
REPORTS OF THE COURSE

GROUP 1

ISSUES AND METHODS OF CRIMINAL INVESTIGATION, PROSECUTION AND JUDICIAL PROCEDURES FOR SERIOUS AND VIOLENT JUVENILE OFFENDERS

Chairperson	Mr. Hideaki Gunji	(Japan)
Co-Chairperson	Ms. Gonna Satayathum	(Thailand)
Rapporteur	Mr. Marcelo Cesário	(Brazil)
Co-Rapporteur	Mr. Fernando Rivero	(Uruguay)
Members	Mr. Al-Smadi	(Jordan)
	Ms. Naoko Naito	(Japan)
	Mr. Kotaro Nakamura	(Japan)
	Dr. Robert Hoge	(Canada)
	Prof. Shintaro Naito	UNAFEI
Visiting Expert Advisers	Prof. Junichiro Otani	UNAFEI
	Prof. Jun Oshino	UNAFEI
	Prof. Haruhiko Higuchi	UNAFEI

I. INTRODUCTION

Group 1 started its discussion on 2 June 2008, and elected, by consensus, Mr. Al Smadi as its Chairperson and Mr. Gunji as its Co-Chairperson. Mr. Cesário was elected as Rapporteur and Mr. Rivero as Co-Rapporteur. Soon after the first meeting of the group, Mr. Al Smadi unfortunately had to leave UNAFEI and return to Jordan unexpectedly, so Mr. Gunji assumed the position of Chairperson and Ms. Satayathum became Co-Chairperson.

The group, which was assigned to discuss “Issues and methods of criminal investigation, prosecution, and judicial procedures for serious and violent juvenile offenders”, agreed to conduct its discussion in accordance with the following issues: 1) investigation; and 2) the judicial system.

Besides this, the group divided each issue into the following sub-topics:

1. Investigation:
 - A. Interview
 - B. Arrest and Detention
 - C. Social Environment/Technical Assessment
 - D. Report.
2. Judicial System
 - A. Court Procedure in Juvenile Justice System
 - B. Involvement of Victims
 - C. Disposition for Juveniles.

II. INVESTIGATION

A. Interview and Violent Cases

Regarding this specific point in the investigation procedure, paying particular attention to serious and violent cases committed by juveniles, the group discussed different methods of interviewing the juvenile offender. The Chairman asked the participants, principally those who are police chiefs, to relate their own experiences.

Mr. Rivero spoke of the extremely difficult conditions during the interview; sometimes the juveniles can be very unstable and, sometimes, a little aggressive. Mr. Rivero also remarked on the juveniles’ vulnerability and noted the difference between three types of interview for an investigation, which are: the primary interview by the police, trying to establish the relationship between the crime and the suspect; the second interview, by the prosecutor or judicial officers, searching for the details of the offence; and the third

interview, for technical assessment.

Mr. Cesário told of his experience in Brazil, where there are specialized police stations for investigation of juvenile offenders, completely separate from those places for adults. He also told the participants about the importance of the presence of the juvenile offender's parents during the interview.

On this specific point, Dr. Robert D. Hoge, whose honored us with his presence during this discussion, said that, from the point of view of psychology, the value or benefit of the presence of the parents during the interview of the juvenile offender will vary, case-by-case, and that it is very difficult to form a general rule on this issue.

Still on the matter of interviews, Mr. Nakamura recalled that the initial interview by the public prosecutor is mainly for judging the necessity of detention, not for fact-finding.

Whether the atmosphere where the interview will take place is formal or not it is much more a question of "interview techniques" than related to the interview itself, which implies that formal environments could vary according to each case.

After all of these topics were discussed, the group agreed that there are two specific points about interview of juvenile offenders, including but not limited to serious and violent juvenile offenders, that must be considered: the place where the interview is to be held and the presence or not of the parents of the juvenile offender during his or her interview.

B. Arrest/Detention

Recognizing the existence of serious and violent crime committed by juvenile offenders, our discussion of the topic above began with a brief explanation by Mr. Nakamura of the Japanese system for arrest and detention, at the invitation of the Chairperson, Mr. Al Smadi.

