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# The rights of the child in the judicial sector in Vietnam: compliance with international legal standards

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Faculty of Law, Humanities and the Arts

**THE RIGHTS OF THE CHILD IN THE JUDICIAL SECTOR IN VIETNAM:  
COMPLIANCE WITH INTERNATIONAL LEGAL STANDARDS**

**PHAM Thi Thanh Nga**

**This thesis is presented in fulfilment of the requirements for the award  
of the Degree of Doctor of Philosophy  
at the University of Wollongong**

**July 2015**

## **DECLARATION**

I, PHAM Thi Thanh Nga, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy in the Faculty of Law, Humanities and the Arts, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualification at any other academic institution.

Pham, Thi Thanh Nga

23 July 2015

## ABSTRACT

In this thesis I analyse and evaluate the treatment of children who come in contact with the judicial system in Vietnam with a focus on the implementation of the state party's obligations under the *Convention on the Rights of the Child (CRC)*, which Vietnam ratified in 1990. I explore to what extent Vietnam has implemented its obligations and consider what it should do further to fully comply with international juvenile justice standards. These questions are addressed with respect to each aspect of the juvenile justice system: the prevention of juvenile delinquency, the treatment of juvenile offenders and the protection of child victims and witnesses of crime.

An interdisciplinary, mixed method approach has been employed, including analysis of documents, statistical analysis, case studies and contextual analysis. Vietnamese law and its actual implementation in juvenile justice are considered through the analysis of international and national legal normative documents, statistics, reports, academic studies and court cases. The thesis includes recommendations based on a careful consideration of Vietnam's obligations under international law, particularly Vietnam's commitment to its obligations under the *CRC*.

Research findings indicate that Vietnam has approached international juvenile justice standards in a number of aspects, including the age of criminal responsibility and the recognition of most juvenile offenders' rights. However, there are significant shortcomings in the definition of the child, national policies on juvenile delinquency prevention, the rights of child victims and witnesses of crimes, and inadequacies in law enforcement. The thesis finally provides practical recommendations for law reform and mechanisms for effective legal implementation.

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## LIST OF PUBLICATIONS

The following publications contain aspects of the research and were published while the project was being undertaken:

Pham, Thi Thanh Nga, 'Juvenile Offenders in Vietnam and the Right to Defence' *Youth Justice* (in press), onlinefirst service:

<<http://yjj.sagepub.com/cgi/reprint/1473225415587737v1.pdf?ijkey=11SDxIarddO7vfP&keytype=finite>>

Pham, Thi Thanh Nga, 'Developments in the Right to Defence for Juvenile Offenders since Vietnam's Ratification of the Convention on the Rights of the Child (2014) 19(3) *East Asian Law Review* 43 <<http://scholarship.law.upenn.edu/ealr/vol9/iss3/2/>>

Pham, Thi Thanh Nga, 'Thuc Thi Cong Uoc Quyen Tre Em o Viet Nam: Tuoi Chiu Trach Nhiem Hinh Su va Che Tai doi voi Nguoi Chua Thanh Nien Pham Toi' [The Implementation of the Convention on the Rights of the Child: The Age of Criminal Responsibility and Penalties Applicable to Juvenile Offenders] (2014) 18 *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 14 <[http://www.nclp.org.vn/nha\\_nuoc\\_va\\_phap\\_luat](http://www.nclp.org.vn/nha_nuoc_va_phap_luat)>

Pham, Thi Thanh Nga, 'The Establishment of Juvenile Courts and the Fulfilment of Vietnam's Obligations under the Convention on the Rights of the Child' (2013) 14(3) *Australian Journal of Asian Law*

<[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2297142](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2297142)>

Pham, Thi Thanh Nga, 'Du Doan nhung Hieu Ung cua viec Thanh lap Toa An Nguoi Chua Thanh Nien o Viet Nam voi viec Thuc Hien Trach Nhiem Phap Ly Quoc Gia theo Cong Uoc Quoc Te ve Quyen Tre Em' [Predicting the Effects of the Establishment of Juvenile Courts in Vietnam on the Implementation of the National Liability under the International Convention on the Rights of the Child] 2012(20–21) *The People's Court Journal* 38, 36

Pham, Thi Thanh Nga, 'Xem Xet Moi Tuong Quan giua Thanh Lap Toa An Gia Dinh va Nguoi Chua Thanh Nien o Viet Nam va viec Thuc Hien Trach Nhiem Phap Ly Quoc Gia theo Cong Uoc Quye Tre Em' [Considering the Establishment of the Family and Children's Court and the Implementation of Vietnam's Obligation as a Signatory to the Convention on the Rights of the Child'] in *Tai Lieu Toa Dam: Tham Van Chinh Sach Thanh Lap Toa An Gia Dinh va Nguoi Chua Thanh Nien o Viet Nam* [Proceedings of the Supreme Court of Vietnam & UNICEF Vietnam's Advocate Workshop on the Establishment of Family and Juvenile Court in Vietnam], Lao Cai, Vietnam, 13–16 May 2012.



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## NOTES ON TRANSLATIONS AND ABBREVIATIONS

In this thesis, many documents written in Vietnamese, including Vietnamese policies, laws and relevant studies, have been referred to and analysed. In these situations, I have translated and quoted information by myself with great care so as to convey the original meanings of the original data. In citations, original names of documents (Vietnamese) are presented first followed by translations into English.

Throughout the thesis, the following abbreviations / shortened phrases are often used:

<i>Beijing Rules</i>	<i>Standard Minimum Rules for the Administration of Juvenile Justice</i>
<i>CPC</i>	<i>Criminal Procedure Code of 2003</i>
<i>CRC</i>	<i>Convention on the Rights of the Child</i>
CRC Committee	Committee on the Rights of the Child
<i>GC 10 on Juvenile Justice</i>	<i>General Comment No 10 (2007): Children's Rights in Juvenile Justice</i>
<i>GC 12 on the Right to be Heard</i>	<i>General Comment No 12 (2009): The Right of the Child to be Heard</i>
<i>GC 14 on the Best Interests of the Child</i>	<i>General Comment No 14 (2013) on the Right of the Child to have his or her Best Interests Taken as a Primary Consideration</i>
<i>Havana Rules</i>	<i>Rules for the Protection of Juveniles Deprived of their Liberty</i>
<i>ICCPR</i>	<i>International Covenant on Civil and Political Rights</i>
<i>ICESCR</i>	<i>International Covenant on Economic, Social and Cultural Rights</i>
<i>PC</i>	<i>Penal Code of 1999, amended in 2009</i>
<i>Protocol on the Sale of Children</i>	<i>Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography</i>
<i>Protocol to Prevent Trafficking in Persons</i>	<i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention against Transnational Organized Crime</i>
<i>Riyadh Guidelines</i>	<i>United Nations Guidelines for the Prevention of Juvenile Delinquency</i>



<i>UHDHR</i>	<i>Universal Declaration of Human Rights</i>
UN	United Nations
<i>UN Guidelines 1995</i>	<i>Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention</i>
<i>UN Guidelines 1997</i>	<i>Guidelines for Action on Children in the Criminal Justice System</i>
<i>UN Guidelines 2002</i>	<i>Guidelines for the Prevention of Crime</i>
<i>UN Guidelines 2005</i>	<i>Guidelines on Justice Matters involving Child Victims and Witnesses of Crime</i>
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
Vietnam	Socialist Republic of Vietnam

English–Vietnamese common terms

<b>English</b>	<b>Vietnamese</b>
Bail / Depositing money or valuable property as bail	Dat tien hoac tai san de dam bao
Banning from travel out of local area	Cam di khoi noi cu tru
Bar association	Doan Luat su
Child / children	Tre em
Court	Toa an
Crime	Toi pham
Criminal Procedure Code	Bo luat To tung Hinh su
Custody	Tam giu
Defence	Bao chua
Defence counsel	Nguoi bao chua
Deterrent measure	Bien phap ngan chan
Education at a commune	Giao duc tai xa, phuong, thi tran
Extremely serious crime	Toi pham dac biet nghiem trong
Fatherland Front	Mat tran To quoc
Fine	Phat tien
Forcible sexual intercourse with a child	Cuong dam tre em

Guarantee	Bao linh
Guardian	Nguoi giam ho
Having sexual intercourse with a child	Giao cau voi tre em
Investigative body	Co quan dieu tra
Judicial	Tu phap
Judicial measurer	Bien phap tu phap
Juvenile	Nguoi chua thanh nien
Lawful representative	Nguoi dai dien hop phap
Lawyer	Luat su
Less serious crime	Toi pham it nghiem trong
Non-custodial reform	Cai tao khong giam giu
Obscenity against a child	Dam o doi voi tre em
Offender	Nguoi pham toi
Penal Code	Bo luat Hinh su
Penalty / punishment	Hinh phat
People's advocate	Bao chua vien nhan dan
Procedure-conducting body	Co quan tien hanh to tung
Procuracy	Vienkiem sat
Rape of a child / child rape	Hiep dam tre em
Sending to a reformatory school	Dua vao truong giao duong
Serious crime	Toi pham nghiem trong
Show trial	Xet xu luu dong
Suspended sentence	An treo
Temporary detention	Tam giam
Termed imprisonment	Tu co thoi han
Very serious crime	Toi pham rat nghiem trong
Victim	Nguoi bi hai
Warning	Canh cao
Witness	Nguoi lam chung

## Chapter 1: INTRODUCTION

### 1.1 Background

The Socialist Republic of Vietnam (Vietnam) is a developing country in South East Asia. Its area is about 331,216.6 km<sup>2</sup> with a coastline of 3260 km; it includes a number of offshore islands.<sup>1</sup> Vietnam's population consists of 54 ethnic groups with the Kinh (or Viet) accounting for the vast majority (85.7 per cent). They usually live in cities and deltas, while many other small groups inhabit isolated and mountainous regions.<sup>2</sup> The total Vietnamese population reached 90.5 million in 2014<sup>3</sup> with children (those aged below 16) and juveniles (those aged below 18) accounting for about 30 and 34 per cent respectively.<sup>4</sup>

Vietnam declared independence in 1945 and achieved national reunification 30 years later after decades of war. Since reunification in 1975, Vietnam has gradually developed its society, economy and integration into the international community with a philosophy that all development is for humanity and the country aspires to be a responsible member of the international community. Since joining the United Nations (UN) in 1977, Vietnam has acceded to most of the UN core human rights treaties, including the *Convention on the Rights of the Child (CRC)*.<sup>5</sup>

The *CRC* is recognised as the most important international document concerning children, containing in one instrument 'the whole gamut of human rights' for children, that is, — their economic, social, cultural, civil and political rights.<sup>6</sup>

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<sup>1</sup> Ministry of Foreign Affairs, *General Information about the Socialist Republic of Viet Nam* (17 March 2014) Ministry of Foreign Affairs <[http://www.mofa.gov.vn/en/tt\\_vietnam/](http://www.mofa.gov.vn/en/tt_vietnam/)>.

<sup>2</sup> Central Population and Housing Census Steering Committee, *The 2009 Vietnam Population and Housing Census: Completed Results* (Statistical Publishing House, 2010).

<sup>3</sup> Vuong Linh, 'Dan So Viet Nam co gan 90,5 trieu Nguoi' [Vietnam's Population Reached 90.5 million], *VnExpress* (online), 2013 <<http://doisong.vnexpress.net/tin-tuc/gia-dinh/dan-so-viet-nam-co-gan-90-5-trieu-nguoi-3121884.html>>.

<sup>4</sup> See more details in section 3.1—The Situation of Children and Juveniles in Vietnam.

<sup>5</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (hereafter *CRC*).

