

Children's Rights

From Theory to Practice

Yangon Seminar 2001

Jean Zermatten
Paola Riva Gapany (Eds.)

Working Report
4 – 2001

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This working report presents the various conferences of the Yangon Seminar, held in Myanmar from November 12th to 15th 2001.

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FOREWORD

By

Jean Zermatten, Juvenile Judge, Director of the International Institute for the Rights of the Child (IIRC), Sion, Switzerland

Popular wisdom in Myanmar says : « Children are our precious gems ». This is not only a declaration, it is a truth: The people of Myanmar love their children.

So why organising a seminar on the rights of the child on November 12th to 15th 2001 in Yangon? Why must we speak about children's rights in a country that loves them? Is it not granted that children should see their rights recognised and applied, without discussion and without a futile conference?

The debate is more complex and does not revolve uniquely around the affection and respect given to these children. Indeed, the question to evoke is of a new global evidence. The United Nations Convention on the Rights of the Child (20.11.1989) established a new status for the child and interpolates every State, every nation, every country, on the situation of its legislative system compared to international instruments put into place by the global legal order. And the answer to this question of the adequacy of the national framework relative to international standards is not simple, since it excludes a mechanical response, which would answer a simple yes or no. On the contrary, it postulates a meticulous examination not only of the texts in force, but also of the spirit of the laws included in the national context, which cannot separate the cultural reality of a nation from the historical contribution, nor from its institutions and its traditions, nor from the richness of its practices often not codified but carried by the old ones. And not either from the extraordinary source hidden in the beliefs, the spiritual inclination, even religious education.

Myanmar, like many other countries, offers all of that to its children in addition to a legal framework and a judicial system. It is a lot and it is an invaluable garden in which the rights of the child can only flourish and thrive.

Thus, the idea for a seminar on the rights of the child lies within this new approach of the statute of the child which should be explained, diffused and brought to be applied. No State can say that the work is finished and that its children enjoy, in a complete way, all their rights and that the Convention is

applied to the satisfaction of all and in all its nuances and subtleties. Because this text conceals treasures and, the more we approach it, the more we read it to the second or third degree, the more we understand that it is an extraordinary instrument in regards to the child as a whole person and not only as a small man or an adult to be. The idea also lies in founding an equality between all the children of the world who should not undergo any type of discrimination because of their colour, their sex, or their nationality and in recognising their fundamental rights, particularly the right to education.

The right to education is no abstract right; it must become reality. Alas, in many situations, this remains a beautiful declaration in a constitution or a report. The lack of education forms the basis for the majority of the problems that the Committee of the rights of the child detects and denounces. But education is certainly also the solution for the many wounds of the rights of the child.

Other rights could also be cited such as the right to health, protection against abuses, the right to be heard etc. Everything is so significant that when quoting one right, we risk forgetting the others or weakening their position. Let's avoid privileging one right and regard them all as very significant, each forming the part of a whole to be respected and applied as a whole.

In fact, the objective of this first seminar on the rights of the child in Myanmar was to introduce the Convention and to say what it signifies; to reflect with the participants about what it means for them, in their daily practice and how they could be inspired by it in the future. We were not disappointed, so much work was carried out in-depth, so much the participants brought their experiences and so much they taught us. And they gifted us by wanting to go a step further, by asking that a second meeting on the child in difficult situations and the Convention be organised. We are delighted.

That will be for 2002.

For 2001, we thought it useful to gather the various presentations made at the time of the seminar, to leave a paper trace, to allow others the benefit of these teachings and reflections for all those who could not take part in this

manifestation. It is a small basic work that should be used for all the people in charge of children in the country and that reflects our work; not in an exhaustive manner, but in a succinct manner, while trying to release the very substance; a small brochure for useful reference, not one that outlines everything to the last detail. Rather to draw the attention, to help reflect on a manner of action and to make the rights of the child more familiar.

May these pages be the reflection of the collective preoccupation : the interest of the child to see its rights applied.

Happy reading and see you soon in Myanmar !

Jean Zermatten, Director of the IDE

THE CONVENTION ON THE RIGHTS OF THE CHILD : A NEW UNIVERSAL ORDER

By
Jean Zermatten

November 20th, 1989, the United Nations promulgated the International Convention for the Rights of the Child, the founding text of a new concept: Children's Rights. Can we qualify this idea as "revolutionary"? It is perhaps too early to answer such a question. Nevertheless, the more I read the "Convention", the more I find it Innovative, Participative, Egalitarian, Universal.

It is first of all Innovative, because it completely modifies the vision that we have of the child, going from the conception of a paternalistic protection of children to a veritable status of the child: from the child-object (where he was the property of adults), he becomes the child-subject, entitled to certain rights. It is a new child that is born.

The Convention is Participative, in the sense where the child was given the right to express himself in article 12: the child who has the capacity of forming his or her own views has the right to express those views freely in all matters affecting him, views that must be given due weight in accordance with the age and maturity of the child.

The Convention is Egalitarian in the sense where its first principle rests on the idea that all rights must be granted to all children without exception (art 2 ch 1).

The Convention then dons a Universal character since 191 of 193 States are party to this constraining text. It's exceptional. This enthusiasm must not only be saluted for the momentum that expresses towards the new concept of the child subject of rights, but especially for the scope that it confers to this legal instrument. Indeed, one can say that the rights of the child, through the support of almost all States Parties, become a new legal reality impossible to circumvent. For a long time, the general policy with respect to children (but also family) consisted of an action of protection either through the implementation of means intended to eliminate risks or, of risky situations or, in an action of service, while placing at disposal the means aiming for precise, sometimes specific and at times long term, objectives. The challenge that we are faced with, with the new

position of the child, subject of rights and future citizen, is to pass from this wait-and-see policy (to meet needs) to a pro-active policy, which signifies to anticipate the needs and to set up the conditions for a harmonious development of children. There is an enormous amount of work to be done: from the point of view of the concrete achievements to carry out, surely; but especially from the point of view of mentalities to be changed, because it is a new state of mind that is necessary. It is not simple, indeed, to envisage and it is often easier to react when a problem occurs or when a need is felt.

Nevertheless, we think that the policy of tomorrow which would take into account the child, in his new statute, which is to say equal to all other children, guaranteed not to be discriminated against because he is white, yellow or black, legitimate or not, girl or boy, rich or poor, a national or emigrated, that this child which is entitled to be heard and can assert in front of official authorities, that policy is promising:

- Because it counts on a fundamental change: the point of view that one has of the child and the respect, which is owed him, not like a small person, but as a whole person;
- Because its aims are long term, in other words, the generations to come and not only the children from today, since its approach is durable;
- Because it is built on the universality of its principles and that it abolishes the borders: what is just in Rangoon must also be in Geneva;
- Because finally it is based on the equality of all children, future citizens.

Will this policy lead to peace? No one can answer that question. Hope resides in the conviction that many share: all the ingredients are present, not for a negative definition of peace like the absence of conflicts, but certainly for a positive definition of peace, the state of mind that is necessary to create mutual relations of comprehension between men. Respecting others and their differences is a preliminary step to this state of mind; I believe that the CRC carries within itself the seeds for this culture. It is up to us to make those seeds grow.

CONVENTIONS : DEFINITION AND OBLIGATIONS

By

Jürgen Dubbers, a. Magistrate, Expert of the IIRC, München, Germany

CRC – Convention on the Rights of the Child. A convention is a contractual agreement to adhere to particular principles or rules. The countries in this world, which has become so narrow, are coming closer and closer. They need rules for co-existence.

