

A report on juvenile justice in Armenia

Hon Justice Muhammad Imman Ali, Appellate Division, Supreme Court of Bangladesh, 20 March 2013

Armenia is a beautiful, scenic country having only 3 million people living within and 7 million living outside the country. The child population living in Armenia is 819,000. I am grateful to Penal Reform International (PRI), Civil Society Institute (CSI) and the Children's Support Centre Foundation at Fund for Armenian Relief (FAR CSCF) for selecting me as an 'international expert trainer' for members of the judiciary, prosecutors, lawyers, police personnel and others involved in the juvenile justice system as part of their program 'Promotion of Modern Concepts in the Administration of Juvenile Justice in Armenia'. I was also asked to train trainers who would in due course continue the training program. I may say at the outset that it was a pleasure to have discourse with persons who are knowledgeable, child-friendly and dedicated to the cause of children who find themselves in contact or in conflict with the law. For me, it was a valuable learning experience also. In particular, I am grateful to Hayk Khemchyan and his colleagues for their constant support during the training programme.

Laws of Armenia in relation to children

There is no separate or specific law dealing with children in Armenia. The aspects of justice for children, who appear before the courts either as accused or as victims, are covered in several statutes as well as the Constitution. Additionally, international instruments which Armenia has ratified or approved are, according to the Constitution, equally enforceable as any other statute enacted by the Parliament. Thus, the provisions of the Convention on the Rights of the Child (CRC) form part of the law of Armenia. In fact article 6 of the Constitution provides that if the norms stipulated in the international treaty are different from the laws of Armenia, the norms of the treaty shall prevail. In addition, the Constitution includes all the provisions relating to human rights, which are applicable to every citizen, as found in the United Nations Declaration of Human Rights, including the right to liberty, security, non-discrimination, presumption of innocence, not to be subjected to torture, inhuman or degrading punishment etc.

The Criminal Procedure Code generally provides for procedures to be followed in any criminal trial and is applicable to all the accused persons, including children who are persons below 18 years of age. Juveniles enjoy all the facilities provided by the Code and also suffer all the rigours of the criminal justice system in the same way as adults. No extra benefit or leniency is shown to juveniles in the course of trial: the court premises and trial process are the same. Provisions are in place in article 108 affording special procedure in case of an accused who is incapable of controlling or realising the nature and importance of his actions (inaction), their being dangerous at the time of the incident as a result of mental disease, temporary mental depression or mental alienation. Nothing is mentioned about incapability due to immaturity on account of a lower age. However, proceedings of cases concerning the under-aged, i.e. those below the age of 16 years at the moment of committing the crime, are covered under Part 13 of the said Code.

Children and adults are tried in the same courts, for the offences mentioned in the Criminal Code under the same procedures as laid down in the Criminal Procedure Code, save and except those provided in Part 13, Chapter 50, articles 440, 441, 442 and the provision relating to punishment in article 443 of the said Code. Under the Law on Treatment of Arrestees and Detainees, juveniles are provided some beneficial treatment, including short-term home leave, special food free of charge, right to daily walks etc. Under this law also juveniles are to be kept separate from adults.

Offenders found guilty of commission of any offence against a child are punished more severely. In contradistinction, child offenders are dealt with more leniently so far as it relates to awarding punishment upon their conviction.

The Consolidated Criminal Code provides that a person who has attained the age of 16 years before committing a criminal offence shall be subject to criminal liability and those above the age of 14 years shall be subject to criminal liability for murder and other serious offences such as rape, robbery, extortion etc. Further concession is made in case of mental retardation, insanity and intoxication. A separate chapter is devoted to punishment of minors. The maximum that can be awarded to a juvenile between the ages of 16 to 18 years is a term of 10 years for a grave or particularly grave criminal offence. No juvenile can be sentenced to imprisonment for life. For minor offences he may be awarded detention for a term of 15 days to 2 months. Under article 90, when imposing punishment on a minor a number of factors are to be taken into account, including his or her life and upbringing conditions, degree of mental development, health condition, other specific characteristics of a person, as well as influence of other persons on him or her. The maximum punishment of 10 years imprisonment may only be exceeded in case of accumulation of sentences, when it may not exceed 12 years. In case of minor or medium gravity offences committed for the first time, the offender may be released from criminal liability if the court finds that his or her correction is possible by applying educational coercive measures. Specific lenient measures are applied in the case of conditional early release of minors.

Compliance with provisions of international instruments

Armenia acceded to the Convention on the Rights of the Child in June 1992 and promulgated the Rights of the Child Act 1996, which essentially caters for the care and protection of children. The only provision in that enactment relevant for children involved in criminal activities is article 31 which provides that a child should not be arrested, searched or incarcerated otherwise than defined by the law and the parents of the child or other legal representatives should be informed immediately upon his arrest or incarceration.