<sup>6</sup> A Glenn Mower, *The Convention on the Rights of the Child: International Law Support for Children* (Greenwood Press, 1997) 6.

Figure 1.1 Map Showing Distribution of Vietnamese Ethnic Groups

**THE NORTHERN DELTA & UPLANDS**

1. Viet
2. Muong
3. Tho
4. Chut

**THE NORTHEAST**

5. Tay
6. Nung
7. San Chay
8. Giay
9. Bo Y
10. San Diu
11. Ngai
12. La Chi
13. Co Lao
14. Pu Peo
15. Hmong
16. Dao
17. Pa Then
18. Lo Lo

**THE NORTHWEST**

19. Thai
20. Lao
21. Lu
22. Kho-mu
23. Xinh-mun
24. Khang
25. Mang
26. O-du
27. La-ha
28. Ha Nhi
29. Phu La
30. La Hu
31. Cong
32. Si La

**THE TRUONG-SON****TAY-NGUYEN**

33. Bru-Van Kieu
34. Co-tu
35. Ta-oi
36. Ba-na
37. Xo-dang
38. Hre
39. Co
40. Gie-Trieng
41. Ro-mam
42. Brau
43. E-de
44. Gia-rai
45. Mnong
46. Co-ho
47. Xtieng
48. Ma
49. Cho-ro

**SOUTH-CENTRAL****COAST REGION**

50. Cham
51. Ra-glai
52. Chu-ru

**THE PLAIN OF****NAM-BO**

53. Khmer
54. Hoa



Source: Highland Education Development Organisation, *Map Showing Distribution of Vietnamese Ethnic Groups (in Highland and Rural Areas)* (2009) <[http://hedo-vietnam.tripod.com/ethnic\\_groups.htm](http://hedo-vietnam.tripod.com/ethnic_groups.htm)>.

This *Convention* has been globally accepted, ratified by all countries with the sole exception of the United States.<sup>7</sup> It provides the international standard for the protection of the child, including children in contact with the judicial system.

Vietnam ratified the *CRC* in early 1990 very soon after its adoption, being the first country in Asia and the second in the world to accede to the *Convention*. So far, Vietnam has made significant progress in the implementation of child rights and in its state party obligations under the *CRC*. The Government has stated that ‘implementing child rights is one of the focuses of human rights in Vietnam’.<sup>8</sup> Numerous national regulations and programs to promote and protect children have been adopted, revised or established. The improvement in the area of children’s rights has been better than in other aspects of human rights,<sup>9</sup> and has had “catalytic” effects on the promotion of human rights’<sup>10</sup> in Vietnam.

However, in Vietnamese law, not all people under 18 years of age are recognised as children. Not all children’s rights enshrined in the *CRC* are regulated and implemented in Vietnam. In particular, with respect to the realisation of child rights in juvenile justice in Vietnam, there is a gap between actual practice and the international standards set forth in the *CRC* and relevant documents. In this regard, the Committee on the Rights of the Child (‘CRC Committee’) has recommended that

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<sup>7</sup> To date 15 July 2015, the *CRC* formally has 195 states parties, the Government of Somalia signed the treaty but has not yet finalised the ratification process. This leaves the US as the sole non ratifier. See United Nations, *Status of Treaties: Convention on the Rights of the Child* <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)>; UN News Centre, *UN Lauds South Sudan as Country Ratifies Landmark Child Rights Treaty* (4 May 2015) <[http://www.un.org/apps/news/story.asp?NewsID=50759#.VW\\_yjM-qpBc](http://www.un.org/apps/news/story.asp?NewsID=50759#.VW_yjM-qpBc)>; UNICEF Press Centre, *Government of Somalia Signs Instrument of Ratification of UN Convention on the Rights of the Child* (Press Release, 20 January 2015) <[http://www.unicef.org/media/media\\_78732.html](http://www.unicef.org/media/media_78732.html)>.

<sup>8</sup> Vietnam, ‘National Report on the Implementation of the *Convention on the Rights of the Child* 1993–1998’ (Government of Vietnam, 1999) (hereafter Vietnam’s *CRC* Report 1993–1998) 3.

<sup>9</sup> See generally, Vietnam, ‘National Report of the Socialist Republic of Viet Nam under the Universal Periodic Review of the United Nations Human Rights Council’ (Government of Vietnam, 2009) (hereafter Vietnam’s National Report 2009); Christian Salazar-Volkman, *A Human Rights-Based Approach to Programming for Children and Women in Vietnam: Key Entry Points and Challenges* (National Political Publishing House, 2004); Ministry of Foreign Affairs, ‘White Paper on Human Rights in Vietnam’ (Ministry of Foreign Affairs, 2005).

<sup>10</sup> Salazar-Volkman, above n 9, 5.

Vietnam should reform its juvenile justice system,<sup>11</sup> and ‘ensure the full implementation of juvenile justice standards’.<sup>12</sup> This means that Vietnam needs to enhance the mechanisms for the protection of children in contact with the judicial system. Nevertheless, to what extent Vietnam should and is able to reform its legal and justice system to adhere to international standards within its circumstances is a difficult question. This requires careful consideration and an objective assessment of current legal regulations, implementation mechanisms, the capacity of judicial staff, and relevant issues in relation to the conditions which need to be met. Until now, there has been no research fully covering these matters.

This matter is further complicated because of Vietnam’s circumstances. Therein, the Communist Party leads the State and society, provides driving directions of the country, including the area of justice — as indicated in its resolutions on legal and judicial reform<sup>13</sup>. Vietnam is seeking a suitable model for better implementation of the *CRC*, including the rights of the child in the judicial sector. Under the *National Program for Child Protection for the period 2011–2015*,<sup>14</sup> reviewing the legal documents and researching juvenile justice has been an important task. The law and the mechanisms for law enforcement concerning human rights, including child protection and juvenile justice, have been in a very dynamic state. The introduction

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<sup>11</sup> CRC Committee, ‘Consideration of Reports Submitted by States Parties under Article 44 of the *Convention* — Concluding Observations of the Committee on the Rights of the Child: Vietnam’, UN Doc CRC/C/15/Add.3 (13 August 1993) (hereafter CRC Committee’s Observations 1993) 2.

<sup>12</sup> CRC Committee, ‘Consideration of Reports Submitted by States Parties under Article 44 of the *Convention* — Concluding Observations: Vietnam’, UN Doc CRC/C/15/Add.200 (18 March 2003) (hereafter CRC Committee’s Observations 2003) 12.

<sup>13</sup> See *Nghi Quyét 08-NQ/TW ngày 02/01/2002 của Bộ Chính Trị về Một Số Nhiệm Vụ Trong Tam Công Tác Tư Pháp trong Thời Gian Tới* [Resolution 08-NQ/TW dated 2 January 2002, issued by the Politburo on Several Key Tasks in the Judicial Sector in the Near Future] (hereafter *Resolution 08-NQ/TW 2002*); *Nghi Quyét 48-NQ/TW ngày 24/5/2005 của Bộ Chính Trị về Chiến Lược Xây Dựng và Hoàn Thiện Hệ Thống Pháp Luật Việt Nam đến năm 2010, Định Hướng đến năm 2020* [Resolution 48-NQ/TW dated 24 May 2005, issued by the Politburo on the Strategy for Development and Improvement of Vietnam’s Legal System to 2010 and Orientation to 2020] (hereafter *Resolution 48-NQ/TW 2005*); *Nghi Quyét 49-NQ/TW ngày 02/06/2005 của Bộ Chính Trị về Chiến Lược Cải Cách Tư Pháp đến năm 2020* [Resolution 49-NQ/TW dated 2 June 2005, issued by the Politburo on Judicial Reform Strategy to 2020] (hereafter *Resolution 49-NQ/TW 2005*).

<sup>14</sup> *Quyết Định 267/QĐ-TTg ngày 22/02/2011 của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Quốc Gia Bảo Vệ Trẻ Em giai đoạn 2011-2015* [Decision 267/QĐ-TTg dated 22 February 2011, issued by the Prime Minister on the Approval of the National Program for Child Protection for the period 2011–2015] (hereafter *National Program for Child Protection 2011–2015*).

of the *Constitution* of 2013 (entered into force in 2014) with significant changes in regards to human rights requires intensive revision of the existing *Penal Code* of 1999 (*PC*)<sup>15</sup> and the *Criminal Procedure Code* of 2003 (*CPC*),<sup>16</sup> in particular the mechanisms for dealing with people in contact with the judicial system. The *Law on the Organisation of the People's Courts* of 2014,<sup>17</sup> which entered into force in mid-2015, provides flexible provisions on establishing family and juvenile courts when necessary. This context may provide opportunities for enhancing the protection of children and the effectiveness of the justice system, including juvenile justice. It may also, however, take up time, money and resources if the new juvenile courts and juvenile justice do not work well.

As I have experience working in the justice system, I understand the difficulties that Vietnam has faced in the implementation of the *CRC*, particularly with respect to the rights of the child in the judicial sector and opportunities to enhance the effectiveness of the system under the current legal and judicial reforms. In addition, with the experience of having been a child and now as a mother in an extended family where there are numerous children in the countryside, I understand the common situation of Vietnamese children and their needs, wishes and aspirations. With a desire for a better mechanism for the protection of children in contact with the judicial system in Vietnam, I conduct this project, 'The Rights of the Child in the Judicial Sector in Vietnam: Compliance with International Legal Standards'. This thesis considers the existing legal regulation and the actual implementation of children's rights in the judicial sector in Vietnam with reference to Vietnam's obligations under the *CRC*. In the conclusion I point out shortcomings and propose relevant recommendations so that Vietnam can approach international standards in juvenile justice.

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<sup>15</sup> *Bo Luat 19/1999/QH10 ve Hinh Su, duoc Sua Doi theo Luat 37/2009/QH12* [Code 19/1999/QH10 on Penal Law, Amended by Law 37/2009/QH12] (hereafter *PC*).

<sup>16</sup> *Bo Luat so 24/2003/QH11 ve To tung Hinh Su* [Code 24/2003/QH11 on the Procedures of Criminal Proceedings] (hereafter *CPC*).

<sup>17</sup> *Luat 62/2014/QH13 ve To Chuc Toa An Nhan Dan* [Law 62/2014/QH13 on the Organisation of the People's Courts] (hereafter *Law on the Organisation of the People's Courts 2014*).

## 1.2 Literature Review

### 1.2.1 Introduction

Children's rights, including the rights of the child in the judicial sector, is a subject with a long history if one looks at literature referring not only to the *CRC* but also previous documents such as the *International Convention for the Suppression of the Traffic in Women and Children* of 1921,<sup>18</sup> the *Geneva Declaration of the Rights of the Child* of 1924<sup>19</sup> and the *Declaration of the Rights of the Child* of 1959.<sup>20</sup> This subject is carefully considered not only by scholars but also governments and organisations in most countries and regions around the world. Consequently, the number of scholarly studies, reports and handbooks in this field is very large. 'A Review of Children's Rights Literature since the Adoption of the *United Nations Convention on the Rights of the Child*'<sup>21</sup> reveals that from the adoption of the *CRC* to November 2007, the Social Science Citation Index (Web of Science [ISI]<sup>22</sup>) listed 242 articles and 174 references which contain the keywords 'children's rights' and 'the rights of the child'. These numbers have continued to expand. Therefore, it is extremely difficult to review all research relating to this matter in a limited space.

In this context, in order to directly develop the research topic, I will here review the literature regarding general commentary on the *CRC* and its implementation, as well as the literature on human rights and the rights of the child in Vietnam. The review of general literature on children's rights will increase insight into the *CRC*'s provisions and their implementation; the review of the literature on Vietnam will provide a national context for the research. This knowledge will be useful for proposing

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<sup>18</sup> *International Convention for the Suppression of the Traffic in Women and Children*, opened for signature 30 September 1921, 9 LNTS 415.