An example of this co-existence is the Council of Europe, established in 1949, with 41 European member states, with the total of 377 million people. The goals of the Council of Europe are economic and social development, protection of democracy and human rights.

Another example is the European Union with 15 members so far. It strengthens equal prosperity of all member states, as well as peace in Europe and outside Europe. In that way, the European Union is contributing to achieve the prevention of war and the understanding among peoples. These state parties wanted to achieve peace for good in Europe, after the terrible experience of World War II. It is thanks to these agreements that e.g. the ancient antagonism between Germany and France came to an end.

Many relations and obligations among the European Union states, between the Union and third states, among the Council of Europe member states and between all these states are regulated by numerous Conventions. Probably the most important and famous one is the European Convention on Human Rights dated 1950. Only within the scope of the Council of Europe, today there are 173 conventions and treaties on human rights, foreign workforce, language and ethnic minorities, media policy, legal cooperation between member states etc.

Then there are also UN Conventions. The most famous one is the UN Declaration of Human Rights dated 1948. Other important UN Conventions are United Nations Convention against Genocide, 1948

United Nations Convention on the Law of the Sea, 1982 (one of the most extensive)

United Nations Convention on the Rights of the Child, 1989, ratified also by Myanmar

United Nations Convention on the Law of Treaties, Vienna 1969, with rules and definitions about agreements on international law, today ratified by 90 State Parties, 1998 ratified also by Myanmar

United Nations Convention on Consular Issues, Vienna 1963

United Nations Convention on the Law of Diplomats, Vienna 1961

United Nations Convention on Biotxin Weapons, 1972

United Nations Mine Ban Treaty, 1997, until now ratified by 118 State Parties, signed by 22

United Nations International Court Convention (ICC) – Rome Treaty with Rome Statute of the ICC, 1999, until now signed by 139 State Parties, ratified by 43

Recently United Nations Conventions on Terrorism, 1997 and 1999

There exists also

the American Convention of Human Rights of the Organization of American States (OAS), 1978, ratified by 23 of 31 Member States (not by USA),
the OECD- (Organization for Economic Cooperation and Development) Convention on Corruption and Bribery, 1997 - and so on...

Finally another, already really old, but very important convention: The Hague Land Warfare Convention dated 1907 detailed in twelve individual conventions, a result of the Russian-Japanese war. It follows the older conventions of the Brussels peace conference dated 1874 and a treaty dated 1899.

One can already see how multifold the scope of regulation might be for conventions. The conventions – their meaning and importance does not ensue only from their large number.

The conventions are usually made with a lot of effort and proceed slowly. At a certain point, states notice some matching views in important matters. There will then be a follow up concerning the respective matters of concern by contracts, agreements, eventually by conventions. In this regard, the economic or military interests of particular states or large corporations are often obstacles to legal or humanitarian matters of concern. However, in spite of all the resistance, with sufficient patience and engagement, the conventions are able to achieve international consensus on important issues and thus build up international

standards, even if they, due to national special interests, would just be minimum standards at the beginning. After some time, generally recognized principles of the international law can develop from those standards.

From the long-recognized principle of protection of children already expressed in the 1949 Geneva Red Cross Convention on the treatment of war prisoners and civilians, through the Childs Rights Convention (CRC Article. 38 – child soldiers) dated 1989, and finally, through the ICC Rome Convention dated 1999, the internationally recognized possibility to punish the use of child soldiers could be achieved as it falls under the scope of war crime. Therefore it is stated now as follows in

ICC Article 8 – War crimes

The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

For the Purpose of this Statute, “war crimes” means:

Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

... (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities...

For example, one success of those conventions consists in the fact that the South Sudan Peoples Liberation Army has released over 3,000 child soldiers until March this year (amongst whom the three youngest I have seen were 8 years old after 3 years military service!)

One can already deduct from those few examples that precisely the human rights, which were placed little value on at the beginning, can achieve not only international, but also worldwide consensus and finally also worldwide protection, goodwill being a precondition.

Important international topics (e.g. child soldiers, antipersonnel mines, small weapons, war crimes, corruption, terrorism) can give great power to respective draft conventions and finally help the eventually created conventions to achieve

further dynamics. In most cases, a lot of work of innumerable persons and NGOs is necessary until a convention is finalized. The result may be disappointingly small at the beginning. However, such a convention can always be a start of a positive development.

The international law regulates primarily relations between states. It represents an independent legal system. The international law may not be directly implemented nationally. However, it can become a constituent part of the national law. An example is given by the USA: the jurisprudence there states that the international law is “the law of the country.” The German Constitution, in Article 25, proclaims the “general rules of the international law” to be constituent part of the German law, and in the Arusha (Tanzania) peace treaties for Rwanda dated 1992, the international humanitarian conventions have been proclaimed national law of Rwanda.

If, in spite of the existing conventions or agreements there are still differences in opinion between states, the United Nations have prepared mechanisms in the UN-Charter, which should help avoid the use of force and wars: e.g. the UN Court in The Hague, which is competent (only) for quarrels between states (and should not be mistaken for the UN Criminal Tribunal – also in The Hague).

CRC has an interesting mechanism for its own implementation: Art. 42 to 44 stipulate that every five years the member-states of the Convention must report to an elected ten-member committee, through the Secretary General of the United Nations, about the respective measures and achieved progress, concerning the realization of the rights recognized in this convention. And, in order to ensure the correctness of this state report, UNICEF and NGOs can according to Art. 45 present their own reports and the committee may request from them to comment to the state reports. The committee can recommend to the General Assembly of the United Nations to request the Secretary General to conduct investigations with regard to the issues connected with child rights for the committee. Finally, the committee can formulate proposals and general recommendations to the state parties and to the General Assembly.

As shown, the CRC do not contain any sanctions, but have supervisory and advisory functions towards the state parties, which can be really effective.

International law may develop from conventions. This is especially the case if “almost all nations will almost all the time respect almost all principles of the

international law as well as almost all their obligations” (Henkin). The international law, until now mostly power-oriented, becomes today more and more value-oriented, and develops as well an own justice system and mechanisms for mediation and sanctions.

Furthermore a new policy is developing in Europe: financial assistance will be accorded only in case of good governance which means among others as well to respect international conventions.

We need conventions, as we need freedom and the rule of law. Therefore Myanmar needs and respects conventions too. This is why Myanmar has ratified CRC and the Vienna Convention on the Law of Treaties. We would like to assist Myanmar to get to know better especially the CRC on those issues, where they may still not yet be so well known, to apply them in the best possible way.

Those who respect conventions are also internationally respected, and mutual respect is the basis for further development and cooperation of nations.

THE CRC AND THE PROTECTION OF THE CHILD

By

Renate Winter, Justice magistrate, International Judge in Kosovo,

Director of the Seminar

The CRC - its key principles

The Convention as an international human rights instrument constitutes a comprehensive listing of the obligations that member states have towards the child.

The Convention covers the whole range of human rights of children, described as the 4 “P’s”, namely

P rovision

P rotection

P revention

P articipation

Thus the Convention confirms that children must be provided with the basic needs and rights, such as the right for a name or the right for education, to guarantee them a chance for a proper development. This duty for provision (Art. 6) does of course not exclude any child, meaning for instance that children in conflict with the law, children kept in institutions have to get the possibility for a proper development as any other child.

It happens that a member state is not able or willing e.g. to provide food for all its children. This same member state might then use legal provisions through its judiciary to punish children stealing food. This is of course no solution for the underlying problem, the lack of proper possibilities for getting food! Justice cannot and should not solve social problems of a country and must be very sensitive to this kind of issues, able to undermine the principles set forth in the Convention, ratified by the respective member state.

