



**To**

**Chief Judge of the Supreme Court of the Union**

**Supreme Court of the Union**

**Nay Pyi Daw**

**Date, 12/June/2020**

**Subject – presenting to issue a guideline in order to get the full rights and bail release for the children who are being detained in training school and for the children who are being accused of a criminal case during COVID 19 pandemic.**

1. Due to the spread of COVID 19, governments are taking necessary emergency measures and announcements to slow the spread of the virus, and on the other hand, those measures are impacting the administration of justice. Consequently Myanmar is facing difficulties in its judiciary process and implementation of law. During COVID 19, the right to a fair trial and the best interests of children are jeopardized due to the directives and activities for controlling infectious disease. Further, there is no guidance to justice sector actors on how to protect the rights provided under the law. Therefore children, who are a particularly vulnerable group and require special protections, are being arrested and detained around the country without getting their rights.

2. In some regions where training schools are not available, children get detained in police custodies and transferred with the adult detainees to the courts at the time of taking remand (or) examining the case. Myanmar law prohibits the detention of children in police stations and/or with adults under all circumstances. Further Myanmar law and international principles and best practices require the best interest of the children to be



the tantamount consideration, and detaining children away from their parents and guardian should be practiced as a last resort.

3. Currently, training schools are filled with numerous numbers of juvenile detainees and they cannot provide ways and services for the interest of the juveniles such as health facilities and full filling mental requirements to protect them from contracting Covid-19 and address the psychological and social trauma of detention. We also heard that there are insufficient staff members to look after the children.

4. During the spread of COVID 19 pandemic, detainees are placed in small police custodies without a proper medical checkup provided under the guidelines of the Ministry of Health and Sports. Children are locked up in the rooms of training schools and Police custodies where they cannot practice social distancing. Also, there is no protection system and services in those facilities to give treatment for COVID 19 and this could result children to cause physical health problems and mental disorder such as depression and trauma. These negative consequences can cause lifelong mental health problems which can suffer for their whole life.

Also, juvenile detainees cannot get necessary personal hygiene supplements. In some police stations, new detainees are arrested in every week but there is no PPF (Personal Protective Equipment) for them. Therefore, we need to consider about the spread of COVID 19 not only for the children but also for the police, adult detainees and their families.

5. According to the United Nation Convention on the Rights of the Child and section 4, sub section (b) of Myanmar Child Rights Law, the objective of the law is to promote the best interests of children and to protect the



rights of the child according to the law. Therefore, the USC should consider the best interest of a child during the spread of COVID 19.

6. Also, USC should carefully consider above circumstances and Union Supreme court should make a clear and exact directive to different level of courts and juvenile courts for the following requests;

(a) Giving police bail or release the children with the personal bond under section 496,497 of the CrPC and Child Rights Law or entrust them to their parents or guardian by setting the rules if the child is accused with a charge which does not pose any danger to public safety.

(b) If a child is facing a criminal case which can be considered under diversion program, for new cases, the court should perform action provided under section 75(b) of the Child Rights Law instead of taking remand, or revoke the detention order, if already ordered, and release the child on bail as a priority.

(c) For the children who cannot be placed in the diversion program, the USC should issue an exact directive to consider the best interest of the child provided under the Child Rights Law and entrust them to their parents or guardians after setting rules with the personal bond or making a bond with the guarantors,

(d) The USC should direct the courts to relax the requirement of documents as a necessary condition for seeking bail. The strict requirement of documents like proof of property ownership is harsh for the indigent, homeless and marginalized communities to secure the release of the children on bail.



7. For protection of children in conflict with the law, they need legal counsel. ALL CHILDREN have the right to legal aid, including during the remand period, under Legal Aid Law section 25, sub section (a) (b) and (c). Although it is not the currently recognized practice in Myanmar, in fact, the court has the power to allow a lawyer at the remand hearing under section 167 (2) of the CRPC. Therefore, the USC should make a clear guidance to allow representing juveniles' cases at the remand stage and make all efforts to ensure that all children have legal counsel.

Send the copies to

- Presidential office,
- State counsellor office,
- Union Attorney General office
- Vice president (1)/Chairman, Coronavirus Disease 2019 (COVID 19) Control and Emergency Response Committee.
- Acceptance by the office