

Independent monitoring mechanisms for children in detention



“Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities in a confidential setting.” UN Committee on the Rights of the Child, General Comment 10

Penal Reform International (PRI) believes that independent monitors are a vital mechanism to protect the rights of children in detention. By issuing this briefing, PRI hopes to encourage more effective monitoring of children’s treatment and conditions in detention. It examines the key components of an effective and independent monitoring mechanism for children and explores how they can ensure that their recommendations ultimately lead to improvement in the treatment of children in conflict with the law.

1. Why are independent monitoring mechanisms important?

Children who are held in detention are entitled to all of the rights enjoyed by their peers in the community, apart from the right to liberty. These include the right to survival and development, the right to non-discrimination, the right to participation and the right to have their best interests as a primary consideration in all decisions that affect them.

Yet children in detention experience serious violations of their rights in many countries, even when detained for only a short while. They are often held in adult prisons and it is not unusual for children to experience violence, abuse, neglect and exploitation at the hands of fellow detainees and staff. Girls can be especially vulnerable to sexual abuse. Children in detention can also experience malnutrition; the absence of treatment for physical or mental illness; psychological trauma; lack of education, rest, play, leisure and other conditions necessary for healthy development; discrimination; interference with privacy and family life; and violation of other civil and political rights such as freedom of thought, conscience, religion, association, expression and protection of their legal safeguards in relation to deprivation of liberty.

In order to safeguard children’s rights in detention, it is very important that detention facilities are ‘open’ to families and to the community at large as far as possible. This encourages detention facilities to be transparent and accountable for realising the rights of the children in their care. It also helps children to

be rehabilitated and reintegrated into society on their release. It gives the public confidence that detention facilities are well managed and are doing their utmost to ensure that children are being rehabilitated and consequently are less likely to offend in future. A crucial aspect of this ‘openness’ and scrutiny is the inspection and monitoring of detention facilities where children are held, by independent bodies which are not under the same administrative authority as the prison system.

Independent monitoring mechanisms can help safeguard the rights of children who are in detention by:

- Preventing violence and abuse against children.
- Opening up the issue of children in detention to the public eye.
- Identifying challenges and changes needed in policy, practice and legislation.
- Bringing to light good practice in the treatment of children in detention which can be replicated elsewhere.
- Providing a protective mechanism for detention facility employees against unfounded criticism and supporting employees who do not want to be involved in bad practice.
- Holding those in charge accountable for what happens to children in their detention facilities.
- Giving children who are held in detention a voice.

2. Independent monitoring mechanisms and international standards

There is a wide range of international standards concerned with the independent monitoring of detention facilities for adults in general, and children in particular. The UN Committee on the Rights of the Child declared in General Comment No. 10 that *“Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities in a confidential setting.”* This is echoed in the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) (Havana Rules), the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010) (Bangkok Rules), the Standard Minimum Rules for the Treatment of Prisoners (1957) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988). According to these standards, independent monitoring mechanisms should have the following characteristics and powers:

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

3. Mechanisms for inspection

A range of different bodies may be involved in monitoring detention facilities for both adults and children: judicial bodies; lawyers and Bar Association

groups; official institutions established by Parliament such as National Human Rights Institutions or Children’s Ombudspersons; civil society organisations, National Preventive Mechanisms and international and regional bodies such as the UN Sub-Committee to the Convention Against Torture, the European Committee for the Prevention of Torture, the UN Special Rapporteur on Torture, and the Special Rapporteur on Prisons and Conditions of Detention in Africa. Each mechanism can provide different perspectives and insight and complement each other. In countries with a multiplicity of different monitoring bodies concerned with children in detention, it is very important to have coordination between them.

The special status of children in detention demands either a separate monitoring body or special arrangements within an existing body to reflect the specificity and gravity of rights violations they experience. There is no overwhelming case for children’s inspection bodies to be separate or integrated from adult inspection bodies, so long as the mechanism pursues the promotion and protection of children’s rights in detention effectively. This demands employees who are knowledgeable and experienced in children’s rights and who have the necessary profile, powers and duties. In general, states have been slow to develop strong, influential, external monitoring mechanisms for adults and children, that are fully independent of the prison administration.

4. Standards for monitoring the treatment of children in detention

The UN Convention on the Rights of the Child (CRC) sets the framework for monitoring the conditions and treatment of children in detention. Monitoring should focus on all aspects of children’s rights taking into account that children in detention have the same rights, aside from the right to liberty, as children living normal lives outside and that children’s rights are interdependent and should be approached with a holistic perspective. Above all, the CRC emphasises that children should only be detained as a measure of last resort and for the shortest appropriate period of time and the explicit and over-riding purpose of detaining children should be to contribute to their rehabilitation and reintegration back into society on completion of their sentence. The following is an overview of some of the principal issues to monitor:

- Rehabilitation and reintegration
- Protecting children in detention from torture
- Separation from adults
- Protection measures—including the right to complain and importance of custody records
- Living conditions

- Contact with family and the outside world
- Access to health care
- Access to education, vocational training and recreation
- Freedom of religion
- Treatment of girls in detention
- Treatment of children living in prison with their mothers
- Training and organisation of prison staff

This is not a comprehensive list and inspectors should consider the full breadth of international standards as well as the specifics of the local context when devising criteria appropriate to their context. Guidance on the international standards can be found in 'Further Reading' below.

