly complied with.
- Proper procedures should be in place to ensure that a child is given access to medical care at the police station.
- The law enforcement agencies should have specialised child units and well-trained child justice personnel.
- Adequate budgetary allocations should be made for creation of specialised child police units and the appointment of trained police officers, including women.
- Legislation should explicitly require the separation of children and adults at all points of detention or deprivation of liberty
- Efforts should be made to separate older and younger children while in detention. Similarly, boys and girls must be separated.
- Policy and regulations should be developed that require the presence of legal advisors and the mandatory presence of a parent/guardian/legal representative during the interrogation of a child at a police station

Prevention measures during court proceedings

Courts specialising in children's cases

The Children Act 1974 requires a separate trial system for youthful offenders, and empowers the government to establish one or more juvenile courts for any local area. The proceedings must be conducted in as simple a manner as possible in a 'home-like atmosphere'. In 2013, there were only three such specialised juvenile courts.

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

Under the Children Act, the Court while passing orders has to have regard to a child's character, age, living circumstances, and any report made by the Probation Officer. However, there are very few Probation Officers; and in practice, they are not contacted in many cases.

Provision of legal assistance during court proceedings

The Legal Aid Services Act provides for legal representation at trial, including for children. However, UNICEF has noted that children are frequently tried in adult courts without any legal representation.

Exclusion of evidence obtained through torture or threats

Article 35(4) of the Constitution provides that no person accused of an offence shall be compelled to be a witness against himself. The High Court has held that a confession made by a child is of no legal effect. The High Court has also held that when children are taken to record their confessional statements, they must be accompanied by a parent, guardian, custodian or legal representative.

RECOMMENDATIONS

- More juvenile courts should be created that can hear children's cases on a priority basis in compliance with Section 7, of the Children Act, 1974.
- More probation officers should be recruited and the infrastructural development of the probation department improved.
- Courts must be supported in their decision-making by social workers, probation officers or service providers who work with children in detention .
- Policy and regulations should be developed that require the mandatory presence of legal assistance for children.
- Clear legal provisions should be adopted which prescribe measures to be taken 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

The Children Act makes no specific provision regarding the separation of children from adults in pre-trial detention. In practice, children may be detained in District Jails, instead of being sent to CDCs, at the request of parents, as they are more accessible. The High Court has however held such custody to be illegal. The High Court has also directed the Government to provide 'places of safety' for children in every district. The National Taskforce for Releasing Children from Jails is mandated to find alternatives to detention for children in jails. Reportedly, its current activity is limited to monthly monitoring of jails.

Regular visits by parents/guardians/ family members and others

Visits by parents/guardians are governed by Rule 22 of the Children Rules, which falls short of international standards on the subject. The limited number of remand homes mean that for most families they are very distant, and difficult to access.

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

There are no separate rules in Bangladesh regarding children in pre-trial detention and police custody. Corporal punishment, separate confinement and 'hard and laborious work' are lawful disciplinary measures under the Children Rules which may be imposed in respect of acts defined in Rule 23 of the Children Rules. The draft Children Act 2013 states that children cannot be subjected to inhuman and degrading punishment .

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

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

Implementation of a clear child protection policy 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.

Appropriately qualified, trained and remunerated staff

According to the UN Study, unqualified and poorly remunerated staff at detention facilities in Bangladesh are widely recognised as a key factor linked to violence within institutions.

RECOMMENDATIONS TO PREVENT VIOLENCE DURING PRE-TRIAL DETENTION

- Legislation should explicitly require the separation of children and adults at all points of detention or deprivation of liberty. Children must be housed separately according to their age.
- Legislation and policy relating to visits by parents and relatives should be developed establishing that such visits are a right and considering the following:
 - Visits should occur once a week and not less than once a month;
 - Children should have facilities to maintain contact with parents and relatives;
 - Children should be placed in a facility that is as close as possible to the place of residence of their family;
 - Children should be provided with help in communicating with their families and their right to privacy should be respected;
 - Children should be allowed to communicate with other persons or representatives of reputable outside organisations who can support the development and reintegration of children;
- Specific regulations must be drawn up and implemented concerning the use of disciplinary measures in all detention facilities where children are held, including prohibition of corporal punishment, solitary confinement and restriction or denial of contact with family members.
- 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 and be fully aware of all national and international child rights standards.

- Staff must be trained to immediately report any concerns, suspicions or disclosures of violence against children to the appropriate authorities.
- The use of any form of violence by staff against a child in detention should be prohibited in law and penalised.
- The Government should establish a clear Child Protection Policy with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions.
- Legislation should provide for guidelines on searches of children.
- National taskforces should play an active role in ensuring the prevention and punishment of violence against children whilst in detention.
- More remand homes should be established.

Independent monitoring of police and pre-trial detention facilities

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

Bangladesh has regularly submitted reports to the Committee on the Rights of the Child, and as noted above, some steps have been taken to revise the legal framework particularly of the Children Act and the Children Policy in response to the Committee's observations. However, Bangladesh has not yet signed OPCAT or the OP1 or OP2 to the ICCPR, or the OP3 to the CRC. Bangladesh's cooperation with the international human rights mechanisms has otherwise remained limited, with few reports submitted to other treaty monitoring bodies and limited visits by relevant special procedures.

System guaranteeing regular independent inspections of places of detention

The Children Act provides for inspection of 'certified institutes' (which includes CDCs). In cases of inspection of a girls' facility, the inspection team should include at least one woman. Registered medical practitioners may also be encouraged to visit all certified institutes or approved home and make reports. The CDC in Gazipur is regularly visited by doctors; but not the centre in Jessore. Regarding monitoring of places of imprisonment, visits by independent monitors are generally not allowed by the Government. Police detention facilities are monitored poorly, and the police appear to be rarely held accountable for any alleged abuses, with no information being made publicly available in this regard.

RECOMMENDATIONS TO ENSURE INDEPENDENT MONITORING

- The Government should ensure independent inspections and monitoring of detention facilities including police stations.
- The Government should ensure that inspection and monitoring of girls' detention facilities is undertaken and that inspection teams include women.
- Existing national monitors, such as Jail Visitors, should disclose their findings.
- Bangladesh should take steps to sign and ratify the OPCAT and also engage with the Committee against Torture including submitting its initial and then periodic reports.

Measures to ensure accountability

The National Human Rights Commission addresses specific human rights complaints including violations of children's rights. However, concerns remain with respect to having child-specific and child sensitive procedures for individual complaints . The Constitution expressly prohibits torture and cruel, inhuman, or degrading punishment or treatment (Article 35(5)). Though the term 'torture' is not defined in the Constitution or any law, specific laws do impose penalties on any person who assaults an individual, including a child, in custody (Children Bill, 2013, Penal Code, Cr.P.C, Suppression of Violence Against Women and Children Act). However, enforcement of laws is poor. The impunity enjoyed by law enforcement agencies, combined with reportedly widespread corruption, are barriers to accountability.

RECOMMENDATIONS TO COUNTER IMPUNITY

- Bangladesh should enact a law defining and penalizing torture in line with CAT.
- The Government should deliver on its message of 'zero tolerance' to torture and ill-treatment, including through training of police and prison staff.
- The Government should ensure that all allegations of violence and ill-treatment including of children are impartially and adequately investigated and prosecuted.
- An independent body for receiving and processing complaints by children in detention should be established. The NHRC Child Rights Committee could be given or adopt this mandate.
- Legislation should ensure compensation and redress to any child who has suffered ill-treatment or abuse in police or pre-trial detention.