

Juvenile Justice System in Myanmar with a view on cross-border safeguards for children in contact with the law

I. Brief Background of Juvenile Justice System

(i) Main Legal Instruments relating to Juvenile Justice in Myanmar

The first law regarding with child was the prevention of Crime (Young Offenders) Act (1930). This law did not include provision of establishing specific juvenile courts. Therefore, Magistrates and Benches of Magistrates were empowered to handle juvenile under the Act. The Young Offenders 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.

After independence, in the Prevention of Crime (Young Offenders) Act 1930 was found to be out of date and a new Children's Act was enacted in 1955. It retained some of the provisions of the old Act and added new ones bringing it in line with current international standard at the times. By order of the President of the Union, a Juvenile Court was established in Myanmar on the 1st March 1958.

Myanmar became a signatory to the UN Convention on the Rights of the Child in 16 July, 1991 and began drafting a new law to be in conformity with the UN Convention. Only two years after signing the above UN Convention the present law was promulgated in July 14, 1993. This law has a special provision for the establishment of Juvenile courts with exclusive jurisdiction over all criminal cases in which juveniles are concerned.

Regarding with the prevention and suppression trafficking in persons especially women, children, and youth, the Anti-trafficking in Person Law was promulgated in 2005. This law also provides effective functions of rescuing,

receiving, safeguarding, rehabilitation and reintegration into society of trafficked persons.

(ii) Myanmar Child Rights Law Reform Process

Myanmar became a signatory to the UN Convention on the Rights of the Child in 16 July, 1991. As mentioned previously, national Child law was enacted in 1993 to implement the rights of the child and recognized in the UN Convention. The law provides a separate trial of a juvenile offence in order to carry out measures with the objective of reforming the character of the child who has committed an offence.

After Myanmar acceded to the optional protocol to the Convention of the Rights of the child on the Sale of Children, Child prostitution and Child Pornography in 2012, new Child Rights Law is currently being drafted by Ministry of Social Welfare, Relief and Resettlement with technical assistance from UNICEF. The drafting process began in 2010 and in December 2011, a joint consultative meeting was organized to bring together government officials, representatives from UN agencies, international and national non-governmental organizations. Under the Committee on the Rights of the Child's recommendations, some amended chapters are included in new child rights law. The age of child will be increased from 16 to 18 and the age of criminal responsibility will be increased from 7 to 12. New Chapter on witnesses and victims regarding the substance of their rights set out and diversion as a principle will be acknowledged in the Law. But, new law does not include any issue of cross-border safeguard for children.

(iii) Different Levels of Courts in Myanmar

Courts in Myanmar are established in accordance with the Constitution 2008 and the Union Judiciary Law 2010. They are as follows;

- Supreme Court of the Union
- High Courts of the Region and the State
- District Courts
- Township Courts
- Other Courts constituted by law (Special Courts)

➤ ***The Supreme Court of the Union***

The Supreme Court of the Union is the highest court of appeal. It exercises both appellate and revision powers. It has the jurisdiction on confirming death sentence and appeal against death sentence. It also has the jurisdiction on a case transferred to it by its own decision and for the transfer of a case from a Court to any other Court. Then, the Supreme Court of the Union has the power to issue the writs. Moreover, it has supervisory powers over all courts in the Union and its decisions are binding upon all courts.

➤ ***High Courts of the Region and the State***

The High Courts of the Region or State are established in 7 States and 7 Regions. The Chief Justice and Judges of the High Courts in the Region or State may hear and determine the civil cases in which the amount in dispute or value of the subject matters is unlimited. As courts of appellate jurisdiction, Judges of the High Courts hear and determine appeal cases and revision cases from any sentences or orders passed by the District Courts and Township Courts. The Judges of the High Courts of the Region or State supervise the judicial matters upon the all courts within its jurisdiction and also adjudicate on the transfer of cases from one court to another within the region or state concerned.

➤ ***District Courts***

The District Courts are established under the Constitution and the Union Judiciary Law. There are altogether 72 District Courts in the whole country. The

district judges are with original criminal jurisdictional powers and criminal appellate and revision powers and original civil jurisdictional powers, civil appellate and revision powers. As Courts of original jurisdiction they hear and determine serious criminal cases which can pass the sentence of death or transportation for life and civil cases in which the amount in dispute or value of the subject matters is not exceeding 500 million kyats. The district courts supervise the judicial matters of all Township Courts.

