

JUDICIAL SYSTEMS OF ASIAN COUNTRIES AS APPLIED TO CHILDREN: STRENGTHENING THE JUDICIAL PROTECTION OF CHILDREN*

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*"Mankind owes to the child the best
that it has to give."*

U.N. Declaration on the Rights of the Child

I. INTRODUCTION

The Philippines declares that children are "one of the most important assets of the nation."¹ Japan affirms that they shall "be respected as human beings," "esteemed as members of society" and "raised in a good environment."² China prides itself for being "a consistent respecter and defender" of their rights.³ The Preamble of the United Nations Convention on the Rights of the Child declares that "childhood is entitled to special care and assistance," and that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

It is now no longer questioned that children are significant members of the society, and that it is the State's fundamental duty to protect and care for them.

By protection, I do not mean the mere ensuring of the safety of their persons from threats of physical harm, but more so the guarantee that their rights will be respected and upheld. The 177 States Parties to the Convention on the Rights of the Child have declared that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding," thereby recognizing the right of

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¹ Pres. Decree No. 603 (1974).

² Initial Report of States Parties due in 1996: Japan. CRC/C/41/Add.1 (1996).

³ Initial Report of States Parties due in 1994: China. CRC/C/11/Add.7 (1995).

the child “to live an individual life in society and brought up...in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.”

This meeting itself is evidence of the genuine intent of each participating State to further the efforts to extend the protection accorded to children. Here and now we affirm the “importance of international cooperation for improving the living conditions of children in every country.”⁴ Living conditions, of course, cover a wide range of societal factors, but this year’s meeting focuses on the theme “Strengthening the Judicial Protection of Children.”

Our theme is not in the least unimportant. It will not be a hasty generalization to say that in all the countries now represented in this meeting, children get exposed and undergo judicial proceedings which significantly affect them. Each of our countries has its share of offenses committed by and against children. And we all see the need to develop efficient and effective means of dealing with such offenses to promote the best interests of the child.

Here in the Philippines, it has been observed that the justice system is frustrating, to the utter prejudice of suspected juvenile offenders.⁵ A story is recalled about a 17-year old boy charged with stealing a cellular phone, detained at the Manila Youth Reception Center, whose case was being tried at the Manila City Hall. The boy had been in detention for several months already. On the day set for the hearing of his case, he went to court with a social worker, his parents and a journalist who wanted to see how juvenile cases are tried. After several hours of waiting in the packed courtroom, the judge cancelled all the hearings for that day because the fiscal and the Public Attorney’s Office lawyer did not show up. It was that simple, and the boy had to go back to the detention center to await the next hearing date of his case. He had to stay in a place away from his natural environment – separate from his family, secluded from his friends, without a strong hope of being released in the near future. The journalist wrote,

The Philippine justice system is indeed frustrating...The thing is, things will not improve unless all the pillars of the justice system do their part in ensuring that the rights and welfare of children are protected and upheld. The law enforcement, courts, prosecution, correction institutions and the community all have to work together to bring justice to children. Time and again we have heard – the children cannot wait. A day that a child stays at a detention center or jail is a day in his life wasted. A child’s place is in school and with his family, where he is showered with the love and support he needs to live a normal and productive life.⁶

⁴ Preamble of the Convention on the Rights of the Child, available at <<http://www.unicef.org>>

⁵ Philippine Daily Inquirer, *The courts and youth offenders*, Melanie P. Ramos, August 10, 2001, p. A9.

⁶ *Id.*

In whatever capacity they participate, the rigorous judicial proceedings that children undergo have a tremendous impact on them. As witnesses, victims, defendants or complainants, children are likely to carry the effect of such proceedings even after they go out of the courtroom, while we sit on the sidelines and hope that the popular, albeit fatalistic, saying that "what does not kill you will only make you stronger" applies to them, too.

Perhaps, therefore, it can be said that this meeting is our response to the call for efforts to improve the justice system as applied to children – a call that may not have been explicitly voiced out by the society but have been heard by the State as *parens patriae* from the many moans and groans of those who have been subjected to judicial proceedings and as a result, traumatized. Today we try to learn from each participating State the mistakes as well as the best practices in handling children-related judicial cases. We sit together now to study our situations, in the hope that we will come up with better procedures to govern child-related cases, so that someday, any child who may have to deal with the law will emerge unscathed.

II. SURVEY OF ASIAN COUNTRIES' JUDICIAL PROCESSES RELATING TO CHILDREN (Brunei, China, Japan, Malaysia, Philippines, Singapore, South Korea, Thailand, and Vietnam)

Questionnaires in relation to our theme have been sent out by the Department of Foreign Affairs of the Philippines to the participating States. From the responses received, I will now try to catalogue the different procedures used by different Asian countries in relation to children. Please note however that not all participating countries sent replies. For those who did not do so, I based my study of their judicial processes on their Initial Reports to the Committee on the Rights of the Child, and on other research materials which will be specifically indicated.

I will look at the child-related judicial procedures of the participating Asian countries sequentially – from the investigation phase which is usually the child's first contact with the judicial system, to the trial stage where the child is mostly subjected to court rules and procedures, up to the post-judgement procedures where the child is released from the court's jurisdiction and/or custody to be reintegrated to society.

But before I go into the said processes, it is first essential to determine who are contemplated by the Asian countries as covered by their legislation protecting “children.”

First, be it remembered that the United Nations Convention on the Rights of the Child, Article 1 defines a “child” as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.” From this provision it is evident that the States Parties to the Convention recognize that different countries may define the term differently, and that even within one country, the term may have different meanings for different purposes.

In the Philippines, several laws provide different definitions and different terminologies. Under the Family Code, as amended by Republic Act 6809, “majority commences at the age of eighteen years.”⁷ The Child and Youth Welfare Code uses the terms ‘minor’, ‘child’ or ‘youth’ to refer to persons below 21 years of age except those emancipated in accordance with law⁸ and “youthful offender” to mean a child, minor or youth over 9 years but under 18 years of age at the time of the commission of the offense. Republic Act 7610, known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act” defines “children” as persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. The Revised Penal Code makes further distinctions in its treatment of minors – those under 9 years of age enjoy absolute exemption from criminal liability, those over 9 and under 15 are exempt from criminal liability unless he or she acted with discernment, and those above 15 and under 18 years may only mitigate their criminal liability because of such minority.⁹

In Brunei Darussalam, a “child” is defined under the Children Order 2000 as a person who is under the age of 18 years. Brunei’s Evidence Act does not define a child, although the Criminal Procedure Code provides that a child victim under the age of 14 years may avail of the special procedures of the courts in giving testimony.

China’s Law on the Protection of Minors defines a “minor” as a citizen who has not attained 18 years of age. This is in consonance with the General Rules of Civil Law of the country, which provides that “citizens aged 18 or over shall be considered as adults.” Under the same General Rules, however, it is stated that those over 16 but below 18 shall be deemed to have full civil capacity if their income from labor constitutes their principal means of support. The Marriages Act provides

⁷ FAMILY CODE, art. 234.

⁸ Pres. Decree No. 603, (1974), art. 2.

⁹ Art. 4(2) & (3) in relation to art. 80.

that boys may marry at the age of 22, while girls may do so when they reach 20 years old. The People's Republic of China prohibits "child labor" which is defined as labor performed for economic reward by a child or youth under the age of 16.¹⁰

Indonesia's Civil Code pegs the age of simple majority at 18 years for males and 15 years for females. The Penal Code, however, provides that anybody who has not yet reached 16 years is under age. The age of consent for marriage and the age of consent for sexual activity are also different. The first is 18 for males, 15 for females, and the latter is 19 for males, and 16 for females.¹¹

Japan's Civil Code prescribes "that any person attaining 20 years of age may take legal action autonomously." Adulthood, thus, starts from the time a person reaches 20 years old, as a consequence of which, he or she becomes entitled to rights previously withheld by reason of his or her minority. For one, an adult is entitled to vote for members of the Diet. An adult acquires the capacity to conduct juristic acts independently. He or she also acquires the right to personally deliver statements in civil suits and civil mediation, which before he or she reached majority age was required to be delivered through legal representatives. The Civil Code, however, also allows for emancipation of the minor by marriage even before he or she reaches the age of majority, provided that the male marries at 18 years, and the female at 16. The Juvenile Law defines "juvenile" to be anyone under 20 years of age. The Penal Code provides that any act of a person under 14 is not punishable. Article 4 of the Child Welfare Law defines "child" as anyone under 18 years.¹² The same law also prohibits inducement of a person under 18 years of age to practice obscene acts.¹³ The Labor Standards Law prohibits the employment of "children under 15 full years of age," subject only to certain specific exceptions. Anyone under 20 full years of age is prohibited from drinking liquors and smoking under the Law on Prohibiting Liquors to Minors and Law on Prohibiting Smoking to Minors.¹⁴ The Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting of Children, which took effect in November 1999 defines "child" as anyone under 18 years of age.¹⁵

¹⁰ *Initial Reports of States Parties due in 1994: China*. CRC/C/11/Add.7 (1995).

¹¹ 'Sexual Abuse,' available <<http://www.interpol.int/Public/Children/SexualAbuse/Default.asp>> February 20, 2003.

¹² 'Ages for Legal Purposes' available <<http://www.mofa.go.jp/policy/human/child/report2/definition.html>> February 20, 2003.

¹³ *Initial Reports of States Parties due in 1996: Japan*. CRC/C/41/Add.1 (1996).

