

Justice for children in Bangladesh

KEY STATISTICS

Child population (under 18 years)		61.3 million*
Minimum age of criminal responsibility		9 years
Age when children can be tried and punished as adults		16 years
Number of children in adult jails**	Aged under 18	205
	Aged under 16	98

* *State of the World's Children 2010*

** *National Taskforce on Releasing Children from Jail, November 2009.*

BACKGROUND

Bangladesh lacks a functioning juvenile justice system. The legislation covering juvenile justice is inadequate, poorly enforced, and provides few alternatives to confinement for children in contact with the law. The principle of diversion (diverting children from the justice system through the provision of support and care services), is the cornerstone of international standards on juvenile justice but is not yet recognized in Bengali legislation and legal practice.

A key limitation of the Bangladeshi system is that both child victims of crime, witnesses and children alleged of committing a crime are directed into the same system of child protection services. This means that children are often deprived of their liberty in the name of safe custody. Additionally, Government officials and justice system professionals, such as police, judiciary and probation officers have a lack of knowledge about juvenile justice and the rights of children who come into conflict with the law.

A 2009 review of Bangladesh's implementation of the Convention on the Rights of the Child (CRC) by the UN Committee on the Rights of the Child acknowledged that improvements had been made such as removing some children from adult jails, establishing child development centres and training legal professionals in juvenile justice. However, many children continue to be tried in regular adult criminal courts, often without legal representation, and are sentenced as adults. The Committee was greatly concerned that some children had been sentenced to life sentences or the death penalty and that children remained in police detention for extended periods.

No accurate statistical information is available on the number of children who come into contact with the law.

ISSUES

Legislation

The Children Act 1974 is the main law dealing with children in contact with the law but it deals both with children in need of protection as well as those accused of breaking the law. It relies heavily on institutionalization or imprisonment of children which is generally seen by the police and judiciary as the only possible way to rehabilitate or "correct" children.

Existing legislation, which provides limited protection for children in conflict with the law, is not well enforced. While the Children Act specifies that children should be tried at juvenile courts and be separated from adults at all times, in practice many children are tried and sentenced in the adult system. As of November 2009, 205 children under the age of 18 were incarcerated in adult jails.

Under the different laws, the police enjoy wide discretionary powers to arrest children in need of protection on grounds of vagrancy, begging, prostitution, smoking and dropping out of school. Child victims and witnesses of crime are subject to arrest and detention in order to safeguard them.

Most of Bangladesh's existing legislation predates current international standards on juvenile justice such as the CRC, the UN Standard Minimum Rules for the Administration of Justice (Beijing Rules), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and thus do not reflect and comply with these principles.

Age-based protection

In 2004, the age of criminal responsibility was raised from seven to nine years of age, but UNICEF advocates to further increase this to age 12.

The Children Act defines "child" and "youth offender" as persons under the age of 16. This is inconsistent with the CRC, which Bangladesh has ratified and which defines "child" as anyone under age 18.

Moreover, many children have difficulty proving their age and therefore accessing age-related protection because birth registration rates remain low. Although there has been substantial improvement in these rates in the past five years, about 46 per cent of children under five have not had their births registered.

Justice system

Arrest, detention and sentencing are often arbitrary and at times even illegal. Physical abuse, force and torture are often applied during arrest and interrogation and children are frequently sexually abused. Detained children can be below the age of criminal responsibility and kept with adult prisoners, exposing them to abuse, violence and negative social attitudes.

There are only three specialized juvenile courts, although the Government is considering establishing four more. There are also only three specialized institutions for detaining children in conflict with the law, which are called Child Development Centres. The two centres for boys are located in Tongi and Jessore and the girls' centre is in Konabari. These centres accommodate children with vastly varying needs: children in conflict with the law

(during pre-trial and sentencing); children in safe custody; and children who have been referred by their parents for being “uncontrollable”.

Some children are also placed in ‘safe custody’ in vagrant homes, where they are mixed with adults. These homes often have very limited staff capacity, with no trained social workers or counsellors to provide individual case management. A lack of regulatory systems mean that minimum standards of care are not always respected.