➤ ***Township Courts***

Township courts are mainly courts of original jurisdiction and there are 330 township courts in the whole country. The judges at township level are conferred with judicial powers by the Supreme Court of the Union in accordance with the provisions of the Criminal Procedure Code and Civil Procedure Code. The Township Judges who are in charge of the township where no juvenile court, also exercise juvenile jurisdiction specially conferred under 1993 Child Law.

➤ ***Other Courts constituted by Law***

Separate courts are established under special provisions in any law. The Supreme Court of the Union established juvenile courts, courts to try municipal offences and courts to try traffic offences to achieve speedy and effective trial as separate trial.

(iv) Jurisdiction of the Juvenile Court

According to the Child Law, the juvenile court has jurisdiction only in respect of a child who has not attained the age of sixteen 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. Although a child has attained the age of sixteen 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.

➤ ***Formation of Juvenile Court***

At present, the Union Supreme Court has established two special Juvenile courts for Yangon City metropolitan area (Lower Burma), which includes 20 townships, and for Mandalay City metropolitan area (Upper Burma) including 5 townships. The Supreme Court has also appointed Juvenile Judges. In all other areas of the country, where have not been established juvenile courts, the presiding judge of the township court is empowered to serve as the juvenile judge.

➤ ***Applying Law in Juvenile Cases***

As in all criminal cases, the law of evidence, criminal procedure code and penal code are applied in juvenile trial and procedure which is set out in the Rules relates to the Child Law 1993.

➤ ***Access to Parents, Guardians for Children Under Arrest***

Rule 67 of the Myanmar Rules Relating to the Child Law specifies that the parents or guardians of a child in custody must be notified by the arresting official within 24 hours from the start of the period of the arrest. At present Rule 66 specifies that no circumstances shall an order for detention be passed on a child under investigation.

➤ ***Avoidance of Delay between Arrest and First Court Appearance***

An arrested child be sent up to a court as soon as possible (sec 37 (f) Child law), and Rule 65 of the Rules Related to the Child Law, allows a 24 hour limit for the custody of a child under arrest before an arresting official is obliged to take the child before a juvenile judge.

➤ ***Criminal Responsibility***

If the child brought before the juvenile court is proved to be under 7 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. Similarly, if the child is found out to be under 12

and can prove that he or she has no understanding of the consequences of committing of offence, he or she shall be acquitted by virtue of section 83 of the Penal Code and Section 28(b) of the Child Law, Naturally, if it is found that a child is not guilty after having gone through trial he or she will also be acquitted.

➤ ***Trial of Juvenile Cases***

In sending up a child for prosecution, supporting evidence with respect of his or her age shall be presented. After receiving the juvenile case, first and foremost the juvenile judge scrutinize the supporting evidence in respect of the age of the child. Juvenile judge accepts supporting evidences in respect of the age of the child in priorities are as follows;

- (a) The birth certificate
- (b) True copy of an extract of school admission register
- (c) Citizenship scrutiny card (or) Foreign registration certificate
- (d) Doctor's medical certificate
- (e) True copy of resident registration
- (f) Other valid supporting evidence

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.

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.

➤ ***Punishment - Sentencing options – Training Schools***

The punishment of juvenile court is restricted and they have been furnished with a variety of alternatives, which aim to bring about reformation and rehabilitation of the young offender.

Before passing an order on a child who is found guilty, 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. 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.

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. The Juvenile court does not ordinarily sentence a child to imprisonment, but if it does, the maximum term is seven years.

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.

Moreover, 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.***

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 as maximum.

➤ ***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.

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.

If prosecuted the child has the right to appeal or apply for a revision at the relevant District court and then to the High Court. The Child Law 1993 has not empowered juvenile court to pass any diversion order. According to statistic of criminal justice department, Union Supreme Court, during 2015, juvenile cases have been arisen mostly in Yangon region.

II. Myanmar Promoting Cross-Border Safeguards for Children in Contact with the Law in ASEAN region

➤ **Intervention**

(i) Institutional Responsibilities for cross border issues involving child victims and child witness of crime

The Supreme Court of the Union: Authority and Responsibilities

The Supreme Court of the Union confers the power to juvenile judges and township judges to try juvenile cases and to district judges to cases against trafficking in person. Trafficked victims and witnesses have the rights to receive special protection in the trial. Then, the courts arrange security program while the victims are giving testimony or contesting cases. In order to protect the privacy of the child, Juvenile Courts in Yangon and in Mandalay have been equipped with

special CCTV by UNICEF. Courts in border areas have worked in the cooperation with other relevant departments to provide necessary arrangements for trafficked child victims and witnesses as hiring lawyer and assisting in hearing with interpreter.