<sup>19</sup> *Geneva Declaration of the Rights of the Child*, LON (26 September 1924).

<sup>20</sup> *Declaration of the Rights of the Child*, GA Res 1386 (XIV), 14 UN GAOR Supp No 16, UN Doc A/4354 (20 November 1959).

<sup>21</sup> Didier Reynaert, Maria Bouverne-de Bie and Stijn Vandeveldel, 'A Review of Children's Rights Literature since the Adoption of the *United Nations Convention on the Rights of the Child*' (2009) 16(4) *Childhood* 518.

<sup>22</sup> The ISI database represents a clear standard for international peer-reviewed articles within the scientific field.



suggestions for the better implementation of the *CRC*, particularly the rights of the child in the judicial sector in Vietnam.

### 1.2.2 Commentary on, and Implementation of, the Rights of the Child under the *CRC*

Among various studies on different aspects of the human rights of children, I would like to single out five works which will be particularly helpful in understanding and improving the implementation of the *CRC*. These studies have been conducted by scholars working in the field, and most of those have been supported by UNICEF. The research is usually carried out with reference to the *CRC*, and utilises several common methods, such as the analysis of data, contents and contexts; the comparison of normative legal documents; and observation. Below I will provide a brief review of these works, focusing on the understanding and fulfilment of children's rights.

#### 1.2.2.1 The Best Interests of the Child: Reconciling Culture and Human Rights<sup>23</sup>

'The best interests of the child' expressed in Article 3 of the *CRC*<sup>24</sup> is considered to be a crucial principle, playing an orienting role in illuminating particular provisions of the *CRC* as well as activities affecting children. At times, however, this principle can be vague in practice because of the way it is interpreted in different nations according to the diversity of their respective cultures. In this book, the principle is interpreted in correlation with fundamental dimensions of children's rights set forth in the *CRC* and 'the broader relationship between culture and human rights'.<sup>25</sup> Alston emphasises that the 'best interests of the child' principle needs to be applied 'not only in the context of legal and administrative proceedings, or in other narrowly-

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<sup>23</sup> Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, 1994). This study is supported by UNICEF.

<sup>24</sup> It provides that:

In all action concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (*CRC* art 3).

<sup>25</sup> Philip Alston, 'The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights' in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, 1994) 1, 2.

defined contexts, but in relation to all actions concerning children'.<sup>26</sup> However, the interpretation and application of this principle varies in different contexts because of variables of culture, religion and other traditions, which can be seen as a common situation in regard to human rights issues.<sup>27</sup> An-Na'im concludes that it is necessary to find the right way to prevent and combat the abuse of arguments about cultural relativity which might violate the rights of the child. Alston's book also provides seven case studies in national contexts, including 'The Best Interests of the Child: A South Asian Perspective',<sup>28</sup> 'The Best Interests Principle in French Law and Practice'<sup>29</sup> and so forth. Each case study illustrates the differing historical and social features of the countries mentioned and their influence. Overall, as Himes, Director of UNICEF's International Child Development Centre, wrote in this book's foreword: 'National and international human rights communities will have to continue struggling with social and legal issues relating to evolving cultural values, many of which are as ancient as the process of change in human societies', and that no one study 'could hope to grapple with all the issues'.<sup>30</sup> Since this work was published 21 years ago, the situation of culture and economics has probably also changed in every country. However, the differences among countries, and their cultural foundations, remain. Therefore, it is reasonably suggested that more attention should be paid to harmonising this *Convention* or international law generally with the particular conditions of each country.

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<sup>26</sup> Ibid 4.

<sup>27</sup> Abdullahi An-Na'im, 'Cultural Transformation and Normative Consensus on the Best Interests of the Child' in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, 1994) 62, 79.

<sup>28</sup> Savitri Goonesekere, 'The Best Interests of the Child: A South Asian Perspective' in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, 1994) 117.

<sup>29</sup> Facqueline Rubellin-Devichi, 'The Best Interests Principle in French Law and Practice' in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, 1994) 259.

<sup>30</sup> James R Himes, 'Foreword' in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, 1994) v, vi.

### 1.2.2.2 Implementing the *Convention on the Rights of the Child*: Resource Mobilization in Low-Income Countries<sup>31</sup>

In this 1995 volume, Himes discusses key concepts and surveys the states parties' obligations in implementing child rights as recognised in the *CRC*, focusing upon how to maximise 'available resources' as prescribed in Article 4<sup>32</sup> and on programs for implementing the Convention, especially under the conditions of developing countries.

Himes analyses government obligations in two dimensions: the nature of the obligations and the level of governmental authority.<sup>33</sup> There are four levels of governmental authority—including Community/District, Metropolitan/Provincial/State, National and International—where *CRC* members should fulfil commitments to respect, protect, facilitate and fulfil the rights of the child. For example, communities respect participation and other rights of children while the national body protects all citizens from human rights abuse without discrimination, and facilitates the welfare of children by planning, organising and implementing policies, laws and regulations to increase and equalise opportunities for education, culture, and so on. The author also suggests a four-step strategy for enforcing the *CRC*, consisting of: 'Situation analysis', 'Goal and standard setting', 'Plans and programs of action' and 'Monitoring compliance and enforcement.'<sup>34</sup>

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<sup>31</sup> James R Himes (ed), *Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries* (Kluwer Law International, 1995).

<sup>32</sup> Article 4 of the *CRC*:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

<sup>33</sup> James R Himes, 'Introduction' in James R Himes (ed), *Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries* (Martinus Nijhoff Publishers, 1995) 1.

<sup>34</sup> *Ibid* 21–2.

According to Himes and Saltarelli,<sup>35</sup> ‘available resources’ to implement child rights need to be maximised and understood broadly, embodying three groups of economic, human and organisational resources:

- (a) Economic resources which include financial resources, natural resources, physical infrastructure, technology and information;
- (b) Human resources which are people, their knowledge, experience, skills, motivation, aspirations, vision commitment and energy; and
- (c) Organisational resources which include family structure, extended family support and childcare services; municipal arrangements for education, health, housing and juvenile justice, national laws and regulations; and international monitoring systems.

This study also specifically discusses children’s rights to survival, health and education, and the right to be protected from economic exploitation. Overall, it is indicated that in order to realise the goals of the *CRC*, each nation needs to mobilise various resources and apply different methods, measures and programs simultaneously. This includes reforming the law, collecting data about children’s situations, educating and training persons working with children, recognising difficulties and allocating duties. This volume was published about 20 years ago, but the basic contents remain a valuable reference for designing programs to support and implement the *CRC* in developing countries, including Vietnam.

#### 1.2.2.3 A Commentary on the *United Nations Convention on the Rights of the Child*<sup>36</sup>

The book has two parts: the first part introduces the *CRC* and its history and the mission of the *CRC* Committee. The second part is a commentary on the *CRC* substantive articles 1–41. Each article is analysed as a relatively independent topic, comprising the text, the purpose of the article, and analyses and interpretations of its

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<sup>35</sup> Diana Saltarelli and James R Himes, ‘Conclusion’ in James R Himes (ed), *Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries* (Martinus Nijhoff Publishers, 1995) 223, 225–6.

<sup>36</sup> Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, 1999).

contents in relation to other relevant instruments where appropriate. For instance, in commentary on Article 1 on the definition of the child, Detrick shows that the *International Covenant on Civil and Political Rights (ICCPR)*<sup>37</sup> and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>38</sup> stipulate special regulations for ‘children’, the ‘child’, ‘juvenile persons’ or ‘young persons’ but that these terms are not defined. He also notes that, those drafting the *CRC* defined ‘a child’ as any person under the age of 18 years. The present provisions, however, create some flexibility for application in various countries.<sup>39</sup>

This work may be considered a reference material that enables a precise understanding of the meaning of each article and the original intention and spirit of the whole *Convention*. However, since this book was launched, there have been substantial changes in the international law system and economic and social conditions, such as three optional protocols to the *CRC*, the *CRC* Committee’s general comments and a number of other related instruments. Therefore, while referring to this study, it is necessary to update relevant information.

#### 1.2.2.4 Implementing the Rights of the Child: Six Reasons Why the Human Rights of Children Remain a Constant Challenge<sup>40</sup>

In this article, the author indicates that there are ‘at least 6 over-reaching challenges relating to the implementation of the *CRC*’. These can be summarised as follows:

- (a) To fulfil the *CRC* a new approach to solving child issues is required, a human rights approach instead of the traditional welfare approach, leading to a need for substantial revolution in each state, including its legislation, institutions and belief;

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<sup>37</sup> *Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (hereafter *ICCPR*).

<sup>38</sup> *Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (hereafter *ICESCR*).

<sup>39</sup> Article 1 of the *CRC* prescribes that:

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

<sup>40</sup> Paulo David, ‘Implementing the Rights of the Child: Six Reasons Why the Human Rights of Children Remain a Constant Challenge’ (2002) 48(3–4) *International Review of Education* 259.

- (b) Implementing the *CRC* requires strong interaction between various state bodies, such as ministries of social welfare, health, justice and so on, along with related measures;
- (c) The *CRC*'s provisions in terms of civil rights, especially the right to participation in discussing matters relating to children, are often overlooked or misunderstood, requiring 'deep social changes in attitudes, behaviour and values',<sup>41</sup>
- (d) New dimensions recognised in the *CRC* about of tradition and typical child related matters, particularly health and education, which can bring clear impact, still provoke difficulties in understanding and implementation;
- (e) The concept of the human rights of children sometimes creates 'hysterical debates'; many groups sense that children's rights 'will infringe on their own rights';<sup>42</sup>
- (f) '69 states have made reservations or declarations when ratifying the Convention',<sup>43</sup> resulting in a limitation of the *CRC*'s impact on states generally.<sup>44</sup>

This research was conducted more than 10 years ago and the situation relating to children has changed noticeably since then. Nevertheless, the implementation of the *CRC* has not achieved as much as expected. Persons who are responsible for taking care of children still complain that the *Convention* brings progress but challenges remain in areas of children's rights, including the right to be protected.<sup>45</sup> Along this line, researchers also claim that, in spite of achievements, 'very few cases of an

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<sup>41</sup> Ibid 260.

<sup>42</sup> Ibid 261.

<sup>43</sup> Ibid 262.

<sup>44</sup> This paper does not clearly show what kinds of reservations have been made by states. However, the UN has records of reservations. See United Nations, *Status of Treaties: Convention on the Rights of the Child* (30 June 2015) <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)>.

<sup>45</sup> Yanghee Lee and Kimberly A Svevo-Cianci, 'Twenty Years of the *Convention on the Rights of the Child*: Achievements and Challenges for Child Protection' (2009) 33(11) *Child Abuse & Neglect* 767; Dan Seymour, *Convention Brings Progress on Child Rights, but Challenges Remain* (1st August 2011) UNICEF <<http://www.unicef.org/rightsite/237.htm>>.

integral or holistic application of the *CRC* to national law can be found' and there exist challenges for the implementation of the *CRC*.<sup>46</sup> Thus, David's work might remain valuable for reference when seeking solutions for better implementation of the *CRC*.