¹⁴ *Id.*

¹⁵ Japan, Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children, available <<http://www.mofa.go.jp/policy/human/child/report2/definition.html>>

Malaysia's Child Act 2001 which took effect on August 1, 2002 provides that a "child under the age of 14 years" shall not be ordered to be imprisoned for any offense, or be committed to prison in default of a fine, compensation or costs. The definition of a child in this new legislation is now what is controlling, since this Act repealed the Juvenile Courts Act 1947, the Child Protection Act 1991, and the Women and Girls Protection Act 1973.¹⁶

The Children and Young Persons Act of Singapore defines "children" as those less than 14 years old, and "young persons" are those with ages between 14 to 16. Singapore's labor legislation provides that "children below the age of 12" are prohibited from being employed while "those between the ages of 12 and 16" may be employed subject to employers' compliance with the safeguards in the law. Under the Penal Code, a child who is at least 7 years old may be an accused person, provided he or she has attained "sufficient maturity of understanding to judge of the nature and consequence of his or her conduct on that occasion." A child or young person who is below the age of 16 years can only be tried in the juvenile courts. Singapore also has a Vulnerable Witness Programme under which special support and protection are accorded to "any child or young person below the age of 16 years, who may be a victim or a witness, and even to victims and witnesses over 16 years of age who have a mental age of under 16 years."

In South Korea, majority is attained at age 20 pursuant to Article 4 of the Civil Code. It further provides that a minor should get the consent of his legal representative to perform a juristic act.¹⁷ The Juvenile Act of 1953 as amended states that minors who are above 12 and under 14 years of age at the time they committed the offense shall be tried by the Juvenile Department in a juvenile protection case.¹⁸

In Thailand, the Juvenile and Family Law of 1991 defines a child as a person between 7 and 14 years old.¹⁹ The National Youth Act uses the term "child" to refer to a person between zero to 18 years old, and "youth" to mean persons not older than 25 years.²⁰ The Act Instituting the Juvenile and Family Courts defines a "child" to be a person over 7 years of age but below 14, and "youth" are persons over 14 but below 18 years of age.²¹ The Penal Code pegs the beginning of criminal responsibility at 7 years. The Criminal Procedure Amendment Act (no. 20) B.E.

¹⁶ 'Children & the Courts: Insights into the Child Act 2001,' available <<http://www.mlj.com.my/products/conferences/details.asp?id=73>> October 22, 2002.

¹⁷ Art. 5.

¹⁸ South Korea Law 489 (1958), as amended by Law 1376 (1963).

¹⁹ 'Save the Children (UK) and the UN Convention on the Rights of the Child' Available <<http://www.globalmarch.org/virtuallibrary/dci/southeast-asia.htm>>. August 22, 1995.

²⁰ *Id.*

²¹ *Initial Reports of States Parties due in 1994: Thailand*. CRC/C/11/Add.13. (1996).

2542 (1999) aims to protect “children up to 18 years old.” The Labor Protection Act of 1998 increased the minimum age of employees from 13 to 15 years old, with special measures for the protection of child workers aged 15 to 18 years.²² Under Thailand’s Prostitution Prevention and Suppression Act of 1996, sex customers suffer harsher penalties if they engage the services of children, defined as those less than 18 years. The official Thai dictionary as published by the Royal Institute in 1982 defines “child” as a person below the age of 14 years.²³

Vietnam also has several laws defining children for different purposes. The Law on the Protection, Care and Education of Children defines children as all citizens under 16 years of age. The 1992 Constitution stipulates that all Vietnamese citizens 18 years old or more shall have the right to vote, and all citizens 21 years old or more shall be eligible for election to the National Assembly. The Law on Marriage and the Family states that the minimum ages for marriage are 20 years for men and 18 years for women. The same law also stipulates that parents shall have to pay indemnities for damage caused by illegal acts committed by any of their children under the age of 16. The Law on Military Service states that all citizens of 18 years or more shall be required to serve in the military. The Penal Code states that all people aged 14 or 15 years shall bear penal responsibility only for serious, intentional offenses, but that they may not be sentenced either to life imprisonment or to capital punishment, whereas those aged 16 or more shall bear full penal responsibility for any offence they commit. It also stipulates that when the authorities seek information about criminal acts from witnesses under 15, their parents, legal representatives or teachers must be present. The Law on Nationality states that children of 15 years or more but less than 18 years of age shall be consulted before their nationality is changed while, if they are under 15, their parents’ change of nationality automatically entails their own change of nationality. The Law on the Universalization of Primary Education states that children from 6 to 14 years of age shall receive primary education and complete it (i.e. complete fifth grade).²⁴

A. INVESTIGATION PROCESS

When a child commits an offense, or is suspected of committing an offense, he or she becomes subject to the investigative power of the State. Likewise, when a child complains of an offense committed against him or her, he or she also has to be investigated by the authorities to determine the veracity of his or her story and to follow up on the complaint.

²² ‘Combating Sexual Exploitation of Children and Youth, Good Practice from Thailand’ *Memorandum of Understanding (MOU) on the Procedures for Women and Children as Victims of Trafficking*.

²³ *Initial Reports of States Parties due in 1994: Thailand*. CRC/C/11/Add.13. (1996).

²⁴ *Initial Reports of States Parties due in 1992: Vietnam*. CRC/C/3/Add.21 (1993).

1. Philippines

In the Philippines, the process is initiated when a complaint or information is filed with the appropriate officer for the purpose of conducting the requisite preliminary investigation, or with the office of the prosecutor, or even directly with the Municipal Trial Courts and Municipal Circuit Trial Courts.²⁵ It may also be filed directly with the Family Court if no preliminary investigation is required.²⁶

The Rules of Criminal Procedure expressly allows a minor to file a complaint or information independently of his or her parents, grandparents or guardian for the offenses of seduction, abduction and acts of lasciviousness.²⁷

In the event, however, that a complaint is filed against a minor, the officers may apply for a warrant for the minor's arrest, or may even effect a valid warrantless arrest provided such falls within the circumstances provided by law, to wit:

- a. When, in his (peace officer's) presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- b. When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and,
- c. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment, or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.²⁸

The Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders ("Rules on Apprehension") provide that handcuffs or other instruments of restraint should not be used on the arrested child unless absolutely necessary. The arresting officer should also refrain from vulgar or profane conduct, the display or use of firearms or weapons, or any other form of violence or unnecessary force.²⁹ It also provides that a female youthful offender should only be searched by a female police officer.

²⁵ REVISED RULES OF COURT, Rule 110, sec. 1.

²⁶ Supreme Court A.M. No. 02-1-18-SC or the Rule on Juveniles in Conflict with the Law (effective 15 April 2002), sec. 11.

²⁷ REVISED RULES OF COURT, Rule 110, sec. 5.

²⁸ REVISED RULES OF COURT, Rule 113, sec. 5.

²⁹ Supreme Court A.M. No. 02-1-18-SC, sec. 6.

The arrested minor should immediately be taken to any available government medical or health officer in the area for a physical and mental examination for the purpose of addressing the immediate physical and mental needs of the minor.³⁰ The arresting officer is mandated to notify within eight (8) hours from arrest the duly authorized officer or social worker of the Department of Social Welfare and Development (DSWD) and the parents or guardian of the minor.³¹ The arrested child shall afterwards be turned over to the Child and Youth Relations Section (CYRS) or Child and Youth Relations Officer for the proper disposition of the case.³²

The minor's statement shall then be secured in the presence of his or her legal counsel, and whenever possible, his or her parents, guardian or social worker, or support persons and as far as practicable, in private. Any statement from the minor secured not in the presence of counsel will not be admissible in any proceeding. The parents, guardian or social worker shall be advised of the minor's right to remain silent and to have competent legal counsel preferably of his or her choice.³³ The investigating officer shall either release the minor to the custody of the social worker or a responsible person in the community for supervision and counseling, or forward the records of the minor's case, stamped with the word "YOUTH" to the prosecutor or judge concerned for the conduct of an inquest to determine whether or not the minor shall remain in custody and charged in court.³⁴

Pending trial of the case, the minor shall be entitled to be released on bail unless the offense for which he or she is charged is punishable by *reclusion perpetua*³⁵ or higher, and the evidence of guilt is strong. In determining the penalty imposable on the minor for the offense with which he or she is charged, the mitigating circumstance of minority shall be taken into account, which results in a lowering of the penalty provided in the Penal Code. If the minor is unable to furnish bail, the court may either commit him or her to the custody of the duly authorized officer or social worker of the DSWD, or in the local rehabilitation center, or in a detention home distinct and separate from jails, or even on recognizance to the custody of the minor's parents or other suitable person who shall be responsible for the minor's

³⁰ Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders Pursuant to Article 209 of P.D. 603 (hereinafter 'Rules on Apprehension'), sec. 5, as cited in *Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System*, Adhikaon Para Sa Karapatang Pambata (AKAP), UNICEF (1998).

³¹ *Id.*

³² National Project on Streetchildren, *Police Handbook on the Management of Cases of Children in Especially Difficult Circumstances* (Quezon City: 1993), p. 16 as cited in *Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System* (1998), p. 46.

³³ Rules on Apprehension, sec. 6.

³⁴ Rules on Apprehension, sec. 8, 9.