Ministry of Home Affairs: Authority and Responsibilities

As Minister of Ministry of Home Affairs is the Chairman of the Central Body for Suppression of Trafficking in Person, the Ministry of Home Affairs organized three “Child Protection Task Forces” with UNICEF’s support under the Department of Transnational Crime in Mandalay, Yangon and Nay Pyi Taw in 2013. They are composed of two to three police officers, are located in Special Anti-trafficking Units. The Mandalay task force is the only operational one. These departments perform effectively awareness programs relating to education and publication of danger of trafficking, in cooperation with INGOs, NGOs to the people of rural areas and to the camps for internal displaced people in armed conflict areas. And then, Ministry of Home Affairs has carried out necessary arrangements of protection and assistance for foreigners who are trafficked victims in cooperation with relevant departments. Child Protection Task Forces has carried out functions to prevent children from committing crimes and to protect the children in contact with law.

Ministry of Social welfare, Relief and Resettlement: Department of Social welfare: Authority and Responsibilities

According to the Child Law, the National Committee on the Rights of the Child (NCRC) is the institution in charge of prevention for children at risk and has the duty to lay down and carry out “work programmes in order to take preventive measures against occurrence of juvenile crimes.” The expenditures of the Committee are borne out of the budget of the Social Welfare Department (DSW)

which is the government agency tasked with child's protection within the Ministry of Social Welfare.

The Department of Social Welfare (DSW) has carried out the repatriation, reintegration and rehabilitation of victims of trafficking since 1992. From 1994 to April, 2016, the total numbers of 3447 victims who were trafficked in Thailand, China, Indonesia, Japan, Bangladesh, Timor, Singapore, Malaysia, Taiwan, Macao and Malaysia were repatriated. The victims who are repatriated from foreign countries are being provided three days temporary care at the temporary shelters by DSW. During their stays in temporary shelters, the DSW provides the services they need and issues temporary travel authorization documents for those who do not have national ID card. And then, the victims are reintegrated into their parents or guardians by the DSW in cooperation with INGOs and NGOs. After reintegration, the DSW conducts follow up the repatriated victims in collaboration with INGOs and NGOs. The Child victims who cannot reintegrate into their parents and guardians will be arranged by the DSW as providing vocational training, formal education, employment opportunities and family tracing.

Information Center for trafficked persons has been opened in Social Welfare Training School at Yangon. The activities such as supporting the information for trafficked victims, psycho social support, connecting the Civil Service Organization to provide necessary activities for vulnerable children have been implemented by this center.

(ii) *State Provisions and current practice for cross-border child victims of crime or child witness of crime and child accused of crime*

➤ ***State provisions***

In Myanmar, there are no specific procedures and rules regarding with cross-border safeguard in juvenile justice. However, in criminal proceeding, Myanmar is

taking part actively in mutual legal assistance with neighboring countries such as India and China.

Myanmar acceded to the Convention against Transnational Organized Crime on 31st March 2004. To be in line with and to implement the provision of MLA, Myanmar enacted '*The Mutual Assistance in Criminal Matters Law*' on 28 April 2004 and promulgated the *Mutual Assistance in Criminal Matters Rules* on 14 October 2004. Myanmar has only concluded a bilateral agreement with India on this matter. The focal point of MLA is Ministry of Home Affairs. Recently most of the MLA requests were carried out in informal ways between Myanmar and China, Myanmar and Thailand.

Moreover, Myanmar acceded to the Convention relating to suppressions of trafficking in persons, Myanmar enacted '*The Anti Trafficking in Person Law*' on 13 September 2005. Ministry of Home Affairs has liaised and coordinated with international and regional organizations, foreign countries to enable effective and speedy investigation to expose and take action against the person who commits the crime of trafficking in person. The law provides provisions of special protection and repatriation, reintegration and rehabilitation of trafficked victims, women, children and youth.