Children have the right to be protected against measures such as exploitation, arbitrary detention or unwarranted removal from parental care, just to name a few items. What about children who have to work at a very low age despite of the member state having ratified ILO Convention 138, to support their families, thus being deprived of going to school, being exploited by their employer for

long working hours under appalling conditions? It is the duty of the member state in question to see to it, that a compromise can be found to allow the child to contribute to his/her family income while safeguarding the child from exploitation!

What about the protection of children kept in arbitrary detention for whatsoever kind of reasons, ethnical, political, religious etc? What about children kept in custody by police or military? What about children kept in pretrial detention for month and years without ever having seen a judge? No member state should allow that any person, let alone a child be kept in whatsoever kind of detention without proper legal procedure, led by an independent judiciary!

What about children removed from their parents care for reasons, which have nothing to do with the child's best interest? There are situations, where state officials remove children from their parents for political or economical reasons whereas it would be the duty of the member state to protect the children and to grant them their rights to live with their family.

One of the most important issues covered by the Convention is the issue of prevention. It is clear for everyone, not only for medical personal, that preventing an illness is better and cheaper then healing it. The same applies for all other issues as well. It is by far less costly to have primary education granted for every child then to invest in educating adults to enable them to adapt to the challenges of modern economy. It is by far less costly and less problematic to prevent a child at risk to become a child involved in criminal activities then to reintegrate a convicted one. Furthermore prevention is not only the responsibility of the "state" as an abstract notion, it involves the participation of the society as such. The consequence of such a concept is a very positive one, namely that accepted and shared responsibility becomes the most powerful prevention one might think of. This is the reason, the Convention and its accompanying instruments the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) is focusing very much on preventing in the first place.

The most controversial of all "P's" is the one of participation (Art. 12). Very often one can hear in discussions, that it is not acceptable, that children, thus persons not of age, should have their saying about issues concerning them

directly. Sentences like: "It is unimaginable that I should be forced to act upon a child's wish and whim" clearly shows, that the Convention's notion of participation is misunderstood. The Convention stresses the child's right to be heard, to be listened to, and to be part of any decision concerning his/her life. This does in no way mean, that the decision-maker has to abide to the child's wish. If a father would wish his son to become a doctor and the mother wishes him to become an architect, it should seem reasonable first of all to ask the child about his professional intentions, at least as a starting point for discussion. This same attitude should be borne in mind if one wishes that a child in conflict with the law would take responsibility for his/her acts. The first important issue the judge should think of if he wishes not only to punish, but to prevent recidivism is to ask the child, what efforts he/she can undertake to restore the damage caused by him/her. If the child is declined this right for participation in the process, he/she will be denied the possibility to accept responsibility and reconciliation between child and society cannot take place. It is the duty of society to guide its children on their way to become fully fledged responsible persons by letting them participate more and more in decisions especially concerning their own life according to their age. This comprehensive concept of participation is the one stressed by the Convention.

The guiding general principle under which all international instruments concerning child's issues are subsumed is contained in Article 3 of the Convention: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administration authorities or legislation bodies, the best interest of the child shall be a primary consideration". Even if it might be difficult, or just impossible to give a substantiated definition of what is the best interest of a child, the meaning of the Article is very clear. First the interests of the child have to be taken in consideration and only then the interests of other persons involved are of importance, including the ones of the decision-maker. This article seems to be a tricky one, especially for the judges, as they have always to think about safeguarding and protecting the rights of all parties involved. The article nevertheless focuses on the priority to be given in cases of conflicting interests. It might e.g. be in the interest of a village that has to support an orphan, to send the child to a state institution instead of having him/her with another family within his/her environment, if this other family must

be financially assisted. But is it in the best interest of the child, not to stay in his/her familiar environment? It might be in the interest of a father to keep his children within his own family in a case of divorce for several reasons. But what would be the best interest of the children, first of all? It is particularly important that any applications in national law of Art. 37 and 40, articles that address juvenile justice, are based on this guiding general principle. It certainly will not be easy in a complex situation to find a correct solution for a child, one might have to try sometimes very hard and pressures can occur from all sides.

The general principles of the Convention, as mentioned in Art. 3, (best interest of the child), Art 6 (the right to live, survival and development) and Art. 12 (participation of the child) would not constitute the global approach to children's rights as said above, if one would forget to cite Art. 2, that states that no discrimination whatsoever should apply to a child or his/her family. Most of the Constitutions of member states show, that no racial, ethnical or religious discrimination would be allowed, at least not in theory, but is it the same with all the other legal dispositions and practical circumstances? What about a law, which discriminates between, ages, giving priority for older (or younger) children, e.g. in case of heritage? What about possibilities for girls, be it for education, health, in justice matters, concerning institutions etc? There are not many countries, where leisure and training possibilities for children coming from rural areas are the same as for those coming from an urban environment. Looking closely into this matter would show quite a lot of occasions, where member states could improve.

To resume: If state parties would provide for all basic needs of children, if protection for them would be guaranteed, if all members of society would take over their responsibility for preventing that harm or detrimental developments should occur in the first place and if children are given the opportunity to participate in decisions concerning their lives and their environment, a big step forward would be done towards a better future of all of us in the global village we are living in.

THE CRC AND THE BEST INTEREST OF THE CHILD

By
Jean Zermatten

The notion of the best interest of the child is the key to many judicial systems where the child protection services intervene. In art.3 ch.1, the CRC promulgated:

“In all actions concerning children, whether undertaken by public or private Social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

By this provision, the CRC is the unit of measure by which all decisions must be weighed relative to the child-whether he/she participates or not- it is the criteria for the primary interest of the child. This notion is not new, in the sense that a number of prior legislative texts, either at the international level (for ex. Convention of The Hague of 20.10.80) or at the national level, were previously aware of the notion of the interest of the child. But here we are talking of Primary interest. Is this an Innovation?

The criteria remains blurred and vague; that is not a deficiency on the part of the CRC, but a deliberate expression of will of the legislators to maintain a criteria that is as wide and flexible as possible, in order to not deprive this text of its mission. Indeed, it was needed in order to avoid the trap of favouring one ideology to another, to render such provisions the inability to implement in certain parts of the globe, to find a common denominator sufficiently flexible and acceptable for the whole world, and find the most adequate expression possible. That is the Primary interest of the child.

This expression as well as the above criteria has already received much criticism, notably the adjective “primary” that supposes that the interest of the child surpasses all other interests. This is obviously not the case, it simply indicates that any and all decisions concerning a child, should consider his/her best interests; we therefore find ourselves performing the traditional function of this criteria, first the function of control (it belongs to the judge, the judge must control this and that duty of the parents by relying on the best interest of the child) and secondly, the function of solution (it is the interest of the child that determines the choice of the authorities to make this decision or that one). It is

now that we see that the adjective “primary” only serves to insist on the importance of the criterion and not to make this criterion primary or superior to another, where the interest of the child would then serve to rule conflicts of interest, and to rule conflicts of rights...

Nevertheless, in light of this criticism, it must also be said that this concept has the advantage to be evolutionary, which means to take into account the variations of space and time, and that it is rich since it allows us to, in a text as fundamental as the CRC, respect the richness, traditions and socio-cultural values of each country at the base of its social contract.

The primary interest of the child is a sort of “sweeping” concept on the grand scheme of the rights of the child; passing on this notion would not be realistic and it would raise the question of replacing it. But with what?

