

Justice System: the Rights of the Childs in Contact with the Law in Myanmar

Pyone Mon Aye¹

Abstract

As a member of United Nations Convention on the Rights of the Child in 1991, Myanmar enacted the Child Law of Myanmar in 1993. It is found that this law provided the legal regulations of juvenile justice different from the adults. Besides, the Constitution and relevant laws Penal code, and Narcotic drug and Psychotropic substances Law guarantee the rights of the child in contact with law. This paper will focus on the rights of the child offender before and during trial in criminal justice system. It is no doubt that the standards of juvenile justice system should development together with international human rights law. Therefore, this paper will trace the development of child law in Myanmar because the new child law has been promulgated in 2019, and how extent the child law diverts from the Juvenile Justice system in line with the child rights. As the benefit, this paper intends to be able to apply in teaching of Criminal law, Child law and Human Rights Law.

Key words: Juvenile Justice System, child rights

Research Methodology

This paper will examine the international norms for the protection of the Child rights, and current national legal framework relating to the rights of the child in Myanmar.

Research Objective

The objective of this research paper is to appreciate the juvenile justice system in line with the international human rights norms.

Introduction

The term “Juvenile” as used in the English language, is not equal to the term “child”. Juvenile is closer to the term “youth”. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985(The Beijing Rules) defines a juvenile as a child or young person who, under respective legal system, may be deal with for an offence in a manner which is different from an adult. Under the New Child Rights Law2019, child means a person who has attained the age of 18 years. Juvenile delinquency or juvenile offender can be viewed as the breach of legal norms, i.e. committing of crimes by a juvenile. In its broader sense, in addition to committing of crimes it also includes the violation of ethical norms, commission of minor offences as well as antisocial behavior. Juvenile offending has so far been related only to certain types of crimes (mugging, thefts, etc.) Therefore, juvenile justice system is all about administration of justice on juvenile offenders as well as all children deprived of their liberty, children placed in institutions under a welfare system or children with disability placed in special institutions. Justice System has been developing at national and international levels. Each and every country has its types of juvenile justice system. *Juvenile Justice System includes non-judicialization measure before trial, non-penalization measures in trial and non-confinement during execution of a punishment.* This paper will focus on the treatment of the juvenile offenders when they conflict with the laws.

¹ Lecturer, Department of Law, University of Mandalay

The Beijing Rules provided the aim of the juvenile justice system as to emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

1. Child in conflict with the law

Children may involve in a judicial process as the victim of the crime, the witness or the offender. The term “children in conflict with the law” refer to any person below the age of 18 who has come in contact with the justice system as a result of committing a crime or being suspected of committing a crime.² As the common types of offences committed by children are theft and other minor property offences, including simple theft, pick-pocketing and being in the possession of stolen goods (according to the data from the Juvenile court in Mandalay,2016).

2. International Juvenile Justice Framework

The United Nation adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules) as the guidelines to national juvenile justice system on how to treat juvenile in conflict with the law.³ Some of the principles have been incorporated in the 1989 UN Convention on the Rights of the Child (CRC).

The rights of the child are defined in the Convention on the Rights of the Child as the first international agreement dealing with comprehensive protection of children’s rights. The key principles of the UN Convention on the Rights of the Child include respect for the best interests of the child, the right of the child to life, survival and development, non-discrimination and active participation in all the relevant procedures.

Concerning with the rights of children that are either alleged as or accused of having infringed the penal law, the CRC invites the signatories to prescribe special regulations, councils and courts for juvenile offenders, to define the treatment of juveniles and define minimum procedural guarantees for a juvenile, minimum age limit for criminal liability, as well as to promote procedures that imply the implementation of a set of alternatives to institutionalization.

In accordance with the UN Convention on the Rights of the Child and other relevant international standards, the rights of the child that must be respected throughout the procedure so as to achieve the goal of a fair trial include the following:

- (i) right of the child to be informed of the charges
- (ii) right not be compelled to give testimony
- (iii) right to be presumed innocent until proven guilty
- (iv) right not to be compelled to confess guilty
- (v) right to legal assistance (a defence counsel) in preparing for the court trial
- (vi) right of the child to have his parents or legal guardians immediately informed of its arrest, detention and all the charges against it, unless it is against the child’s interests
- (vii) right of the child to maintain contact with its family by correspondence and through visits save in exceptional circumstances
- (viii) right to an effective legal remedy
- (ix) right to privacy
- (x) right to emergency in the procedure administration (emergency procedure)
- (xi) right to liberty and safety of person

