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Rights of the Child in Bangladesh

*Report on the implementation of the
Convention on the Rights of the Child in relation to
Children in Conflict with the Law
by Bangladesh*

A report prepared for the Committee on the Rights of Child
34th Session – Geneva, September 2003

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*OMCT would like to express its gratitude to
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and André Dunant, IAYFJM, Switzerland*

Geneva, May 2003

Contents

1. Introduction.....	3
2. Age of Criminal Responsibility.....	3
3. Jurisdiction and Proceedings.....	5
4. Grounds of Arrest.....	7
4.1. Vagrancy.....	8
4.2. Uncontrollable Children.....	9
4.3. Victims of crime.....	9
5. Police custody.....	10
6. Sentencing.....	11
7. Conditions of detention.....	13
7.1. Detention with adults.....	13
7.2. Places of safety, remand homes and correction institutes.....	14
7.3. Jails.....	15
8. Concluding Observations and Recommendations.....	16

1. Introduction

While Bangladesh ratified the Convention on the Rights of the Child and has been trying to harmonize its laws and practices with the norms enshrined therein, there are still some areas of juvenile justice which are in conflict with the Convention. The concept of juvenile justice in Bangladesh is not unified and it is scattered in various laws which affect children.

When reviewing the first State Party Report, the Committee on the Rights of the Child recommended that *“legal reform be pursued in connection with the very young age of criminal responsibility (7 years), the lack of adequate protection for children aged 16-18, grounds for arrest and detention of children that can include prostitution, “vagrancy” or “uncontrollable behaviour”, the possibility of imposing heavy sentences on children, and the solitary confinement and ill-treatment of children by the police.”*¹

OMCT is preoccupied that these recommendations have not been duly implemented and that the state of juvenile justice is still fairly poor in respect of the areas mentioned.

2. Age of Criminal Responsibility

The Convention on the Rights of the Child requires in section 3 that States set a minimum age of criminal responsibility:

“States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular; (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law (...).”

The Convention does not however specify any particular age of criminal responsibility.

In Bangladesh, the minimum age of criminal responsibility is seven years.² Section 83 of the Penal Code also stipulates that: *“Nothing is an offence which is done by child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.”*

OMCT is concerned about the ambiguity of the requirement of “sufficient maturity of understanding” and the arbitrary power that is given to the court to evaluate criminal responsibility of a child between 7 and 12 years.

OMCT believes that the minimum age for criminal responsibility should be raised in order to respond better to international standards. Rule 4.1 of the Beijing Rules states that *“in those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”*. The commentary of this article clarifies that the minimum age of criminal responsibility differs widely owing to history and culture, but if the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless.

¹ CEC/C/15/Add.74 Concluding Observations of the Committee on the Rights of the Child: Bangladesh 18/08/97, par. 46

² “82. Nothing is an offence which is done by a child under seven years of age.”

Consequently, OMCT is convinced that determining the age of criminal responsibility at seven years is too young. A definition of the age of criminal responsibility in accordance with the Convention would have major positive consequences on the juvenile justice system.

It should also be noted that Section 2(f) of the Children's Act, 1974, stipulates that: “ *“Child” means a person under the age of sixteen and when used with reference to a child sent to a certified institute or approved home or committed by a Court to the custody of a relative or other fit person means that during the whole period of his detention notwithstanding that he may have attained the age of sixteen years during that period;(…)”*”

OMCT is preoccupied that this definition leaves out the children aged from 16 to 18, and feels that this is contrary to the requirements of the CRC, which grants protection to all persons under 18.

In a related vein, pursuant to section 66 of the Children's Act, “*(1) Whenever a person whether charged with an offence or not, is brought before any criminal Court otherwise than for the purpose of giving evidence, and it appears to the Court that he is a child, the Court shall make an enquiry as to the age of that person and, for that purpose, shall take such evidence as may be forthcoming at the hearing of the case, and shall record a finding thereon, stating his age as nearly as may be.*”

The determination of the age of a child is very important for deciding whether he/she has to be tried in a juvenile court or a regular court. However, in practice, it appears that the police conceals the real age of juveniles, does not submit charge sheets and does not contact probation officers, as required by the law.³

As mentioned in “Our Children in Jail” Report, the Chief Metropolitan Magistrate of Dhaka pointed out that there were problems with the records of the cases, which are forwarded by the police to them:

*“During the arrest and forwarding letter the police usually do not mention the age of the arrested person or intentionally enhance the actual age. In these circumstances the magistrate usually does not exercise its jurisdiction to establish the age of the detainee”*⁴

The reasons for this appear to be the lack of motivation of police officers, their lack of knowledge of the Children's Act, their lack of knowledge about the correction centres, their participation in corrupt practices (bribes) and their heavy workload.⁵

Another obstacle to age determination is that birth registration in Bangladesh is very limited. Despite the efforts of local authorities, the system of registration does not function properly and the registration rate is very low.⁶ In practice, this often leads to situations where children are tried in adult courts.

