

KEY ISSUES ON TREATMENT, REHABILITATION AND SOCIAL REINTEGRATION OF JUVENILE OFFENDERS AS IDENTIFIED IN AN RWI STUDY IN THE ASEAN COUNTRIES

*Christian Ranheim**

I. INTRODUCTION

Combined, the 10 member states of the Association of South East Asian nations (ASEAN) comprise 3.3% of this planet's entire land area. Its citizens, however, make up almost 10% of humanity. Home to more than 600 million people — more than 100 million more than the EU — it is a young population. Almost 30% are between 5 and 19 years old. The combined high number of youth and a relatively high percentage of youth unemployment in the region have by many been seen as a formula for increased unrest, violence and juvenile crime.¹

After having worked with juvenile justice related capacity building in Asia for several years, the Raoul Wallenberg Institute for Human Rights and Humanitarian Law wanted to delve deeper into the effects of the youth bulge in ASEAN member states thus contributing to the limited regional based juvenile justice research. Some of the questions we had were: *Is there really a sharp increase in juvenile delinquency in ASEAN countries as reported by news media? How do the governments respond to juvenile delinquency? Is juvenile crime a ticking bomb towards social unrest and instability in South East Asia? How are the juveniles in conflict with the law treated and rehabilitated? Are there common trends in the region?*

Through commissioning of a baseline report on the state of juvenile justice in ASEAN countries, we wanted to find the answer to some of these questions. The study is freshly printed, and I am happy to be able to present the results of the study for the first time here today.

The report has been drafted by 10 independent experts with responsibility for each of the ASEAN member states. Thus, it is pertinent to point out that this is neither an official ASEAN report nor a report drafted or endorsed by any member state. Relevant ASEAN bodies and state representatives have, however, been consulted and have been supportive of our research.

Each researcher drafted a narrative report and collected statistics loosely based upon the UNICEF and UNODC Juvenile Justice Indicators.²

* Head, Indonesia Office, Jakarta, Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI).

¹ ILO: Global Employment Trends for Youth 2013: A generation at risk
http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_212423.pdf

² www.unodc.org/pdf/criminal_justice/Manual_for_the_Measurement_of_Juvenile_Justice_Indicators.

II. FINDINGS

This now brings us to the findings of the report, and I would like to highlight five key conclusions made.

A. What Are the Facts?

Nearly all researchers conducting the country studies for this report stated that it had been difficult to obtain reliable and up-to-date statistical data on the situation of children in conflict with the law. Furthermore, there is no set list of indicators applied for juvenile justice reporting within ASEAN, which makes it difficult to compare figures across the region. Access to data and streamlining of indicators clearly need to improve to ensure transparency and possibilities for future research.

B. Juveniles in the Region Are Mostly Law Abiding

The fear of an increasing number of juveniles in conflict with the law in ASEAN countries has sparked concerns throughout the region. Until today, it has been difficult to verify whether the concerns are justified. Our study confirms that crime is on the rise. The number of juveniles brought into formal contact with the criminal justice system, however, remains surprisingly low: we estimate that approximately 70 000 juveniles are formally charged with an offence each year in ASEAN member states. Comparatively, this number is far lower than, for example, the USA — in which numbers from 2010 show that a staggering 1,4 million children were charged annually.³ There is a lack of complete EU statistics, but in a study conducted by the European Commission in 2014, 8 out of the 28 member states reported 134 000 children charged with a criminal offence.⁴

When assessing the figure, it is, however, important to keep in mind that juvenile crime traditionally is heavily underreported.⁵ Cases of minor crime are often dealt with locally, which may be even more common in Asia where many tend to live in tightly knit communities where crimes are more likely to be resolved without contact with the formal criminal justice system.

C. Those Who Are Not Law Abiding Mostly Commit Less Serious Crimes

In line with international research, crimes committed by youth in the ASEAN region are mostly within the category of theft. The highest percentage we recorded was in the Philippines with 68% and Singapore with 63%. After theft, figures of other crimes vary quite considerably. It does, however, seem common that violent property crime and drug related crimes are high on the statistics. In particular Thailand reports extremely high percentages of drug related crimes (45.51%).

For those countries that provide gender relevant statistics, it is obvious that male delinquency is much higher than female. The Indonesian juvenile prison population in January 2015 consisted of 2% females, which we believe is indicative also for other countries.