In order to provide protection to children in contact with the law, comprehensive reform of the juvenile justice system is necessary.

ACTION

UNICEF’s overall objective is to support the strengthening of child protection services that will enable access to justice for all children who come into contact with the law (including children in conflict with the law, victims and witnesses). The child protection system should provide adequate protection according to the age of a child and focus on family and community-based services as an alternative to imprisonment. Children in conflict with the law should be diverted from legal procedures and imprisonment, instead benefiting from community services that will focus on rehabilitation.

Children in adult prisons

UNICEF is a member of the National Taskforce for Releasing Children from Jails, along with six Government ministries. The Taskforce works to find other options for children incarcerated in adult jails, such as reintegrating children with their families or referring them to the child development centres. The Taskforce works on a case by case basis, focusing on children aged under 16. It links children with legal aid, and aims to find guarantors for children.

Diversion project

A diversion project for boys in contact with the law has been piloted at the Jessore Child Development Centre since June 2009. The project works to divert children who come into contact with the law by referring them to alternative services or reintegrating them with their



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families, where appropriate. A case management team has been established, including members of the Department of Social Services, the police, the Bar Council, local government, the juvenile court and NGOs. This team reviews the cases of certain children who are already in detention at the centre and refers children to appropriate services such as legal aid. The project also has the scope to provide children and families with micro-credit to support their reintegration. Probation officers and other staff at the centre have received training in in-depth interview techniques, case management and family tracing to ensure the sustainability of the project.

There are plans to replicate the project in Bangladesh's other two Child Development Centres in 2010. It is hoped the project will result in the creation of policy related to children in contact with the law. In addition, a database on the situation of children in conflict with the law will be developed as part of the project. This is part of the global child protection agenda on establishing information systems on juvenile justice.

Working in partnership

A National Taskforce on children in conflict with the law has been established. The Taskforce, comprised of key national and international stakeholders, identify priority areas, provide the principal secretary to the Prime Minister with strategic information and coordinate action on justice for children.

UNICEF and Save the Children UK co-chair a justice for children forum of international and national partners to provide technical support to the Government of Bangladesh to reform the justice for children system. The forum works with the Government to create alternative services for children (shelters, clubs, etc) to divert them from the justice system.

UNICEF is also working with the Netherlands Embassy to co-chair a donor group of development partners to ensure children and adults have access to justice.

Policy reform

UNICEF provided technical advice and assistance to the Ministry of Social Welfare to coordinate an inter-ministerial working group to revise the Children Act 1974. The Act will be brought in line with the CRC and other international standards. Draft amendments are with the Government for approval and adoption into legislation.

The international minimum standards on juvenile justice were translated into Bangla to ensure that front-line workers such as police, magistrates, judges, probation officers and social workers had better access to these international standards. UNICEF is advocating for these standards to be integrated into domestic legislation.

UNICEF is now supporting the revision of the Bengal Vagrancy Act 1943 and is advocating for the establishment of an independent commissioner or other body for children's rights.

Training

Based on an assessment carried out in partnership with relevant institutions, UNICEF developed training materials on juvenile justice for police, magistrates and judges. Topics included case management, interviewing skills, legal procedures, victim-offender mediation training and international legal standards.

IMPACT

UNICEF Bangladesh has contributed in several ways to addressing the issue of children in conflict with the law.

After years of advocacy, the minimum age of criminal responsibility was raised from seven to nine years old.

The number of children in adult jails is slowly decreasing. In October 2008, there were 277 children in adult jails, including 105 aged under 16. By November 2009, that number had reduced to 205 children, including 98 aged under 16.

As of December 2009, the diversion pilot project had reunified 12 children from Jessore's Child Development Centre with their parents, and a further 23 children were having their cases reviewed.

The level of awareness on juvenile justice issues, as well as judicial activism has visibly increased among stakeholders and key duty-bearers. In addition, unprecedented judgments have been issued, with reference to minimum international standards. It is expected that further training on international juvenile justice standards will allow police, magistrates, judges, probation officers and social workers to apply these principles as they carry out their duties and responsibilities.

Updated March 2010