³ “Searching for Alternatives: Toward A Child Centred Justice Policy in Bangladesh”, Professor Mizanur Rahman, UNICEF, Bangladesh, Dhaka, March 2003, p. 37

⁴ ‘Our Children in Jail’ in “Report on the State of Juvenile Justice and Violence against Children in Bangladesh”, Save the Children UK and ODHAKAR, May 2003, p. 10

⁵ “Assessing the Training Needs of Police, Magistrates and Judges and the Capacity of Bangladesh Training Facilities in Juvenile Justice and Protection from Violence, Abuse and Discrimination,” Ministry of Women and Children Affairs, UNICEF, Bangladesh, 2002, p. 53

⁶ Ibid, p. 32

OMCT is greatly preoccupied by this situation and recommends that the Government of Bangladesh ensure proper registration of children, provide further training to judges and police officers on the requirements of the Children's Act, establish a monitoring entity which would report on the state of implementation of the relevant provisions of the Children's Act, 1974.

3. Jurisdiction and Proceedings

The CRC emphasizes the importance of the child's right to be tried in accordance with its status. Article 40 states:

"1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

Also, article 40.3 of the CRC requires that: *"States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (...) (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected."*

Furthermore, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") stress the need of creating a comprehensive juvenile justice system within the country:

"1.4. Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society."

Also, the Children's Act of 1974 provides for the establishment of Juvenile Courts and defines their mandate and powers. Presently, in Bangladesh, there are two juvenile courts.⁷ For the areas where there are no Juvenile Courts established, the powers of a Juvenile Court can be exercised by the High Court, a Court of Session, a Court of Assistant Sessions Judge, a sub-divisional magistrate and a magistrate of the first class.⁸ Each juvenile court has a magistrate and ten other staff. This magistrate is appointed through the Bangladesh Civil Service Examination and he has no formal training regarding children's rights and children's issues.

For the purpose of any order, the Court must also have regard to several factors, namely (i) the character and age of the child, (ii) the circumstances in which the child is living, (iii) the

⁷ Op.cit., note 3, p. 19

⁸ Section 4, Children's Act, 1974

reports made by the Probation Officer and (iv) other matters which must be taken in consideration in the best interests of the child.⁹

As reported by Professor Rahman, there is evidence that the magistrates do not bother to obtain the Report of the Probation Officer and that they consider them only in parent related cases. It appears that in police related cases they rely only on charge sheets or final reports. It was reported that magistrates are not very familiar with the requirements of the Children's Act and they tend to rely on the Code of Criminal Procedure (rather than the procedure found in the Children's Act).¹⁰

Pursuant to section 6(2), if a child is accused of an offence for which he could have been tried together with an adult, the Court taking cognizance of the offence shall direct separate trials of the child and of the adult.¹¹ However, according to Professor Rahman, there is a breach of these obligations by judges in most cases and children are tried with adults.¹²

In a recent judgment,¹³ the High Court Division of the Supreme Court of Bangladesh gave directions that Government should follow in order to improve further the poor situation of the juvenile justice system; namely, to expedite accusations brought against juveniles, to consider discharging juveniles pursuant to Section 82 and 83 of the Penal Code¹⁴ and Section 53¹⁵ of the Children Act 1974, to consider withdrawing accusations brought against juveniles under Section 494¹⁶ of the Code of Criminal Procedure, to instruct the local Legal Aid committees to move Courts for bail of accused juveniles, to ensure that juveniles are kept apart from other prisoners, to ensure that juveniles are transferred to correction institutes or approved homes, to include more human rights activists as non-official jail visitors and to transfer juveniles to correction homes.

OMCT welcomes the recommendations made by the High Court Division of the Supreme Court of Bangladesh, and would like to emphasize that there is a need for more effective monitoring, investigations and sanctioning of those responsible for these violations. There should also be more training provided for law enforcement officials.