The Criminal Procedure Code 1998, Consolidated Criminal Code 2003 and the Treatment of Arrestees and Detainees Act 2002 all postdate Armenia's accession to the CRC and naturally reflect the fact that the provisions of the Convention have been considered while formulating these laws. However, there is no compliance with article 40(3) which requires state parties to establish laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law. Article 40(3)(b) obliges state parties to establish measures dealing with children without resorting to judicial proceedings. It may also be recalled that article 4 provides that state parties shall undertake all appropriate legislative, administrative and other measures for the

implementation of the rights recognised in the Convention. Evidently this is where Armenia has fallen short of compliance with the provisions of the CRC.

Attitude of the actors towards children in conflict with the law

During the course of the training sessions, it became abundantly clear that all the participants, maybe apart from a very few, were child friendly. Even the prosecutors in one or two of the groups conceded that they would not prosecute the child offender in a given set of facts, although the offence alleged may be grave in nature. I found it personally most surprising that the judges were extra ordinarily parent-like in their attitude, lenient in their dealings with children and extremely child friendly. This was in total contrast with the situation in Bangladesh where the members of the judiciary dealing with children in conflict with law are hostile towards children who come before them accused of various criminal activities. The vast majority of judicial officers and police personnel are of the view that the children who come before them are engaged in organised criminal activity and are best locked up for the sake of safety and security of the citizens. This is their idea also of teaching wayward children that they will be severely punished if they are caught taking part in criminal activities. These views prevail in spite of the fact that specific law, namely the Children Act 1974, exists to deal with children in conflict with the law in a favourable and beneficial way so that children may not be put in prisons except in the rare cases involving most serious offences.

The judges and prosecutors in Armenia were quick to tell me that in case of children coming into conflict with the law, their primary aim, in particular where the crimes are of minor or medium gravity, is to deal with the case without prosecution. I was told by the honourable judges that in such cases they preferred to send the child to educational correction facilities. They also told me that, even cases which ended in conviction of the child for a medium-grave offence they would impose only educational compulsory measures. In the case of first-time offenders, even those found guilty of particularly grave offences, they would not be subjected to imprisonment. Any sentence of imprisonment awarded would be suspended. Such attitude and response is indeed laudable as it gives the offending children a further chance to improve their behaviour and to be rehabilitated and to become better citizens.

Reasons for children developing criminal behaviour in Armenia

The participants identified three reasons why children in Armenia develop criminal behaviour: (a) broken or disrupted family; (b) parents' inability to provide necessary financial assistance to the children due to poverty; and (c) peer pressure. The reasons given are noticeably universal in nature. These reasons are found to be common across the globe, in developed as well as developing countries. One of the participants narrated the story of a boy who broke into a shop and stole some sausages and nothing else. It was agreed that such a situation was the result of impoverished condition of the child and that it did not call for any criminal prosecution.

It is axiomatic to say that children are not born criminals. Although some believe that criminogenic behaviour can be passed on through the genes, I would venture to suggest that such theory is not true. Such behaviour is induced, as we have suggested earlier, for reasons which are generally beyond the control of the child. A child does not choose to be born to impoverished or violent parents. He or she has no power to decide the

neighbourhood in which they will live and the character and nature of the peers with whom they will mingle. Hence, it can be said that children find themselves in their surroundings due to no fault of their own and are forced into criminal behaviour, effectively due to the inadequacies of their parents and the inability of society to properly cater for their needs. The solution would be for the state to set up institutions geared towards instilling good behaviour into children, teaching them acceptable norms and encourage them to take part in activities beneficial to the community and society at large. If this could be done from an early age then the occurrence of deviant behaviour would be minimised. Such institutions and methods of dealing with children are highlighted In the Riyadh Guidelines.

Separate criminal Justice system for children

The participants were divided in their views as to whether a separate criminal justice system with separate courts or different trial procedures for children was at all necessary. Those against establishment of such a system felt that the existing laws sufficiently catered for the needs of children as they were not unnecessarily prosecuted in cases of minor offences and in the case of first-time offenders. Those who were prosecuted were dealt with leniently by way of fewer sentences of imprisonment and for shorter duration. On the other hand, others felt that exposing the children to the criminal justice system results in their stigmatisation, humiliation and social marginalisation. Furthermore, any length of periods spent inside the prisons exposes them to violence and other criminal behaviour of those already in the penitentiary and can result in the relatively less mature child offenders becoming hardened criminals. It was also felt that actors involved in dealing with children who offend must be made more aware of the provisions of international instruments in order that they may engage diversionary measures and alternative sanctions. It was suggested that a system should be in place whereby, if alternative measures are prescribed by the courts, there should be institutionalised support to give effect to such alternative sanctions, which would be in the best interests of the child. It was agreed that there was presently no way of implementing/overseeing any alternative measures that might be prescribed by the courts.

Why separate courts for children?