³⁵ REVISED PENAL CODE, art 27, provides that the penalty of *reclusion perpetua* shall be from twenty (20) years and one (1) day to forty (40) years.

appearance whenever required.³⁶ In the absence of a rehabilitation or detention center within a reasonable distance from the court, the juvenile shall be detained in the provincial city or municipal jail with adequate quarters separate from adult detainees and detainees of the opposite sex.³⁷

According to the Department of Justice, practically, the child undergoes questioning in three (3) instances. First, at the law enforcement level, before filing the case at the Prosecutor's Office. Second, by the prosecutor, during clarificatory hearing as part of the preliminary investigation stage. Third, during trial. There may be other venues where the child may be interviewed by agencies providing protection or assistance to the child. The DOJ is not aware of any common instrument used among all agencies involved requiring interviews/investigation of the child victim.

One strategy used in the Philippines to minimize the occurrence of double victimization is the Multidisciplinary Team Approach. Under the Comprehensive Program on Child Protection formulated by the Special Committee for the Protection of Children chaired by the Department of Justice (DOJ), it is recommended that a Uniform Reporting and Investigation Format be adopted. Although interagency arrangements are being forged with respect to the interview process, each agency has its own interview format as each agency has its peculiarities and specific purposes in conducting the interview. For instance, the National Bureau of Investigation (NBI) would have a different format from that of the police. The DSWD may apply a different method of interview so as to determine the appropriate psychosocial intervention for the child; the Commission on Human Rights (CHR) may also require additional information for their other programs such as financial assistance.

Presently, the Violence Against Women and Children Division (VAWCD) of the NBI has adopted a "One Stop Shop" approach at its Child Friendly Investigation Studies, composed of a Forensic Interview Team (investigator, psychologist, social worker, medico-legal officer) to facilitate the victim's legal, medical, psychological and rehabilitation concerns and to gather evidence for the prosecution of the offender. Thus far, the approach has been replicated in Baguio City while the studios in the Cities of Iloilo, Cagayan de Oro and Tuguegarao are undergoing construction.

There is also the Child Protection Unit of the Philippine General Hospital (PGH-CPU) which conducts forensic medical investigation for child victims but it is up to the parents to file the necessary cases. Lately a Memorandum of Agreement

³⁶ Rules on Apprehension, sec. 11.

³⁷ Supreme Court A.M. No. 02-1-18-SC, sec. 18.

was concluded with the Philippine National Police (PNP) in order to facilitate the filing of cases. The Department of Health plans to establish CPUs in 12 Regional Centers and the PGH-CPU has trained its personnel, 2000 to date, from sixteen cities.

2. Brunei Darussalam

In Brunei, the investigation process is governed by their Criminal Procedure Code. In cases where the child is the victim-complainant, police personnel from the Domestic Violence Unit of the Royal Brunei Police Force conduct an interview of the child. Such interview may be repeated if necessary to find out the whole picture of the alleged offense. A child psychologist, furthermore, talks to the child to determine his or her intellectual range and competency. A Deputy Public Prosecutor is assigned to the case, and said prosecutor can also conduct his or her own interview of the child.³⁸

It is recognized that such repeated questioning can cause the child unnecessary emotional distress, and so to reduce such possibility, the interview-investigation is, as much as possible, conducted with all the parties present in the very first instance. The psychologist may conduct the actual questioning, while the police officer and the prosecutor sit as observers and record the proceedings.³⁹ Investigation usually lasts no more than two weeks.

If the perpetrator of the alleged crime is a family member of the child, the latter will be removed from the home environment and placed in a protected institution, known as *Ramah Al-Islah*. If the perpetrator, on the other hand, is not a family member, still the prosecutor can apply to the court for measures to protect the child from the suspected criminal. One such measure is the imposition as part of the perpetrator's bail condition that he or she stay away from the child, subject to the court's revocation of his bail should he or she violate such condition.⁴⁰ The Children Order 2000 of Brunei empowers any protector who is satisfied on reasonable grounds that a child is in need of protection, to take such child into temporary custody and placed in a place of safety until such time as the child is brought before a court.⁴¹

³⁸ Response to the Questionnaire, dated 24 April 2002.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

3. People's Republic of China

In China's Initial Report to the Committee on the Rights of the Child, it was there stated that "when dealing with cases involving minors, the State public security and judicial departments, procuratorates and courts have taken care to strengthen the links between them, gradually creating special-purpose machinery for handling criminal cases involving minors and increasing their monitoring of and cooperation with each other."

No legal provision restricting the number of times a child may be interviewed in the course of investigation exists in the statutes of China. Article 14 of China's Criminal Procedure Law provides that "the People's Courts, the People's Procuratorates and the public security organs shall safeguard the procedural rights to which participants in proceedings are entitled according to law. In case where a minor under the age of 18 commits a crime, the criminal suspect and the legal representative of the defendant may be notified to be present at the time of interrogation and trial." This is also true of a witness under 18 years old, as stipulated in article 98. Further, article 182 of the Procedures of the Public Security Organ in the Handling of Criminal Cases states "the interrogation of a minor criminal suspect should adopt ways different from those of adults, taking into consideration the very physical and mental characters of the minor; patriarch, guardian or teacher of the defendant should be notified to be present unless it hinders investigating or unless it is unable to notify them.; interrogation could be conducted in the premises of relevant public security organs or at the defendant's home, working place, schools or any other appropriate places." Article 92, still of the Criminal Procedure Law, provides that the time for interrogation shall not exceed twelve hours.

People's procuratorates oversee the investigations of cases involving juvenile offenders. The Protection of Minors Act shall be followed strictly, establishing special bodies or using experts to handle cases involving minor offenders and making allowance for the minor's physical and emotional characteristics in the process of law enforcement. Said Act, in article 42, prohibits the disclosure of a minor's name, home address and photo as well as other information which can be used to deduce the identity of such minor in news reports, films, television programs, and any other openly circulated publications before judgment. Pending trial, public security organs, people's procuratorates and people's courts shall guard minors under custody separately from adults under custody.⁴²

⁴² People's Republic of China Law on the Protection of Minors, art. 41.

During the investigation stage, a social investigation regarding the minor's family condition, social relations, personality and process of growing up is conducted by the prosecutor and a minor protection organization, to be submitted to the court.

4. Japan

The Juvenile Law of Japan provides the procedures used in handling juvenile offenses, which procedures are different from those for adults. Care is taken to ensure that the measures used are consistent with the goal of educating the juvenile offender so that he or she can play a constructive role in future society. Offenders below 14 years old are not punished, as mandated by the Japanese Penal Code, but instead are sent to a home for juvenile training and education.⁴³

In Japan, it is considered undesirable for public prosecutors to interrogate juvenile offenders as criminals in a criminal proceeding, so the cases are referred to the family courts where the judge will conduct an *ex officio* hearing to investigate the juvenile delinquent and at the same time, to determine the most reasonable and appropriate measures for the juvenile. In such hearings, the judge questions the juvenile directly and gives him or her educational instructions, with the help of medical, psychological, pedagogical, sociological and other technical support personnel as well as family court investigators.⁴⁴ The judge may also appoint a family court probation officer to conduct a "social investigation" as to the personal history, personality and environment of the youth offender, to determine the probability of delinquency. The family court probation officer may call the juvenile and his/her parents or guardian to the court office for interview.⁴⁵ In investigating the case against the accused minor, the Standard of Criminal Investigation requires the police investigators to refrain from using such means as compulsion, torture or threats, and to be careful of what they say and do. The police should conduct the investigation with consideration and understanding and exert efforts not to hurt the minor's feelings, based on the spirit of protecting the sound growth of juveniles.⁴⁶

As protective measures, the court may send the juvenile to Juvenile Classification Homes or Juvenile Training Schools, where they will be treated in accord with the objective of the law, which is the sound upbringing of juveniles, in full consideration of the fact that respect for human dignity and value is essential for bringing up healthy juveniles.⁴⁷ Such detention shall not exceed four weeks.⁴⁸

⁴³ *Initial Reports of States Parties due in 1996: Japan*. CRC/C/41/Add.1 (1996).

⁴⁴ *Id.*

⁴⁵ 'The Japanese Judicial System,' Available <<http://www.kantei.go.jp/foreign/judiciary/0620system.html>> July 1999.

⁴⁶ *Initial Reports of States Parties due in 1996: Japan*. CRC/C/41/Add.1 (1996), par. 271.

⁴⁷ *Id.*, par. 260.

⁴⁸ *Id.*, par. 284.

During such period, the juveniles are allowed to meet and correspond with their families, guardian, attendants and other persons deemed necessary, insofar as such does not harm correctional education, pursuant to the Juvenile Training School Treatment Regulation and the Juvenile Classification Home Treatment Regulation.⁴⁹

5. Malaysia

In Malaysia, before any decision to prosecute is made, a full police investigation has to be concluded first. Such full police investigation involves the recording by the investigating officer of the statements of all the witnesses, child or adult. If the complaint is filed by a child, the child must be sent for medical examination and psychological assessment to assess the maturity and intellectual level of the child. To prevent trauma due to repeated questioning, the officer assigned to the case must be specially trained in handling child-related cases. The child may also be given protection pending investigation of the case by his or her nearest family members or the Social Welfare Department.⁵⁰

Child Act 2001 provides that any child in need of protection may be taken by a police officer into temporary custody. If a child has been sexually abused, he or she may be committed temporarily in a place of safety until the determination of the proceedings against the person charged, such detention not to exceed beyond the time the child attains 18 years.