#### 1.2.2.5 Implementation Handbook for the *Convention on the Rights of the Child*<sup>47</sup>

This work is supported by UNICEF with three versions. According to the Executive Director of UNICEF, Veneman, the handbook has (since its first edition) 'become a well-known practical tool' for guiding states, UNICEF, organisations and academics on the implementation of the *CRC*.<sup>48</sup> Its most recent version, the third edition, was published in 2007. Concepts and contents of all 54 articles of the *Convention* have been integrated and analysed in complex relation to normative legal documents, such as the first two optional protocols to the *CRC*, as well as the *ICCPR*, and *ICESCR*; and general comments and recommendations of the *CRC* Committee and other UN bodies. Additionally, numerous examples extracted from state parties' reports are provided to explain or illustrate the issues being discussed. For example, while analysing Article 37 about the child's right to be protected from torture, degrading treatment and deprivation of liberty, the authors reveal that states parties' reports are examined with regard to relevant detailed standards specified in relevant instruments. Many recommendations of the *CRC* Committee on the reports of about 30 countries including developed and developing countries (such as Canada, the United Kingdom, Australia, China, Singapore and the Philippines) are considered. These recommendations aim to further support judicial activities of child protection in each member state. With such commentary, consequently, the matters of the rights of children, and states' obligations under the *CRC* are relatively clear.

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<sup>46</sup> Marta Mauras, 'Public Policies and Child Rights: Entering the Third Decade of the *Convention on the Rights of the Child*' (2011) 633(1) *The Annals of the American Academy of Political and Social Science* 52, 53, 59.

<sup>47</sup> Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (United Nations Publications, 3 ed, 2007). The first edition was published in 1998, the second in 2002, and the third in 2007.

<sup>48</sup> *Ibid* xi.

Hence, there is no doubt that the handbook provides great knowledge about the human rights of children, and is useful for realising and implementing the *CRC*. However, since the third edition was released, several documents relating to children have been approved, including the CRC Committee's General Comments 11–18,<sup>49</sup> and the *Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*.<sup>50</sup> For this reason, when consulting this handbook, it is necessary to update comments, recommendations and regulations where relevant.

From the studies quoted above, it can be seen that there are various reference documents promoting a greater understanding of the *CRC* and encouraging its application. These studies also demonstrate that there exist many difficulties and challenges in achieving its goals, especially in developing countries. Effective implementation of the *CRC* requires recognising not only the *CRC* provisions but also a number of relevant treaties, guidelines, standard rules and recommendations. Furthermore, local and national contextual factors should be considered while avoiding the violation of child rights. Each nation should make efforts to improve its legal system, social attitudes, and provide financial and human resources for child issues. When studying and applying the *CRC*, actors might consult these studies, while remembering to update relevant documents and carefully place them in their particular cultural and socio-economic contexts.

### 1.2.3 Human Rights in Vietnam

It is said that human rights have experienced a long history and an abundance of research in many developed countries including Great Britain, France and the United States. In these nations, many official documents affirming individual rights have been promulgated in earlier centuries, including the English *Bill of Rights* of 1689, the French *Declaration of the Rights of Man and Citizen* of 1789, and the *Constitution of the United States* of 1787 and its first ten amendments, collectively

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<sup>49</sup> See more at: Office of High Commissioner for Human Rights  
<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)>.

<sup>50</sup> The [Third] *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* opened for signature 28 February 2012 A/RES/66/138 (entered into force 14 April 2014).



known as the *Bill of Rights* (1791). These are considered to be precursors to international human rights treaties.<sup>51</sup>

In Vietnam, early reference to ideas related to people's rights, such as freedom and democracy, can be found in the mechanism of Mandarin recruitment through the civil service three-stage examination in feudal society (first held in 1075 and ended in 1919 CE) and the writings of the renowned, elite philosophers Le Quy Don (1726–84) and Phan Huy Chu (1782–1840).<sup>52</sup> Research directly referring to the concept of 'rights' or 'human rights' appeared relatively late and is limited in the number of works, number of scholars and the contents of their studies. The issue of human rights has only really become a subject of public discussion and academic research in the last two decades and such research is still in its early stages.<sup>53</sup> So far, there has been almost no document published that indicates when the study of human rights started in Vietnam. However, it must be earlier than 9 June 1981 when Vietnam officially ratified the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948,<sup>54</sup> the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1965<sup>55</sup> and the *International Convention on the Suppression and Punishment of the Crime of Apartheid* of 1973.<sup>56</sup> Before this date,

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<sup>51</sup> Nancy Flowers (ed), *Human Rights Here and Now: Celebrating the Universal Declaration of Human Rights* University of Minnesota Human Rights Resource Centre (undated) <<http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/short-history.htm>>. Note: Flowers notes that her material there is adapted from: David Shiman, *Teaching Human Rights* (Center for Teaching International Relations Publications, University of Denver, 1993) 6–7.

<sup>52</sup> Alexander Woodside, 'Freedom and Élite Political Theory in Vietnam before the French' in David Kelly and Anthony Reid (eds), *Asian Freedoms: The Idea of Freedom in East and Southeast Asia* (Cambridge University Press, 1998) 205, 207–10.

<sup>53</sup> Tri Uc Dao and Cong Giao Vu, *Khai Quat ve Hoat Dong Nghien Cuu Khoa Hoc tren Linh Vuc Quyen Con Nguoi o Viet Nam* [Overview of Scientific Activities in Human Rights in Vietnam] (15 July 2010) Dai Hoc Quoc Gia <<http://www.crights.org.vn/home.asp?id=110&langid=1>>; Xuan Tinh Vuong, 'Tinh Dac Thu cua Quyen Con Nguoi va Thuc Hien Quyen Con Nguoi o Cac Dan Toc Thieu So Viet Nam' [The Speciality of Human Rights and Implementation of Human Rights among Minority Groups in Vietnam] (Paper presented at the Conference on Universality and Speciality of Human Rights, Hanoi, 16–17 March 2010) 2.

<sup>54</sup> *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

<sup>55</sup> *Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1966, 660 UNTS 196 (entered into force 4 January 1969).

<sup>56</sup> *Convention on the Suppression and Punishment of the Crime of Apartheid*, opened for signature 30 November 1973, 1015 UNTS 243 (entered into force 18 July 1976).

related state agencies had examined international conventions and relevant requirements so as to prepare for Vietnam's accession to these treaties. To date (15 July 2015), Vietnam has become a state member of 12 UN human rights treaties.<sup>57</sup> Nevertheless, related documents on Vietnam's preparation for Vietnam's ratification of these treaties have not been available in the public domain.

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<sup>57</sup> See tables 1.1 and 1.2.

Table 1.1 UN Core Human Rights Treaties and Vietnam's Accession to 15 July 2015<sup>58</sup>

No	TREATIES		Vietnam's Actions & Date
	Name	Date of adoption & entry into force	
1.	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>	21 Dec 1965 4 Jan 1969	Accession 9 Jun 1981
2.	<i>International Covenant on Economic, Social and Cultural Rights</i>	16 Dec 1966 3 Jan 1976	Accession 24 Sep 1982
3.	<i>International Covenant on Civil and Political Rights</i>	16 Dec 1966 23 Mar 1976	Accession 24 Sep 1982
4.	<i>International Convention on the Elimination of All Forms of Discrimination against Women</i>	18 Dec 1979 3 Sep 1981	Ratification 18 Dec 1982
5.	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	10 Dec 1984 26 Jun 1987	Ratification 5 Feb 2015
6.	<i>Convention on the Rights of the Child</i>	20 Nov 1989 2 Sep 1990	Ratification 20 Feb 1990
7.	<i>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</i>	18 Dec 1990 1 July 2003	Considering
8.	<i>Convention on the Rights of Persons with Disabilities</i>	13 Dec 2006 3 May 2008	Ratification 5 Feb 2015
9.	<i>International Convention for the Protection of All Persons from Enforced Disappearance</i>	20 Dec 2006 23 Dec 2010	Considering

<sup>58</sup> This table is a synthesis from Vietnamese documents and the United Nations bodies' websites: <<http://treaties.un.org>>; <<http://www2.ohchr.org>>.

Table 1.2 UN Human Rights Treaties that Vietnam has Acceded to  
or Signed and Ratified to 15 July 2015<sup>59</sup>

No	TREATIES		Vietnam's accession / signature - ratification & date
	Name	Dates of adoption- entry into enforce	
1.	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i>	19 Dec 1948 12 Jan 1951	Accession 9 Jun 1981
2.	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>	21 Dec 1965 4 Jan 1969	Accession 9 Jun 1982
3.	<i>International Covenant on the Suppression and Punishment of the Crime of Apartheid</i>	30 Nov 1973 18 Jul 1976	Accession 9 Jun 1981
4.	<i>International Covenant on Economic, Social and Cultural Rights</i>	16 Dec 1966 3 Jan 1976	Accession 24 Sep 1982
5.	<i>International Covenant on Civil and Political Rights</i>	16 Dec 1966 23 Mar 1976	Accession 24 Sep 1982
6.	<i>International Convention on the Elimination of All Forms of Discrimination against Women</i>	18 Dec 1979 3 Sep 1981	Sign: 29 Jul 1980 Rat: 18 Dec 1982
7.	<i>Convention on the Non-application of Statutory Limitations to War Crimes and Crimes against Humanity</i>	26 Nov 1968 11 Nov 1970	Accession 6 May 1983
8.	<i>Convention on the Rights of the Child</i>	20 Nov 1989 2 Sep 1990	Sign: 26 Jan 1990 Rat: 20 Feb 1990
9.	<i>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict</i>	25 May 2000 18 Jan 2002	Sign: 8 Sep 2000 Rat: 20 Dec 2001
10.	<i>Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Pornography</i>	25 May 2000 18 Jan 2002	Sign: 8 Sep 2000 Rat: 20 Dec 2001
11.	<i>Convention on the Rights of Person with Disabilities</i>	13 Dec 2006 3 May 2008	Sign: 22 Oct 2007 Rat: 5 Feb 2015
12.	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	10 Dec 1984 26 Jun 1987	Sign: 7 Nov 2013 Rat: 5 Feb 2015

<sup>59</sup> This table is a synthesis from Vietnamese documents and the United Nations bodies' Websites: <<http://treaties.un.org>>.

When the *Constitution* of 1992 — the first legal document to do so — formally recognised the concept of ‘human rights’ (*quyen con nguoi*) in Article 50,<sup>60</sup> then a few state projects about ‘human rights’ and socialism were conducted by social scientists from different disciplines.<sup>61</sup> Therein, human rights were considered to be effectively ensured in Vietnam’s legal system. These projects were regarded as establishing basic theoretical foundations for research and teaching on human rights in Vietnam today.<sup>62</sup> Since mid-1990s, human rights have been researched more actively, and a number of studies have been published. The majority of publications concentrated on analysing the theory of human rights, and were conducted by Vietnamese institutes and scholars.<sup>63</sup> These works analysed the basic contents of human rights as universal values as well as features particular to Vietnam. These ‘special features’ were explained by Vietnam’s cultural, traditional and economic-social specificities or theories of cultural diversity. There are also a number of studies introducing international laws and national legislation relating to areas of human rights, providing guidelines for domestic readers and some suggestions for the amendment of domestic legislation.<sup>64</sup>

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<sup>60</sup> In the current *Constitution* of 2013, ‘human rights’ are clearly regulated, mentioned nine times in seven articles (arts 3, 14, 15, 70, 96, 102 and 107); in particular, this Constitution devotes one chapter to human rights — Chapter II: Human Rights and Basic Rights and Duties of Citizens. See *Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 2013* [The Constitution of the Socialist Republic of Vietnam of 2013] (hereafter *Constitution 2013*).

<sup>61</sup> Hoc Vien Chinh Tri Nguyen Ai Quoc, ‘Xa Hoi Chu Nghia va Quyen Con Nguoi’ [Socialism and Human Rights] (Hanoi, 1992); Van Phong Trung Uong Dang, ‘Con Nguoi: Muc Tieu va Dong Luc cua su Phat Trien Kinh Te, Xa Hoi’ [People: The Object and Motivation of the Socio-economic Development] (Hanoi, 1992); Hoc Vien Chinh Tri Quoc Gia Ho Chi Minh, ‘Quyen Con Nguoi va Quyen Cong Dan trong Su Nghiep Doi Moi cua Viet Nam’ [Human Rights and Citizenship in Vietnam’s Doi Moi Process] (Hanoi, 1993).

