
REPORTS OF THE COURSE

GROUP 1

ENSURING DUE PROCESS IN THE JUVENILE JUSTICE SYSTEM AND THE APPROPRIATE ADJUDICATION OR DISPOSITION OF JUVENILES

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I. INTRODUCTION

Group 1 agreed to discuss the following agenda:

- (1) Current situation and challenges in regard to the legal framework of arrest, detention, transfer between related agencies, prosecution and trial.
- (2) Current situation and challenges in regard to (i) information gathering (legal investigations and social inquiry) of offences and/or the background of delinquency; (ii) information sharing; and (iii) co-operation amongst stakeholders.
- (3) Assessment of the degree of risk of reoffending and the factors important for the rehabilitation of each juvenile (i.e. their needs) before disposition.
- (4) Measures for ensuring the appropriate adjudication or disposition of juveniles, including the introduction of diversion programmes.
- (5) Adjudication or disposition considering the restitution or minimization of damage to the victim and/or community and effective measures to restore the damage caused by juvenile offenders.

The discussions of the group were mainly centred on ensuring due process in the juvenile justice system and the appropriate adjudication or disposition of juveniles through considering the current situation and challenges facing member countries. The group agreed that some member countries are already adhering to the United Nations standards, norms and guidelines.

II. CURRENT SITUATION AND CHALLENGES

The group discussed the following topics and agreed that they posed great challenges in ensuring due process in the juvenile justice system.

A. Arrest and Detention

The group observed that member countries had laws in place that provide for the arrest of offenders but noted that certain countries did not have specific separate laws dealing with the arrest of juveniles as distinct from adults. A further challenge was the issue of detention before a juvenile can be brought to court.

In some countries, where such laws exist, in certain circumstances or cases, they are not specifically followed by the courts and law enforcement agencies. Where the law provides that a juvenile must be detained for a minimum period of time, the juvenile is not brought to court in a timely manner. This can arise due to practical and individual reasons. Probation reports are not thorough or detailed and are not submitted on time. In certain instances, presiding officers consider the gravity of the offence more than the basic requirements of rehabilitating and reintegrating the juvenile into society.

B. Trial

Zimbabwe and Vietnam have fragmented legal provisions on juvenile justice such as the right to be represented by a parent or guardian when police record a caution and during trial. However, there are no specific courts to deal with juvenile offenders and insufficient facilities for their detention.

While educative measures are very effective for juvenile offenders, in Japan there is a social movement which criticizes the Family Court as being too lenient on juveniles and which calls for severe punishment. This is mostly attributed to the fact that there is a lack of awareness of the gains of the juvenile justice system.

In respect of the right to a speedy trial, the group agreed that justice delayed is justice denied. In certain circumstances, there is an inordinate delay before juvenile cases are disposed of and this causes actual prejudice in that a juvenile, due to the delay, is dealt with as an adult when matter is tried (Sri Lanka, Zimbabwe). Japan has strict time limitations for detention not only in the investigation stage (arrest and referral to Family Court must occur within a maximum of 23 days) but also in the juvenile hearing stage (the Family Court has to make a final disposition, usually within four weeks, but up to a maximum of eight weeks). These limits are provided for by law.

In relation to the right to legal representation, in some countries, it is available only at the juvenile's expense. The result is that most juvenile cases are disposed without them being properly represented by legal counsel. In Zimbabwe, legal representation is only provided by the State in indictable cases. In Panama, offices of public defenders of adolescents provide legal representation for juveniles. In Japan, an attendant (lawyer) will be appointed by the State for detained juveniles in felony cases by the 2007 amendment of the Juvenile Law.

C. Probation Officers and their Assessment

All participants explained the situations of probation officers in their respective countries. In Sri Lanka, probation officers are required to have a background in sociology. Japanese participants found it interesting that while in some countries probation officers do not have a background in juvenile psychology, in Japan they are expected to be specialists in psychology, sociology, and education.

In Vietnam the law does not provide for probation officers. Instead, police officers make an assessment during their investigations and send the information to the prosecutors who in turn place this information before the judge. The judge will proceed to deliver his or her judgment after considering this assessment.

In Japan, the law provides for the juvenile classification home officer and the Family Court probation officer to carry out assessment of juvenile offenders. Family Court judges must consider two aspects of the matter before them: the criminal facts of the case and the necessity for educative measures. The judge gives serious consideration to the report by the family court probation officer in his or her assessment of the risk of reoffending. The underlying principle is that since juveniles act out of immaturity, and because of their high pliability, they may be corrected. The great challenge lies in educating citizens to understand the all-important role played by probation officers in juvenile justice.

A Japanese participant stated that in Japan, a challenge exists in the quality of probation officers. It is believed that the quality is not low. However, information gathering is a vital yet difficult task. Therefore, in his opinion, there is still room for Japanese family court probation officers to improve their ability.