6. Singapore

As with the other Asian countries, Singapore too does not have a limit on the number of times a child may be questioned during investigation. They may be questioned for as long as necessary, except that for sexual abuse cases, as far as possible, the victim is only questioned by the police on the incident.⁵¹ To prevent traumatizing investigations, the police officers who conduct the same are specially trained for the procedure, and the investigation is conducted as a role-playing session instead of the normal interrogation.⁵²

7. South Korea

In South Korea, a juvenile who has committed a crime and in view of his character or circumstances is transferred by the police station chief to the Juvenile

⁴⁹ *Id.*, par. 128.

⁵⁰ Response to the Questionnaire, dated 3 January 2002.

⁵¹ Response to the Questionnaire, dated 23 November 2001.

⁵² *Id.*

Department concerned,⁵³ together with a record of his name, domicile, date of birth and outline of offenses. If the criminal act committed deserves a penalty of imprisonment as a result of examination or trial, the department, by means of a ruling transfers the case to the prosecutors' office corresponding to the competent district court. The accused juvenile and his guardian are notified immediately.

Investigation is conducted by a juvenile investigator upon order of the judge of the Juvenile Department. He looks into the character, personal records, family conditions, and other circumstances of the juvenile concerned, his guardian or references and other necessary matters. The Juvenile Department also takes into account the diagnosis by psychiatrists, psychologists, social workers, educators and other experts and classification results including the opinion of the reformatory.⁵⁴

8. Thailand

A youth offender in Thailand will be arrested by government officials, who will then have the authority to detain him or her for twenty-four hours to be interrogated. During such 24-hour detention, the offender must not be confined with adults, and he or she must be sent to an observation and protection center immediately after the allowed 24-hour detention.⁵⁵ In the response of Thailand to the questionnaire sent out for this meeting, it was there said that a child will only undergo questioning twice, first during the investigation stage, and afterwards during trial. The inquiry stage should be properly documented by video and audio recording, and taken in privacy in a suitable place for the child. The inquiry should be conducted in the presence of a psychologist or social worker, a person whom the child requested to be present and the public prosecutor. The child has a right to bail during the investigation, and bail procedures in such cases are not as complicated as the ones applied to adult offenders.⁵⁶

9. Vietnam

Finally, Vietnam's laws also provide no limit to the number of times a child may be questioned during investigation. The Criminal Procedure Code requires that all evidence must be presented at the court, and pursuant to this, the child may be questioned until enough proof is collected. During such investigation, the child's lawyer and/or guardian should participate. Such participation by the lawyer and/or

⁵³ South Korea Juvenile Act 1958, art. 4.

⁵⁴ South Korea Juvenile Act 1958, arts. 9-11.

⁵⁵ *Initial Reports of States Parties due in 1994: Thailand*. CRC/C/11/Add.13. (1996).

⁵⁶ *Id.*

guardian is aimed at ensuring that the child will not be traumatized by the experience.⁵⁷

FROM THIS overview of the participating Asian countries' rules governing the investigation stage in a court case, several cross-cutting issues emerge. It seems evident that not all employ psycho-social intervention during the investigation stage. Only the Philippines, Brunei, China, Japan, Malaysia and Thailand indicated their use of psychologists, medical and other technical experts in their conduct of the investigation. Brunei even explained in its response to the questionnaire that "psychologists are not involved in monitoring the progress of the child except to assess the competency and intellectual level of child victims. Thus, child psychologist report on child progress is not available to court for assessment and thus psychological considerations are not incorporated in judgements and orders." In the other countries where psychologists are utilized, such usually merely extends until the child testifies in court, and not until after the case has been terminated, to ensure the stability of the child after the ordeal. This shows that the intent behind the allowance of psychologists' participation in judicial proceedings is more to facilitate the easy and credible giving of testimony rather than the desire to protect the child from unnecessary emotional distress and trauma.

The United States Department of Justice in 1999 published a monograph entitled "Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses." In that publication, it was stated after a careful study that the use of "personnel trained in interviewing children," the involvement of "victim advocates and clinicians in the early stages of the cases," and the use of "a multidisciplinary, team approach when handling cases involving child victims and witnesses" achieve a number of goals, to wit: (1) enhance support and representation for child victims in the criminal justice and juvenile court system, and (2) access treatment programs to help children recover and to help prevent future revictimization. The improved practices "benefit both the child victim" and witnesses "and the cause of justice." Sadly, though, such measures are not maximized by the judicial procedures in force now in Asian countries.

Another issue that emerges from the cursory discussion of the Asian judicial systems is the differential treatment of males and females. First, from the laws defining the term child for different purposes, it appears that a further distinction based on gender is also being made. For one, in most countries I talked about, the marrying age for males and females are different. The males usually have a higher age requirement before they are allowed to enter into marriage. Whether that

⁵⁷ Response to the Questionnaire, dated 7 November 2001.

reflects the old belief about males maturing later than females, or the *passé* justification that males need more time to develop their abilities and achieve their goals while females can marry early because they do not need to hone their potentials anyway, is not for me to say and conclude. Whatever may be the reason behind such difference, the fact remains that males and females are still treated unequally in some Asian countries.

It is well worth pointing out too that in Brunei, the provision allowing abused children to be removed from their homes if the perpetrator is a family member and placed in the protected institution of *Rumah Al-Islah* applies only to young women and girls, and do not cover young boys, unless such boy is subjected to the same abuse as his sisters in which case he will be allowed to stay in the institution with his female siblings. Again, I am not in a position to judge the wisdom of this law.

B. TRIAL

After the inquiry stage, and it is determined by the proper officer that a criminal charge should be filed against the minor offender, then an information or complaint should be filed in court and the case set for trial.

1. Philippines

The Family Court has exclusive original jurisdiction to hear and decide, among others, cases on: (a) criminal cases where one of the accused is below 18 years but not less than 9 years, or where one or more of the victims is a minor at the time of the commission of the offense; (b) petitions for guardianship and custody of children; (c) petitions for voluntary or involuntary commitment of children; (d) cases against minors cognizable under the Dangerous Drugs Act; (d) violations of Republic Act 7610, as amended; and (e) cases of domestic violence against women and children.⁵⁸

In the Philippines, the prosecutor, after conducting the preliminary investigation, should prepare a resolution detailing why there is cause to hold the offender for trial, and certifying that he (prosecutor) has personally examined the complainant and witnesses, and there is reasonable ground to believe that a crime has been committed and that the offender is probably guilty thereof.⁵⁹ The records

⁵⁸ Rep. Act No. 8369 (1997), sec. 5.

⁵⁹ REVISED RULES OF COURT, Rule 112, sec. 4.

of the case shall be forwarded to the proper approving officer, and once such approval is acquired, then the information may be filed in court. The Social Welfare officer assigned to the minor by the DSWD shall undertake a preliminary background investigation of the juvenile and submit a report on his findings to the court where the case against the minor is filed.⁶⁰

Each Family Court has a Diversion Committee charged with determining whether the juvenile can be diverted to a diversion program or undergo formal court proceedings. Diversion proceedings are conducted prior to arraignment, when the charge against the minor is punishable by fine or by fine and imprisonment of not more than six months.⁶¹ The following factors should be considered by the Diversion Committee in making its recommendation: (a) the track record of the juvenile, (b) whether the juvenile is an obvious threat to himself and/or the community, (c) the juvenile and his or her parents' attitude, and (d) whether the juvenile's relationships with his peers increase the possibility of delinquent behavior.⁶² The diversion programs which the committee may recommend include written or oral reprimand, written or oral apology, guidance for the juvenile and his family, payment of damage caused, trainings, seminars and lectures on skills that will aid the juvenile to properly deal with situations that can lead to a repetition of the offense, institutional care and custody, or work-detail program in the community.⁶³ Consent to the diversion program must be given by both the juvenile and the private complainant.⁶⁴ The Family Court shall approve, supervise and control the enforcement of the diversion program.⁶⁵

If diversion programs are not applicable, the offender is then presented in court for arraignment, during which the judge reads the information filed against such offender and asks the offender his or her plea. The arraignment shall be held in chambers, within seven days from the date of the filing of the complaint.⁶⁶ If the minor pleads not guilty, or the judge orders that a plea of not guilty be entered, then the case will be set for pre-trial, and subsequently, trial.⁶⁷ There used to be Juvenile and Domestic Relations Courts, but they were abolished in 1983. Instead, juvenile and domestic relations cases and cases involving youthful offenders are now handled by the Regional Trial Courts designated by the Supreme Court to handle such specialized cases.⁶⁸ The Family Court Act of 1997 provides for the establishment of

⁶⁰ Supreme Court A.M. No. 02-1-18-SC, sec. 10.

⁶¹ Supreme Court A.M. No. 02-1-18-SC, sec. 20-21.

⁶² Supreme Court A.M. No. 02-1-18-SC, sec. 21.

⁶³ Supreme Court A.M. No. 02-1-18-SC, sec. 22.

⁶⁴ Supreme Court A.M. No. 02-1-18-SC, sec. 21.

⁶⁵ Supreme Court A.M. No. 02-1-18-SC, sec. 24.

⁶⁶ Supreme Court A.M. No. 02-1-18-SC, sec. 27.

⁶⁷ REVISED RULES OF COURT, Rule 116, 118, 119.

⁶⁸ Batas Pambansa Blg. 129 (1981) sec. 19, par. 7.

family courts which would have exclusive jurisdiction over criminal cases where the accused is below 18 but not less than 9 years of age, or where one or more of the victims is a minor at the time of the commission of the offense.⁶⁹ As of date, however, this has not been fully implemented.