<sup>62</sup> Dao and Vu, above n 53.

<sup>63</sup> Khiem Ich Pham and Van Hoa Hoang, ‘Quyen Con Nguoi trong The Gioi Hien Dai’ [Human Rights in the Modern World] (Vien Thong Tin Khoa hoc Xa Hoi, 1995); Hong Thanh Chu (ed), *Tim Hieu Van De Nhan Quyen trong The Gioi Hien Dai* [Understanding the Human Rights Issue in the Modern World] (Lao Dong Xa Hoi, 1996); Van Hoa Hoang and Hong Thanh Chu (eds), *Mot so Van De ve Quyen Kinh Te va Chinh Tri* [Matters of Economic and Social Rights] (Chinh Tri Quoc Gia, 1996); Hoc Vien Chinh Tri, Hanh Chinh Quoc Gia, ‘Nhung Quan Diem Co Ban cua Chu Nghia Mac-Lenin ve Quyen Con Nguoi va Y Nghia voi Viet Nam hien nay’ [Essential Opinions of Lenin-Marxism on Human Rights and its Significance for Vietnam Today] (Hanoi, 2008).

<sup>64</sup> Eg, Van Phong Quoc Hoi, *Quyen cua Phu Nu va Tre Em trong cac Van Ban Phap Ly Quoc Te va Phap Luat Viet Nam* [The Rights of Women and Children in International Instruments and Vietnamese Laws] (Chinh Tri Quoc Gia, 2003); Hoi Luat gia Viet Nam, *Phap Luat Quoc Gia va Phap*

There is only limited empirical research on the actual situation of human rights in Vietnam. The two most prominent publications are ‘The White Paper on Human Rights in Vietnam’;<sup>65</sup> and ‘The National Report of the Socialist Republic of Vietnam under the Universal Periodic Review of the United Nations Human Rights Council’.<sup>66</sup> By providing relevant statistics and information, these documents clearly show that Vietnam has been a state party to almost all key international treaties on human rights and has made significant achievements in the protection and promotion of human rights in practice. That includes civil and political rights; economic, social and cultural rights; and the rights of vulnerable groups, such as children, women, ethnic minority groups, the aged and persons with disabilities.<sup>67</sup> The reports also point out that there are many challenges in the full implementation of human rights according to international standards. For instance, normative legal documents concerning human rights still involve ‘inconsistencies and overlap and conflicts at several points, leading to difficulties, even misinterpretation in application and enforcement’.<sup>68</sup> Vietnam’s economic conditions are poor; and the human rights awareness of civil servants is still inadequate at times.<sup>69</sup> These are considered to be the most serious limitations on the exercise of human rights in practice in Vietnam.<sup>70</sup>

Recently, in addition to domestic research, there have been some projects concerning human rights in Vietnam conducted at overseas universities. Most notable are two doctoral theses. The first, ‘The Development of a Human Rights Culture in Vietnam, 1986 to Present’, analyses the cultural development of human rights in Vietnam since the *Doi Moi* policy was enshrined in the Vietnamese Constitution and relevant laws

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*Luat Quoc Te ve Bao Ve QUYEN cua nhom Xa Hoi De bi Ton Thuong* [National and International Laws on Protecting the Rights of Vulnerable Groups] (Hong Duc, 2007); Van Manh Nguyen, *Xay Dung va Hoan Thien Dam Bao Phap Ly Thuc hien QUYEN Con Ngoai trong Dieu Kien Doi Moi o Nuoc ta hien nay* [Building and Completing Legal Measures to Ensure Human Rights in the Doi Moi Condition in Vietnam today] (PhD Thesis, Hoc Vien Chinh Tri Quoc Gia Ho Chi Minh, 2005).

<sup>65</sup> Ministry of Foreign Affairs, ‘White Paper on Human Rights in Vietnam’, above n 9.

<sup>66</sup> Vietnam’s National Report 2009, above n 9.

<sup>67</sup> To 15 July 2015, Vietnam ratified 12 UN human rights covenants, conventions and protocols, including almost all UN core human rights treaties except for the *International Convention for the Protection of All Persons from Enforced Disappearance* (see tables 1 and 2).

<sup>68</sup> Vietnam’s National Report 2009, above n 9 [10].

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

were amended, and the right to participation in a fair trial, and the right to property adopted.<sup>71</sup> The second, ‘Jurisprudence of Human Rights and the Mechanism for Protection: A Comparative Study between Vietnam and the United Kingdom’, clarifies the different characteristics and values of the British and Vietnamese approaches to human rights, and compares legislation and judicial practice in Vietnam and the United Kingdom, especially domestic legislation and the enforcement of international conventions on human rights.<sup>72</sup> These authors have also made some suggestions in regard to raising awareness of human rights and effectively enforcing relevant international conventions in Vietnam.

In reviewing these publications, some generalisations can be made. First, human rights in Vietnam may be described in different respects, but the research mostly focuses on theory rather than practice, except for reports prepared by the government. Second, the research methods are mainly based on studying documents and making comparisons. Third, human rights issues are not a popular topic. Some researchers, including leading legal researchers Professor Tri Uc Dao and Professor Xuan Tinh Vuong, believe that in Vietnam human rights is a sensitive subject, and might be politicised.<sup>73</sup> This may be the reason why the research methods of direct interviews or surveys (both written and via the internet) have not been widely deployed.<sup>74</sup> Finally, the studies have basically presented popular beliefs on human

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<sup>71</sup> Ho Hai Truong, *The Development of a Human Rights Culture in Vietnam, 1986 to Present* (PhD Thesis, University of Leeds, 2009). *Doi Moi* (‘renovation’) refers to the policy of adopting a socialist market economy rather than a strictly socialist approach.

<sup>72</sup> Van Nghia Hoang, *Jurisprudence of Human Rights and the Mechanism for Protection: A Comparative Study between Vietnam and the United Kingdom* (PhD Thesis, Manchester Metropolitan University, 2009).

<sup>73</sup> Dao and Vu, above n 53; Vuong, above n 53; Van Nghia Hoang, above n 72; Ngoc Anh Pham, ‘Quyền Con Người ở Việt Nam hiện nay: Thực Trạng và Giải Pháp Đam Bảo Phát Triển’ [Human Rights in Vietnam: Practice and Solutions for Development] (2007) 8(104) *Tap chi Xa Hoi va Bao Hiem* [Journal of Society and Insurance] 15.

<sup>74</sup> The researcher reported that he had tried to establish good relationships with several government members, judicial officials and legal enforcers in order to carry out surveys and interviews but, unfortunately, some declined participation or avoided certain questions. A noted example is given of some well-known lawyers who are successful in protecting human rights, but they do not acknowledge themselves to be professional human rights lawyers because of concerns about their occupational safety and personal security. See Van Nghia Hoang, above n 72, 19.

rights among most Vietnamese scholars as well as the authorities and the Vietnamese Communist Party.<sup>75</sup> Such beliefs are that:

- (a) Human rights are the common values of human beings with universal characteristics;
- (b) Human rights have specific features or cultural relativity, such as ‘Asian values’, depending on national economic, social and cultural conditions;
- (c) Individual rights and interests should harmonise with collective, community and national benefit; and
- (d) Human rights are protected and guaranteed by the government.

The above beliefs reflect a significant difference in the understanding and recognition of ‘human rights’ in Vietnam, where the benefit of the state and society is a priority, unlike in other countries as stated in the Universal Declaration of Human Rights, where the rights of individuals are the central focus. This feature is also represented in the Vietnamese criminal law, where ‘crime’ is defined as an act dangerous to society (further discussed in Chapter 3) and ‘infringing upon the State’s property’ is a circumstance leading to a greater penal liability in the *PC* (art 48/1/i).

#### 1.2.4 Children’s Rights in Vietnam

Children’s rights have been researched more extensively than other aspects of human rights.<sup>76</sup> This can be explained by reference to the tradition and culture of loving children and the fact that this is a less sensitive subject than some other human rights issues.<sup>77</sup> Studies on Vietnamese children have been conducted not only by Vietnamese state agencies<sup>78</sup> and domestic scholars, but also by international

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<sup>75</sup> Directive 12 dated 12 July 1992 of the Secretariat of CPV Central Committee shows seven main points on human rights issues in Vietnam, including those mentioned here.

<sup>76</sup> Dao and Vu, above n 53, 4.

<sup>77</sup> In Vietnam there is a popular saying: ‘*Tre em hôm nay, thế giới ngày mai*’ meaning ‘Children today, the World tomorrow’. See also Vietnam, ‘National Report on Two Years Implementation of the United Nations Conventions on the Rights of the Child’ (Government of Vietnam, 1992) (hereafter Vietnam’s CRC Report 1992).

<sup>78</sup> These are carried out by such agencies as the Commission to Protect and Care for Children, the Ministry of Labour, Invalids and Social Affairs, Ministry of Health, Ministry of Public Security, Ministry of Justice, Supreme People’s Court and the General Statistics Office.



organisations<sup>79</sup> and by non-Vietnamese researchers. The studies can be divided into four basic groups:

The first group consists of the largest number of publications. In common with other publications concerning human rights, these books often introduce and disseminate the *CRC*, make comparisons between international law and domestic law and provide some suggestions for amending Vietnamese law to make it compatible with international law.<sup>80</sup>

The second category is a collection of recent reports and some journal articles reflecting on the situation of children in Vietnam, and usually supported by UNICEF. The researchers are staff working in Vietnamese state agencies, UNICEF Vietnam and several international specialists. These publications often describe the normal lives of Vietnamese children,<sup>81</sup> or different aspects of children's lives (such as health<sup>82</sup> or education,<sup>83</sup> or focus on groups of children in special circumstances (like

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<sup>79</sup> These include organisations such as UNICEF, Rädde Barmen (Save the Children Sweden), Save the Children in Vietnam, International Social Service (ISS), ChildFund, Plan in Vietnam, Italian Association for Aid to Children, World Vision and Terre des hommes foundation: *Enfant and Development in Vietnam (1992–2010)*.

<sup>80</sup> Su That, *Viet Nam voi Cong Uoc cua Lien Hop Quoc ve Quyen Tre Em [Vietnam and the Convention on the Rights of the Child]* (Su That, 1991); Uy Ban Bao Ve va Cham Soc Tre Em, *Viet Nam va cac Van Kien Quoc Te ve Quyen Tre Em [Vietnam and International Normative Documents on Children's Rights]* (Chinh Tri Quoc Gia, 1997); Radda Barmen, *Huong Dan Thuc Hanh Cac Tieu Chuan Quoc Te lien quan den Tu Phap Nguoi Chua Thanh Nien [Directions for Practising International Standards of Juvenile Justice]* (Chinh Tri Quoc Gia, 2000); Radda Barmen, *Tai Lieu Tap Huan Cong Uoc Quyen Tre Em [Documents on the Practice of the Convention on the Rights of the Child]* (Chinh Tri Quoc Gia, 2006).

<sup>81</sup> Christian Salazar Volkmann, '30 Years after the War: Children, Families, and Rights in Vietnam' (2005) 19(1) *International Journal of Law, Policy and the Family* 23.

