



SENATE OF PAKISTAN

Developing a protective environment for South Asian children: the role of parliamentarians in the protection of children in the juvenile justice system

Regional parliamentary seminar hosted by Parliament of Pakistan and organized by the Inter-Parliamentary Union (IPU) and the United Nations Children's Fund (UNICEF)

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SUMMARY AND RECOMMENDATIONS

(Rapporteurs : Senator Semeen Siddiqui and MNA Begum Jehmina Dasti (Pakistan))

The regional seminar entitled *Developing a protective environment for South Asian children: the role of parliamentarians in the protection of children in the juvenile justice system* met in Islamabad, Pakistan, for two and half days, at the invitation of the Parliament of Pakistan and under the auspices of the Inter-Parliamentary Union and UNICEF.

This regional seminar brought together members of parliament and parliamentary staff from Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka to discuss a theme of fundamental importance to their societies: the protection of children. It provided participants with an opportunity to exchange views and experiences and to gain a deeper understanding of the tools at their disposal to develop a protective environment for children, and in particular to secure respect for the rights of children in conflict with the law.

The seminar was opened by the Speaker of the National Assembly, Mr. Chaudhry Amir Hussain and the Deputy Chairman of the Senate, Mr. Mir. Jan Muhammad Khan Jamali, in the presence of Mr. Anders B. Johnsson, IPU Secretary General, and Mr. Martin Mogwanja, UNICEF Resident Representative.

Parliamentarians met in Islamabad with one basic common understanding: that they have the obligation and a central role to play in ensuring that all children live in safety and dignity, regardless of their sex, colour, age, ethnicity, nationality, language, and social status. They all have the obligation to ensure respect for children's rights and provide them with a protective environment, which requires the cooperation of everyone, at all levels, from the family to the international community, including members of parliament.

The debates began with the discussion and analyses of what child protection means and how to develop a protective environment for children. Emphasis was placed on the fact that the Convention on the Rights of the Child (CRC), to which each of our countries is party, recognized children as holders of rights. Not only have children the right to protection - which includes protection from violence, abuse and exploitation in a number of situations - but also a whole set of other rights (the right to education, health, freedom of thought, expression, participation etc.) which must be respected.

The discussions highlighted the importance of a holistic approach to children's rights and child protection. This means that one needs to take into account the bigger picture and the environment in which children live – one cannot address child protection without looking at the socio-economic environment in which children grow up, one cannot secure respect for their rights without addressing the discrimination that exists in our societies whether based on sex or other criteria;

one cannot make progress unless one succeeds in creating a culture that recognizes children as holders of rights, entitled to respect and entitled to be listened to. Any measure to ensure child protection needs to be placed within a larger human rights context and the socio-economic environment. Links with other major societal challenges, including poverty eradication, development, ensuring quality education, and employment opportunities, cannot be ignored. The family and community, whose capacities need to be strengthened in order to protect children, remain the building blocks.

In this debate on a holistic approach to child protection, attention was drawn to several issues including:

- the essential role of education – the need to provide access to education to all children and to teach them, from early, their rights. In this regard, more visibility should be given to children's rights and their protection through educational and awareness-raising campaigns. The role of the media was stressed as central;
- the link between children's rights and gender inequality. The question of population growth, sustainability of large families and empowerment of women was raised.

The important role of the family was also discussed. The Convention on the Rights of the Child establishes balances between the rights and responsibilities of the State and the family, indicating that families should give children "appropriate guidance and direction" in the exercise of their rights. The Convention recognizes the rights of the family to receive support in raising children and providing them with adequate living conditions. The debates, however, highlighted the fact that abuse of children within families, such as domestic violence, was also a reality that needed to be tackled as a matter of priority.

An overview was given of the various functions and roles of members of parliaments (legislative, oversight and representative functions) and how they contribute to the development of a protective environment for children. Discussions centred on compliance with international standards and the importance of ensuring that parliamentarians' respective countries were party to the main instruments of international law on the protection of children's rights.

International instruments, such as the CRC, often require States to provide regular reports on implementation of the rights therein enshrined. These reports are analysed by United Nations committees, which deliver recommendations. Parliaments need to check the status and quality of these reports, be represented in the country delegation that meets with the Committee on the Rights of the Child, and also discuss follow-up on the recommendations made by the Committee and hold their governments accountable in this respect.