It is at the trial stage where the accused is mostly exposed to the judicial processes, and it is therefore at this stage that maximum care needs to be taken to ensure that the youth offender will not be subjected to shabby treatment which may negatively affect his or her development and hinder the minor from becoming the citizen the State envisions him or her to be.

The youth offender enjoys the same rights as that of an adult accused, as guaranteed by Article III of the 1987 Constitution of the Philippines, *viz*:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative remedies.

Section 17. No person shall be compelled to be a witness against himself.

The minor offender shall also have the right to be protected from public identification.⁷⁰

As was stated in the first part of this paper, children below 9 years cannot be subjected to trial as they are absolutely exempt from criminal responsibility, while those over 9 but below 15 years may be tried provided they acted with discernment at the time they allegedly committed the offense.

⁶⁹ Rep. Act. No. 8369 (1997), sec. 5(a).

⁷⁰ Rules on Apprehension, sec. 20.

The court, in promulgating its judgment, shall consider the best interest of the juvenile, the rights of the victims and the need for restorative justice. Restriction on personal liberty shall be limited to the minimum and no corporal punishment may be imposed.⁷¹

The 2002 Rule on Juveniles in Conflict with the Law provides for automatic suspension of sentence without need of application by the juvenile. A disposition conference, participated in by the social worker, the juvenile and his or her parents or guardian shall be held to determine the disposition measures best suited to the rehabilitation and welfare of the juvenile. Such disposition measures may include:

- (1) care, guidance and supervision orders;
- (2) community service orders;
- (3) drug and alcohol treatment;
- (4) participation in group counseling and similar activities; and
- (5) commitment to the Youth Rehabilitation Center of the DSWD or other centers for juveniles in conflict with the law authorized by the DSWD Secretary.⁷²

As for the child witness, the Philippines has several safeguards in place to protect him or her from traumatizing courtroom experience. There is no requirement to prepare the child before trial, although neither is it prohibited. Such preparation usually covers the delivery of testimony, although the officer should be cautious in conducting the training of the child not to dictate or influence what the child has to say.

There is no minimum age requirement before a child's testimony may be admissible in court. For as long as the child understands the meaning of an oath, or appreciates that he or she cannot lie during the court proceeding, such child will be deemed a competent witness. In fact, the Supreme Court of the Philippines, in several cases, expressed the view that a child is an even better witness than an adult because of the more observant nature of the child, and his or her lesser tendency to fabricate facts. However, the Court may conduct a competency examination of a child when it finds that substantial doubt exists regarding the ability of the child to perceive, remember or communicate.⁷³

The child's parents should be present during the trial, but the court may *motu proprio* appoint a guardian *ad litem* for the child in case his or her parents are not present, or the interests of the parents are adverse to those of the child.⁷⁴ The Rule on Examination of a Child Witness, approved by the Supreme Court on November

⁷¹ Supreme Court A.M. No. 02-1-18-SC, sec. 30.

⁷² Supreme Court A.M. No. 02-1-18-SC, sec. 32.

⁷³ Rule on Examination of Child Witness, sec. 6.

⁷⁴ Rules on Apprehension, sec. 15.

21, 2000, also provides for the appointment of a special advocate or guardian *ad litem* who should be familiar with the judicial process, social service programs and child development. Such court-appointed guardian shall be notified of all proceedings. He or she is prohibited from divulging any information, statement or opinion received from the child in the course of the guardianship.⁷⁵

The courtroom environment, as provided in the rules, shall be comfortable for the child. For this purpose, the court may make orders to direct and supervise the location, movement and deportment of all persons in the courtroom.⁷⁶ The witness chair may be rearranged to facilitate the testimony of the child. The child shall testify during a time of day when he or she is well-rested and may be allowed reasonable periods of relief.⁷⁷

The Rule also provides measures for the child to deliver his or her testimony and participate in the trial not in the presence of the accused who may intimidate the child. Such measures are the use of live-link T.V., screens, one-way mirrors, and other devices.⁷⁸ These measures may be used upon approval of the judge after a petition from the child's guardian *ad litem*, support person or the prosecutor.⁷⁹ The child's support person is a person chosen by the child to accompany him to testify at or attend a judicial proceeding or deposition to provide emotional support for him. The judge may allow the support person to accompany the child even in the witness stand and hold the child's hand while the latter testifies, provided the support person does not obscure the child from the view of the opposing party, judge, or hearing officer, and that such support person is not also a witness, or that he has already testified ahead of the child.⁸⁰

Videotaped or audiotaped interviews of the child in abuse cases are admissible in court. When a child testifies, the judge may order the exclusion from the courtroom of all persons, including the media, who do not have a direct interest in the case. The judge may also order the giving of the child's testimony to be done in chambers if such is necessary to protect the privacy of the child, or if the judge determines beforehand that requiring the child to testify in open court would cause psychological harm to him, hinder the ascertainment of truth or his ability to effectively communicate due to embarrassment, fear or timidity.⁸¹

⁷⁵ Rule on Examination of Child Witness, sec. 5.

⁷⁶ Rule on Examination of Child Witness, sec. 13.

⁷⁷ Rule on Examination of Child Witness, sec. 14, 15.

⁷⁸ Rule on Examination of Child Witness, sec. 25, 26.

⁷⁹ Rep. Act No. 8369 (1997), sec. 5.

⁸⁰ Rule on Examination of Child Witness, sec. 11.

⁸¹ Rule on Examination of Child Witness, sec. 23.

2. Brunei Darussalam

The state of Brunei Darussalam does not have special courts for children.

Child witnesses are usually prepared by the Deputy Public Prosecutor (DPP) for their testimony. The DPP is allowed to invite the child to view the courtroom so as to familiarize the child with the setting.

The testimony of a child is admissible if, in the court's opinion, the child understands the nature of an oath, and if not, the evidence can be received if the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. Video recordings of the child's testimony may be admissible with leave of court, and subject to the child's availability for cross-examination either in person or through live-link T.V., unless the opposing party previously agrees to waive such cross-examination. It was mentioned in Brunei's response to the questionnaire, though, that waiver of cross-examination very rarely happens.

The proceedings are conducted in English, and there are interpreters who assist those who do not speak the language. It is believed that the use of the English language is effective as a protective barrier between the counsel doing the questioning and the child witness, since any form of intimidation put by counsel would not have the same effect once translated by the interpreters. Also, the proceedings are held in camera, and the names and identities of the child victim are kept confidential. Children Order 2000, a recent Brunei legislation, makes it an offense for any person to publish or cause to be published any material which reveals the name, address, or school or any particulars which may lead to the identification of any child concerned.

3. People's Republic of China

The People's Republic of China reported to the Committee on the Rights of the Child that by the end of 1993, there were established some 3,135 juvenile courts in the country, including 317 independent juvenile tribunals. These tribunals strictly observe the provisions of the Law on Protecting Minors. A basic tenet in handling juvenile cases in China is that the judicial organs must take account of the juvenile's special physical and emotional characteristics, and respect the individual dignity of juvenile offenders and safeguard their lawful rights and interests.⁸²

⁸² People's Republic of China Law on the Protection of Minors, art. 40.

Juvenile tribunals can be either of two kinds: first, it may be a special collegiate bench of more than three persons in a court's criminal trial division, composed of either judges or judges and jurors to try cases on crimes committed by minors, and second, it may be a minor cases tribunal that has the same organizational system as other judicial divisions. The second not only tries criminal cases with minor defendants but also cases with minor victims. Sometimes it even hears civil cases such as cases for parental support. The hearings before the juvenile tribunals are not open to the public.

The judge hearing the case of the minor is mandated to explain to the minor the proceedings to diminish the minor's fears.

Minors undergoing trial and incarcerated are guarded separately from the adult offenders. The hearings of juvenile cases involving minors 14 to 16 years old are, as a rule, not heard in public, and those involving minors over 16 but below 18 years are also generally not open to the public.

Minors who cannot distinguish right from wrong, or cannot properly express themselves are not qualified to be witnesses in court proceedings.⁸³ They are similarly situated as physically or mentally handicapped persons, in this instance. When witnesses below 18 years old are questioned, his or her legal representative may be notified.⁸⁴

4. Japan

Family courts handle juvenile cases in Japan. Such courts are guided by the principle that with regard to juveniles who commit crimes, protection and education are more useful for their sound growth than blaming them for a criminal offense.⁸⁵ A distinction is made in classifying juveniles: criminal juveniles are those 14 to 19 years old who commit a crime, and law-violating juveniles are those under 14 who violate any criminal law or ordinance. Only the criminal juveniles are subject to criminal proceedings.⁸⁶ The police who effect the arrest of such criminal juveniles are proscribed from using physical restraint as much as possible, and should consider the suspect's age, character, and criminal record and the circumstances of the crime, pursuant to the Guidelines for Police Activities on Juvenile Crimes.⁸⁷

⁸³ People's Republic of China, CRIMINAL PROCEDURE CODE, art. 48.

⁸⁴ People's Republic of China, CRIMINAL PROCEDURE CODE, art. 98.

⁸⁵ *Initial Reports of States Parties due in 1996: Japan*. CRC/C/41/Add.1 (1996), par. 257.

⁸⁶ *Id.*, par. 264.

⁸⁷ *Id.*, par. 283.