Every criminal justice system is pernicious for the accused that face trial. Its aim is to catch criminals, prove their guilt and suitably punish them with a view to prevent recurrence and to instil in the offender a sense of remorse. It is an accepted phenomenon that children are less mature in their intellect and act impulsively without realising the consequences of their actions. Sometimes they act as a reaction to their surroundings and often fall prey to peer pressure. It is also accepted that children are vulnerable and need protection. This is especially so when they find themselves on the wrong side of the law. Crime is induced by peer pressure can be minimised by improving the situation of all the children within a locality by providing for them access to beneficial activities and steering them from criminal activities. Exposing children to others who are already habituated in criminal activities can never be for the benefit of those coming into conflict with the law for the first time.

It must be remembered that children are adept in learning and can be moulded and retrieved from their bad ways, given sufficient care and attention. Exposing them to the criminal courts and justice system merely increases their desperation and subjects them to humiliation, stigmatisation and marginalisation. The court system is awe-inspiring even for the most

hardened criminals. Children should not be exposed to such a system. One of the honourable judges narrated how in a particular case he found the child accused to be so nervous that he was unable to answer any questions. The judge then took off his gown, came down from the high platform where he sits as a judge and sat next to the accused. He found that the accused child was much more forthcoming in giving details of exactly what happened. This clearly indicates the need for a less formal system of trial where children are accused.

The various alternative systems have been discussed, including (i) the more formal Juvenile Justice Board of India where a magistrate sits with two other suitably qualified persons to hear children's cases; (ii) the less formal Children's Panel of Scotland where laypersons who are trained to deal with children's cases decide on the best solution for the well-being of the child; and (iii) the least formal Family Group Conferencing of New Zealand and Australia where an official calls for the presence of the relevant parties including the child offender, his/her parents/teacher/relatives, the victim and any other person felt to be necessary, in order to discuss and decide on the outcome which would serve the best interest of the child offender. When discussions take place in a less formal or informal atmosphere and information is collected from all concerned, a more suitable disposition of the case results for both the accused as well as for the victim.

There is no provision in Armenia for disposition of children's cases using any method other than the regular criminal courts. This clearly puts the children accused of any criminal activity in an undesirable and frightening surrounding, which could be avoided by having a more child friendly system of criminal justice established by law.

Is there any need for separate and specific law for children?

Although the existing laws of Armenia have distinct provisions aimed at giving beneficial treatment for children found guilty of having infringed the penal laws, there is neither a separate trial system, nor separate court premises where children's cases may be heard in a less formal atmosphere. Moreover, the beneficial provisions in respect of children in conflict with the law are found scattered in several statutes. It is always better that all the necessary provisions of law relating to children be codified in one statute so that it may be easily accessible to all the actors working in the justice system for children.

It goes without saying that not every eventuality can be foreseen at any given moment. Keeping in view the fact that laws are always evolving due to new circumstances prevailing in society, if the children's laws were in one statute then that could be easily amended to cater for any specific need which may arise at a later date.

On the occasion of formulating new laws covering all aspects of justice for children, the opportunity may be taken to include within such law the beneficial provisions of the Convention on the Rights of the Child as well as other international instruments, in particular taking into account schemes for diversion and alternative measures to deal with children who come into conflict with the law. When alternative measures are incorporated in the statute, then the provisions for follow-up/monitoring of such alternative measures can also be featured in the new law. With the introduction of any new system, the provisions for supporting institutions, such as establishments for provision of vocational training, psychotherapy, behavioural therapy, anger management, youth sports and development

centres, drugs rehabilitation centres, community support programs etc., can also be incorporated in the new law.

Conclusions

There are many aspects of juvenile Justice which are not covered within the existing laws of Armenia and can easily be incorporated in any comprehensive new legislation which can be enacted taking a holistic approach to the whole gamut of justice for children. It is more beneficial and in the long run less expensive to engage a child in community/developmental work than to feed and keep him in detention. The most common crime committed by juveniles being theft, diversion from the criminal justice system and alternative measures, including behavioural therapy and educational/vocational training would be much more beneficial to the juvenile concerned and society at large. Even in case of more serious offences, it would be cheaper to deal with the cases in a less formal system than in the formal criminal justice system. Introduction of training in parenting and management of finances for the parents of the children concerned would go a long way to improving the conditions of the most vulnerable families, as envisaged in article 18(2) of the CRC.

Finally, the setting up of a separate system for dealing with juveniles and specific laws to deal with all aspects of justice for children would take care of Armenia's obligations under article 40(3) of the CRC. I feel that, new comprehensive laws incorporating all the provisions of the CRC, taking into account the recommendations and explanations given in the other related international instruments, will assist Armenia in fulfilling the requirements of article 4 of the CRC to implement the provisions of the Convention.

I shall end by saying that the need for continual capacity building, especially by way of awareness drives for all actors is a must for effective implementation of the provisions of the CRC and other international instruments and domestic laws, always keeping in mind that the aim is to ensure the best interests of children. Be it remembered always that children are citizens of the country and their well-being reflects on the future of the country. Good productive citizens create a healthy economy for the country, which in turn creates an atmosphere of safety and security for all its citizens. As Nelson Mandella said, "There can be no keener revelation of a society's soul than the way it treats its children".