²<http://childlineindia.org.in/children-issues.htm>

³ Source on Human Rights, Malawi Human Rights Resource Center,p-107

- (xii) right of the child to be interviewed in the presence of parents, professionals social worker, psychologist, education specialist (from the childcare authority), defence counsel
- (xiii) right to free services of an interpreter if the child does not understand or does not speak the language used at the interview

During the procedure, juveniles should have special treatment arising from their right to be treated “*in a manner consistent with the promotion of the child’s sense of dignity and worth, taking into account the age of the child...*”⁴

The CRC provides States shall ensure that “*the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of times.*”⁵

Some aspect of Juvenile Justice System can be seen in the International Convent on Civil and Political Rights like-

- (i) To separate accused juveniles from adults
- (ii) To bring them as speedily as possible for adjudication
- (iii) To treat them appropriately to their age and legal status⁶
- (iv) To take account of their age and desirability of promoting their rehabilitation⁷

Therefore, it is no doubt that Juveniles should enjoy at least all the guarantees and protection to a fair trial just like adults. They enjoy additional special guarantees because of their age.⁸ The government should take into account some guidelines adopted by the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (JDL), 1990 and UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guide Lines), 1990 in order to promote and protect the rights and well-being of all young persons. A juvenile offender must enjoy full respect of human rights as guaranteed by the Constitution and other relevant laws.

Many Non –Governmental organizations and the network like the United Nations Office on Drugs and Crime (UNODC), the United Nations Children’s Fund (UNICEF) and United Nations Development Programme (UNDP) are focusing and collaboration on the protection of the rights of the child including the rights of the child in conflict with the law.⁹

3. National Legislation and Juvenile Justice Administration in Myanmar

Since 1930, the Young Offender Act was enacted for the custody, trial and control of young persons who have committed offences and for the punishment of offences against young persons.¹⁰ And after revoking the 1930 Act, the Children Act was promulgated under which juvenile court was established in Myanmar in March 1958. In 1991, Myanmar become the member of the CRC and enacted the new Child Law of Myanmar 1993 by recognizing the international norms. In 2019, the New Child Rights Law has been promulgated, it has (30) chapters including 121 Sections. The significant development of this law, it raises the age of

⁴ Article-40 , the Convention on the Right of the Child,1993

⁵ Article-37,Ibid

⁶ Article-10, the International Convent on Civil and Political Rights,1966

⁷ Article-14, Ibid

⁸ Juvenile Justice Reform Commission, Right of the Child in conflict with the Law, Podgorica, 2007,p-7

⁹ Protecting the rights of children in conflict with the law, the Inter-Agency Coordination Panel on Juvenile Justice

¹⁰ Juvenile Justice System in Myanmar with a view on cross-border safeguard for children in contact with the Law,p1

the Child, the age of criminal responsibility, and it addresses various child violation issues and its punishment.

The main objective of this law is to protect the rights of the child and enjoy fully in accordance with the law.¹¹ This law has a special provision for the establishment of Juvenile Court to try all criminal cases in which juveniles are concerned. Currently, the Supreme Court of the Union has established two special Juvenile courts in Yangon for twenty townships, and in Mandalay for five townships. In other areas of the country, the presiding judge of the township is empowered to serve as the juvenile judge.

Age of Criminal Responsibility

If the child brought before the juvenile court is proved to be under 10 years of age, the child has to be acquitted by the juvenile court as he or she is not legally liable for any criminal offence.¹² Likewise, the offence committed by a child under 12 years, and can prove that he or she has no understanding of the consequences of committing an offence, he or she will be exempted from criminal responsibility.¹³

Arrest of the accused child

The Court shall not pass the order to detain the child in contact with the law in police custody and prison with any reason.¹⁴ Once a child is arrested the police is obliged to notify the parents or guardians and send the child to the court within 24 hours from the start of the period of the arrest.¹⁵ The child shall not be handcuffed and tied with a rope.¹⁶

Trial of Juvenile case

The juvenile court has jurisdiction only in respect of a child who has not attained the age of eighteen at the time of committing the offence. It shall place on record the decision that the offender is a child, before proceeding with the trial of the juvenile case.¹⁷ Although a child has attained the age of eighteen years during trial, the court shall continue to try the case as if the accused was a child and pass a sentence in accordance with the Child Law.¹⁸

According to the Child Rights Law, there are two trials for Juvenile cases. They are summon trial and the warrant trial. If juvenile offences are punishable with imprisonment for a term not exceeding 3 years, the court shall try the case in summon trial. If juvenile offences are punishable with death, transportation for life or imprisonment for a term exceeding 3 years, the court shall try the case in warrant trial.¹⁹

During the trial, the child accused can be remanded on bail through the execution of bond, or entrusted to the care of parents or guardian subject to conditions, or committed to the custody of a temporary care station but no detention order shall be made.²⁰

By application of the principle of proportionality, the juvenile court shall take into consideration his or her age and character, environmental circumstances and the causes for committing the offence, as well as other relevant information provided by probation officers.