Family courts conduct an *ex officio* hearing to perform its dual role as, first, a judicial agency tasked with the duty of determining whether misconduct was committed, and second, as a welfare agency which would make a judgement as to whether protective measures are necessary in view of the causes of delinquency and other various factors in order to prevent the recurrence of delinquency.⁸⁸ As was mentioned above, medical, psychological, pedagogical, sociological and other technical knowledge are utilized by the courts to look into the conduct, career, temperament and environment of the juvenile.⁸⁹ The presumption of innocence also applies to juvenile procedures, although because of the *ex officio* hearing, no public prosecutor is responsible to prove delinquency beyond reasonable doubt. Judgement is made by the court when it is "confident" of the existence of delinquencies on the basis of evidence which the prosecutor has acquired through his or her investigation.⁹⁰

The Juvenile Law allows the child and his or her guardian to appoint a defense counsel or attendant. Trial is held in the presence of the guardian and such counsel or attendant.⁹¹ As required by the Japanese Constitution, trials should be conducted fairly, and judges should be independent in the exercise of their conscience. This also applies to cases of juveniles such that if a judge hearing a juvenile case performs acts which cause the fairness of the trial to be doubted, the juvenile or his/her attendant may ask that the judge inhibit himself.⁹² The juvenile likewise has the right to question and cross-examine witnesses, in accord with the Constitution and the Code of Criminal Procedure of Japan.

Japanese courts use the Japanese language, and in case persons, including minors, who have to testify are not versed in the said language, then an interpreter is hired and paid by the Government. The records of juvenile trials should not be made public, as well as the conduct of the trial itself. The Juvenile Law forbids the publication of the name, age, occupation, house, looks, etc. of the offender.⁹³

If at the conclusion of the proceedings, the juvenile is found guilty, he or she may not be sentenced to death or life imprisonment without a possibility of release. If the crime for which he or she is convicted is punishable by such penalties, the same will be reduced – from death to life imprisonment, and from a life term to imprisonment with or without labor for ten to fifteen years.⁹⁴

⁸⁸ *Id.*, par. 257.

⁸⁹ *Id.*, par. 257.

⁹⁰ *Id.*, par. 265.

⁹¹ *Id.*, par. 267.

⁹² *Id.*, par. 268, 269.

⁹³ *Id.*, par. 277, 278.

⁹⁴ *Id.*, par. 289.

5. Malaysia

Under Malaysia's Child Act 2001, the Juvenile Courts were abolished and Courts for Children were put in place. Such courts are presided over by a magistrate, with the assistance of two advisers, one of whom shall be a woman who will be tasked to advise the court with respect to the treatment of any child before it, and also advise the child's parents or guardian.

A public prosecutor handles cases involving children. Though such prosecutor is allowed to meet with the child, together with the defense counsel, prior to trial, the child's statements should not be recorded in the prosecutor's presence to avoid allegations of coaching. The prosecutor is allowed to apply to the court for a child-friendly environment and to reduce the formalities so as not to intimidate the child. A child-friendly environment has been described as composed of furniture fit for the child, toys, pictures and the like. The Court for Children should either sit in a different building separate from the regular courts, or at least have a different entrance and exit from the other courts so as to enable the entry and egress of children with privacy.

Only specified and necessary persons are to be present during trial, and it may be held in camera when the need arises. The parents or guardian of the child may be meted out penalties if they fail to attend trial after being ordered to do so. A video recording of the child's interview with the investigating officer or child psychiatrist during the inquiry stage may be introduced in evidence, subject to the general rule that the child be available for cross-examination. This rule admits of exceptions still, as provided in the Evidence Act of 1950.

During his or her testimony, the child may use any language he or she is comfortable with, and it is the court's duty to employ the appropriate interpreter-translator if necessary. This is believed to be more effective in eliciting the relevant testimony from the child. Also, court officers and personnel are enjoined to refrain from aggressive or intimidating behavior.

The media is prohibited from revealing or publishing the name, address, school or any particulars about a child involved in cases before the court, under pain of being fined not exceeding 10,000 ringgit or imprisonment not to exceed five years or both.

If it is the minor who is on trial and subsequently found guilty, the court is given the power to order the child, if male, to be whipped with not more than ten strokes of a light cane within the court premises, and in the presence of the parents or guardian. A child below 14 years old may not be ordered to be imprisoned for any

offense, or be committed to prison in default of payment of a fine, compensation or costs. Those above 14 shall not be ordered imprisoned if he or she can be suitably dealt with in any other way either by detention, or fine, or being sent to a place of detention or a Henry Gurney school. If the child is ordered imprisoned, he or she shall not be allowed to associate with adult prisoners. The penalty of death may not be pronounced against the child if the offense was committed during his or her minority. In the court's decision, the terms "conviction" and "sentence" shall not be used in relation to the child.

6. Singapore

The Juvenile Courts of Singapore has jurisdiction over persons under 16 years old who commit offenses cognizable by the Magistrates' Courts or District Courts. Offenses which can only be tried by the High Court, even if committed by minors, will not fall within the jurisdiction of the Juvenile Courts.⁹⁵ The Juvenile Court is composed of a presiding magistrate and two advisers.

Trials in the Juvenile Courts are open only to those directly interested in the case, and not to the public. Media personnel are not allowed to report or publicize the name or any other particulars relating to the child involved in the case, although the Children and Young Persons Act provides an exception, which is "unless it is in the interest of justice to do so." Any person who violates this prohibition may be fined.

A child may appear in court as a witness depending on the circumstances of the case and the child's maturity. The language used in the courtroom is English, but translators are employed if a witness is not fluent in the said language. It is believed though that the language factor has little effect on the child's testimony.⁹⁶

Video recordings of a child witness's testimony are inadmissible as evidence for being hearsay which deprives the opposing party of the right to cross-examine the witness. A witness below 16 years old may however give testimony using live video or television link if the offense being tried is one that relates to cruelty to children or assault upon a person. The magistrate has wide discretion to forbid questions which are indecent or scandalous, or are intended to insult, annoy, harass or intimidate the child-witness.

⁹⁵ Available <http://www.wwlegal.com/know/lawyers_06.asp>

⁹⁶ Response to Questionnaire, dated 23 November 2001.

7. South Korea

In South Korea, there is only one Family Court which is located in Seoul. In other districts, the work of the Family Court is temporarily performed by the respective district courts.⁹⁷ The juvenile protection cases are under the jurisdiction of the Juvenile Department of the Family Court or the Juvenile Department of a district court. The trial and ruling on the disposition of a juvenile protection case is handled by a single judge of the Juvenile Department⁹⁸ irrespective of the crime committed.

The judge determines whether a trial is necessary or not by considering the warrant of transfer and report by the juvenile investigator on the case. If the judge decides not to proceed with the trial, the temporary measures are cancelled. If the trial ensues, the minor, guardian and/or appointed assistant and the juvenile investigator are informed about dates set for trial.⁹⁹ The trial is not public and it should be conducted in a spirit of humane-feeling and gentle attitude towards the juvenile.¹⁰⁰

When the judge decides not to take protective disposition of the juvenile, his decision is communicated to the juvenile and his guardian. However, if the judge deems it necessary to take protective disposition as a result of the trial, he may make any of the following rulings:

- (1) place the juvenile under the care and custody of his guardian or other appropriate person;
- (2) place him under the care and custody of a Temple, Church or other organizations protecting juveniles;
- (3) accommodate him in hospitals and other sanitariums;
- (4) transfer him to a Juvenile Reformatory; and
- (5) place him under supervision.¹⁰¹

When deemed appropriate, the judge may change or cancel the protective disposition taking into consideration the contents of the reports of the juvenile investigator, reformatory, etc. and the ruling shall be communicated immediately to the juvenile and his guardian.¹⁰²

Regarding protection in criminal cases under investigation and trial, the names, ages, occupations, appearance and other facts which may identify the juvenile

⁹⁷ South Korea Supreme Court, *A Summary of the Korean Judicial System*: 6-7 (1977).

⁹⁸ South Korea Juvenile Act 1958, art. 3.

⁹⁹ South Korea Juvenile Act 1958, arts. 18-22.

¹⁰⁰ South Korea Juvenile Act, 1958, art. 23.

¹⁰¹ South Korea Juvenile Act, 1958, art. 30.

¹⁰² South Korea Juvenile Act, 1958, arts. 34-35.

shall not be carried in newspapers and other publication nor shall they be broadcasted.¹⁰³

8. Thailand

Thailand's Penal Code pegs the age of responsibility at seven. Thus, any person below 7 years old who commits a crime cannot be punished.

Offenses committed by a minor over 7 years old are tried in special Juvenile and Family Courts, and although such minor may still not be punished, he or she may be admonished by the court before release, together with his or her parents, legal guardian or those with whom he or she is living, or consigned to the care of his or her parents conditioned that the parents will pay a monetary fine should such child repeat an offense. The court may also appoint a probation officer to oversee the child's behavior. The child may also be released to the care of an individual or organization deemed appropriate by the court, or sent to a school, training school or any other institution which has been set up for the training and rearing of children for a court-decided period which can only extend until the child turns 18 years old.¹⁰⁴ Those over 17 but not yet 20 years old will face a sentence reduced either by half or one-third, and the penalties of death and life imprisonment are not imposable upon him or her regardless of the offense. He or she will be detained in observation and protection centers instead of regular prisons, where, however, he or she may be punished physically when he or she breaks a rule of the center. Such punishment can range from being deprived of certain privileges and services to a maximum of twelve strokes of a cane.¹⁰⁵

A child will not be arrested unless the offense is flagrant or the aggrieved party singles out the child to the police and insists on the child's arrest.