³ In comparison, the population of the USA is only half that of ASEAN member states. “Juvenile Offenders and Victims: 2014 National Report”, *National Center for Juvenile Justice* p.151.

⁴ “Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the European Union”, *European Commission* 2014, p.4. The report summary finds that in 8 out of the 28 members states of the EU alone, the number of children charged was 134,477.

⁵ Finkelhor and Omrod “Factors in the Underreporting of Crimes Against Juveniles”, *Child Maltreatment, Sage Journals*, August 2001 6: 219-229.

D. The Legal Framework Is Improving — Implementation Is the New Challenge

The country reports indicate that *all* countries within the region have recently installed, or are in the process of installing, a distinct legislative framework for juvenile justice. This is compatible with international standards and a very positive development.

7 out of 10 states have legally recognised diversion procedures. The remaining 3 states are in the process of drafting such a framework — some in cooperation with UNICEF.

The actual *implementation* of juvenile diversion appears to be a more complex issue. Some of our researchers reported a very high application of either diversion or alternative measures. As an example, police in Brunei estimated that 90% of cases reported to the justice system are solved without a judicial proceeding. The Philippines reported that 39% of all reported cases were diverted, while Thailand, on the other hand, had a very low percentage of use of official diversion.

Does the study specify how those going through diversion or alternative measures are treated? Not in detail or in figures, although the narrative reports can give us some guidance. A common observation is that diversion is not used to its fullest potential for several reasons:

- Lack of formal programs
- Lack of funding
- Lack of competence and knowledge
- Lack of facilities

Institutional arrangements for implementation of diversion differ throughout ASEAN. While some countries apply traditionally based procedures such as mediation in village councils, others maintain strict control over the mediation process.

If one looks at figures again, our study shows that while approximately 70 000 juveniles are charged with a criminal offence annually, an estimated 16 000 children are deprived of their liberty after having received a criminal sentence at any given time within the region. Again, to our knowledge, this is the first time such figures have been presented for the ASEAN region. In the USA, the figure of juveniles deprived of liberty was around 70 000 according to a report from 2010, while 21 out of 28 countries in the EU in 2012 reported that 8700 juveniles were detained.⁶

E. Rights Denied?

Juveniles in conflict with the law are especially vulnerable in facing a large, formal justice system comprised of adults. International instruments thus recognise the importance of providing legal or other professional counsel to represent the interest of the child at all phases of the proceedings. Disappointingly, this appears to be one of the weakest parts of the juvenile justice systems in the region. Although most national laws afford some form of legal representation, this is for several countries not implemented in practise. Some report that it is due to the lack of lawyers. As examples, the Lao Bar Association had in 2013 around 150

⁶ “Juvenile Offenders and Victims: 2014 National Report”, National Center for Juvenile Justice, p. 188, “Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the European Union”, *European Commission* 2014.

members while Cambodia had around 800. While this may be amended by training of paralegals or use of other professionals, our researchers reports that such programmes lack funding and that representatives thus are either not available or do not fulfil the required competence to work with juveniles.

III. CONCLUSIONS

ASEAN countries are diverse in terms of population, geography, social development and culture. This is reflected in the findings of the report, and one should thus be careful when drawing conclusions. Some trends do, however, appear general: On a positive note – all ASEAN member states have, or will soon have, specialised legislation on juvenile justice. Furthermore, the number of juveniles in conflict with the law in the region as a whole remains remarkably low.

While most countries have regulations outlining diversion processes, these are not always used to its fullest potential due to a number of factors, and prisons are still being used to a much higher extent that required. The situation for detained children is not conducive to secure full rehabilitation, and incarceration together with adults is still common in several ASEAN countries.

IV. RECOMMENDATIONS

We believe that increased regional cooperation within ASEAN and bilaterally between states would be imperative to strengthen standard setting and sharing of best practises. The main recommendations of the RWI study are to:

- Work towards a set of ASEAN Guidelines on the promotion and protection of juvenile justice that are compatible with the CRC and other international juvenile justice standards;
- Develop an ASEAN system for collecting and publicly reporting statistics on juvenile justice based on recognised UNODC and UNICEF indicators;
- Strengthen regional forums for juvenile justice in order to share best practices;
- Support regional juvenile justice ‘think-tanks’ and strengthen cooperation on juvenile justice related research and education, and
- Create a regional monitoring and evaluation mechanism based on international juvenile justice standards.