THE CRC AND MALAYSIA

DIFFICULTIES OF IMPLEMENTATION

By
Lawyer Anneta Kulasegaran, Vice-President of the
Malaysian Association for the Protection of Children

Malaysia, like most of its neighbouring countries, viewed the UN Convention of the Rights of the Child with some suspicion since it took no part in this 10-year drafting process. Indeed very few Islamic countries took an active part in the gestation period. However since the rest of the world had embraced the CRC, Malaysia was not to be outdone. We ratified it in early 1995, in compliance with the deadline set by UNICEF. However it was unfortunate that the ratification was coupled with 12 (now 8) reservations. They were made as they were found to be “incompatible with present laws and the Constitution”. Some of these reservations are so fundamental however and it is a wonder that no objections were made to them.

We will now look at the rights in the 4 spheres in which they are commonly divided:

Survival Rights

Malaysia's statistics for infant mortality rates have dropped to an impressive low and implementing the right to “the highest attainable health-care” ought not pose many problems except for peoples who remain inaccessible in East Malaysia on the island of Borneo. However, legally, children are still defined in various ages under various statutes therefore Article 1 of the CRC was reserved upon. For example, “an infant” is under the age of 21 in the Guardianship of Infants Act, 1971 for non-Muslims and 18 for Muslims. A “Young Person” is under 14 under the Juvenile Courts Act, 1947 and above 14 but younger than 16 in Children and Young Person's Employment Act, 1966. A child is under 10 for the former Act and 14 under the latter Act. However there are positive moves in the pipeline towards uniformity. In the area of protection and delinquency, the Child Protection Act, 1991 (soon to be part of the Child Act, 2001) does define a child as all persons under the age of 18. One hopes that the reservation on Article 1 of

the CRC will soon be removed. With that, there will better implementation of all the rights enshrined in the CRC.

Developmental Rights

Malaysia can boast to having almost 99% of 7-year olds registering at schools nationwide. However, due to non-compulsory schooling, children have dropped out for various reasons and end up on the job market. Although local schools require no fees, parents do have to provide school books, uniforms, shoes and contribute to various charitable and school funds. Therefore there is need to implement Article 28 of the CRC and move towards making at least primary school compulsory.

Protection Rights

I. Against Economic Exploitation

As mentioned earlier, children as young as 10 may be involved in work “suitable to their capability”. The Children and Young Person’s Employment Act, 1966 does not state a limit on age – clearly in defiance of ILO Convention No.138 which urges States to set a minimum age for entry into work. The Act does not outlaw child labour but rather it governs and protects children who do work. It does however have strict prohibitions – children are strictly prohibited from managing or in the close proximity to machinery and from working underground. However, the Act permits children and young persons to work in just about any establishment where adults can be found, including entertainment outlets if their parent/guardian owns it or works there.

With time ILO Convention No.138 and 189 will have to be implemented and with it Article 38 will be complied with.

II. Child Abuse

Article 19 CRC states that “The State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims.” We have made some inroads under our Child Protection Act, 1991 (CPA) in covering a wide range of types of abuse and neglect namely

physical, emotional or sexual abuse, exposure to moral danger, abandonment, exposure to untreated illness, lack of remedial action by the guardian or even where the child is found begging. The unique features about the Act is that it has set up a Coordinating Council to oversee its implementation. Medical practitioners are now under a legal duty to report suspected child abuse and neglect cases and failure to do will result in a fine of RM1,000 (USD28). Informants of child abuse cases have immunity from defamation. Children at risk of abuse or neglect taken into temporary custody should be produced before the juvenile courts within 24 hours for an order.

Child abuse cases are actually on the rise since in the year 2000 there were 2000 cases of domestic violence. Rape cases are also on the rise since in 1996 1071 rape cases were reported, a 77% increase over 1990, when only 604 cases reported. Sentences against offenders are not a deterrent since the maximum fine is RM 10,000 or imprisonment not exceeding 5 years or both.

Administration of Justice

(a) Children who are Witnesses

Under Section 133A, Evidence Act, 1950, children of “tender years” may give unsworn testimony which must be corroborated. Under Section 101, Subordinate Courts Act, 1948 only proceedings concerning the juveniles will be in camera but the same does not apply to child victims. Children still have to face the perpetrator in court and reiterate their story for the umpteenth time as well as to bear with merciless cross-examination from ruthless defense Counsel

Therefore child-friendly procedures or courts are essential for the protection of victims and witnesses of abuse to prevent further trauma. Possible steps to be implemented are “Child Victim Support Groups” which should familiarise older children with some legal terms and all children with the courtroom and its main players. “Friends of the child” ought to accompany the child to provide comfort and moral support. At present video-taped evidence is received at the discretion of the Judge when it should be the norm. The authorities are looking into providing a TV-link between the courtroom and a separate room where the child is situated with a court interpreter; or providing a screen to obstruct the child’s view of the offender to reduce intimidation.

(b) Children who offend

Article 40 of the CRC under the administration of juvenile justice states that a child in conflict with the law has the right to treatment which promotes dignity and worth, taking the child's age into consideration with the aim of reintegrating the child into society. The child offender is entitled to basic guarantees as well as legal or other assistance. Our new Child Act 2001 will introduce uniformity of implementation in definition of a Child who is defined under 18 years of age. The new Act will impose sentences suitable for juveniles such as "community service orders". For serious crimes offenders are committed to the Henry Gurney School for rehabilitation. For murder young offenders can face life sentences - sentences can be reviewed by the Board of Visitors. This section is actually contrary to Article 37 of the Convention which encourages State Parties to exclude juveniles from the death penalty or life imprisonment. The new Act also imposes additional responsibilities on the Parents/guardians of the young offender who are to attend Court and must furnish a bond to guarantee the child's good behaviour and be held responsible for the child's welfare and misdeeds. To reduce back-log of cases, Appeals will be heard and disposed of within 12 months from the date of filing in notices involving juveniles.

Participatory rights

(a) Discriminatory Laws

Article 2 of the CRC is on Non-discrimination (which was unfortunately reserved). Our Constitution states there ought not to be discrimination on any matter except gender, however that was recently amended to include one's sex.

(b) Name and Nationality

Under Article 7 the child has the right to name and nationality at birth (also reserved). The reservation was upheld because nationality is not conferred as of right (but however conferred on children who have Malaysian mothers). An additional problem is that Malaysian children who have illiterate or disabled parents may not have been registered at birth. Without a birth certificate they are denied a national identity card. Without these essential documents these children

are marginalised and denied the rights of citizens. Obviously the reservation requires to be lifted to help ease this problem

(c) Other Participatory Rights

Freedom on Expression (reserved): The child shall have the right to express his/her views, obtain information, make ideas or information known regardless of boundaries. In the age of the Multimedia Super Corridor and Vision 2020 - this reservation ought to be removed;

Freedom of Thought, Conscience and Religion (also reserved) The State shall respect laws this right subject to appropriate parental guidance and national and public safety. The Article does not promote “propagation” of religious beliefs;

Freedom of Association (reserved) Children have a right to meet and join associations. Reservation ought to be removed to encourage national unity and racial harmony.

Conclusion

Malaysia can be in the forefront of children's rights based on the following:

Finally, it is not only important to have acceded to UN Convention – but also to ratify them, thereby ensuring the articles therein are translated into law and therefore enforceable

Imperative that State Parties with reservations look afresh at the situation and see the bigger picture. It is hoped that reservations expressed by the government in the UN Conventions were quite possibly made in haste and therefore without understanding the actual intention of the articles concerned.

The UN Convention overcome discrimination of sex, race, colour, creed and religion by making rights universal, which is very much in line with our Vision 2020.