According to Mr. Nakamura, a judge's approval is always required for the detention of a juvenile. Besides this, he emphasized that the measure of depriving the juvenile of freedom is more necessary if there is an accomplice, in order to avoid communication between the two and, therefore, the destruction of evidence. Mr. Nakamura ended by saying that it would be better to research the necessity of arrest of the juvenile before the enforcement of the measure itself, and concluded that the main objective of the investigation in Japan is "to find the truth," and that there is no exception in matters of serious and violent juvenile crime.

Mr. Rivero gave a brief explanation of the arrest and detention system of a juvenile in Uruguay.

Mr. Cesário emphasized that the factors that imply the need to take the juvenile into custody must be of two different orders: "social needs" (or "social claims") and "juvenile protection", which form an equation to be solved by the judge regarding the balance of those two factors.

Ms. Satayathum told us that in Thailand, in most cases, the juvenile will be released, except when the alleged offence is very serious.

On the other hand, Mr. Gunji asked us to focus on the factors that really imply the necessity of taking a juvenile into custody and to think about the factors that should be considered in order to detain a juvenile.

At this specific point, Mr. Cesário said that the factors need to reflect the aims of the investigation, and proposed that "preservation of the evidence" and "preservation of the integrity of the juvenile" should be the priority factors.

Mr. Nakamura said that we should not put factors into a priority order, but should analyse them all. Besides this, he added that the detention place for juvenile should be separate from those places assigned for adults.

Finally, Mr. Al Smadi pointed out that during the arrest minimum force should be used, including handcuffs, unless extremely necessary, and properly justified.

By the end of the discussion of this topic, the group agreed that the most important point about arrest and detention in the investigation is consideration of what factors lead to the requirement to detain the juvenile.

C. Social Environment

First of all, and in order to better delimit such a vague issue, the group decided that it is paramount to define what constitutes “social environment”.

At this point, the Chairman, Mr. Gunji, suggested that the “Countermeasures to protect the privacy of the family and of the juvenile” could be a topic, and asked us to talk about our experience in each country.

In that way, Mr. Rivero said that it is necessary to prescribe guidelines concerning information gathered through investigation.

We also introduced the topics of regulation and the present situation of the reports of juvenile cases by the press in each respective country.

After some members of the group gave accounts of their own experiences, the following issues were considered most important when talking about social environment: preservation of the privacy of the family and of the juvenile and the importance of maintaining information gained through investigation.

D. Report

Regarding the report of the investigation, Mr. Rivero introduced the theme by giving us a brief overview of the rules in Uruguay.

After this, Mr. Al Smadi pointed out that we should discuss if recommendation has to be assigned or not in the final report of the investigation, besides asking “who has the right of drop the case”?

On the other hand, the group has not achieved any consensus about the inclusion of the recommendation in the final report, as well as about the competent authority to allow the case to be dropped, as the peculiarities of each country demand different treatment on this specific point.

At the conclusion of discussion of this topic, the group has accorded that every case has to be reported and sent to the competent authority, no matter what authority this is.

III. JUDICIAL SYSTEM

A. Court Procedure in the Juvenile Justice System

First of all, the group decided to draft a comparative table of the situation in the four countries whose participants make up the group:

	JAPAN	THAILAND	BRAZIL	URUGUAY
Principle (philosophy, idea)	Protection	Rehabilitation	Full protection and rehabilitation	Protection and rehabilitation
Age of criminal responsibility (Juvenile)	14 to 19	10 to 18	12 to 17	13 to 17
Type of Court	Family Court (protective) or District Court (criminal)	Juvenile and Family Court	Juvenile Court	Family Court (protective) and Adolescent Court (criminal)

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Persons Present	<u>For the Family Court:</u> 1. Judge 2. Lawyer Attendant 3. Probation Officer 4. Parents 5. Persons approved by judge who can be helpful for rehabilitation <u>For the District Court:</u> 1. Judge 2. Prosecutor 3. Defence Counsel	1. Judge 2. Public Prosecutor 3. Probation Officer 4. Parents 5. Legal Adviser of defendant	1. Judge 2. Public Prosecutor 3. Public Defender 4. Parents 5. Probation Officer	1. Judge 2. Public Prosecutor 3. Public Defender 4. Parents
Maximum Punishment	18 or above: death penalty 14 to 17: life sentence	Life sentence	3 years of internment in an educational establishment	5 years of internment
Duration of detention before final disposition	23 days + 8 weeks	60 days	45 days	60 days

Each participant spoke about his or her own judicial system, briefly explaining the procedure, in order to compare different systems.

