

## FOCUS

## Law and Our Rights

## No Age of Innocence: Justice for Children

by Lisbet Palme

No one can question the notion that children are entitled to the fundamental necessities of life: love and nurturance, food and shelter, health care and education. But the understanding and acceptance of another fundamental entitlement — due process of law — is harder to come by. Few countries take seriously a young person's right to fair treatment at the hands of the justice system: few adults even realize that juveniles have this right. When young people come into conflict with the law, instead of finding compassion

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and help, they often face harsh punishment, and without the legal protections that adults have.

Sometimes young offenders are penalized just as if they were adults, with the maturity and experience to distinguish between right and wrong on a grown-up level. Sometimes they face even worse: Adults must be accused of breaking the law before they can be legally detained, but in many countries a judge can put children in jail simply because of 'irregular conduct' — they are dirty or are sleeping on the street or have lost their identity papers.

Sometimes the authorities put a benevolent face on the punishment, incarcerating children 'for their own protection'. In India, for example, police can apprehend young people if they are 'likely to be abused or exploited for immoral or illegal purposes or wrongful gain' — in other words, any child who is poor is liable to be victimized by the criminal system in the name of altruism.

And sometimes juveniles in detention are abused physically and sexually, in some cases even tortured, by those who are supposed to guard them.

This treatment is inhumane,

## A Younger Generation's Round Table for the 21st Century

by Ronji Chowdhury

It was an unusual scenario — in the UNICEF's James P. Grant Conference Room — on the 14th August 1997. This prestigious formal room was buzzing with the brain-storming of a group of young people — under the banner of 'Law Watch'. Eight Dhaka University students have formed 'Law Watch' — an alternative platform for legal and human rights studies and action. A round-table discussion was held on the 'Progress on Nations-1997' — an annual report of UNICEF. The aim of the event was a topic-wise discussion by the participants on the issues like water and sanitation, nutrition, health, education, women, special protections, interlinking healthy cities and healthy children. This whole programme was the brain child of the Chief, Rights Clusture of UNICEF, Mr. Gopalan Balagopal and the General Secretary of Law Watch Abdul Hasnat Manjurul Kabir.

The main programme began with an introductory session of all the participants and officials of UNICEF. The acting office in charge of UNICEF in his presentation stated that, economical development is not necessary for social development. Any nation may flourish socially with the active participation of the young in the social reform programme. Economy, no doubt, is a factor of development, but by putting each of our best effort, we can achieve a better goal, which a lot of economically developed countries could not. After his speech, the Law Watch members proceeded with their report, which they have prepared for 14 days. The opening speaker was the Information Secretary of Law Watch — Tahmina Huq. She presented a brief report on the — 'Progress of Nations-1997'. Her report was based on the wishful dream expressed in the Report — narrating the day will come when nations will be judged not by their military on economic strength, nor by the splendour of their capital cities and public buildings, but by the well-being of their people, by their levels of health, nutrition and education.

The second participant was Law Watch's Research Secretary — Zakia Afrin. To explain people about water and sanitation, she began her discussion with the story of Marjina — a dweller of Agargaon slum area. Zakia narrated the various aspects, of water pollution in Bangladesh, the insufficient supply of water and the ignorance of common people to their right to have save water and

sanitation facility.

As we are heading towards the 21st century, the world's civilisation is facing a grave threat — namely AIDS. The Media Secretary of Law Watch Dewan Mahmudul Haque emphasised on, how far the Bangladeshi people are aware of AIDS and what should be done to ensure an AIDS free nation.

Law Watch's Finance Secretary Rasheda Rahman discussed on — 'Putting babies before business.' She said, 'Even though we are accustomed with the fact that, benefits of breast-feeding is undisputed, yet, the upper-middle class and working mothers prefer infant formula due to their ignorance and inconvenience. Rasheda suggested different ways to provide the working mother's babies with their best nutrition mother's milk.'

'A quality education' — will

we

be able to provide it to the Bangladeshi children, or will it remain, only as a dream?

The Publication Secretary Saint Akhunji explained how far quality education is possible in Bangladesh — in his report, 'Quality Education — where dreams never turn into reality.'

Economic development has brought comfort and convenience to many people in the industrialised world but in its wake are pollution. The Organising Secretary Amina Rahman

entitled to fair treatment at the hand of juvenile justice. Proper measurements should be taken to ensure their return to a productive society as early as possible.