**THE UNITED NATIONS INSTRUMENTS CONCERNING
JUVENILE JUSTICE:**

**THE IMPORTANCE OF INTERNATIONAL NORMS AND
STANDARDS FOUR KEY INSTRUMENTS**

By

Willie McCarney, OBE, JP, Deputy President of The International Association
of Youth and Family Courts Judges

There is now a wide range of international instruments offering special protection to children in the field of juvenile justice. They are all relevant to juvenile justice in that they offer general basic protection to ALL persons. Children are guaranteed the same rights as adults but, because of their age and immaturity, they need a higher level of protection. For that reason I now want to mention four key instruments which offer specific protection to children.

The Beijing Rules

The Beijing Rules provide guidance to States for the protection of children's rights and respect for their needs in the development of separate and specialised systems of juvenile justice. The Rules outline the procedures which should be followed from the identification of the young offender (BR 10) to his/her "reintegration into society" (BR 29). They do not set an age limit for criminal responsibility because in international comparison that age limit varies a lot. The following guidelines are given:

"The beginning of that age shall not be fixed at too low a level" (BR 4) on the one hand, but "efforts shall also be made to extend the principles embodied in the Rules to young adult offenders" (BR 3.3).

The Riyadh Guidelines

The Riyadh Guidelines outline policies which, if implemented would:

"reduce the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions" (RG 5.b);

The Rules note that:

“... youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood” (RG 5.e);

“... labelling a young person as ‘deviant’, ‘delinquent’ or ‘pre delinquent’ often contributes to the development of a consistent pattern of undesirable behaviour by young persons” (RG 5.f).

The family is seen as a key issue in the interest of prevention:

“The family is the central unit responsible for the primary socialisation of children” (RG 12).

For this reason the family deserves the highest attention at State and community level:

“Governmental and social efforts to preserve the integrity of the family ... should be pursued” (RG 12).

The JDL

The JDL attempt to define how the theoretical concepts outlined in the Beijing Rules should be put into practice in daily life within a closed setting. The Rules attempt to set the standards for welfare policy for young people behind bars.

The JDL stresses very clearly that deprivation of liberty should be a matter of last resort (JDL 1).

The JDL apply not only to young persons found guilty of a criminal act but also to juveniles (under the age of 18) who are placed:

“in another public or private custodial setting ... by order of any judicial, administrative or other public authority” (JDL 11. a,b).

This means that the JDL also covers the “institutionalisation” of juveniles or children for “welfare” reasons, as soon as this measure leads to a deprivation of liberty, deprivation being defined as:

“any form of detention or imprisonment or placement ... in a setting from which this person is not permitted to leave at will” (JDL 11 a,b).

For the purposes of the Rules a juvenile is:

“every person under the age of 18”. (JDL 11 (a)).

The Rules are inspired by the imperatives of preserving contact between the juvenile and his or her family and community, respect for the dignity of juveniles deprived of liberty and the elimination of arbitrary treatment.

A Three-Stage Process

Taken together the three instruments outlined above can be seen as guidance for a three-stage process in the field of Juvenile Justice.

The Riyadh Guidelines outline social policies to be applied to prevent and protect young people from offending;

The Beijing Rules sets the parameters for establishing a progressive justice system for young persons in conflict with the law; and,

The JDL safeguard fundamental rights and establish measures for social re-integration of young people deprived of their liberty, whether in prison or other institutions.

The CRC Acts As An Umbrella

The Convention on the Rights of the Child (1989) constitutes a comprehensive listing of the obligations that States are prepared to recognise towards the child. These obligations may be of a direct nature, providing education facilities and ensuring proper administration of juvenile justice, for example, or indirect, enabling parents, the wider family or guardians to carry out their primary roles and responsibilities as caretakers and protectors. The Convention was the first international instrument to adopt a coherent child-rights approach to the international legal regulation of the deprivation of liberty for children.

The Convention acts as an umbrella over the three-stage process outlined above. It ensures that the focus remains on the rights of the child from identification of those at risk through to the reintegration of adjudicated offenders into the community.

The Convention does more than bind these three instruments together. It focuses on Juvenile Justice in two very important Articles which guarantee that the rights of the child are fully respected at all stages of the proceedings from apprehension

to adjudication and, where deprivation of liberty is found to be the only option, in detention. These are Article 37 and Article 40.

If you do not have time to study even the four key instruments I mentioned above, I would urge you, as a minimum, to keep on your desk a copy of these two Articles which encapsulate the key elements of the other international standards with regard to Youth Justice.

THE CHANGING ROLE OF THE YOUTH COURT JUDGE IN CANADA

By
Judge Lucien A. Beaulieu, President of the International Association of Youth
and Family Courts Judges

Introduction

The justice system in the English common law tradition is essentially adversarial in which the judge stands aloof from the arena and intervenes only as an impartial umpire to ensure fairness in the process.

This is the model of the adjudicating judge in all superior courts across Canada and it is the established norm for all inferior courts, even down to justices of the peace.

The early juvenile court judge,¹ as will be shortly be explained, was drawn from a pool of persons who often had little or no exposure to the law and therefore little sense or vision of traditional judgeship. But they knew what was expected of them as juvenile court judges. They focussed on the statutory duty to provide “care and custody and discipline of a juvenile delinquent” that would “approximate nearly as may be that which should be given by its parents”, treating the delinquent child “not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance”. It seemed to be a call to behave as a benevolent counsellor or therapist, albeit backed up with the coercive powers of the state should the subject resist corrective treatment, but if they were right in defining this role, then there was no precedent in the Anglo-Canadian justice system to which they could have compared themselves.

Neither the legislature nor the judges as a collective body have ever considered a clear and coherent position on the juvenile court judge.

In practice, the juvenile court conducted its own distinct operation that was the often product of local culture and the personality of the presiding judge. The

¹ Throughout this work, I will be using the expression “juvenile court judge” interchangeably

juvenile court was positioned on lowest rung of the judicial hierarchy, roughly on a parallel with magistrates' court. Its facilities tended to be dismal — the basements and outlying wings of courthouses or municipal buildings, in an attempt to keep them separate from the adult courts and to keep them closed to the general public. Lawyers never appeared in that court and the “prosecutor” was often a local police constable. The child appeared with or without his parents, but was invariably accompanied by a “probation officer”. These probation officers were often employees of the local children's aid society and probably had some training in child care and social work, but almost none in law. In a sense, these workers might have acted as the child's advocate, they did not see the juvenile court as a criminal court but as an extension of the child protection court.

Like the magistrates of their day, juvenile court judges had little or no legal training. They came from many walks of life – former probation officers, municipal politicians, clergy, school teachers, salesmen, etc. What seems to emerge, by default, is a vision of a court *sui generis* — that is, unprecedented and one unlike any other court of law — presided by a well-intentioned judge, one who was often the same judge who presided in child protection court, a judge who heard submissions from the a probation officer who also appeared in child protection cases and a judge who tried to juggle those submissions with the statements of the police officer, the statements of the parents and any answers provided by the child to the court's direct interrogation. The fact that there might have been no formal arraignment (or reading of the charge), no request for a plea and no formal trial that adhered to the rules of evidence seemed unimportant in light of the lofty goal that the judge felt obliged to achieve. Unfortunately, there was no system of corrective feedback, no criticism of the judge's apparent omnipotence.

Sparked by criticisms of the youth system, the advent of Legal Aid and lawyers in the court, governments were increasingly seeking out lawyers for the judicial appointments to the lower courts. Being lawyers who had been exposed to the style of judgeship in the superior courts and courts of appeal, the new wave of legally trained judges interpreted the Juvenile Delinquents Act from a strictly due process perspective that respected the accused child's rights and, in fact, for the trial stage at least, treated the juvenile court as a criminal court for children,

albeit with a certain measure of informality. Only at the sentencing stage did the legislation specifically oblige them to certain restricted remedies of a child-saving nature.