⁹ Section 15, Children's Act, 1974

¹⁰ Op.cit, note 3, p. 39

¹¹ Children's Act 1974, «6(2) *If a child is accused of an offence for which under section 239 of the Code or any other law for the time being in force such child but for the provisions of sub-section (1) could have been tried together with an adult, the Court taking cognizance of the offence shall direct separate trials of the child and the adult.*»

¹² Op.cit., note 3, p. 38

¹³ Suo Moto Order No. 248 of 2003, Special Jurisdiction, 9th April 2003

¹⁴ See p.3 and Op.cit., note 2

¹⁵ «54. *Power to order parent to pay fine, etc.-(1) Where a child is convicted of an offence punishable with fine the Court shall order that the fine be paid by the parent or guardian of the child, unless the Court is satisfied that the parent or guardian cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care of the child.*»

¹⁶ «494. *Any Public Prosecutor may, with the consent of the Court, before the judgement is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal, (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; (b) if it is made after a charged has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.*»

4. Grounds of Arrest:

According to article 37 of the CRC, “(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;(...).”

In this respect, the Constitution of Bangladesh states in section 32 that “No person shall be deprived of life or personal liberty save in accordance with the law”.

Also, as mentioned in the State Report, The Dhaka, Chittagong and Khulna Metropolitan Police Ordinances (1976, 1978 and 1985) give police officers the power to arrest without warrant “any person committing in his presence or within his view” any offence punishable under the Ordinance or under any current law. The police is also authorized under section 54 of the Code of Criminal Procedure 1898 to make arrests without warrant on the basis of “reasonable suspicion” of involvement in a criminal act.¹⁷ It appears that the only limitations to these powers are the requirements of reasonable suspicion and credibility. Extensive powers, lacking clarity, monitoring and evaluation are more likely to be open to abuse through the excessive discretion granted to the police and other authorities.

According to the “Our Children in Jail”¹⁸ Report, children are often arrested under the Code of Criminal Procedure, the Dhaka Metropolitan Police Ordinance as well as the Special Powers Act, the Arm Act, the Drugs Act and the Public Safety Act. In 2001, Odhikar, an NGO based in Bangladesh, conducted a study of the arrests made under Section 54 of the Code of Criminal Procedure and Section 84 of the Dhaka Metropolitan Police Ordinance in four police station in Dhaka and two police stations outside Dhaka.¹⁹ This study revealed that a significant number of those arrested were the homeless, street children, destitute women and commercial sex workers. The underlying reason for such arrests appears to be political rivalry and failure to pay bribes to the police. It is quite clear that children are unlikely to pay their way out, and are therefore more likely to get arrested. Other researchers also suggested that the police tends to do mass arrests under Section 54 of the Code of Criminal Procedure because of the requirements of performance and efficiency, which is evaluated on the basis of the arrests made.²⁰

Another common practice which has been extensively documented is arresting children prior to demonstrations, strikes, “hartal” (political activism) or other events. It has been reported that such arrests are not limited to people involved in these events, and that often street children are also picked up along the way without apparent reason. Many of them are tricked,

¹⁷ Code of Criminal Procedure of 1898, “54.-(1) Any police-officer may, without an order from a Magistrate and without a warrant arrest, - firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking; thirdly, any person who has been proclaimed as an offender either under this Code or by order of the [Government]; fourthly, any person in whose possession anything is found may reasonably be suspected to be stolen property [and] who may reasonably be suspected of having committed an offence with reference to such thing;(...).”

¹⁸ Op.cit., note 3, p. 13

¹⁹ “Abuse of Section 54 of the Code of Criminal Procedure”, Odhikar, Dhaka, Bangladesh, July 2001, in Op.cit., note 3, p.32, note 60

²⁰ Sattar, Neela, « Juvenile Justice, Rights of the Child, Law and Reality in Bangladesh, » in Human Rights Legal Education & Training Institute, Bangladesh, Bar Council, p.407, in Op.cit., note 3, p. 32, note 60.

taken away and subsequently arrested. This practice was accurately captured by the words of a Bangladeshi child:

*“I was staying at the railway station...I was very hungry and these men, who I later found out they were policemen, came to a group of us (the night before the hartal) and told us that they had food for us – they suggested to us that we should get into the car...When we got in the car later we found out that we were being arrested.”*²¹

In practice, cases of arbitrary detention seem to be quite common and they are by no means isolated events.

4.1. Vagrancy:

Another area of conflict with the Convention on the Rights of the Child seems to be The Bengal Vagrancy Act 1943 (‘Bengal Vagrancy Act’), which was enacted by the Indian Parliament against the backdrop of the great famine in 1943, to promote the social rehabilitation of vagrant beggars and handicapped persons under government care through training and other means.²² It has, however, remained in force in Bangladesh even after independence. In 1947, three vagrant centres (one for men, women and children) were transferred from Calcutta to Chandpur, and were successively run under the Defence, Relief and Health Ministries.