This topic - Court Procedure in the Juvenile Justice System - was divided into two main sub-topics, which are: 1) the role of parents; and 2) special consideration during the justice procedure.

Regarding the role of parents during the juvenile justice procedure, Ms. Naito told us that in Japan, the parents of the juvenile have the right to attend the hearing in the Family Court. In some cases however, the presence of the parents can be prejudicial for the juvenile, and so the Family Court, in those cases, can ask the parents to leave and can hold hearings for the juvenile and the parents separately. On the other hand, in the District Court the parents do not have the right to be a part of the proceedings, but as the trial is open to public, they can observe the trial.

Ms. Satayathum explained that in Thailand the presence of the juvenile's parents is required during all procedures.

Mr. Rivero said that in Uruguay the presence of the juvenile's parents is also required during the trial, but that there is no sanction for those who don't appear, just advice.

Still on this topic, Mr. Cesário said that Brazil is just like Uruguay and Thailand, meaning that the presence of the juvenile's parents is always required, but if they don't appear the hearing will not be postponed, but an ad hoc legal representative for the act will be pointed by the judge.

The method of using social inquiry reports was one of the special considerations during justice system procedures that the group discussed. On this specific topic, Ms. Naito explained that in Japan the social inquiry report is basically prepared by the Family Court probation officer and the official of the Juvenile Classification Home (JCH). The first is dedicated to social data and the recommendation for disposition; the second attends to psychological aspects such as IQ tests and behavioural tendencies, besides giving recommendations for the appropriate treatment.

In Thailand, according to Ms. Satayathum, the social inquiry report is basically prepared by the probation officer and its aim is to advise the most effective treatment.

According to Mr. Rivero, in Uruguay this report is made by the forensic office and also looks to recommend the best treatment.

Finally, Mr. Cesário pointed out that Brazil a specialized section of the Juvenile Court, staffed by social welfare and psychology specialists, do make a social inquiry report, with the same objective of the of Thai reports.

Aspects like, *inter alia*, who has access to the reports, the possibility of taking or making copies, and the stage of proceedings when the report is read by the judge were also included in the discussion of social inquiry reports.

B. Involvement of Victims

Our discussion of this issue began with a request by our Chairperson to each participant to explain his or her own experience of (or country’s policy on) the involvement of victims during juvenile criminal justice procedure.

After a brief explanation by each member, two issues were identified as important when discussing the involvement of victims: the effect on the juvenile and the effect on the final decision.

On this topic, according to Ms. Naito, it is possible to make the juvenile think about the seriousness of his or her conduct by letting him or her know about the feelings of the victim. On the other hand, the presence of the victim during the hearing could make the juvenile feel uncomfortable when talking about the facts, leading to the juvenile not expressing his or her real feelings.

The group also discussed the convenience or otherwise of the full involvement of the victim in the trial.

The extent of the involvement of the victim in the hearing/trial, including contact with the juvenile, was discussed exhaustively, in order to ascertain the advantages or disadvantages of this kind of procedure. In spite of the differences between the countries, the group accorded that in juvenile criminal justice procedure the feelings of the victims should be considered, giving them at least the opportunity of being heard.

C. Disposition for Juvenile Offenders (Including Serious and Violent Juvenile Crime)

The group’s main worry regarding this topic was to discuss which measures are the most appropriate for the juvenile offenders to be disposed by the judge according to the main objectives of focusing on the juvenile, resocialization and rehabilitation. In this way, each member briefly exposed the legal measures existing in his or her own country, making possible the following table.

	Main Types of Disposition for Juvenile Offenders	Term of Incarceration
Japan	1. <u>Protective Measures</u> (i) Probation (ii) Juvenile Training School	Indeterminate
Thailand	<u>Criminal Punishment</u> (i) Office of the Observation and Protection Center (ii) Probation	Determinate
Brazil	1. <u>Protective Measures</u> 2. <u>Socio-educational Measures</u>	Indeterminate
Uruguay	1. <u>Socio-educational Measures</u> (i) Educational Programme (ii) Community Work 2. <u>Criminal Punishment</u>	Indeterminate

During discussions on this issue, it emerged that it is important to have some flexibility in dispositions for juveniles, in order that the length of their sentences not always be fixed, but that there is some discretion accorded to the authorities to evaluate the best moment to release the juvenile, according to his or her development during the imposed treatment period.