The Zimbabwean position is that probation officers, who fall under the Department of Social Welfare in the Ministry of Labour and Social Welfare, are called upon by the police and the courts to carry out assessments of juvenile offenders. The police make such a request in all cases involving juveniles below the age of 14 years. The assessments are passed to the Attorney General in order for him or her to decide whether or not to prosecute a juvenile offender. If a docket is referred to the Attorney General without this report, it will be returned to the police to enable them to obtain the report. The courts request probation officers to provide an assessment report on the risk of recidivism and rehabilitation before passing sentence. Probation officers are professionals and presiding officers are accordingly guided by their recommendations in passing sentence.

In Sri Lanka, supervising police officers and probation officers assist judges in assessing the risk of re-offending by juveniles in minor cases. Since probation officers play a vital role in delivering juvenile justice, they must be given adequate time and resources to enable them to come up with comprehensive reports. Regarding rehabilitation, the chairperson's personal opinion was that Family Group Conferencing (FGC) of New Zealand and the Family Court of Japan were good models in minor cases. FGC allows the offender and the victim to come face to face and has a provision for restorative justice. As for serious offences, Sri Lanka is bound by national and international laws in such dispositions. Judges should consider probation officers' reports even in serious offences and mostly pass rehabilitative sentences.

D. Diversion

The group wanted to come up with a working definition of this word and adopted the international best practice of diversion as the channelling of juveniles away from the formal court system into reintegrative programmes. If a juvenile acknowledges responsibility for his or her wrongdoing, he or she can be 'diverted' to such a programme, thereby avoiding the stigmatizing effects of the criminal justice system. It gives juveniles a chance to avoid a criminal record, while at the same time aiming to teach them to take responsibility for their actions and to avoid getting into trouble again.

In Vietnam there are provisions in both criminal and administrative procedures in which courts play no part. In the administrative procedure, the police take the juvenile to the local government or authority for it to take appropriate measures to send the juvenile to a training school. Alternatively, the police can send the case to a prosecutor who may also decide to refer the matter to the local authority for the juvenile to receive treatment.

In Panama, other than in cases of murder, rape, kidnapping, terrorism and drug trafficking, a judge of adolescents deals with issues of diversion. A judge of adolescents can prescribe social or educative measures for a juvenile offender in non-serious cases. A prosecutor can also dispose of the case in his or her office and may choose not to send it to a judge of adolescents where the victim has been compensated and in cases where there is no threat to society.

In the Philippines, there are various programmes in place which provide for diversion of children in conflict with the law such as the *Barangay* Court (village court system), police, prosecutors and lastly, the courts. Decision makers are guided by the juvenile law. Diversion is allowed in minor cases where the possible penalty for the offence is less than six years. Some other factors include such things as the nature and consequence of the offence and circumstances of the child. The disposition must be made with consideration for the best interests of the child.

Current laws in Zimbabwe do not specifically provide for diversion of juvenile offenders. However, there is provision for prosecutors to decline prosecution in trivial cases using the *de minimis non curat lex* principle (the law does not concern itself with trivialities). The problems or challenges with this system are that it has no provision for the juvenile offender to take responsibility for what he or she has done; thus, the offender is not sent for corrective and/or rehabilitative treatment. The diversion programme proposed by the National Committee on Community Service has provision for the victim and offender to meet under victim offender mediation (VOM) and Family Group Conferencing (FGC). This will provide a platform for the victim to be heard.

The Family Court in Japan can be seen as special model of diversion (more than 70% of all juvenile cases are dismissed without any disposition). In the Family Court procedure, victims can request the Court to hear their opinion. However, in some cases, it is difficult for the Court to fully reflect the victim's voice in its disposition.

Sri Lanka at present does not have a specific diversion programme. However, the present law enables a Juvenile Court judge to proceed with protective measures and diversion in cases of a minor nature. Even though a juvenile offender is brought before a court, a formal hearing does not take place because magistrates are empowered and it is within their jurisdiction to act in appropriate cases resulting in diversion.

III. RECOMMENDATIONS FOR IMPROVING AND STRENGTHENING JUVENILE JUSTICE SYSTEMS

With regard to the topics, the participants agreed that the following recommendations could be necessary for improving and strengthening juvenile justice systems:

1. A special court system competent to deal with juvenile offenders is necessary. The Family Court in Japan, and also the model of the Criminal Child Court in South Africa as proposed in the Child Justice Bill, or the model of the *Barangay* Court in the Philippines are considered good models;
2. The formulation of (or improvement an existing) fundamental framework on arrest, detention, prosecution and trial, applicable to juvenile offenders and based on United Nations standards, norms and guidelines, must be taken into account;
3. Judges must have proper information in the form of comprehensive reports to enable them to make appropriate decisions;
4. Probation officers, as specialists of human sciences such as psychology, sociology and education, should be involved in the process of decision-making. Their reports and recommendations should have significant bearing on the final dispositions of cases;
5. The involvement of volunteer probation officers, volunteer social workers, etc. as community support resources in dealing with juvenile offenders should be encouraged;
6. The competent authorities, in their determination, should, as a rule, give priority to the juvenile offender rather than the offence;
7. Restorative justice, where the victim meets the juvenile offender to understand why the latter committed the offence and for possible compensation to be agreed upon, should be encouraged;
8. Many participants emphasized the importance of recording, properly and methodically, statistics on juvenile offenders.