5. Specific issues to consider

5.1 The purpose of visits to facilities

The main source of information for inspectors is to actually go to detention facilities in order to observe conditions and conduct interviews. It is important to visit a cross-section of facilities and ensure that visits review the experiences of boys and girls of different ethnicity and linguistic groups. Visits to detention facilities have various functions:

- They can act as a deterrent for violations of children's rights.
- The inspectors can respond to specific allegations of abuse made to them during visits. Allegations of serious ill-treatment and torture should be transmitted to the authorities immediately, and at a level that does not endanger the child or children concerned by the allegation.
- Information regarding conditions and treatment in detention can be gathered to form the basis of an analysis and recommendations for improvement. This information can also be used to establish a baseline to monitor future improvements.
- Many countries lack reliable, up to date, disaggregated statistics on the number and characteristics of children in detention. Monitoring visits can be used to gather statistics which highlight specific child rights violations – for example, whether children are being imprisoned in adult prisons; whether children are being detained as a measure of last resort; whether children in pre-trial detention are experiencing excessive delay in the processing of their cases, and so on.
- Visits provide a basis for direct and constructive dialogue with authorities in charge of rehabilitating children in detention facilities.

- For many children, particularly those who are detained far from their families and who have few visitors or contact with the outside world, inspectors can be a vital source of moral support.
- It can be a way of gathering information about children's experience within the criminal justice system more broadly; for example, they can be asked about the way they were treated whilst in police detention and during court hearings including trial proceedings.

5.2 Composition and training of monitoring teams

Visiting teams should contain at least one person with a legal background and one with a medical background. Where detention facilities hold girls, then the team must have at least one woman. The composition of the team should also reflect the ethnic, linguistic and regional backgrounds of the children they are meeting. It is vital for monitoring teams to receive ongoing training throughout their term of office in relation to the rights of children in detention.

5.3 Length and frequency of visits

Children in detention may find it particularly difficult to trust an unfamiliar adult and it will take time and patience before a child can communicate freely. Visits will be much more effective in terms of promoting sustained improvement in the conditions of detention and treatment of children if they take place on a regular and systematic basis.

5.4 Child protection policy

It is good practice for monitoring bodies to have their own child protection policy to create a safe environment for children involved in an inspection visit. This will provide guidance on: proper screening in the recruitment and supervision of inspectors having contact with children in detention; appropriate training provided to inspectors on how to work with and interview different age groups of children so they are safe; and safe storage of children's personal information including records of allegations of abuse. All inspectors should be required to sign a child protection policy.

5.5 Consulting with children in detention

As far as possible, children should be able to give their own accounts to inspectors rather than have people speak on their behalf. Interviewing children in detention and reporting on their treatment and conditions can create challenging ethical issues for inspectors. What should an inspector do if a child alleges that they have been abused by another inmate or member of staff? How can an inspector ensure that children are

speaking freely and openly? How can an inspector ensure that a child has given informed consent to be interviewed? Is there a risk of reprisals for a child who discloses information about maltreatment or poor conditions? Before and during any visit the possible impact on participating children of the interview questions, methods and findings should be evaluated and their best interests should be a primary consideration throughout.

5.6 Confidentiality and reporting

The privacy and personal data of children in detention must be protected by monitoring inspectors so that access to personal information about children is restricted to the minimum number of people who need to know and no information or personal data is made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including image, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc. Children must be asked for their permission before a photo is taken and a photo may only be used if a child has given their consent for its use for a specified purpose. Inspectors must be aware of the risk that, once public, their reports may be used to sensationalise issues around children in detention and that the children who participated may be misrepresented and linked with moral panic surrounding children in conflict with the law. It is essential to avoid the use of language and images that could degrade, victimise or shame children, which make generalisations which do not accurately reflect the nature of the situation, or which discriminate against certain groups of children.

5.7 Reporting and recommendations

Visit reports should cover all concerns or issues identified in the visit and recommendations for their improvement. They should also include any improvements that have been observed since the previous visit. They should be addressed to the authorities in charge of the detention facilities and should be sent as soon after the visit as is possible. Recommendations should be aimed at the level of

authority that has the power to make the appropriate change or decision. Most recommendations should be made directly to the authority in charge of the prison but if the root cause of an issue lies outside their jurisdiction, for example within the court system, the recommendation should be addressed to a different level of authority and in a separate report.

6. Further reading

A Human Rights Approach to Prison Management, Second Edition, International Centre for Prison Studies (2010)

Child Protection Toolkit, ChildHope (2005)

[Developing an advocacy approach for monitoring and reporting on conditions of detention](#), Penal Reform International (2011)

Handbook for Prison Leaders, UNODC (2010)

[Making Standards Work](#), Penal Reform International (2001)

Monitoring places of detention: a practical guide for NGOs, Association for the Prevention of Torture (2004)

[Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in MENA](#), Penal Reform International (2011)

Training Manual on Human Rights Monitoring, Office of the High Commissioner for Human Rights (2001)

[Training Manual: Independent Monitors of Juvenile Detention Facilities](#), Penal Reform International (2011)

Training Pack for establishing human rights institutions for children, European Network of Ombudspersons for Children (undated)

[Toolkit: Interviewing Children, their Guardians, and Staff of Juvenile Detention Facilities](#), Penal Reform International (2011)

Water, sanitation, hygiene and habitat in prisons, ICRC (2005)

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