The Vagrancy Act of 1943 defines a vagrant as anyone: *“found asking for alms in any public place, wandering about or remaining in public places in such condition or manner as makes it likely that such person collecting money or asking for food or gifts for a prescribed purpose: (...).”*²³

It appears there are no consistent criteria for declaring someone a vagrant. Given the vagueness and ambiguity of this provision, it seems that it gives too great of a discretion to police authorities, which may lend itself to abuse.

The Vagrancy Act does not include any legal representation on behalf of the arrested person and for the other case assessment services. Police arrest people and hand them over without giving specific information regarding the person. The majority of the residents are brought to the court without a case assessment report and the hearing is very brief and hasty where the residents are not given the opportunity of expressing themselves. Suspected vagrants have been detained for 4 or 5 months at a time before being produced before a Magistrate. Also, the Act does not mention any definite period of time for detention of the person.²⁴

In addition to this, the Vagrancy Act provides for the establishment of an Advisory Board²⁵ which will inspect the homes to ensure quality services, but an Advisory Board does not exist in practice.²⁶ Vagrant homes inmates have informed visitors that bribes are a must to get released from the homes. Also, the inmates have also reported that parents and guardians

²¹ Op.cit., note 3, p.15

²² Bregg David, « Poverty and Human Rights in Bangladesh », 1 Melb. J.Int.L. 149, p. 150

²³ Section 3(9), Vagrancy Act of 1943

²⁴ Op.cit., note 3, p.19

²⁵ The Vagrancy Act of 1943, Section 3.3 (1)

²⁶ Op.cit, note 3, p.18

cannot meet their wards without paying a bribe at the gate.²⁷ They have also said that they are often exposed to torture and persecution, that girls are sexually exploited, that valuable personal belongings are taken away and not returned, that those who cannot pay the bribes are not released immediately, and that while there is prescribed three month limit stay, there are cases where a stay lasts up to two years. Girls in vagrant homes are engaged to do embroidery and sewing but they do not get paid in return.

The conditions in vagrant homes are appalling and there is a lack of adequate care for the inmates. The major part of the inmates today are young women engaged in prostitution, the so-called ‘commercial sex workers,’ and street children. They are inadequately fed and clothed, and lack medical care and even the most essential commodities for personal hygiene.²⁸ According to specialists of the field, the Act is often used to clearing the area of street children, which form a population of 445, 226 in Bangladesh.²⁹

4.2. Uncontrollable children

Pursuant to Section 33 of the Children’s Act,³⁰ a parent or a guardian of a child can complain to a Juvenile Court that he is unable to control the child and the Court may order to have the child detained in a certified institute or an approved home for a period of three years : « 33.Un-controllable children.-(1) Where the parent or guardian of a child complains to a Juvenile Court or to a Court empowered under section 4 that he is unable to control the child the Court may, if satisfied on inquiry that it is expedient so to deal with the child, order the child to a certified institute or an approved home for a period not exceeding three years.”

In practice, this may happen for various reasons, namely when a father has left the family home, the practice of polygamy or the children have lost their mother. Also, among the members of the poor community there is a popular belief that correction centres provide better education, food, clothing and cultural activities to children than their family home. For this reason, many poor people send their children to correction homes.³¹

OMCT is preoccupied by the wording found in this provision, which is unduly vague and may give rise to arbitrary detention. OMCT also feels that training and support should be provided to parents in order to ameliorate their parenting skills and thereby abolish the detention of ‘uncontrollable’ children.

4.3. Victims of Crime

Children who are victims of crime may be placed in safe custody. The term ‘safe custody’ and its equivalents, ‘protective custody’ and ‘suitable custody,’ arises from Section 13 of the Suppression of Immoral Traffic Act, 1933. It can also be found in Section 55 of the Children’s Act, 1974 which states that “Any Probation Officer or police officer not below the rank of Assistant Sub-Inspector or a person authorised by the Government in this behalf may

²⁷ Ibid, p.19

²⁸ Op.cit., note 19, p.151

²⁹ Op.cit., note 5, p. 36

³⁰ The Children’s Act of 1974, « 33.Un-controllable children.-(1) Where the parent or guardian of a child complains to a Juvenile Court or to a Court empowered under section 4 that he is unable to control the child the Court may, if satisfied on inquiry that it is expedient so to deal with the child, order the child to a certified institute or an approved home for a period not exceeding three years.”

