

NCPCR Visit, Shimla, Himachal Pradesh (HP) , 14th to 15th September 2007

PURPOSE:

To assess and review the context and status of Juvenile Justice Act implementation and operation, and its impact on the overall condition of children in Himachal Pradesh.

SUMMARY OF PROGRAMME:

Site visits to children's homes, joint discussions with members of the police, judiciary, representatives of the State government (Social Justice & Empowerment, Labour, ICDS etc) and NGO's as well as issue specific meetings (such as with the JJB membership, Shimla) were undertaken to form a preliminary view on the above.

KEY PERSONNEL MET:

Mr. Ashwani Kumar, Director General of Police, Himachal Pradesh
Ms Anuradha Thakur, IAS Director, Social Justice & Empowerment HP
Mrs. Aruna Kapoor, Registrar General HP High Court, Shimla
Mr V. K. Gupta, Registrar (Vigilance), HP High Court
Mr. S. C. Awasthi, Joint Labour Commissioner
Smt. Leela Thakur, Superintendent Bal Ashram Tutikandi
Smt Shakuntala Mehta, Superintendent, Balika Ashram, Mashobra
Mr. BhimSen, Principal Private Secretary, Social Justice and Empowerment
Mr. Barinder Thakur, Principal Magistrate , JJB , Shimla
Mr. H.S. Verma, Secretary, Kasturba Gandhi Ashram, Shimla, NGO [check name]
Ms. Prem Negi, Secretary HP Child Welfare Council, NGO
Dr. Sunil, Teaching Department, HP University [check name]

SUMMARY OF DISCUSSIONS / OBSERVATIONS

1. Juvenile Justice Board (JJB) and Observation Home (OH) Implementation / Operation

Currently there are two operational JJBs, one in Shimla and Una, only the latter having an Observation Home ('OH') Discussions in Shimla clearly highlighted the significance of regional variations to uniform application of the JJ Act with regard to JJB implementation. In Himachal Pradesh, further implementation of JJBs co-located with OHs per district or grouping of districts will need to take account of the needs dictated by its regional topography (including long travel distances and inaccessible locations during winter months) and juvenile offence prevalence profile by district - such as a consistent profile of significantly high prevalence districts and others with very small case numbers as established by historic data. (Data to be provided – see follow-up actions below) Distribution and proximity of JJB/OH or other suitable custodial facility would

need to ensure that juveniles would not be forced to be remanded in jail facilities for appearances in front of the JJB.

In addition to the above regional / prevalence profile current data shows that that out of the 569 cases pending in HP (see Table A below, currently only 23 children are in state custodial care in observation homes (implying family custody) thus highlighting the limited current potential utilisation of OH facilities. However, the ability of these cases to be heard on an expedited basis has to date been restricted by the absence of more easily accessible JJBs (apart from those in Shimla and Una) and the further requirement that cases be heard within the premises of the Observation Home. As such interim ‘exceptional’ approval for the operationalisation of mechanisms such as a ‘travelling JJB ’ (noting that the new model rules allow for hearings on or near OH premises or in any suitable premise within an institution run under the Act but in no circumstance within Court premises*) needs to be addressed. Longer term, potential JJ Act reform reflecting the need for regionally varied application (consistent with the best interests of the child, de-institutionalization focused, child-centric principles of the legislation) will also need to be addressed.

(*In Shimla JJB hearings are currently conducted within the magistrate’s chambers.)

Table A: Statement of case pendency in HP JJBs as at 31/07/07:

	2000	2001	2002	2003	2004	2005	2006	2007	TOTAL
Cases Pending	1	5	20	56	106	139	139	103	569

Similar to many other States, the implementation of a child-centric JJB in Himachal is impeded by insufficient juvenile justice knowledge, training and the continuing reliance on criminal sessions court based procedural process (rules of evidence etc) and lack of clarity and training regarding how to operate an ‘inquiry’ based on child-centric juvenile justice principles rather than the adversarial sessions court process. Insufficient lack of training/knowledge is reflected in fundamental application issues – such as understanding alternatives for age determination where standard records not available and whether age relevance applies to the date of the alleged offence or the age on the date of initial presentation to the JJB. The issue of the quality of legal aid was also raised as another key factor impeding the juvenile justice process – whilst it appeared that knowledge levels about legal aid were high, the quality of provision and impact on the outcome for the child are key factors in motivating parents to increasingly retain private counsel with resulting serious inequities in the juvenile justice system.

With regard to monitoring and governance of the JJB, co-ordination between state and judiciary was also raised as a key issue. Whilst the CJM () is

regularly monitoring and reporting to the High Court on JJB operation, these reports are not being accessed by the state government thus limiting their ability to address key implementation issues in collaboration with the judiciary.