During the court proceedings in the Juvenile and Family Courts, the rules of regular court proceedings are not strictly followed. The child should not be handcuffed or fettered or chained. The trial must be held in camera, using the Thai language as medium of communication. The court may allow the child to be questioned by psychologists or social workers. And the sentence must be promulgated by a judge assisted by an associate who is an expert in child and youth affairs.¹⁰⁶

¹⁰³ South Korea Juvenile Act, 1958, art. 61.

¹⁰⁴ *Initial Reports of States Parties due in 1994: Thailand*. CRC/C/11/Add.13. (1996), par. 82.

¹⁰⁵ *Id.*, par. 391, 393.

¹⁰⁶ *Id.*, par. 392.

The names and other particulars of the children involved in the case should be kept confidential. Any media practitioner who violates such confidentiality by publicizing the data abovementioned shall be liable to criminal punishment.

A child may also be the subject of judicial proceedings not only if he or she has committed an offense or is a witness in a trial, but also when he or she is depraved or behaves in a manner not consistent with his or her age. In such cases, the Court will hold welfare protection procedures initiated by the ministries and agencies concerned.¹⁰⁷

9. Vietnam

There are no special courts for children in Vietnam.

When minors are the subject of the court proceedings, they shall be assisted by counsel or legal representative/assessor who should be either a member of the Youth Union and Women's Association or a teacher. The proceedings are open to the public, and the Vietnamese language is used. The child-witness who must be at least 9 years old, however, may use his or her ethnic language if he or she is not versed in Vietnamese. An interpreter will be provided.¹⁰⁸

The Penal Code of Vietnam provides that legal sanctions against juvenile offenders are intended to serve a reforming and educative role, and so juvenile convicts must attend general education or vocational training courses during their punishment. Juvenile offenders may not be detained with adult offenders, and they shall be allowed remission or reduction of sentence if they prove true repentance. The juvenile convicts may not be sentenced to life imprisonment or death.¹⁰⁹

AGAIN, FROM the overview of the cases, we see aspects of the trial proceedings common to most jurisdictions in Asia. The policy considerations behind such rules of procedure do not significantly differ. Majority of the countries emphasize the primacy of educating and rehabilitating the child offender over imposition of punishment. The countries accord the juvenile all the rights of an adult offender, plus some other rights applicable only to them by reason of their minority. Although the states just discussed had different specific rules – as regards the age of criminal responsibility, the admissibility of videotaped interviews, the measures employed to prevent the harassment and intimidation of the child, the possible treatments

¹⁰⁷ *Id.*, par. 405.

¹⁰⁸ Response to Questionnaire, dated 7 November 2001.

¹⁰⁹ *Initial Reports of States Parties due in 1992: Vietnam*. CRC/C/3/Add.21. (1993).

impossible on the youthful offender upon a finding of guilt – the general principles behind the rules are similar.

The treatments accorded to child witnesses differ more than those for minor offenders. Child witnesses enjoy special measures in some jurisdictions, but are treated as regular witnesses in others. In some, video recordings of the child's statements are admissible, in recognition of the importance of protecting the child from distress over having to testify in the presence of the accused. In other states, such admissibility is conditioned on the right of the opposing party to cross-examine the child witness. Still in others, the video recordings are inadmissible for being hearsay.

The use of experts such as psychologists and social workers in the course of the trial does not appear to be widespread in Asia. Also, the allowance of support persons who will provide moral and emotional assistance to a child witness seems a recent development and has not yet gained strong ground. In all jurisdictions discussed though, except for Vietnam, the proceedings are or can be held *in camera*, to the exclusion of the public. Confidentiality of records and the prevention of publicizing data about the children involved are also common features of the Asian jurisdictions.

Only Thailand makes a distinction based on the child's gender in the imposition of punishment in that male children may be punished by caning, while females cannot. All other rules of the other countries do not distinguish based on sex. It must be remembered though, that these are mere rules, and actual practice may be a totally different story. In all states though, children may not be sentenced to death or life imprisonment.

A discussion about the rules and procedures governing the trial and sentencing of cases involving juveniles either as offenders or witnesses presupposes that such cases are pursued to their end. It should also be remembered, however, that there are instances when a case is terminated before it can be actually resolved due to the desistance of the victim or the witnesses. In each country, the reasons for such desistance vary.

In Singapore's response to the DFA questionnaire, the reasons espoused were (1) ambivalence towards the petitioner, (2) pressure from other family members, (3) fear of loss of household income, and (4) fear of other consequences. Malaysia, on the other hand, submits that the following are the deterrents to the pursuance of cases:

- threats from the perpetrator towards the child or his/her family;
- discouragement from the parents or guardian, especially where the crime is committed by a family member or a trusted adult for fear of shame and stigma;
- discouragement from the parents or guardian due to concern over the trauma to the child;
- discouragement from the parents or guardian due to lack of resources, the time and effort that will be involved, including repeated appearances in court;
- the child does not know how to report the crime to the relevant authorities or does not know who to report to;
- the child may be too young to understand that an offense has been committed;
- the child does not understand his/her role in the judicial process, the court system and the court personnel;
- the child is afraid and/or traumatized by the investigation process and in attending the court proceedings; and
- the child views his/her court experience negatively.

Brunei proffers that concern for the family is the main reason for the children's decision not to pursue the cases anymore. Thailand submits that children withdraw their complaints usually because of fear and shame, or in case the parents are the offenders, the feeling of gratitude to their parents.

The Judicial Reform Office of the Philippine Judicial Academy, Supreme Court has drafted proposed guidelines where the child abuse victim desists, recants or impeaches his or her own testimony. It is recommended that in such event, the child should immediately be referred to a duly accredited psychologist or psychiatrist for psychological or psychiatric evaluation to determine the cause of the child's desistance or recantation. If it is found that such desistance or recantation is due to coercion or intimidation by any person, or to severe psychological injury, the child's guardian *ad litem* or court-appointed special advocate shall seek an order from the court for the DSWD to take custody of the child, move for a competency examination of the child, or ascertain the necessity for the child to testify through alternative modes provided in the Rule on Examination of a Child Witness.

Another issue that needs to be looked into in discussing the trial systems as applied to children in Asian countries is the expertise of the court personnel handling such cases. The rules may be in place, but if no one is able to implement and execute the rules due to lack of adequate training, such rules will be for naught and will not at all achieve the purpose for which they were promulgated. In every country, again, the training and sensitization of court officers and personnel varies. Generally, however, court officers and personnel do not receive any special training to acquaint them with the nuances of handling child-related cases.

Brunei Darussalam has no law schools and thus, its court personnel do not undergo training for juvenile cases before they become qualified for the job. The National University of Singapore neither has courses preparing law students to handle child abuse cases. Similarly, Thailand does not have special trainings accorded to prosecutors, public attorneys and court personnel in handling child abuse cases.

The Department of Justice of the Philippines conducts regular seminars or trainings focused on handling of children as victims.¹¹⁰ Gender-sensitivity lectures and seminars for judges are likewise conducted by the Philippine Judicial Academy as well as non-governmental organizations to train police officers on handling child-related cases. Vietnam has courses that help develop child sensitivity among law students which are included in the teaching program and periods of practice and probation. In Vietnam's response to the DFA questionnaire, it was said that court personnel "take those courses regularly." Malaysia incorporated special trainings to increase awareness and sensitivity to the needs of children in their continuing legal education program. China's Ministry of Public Security conducts training courses for police officers on "Law Enforcement about Protecting Minors," "Fighting Against Sexual Exploitation of Women and Children," and "Psychological Consultation and Interference Techniques for Victims."

C. POST-JUDGMENT PROCEEDINGS

Upon termination of the trial, and after the court pronounces its judgment, the child would either go back to his or her normal, court-free life, or otherwise be ordered detained, committed to an institution for juveniles, or even just put under continued observation for a certain period. It depends on what the court will decide upon. But no matter what the decision may be, the fact remains that the child has already been subjected to the rigorous judicial proceeding and the effects on his life of such proceedings have already been implanted. It is with this premise that some states seek to provide post-judgment procedures to monitor the child, see whether adverse effects have set in, and if necessary, provide assistance.

1. Philippines

In the Philippines, automatic suspension of sentence against juveniles is provided. Regular status and progress reports are submitted by the Social Services and Counseling Division (SSCD) of the DSWD to the Court to monitor compliance

¹¹⁰ *Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System*, Adhikain Para sa Karapatang Pambata (AKAP), UNICEF (1998) p. 62.

with the disposition measures imposed. If the court finds, based on the reports and recommendations of the custodian, the SSCD, and the duly authorized officer of the DSWD that the offender has behaved properly and has displayed a capability to be a useful member of the community, the court may, after due notice and hearing, dismiss the case against the offender and order his or her final discharge. If, on the other hand, the court finds that the minor has not behaved properly or has been incorrigible, or has willfully failed to comply with the conditions of his disposition or rehabilitation program, or should his continued stay in the institution be not in his best interests, he shall be returned to the court for sentencing.¹¹¹

If a juvenile is ordered detained, the judge shall also include in the order instructions to the court social worker to visit the minor detainee regularly to know of their situations and conditions.¹¹²

The juvenile, if qualified, may apply for probation under the Probation Law. If he does not qualify and the sentence is to be executed, he shall be credited with the time during which he has undergone preventive imprisonment. In case such preventive imprisonment is equal to or more than the possible maximum imprisonment, the juvenile shall be immediately released. Any form of physical restraint imposed on the juvenile in conflict with the law, including community service and confinement to a rehabilitation center, shall be considered preventive imprisonment.¹¹³

After two years from sentence, the records of the case shall be sealed upon application of the minor or his or her parents. The case shall be treated as if it never occurred.¹¹⁴

As regards child abuse victims, Family Court judges order a social worker to conduct monitoring and follow-up visits to the child and his or her family to update the judge as to their condition. Counseling is also provided to the child and the child's family by the court social worker.