¹¹ Section-4 of the Child Rights Law 2019

¹² Section-78(a) of the Child Rights Law 2019

¹³ Section-83 of the Penal Code and Section-78(b) of the Child Rights Law 2019

¹⁴ Section-83(e), Ibid

¹⁵ Section-80(g) of the Child Rights Law 2019 and Rule-67 and 65, Ibid

¹⁶ Section-80(d), the Child Rights Law 2019

¹⁷ Section-83(a), Ibid

¹⁸ Section-83(b), Ibid

¹⁹ Section-83(g) and (h), Ibid.

²⁰ Section-83(c), Ibid

After taking into consideration all of the facts, the court shall pass an order, which is reformatory and which will be beneficial to the child.²¹

Sentencing

The Court shall pass no death sentence, transportation for life or a sentence of whipping on any child. Only if the juvenile court is satisfied that the child has committed an offence which is punishable with death or transportation for life under any existing law and that the child is of so unruly or depraved a character or absolutely uncontrollable, he shall be sentenced to imprisonment.²² The Juvenile court does not ordinarily sentence a child to imprisonment, but if it does, the maximum term is ten years. A Child, at the time of committing the offence, who has attained 16 years, shall be imprisoned not exceeding seven years, but who has not attained the age of 18 years, shall be passed not exceeding ten years.²³

The Police officer shall not keep the child together with the adult prisoners.²⁴

If the offence committed is not serious and the character of the child is not perverted the Juvenile court may release the child after due admonition and may impose a fine on the child over 14 years of age or on the parents or guardian if the child has no income.²⁵

Treatment of a Juvenile offender, Rehabilitation and Reintegration

As the alternative way, the child is sent to the custody of his or her parents or guardian upon execution of a bond for not exceeding 3 years for child's good behavior.²⁶ Then, the child is submitted to the supervision and management of the probation officer for a period not exceeding 3 year. If the child is of a perverted character or of no parents or guardian, the child is sent to the custody of any training school for a minimum for a term of 2 years or till he attains the age of 18 years or 20 years as maximum.²⁷

There are totally nine training schools run by the Social Welfare Department. Three training school in Yangon(three for boys and two -for girls), two in Mandalay(one for boys and one for girls), one in Mwlamyang (for boys), and one in Lashio (for boys).

Appeal and Revision

There shall be right of appeal or right of revision in accordance with the provisions of the Code of Criminal Procedure against the order or decision passed under the Child Law by the Juvenile court and if a sentence of imprisonment is passed on the child by a Juvenile court or appellate court or court of revision a copy of the sentences shall be sent to the Ministry of Social Welfare, Relief and Resettlement.²⁸

²¹ Section-87, The Child Rights Law 2019

²² Section-88(b), Ibid

²³ Section-88(d), Ibid

²⁴ Section-80(f), Ibid

²⁵ Section-88(e), Ibid

²⁶ Section-89(c), Ibid

²⁷ Section-89(d) and (e), Ibid

²⁸ Section-98, The Child Rights Law 2019

Conclusion

Therefore, at international and national level, it is found that the child in conflict with the law should enjoy additional special guarantees besides the guarantees and protection to a fair trial just like adults because children differ from adults in their physical and psychological development, and their emotional and educational needs.. The most important principle is that the best interest of the child should be the primary consideration in all decision taken within the context of the administration of juvenile justice.

Regarding the juvenile justice in Myanmar, the Child Law guarantees the rights of the child in consistent with the international standards and also designs the diversion system which aim to bring reformation and rehabilitation of the young offender. But there are still challenges in legal and practice.

As the legal reform, Myanmar is drafting the new child law with some amendment. The age of child will be increased from 16 to 18 and the age of criminal responsibility will be increased from 7 to 12. So other laws such the Penal Code, Social Security Law should be compatible with the Child Law.

And at present, the training school for children in contact with law could not provide effective rehabilitation program like formal and informal education and health care services for children in conflict with the law due to the lack of budgets. In order to improve prevention and rehabilitation for children in conflict with the law, sufficient budgets should be allocated to the Department of Social Welfare.

The government should offer the capacity building training for Judges, law officer, the police officers and the social welfare officers who are working in the juvenile justice system to help professionals who administer juvenile justice to fulfill their professional obligations in a way that reflects the best interests of children and that is consistent with the Convention on the Rights of the Child.

Therefore, the regulations of juvenile justice system should go parallel with the children 'rights. The government should guarantee the minimum standards of human rights based on the economic development although it is difficult to measure in practice.

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