Understandably, the main focus on parliament's role was on the legislative function. Legislation is a first step in implementing international instruments and building a protective framework for children. Following ratification, legislative measures are critical to ensure full conformity between the national legal framework and the standards established by the treaty. But legislation alone cannot achieve effective implementation. As the CRC has stressed, other measures are also needed to translate the Convention into reality, which include:

- Policy;
- National plans of action;
- The development of indicators; national targets inserted into five-year plans;
- Capacity building of enforcement actors and institutions;
- Measures to promote coordination of efforts; and
- Allocation of adequate budgetary measures.

There are seven principles which must be taken into account when legislating for child protection and bringing rights home.

1. Participation: the process must be inclusive and cross-sectoral, including parliamentary committees, relevant government departments, civil society, law commissions, national

commissions for children (or a children's desk at national human rights commission) and, last but not least, children themselves.

2. A comprehensive situation analysis must be performed to identify the problem and its root causes. For that, comprehensive and disaggregated data must be made available.
3. Children's rights must be included in the Constitution as a guarantee and protection against action that may contravene their fundamental rights.
4. Periodic review of legislation must be performed. Laws directly relevant to children should be reviewed on a priority basis. *All* other laws should be passed or reviewed through a child rights lens.
5. Substance of the law must conform to international treaty standards.
6. A costing of the law: should be performed - no legislation should be enacted without determining what will be necessary in order to put it into effect, calculating how much it will cost and making requisite plans.
7. Policies should be designed to achieve child rights.

When drawing up legislation, members of parliament must also keep in mind the need for coherence among local, provincial and national legislation and regulations. The same principle applies at the regional level. Particularly in the case of child protection issues of a bilateral or multinational nature (camel jockeys for instance or child trafficking), it is important that laws in neighbouring countries set common standards in order to avoid loopholes that make national legislation less effective. Therefore, greater cooperation and coordination among countries when drawing up legislation is necessary.

The discussions then focused on the challenges of enforcement and implementation. For legislation to have teeth, many elements are required:

- Legislation needs to be known and understood so it can be enforced. Awareness-raising campaigns and training of enforcement agents (such as police and judges) are necessary to ensure that legislation makes a difference.
- Another critical element is the provision and allocation of adequate resources. The experience of South Africa highlighted the importance of carrying out a cost-assessment exercise in parallel with the legislative process and the usefulness of that exercise in crafting legislation that can be realistically implemented. It also demonstrated that providing more information to parliaments enhanced their oversight capacity. The exercise requires, however, a certain investment in terms of time, resources, expertise and close collaboration between the various governmental departments.
- Enforcement cannot take place without the necessary state infrastructures: Debates included the idea of establishing, if necessary, a specific governmental body for children (ministry or department for children's rights for instance). Others highlighted the need to ensure that all state institutions from the national to the local and even grass-roots level have the power to enforce legislation (magisterial power for municipal bodies for instance).

Parliamentary mechanisms and structures that address child protection issues was another topic on the agenda of the seminar. Participants discussed the importance of parliaments having the capacity and resources to address child protection issues. Some parliaments have specific committees on children. This is a mechanism that can generate regular parliamentary debate and allows for a thorough focus on child protection issues, effective oversight and coordination of action. The importance of including children in the work of parliamentary committees was highlighted. Other parliamentary initiatives were discussed such as informal parliamentary forums.

The discussions then moved on to the role of independent mechanisms for child protection, such as the functions of ombudsperson and national commissions. These mechanisms are excellent complements to the work that should be carried out by parliaments. Establishing an office of the ombudsperson safeguards the best interests of the child by monitoring legislation adopted in parliament. The independent annual reports produced by the ombudsperson are useful for parliament, as they include recommendations for action, and also follows up on recommendations

made by the United Nations Committee on the Rights of the Child. The office of the ombudsperson is also an important institution for children and parents, as they can turn to it when their rights have been violated. It is important that all these different structures cooperate and coordinate their work.

In all of the discussions related to parliament's role for child protection, the importance of access to comprehensive data was raised. The need to enhance country capacities to collect such data in an independent way was stressed. The idea of creating independent statistical offices was put forward.

Cooperation was another important point raised. Child protection requires the involvement of all stakeholders. Partnerships and cooperation are essential to any progress: there must be cooperation among parliamentarians and with governments, international organizations, non-governmental organizations (NGOs), the private sector, civil society, families and children. It is necessary for parliamentarians to learn from each other, to share experiences, best practices, examples of legislation, to coordinate efforts and to support each another at the regional and the international levels.

Juvenile justice

A great part of the debates focused on the question of juvenile justice and securing respect for children's rights in conflict with the law.