Mr Selim Ahmed the Director of Urban Development Division of UNICEF appreciated the sincere effort of Law Watch. He said, this effort of Law Watch cast a new trend and is beginning of a new era. The suggestion given by the young people can help UNICEF as well as the society to project a new reformative programme. He finished his speech by assuring about co-operation to Law Watch.

Mr Balagopal expressed his admiration through a short speech. He encouraged the Law Watch members and wished that the organisation may come up with successful achievements. The consultant of UNICEF Rushan Murtaza also encouraged the members. She welcomed the young group to work with UNICEF.

Among other officials there were Nafisa Karim — Incharge of Library. Information of UNICEF & one of the senior members of the water and Sanitation Division.

Law Watch's first effort can be termed as their first feather in their cap as you might have over-heard the overwhelmed crowd walking out the conference room, confessing, 'If we did not come we would have been missing something.'



The Law Watch Round Table is in progress



and it is inconsistent with the Convention on the Rights of the Child, which was adopted by the United Nations General Assembly in 1989 and has been ratified by all but three countries on earth (Cook Islands, Somalia and the United States). When young people come into conflict with the law, they need help, not retribution.

I was only 20 years old when I started to work for and with children in detention. My experience over the years has only strengthened my conviction that we must develop juvenile justice systems that are compassionate and rational. Our children are entitled to fair treatment, and society as a whole will benefit when they receive it.

### Injustice to juveniles

Let us be clear about this: Juveniles are being subjected to grave injustices at every moment in countries around the globe. In Jamaica, children as young as 10 are held for indeterminate periods of time, often with adults, in dank detention cells. In Egypt, children who work as prostitutes are not only sexually exploited for commercial purposes but are criminalized and also face harsher penalties than adult sex workers. In Rwanda, youngsters below the country's age of criminal responsibility (14) are imprisoned in connection with the nation's recent genocide.

In Australia, aboriginal children are incarcerated at 18 times the rate of non-aboriginal children are incarcerated at 18 times the rate of non-aboriginals. In Sudan, children are subject to punishments that include flogging, amputation and execution. In Kenya, up to 120 children a week find themselves in Nairobi's juvenile court for the 'crime' of being homeless. The majority of children in the West Bank who are sentenced according to Israeli security laws have no legal right to a lawyer.

### The roots of conflict

I believe fervently that youthful offenders are made, not born, and that the vast majority would not be made if troubled young people had the benefit of loving nurturance from supportive parents, schools (including pre-schools) and communities. When that support is wanting, they should come under the care of youth guidance authorities. Most children fall into conflict with the law because such assistance is simply not available or does not operate properly.

Impoverished young people experience society's linkage between poverty and crime from an early age. Many of them come into contact with the criminal justice system. The tragedy is that the great majority of juvenile offenders have committed minor crimes or are

lacking the role model of grown-ups who go to legitimate jobs every morning, some find it impossible to resist the temptation of the drug trade's easy money.

Eventually the police catch up with them. That is often the start of a life in which they know their probation officers better than their teachers.

These children have been discarded by their families and their societies, and they hear that message loud and clear. With the gap between the rich and the poor continuing to grow, we can expect to see even

more 'discarded' children in the coming years.

A decision by a police officer or a judge to detain a child on the basis of some vague infraction like vagrancy or suspicion of misconduct can expose him or her to callous injustice or to a system that is overloaded, uncaring and often designed for adults. When poor children are accused of more serious crimes, they typically receive the inferior services of overworked lawyers — if they get any legal representation at all. Once stigmatized by a criminal record, these juveniles become scapegoats for the complex problems that adult society has been unable to solve.

On the other hand, some young people who should be handled by the justice system escape it altogether. In most societies, well-to-do parents can often make use of social connections to 'take care of' any charges brought against their children when they come into conflict with the law, even when the accusations are serious.

The first step towards ensuring fair justice for all juveniles is identifying the 'many' — those in need of social services — and separating them from the criminal justice system so it can function for the 'few' — the serious offenders. The involvement in the justice system of children whose only 'crime' is poverty also pads the juvenile crime statistics, which in turn inflate media accounts of mauling young offenders.

### When responsibility begins

All countries have an age at which people become adults in the legal sense of the word — they can vote, sign legal contracts, marry. But the Convention on the Rights of the Child calls for countries to establish a minimum age below which young people 'shall be presumed not to have the capacity to infringe the penal law' — in other words, an age below

which they are too young to be responsible for their actions and therefore too young to face criminal sanctions.