The model of the juvenile court that was rapidly emerging was a drastic departure from its *sui generis* predecessor. This quiet transformation was essentially judge-driven. The juvenile court was now at heart a criminal court, but a very special one. As a criminal court, it purported to respect the accused child's basic rights, but the court's special features were its air of informality and its set of special "sentences" or dispositions suited for the child's rehabilitation. Those special features, although prescribed by statute, were fed and nourished by the simple fact that this juvenile court was, when it sat in its civil capacity, the child protection court and the family domestic court and was therefore intimately acquainted with the social ills and calamities that befell children and their families, to say nothing of the increased awareness of the social resources of the community derived from that civil experience. This invisible link between the court's criminal and civil faces was, in effect, the very soul of the new juvenile court.

For the first time, it was possible to speak of a clearly defined "role" for the juvenile court judge. That role had two distinct components — one for each of the two distinct stages of the juvenile court process. The first stage was adjudication or the determination of the accused child's guilt or non-guilt. This phase was indistinguishable from that of a criminal trial. The judge assumed the role of an impartial umpire in the British tradition. At the end of the process, the juvenile court judge had to be persuaded beyond a reasonable doubt that the child had in fact committed the alleged act of delinquency. If the prosecution's effort did not convince the judge, then the child had to be acquitted, no matter how badly the child might have needed some form of social intervention.

It is this vital point that differentiated the new generation of juvenile court judges from their predecessors. They realized that, if a child needed social intervention from the state, it could not be done through the criminal law process unless a crime had in fact been committed. Where a crime could not be strictly proved, state intervention, if any, would have to spring from other sources, such as child protection legislation. Admission into a badly needed treatment program was not to be purchased at the cost of a criminal conviction of convenience.

The second phase — the dispositional or sentencing stage — would arise only if the child were found guilty of the alleged delinquency. Here, the statute of the day specifically directed the judge thus:

Even in traditional criminal proceedings, the sentencing hearing sees a relaxation of the rules of evidence and greater scope for intervention on the judge's own initiative. Criminal sentencing has many goals — retribution, community protection, individual deterrence, general deterrence and rehabilitation — but in juvenile court, the principle aim has always been understood the child's rehabilitation. In effect, the court had the potential for functioning as a social clinic with coercive powers far exceeding those of a child protection court. Admittedly, many of the dispositions open to the court were rather limited either by statute or by the availability of particular resources within a given community. Where possible, some judge managed to enlarge the meaning of the legislation to offer more options. The more inventive or activist judges would have already created needed programs to ensure that the rehabilitative needs of juvenile delinquents were being met. As an activity well outside the scope of the traditional judge, this had its positive side, but it had its pitfalls.

This new role was one that appeal courts, the lawyers, and even social workers could (perhaps grudgingly) understand. It was much more clearly defined, had a measure of predictability and was more in keeping with the roles carried out by the judges of other courts, whether civil or criminal. The traditional values of what is expected from a judge were more transparent and were reflected in the youth court judge. Those qualities of patience, objectivity, listening and fairness were paired with the recognition that special personal and professional qualifications, training, experience in law and an appreciation of the social sciences, particularly child psychology and human growth and development were important ingredients of the specialized persona of a youth court judge.

Conclusion

The Youth Court model that ultimately emerged within the confines of Canada's constitutional imperatives over the past three decades was a proud achievement in its own right, a juvenile court that had sensibly balanced the child's basic rights with society's dual interests in rehabilitating the child and protecting itself.

To be sure, this juvenile court is still beset with a host of old and new problems, such as:

fiscally conservative governments that make badly needed children's resources scarce;

a public fear that seems to fuel a political push for more Draconian measures against young offenders;

new forms of youth crime in the wake of technological advances, globalization, greater geographic mobility and the clash of generational and cultural values resulting from increased immigration and urbanization;

the ongoing need to seek out qualified appointments to the youth court bench and to refine and elevate a variety of skills through continuing judicial education;

But the model itself is inherently sound, given the constitutional constraints within which it must operate. I have also emphasized that the vital spark that invigorates and revitalizes this court is its link to its alter ego, the family court that deals with child protection and domestic relations. That link should be preserved if the youth court is to remain dynamic and not become a mere uninspiring adjunct of the adult criminal court.

The youth court judge has played a significant, patient and courageous role during the socio-economic and political vicissitudes which characterised the youth courts' development and evolution. There is every hope that a concomitant collective societal element of courage will reinforce and continue to invigorate the youth judges' ability to dispense justice for all children, youth and their families.

MODEL LAW ON JUVENILE JUSTICE

By
Willie McCarney

Introduction

The initiative for developing a Model Law came from people working in the field and not from the UN itself. An increasing number of countries express their willingness to go ahead with enacting new national legislation in the field of juvenile justice, but, in doing so, are asking for advice as to how they could really live up to the standards set out in the various international instruments.

The Model Law ensures and guarantees the rights of Minors

The model law, drafted by the United Nations Centre for International Crime Prevention in Vienna, Austria, is the latest in a line of projects and international texts concerning minors adopted by the UN General Assembly, in response to concerns frequently expressed by Member States that the condition of minors is not being taken seriously. Consequently the Model Law has the purpose of ensuring the guarantee and promotion of the rights of minors.

The provisions contained in the model law have been drafted to respond to the increase, both in number and in gravity, of offences committed by minors, while ensuring the pre-eminence of measures of protection, assistance and education over criminal penalties. Generally, the model law emphasises the separate nature of juvenile criminal law and creates in particular specialised magistrates and jurisdictions, aims to avoid slow proceedings (and their all too frequent harmful consequences), to arrive at a good knowledge of the delinquent, and which places a wide range of options at the disposal of magistrates enabling them to arrive at the most appropriate decisions for the young person concerned and which always allows for a revision of the decision. However the purpose of this model law is also to ensure educational assistance to minors in danger and protection to juvenile victims who are usually ignored in national legislative provisions where these exist.

This legislative document must ensure the reform or the establishment of a justice system for minors as an integral part of social justice for young people.

The model law is a legal tool intended to facilitate the drafting of national legislative provisions adapted by countries wishing to establish a law on juvenile justice or to modernise their legislation in this area. Therefore it is the task of every country to adopt the proposed provisions compatible with its constitutional principles and the fundamental concepts of its legal system. With a view to facilitating its incorporation into national legislation, the model law presents certain provisions in the form of variations and options. The variation added to an article makes it possible to modulate the adoption of a provision whose absence would not be conceivable within a system of juvenile justice. In addition to the variations, options have also been proposed, which, as the name indicates, represent optional legal provisions. It will therefore be the decision of the State whether or not to take these provisions into account.

The MLJJ offers itself as a framework for legislative action that is as differentiated as it leaves choices for further differentiation and necessary completion. This way it gives room for future innovations.

Guiding principles

The aim of the present law is the recognition of the inherent dignity of all members of human society, particularly of children, and of the equality and inalienability of their rights founded on liberty and justice.

The Commentary

Along with the text of the Model Law a full Commentary has been furnished, about twice as long as the text itself which the Commentary follows article by article. The Commentary is of particular value and importance, since it provides ample information by illustrating the Model Law's underlying philosophy and specific intentions. It seems to me that it is especially important to have the Commentary at one's disposal wherever the Model Law is to be used to fulfil its very purpose — to be used as a draft for new national legislation. If you would like to obtain the Commentary you need only ask the UN Office at Vienna for a copy! I give you the address below.