³¹ Op. cit., note 3, p.11

take to a place of safety any child in respect of whom there is reason to believe that an offence has been or is likely to be committed.”

Also, the Children’s Act describes in sections 34 to 46 several specific offences through which children become victims of crime, namely cruelty to a child, employing children for begging, being drunk while in charge of a child, inciting children to bet or borrow, allowing children to be in a brothel, causing or encouraging seduction, exploitation of child employees, etc. Section 54 of the Code of Criminal Procedure is also used as a means for obtaining ‘safe custody’ of a child, and is often complied with in the absence of other alternatives.

In practice, this often leads children to come in contact with the law without having committed an offence and to being imprisoned more easily. While boys are sometimes sent to rehabilitation centres, girls are often sent to adult jails as there are no such facilities for them. Moreover, police officers have often arrested young girls on grounds of suspicion that they engage in prostitution .

The CRC is very clear on the special requirements of children in need of rehabilitation and holding such children in jail is contravening this requirement. OMCT strongly believes that child victims should be provided with special care and not placed in detention. There is a clear abuse of deprivation of liberty and the Government must seek to explore adequate care and support for children victims of crime.

Generally, OMCT is also concerned by the legal categories used in Bangladeshi legislation, namely “vagrancy”, “uncontrollable behaviour” and “ victims of crime,” which promote coercive measures rather than protection and reintegration of child victims of precarious socio-economic situation.

OMCT also regrets that the criminal regime applicable to children does not separate penal and tutelary criteria when it allows deprivation of liberty. Thus it allows adoption of these measures on the basis of social situation, rather than on the basis of suspected illegal action. This system, which blurs the distinction between offence and social marginalisation, tends to weaken the requirement of guilt and the presumption of innocence in the judiciary process, and thus appears contrary to due process of law requirements enshrined in article 40 of the CRC.

Thus, OMCT would recommend that the State amend its legislation as to establish a clear distinction between child offenders and child victims, in order for the latter to be protected and assisted, rather than submitted to criminal jurisdictions. More precisely, OMCT would urge the state to abrogate all provisions allowing coercive measures against children belonging to certain categories, even when no offence was committed.

5. Police custody

Pursuant to article 33(1) of the Constitution of Bangladesh, *“No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice(...).”* In addition, both the Constitution and the Code of Criminal Procedure require that persons arrested and detained in custody be brought before a magistrate within 24

hours of arrest and that an order be obtained for their further detention.³² Where the child is arrested, the officer-in-charge of the police station to which he or she is brought shall inform the parent or guardian of such arrest, if found and shall also cause them to be directed to attend the court before which the child will appear and specified the date of such appearance.³³

According to section 38 of the Children's Act 1974, "*Where a person apparently under the age of sixteen years arrested on a charge of non-bailable offence and cannot be brought forthwith before a Court, the officer-in-Charge of the police station to which such person is brought may release him on bail, if sufficient security is forthcoming, but shall not do so where the release of the person shall bring him into association with reputed criminal or expose him to moral danger or where his release would defeat the ends of justice.*"

In addition to this, section 49 requires that when a person is not released under these conditions, the officer-in-charge of the police will direct him to a remand home or a place of safe custody.³⁴ Immediately after the arrest of a child, it is the duty of the police officer or any other person affecting the arrest to inform the Probation Officer of this arrest in order to enable the history and other material circumstances likely to assist the Court in making its order.³⁵

Unfortunately, in reality, these requirements are seldom respected. Overworked police officers, lacking motivation and knowledge about children's issues, rarely contact probation officers. They tend to see adult and child offenders in the same way, and they also lack knowledge about correction centres. The supervision mechanisms of police activities are very poor, and this often leads to serious violations.³⁶ The police officers also fear of releasing juvenile offenders due to the apprehension of losing a job.³⁷

6. Sentencing

As mentioned earlier, section 37 (b) of the CRC requires that "*The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;(...).*"

³² "33. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate. Code of Criminal Procedure of 1898; "No police-officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

³³ Section 13 (2), Children's Act, 1974

³⁴ Section 49, Children's Act 1974; "*Custody of child not enlarged on bail.-(1) Where a person apparently under the age of sixteen years having been arrested is not released under section 48, the officer-in-charge of the police-station shall cause him to be detained in a remand home or a place of safety until he can be brought before a Court. (2) A Court, on remanding for trial a child who is not released on bail, shall order him to be detained in remand home or place of safety.*"