<sup>82</sup> Suzanne Goren, 'Looking for Child Psychiatric Nursing: Vietnam 2005' (2007) 20(3) *Journal of Child and Adolescent Psychiatric Nursing* 156; Eric Rosenthal and Mental Disability Rights International, *The Rights of Children with Disabilities in Vietnam: Bring Vietnam's Law into Compliance with the UN Convention on the Rights of Persons with Disabilities* (UNICEF Vietnam, 2009); UNICEF Vietnam, *Health Equity in Vietnam: A Situational Analysis Focused on Maternal and Child Mortality* (UNICEF, 2010).

<sup>83</sup> UNICEF Vietnam, *Programme Brief: Action Research on Mother Tongue- Based Bilingual Education: Achieving, Equitable Education* (UNICEF, 2010); UNICEF Vietnam, MOET of Vietnam and UNESCO Vietnam, *The Transition of Ethnic Minority Girls from Primary to Secondary Education* (UNICEF, 2009).

poor, street children<sup>84</sup> and children living in certain regions).<sup>85</sup> These are surveyed by using different methods including observation, interview, literature review and comparison. Among such studies, UNICEF's 'An Analysis of the Situation of Children in Viet Nam 2010'<sup>86</sup> can be seen as the most prominent. It is the product of a huge and serious project by UNICEF undertaken in close collaboration with the Vietnamese Government.<sup>87</sup> Based on statistics and the results of most previous studies relating to children in Vietnam, this work has provided critical analysis, describing and evaluating Vietnamese children's rights to health and survival, education, participation, and to protection. It is claimed that 'Vietnam has achieved unprecedented improvements in the lives of its children in the past two decades', but there exist emerging challenges.<sup>88</sup> Some suggestions have been proposed for Vietnam to fully implement the *CRC* and the *CRC* Committee's recommendations. However, in this project, several materials used are old, based on research conducted in 2001–2003 or data of the 1990s, while the situations mentioned have changed rapidly due to socio-economic change. As a result, some particular comments now seem out of date or inappropriate. In addition, the number of children in conflict with the law and child victims who are sexually abused is cited, but the analysis of the protection of child rights in the field of justice seems to be inadequate.

The third group includes reports to the UN by the Vietnamese Government on the implementation of the *CRC* and its first two optional protocols. Since ratifying the *CRC* in 1990 and the two optional protocols in 2001, Vietnam has submitted reports on the implementation of *CRC* in 1992, 1998, 2002, 2008 and 2012; and reports on

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<sup>84</sup> UNICEF Vietnam and Uy Ban Dan So, Gia Dinh va Tre Em, *Bao Cao Ra Soat Danh Gia Chinh Sach, Phap Luat cua Viet Nam ve Phong Chong Lam Dung, Xam Hai Tre Em* [Report on Evaluation of Policies, and Regulations on the Prevention of Child Abuse] (Uy Ban Dan So, Gia Dinh va Tre Em, 2006).

<sup>85</sup> UNICEF Vietnam, *Research Report on Children with Disabilities and their Families in Da Nang* (UNICEF, 2009); UNICEF Vietnam, *An Analysis of the Situation of Children in Dien Bien* (UNICEF, 2010); MOLISA and UNICEF Vietnam, *Qualitative Research on Children with Disability in An Giang and Dong Nai: Knowledge, Attitude, Practice* (UNICEF, 2011).

<sup>86</sup> UNICEF, *An Analysis of the Situation of Children in Viet Nam 2010* (UNICEF Vietnam, 2011) (hereafter UNICEF's Report on Children in Viet Nam).

<sup>87</sup> *Ibid* 2.

<sup>88</sup> *Ibid* 297.

the implementation of the first two optional protocols to the *CRC* in 2004.<sup>89</sup> These reports reflect the situation of Vietnamese children in relation to criteria outlined in the *CRC* and those optional protocols, showing the advantages and disadvantages that Vietnam faces while implementing the *CRC* and its protocols. ‘The Third and Fourth Country Report on Vietnam’s Implementation of the *United Nations Convention on the Rights of the Child* in the 2002–2007 Period’, updated in 2012, illustrates that Vietnam has achieved significant development in realising the rights of the child in practice. It indicates that there are a number of new or reformed laws aiming to harmonise national law with the *CRC* and relevant treaties. However, as the Vietnamese Government acknowledges, ‘it is not yet possible to say that Vietnam’s legal system is streamlined with the regulation of the *CRC* and with the [then] two optional protocols to the *Convention*’.<sup>90</sup> For instance, there are no detailed provisions specifying child-friendly procedures during court proceedings; and several key concepts, including ‘child trafficking’ and ‘child pornography’, have not been clearly identified, leading to different understandings while relevant laws are being enforced. Moreover, several contents are described without critical evaluation of the real effectiveness of the relevant laws, policies and programs for children. Therefore, a number of solutions suggested seem to reflect the Vietnamese Government’s desire for a better future for its children rather than a possible way to concretely improve its procedures. In terms of juvenile justice, the report presents

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<sup>89</sup> Vietnam’s *CRC* Report 1992, above 77; Vietnam’s *CRC* Report 1993–1998, above n 8; Vietnam, ‘Updated Report on the Implementation of the *Convention on the Rights of the Child* 1998–2002’ (Government of Vietnam, 2002); Vietnam, ‘National Report on Implementation of the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*’ (Government of Vietnam, 2004); Vietnam, ‘National Report on Implementation of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*’ (Government of Vietnam, 2004); Vietnam, ‘The Third and Fourth Country Report on Vietnam’s Implementation of the *United Nations Convention on the Rights of the Child* in the period 2002–2007’ (Government of Vietnam, 2008) (hereafter Vietnam’s *CRC* Report 2002–2007); Vietnam’s *CRC* Report 2008–2011, below n 143.

<sup>90</sup> The first two optional protocols are:

The *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, below n 176; and

The *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, opened for signature 25 May 2000, A/RES/54/263 (entered into force 12 February 2002).

Vietnam ratified both Protocols on 20 December 2001. See Vietnam’s *CRC* Report 2002–2007, above n 89, 21.

information about relevant changes in the legal system without providing either critical evaluation of practice or practical solutions.

Recently, with the support of UNICEF, several projects on aspects of juvenile justice have been conducted by the Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Court. Notable works include 'Investigation and Court Proceedings Involving Children and Juveniles: An Assessment of Child-Sensitive Procedures',<sup>91</sup> 'An Assessment Report on the Provisions Relating to Juveniles of the *Penal Code* and Practical Implementation',<sup>92</sup> 'An Assessment of Provisions concerning Juvenile Offenders, Victims and Witnesses of Crime in the *Criminal Procedure Code* in Comparison with International Standards',<sup>93</sup> and 'General Report on the Theoretical and Practical Rationale for Establishing Specialised Courts for Juveniles in Vietnam'.<sup>94</sup> A common characteristic of these projects is the use of the document analysis method when considering Vietnam's criminal regulations in comparison with international law in regard to aspects of the projects being undertaken. Interviews were used sometimes to collect data about the attitudes of children and their parents toward the criminal procedure they had participated in, or data on the observations of judicial staff. These studies indicate several weaknesses of Vietnam's juvenile justice, such as having no separate court for children and no child-friendly procedures. These studies make some important proposals for revising relevant regulation of the *PC* and *CPC* or for establishing separate courts for juveniles.

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<sup>91</sup> Supreme People's Court and UNICEF Vietnam, *Investigation and Court Proceedings Involving Children and Juveniles: An Assessment of Child-Sensitive Procedures* (Thanh Nien, 2007).

<sup>92</sup> Bo Tu Phap and UNICEF Vietnam, *Bao Cao Danh Gia Cac Quy Dinh cua Bo Luat Hinh Su Lien Quan den Ngươi Chua Thanh Nien va Thuc Tien Thi Hanh* [An Assessment Report on the Provisions Relating to Juveniles of the Penal Code and Practical Implementation] (Tu Phap, 2012).

<sup>93</sup> Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, *Danh Gia Tinh Tuong Thich cac Dieu Khoan cua Bo Luat To Tung Hinh Su ve Ngươi Vi Pham Phap Luat Hinh Su, Ngươi Bi Hai, Ngươi Lam Chung la Ngươi Chua Thanh Nien voi cac Chuan Muc Quoc Te* [An Assessment of Provisions concerning Juvenile Offenders, Victims and Witnesses of Crime in the Criminal Procedure Code in Comparison with International Standards] (Tu Phap, 2012).

<sup>94</sup> Toa An Nhan Dan Toi Cao and UniCEF Vietnam, *Bao Cao Tong Quan ve Co so Ly Luan va Thuc Tien cua Su Can Thiet Thanh Lap Toa An Chuyen Trach doi voi Ngươi Chua Thanh Nien o Viet Nam* [General Report on the Theoretical and Practical Rationale for Establishing Specialised Courts for Juveniles in Vietnam] (Thanh Nien, 2012).

However, none of these projects consider the subject from the perspective of Vietnam's implementation of the *CRC*, and no Vietnamese reports on the implementation of the *CRC* or the *CRC* Committee's recommendations are mentioned. The prevention of juvenile delinquency was not included in these studies. Except for some general comments, these projects had no statistics on the actual implementation of the law, neither the number of juveniles in contact with the judicial system nor penalties imposed on juvenile offenders or on criminals who abused children. Consequently, these studies could not provide a common context concerning children in contact with the justice system or an evaluation of the degree to which Vietnamese law and the justice system harmonise with international standards. There is no evaluation of the practical implementation of the existing law. Furthermore, all these studies are no longer current, using outdated information and without reference to the existing judicial reform, particularly new points of the *Constitution* of 2013, the *Law on the Organisation of Court* of 2013, and the *Law on the Organisation of Procuracies* of 2013. They also make no mention of Vietnam's expectations that are presented in its updated report on the implementation of the *CRC* (submitted in 2012) or of the latest feedback from the *CRC* Committee in 2012 to that submission.

As seen from the research referred to this point, it can be recognised that there is considerable progress in studies on child rights recently. However, the results are still limited. Therefore, this topic should be pursued in more detail.

#### 1.2.5 Conclusion

From the discussion above, it can be concluded that although discussion in Vietnam about human rights is far less prolific than in developed countries, studies of human rights and child rights have contributed to improving common knowledge and awareness of human rights in contemporary Vietnam. This assists Vietnam in the implementation of its obligations under human rights treaties in general and the *CRC* in particular, thereby encouraging a better life for Vietnamese children. With regard to child rights in the judicial sector, there is a need to establish juvenile courts and to

reform relevant laws. Nevertheless, there are a number of shortcomings in this literature, including:

- (a) The lack of systematisation and popularisation of international standards on the rights of the child in juvenile justice, especially of materials in the national Vietnamese language;
- (b) The absence of full comparison between current Vietnamese laws and international legal documents relating to child rights in the judicial sector;
- (c) The lack of research on a human rights-based approach to dealing with child issues, including the prevention of juvenile delinquency and the treatment of children in contact with the judicial system;
- (d) The lack of sufficient analysis of the current situation of children in contact with the judicial system, juveniles breaking the law, and child victims and child witnesses of crime;
- (e) The absence of consideration of penalties imposed on juvenile offenders as well as on criminals who abuse children;
- (f) The absence of critical evaluation of current laws regarding children in the Vietnamese justice system;
- (g) The lack of wide discussion of alternative approaches to imprisonment and restorative justice;
- (h) The absence of analysis of the rights of child victims and witnesses.