For a copy of the Model Law and/or the Commentary contact
Centre for International Crime Prevention,
United Nations Office,
Vienna International Centre,
P.O. Box 500, A-1400 Vienna, Austria.
Tel : (43-1) 21345-4272; Fax : (43-1) 21345-5898; u:\docs\mineurs\loi.frl.
Responsible officer: Alexandre Schmidt

CHILD PROTECTION

By
U Myint Thein, Deputy Director from Department of Social Welfare

Introduction

Like Human Rights, children rights recognize immediate rights (civil, political rights and fundamental rights) as well as progressive rights (economic, social, cultural rights and rights to health and education).

Category of rights provided by the CRC

Survival Rights: right to life and right to the highest standard of health and medical care

Protection Rights: protection from discrimination, abuse, neglect protection for children without families and refugee children.

Developments rights: formal and non-formal education and the right to a standard of living which is adequate for child's physical mental, spiritual, moral and social development

Participation rights: right to express his/her view about all matters which concern him/her.

Why do children need protection?

A special protection is provided for children because of their age and development; this protection is afforded by States, institutions, individuals and children without consideration of sex, nationality and culture.

Areas of protection

Bound by specific provisions of the CRC, States have to:
protect children from economic exploitation, sexual and physical abuse, effects of war, neglect and abandonment, maltreatment and discrimination
provide proper care and/or rehabilitation where necessary

There are three areas of protection:

protection against discrimination
protection against exploitation
protection in crisis and emergency situations

CNSP Children in Myanmar

The 1993 Child law applies to: child defines as a person who has not attained the age of 16 years; youth person who has attained the age of 16 years but has not attained the age of 18 years.

There are three categories of children:

Children with normal circumstances (no exploitation, no discrimination, no emergency situation)

Children with difficult circumstances (exploitation, discrimination and situation/crisis)

CNSP Children (abandoned children, street children, orphans, working children, institutionalised children, disabled children and children in conflicts with the law)

Strategies for prevention and protection of CNSP Children

Preventive programme (education, awareness programme, community development, income generation and training programme)

Protective program: training programme for law enforcement, protective measure in according with the provisions, protection of children, family and community

Rehabilitation programme: institutional care/rehabilitation

Programme for CNSP Children

Street/ working children: establishment of drop in centre, hostel, community development programme

Abandoned/orphan children: residential care and adoption service

Institutionalised children: institutions run by GO and NGO providing education, vocational and social training, relocation program

Children in conflict with the law: protection in classification home, probation services

Disabled children: institutions run by GO and NGO, institutional care, community based prevention program

Abused and exploited children: situational analysis of SAC/SEC advocacy meeting, awareness raising meeting and production of IEC materials.

Conclusion

The 1993 Child Law provides Prevention, Protection and Rehabilitation measures for children without and with specific needs. Child centres implement prevention and early intervention in a family focus approach. Social service system for child protection including education health and social welfare are carried out. The rescue, recovery and reintegration services are developed through training capacity building appropriate emergency response procedure and mechanism. Appropriate justice for children is provided by reviewing the existing law and procedures related, by establishing juvenile courts and by providing training in children rights to policemen, prosecutors, judges and civil society. Measures such as advocacy, public awareness, mobilisation data collection and monitoring are provided.

JUVENILE JUSTICE SYSTEM IN MYANMAR

By
U Hang Za Thawn, Director from Supreme Court office,

Origin and Development of the Legal System in Myanmar

Before the British annexion of Myanmar, the country was ruled by three systems:

Yazathat, edicts issued by the King which was the most important legislation

Dhamathats customary rules codified by monks and scholars

Phathtons records of judicial decisions rendered by various monarchs and judges.

At that time, criminal justice was part of the administrative machinery and civil justice was administered by judges, appointed by the King, and by arbitrators chosen by the parties.

By the British annexion, the legal and judiciary system changed: British common law system was imposed, and lasted till August 1972, even if Myanmar gained its independence on January 4th 1948.

With the accession of Socialists to power in 1972, judges were formed with committee of people's representatives.

This system reverted to the former one in September 1988, and judicial officers became judges again.

Judicial Principles ruling the present system

Administering justice independently according to law

Protecting and safeguarding the interest of the people and aiding in the restoration of law and order and regional peace and tranquillity

Educating people to understand and abide by the law and cultivating in the people the habit of abiding by the law

Working within the framework of law for the settlement of cases

Dispensing justice in open court unless prohibited by law

Guaranteeing in all cases the right of defence and the right of appeal under the law

Aiming at reforming moral character in meeting out punishment to offenders.

Courts System in Myanmar

Under the Judiciary Law of 2000, judiciary system is divided in four courts: 1) the Supreme Court 2) the State or Divisional Courts 3) the District Courts 4) the Township Courts.

Specials Courts are provided by special provisions in any law in order to achieve speedy and effective trial: 1) Juvenile Courts 2) Courts to try municipal offences 3) Courts to try traffic offences.

Adjudication of the Accused Juvenile Offenders

The Criminal Procedure Code, in force since 1989, doesn't provide separated trial procedure for young offenders. However, probation is often used for young offenders who are not recidivist. In 1930 the Young Offenders Act was enacted for the custody, trial, control and punishment of young persons who have committed an offence. In 1955, a new law was adopted: the Children's Act which embodied some provisions of the 1930 Act. This former was not repealed. Myanmar signed the UN Convention on the Rights of the Child on July 14th 1991. To comply with its principles, the child law was adopted in 1993 and the formers Acts of 1930 and 1955 were repealed. Under the Child Law of 1993, courts come into contact with young offenders only when they are arrested for prosecution or sent up for trial. The Social Welfare Department is the most responsible government agency for children in training and care.

Jurisdiction of the Juvenile Court

The juvenile Court is presided by a career judge chosen by the Supreme Court. Two juvenile Courts exist in Yangon and in Mandalay. In all other areas of the country, the presiding judge of the township court serves as juvenile judge.

The 1993 Child law enhances fundamental human rights principles and freedoms with a special consideration to child. According to the Child Law a child is a human being under 16 years .From 16 to 18, he is a young person. Juvenile Courts have jurisdiction only in respect of a child who is under 16 age at the time

of committing the offence. A young adult is tried by the court which has jurisdiction, but his young age is taken into consideration. Detention from adults is guaranteed, such as gender respect. Parents or guardians are to be informed as soon as possible of the child detention. A death sentence, transportation for life or a sentence of whipping shall not be passed on any child. A sentence for death or transportation for life shall not be passed on a young person. A child shall not ordinarily be sentenced to imprisonment, in exceptional case a child may be condemned to imprisonment but the sentence should not exceed 7 years and for a young adult 10 years.

For more detail, please look at the Child Law, at Chapter IX: Taking Action against a Child for an offence, Chapter X: trial of Juvenile Cases, Chapter XI :Safeguarding Children Against Dangers and Chapter XVII: Offence and Penalties²

² Note of the International Institute for the Rights of the Child (IDE): the Child Law can be viewed on the IDE Web site, <http://www.childsrights.org>

POVERTY RATE IN MYANMAR

By
U San Myint, Staff Officer, Central Statistical Organization

The Central Statistical Organization (CSO) has computed the percentage of households in poverty in Myanmar on the basis of 1997 Households Income and Expenditure Survey, using estimates of minimum subsistence costs based on national norms provided by the Ministry of health.

In Myanmar, the incidence of poverty is lower in rural than in urban areas. This poverty is not concentrated in outlying regions away from metropolitan areas. The typical developing country picture of the metropolitan area having relatively high income at the cost of neglected regions on the periphery does not obtain in Myanmar.