**Young people must be held accountable for their offences in a manner appropriate to their level of maturity**

But this age varies widely, and in many cases it is far too young: The age of criminal responsibility is 7 years in, for example, Bangladesh, India, Ireland, Jordan, Liechtenstein, Myanmar, Nigeria, Pakistan, South Africa, Sudan, Switzerland, Tanzania and Thailand. Under....

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temptation to reduce the juvenile justice system to a structure for retribution designed for the rare hardened child criminal. Glib slogans like 'Adult time for adult crime' betray the very people that society has failed and encourage 'warehousing' of juveniles — in prisons that in reality serve as training grounds for criminals.

### Preventing juvenile crime

There is no question that preventing crime is preferable to punishing it. Never is that more true than in the case of juvenile delinquency, so often a cry for help from a troubled youngster.

The UN Guidelines for the Prevention of Juvenile Delinquency, known as the 'Riyadha Guidelines', recognize the importance of preventing young people from being stigmatized by the justice system. The Guidelines call for the development of measures that 'avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others.' This statement sends a profound message: Preventing juvenile delinquency or crime is not just a matter of protecting society — its aim is

**In at least 15 countries, 7-year-old children can be held responsible for criminal actions.**

to help children overcome their misdeeds and fulfill their potential. It is also less costly and more efficient for society to prevent young people from starting on criminal careers than to pay for the outcome of criminal behaviour.

### To be continued

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## BANGABANDHU MURDER CASE

### Verbatim Text of Cross Examination of Seventh Prosecution Witness

A: I went of my own as my senior officers were there.

Q: To whom you handed over your duty charge at Ganobhaban?

A: The second person was supposed to be Subedar Kabir in absence of me. But the charge automatically went to his senior Subedar Major Wahab Joardar as he came there.

(Advocate Abdur Razzaq Khan, defence counsel of Joardar, raised objection).

Q: In fact, you went to Comilla directly from your uncle's house.

A: Not correct.

Examination by advocate Belayer Hossain, state defence for absconding accused Captain (retd) M A Majed:

Q: Who do you join Bangladesh Army directly after returning from Pakistan?

A: Yes.

Q: When did you come to Dhaka in July, 1975?

A: On 27th or 28th July.

Q: When did you return to your uncle's house on August 14 night?

A: I returned in the afternoon on the day.

Q: When was your duty on August 15?

A: Usually, I worked at Ganobhaban in the office time from 7:30 am to 2 pm. I would have stayed more if it was necessary. Sometimes I would have come later to check guards, meals etc.

Q: How far is Bangabandhu's house from the China building?

A: Approximately three to four kilometres.

Q: Did you hear firing on August 15 early morning?

A: No.

Q: When did you reach Bangabandhu's house after listening to radio bulletin?

A: In between 12:30 pm and 1 pm.

Q: Did you see any soldier doing duty at Bangabandhu's house at that time?

A: Yes, I saw.

Q: What is the name of the havildar who told you about the incident?

A: As far as I could remember, he was Havildar Quddus or Havildar Gani.

Q: You did not go anywhere after listening to radio bulletin at China building. You did not see anything. You gave a false statement.

A: Your comment is not correct.

Examination by advocate Gazi Zillur Rahman, state defence for absconding accused Lt Col (dismissed) Khandaker Abdur Rashid:

Q: How many soldiers comprise a platoon?

A: 30 to 37.

Q: One platoon was at Bangabandhu's house. Were the rest of the 105 at Ganobhaban?

A: Yes, at Ganobhaban.

Q: What your uncle used to do at the house of whom you stayed?

A: He was an officer of Bangladesh Shilpa Rin Sangathan.

Q: Was there any personal security for you?

A: No.

Q: Did you ask the army personnel whom you saw in army cars on way to Bangabandhu's house?

A: No, I didn't ask.

Q: Were you in civil dressed at that time?

A: I was in army uniform.

Q: Did you know Sheikh Naser, brother of Bangabandhu?

A: I didn't know him. However, I was seen his body and told that he was Sheikh Naser.

Q: Did you know the family members of Bangabandhu?

A: I knew most of them.

Q: How many security personnel did you find at that house after coming there?

A: I can't recall the accurate number. I found a number of them.

Q: None of them gave you any written statement. You also didn't take from them.

A: I didn't take.

Q: Were the salaries of army forces provided in cheque or cash?

A: The salaries of soldiers were always provided in cash.

Q: When the salaries were given?

A: I didn't know.

Q: Did you further enquire about Bangabandhu's house on the night of August 14?

A: No.

Q: Did you know that the killings would take place?

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