### 1.3 Research Questions and the Scope of Study

The rights of the child in the judicial sector or juvenile justice are an integral part of children's rights. However, in most countries, the implementation of the *CRC* in juvenile justice is less efficient and effective than for other sectors.<sup>95</sup> How to promote

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<sup>95</sup> International Network on Juvenile Justice (ed), *Bao Cao cua Uy Ban Quyen Tre Em Lien Hop Quoc ve Cong tac Tu Phap Ngoai Chua Thanh Nien* [A Translation from 'Juvenile Justice: The Unwanted Child of State Responsibilities'] (Chinh Tri Quoc Gia, 2001) 13; Bruce Abramson, 'Juvenile Justice: The "Unwanted Child" — Why the Potential of the *Convention on the Rights of the Child* is Not Being Realized, and What We Can Do about It' in Eric L Jense and Jorgen Jepsen (eds), *Juvenile Law Violators, Human Rights, and the Development of New Juvenile Justice Systems* (Hart 2006) 15.

child protection in juvenile justice is a question for *CRC* signatories. This thesis will explore this question in Vietnam.

The following questions are central to this research:

To what extent has Vietnam implemented its obligations as a state party of the *CRC* with respect to juvenile justice?

What should Vietnam do to fully comply with international juvenile justice standards?

Juvenile justice is a multifaceted and complex area, where many different systems including courts, police, prisons, counsel, and care services are interwoven. It has been observed that many states parties need to reform their legal systems, rebuild institutions, and improve the training of staff with duties related to children in the justice system.<sup>96</sup>

The scope of juvenile justice can be understood differently with reference to the *CRC*. Traditionally, juvenile justice has mainly focused on the prevention of juvenile delinquency and the treatment of juvenile offenders. Nowadays, it also covers the protection of child victims and child witnesses of crime. The evaluation of juvenile justice in each country can be approached from different viewpoints and various aspects. If considering the matter from a chronological perspective of children involved in the judicial system and their role in the proceedings, the matters of juvenile justice can be divided into: the prevention of juvenile delinquency and child abuse; the treatment of juvenile offenders, child victims and child witnesses of crime during judicial proceedings; and the treatment of children after the trial.

Given the time frame of a doctoral project, three domains of juvenile justice in Vietnam are examined in this study: the prevention of juvenile delinquency, the treatment of juvenile offenders during criminal proceedings, and the protection of child victims and child witnesses of crime. The treatment of children after trial is not a focus of this project. The two main research questions can be broken up into a series of sub-questions.

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<sup>96</sup> International Network on Juvenile Justice, above n 95, 13.

1. What measures has Vietnam implemented for preventing children from violating the law? Do these measures follow the relevant provisions and guidelines in the *CRC* and international guidelines for the prevention of juvenile delinquency?
2. What is the minimum age of criminal responsibility, and what are the rights of juveniles in conflict with the law in Vietnam?
3. Are there interventions or diversions which allow the relevant institutions to deal with the cases of children in conflict with the law without resorting to formal proceedings in Vietnam?
4. How does Vietnam prescribe the rights of child victims and child witnesses? Does it meet international juvenile justice standards?
5. How does Vietnam elaborate measures ensuring fair trials? Does it comply with relevant provisions of the *CRC*, and relevant instruments? How have these provisions been applied in practice?
6. Does Vietnam have specialised organisations and trained personnel for dealing with cases relating to children? Do these meet international standards?
7. Has Vietnam regulated and provided assistance for children when they are in contact with the law as the *CRC* and relevant international documents require?

From the perspective of being a party to the *CRC* and almost all core UN human rights treaties, Vietnam has obligations to undertake all appropriate measures to realise children's rights as set forth in the *CRC* and relevant instruments. In order to propose practical suggestions for Vietnam to approach international juvenile justice standards, the theoretical framework in this thesis is based on the principles of international human rights law and the rule of law at both international and national levels under the purview of the UN. Under international human rights law, state parties to human rights treaties are bound to respect, protect and fulfil human rights, and to implement domestic measures and legislation compatible with their obligations and duties.<sup>97</sup> The rule of law requires that all natural and legal persons and the state itself are accountable to and equal before the law; that laws are

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<sup>97</sup> United Nations, *International Human Rights Law*  
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>>.



consistent with international human rights law, and publicly promulgated, equally enforced and independently adjudicated; and that there are measures to ensure adherence to the principles of supremacy of the law, and of fair, just and effective law enforcement.<sup>98</sup> Much of this is present in Vietnam's constitution and criminal law.<sup>99</sup>

In this thesis, international juvenile justice standards, domestic regulations and actual implementation are reviewed, analysed and evaluated. I first study the *CRC* and international relevant instruments in relation to the common context of human rights because human rights are indivisible and interdependent. This stage provides a systematic perspective of international juvenile justice. Then, Vietnamese regulations are considered in comparison to the respective international standards. The practice of law enforcement in this field is surveyed through analysing relevant studies, reports, judicial statistics and court cases. The actual protection of juveniles in contact with the judicial system is evaluated in relation to contributing factors, such as historical, cultural, political and economic circumstances. After that, shortcomings in Vietnam's legal and justice system, and the reasons for these, are explored, and this is followed by suggestions for alterations in the country's approach to international juvenile justice.

It should be noted that Vietnam's legal and judicial system has been reforming and the introduction of *Constitution 2013* requires significant changes in other laws, particularly the *PC* and *CPC* as mentioned. The new points concerning juvenile justice in the *Constitution 2013* and *Law on the Organisation of the People's Courts 2014* can not become practically applicable until the *PC* and *CPC* are amended in order to clarify mechanisms and procedures for the implementation in practice. Therefore in this thesis, Vietnam's legal regulations that are analysed to evaluate its compliance with international standards and actual application do not include the *Constitution 2013* and the laws that are based on this *Constitution* unless otherwise clearly indicated. The case studies analysed in this thesis all took place under the

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<sup>98</sup> Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc S/2004/616 (23 August 2004) <<http://www.un.org/en/ruleoflaw/>> [6].

<sup>99</sup> See more details in chapters 3–6.

earlier system. The *Constitution 2013*, new laws on the organisation of judicial bodies and others relevant are considered in the last chapter, where I describe the trends in judicial reform and address practical recommendations.

## 1.4 Methodology

### 1.4.1 Overview

Research methodology involves how problems are addressed, how to collect and organise relevant data, and how to interpret the results.<sup>100</sup> In other words, it is the way in which methods are used to gain appropriate information and knowledge, showing the work plan of research.<sup>101</sup> For each project, the deciding factor in the choice of methods is the research question or purpose of research.<sup>102</sup> Choice of methods may also rely on the financial resources, time-limit and researcher's ability; no single method should be favoured. In the human rights field, given that it is an interdisciplinary subject, there are 'no typical, preferred methods for carrying out research',<sup>103</sup> but many ways, 'not just by a focus on legal wording, legal obligations, and court cases',<sup>104</sup> since 'a combination of methods, if expertly employed, may of course produce more reliable results'.<sup>105</sup> This research on juvenile justice is an interdisciplinary and complex topic which relates to the social science disciplines of legal studies, policy studies, and the study of law and society. The purpose of the

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<sup>100</sup> S Rajasekar, P Philominathan and V Chinnathambi, 'Research Methodology' (2013) <<http://arxiv.org/abs/physics/0601009>> 2; Fons Coomans, Fred Grünfeld and Menno T Kamminga, 'A Primer' in Fons Coomans, Fred Grünfeld and Menno T Kamminga (eds), *Methods of Human Rights Research* (Intersentia, 2009) Maastricht Series in Human Rights vol 10, 11, 14; Terry Hutchinson, *Researching and Writing in Law* (Thomson Reuters/Lawbook Co, 3<sup>rd</sup> ed, 2010) 21.

<sup>101</sup> Rajasekar, Philominathan and Chinnathambi, above n 100, 2; Donatella Della Porta and Michael Keating, 'How Many Approaches in the Social Sciences? An Epistemological Introduction' in Donatella della Porta and Michael Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (Cambridge University Press, 2008) 19, 28.

<sup>102</sup> Robert G Burgess, *Conducting Qualitative Research* (Jai Press 1988) cited in Geoff Lindsay and Ann Lewis (eds), *Researching Children's Perspectives* (Open University Press, 2000) xv; Della Porta and Keating, above n 101, 29; Hutchinson, above n 100, 23.

<sup>103</sup> Coomans, Grünfeld and Kamminga, above n 100, 15.

<sup>104</sup> David P Forsythe, 'Human Rights Study: On the Dangers of Legalistic Assumptions' in Fons Coomans, Fred Grünfeld and Menno T Kamminga (eds), *Methods of Human Rights Research* (Intersentia, 2009) Maastricht Series in Human Rights vol 10, 59, 75.

<sup>105</sup> Coomans, Grünfeld and Kamminga, above n 100, 15.

thesis is to provide Vietnam with suitable solutions for promoting children's rights in the judicial sector based on a thorough understanding of international standards and particular national circumstances. Hence, this thesis is interdisciplinary and a combination of methods can assist in a better understanding of the field of study. Based on interdisciplinary methodology, which will speak to a range of social science disciplines, a combination of mixed methods as described below is utilised to address the research questions.

#### 1.4.2 Document Analysis

Document analysis is a methodical procedure for systematic review and evaluation as part of research.<sup>106</sup> It is the most popular method of collecting and analysing data in the field of political science,<sup>107</sup> and is used to track changes and movements, and verify findings from other data collections.<sup>108</sup> Further, according to Nys et al,<sup>109</sup> document review and analysis is a way to track how states parties implement their obligations under human rights treaties. Herein, document analysis is employed to analyse and interpret normative legal documents (at both international and domestic levels), and national reports and other relevant texts with regard to children's rights in justice. International norms are studied and synthesised to build common standards from various provisions of the *CRC* and relevant instruments on the prevention of juvenile delinquency, the treatment of juvenile offenders, and the protection of child victims and witnesses of crime.

At the same time, Vietnam's laws and policies are considered in terms of developments since Vietnam ratified the *CRC* in 1990 with a focus on the penal law and criminal procedure law on handling juveniles in contact with the judicial system.

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<sup>106</sup> Glenn A Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* 27, 27.

<sup>107</sup> Janet Buttolph Johnson, H T Reynolds and Jason D Mycoff, *Political Science Research Methods* (CQ Press, 6<sup>th</sup> ed, 2008); Jared J Wesley, 'Qualitative Document Analysis in Political Science' (Paper presented at the From Texts to Political Positions Workshop, Vrije Universiteit Amsterdam, The Netherlands, 9 April 2010).

<sup>108</sup> Bowen, above n 106, 30.

<sup>109</sup> Herman Nys et al, 'Patient Rights in EU Member States after the Ratification of the *Convention on Human Rights and Biomedicine*' (2007) 83(2-3) *Health Policy (Amsterdam, Netherlands)* 223.

In addition, relevant national reports and documents are analysed to discern the Vietnamese Government's attitude toward the issue. These considerations can assist one to achieve a thorough understanding of international instruments, Vietnamese policies, and particular provisions about the rights of the child in the judicial sector.

#### 1.4.3 Statistical Analysis

Statistical analysis, a means of research by collecting and analysing statistical data, can be very useful in researching human rights, especially assessing human rights violations, as Romeu has concluded.<sup>110</sup> In this thesis, from raw statistics collected, I selected relevant data, drawing diagrams (tables and figures) and interpreting the numbers of juveniles in conflict with the law, child victims and witnesses of crime and crimes against children, and the rates of crime and penalties imposed on offenders over nine years from 2005.<sup>111</sup> The statistics have been obtained from official data provided by Vietnamese authorities, including the Supreme Court, Supreme Procuracy, Ministry of Public Security, Ministry of Labour, Invalids and Social Affairs, and Project IV—a department established for the prevention of juvenile delinquency and crimes against children, detailed in section 4.3.3 Programs for Crime Prevention. In each Table or Figure, the names of state agencies that provided raw statistics are referred to as the source of data.