³⁵ Section 50, Children's Act, 1974

³⁶ Op.cit., note 3, p. 14

³⁷ Ibid, p. 14

In Bangladesh, Juvenile Courts have the power to commit the child for detention in a certified institute.³⁸ Such detention must be for a minimum of two and a maximum of ten years duration and will in any case come to an end when the child reaches 18. However, under article 51 of the Children's Act, it is permissible to impose a prison sentence on a child under 16 in exceptional circumstances, namely when a child is found to have committed an offence of such seriousness that the Court takes the view that no punishment authorized under the Act is sufficient, or when the Court is satisfied that the child is of "*so unruly or of so depraved character*" that he cannot be committed to a certified institute and none of the other available methods for dealing with the case is suitable. Then, the Court can impose a prison sentence on the child or order him or her to be detained "*in such place and on such conditions as it thinks fit.*"³⁹ The Court has the power to vary the detention order at a later date and direct that the child be moved from any place of detention to a certified institute until he or she reaches 18.

OMCT deems that the maximal sentence of 10 years is unduly high and it should be abrogated in order to conform to international child rights instruments.

OMCT is greatly concerned by the wording contained in section 51 of the Children's Act, which provides little guidelines as to what constitutes an "*unruly and depraved character*" and provides no limits as to the conditions in which a child may be detained. Granting such extensive judicial discretion is dangerous and it may lead to abuse.

Also, while under the provisions of the Children's Act deprivation of liberty must be used as a last resort measure, in practice it is extensively used by the magistrates. After conviction, magistrates do not bother to find the parents or relatives of children in order to release juveniles on probation of good contact.⁴⁰ The magistrates usually order the juveniles to be committed to a certified institute.

The state of the juvenile justice system in this area suffers enormously and does not conform to international standards of juvenile justice. It should also be noted that the Beijing Rules state in Rule 18.1 that various alternatives to imprisonment should be provided for by the State:

"A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible. Such measures, some of which may be combined, include: (a) Care, guidance and supervision orders; (b) Probation; (c) Community service orders; (d) Financial penalties, compensation and restitution; (e) Intermediate treatment and other treatment orders; (f) Orders to participate in group counselling and similar activities; (g) Orders concerning foster care, living communities or other educational settings; (h) Other relevant orders."

³⁸Section 52, Children's Act, 1974.

³⁹ Children's Act 1974, "51. Restrictions on punishment of Child.-(1) Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment: Provided that when a child is found to have committed an offence which of so serious a nature that the Court is of opinion that no punishment, which under the provisions of this Act it is authorized to inflict, is sufficient or when the Court is of opinion that no punishment, which under the provisions of this Act it is authorized to inflict, is sufficient or when the Court is satisfied that the child is of so unruly or of so, depraved character that he cannot be submitted to a certified institute and that none of the other methods in which the case may legally be dealt with is suitable, the Court may sentence the child to imprisonment or order him to be detained in such place and on such conditions as it thinks fit: (...)"

⁴⁰ Op.cit., note 3, p.14

Furthermore, the aim of juvenile justice should be arranged in such a way that the juveniles can assume a socially constructive role in society.⁴¹ It seems that the aims of juvenile justice in Bangladesh are not analogous to those of the Beijing Rules. According to Professor Rahman, the only alternatives to deprivations of liberty provided for by the legislation are dismissal reprimand, caning, probation and parole, and it seems that these are not resorted to very frequently. There is a need to provide more alternatives or diversion programmes which would replace the abuse of deprivation of liberty and institutionalisation in Bangladesh.

7. Conditions of detention

OMCT wishes to recall that section 37 (c) of the CRC states that *“every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall have the right to maintain contact with his or her family through correspondence and visits, save exceptional circumstances.”*

Also, Rule 31 of the UN Rules for the Protection of Juveniles Deprived of their Liberty states that *“the right to facilities and services that meet all the requirements of health and human dignity.”* Rule 32 requires that these facilities need to take into account *“the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports physical exercise and leisure-time activities.”* Also, Rule 81 requires that the personnel of juvenile detention facilities *“should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologist.”*

7.1. Detention with adults

The Convention on the Rights of the Child requires children to be separated from adults while they are in detention.

“ 37(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so (...)”

The Children’s Act of 1974 also repeats this requirement in section 52 as one of the restrictions to the punishment of a child.

“(2) A youthful offender sentenced to imprisonment shall not be allowed to associate with adult prisoners.”

In practice, however, after being arrested, juvenile offenders are sometimes detained in police stations with the adult offenders as there is no separate location for them.⁴² This situation does not meet the requirements enshrined in section 37 of the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

⁴¹ Rule 26.1, the Beijing Rules

⁴² Op.cit., note 3, p.14

OMCT urges the authorities to ensure that child detainees are kept separately from adults, unless it is in their best interest to do so.