Myanmar's poverty situation is superior to that of most developing countries with regard to level (for its per capita income), gender and regional bias. However, very little of the degrading and dehumanising poverty seen in many parts of Asia exists in Myanmar, because the socialist policies were oriented towards basic needs and towards rural areas. Now the issue is whether given its favourable conditions on the incidence of poverty, Myanmar can reasonably look forward to virtual elimination of poverty within a generation.

In Myanmar the poverty ratio in 1997 was estimated to be 22.9 % and hopefully with 5% annual rate of reduction, the poverty ratio can be reduced to 7% by 2020.

Nearly one out of four households or about 13 million people which 35% are children have expenditure below minimum subsistence levels. Poverty rates are approximately the same in urban and rural areas, but 70% of the poor live in rural areas.

The CSO has conducted a nation-wide Household Income and Expenditure Survey in October 2001 in 14 States and Divisions. The aim of the survey is to

investigate into the changes in the levels of patterns of food and non-food expenditure of households residing in urban and rural areas. Its objective is to provide the basic data to compute poverty level.

Nearly 75% of the population live in rural areas, but urbanisation is increasing.

After 1988, the government introduced market-oriented economic policy based on agriculture. More than 60 different crops species grow in Myanmar, among which the most important paddy.

Food security plays a vital role in combating poverty, because nearly 70% of expenditure of people are for food and beverage.

Food security and poverty is a related question, without food security, it is impossible to combat poverty issues.

JUVENILE DELINQUENCY INTERVENTION

By

U Myint Thein, Deputy Director from Department of Social Welfare

Introduction

Juvenile delinquency is defined as the commission of an offence by a person who is under a particular age limit. This definition differs from one country to another one on the bases of the minimum age of criminal responsibility, the committed crime and the misconduct or bad behaviour.

The term of juvenile is used to include all types of children.

Types of Juvenile Delinquency

Pre delinquent juvenile: do not commit any offence, but shows strong tendencies towards committing offence such as staying away from their home without good reason, associated a with person of criminal propensity,

Delinquent juvenile: is of minimum age of criminal responsibility and has committed an offence

Causes of Juvenile Delinquency

broken family

parent child relationship problem

parental love and self-achievement

low socio-economic class

education

Provisions on Juvenile Delinquency in the Child Law

The Child law states:

juvenile offence means an offence under any existing law for which a child is sent up for prosecution to a juvenile court.

Nothing is an offence which is done by a child under 7 years of age and above 7 years of age and under 12 who has not attained sufficient maturity of

understanding to judge of the nature and consequences of his conduct on that occasion

The juvenile court pass an order which is reformatory and which will be beneficial to the child.

A child is defined as a being under 16 years old

A young person is a person between 16 and 18 years

A juvenile delinquency is the commission of an offence by a person who is in particular age limit.

Focal Point for Institutional Care and rehabilitation

community-based treatment options and institutional care

law enforcement (Police Force, Attorney General Office, Judicial Office)

Institutional Care and Rehabilitation (Department of social Welfare)

Strategies for Rehabilitation of Juvenile Delinquency

Institutional Care and rehabilitation (residential Training, Re-location, After Care Services, Parole)

Community Rehabilitation (probation/supervision, volunteer Program for probationers, awareness and Education)

Program in institutional rehabilitation and reintegration

residential training for boys and girls

reunification : regular family contacts are carried out

After care service

Parole: based on the good character and discipline, the child is sent back to his/her family before having completed his/her sentence

Program in Community rehabilitation of Juvenile Delinquency

Probation/supervision: probation officer supervise and guide the probationer.

The families of the probationers are also assisted by the probation officers. For

the duties and Powers of Probation Officer, please look at Child Law, Section 61&62.3

Voluntary social worker for probationers

Awareness and Education

Conclusion

Law & Development accompanying of rules and regulations. Community service orders and other innovative measures to be included.

Training of all stakeholders working with children and young people, prosecutors, police, judges separately and together in order to strengthen collaboration

Expansion of community based prevention measures for juvenile delinquents

Mobilization of communities to participate in prevention and protection program

Provision of various innovative social services including rehabilitation, counselling, reintegration, vocational and social services

Promotion of national advocacy and community education

³ Note of the International Institute for the Rights of the Child (IDE): This law can be viewed on the Web site of IDE, <http://www.childsrights.org>

WORKSHOPS

In the Area of Education

The participants highlighted Articles 2, 11, 12, 14, 23, 24, 28, 31, 33, 34 as being relevant. Some customary practices already conform to the CRC such as Articles 2, 14, 31.

However there are some practices that may already be in place but however require expansion such as educating parents in child development and certainly in child rights. Other matters would be specifically implementing Article 23 by increasing efforts to include a physically and mentally challenged child to join main-stream education rather than keeping him at home as is the practice now.

There also is a need to have a sustained and continuous effort to educate children on the harmful effects of smoking, drinking and taking drugs as under Article 33. At present, these harmful things are easily available to children. To ensure a healthy and productive future generation, more efforts are required to increase adolescent education in living skills including reproductive health in line with Article 34.

In the Area of Social Work

The participants recognised the several categories of Children in Especially Difficult Circumstances (CEDCSs). Having defined CEDCs, the group looked at their protection in both rural and urban settings. Specific responses, such as monasteries in the rural areas and more drop-in centers in the urban areas were required.

Poverty being an ever-present problem, there is need for educational programs for both parents and children on opportunities for income generating projects such as:

Small-loan programmes currently given by both NGOs and local authorities, and Enhancing effective counselling services to CEDCSs from qualified probation officers and social workers

In the Area of Juvenile Delinquency

The participants recognised that the judiciary and the prosecution are not confined to the shackles of the law but can actually be creative in the implementation of it. At present, the law provides that the police officer will bring the juvenile to court as soon as possible. This should be within 24 hours. The Social Welfare Department gets involved and the officers should be trained in the area. If a child and an adult are charged together, they should not be tried jointly.

Juvenile matters should be heard in a separate courts or in a separate buildings from those of adult matters. In hearing a juvenile matter, the court/the judge should consider the following factors:

Age and character of the offender

Circumstances he is in

Causes of committing the crime

Report of probation officer

Other special circumstances in the interest of the child

Despite section 45, no death sentences, life sentences or whipping should be imposed. Children should not be sentenced to imprisonment. The possible sentences under the Child law are :

Release with admonishment

Fine if the juvenile is 14 years and earning an income and if not, the parents are fined

Entrust to child custody of the parent/guardian with a bond not exceeding 3 years

Place the child under supervision of the probation officer for a tem not exceeding 3 years; or

Commit a child to a minimum o term of 2 years to training school or till the age of 18 years.

For the protection and rehabiiltation of children in training schools, the authorities should provide :

Educational and vocational training

Family contacts

Preparation for release and after-case services

Financial and technical assistance for staff-training

In the Area of Child Protection

At present when a child who has been physically and sexually abused is in need of protection, she is removed from home and placed in an institution. There should be a change in mind-set. Instead the suspected offender should be removed from the home. This would be less traumatic for the child. Also she should remain with her mother and/or extended family. She requires immediate medical attention and treatment. Counselling should also be provided and psychiatric evaluation should be carried out to assess the child. There is also a need to have a counselling programme for the family undergoing the trauma and to support the child before and during the trial.

Who is to carry out the work on Child Rights ?

The existing framework of National Committee is widely recognized as the vehicle to carry out the work of child rights in Myanmar. The NGOs are ready, willing and able to cooperate in the deliberations in the various sub-committees however to be effective there is a need for more networking between the various NGOs and the National Committee. This is essential for the growth of Child Rights in Myanmar



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