Finally, Administrative Circular No. 04-2002, promulgated by the Supreme Court on February 1, 2002 mandates trial judges to hold regular dialogues, conferences or visitation with government agencies, local chief executives, jail wardens, chiefs of police, officials from social welfare offices and the inmates in all jails in their territorial jurisdiction, including the minor detainees, to determine the

¹¹¹ *Id.*, at 50-53.

¹¹² ARSENIA DALISAY, *Application of Child Psychology in Family Court During Trial, Rehabilitation and Integration*, PHILJA JUDICIAL JOURNAL Vol. 3, Issue No. 8, April-June 2001, pp. 262-265.

¹¹³ Supreme Court A.M. No. 02-1-18-SC, sec. 23.

¹¹⁴ Supreme Court A.M. No. 02-1-18-SC, sec. 38.

sufficiency or manner of safekeeping and reformation of prisoners, to provide for segregation of minors from adult prisoners and to order the release from detention of any accused who is already entitled to release. A report of such dialogues shall be submitted to the Court Administrator of the Supreme Court.

2. Brunei Darussalam

Post-trial monitoring of child abuse cases is not provided in the orders and judgments of courts in Brunei. The courts, upon termination of the case, no longer take part in monitoring the impact the court proceedings had upon the child. Psychologists who were initially involved in the case in assessing the competency and maturity of the child neither do monitoring of the child's development after the case is terminated. No psychological report as to the child's behavior is made available to the court for consideration.

Neither are there established programs for reintegration. The Children Order 2000 sets up an action team on child abuse groups for the purpose of coordinating locally based services to families and children where children are or suspected of being in need of protection.

The Social Welfare Unit of the Ministry of Culture, Youth and Sports ensures that the child gets proper counseling, religious and mainstream education, and are placed in a suitable home or workplace.

3. People's Republic of China

In China, when a minor offender is convicted and sentenced to probation and public surveillance, the court must regularly call back the minor to monitor his or her rehabilitation and observance of the laws.

China's juvenile correctional facilities employ legal advisers tasked to resolve any question of law arising in the course of execution of penal sentence, give juvenile offenders some grounding in the law, and provide them with legal assistance.¹¹⁵

Those detained in juvenile correction facilities receive not less than twenty-four hours of political, cultural and vocational technical education every week. If the offenders show signs of improvement, they may even be allowed to attend lessons at schools in the community.¹¹⁶

¹¹⁵ *Initial Reports of States Parties due in 1994: China*. CRC/C/11/Add.7, (1995) par. 223.

¹¹⁶ *Id.*, par. 224.

The Law on Protecting Minors mandates homes, schools and other work units to cooperate with correction facilities in the joint education and rehabilitation of juvenile offenders. It also provides for non-discrimination against minors after they have been released from the juvenile correction facilities. Upon the release of the juveniles, the labor and education departments arrange for their return to school or placement in a job. The juvenile correction facilities, on the other hand, make scheduled visits to check on the child's degrees of reform.¹¹⁷

The Supreme People's Court or local courts at different levels organize working conferences on experience exchanges, workshops on theories and professional training courses in this field every year and invite experts, scholars and social workers to participate.

4. Japan

In Japan, the police promotes regular counseling activities through specialists in juvenile guidance and female police officers and assist activities in cooperation with guardians and any other person concerned, focusing on the protection of juvenile victims of crimes involving serious physical and psychological injuries such as rape, forced obscenity and other sexual crimes.¹¹⁸ There is no mention, though, in their report to the Committee on the Rights of the Child as to the participation of the courts in the tracking and monitoring of the children after the termination of the case.

5. Malaysia

Under the Child Act 2001, social welfare officers and police officers are empowered to rescue children who are victims of abuse and neglect. The law also allows parents who are unable to exercise proper control over their children to seek assistance. Counseling and support services are provided to children and their families. Children can be placed with fit persons and foster parents. Institutional care and rehabilitation facilities are also available. Community participation in the care, protection and rehabilitation of children is provided through organizations like Child Protection Teams, Child Activity Centers and the Child Welfare Community the members of which are appointed by the Minister of Social Welfare.

6. Singapore

Singapore's Ministry of Community Development and Family Service Centers are in charge of post-trial monitoring of child abuse cases in the country.

¹¹⁷ *Id.*, par. 228, 230.

¹¹⁸ *Initial Reports of States Parties due in 1996: Japan*. CRC/C/41/Add.1 (1996), par. 291.

The services provided range from care and protection to social and psychological interventions.¹¹⁹ The Ministry's Child Protection Officers and Psychologists provide counseling and therapeutic sessions to victims to help them recover from their trauma.

7. South Korea

In South Korea, the judge of the Juvenile Court may issue instructions concerning the care and custody of the juvenile to his or her guardian or trustee and may have the juvenile investigator observe and report on conditions of such care and custody.¹²⁰

Juveniles who are sentenced to imprisonment are kept in prisons or partitioned places particularly established for them but upon reaching the age of 23 they may be transferred to an ordinary correction house.

8. Thailand

Thailand's courts allow for the review of their decisions if, on account of subsequent information submitted by the officer in the place of confinement of the child, or the school director, or the director of the observation and protection center, or the child's parents, the court finds that the facts and circumstances have changed.¹²¹ Moreover, multi-agency teams are being set up in Thailand, with the aim of providing legal, medical and social assistance to children all throughout the case and even after termination.¹²²

The Department of Social Development and Welfare established the Kredtakarn Protection and Occupational Development Center, otherwise known as the Kredtakarn Home, pursuant to the Prostitution Suppression Act of 1960, later amended in 1996, to provide improved protection for and assistance to children below 18 years of age who are victims of sexual exploitation. The Kredtakarn Home also provides assistance to women and children who are victims of trafficking, in conformity with the Act Concerning Measures of Prevention and Suppression of Trafficking in Women and Children of 1997.

The Kredtakarn Home provides legal assistance when the case involves abuse and exploitation. The Home assists in preparing the children and women involved to familiarize them with legal proceedings. Upon completion and

¹¹⁹ Response to Questionnaire, dated 23 November 2001.

¹²⁰ Art. 22.

¹²¹ Response to Questionnaire, dated 11 April 2002.

¹²² *Id.*

termination of the proceedings, social workers or caretakers accompany the victims home to ensure safe repatriation and cooperation with local agencies for continued assistance. Periodic monitoring and assistance on quarterly basis are also done by the Home in collaboration with local agencies.

9. Vietnam

In the response submitted by Vietnam, it was stated that the People's Procuratory, social organizations and local administrations monitor the situation of children who have been tried and create conditions for them to reintegrate into the community.¹²³

THE CONCLUSION may be drawn from the discussion above that post-judgement proceedings are not widely utilized in Asian countries. In the jurisdictions which do employ such measures, the usual subjects are children offenders, and children in conflict with the law. As for the child witnesses and victims, there are very few, if any, programs to help them recover from the trauma they suffered.

Legal provisions guaranteeing non-discrimination against children released from the care of juvenile correction facilities exist, although it seems that there are no strong implementing rules that will give teeth to such provisions. Even if non-discrimination is guaranteed by law, if there are no agencies tasked to ensure that such guarantee is observed and complied with, there are bigger chances of its being violated instead of being conscientiously upheld.

Also, there is a significant lack of multidisciplinary teams that can provide holistic assistance to children. The few social workers and psychologists who do monitor the progress of the children do not even have avenues to share their views and opinions about the impact of the current procedures on the personality development and maturity of the child. The best practices among courts are neither disseminated due to the lack of the said avenue for discussion and evaluation. The possibility, thus, of soliciting child participation in the drafting of the rules governing cases that relate to them is effectively precluded because of the lack of a forum for discussion.

Finally, international cooperation in relation to the protection of children's rights and welfare is not maximized. Vietnam did not mention the treaties it entered into to protect the rights and welfare of children. Thailand has bilateral treaties on mutual legal assistance in criminal matters with other countries, but such contain no

¹²³ Response to Questionnaire, dated 7 November 2001.

provisions for the protection of children's rights. The same is true for Brunei. Singapore is a party to the International Labor Organization, the International Convention for the Suppression of Traffic in Women and Children, and the International Agreement for the Suppression of White Slave Traffic.

All the countries discussed herein are parties to the United Nations Convention on the Rights of the Child, but most have ratified or acceded to the Convention with reservations. In fact, of all the States discussed above, only the Philippines and Vietnam acceded unqualifiedly to the Convention.

III. CONCLUSION

If we are to give life to the lofty declarations embodied in the international declarations on the rights of the child, and the policies behind our national laws on the same matter, then it is but proper and prudent to look again into the judicial rules that significantly affect the children who come in contact with the courts. If we wish never again to see a child traumatized within our halls of justice, then we would take stock and maximize this opportunity we have now to initiate reforms that would further the protection of children's rights and welfare in the context of the justice system. After all, it is not too much to do, to realize our declaration that we owe to the child the best that we have to give.

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