OMCT is also preoccupied that section 52(2) refers only to convicted while it should also be made applicable to children held in pre-trial detention.

7.2. Places of safety, remand homes and correctional institutes

The Children's Act of 1974 provides for the placing of children in a place of safety, remand home or certified institutes. According to the Report of Professor Rahman, there are no such remand or shelter homes in some districts, and for this reason juveniles are often kept in jails.⁴³ Also, while pursuant to the Children's Act of 1974 correctional institutes should be used as a last resort measure, they are used quite extensively.

There are two correctional centres in Bangladesh, and the first one, called the National Correctional Centre, was established in Tongi in June 1978. It has a capacity to house two hundred children and the total number of staff is 57. It comprises a juvenile court, a remand home and a correctional centre. Another correctional centre was established in Jessore in 1995. While the law provides that the centre must accommodate both girls and boys, the centre only accommodates boys.

The majority of children in the institute are between 10 and 16 years old, and 8% of these children are 17 and 18. The children who are not released on bail are usually kept in custody at the Centre while awaiting trial. Also, children referred by their guardians to the Centre can be released upon agreement of the Institute's authority and children referred by the police may be recommended by the Superintendent of Tongi when they reach 18 to the Department of Social Welfare for release or further detention.⁴⁴

According to the interviewees, the Centre has a poor standard of food, the health care facilities are inadequate, there is a school providing primary education (although there is a religious teacher that provides training on the Koran), there are no trained social workers and there is evidence suggesting the existence of corporal punishment.⁴⁵

There is another Correctional Centre called the Pullerhat Correction Centre which was established in Jessore in 1995. It has a capacity to house 150 juveniles, and most of them are referred by their parents. The juvenile detainees were seen attending classes with dirty clothes and appear not to have been given sufficient clothes. It was also reported that the juveniles are maltreated and tortured by some officials of the correction centre. There is no doctor in the Pullerhat Correction Centre, and when children become sick they are brought to the nearest pharmacy and given medicine without a consultation.⁴⁶

More generally, according to the Report of Professor Rahman, the food supplied by the correctional centres is not enough to provide sufficient nutrition to the juveniles. It is sometimes not served on time, and children starve. The money allocated for food is often misappropriated by the authorities and used for other purposes. Fish and meat are served only

⁴³ Ibid, p.15

⁴⁴ Ibid, p.16

⁴⁵ Ibid, p. 16

⁴⁶ Ibid, p.16

a few times during the month. Moreover, it seems that all juveniles, even juveniles coming from different religions, are obliged to perform Muslim prayers. In fact, the correction centres have no arrangements for conducting prayers of Hindus, Christians or Buddhists. The training facilities are also very poor. While the correction centres have general and vocational training programmes up to class five, most juveniles are aged from 7 to 16 years old. There are insufficient training materials, and the quality of the teaching is very poor.⁴⁷ The Children's Rules, 1976, provide for some of the minimal criteria, namely regarding the medical facilities, diet, clothing, education and training, however they are still to be implemented.⁴⁸ OMCT urges the authorities to comply with the standards enshrined in the Children's Rules of 1976, the Convention on the Rights of the Child and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

7.3. Jails

It should be noted that in a judgement of the High Court Division of the Supreme Court of Bangladesh mentioned earlier,⁴⁹ after considering the various submissions made by Bangladeshi Government bodies and Non-Government Organisations, the Court recognized that the Government has made positive steps toward ameliorating the situation of children in jail by establishing a body named Juvenile Criminal Justice System Monitoring Cell. The Court also stated that the Inspector General of Prisons was ordered by it to investigate the matter of child incarceration in the Dhaka Prison. Also, according to the investigation report, the Inspector General of Prisons, Brigadier Zillur Rahman, visited the jail on January 30th 2003 and found 2 female prisoners and 77 male prisoners below the age of 16 in the jail. He also found a further 127 male prisoners below the age of 18. The report also mentioned that there were 383 women, girls and children in a cell with a capacity for only 84 persons.⁵⁰

There are eighty prisons in Bangladesh and they have the capacity to receive a total of 24, 538 prisoners. In an estimate (in 2001), a total of 64,890 prisoners were staying in the jails which means the number of prisoners in the jail was three times higher than the actual capacity.⁵¹ Of them 1, 827 were women, 1029 were children, including 129 girl children. In the last decade the number of total prisoners has increased by twenty one thousand whereas the capacity of the jails increased by about three thousand.⁵²

According to a Study conducted recently, women prisoners are allowed to keep their children with them up to the age of four, and this period can be extended to 6 years with the permission of a jail superintendent.⁵³ Children with their mother usually remain uncounted, as they are not subject to receive any material support from the jail. They become vulnerable to diseases due to poor living conditions. The prisons are overcrowded, there is a lack of ventilation, the quality of food is poor and medical facilities make the situation worse. There is no arrangement for children's recreation in the jails. The most worrying remains however that the children and adolescents have to stay with notorious terrorists and drug addicts.