Whilst HP appears to have converted most homes into age specific facilities, it seems that currently in UNA the OH and special homes are co-located – raising the serious issue of separation between children undergoing an inquiry process and those undergoing detention following inquiry outcome.

2. Child Welfare Committee (CWC) & Children's Homes (CH) Implementation / Operation

Whilst members have been appointed and training delivered in May 2007 for the CWCs of all twelve districts, these committees are still not operational, thus currently leaving children's homes and other care & protection facilities with no case management infrastructure. Partly this seems to be the result of change of government, which has resulted in recent membership changes. Currently in Shimla, children are being approved for admission to the homes by the Deputy Commissioner (who is also a CWC chairperson). Progress on the operationalisation of these committees is a priority. (See follow-up actions below)

Whilst visits were conducted to two children's homes (Bal Ashram, Tutikandi and Balika Ashram, Mashobra), given the recent transfer of children across homes based on age-specific re-categorisation a perspective on any consistent operational issues and any specific data on a case basis was difficult to obtain. These facilities will need to be followed up to understand operational implementation issues. In both instances based on preliminary visits, the ability of these homes to provide the requisite child-centric environment which can foster care and protection (including education, counseling and social / vocational development) in line with the children's needs and abilities within a non 'detention-like facility needs to be addressed.

A recent state government evaluation leading to the set-up of the 'Mukhya Mantri Bal Udhhar Yojna' scheme (Integrated scheme for children in need of care and protection and rehabilitation) corroborates the above as a key basis for reform within these institutions. Key features of the proposed scheme include the age group restructuring of homes, staff allocation, recruitment and promotion restructuring, establishment of specially designated institutions for senior (class IX – XII) education and counseling and provision for higher education and job oriented vocational training. Implementation progress and assessment of the above scheme will need to be followed-up.

With regard to CH operation, currently there are 6 state run institutions and 13 NGO run institutions. During joint discussions with state and NGO representatives issues relating to consistent delivery of operational standards , funding allocation basis and disbursement history were raised. These need to be further investigated to form an assessment on NGO-state participation and the ability of both to deliver consistent operational standards of delivery based on inter-alia, appropriate vetting procedure for the appointment of NGOs as CH operators, on-going monitoring and evaluation and review of funding allocation differentials and disbursement / shortfall issues.

With regard to facilities for children with disabilities, a specific issue was raised by the NGO – HP Child Welfare Council, regarding their home for [160] deaf, dumb and blind children, which has experienced personnel cuts (warden etc) and is facing severe funding/resource issues. The NGO noted that they had forwarded a proposal to the SJ&E Ministry to which they had been unable to obtain a response. It was proposed that the proposal be forwarded to the NCPCR for review regarding follow-up with the Ministry.

3. Funding Allocation and Disbursement

During discussions with representatives of the state government issues relating to differences in planned and actual centre-state funding allocations as well as the poor rate of actual disbursements was highlighted. Based on representations made, funding allocations of 50-50 have apparently been revised to 25-75 with disbursements having only been received from the Centre a few times since 1986. Further clarification on the basis and occurrence of the above needs to be obtained as well as understanding the impact of overall budgeting and disbursement policy and delivery on JJ infrastructure development and operation. To facilitate the above, a breakdown highlighting the difference between state-centre norms for budgetary allocation as well as actual centre-state expenditure for CH operation, has been requested from the state government. Further with regard to the earlier note on NGO operation, clarification on significant differential between state v NGO operational cost and delivery outcomes also need to be fully assessed.

4. Mental Health Assessment & Delivery Capability

Shimla is currently piloting a mental health intervention programme in collaboration with the University of Himachal Pradesh, which, dependent on its implementation outcomes is planed to be rolled-out state wide and should be assessed for potential application in other states where the mental and psycho-social needs of children are currently not being comprehensively or systematically addressed by children's home facilities. Across the sample sites (Tetikundi, Mashobra and Masli) a team of four counselors led by Dr. Sunil from the

University's Psychology Department are conducting assessments on intellectual, psycho-pathology and overall social adjustment attributes. Briefly, in addition to more serious mental disabilities and trauma, the pilot has already highlighted prevalence of learning difficulties associated with separation / trauma and issues of overall social adjustment relating to separation and loneliness experienced in the homes. Implementation of in-home case based counselling and treatment delivery for the above will need to be followed up. Significantly, the above study also underscores the lack of any 'early intervention strategies' which can significantly prevent the onset /arrest of mental health development issues by addressing these children at the earliest point of their introduction into the state custodial system.