Child protection includes at least two separate systems: social protection for children and the juvenile justice system. Child protection includes special measures to protect children from abuse, violence, exploitation and neglect. These situations concern children who are victims of physical and sexual abuse (within and outside the family), street children, child trafficking, commercial sexual exploitation, abandoned children or any other situation where the security and development of the child is compromised. In contrast, children in conflict with the law or juvenile justice refers to the case of children who allegedly have committed an act that falls under criminal laws.

There are different models that deal with children in conflict with the law. While for many years the welfare approach prevailed, today preference is given to a rights-based restorative justice model.

The welfare approach is based on the idea that interventions are in the best interests of children, focusing on their needs rather than their conduct or their deeds, not related to the offence (gravity) that has been allegedly committed. However experience has shown that child welfare-focused systems can in fact sometimes violate children's rights because these systems may deny basic due process safeguards (right to a hearing, right to an independent representation), allow interventions for offences that would not otherwise attract the attention of authorities or involve deprivation of liberty, and proposes institutionalization and deprivation of liberty in care and education-oriented institutions as a primary response to child offenders.

The welfare approach implies that a large number of children are in institutions and few interventions concentrate on alternative measures for greater family and community integration for these children. The basic problem of this approach is that there is no distinction between children in conflict with the law and children in need of protection.

The rights-based restorative justice model promotes procedural safeguards for children in conflict with the law, reconciliation, restitution and responsibility through the involvement of the child, family members, victims and communities. It is an approach to crime that recognizes how crime affects the victim, the community in which the crime was committed and the offender. Its primary focus is to repair damage caused by the offence, to make reparation to the community and to the victim and to return the offender to a productive place in the community.

Major principles for juvenile justice legislation and enforcement include:

- Children should be separated from adults;
- Juvenile Justice systems should be fair and humane;
- The reaction of the authorities needs to be proportionate to the circumstances of the offender as well as the offence;
- The use of diversion with the child's consent is highly recommended whenever possible; and
- Deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases.

Where deprivation of liberty is unavoidable, the following conditions should be met:

- Priority should be given to a speedy trial to avoid unnecessarily lengthy detention periods;
- Children should not be detained without a valid court order;
- Small, open facilities should be established with minimal security measures;
- Education should take place in the community and children should have the opportunity to work within the community;
- Juvenile justice personnel should receive appropriate training; and
- Qualified independent inspectors should conduct regular inspections to avoid abuse.

The debates focused largely on diversion and community-based dispute resolution. Diversion involves referring cases away from the formal criminal court procedures and directing young offenders towards community support. Diversion options can come into play at any point of decision-making, on the decision of the police, prosecutor, court or similar body. Examples of diversion options include police warnings, mediation, probation, family group counselling, community service, conditional or unconditional release, behavior contracts, referral to services such as NGO programmes and substance abuse centres. Diversion should be encouraged but requires the consent of the child and his or her recognition of the offence.

The practice of resolving disputes through existing community-based mechanisms and traditional justice was also considered and can often be an alternative to the formal justice system, provided that basic guidelines and oversight is ensured and that these mechanisms are monitored to avoid disproportional responses, abuse and discrimination.

For children who are processed through the formal justice system, it is important to secure specialized procedures and specialized justice professionals for handling juvenile cases. In some countries, specialized juvenile police units and procedures governing the arrest of children have been introduced. Some countries have specialized children's courts, whose procedures emphasize speedy resolution, participation of parents, reduced formality, and support and advice from probation officers or social workers. All in all, all proceedings and mechanisms regarding children in conflict with the law should be child-friendly.

The ultimate objective of juvenile justice is the rehabilitation and reintegration of children. Institutionalization should be used as a last resort and community-based rehabilitation should be preferred. Alternative custodial sentences should be encouraged. Alternative sentences to custodial institutionalization are a positive option insofar as they are in conformity with international standards that advocate custodial sanctions only for children who commit serious crimes or persist in committing other serious offences. In addition, alternative custodial sentences promote integration back into the community as well as rehabilitation and are less costly than sanctions involving punishment.

Various actors and systems (the police, the prosecutor, NGOs, courts, lawyers etc.) intervene in the juvenile justice system. They are relatively autonomous actors which have their own objectives, standards and command structures. These systems may be in competition with one another. An efficient juvenile justice system therefore requires proper coordination between these different actors. Training of the different actors involved in the juvenile justice system, from the grass-roots to the national level, should also be promoted.