➤ *current practices for cross-border child victims of crime or child witness of crime*

(i) Myanmar-Thailand Cooperation on Combating Human Trafficking

Myanmar and Thailand have being cooperated and implemented on the measures to combat human trafficking through MoU in April, 2009. Under the MoU, bilateral cooperation has been promoted in the areas of prevention, prosecution, repatriation and reintegration of victims of trafficking. Myanmar case workers visited 23 times to shelters under the Department of Social development and Welfare, Thailand from 2008 to 2014. The border cooperation anti trafficking

in person (BICATIP) has been implemented in border area of Myanmar and Thailand. In this BICATIP, police members and officials from Department of Social welfare are organized to carry out necessary coordination for repatriation of the trafficked victims in cooperation with Department of Social development and Welfare, Thailand. As soon as the border cooperation trafficking in person got information about trafficking in person, Myanmar police members looked for the victim who was in Thailand, with cooperation with the Department of Social development and Welfare, Thailand. It was happened in the situation sometime that the victim could not find easily. If the victim was found, BICATIP carried out necessary arrangements such as repatriation, reintegration for victim.

(ii) Cooperation with other countries on Combating Human Trafficking

The government signed MoU of Coordinated Mekong Ministerial Initiative against Trafficking - COMMIT) with countries in the Mekong region- Cambodia, China, Laos and Vietnam. The COMMIT organized meetings to enhance on combating human trafficking in the Mekong region in collaboration with Department of Special Investigation, Thailand.

In 2003, MoU on Anti-Trafficking Project in Asia was signed between Australia and Cambodia, Laos, Myanmar and Vietnam. According to this MoU, Anti Trafficking Unit (ATU) was organized in Nay Pyi Taw, Yangon and Mandalay. These Units have carried out functions and duties relating to suppression of trafficking in persons.

Protocol on Myanmar-China bilateral cooperation in border areas has been made in December, 2001. Then, cooperation works between two countries have been carried out after signing an Agreement on combating transnational organized crime. Border liaisons Offices (BLO) are established in the border areas of

Myanmar and China to carry out necessary coordination for repatriation of the trafficked victims.

(iii) Cases of trafficking in persons (child victims/ witnesses)

According to statistics of Mandalay ATU, in 2015, total trafficked children were 26 persons (Boy 2 persons and Girl 24 persons) in 20 cases. The main place of trafficking is Muse city which is near the border of China. The majority of incidents were forced marriage to Chinese in this area. Most of the trafficking cases are happened the borders of China and Thailand.

(1) Sexual exploitation

The victim was 14 years old from Southern Shan State which is near the border of Thailand. The accused sold her to Thai national for prostitution and the victim was forced to prostitute in Thailand. After they received information about her, the border cooperation anti trafficking in person (BCATIP) rescued her in cooperation with Department of Social development and Welfare, Thailand. The accused was arrested by the police for crime against the Anti Trafficking in Person Law.

(2) Forced Marriage

The victims was 16 years old and she was deceived by the accused to work at Muse (northern Shan state) which is near the border of China, as helper at the shop. Later, she was sold to Chinese for marriage without her consent. In this case, although Border liaisons Offices (BLO) arrested the accused but the victim was not found and BLO could not save her anymore.

(iv) The Case of non-national child accused before the Juvenile Court

Mostly, non-national child has been prosecuted rarely before the court in Myanmar. In 2014, there was only a case of non-national child accused in juvenile

court. A Korean girl who was 16 years old was sent to the juvenile court, Yangon by violation of Immigration Act (Emergency Provision) section 13 (1). In this case, her mother and brother were also charged with the same crime in adult court. So, she was sent to court unaccompanied with her family. Her mother, brother and she entered Myanmar in 2004 and they did not extend the visas after their stay expired. So, immigration department found their stay expired and complained to the court with violation of Immigration Act (Emergency Provision) section 13 (1). The juvenile court provided her in the trial with all equal rights of national child. After trial, juvenile judge released her after due admonition as the offence is not serious and her character is not yet perverted. Finally, the embassy of Korea repatriated their family and sends them back to Korea.

(III) National Plan on Cross Border Issues that concern Children in contact with Law

There is no specific national plan for cross border safeguard for children in contact with law. As for trafficked victim, after enactment of the Anti Trafficking in Persons Law, it has been implemented 5 year national plan of actions and its work plan annually. At present, 2012-2016 national plan of action has been already issued.

The Union Supreme Court issued three year strategic plan (2015-2017) and one of the strategic action area is promote public access to justice that ensure to provide equal access, fairness and rule of law. Everyone has a right to accessible justice and courts in Myanmar will provide all people with the help and information that they need to resolve their cases fairly and speedily. Therefore, all people including children can be treated in equal before the court regardless of religion, races and nationality.