5. Child Labour / Street Children / Migrants – Rescue, rehabilitation & restoration

The last survey conducted on child labour assessment in the state was in 1997 (documenting 314 child labourers). Current day estimates are significantly greater and a priority requirement for an up to date survey has been flagged and requested. With regard to rescued child labourers in the state, whilst there appear to be consistent efforts in mainstreaming children into schools (through SSA) overall family tracing*, parental notification and rehabilitation processes do not seem to be systematically implemented due to lack of clarity on division of responsibility regarding the above across departments and units (CH, CWC, Labour, SJ&E etc), with children some-times being institutionalised for 6 months before being restored to families/enrolled in schools (anecdotal account). The above situation also appears to be compounded by non-operationalisation of CWCs – in relation to a recent rescue of 51 children, whilst representative could advise that 25 had been restored to their parents, the status of the remaining 26 children in various homes could not be established with follow-up on education/rehabilitation of all these children also not able to be established.

(*Family tracing and restoration are critical issues for migrant children. Whilst some efforts are being made through data sharing across state/national registries, no systematic process with clear accountability is in place, with several anecdotal accounts of children subject to inevitable long term institutionalisation due to lack of family/tracing restoration processes.)

A joint project between Child Development officers, ICDS and SSA personnel targeting street children in Shimla (see Table B below) also highlighted the serious issue of the inability to target care and protection services including education to those children categorized as living under the control of contractors who have transported them from other states (Bihar, U.P. etc) and engaged them in occupations such as selling of plastic carry bags, ballons cloths etc. The removal, restoration and rehabilitation process for these children in conjunction with appropriate prosecution of their employers rather than compromised

solutions for shared work/school attendance under the guardianship of the contractors needs to be urgently addressed.

Table B:

Street Children ‘Motivation & health Camps’ Outcomes (May-June 2007)	Number of Children
Total identified street children	265
No. Of children Benefited	221
Children enrolled in schools	60
Children enrolled in AIE centres	103
Children to be enrolled in AWCs (0-6Yrs)	45
Balance – (Not enrolled in schools)	57
Children not regularly attending schools	84
Children living with parents	134
Children not living with parents	131

6. ‘In-Home’ vocational training and education support

The current levels of vocational training provided do not appear to be linked to children’s needs and abilities or based on technical/professional platforms for future employment. As an example, vocational training provided at the OH in Una is limited to the one craft based skill of the assigned state government employee (Education department) – in this case carpentry. The ability of the newly launched ‘Mukhya Mantri’ integrated scheme (with proposals for linkages to technical institutes etc) to redress this will need to be monitored.

Visits to the children’s homes also highlighted the need for after-school education support, particularly for those children preparing for Class 10 and 12 examinations. The continued, quality provision of the above addressing specific needs in Math and Science etc through a locally based resource has also been flagged as an urgent priority.

7. Other - ICDS Overview

Discussion with Anganwadi workers and Child Development Project Officers during a brief visit to an Anganwadi Centre (BHOG Circle Shogi) highlighted the following issues. Coverage of malnutrition assessment was recently greatly enhanced as a result of children being weighed under the IPPI programme (583,603 weighed) rather than the regular ICDS Growth monitoring exercise (320,841 weighed). ICDS policy implications for regular assessments with higher levels of coverage need to be addressed to ensure continued focus on the malnutrition issue. At the centre visited Anganwadi maternal support appears to be being provided systematically from conception to post-delivery and data is being collected on a family basis*.

(* In collaboration with the department of technology the SJ&E department has recently launched a database which will collate and analyse data with a focus on cross linkages across data appoints to allow systemic solution development – e.g., malnutrition assessments taking into account status of siblings other family dependants and integrating main meal, supplementary meal and other data).

The anganwadi workers at this site raised the issue of being overloaded with numerous responsibilities from other departments (e.g. conducting surveys for leprosy etc). In follow-up with the state government, attention was drawn to the nodal, multi-tasking role of an anganwadi. Recognising her central role in facilitating convergence of multiple ICDS services, attention to potential over-burdening of these workers to the detriment of their ability to undertake their primary tasks will need to be further assessed.

Decentralisation of nutrition supply provision following Supreme Court orders has also raised concerns by workers over potential quality/cost variation issues under the new arrangements. Adequate implementation of monitoring systems should address the above and should also be followed-up.

KEY FOLLOW-UP ACTIONS:

(Main data co-ordination / follow-up contact: Ms. Anuradha Thakur, SJ&E)

1. Implementation of up-to date child labour survey.
2. Follow-up on appropriate tuition provision at children's homes (Moshobra) as a priority for current group of children studying for class X and IX.
3. Operationalisation of HP CWCs and case management process follow-up
4. HP district based offence prevalence data to be provided.
5. Proposal for home for children with disabilities from NGO () to be forwarded to NCPCR. (Ms. Prem Negi, HP Child Welfare Council)
6. Outcome of mental health pilot study to be forwarded to NCPCR.(Dr. Sunil, HP University)
7. Data highlighting differences in centre-state operational budgetary norms, actual state-centre expenditures and NGO v state run funding allocation basis to be provided.