⁴⁷ Ibid, p. 13

⁴⁸ See Children's Rules 1976, sections 14 to 18

⁴⁹ Op.cit., note 13

⁵⁰ Kushum, Odhikar newsletter, p. 8

⁵¹ Parvez, Ataf, "Prison Management in Bangladesh » in « Yearbook 2001 on the State of Juvenile Justice and Violence against Children," Save the Children UK and Odhikar, 2002, p. 14

⁵² Ibid, p. 14

⁵³ Ibid, p. 14

Statistics show that there are children who remain under trial for more than five years when the alleged offence only deserve an imprisonment of only 2 or 3 years.⁵⁴

OMCT is preoccupied by the conditions found in correctional centres and jails in Bangladesh and would then urge the Government of Bangladesh to adapt the detention centres to the requirements of article 37(c) of the CRC.

OMCT also urges the authorities to undertake a survey of children detained in Bangladesh and order the immediate release of those who have been detained awaiting trial for an excessive period of time.

8. Concluding Observations and Recommendations:

In respect of the **age of criminal responsibility:**

- the Government of Bangladesh must ensure proper registration of children, provide further training to judges and police officers on the requirements of the Children's Act, establish a monitoring entity which would report on the state of implementation of the relevant provisions of the Children's Act, 1974.
- OMCT is convinced that determining the age of criminal responsibility at seven years is too young. A definition of the age of criminal responsibility in accordance with the Convention would have major positive consequences on the juvenile justice system.
- OMCT is preoccupied that the definition of "child" in Section 2(f) of the Children's Act of 1974 leaves out the children aged from 16 to 18, and feels that this is contrary to the requirements of the CRC, which grants protection to all persons under 18.

In respect of the **jurisdiction and proceedings:**

- OMCT welcomes the recommendations made by the High Court Division of the Supreme Court of Bangladesh, and would like to emphasize that there is a need for more effective monitoring, investigations and sanctioning of those responsible for these violations. There should also be more training provided for law enforcement officials and criminalization of non-offender children should be eliminated.
- OMCT urges the authorities to ensure that child detainees are kept separately from adults, unless it is in their best interest to do so.
- OMCT urges the authorities to ensure that section 6(2) of the Children's Act is properly implemented and that children are not tried together with adults.

In respect of the **grounds of arrest:**

- OMCT is preoccupied by the wording found in Section 3 (9) of the Vagrancy Act of 1943, which is unduly vague and may give rise to arbitrary detention. OMCT also feels that training and support should be provided to parents in order to ameliorate

⁵⁴ Ibid, p. 14

their parenting skills and thereby reduce the number of ‘uncontrollable’ children detained.

- OMCT would recommend that the State amend its legislation as to establish a clear distinction between child offenders and child victims, in order for the latter to be protected and assisted, rather than submitted to criminal jurisdictions. More precisely, OMCT would urge the state to abrogate all provisions allowing coercive measures against children belonging to certain categories, even when no offence was committed.

In respect of the **sentencing**:

- OMCT deems that the aims of juvenile justice in Bangladesh are not analogous to the ones mentioned by the Beijing Rules and they must be reconsidered. There is also a need to provide more alternatives or diversion programs which would replace the abuse of deprivation of liberty and institutionalization.
- OMCT is also preoccupied that section 52(2) of the Children’s Act refers only to convicted children and feels that it should also be made applicable to pre-trial detention.
- OMCT is greatly concerned by the wording contained in section 51 of the Children’s Act, which provides little guidelines as to what constitutes an “*unruly and depraved character*” and provides no limits as to the conditions in which a child may be detained. Granting such extensive judicial discretion is dangerous and it may lead to abuse.

In respect of the **conditions of detention**:

- OMCT is greatly concerned by the conditions found in correctional centres and jails in Bangladesh and urges the Government of Bangladesh to adapt these to the requirements of section 37(c) of the CRC.
- OMCT also urges the authorities to undertake a survey of children detained in Bangladesh and order the immediate release of those who have been detained awaiting trial for an excessive period of time.