The Office of the Union Supreme Court is working together with UNICEF and has agreed to implement Multi-Year Work Plan (2016-2017). This work plan reflects in the Strategic Plan of the Office of the Union Supreme Court. Under this work plan, the Union Supreme Court will work with UNICEF and other stakeholders regarding with activities of drafting and implementation of child focused law and procedures, technical support as training and child - friendly procedures.

Ministry of Social Welfare, Relief and Resettlement has laid down National Strategic Plan for Social Protection in December, 2014. Department of Social Welfare has not child protection online system but Help line system has been already set up in head office to provide information. According to the child law, the courts only came into contact with the child when the offender is arrested for prosecution or sent up trial. Training and care for children are conferred to the Social Welfare Department.

IV. Challenges

- Regarding with Juvenile justice in Myanmar, some challenges have been met to the system affecting an effective protection of children in conflict with the law. The Union of Myanmar is still deeply divided by several internal armed conflicts and in practice, almost half of the territory is not accessible to the Government. These parts of the country's regions are under the authority of ethnic armed groups, which sometimes have their own government, their own police and function as separate national entities, and which enforce their own policies. Furthermore, the 140, 000 persons living in Internal Displaced Persons (IDPs) camps across the country, seem to settle disputes involving children using mediation processes. There is no precise information on the subject. In fact,

systematic violations are due mostly to the lack of awareness on children's rights, procedures and laws.

- The Training school for children in contact with law could not provide effective rehabilitation program 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 lack of trainings along with the lack of post- training monitoring is therefore one of the biggest challenges to the system. Protection and rehabilitation of children in contact with law will not be achieved to get fruitful results without professionalism. Capacity enhancement of professionals who are working in the Juvenile Justice System - judges, lawyers, police officers, probation officers, and training school is very important.
- There are often difficulties for the courts in determining the ages of many juveniles who come into conflict with the law and that this can cause delays in the criminal justice process, particularly in rural areas, there many children still do not have birth registration documents. In this circumstance, the court asked medical certificate which take time a month. It causes delay trial for children.

V. Recommendation: How can Regional Guidelines of safeguard for cross-border cooperation improve situation?

➤ The nature of cross-border cooperation in juvenile justice between ASEAN member states and MLA in criminal matters is quite different. In practice of MLA, it is difficult to implement the criminal matters on MLA by MLA law itself so that other related laws need to be considered. But, cross-border cooperation for children in contact with the law can be carried out by regional framework. All children shall have the equal rights regardless of religion, races and nationality.

- Every state has a national legislation that ensures the rights and protection to children. Therefore, national law should be included minimum safeguards in cross-border children.
- As ASEAN vision is one vision, one identity, one community, all ASEAN countries have focused on the issue of minimum level of human standards for children in contact with the law. All state members agree to ensure equal treatment of citizens across state borders. Therefore, establishment of common policies will be in urgent. However, it is important that common policies should be consistent with national laws. (Child Law and other related Laws)
- ASEAN countries are planning to establish ASEAN Judiciaries Portal in order to bring the ASEAN legal jurisdiction to the world and to share information and news among ASEAN countries. So, we should share and access news, information, judgments regarding with cross border protection for children in contact with law through the ASEAN Judiciaries Portal.
- As detention of migrant children is illegal according to international standard, the special protection to migrant children should be ensured.
- Child victims and witnesses of non-nationals should have access to a justice process that protects them from discrimination based on the child's, parent's or legal guardian's race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.
- It is important to provide child rights training to judges, law officers, polices and ensure that infrastructure is child friendly, especially separation of children and adults.
- It is ensured that regular cooperation between local, regional, and national authorities of both departure and destination countries, but also local populations and private sector to prevent child exploitation (smuggling) and trafficking.

Conclusion

In juvenile justice system, there are some challenges that have been met to the system affecting an effective protection of children in conflict with the law. In terms of challenges on cross-border protection for children in contact with law, national laws should guarantee a minimum standard of human rights for both national children and non-national children. Law enforcement bodies should be provided necessary trainings to understand child friendly procedures as fulfillment of basic human rights standard when they engage the children in contact with law. Moreover, every state should be encouraged to implement more and more trans-national judicial cooperation. In doing so, all necessary measures and procedures will come out as common strategies of the region to ensure equal treatments of children across state borders.

In conclusion, I firmly believe that this meeting is a good opportunity for us to identify the practical issues and the ways to overcome current challenges we have met. The meeting provides a useful forum to exchange expertise and to share experiences of our common efforts in view of the best practice for cross border safeguard to children in contact with the law.

I wish you all the best of success.

Thank you.