Another point discussed was related to the competent authority to release the juvenile after the enforcement of the treatment imposed or after the juvenile has reached an acceptable level of re-habilitation.

Recalling that the main theme of the Course is “Profiles and Effective Treatments of Serious and Violent Juvenile Offenders”, Ms. Naito explained that in Japan there is a provision in the Juvenile Law that, in principle, serious cases in which a juvenile intentionally acted causing the victim’s death should be sent to the public prosecutor, meaning that a criminal sentence should be imposed by the Criminal Court, when the juvenile is 16 or over.

According to the participants from countries other than Japan, there is no similar provision in their countries to restrict a judge’s discretion regarding disposition.

According to Mr. Cesário, in Brazil, by the occasion of the final disposition, the juvenile judge has the discretion to choose between any of the socio-educational measures, but once “internment in an educational establishment” has been chosen, a minimum of six months has to be observed, with the obligation of re-examining the juvenile’s development and condition every six months. Besides this, in Brazil there is no criminal punishment for juveniles, including serious and violent juvenile offenders.

Regarding criminal punishment and socio-educational measures, it is important that these issues be discussed separately, taking into consideration that they are completely different and have different natures and characteristics.

IV. CONCLUSIONS

After nine sessions of work and discussion, the Group has agreed on the following terms:

A. Investigation

1. The interview of the juvenile offender should be conducted in a separate and reserved room, in order to avoid putting the juvenile in contact with other juveniles, the victim, witnesses, and people in general, and also to protect the privacy of the juvenile.
2. Specialized training for those who deal with and interview juvenile offenders is desirable.
3. Regarding the presence of the parents of the juvenile during the interview, the juvenile’s wish should be respected regarding whether he or she will feel more or less comfortable, with due consideration for what would be most effective for the investigation.
4. The period of detention of a juvenile offender shall be as short as possible, even though the appropriate period of time cannot be specified because of the special needs of each country.
5. The factors that must be considered preponderant when deciding upon the detention of a juvenile can be summarized as “preservation of the evidence” and “protection of the juvenile”. These factors reflect the balance that must be struck between the “claims of society” and “the preservation of the rights of the juvenile” by those who make requests in these matters as well as those who ultimately make decisions regarding detention.
6. When deciding upon the detention of a juvenile during the investigation, the judge or the proper authority must focus more on the juvenile him or herself than on the crime as a fact by itself, not forgetting the seriousness and the gravity of the crime.
7. The perspectives of behavioural analysis and psychological conditions should be respected in the investigation of the juvenile case.

8. It is vital to protect the privacy of the juvenile offender as well as that of his or her family, by protecting the secrecy of the investigation as much as possible and by imposing limits on media reports of juvenile crime.
9. In every case, the results of a formal investigation must be reported, and the report shall contain as much information and evidence as possible in it.

B. Judicial System

1. The goal of juvenile judicial system should be the rehabilitation and resocialization of the juvenile offender, not punishment;
2. During the juvenile procedure, the role of parents is always important, considering two main factors: protection of the juvenile and the duties of parents and family as an institution;
3. The social inquiry report, with sufficient information and analysis, such as family and educational background, in addition to psychological aspects of the juvenile, is an essential document to give support to the final disposition on the ground that each juvenile shall be considered as an individual in his or her own particular circumstances;
4. All those who handle information about juvenile offenders must be careful to keep it safe and confidential in order to protect the privacy of the juvenile and his or her family, avoiding any kind of unnecessary exposure;
5. In the juvenile procedure, the feelings of the victims should be considered, giving them at least the opportunity of being heard by the court;
6. The disposition for the juvenile shall not be too harsh regarding the period of time, but should give the competent authority some discretion or flexibility to evaluate the best moment to release the juvenile offender, taking into consideration two main factors: the minimum *as well as the sufficient* period necessary for rehabilitation of the juvenile.