Equal treatment of children within the juvenile justice system must be a primary objective. All children, regardless of their socio-economic background, must have access to the same support, treatment and options. Special measures must be taken to address inherent socio-economic discrepancies and differences which may be detrimental to the child offender. Special attention must also be given to girls in detention, who require special services and treatment.

Social stigma of child offenders was also discussed. In order to promote reintegration of child offenders, it is important that we pay attention to the way child offenders are depicted, presented and talked about. Changing the vocabulary helps to reduce the stigma, and equally important, helps to promote among all actors an approach that encourages the rehabilitation of offenders.

Monitoring and improving the juvenile justice system is a necessity. For that, adequate indicators need to be developed and comprehensive data provided. Juvenile justice indicators provide a framework for measuring and presenting specific information about the situation of children in conflict with the law. The United Nations has developed 15 indicators on juvenile justice which should serve as guidelines for the national collection and monitoring of data. Preventing and eliminating abuse within the system must also be a target. All actors and institutions within the juvenile justice system must be closely monitored (police, detention centers, rehabilitation centers etc.) to avoid ill-treatment and abuse.

The presentations and debates were rich and fruitful and participants spoke from the perspective of what they could do as parliamentarians to protect children, and in particular, ensure respect for the rights of children in conflict with the law.

The debates gave rise to the following concrete commitments and recommendations :

We, parliamentarians, commit ourselves to:

1. Do everything in our power to protect children and ensure respect for their rights;
2. Make sure that our country is party to the main instruments of international law for the protection of children's rights, in particular those that relate to juvenile justice;
3. Check the status and quality of reports submitted to the United Nations Committee on the Rights of the Child, provide input to these reports through public hearings and other parliamentary mechanisms, ensure follow-up of the recommendations made by the Committee and hold our governments accountable in this respect;
4. Develop an adequate legislative framework to meet internationally-agreed standards on children's rights. In so doing, we need to first carry out a comprehensive and informed situation analysis and harmonization of legislation at the national and the regional levels. We also need to monitor on a regular basis the effectiveness and relevance of laws;
5. Call for and support the creation of an independent national bureau of statistics to collect comprehensive and disaggregated data related to child protection. This bureau should report to the parliament;
6. Ensure proper enforcement of legislation by ensuring that enforcement mechanisms are in place, have adequate resources and trained staff and, if necessary, consider setting up specialized enforcement bodies such as a ministry for children's rights or an ombudsperson for children;
7. Empower children, by ensuring that free universal primary education is provided to all children and that their rights are taught to them at the very start of the curricula; support the development of awareness-raising campaigns, in cooperation with the media, to educate children and adults about children's rights;

8. Protect children at school by putting an end to the practice of corporal punishment;
9. Empower children by providing equal opportunities and protection to all, paying special attention to the particular situation of the girl child;
10. Secure a balance between the responsibilities of the State and families in the protection of children;
11. Ensure that domestic violence is subject to investigation and documentation, and that it is debated in parliament and measures are taken to address the problem;
12. Develop child-friendly processes in our countries to ensure children's full participation with safety and dignity;
13. Identify instances where child protection will be dealt within parliament and within its existing committee structure and, where necessary, create a specific mechanism such as a select or special committee on children's issues;
14. Support the establishment in our countries of juvenile justice systems built on a rights-based approach and give preference to restorative measures, the use of diversion and alternative measures;
15. Support the creation of separate mechanisms, processes and facilities for children in conflict with the law that are governed by child-friendly procedures;
16. Support the creation of specific facilities for children, such as separate police units for children, open observatory homes, community-based centres, and promote the use of alternative options to institutionalization and detention, which should be used as a last resort and for the shortest possible period;
17. Secure respect for children's rights in cases of children in conflict with the law and protect them from abuse and exploitation by the system by carrying out close monitoring of services, collecting information, carrying out visits to detention centres, etc.
18. Ensure the effectiveness of juvenile justice mechanisms by securing appropriate training of enforcement agents, adequate budgets and close monitoring;
19. Give preference to and support mechanisms and initiatives that facilitate the reintegration and rehabilitation of child offenders and offer them a chance to develop themselves and contribute constructively to society;
20. Remain in regular contact with, exchange information and best practices and support one another in our initiatives and action to promote children's rights;
21. Share the results of this seminar with our parliament and constituencies and ensure follow up on recommendations made ;

In this regard, we invite the IPU and UNICEF to disseminate results, provide support, wherever required, to follow up activities at the national level and organize a similar event in a year to assess progress made.