In analysing statistics, juveniles in conflict with the law are sorted into groups based on the age of juvenile offenders; and then on kinds of crime, categories and time periods of judicial measures and penalties applied to juveniles. The numbers of child victims, cases of child abuse and crimes against children are also analysed. This step

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<sup>110</sup> Jorge L Romeu, 'Statistical Thinking and Data Analysis: Enhancing Human Rights Work' in Jana Asher, David L Banks and Fritz Scheuren (eds), *Statistical Methods for Human Rights* (Springer, 2008) 65, 83.

<sup>111</sup> The year 2005 is chosen as a starting point because it is the first year when national criminal statistics started to be formally recorded by the Supreme People's Procuracy. See *Thong Tu Lien Tich 01/2005/TTLT-VKSNDTC-TANDTC-BCA-BQP cua Vien Kiem Sat Nhan Dan Toi Cao, Toa An Nhan Dan Toi Cao, Bo Cong An, va Bo Quoc Phong Huong Dan Thi Hanh mot so Quy Dinh cua Phap Luat trong Cong Tac Thong Ke Hinh Su, Thong Ke Toi Pham* [Joint Circular 01/2005/TTLT-VKSNDTC-TANDTC-BCA-BQP issued by the Supreme People's Procuracy Supreme People's Court, Ministry of Public Security and Ministry of Defence on Guiding the Implementation of Legal Provisions on Criminal Statistics].

allows us to identify the trends in juvenile delinquencies as well as common penalties enforced on juvenile offenders and criminals against children.

Relevant statistics on population, national criminal statistics and statistics on defence counsels are sometimes examined to draw comparisons where appropriate. From such interpretations, the common situation of children involved with the justice system can be understood.

#### 1.4.4 Case Study Method

Case study is a method of data gathering in which information about specific cases or events is collected, organised, interpreted and presented in narrow contexts.<sup>112</sup> It is regarded as a ‘robust’ method for researching complex issues and brings significant knowledge about the world of society and politics<sup>113</sup> because case studies give both quantitative and qualitative data, helping to explain both processes and outcomes of problems.<sup>114</sup> By using this method to study court cases concerning juveniles, this thesis can provide new insights into aspects of juvenile justice in Vietnam.

#### *Selecting cases and information*

In order to better understand the actual implementation of the law in juvenile justice, I examine 18 selected court case files with full transcripts of proceedings. They include ten cases dealing with juvenile offenders and eight cases dealing with child victims and witnesses of crimes. These cases were selected from the case files stored in the Judicial Academy, whose function is to train people working in the judicial sector, embracing judges, prosecutors and lawyers.

More than 300 verdicts of child victims are also considered. These verdicts were the results of first instance trials across the country and submitted to the Supreme Court

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<sup>112</sup> Anne F Marrelli, ‘Collecting Data through Case Studies’ (2007) 46(7) *Performance Improvement* 39, 39; Zainal Zaidah, ‘Case Study as a Research Method’ (2007) 9(2) *Jurnal Kemanusiaan* 1, 1–2.

<sup>113</sup> Zaidah, above n 112, 1; Pascal Vennesson, ‘Case Studies and Process Tracing: Theories and Practices’ in Donatella della Porta and Michael Keating (eds), *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective* (Cambridge University Press, 2008) 223, 223.

<sup>114</sup> Winston Tellis, ‘Application of a Case Study Methodology’ 1997 *Qualitative Report* 3(5) cited in Zaidah, above n 112, 1.

for review as regulated by the national law. The analysis of 300 judgments on child abuse cases provides information about offences against children and law enforcement in 300 particular cases. This is useful for evaluating the practical treatment of child victims and witnesses of crime where relevant data is not collected, or inconsistent.

### ***Organising and interpreting data***

Raw material from case studies is organised into groups and interpreted together. The discussion is conducted with aggregate data rather than individual cases. In cases where it is necessary to mention information about individual cases in order to clarify certain issues, I use pseudonyms or disguise their identities. By analysing collective information, representative features of judicial activities (including common shortcomings) can be reflected upon.

The way to analyse court cases is based on the principle of the rule of law and my practical experience of working as a lawyer and as a judicial staff conducting the review of criminal cases. The laws referred to in evaluating the practical law enforcement are mainly Vietnamese regulations having effect at the time of the cases solved. Relevant international legal standards are at time mentioned so as more clarify the matters of discussion.

Combined with the analysis of statistics, documents and context, case studies provide sound basis for comments on the actual application of the law in juvenile justice, contribute to answering the research questions about the implementation of state obligations. This can inform suggestions on how to improve Vietnamese law and its mechanisms for protecting children in contact with the judicial system.

#### 1.4.5 Contextual Analysis

Context refers to ‘the circumstances in which an event occurs; a setting’.<sup>115</sup> Contextual analysis is important in doing research because, without an appropriate environmental analysis, a research project may produce theoretically sound but

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<sup>115</sup> Falex, *Dictionary* <<http://www.thefreedictionary.com/context>>.

practically unusable results.<sup>116</sup> In terms of the implementation of human rights treaties, the circumstances of states parties vary from country to country and Vietnam therefore surely exhibits special features. Contextual analysis is necessary to clarify and evaluate the circumstances of history, culture, economics, international relationships and other factors influencing Vietnam in the implementation of its state obligations. Such analysis will provide the background for understanding the past and present context of juvenile justice in Vietnam. This knowledge is helpful for analysing special features of the law and practice, and may provide a context for suggestions for improving the protection of child rights in Vietnam.

In this research, Vietnamese law is placed in an international context. By comparing domestic law with international standards, the shortcomings of the Vietnamese legal and justice system can be pointed out. Similarly, the evaluation of the application of domestic law is based on the comparison of actual activities with relevant legal norms. Following such a comparison is similar to using a comparative method while conducting human rights research: it will be a ‘single-country study’, but not ‘global comparative analysis’ or ‘few-country comparison’ which is introduced in ‘Social Science Methods and Human Rights’ by Landman.<sup>117</sup>

The contribution of the different methods described above is relative. As a popular characteristic of research in law, human rights and social science, these methods can be used together during the process of data collection and the discussion of each relevant issue in this project. For example, when a court case is being studied, contextual analysis and comparison are also used to show mistakes made while enforcing the law and to determine factors affecting that case.

In this project, the methods of observation and interview are not utilised. This is because using those methods is very expensive and time-consuming but not really

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<sup>116</sup> Martin Tessmer, ‘Environmental Analysis: A Neglected Stage of Instructional Design’ (1990) 38(1) *Educational, Technology, Research and Development* 55, 56; Martin Tessmer and Rita C Richey, ‘The Role of Context in Learning and Instructional Design’ (1997) 45(2) *Educational, Technology, Research and Development* 85.

<sup>117</sup> Todd Landman, ‘Social Science Methods and Human Rights’ in Fons Coomans, Fred Grünfeld and Menno T Kamminga (eds), *Methods of Human Rights Research* (Intersentia, 2009) Maastricht Series in Human Rights, vol 10,19, 31–9.

effective. In fact, as each criminal case usually lasts around one year, it would not be feasible to carry out observation in the time frame of the doctoral research program. Also, if interviewing law enforcers or judicial staff about the rights of the child in justice, it is likely that the interviewer would receive formally expected answers rather than factual ones. This is because ‘rights’, particularly the rights in justice, are still a sensitive issue in Vietnam. Many human rights researchers in Vietnam have experienced and commented on this problem.<sup>118</sup>

### 1.5 Ethical Issues

Ethics in general, as defined in an English dictionary, are moral principles of behaviour, used to evaluate what is right/good or wrong/bad.<sup>119</sup> In social research, ethics as a ‘branch of knowledge that deals with moral principles’ is about standards of right and virtue with the purpose of protecting the interests of individuals, communities and society, and offering the potential to enhance the good in the world.<sup>120</sup> However, ‘ethics is ‘applied and developed within a particular professional context’,<sup>121</sup> and ethical issues in each study may vary ‘as a function of the particular research methods employed’.<sup>122</sup> In fact, many governments and organisations have adopted codes, principles or guidelines with sets of provisions about ethical issues for relevant science research. For example, the ‘Ethical Guidelines for International Comparative Social Science Research in the Framework of MOST’<sup>123</sup> with 19 basic principles provides that:

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<sup>118</sup> See section 1.2.3 — Human Rights in Vietnam.

<sup>119</sup> Della Summers, *Longman Dictionary of Contemporary English* (Longman, 2005).

<sup>120</sup> Mark Israel and Iain Hay, *Research Ethics for Social Scientists: Between Ethical Conduct and Regulatory Compliance* (Sage Publications, 2006) 1–2. For a definition of ethics as a branch of knowledge (treated as singular) or as general moral principles (plural), see also Oxford Dictionaries, *Ethics* <<http://www.oxforddictionaries.com/definition/english/ethics>>.

<sup>121</sup> Roger Homan, *The Ethics of Social Research* (Longman, 1991) 1.

<sup>122</sup> Herbert C Kelman, ‘Ethical Issues in Different Social Science Methods’ in Tom L Beauchamp et al (eds), *Ethical Issues in Social Science Research* (Johns Hopkins University Press, 1982) 40, 40.

<sup>123</sup> MOST [Management of Social Transformations] is an international program established by UNESCO in early 1994 to promote policy-relevant social science research and to ensure the wide dissemination of the results of such work to a wide range of end-users, including key decision-makers, different communities and social groups and representatives of civil society. *Ethical Guidelines for International Comparative Social Science Research in the Framework of MOST* <<http://www.unesco.org/most/ethical.htm>> Preamble.



The choice of research issue should be based on the best scientific judgement and on an assessment of the potential benefit to the participants and society in relation to the risk to be borne by the participants. Studies should relate to an important intellectual issue.<sup>124</sup>

With the expectation of encouraging improvements in Vietnam's juvenile justice system, which can bring potential benefits to children and society, I apply appropriate methods to enable me to carry out the project in a manner that permits full compliance with local customs and laws, respecting stakeholders in research, and increasing the possibility of good outcomes for communities. The research design is based on research questions with reference to relevant models, such as 'Research Design: Qualitative, Quantitative, and Mixed Methods Approaches'.<sup>125</sup> Most data sources are documents without direct individual participation or observation; but rather are from authorities, publications, and websites of state agencies and relevant organisations. These data are treated in some detail with the expectation of disseminating the research results to Vietnam's officers, judicial staff, legal practitioners and others who are interested in the protection of children's rights in justice.

However, in regard to ethical issues, the researcher can — in the process of research — face dilemmas relating to individual privacy. According to Australian laws and ethical guidelines for social science research, individual information, especially criminal records, must be strictly respected. This is quite different from Vietnam. Under the domestic law and practice in Vietnam, information relating to crimes or criminals, including juvenile offenders and victims and witness of crime, is not generally prohibited from being widely broadcast. In this context, I need to collect publicly available information in order to fully understand research issues, and present appropriate evaluations of relevant problems.<sup>126</sup> While analysing the data as the next step, the identifying features of individuals are disguised, but sometimes it

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<sup>124</sup> Ibid [3].

<sup>125</sup> John W Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Sage, 3<sup>rd</sup> ed, 2009).

<sup>126</sup> The University of Wollongong Human Research Ethics Committee advised me that it was not necessary to undergo ethics clearance for the use of publicly available information.

may be necessary to quote original information. In such situations, I have no intention of infringing the right to privacy of these individuals. The intention of the research is, by the presentation of clear evidence and analyses, to persuade Vietnamese authorities to improve the law and related mechanisms to better protect human rights. Moreover, I believe that the objects of consideration and evaluation are relevant laws and judicial bodies' activities rather than the personal details of individuals, so the use of information in this thesis will not cause damage to any particular individuals.

In short, understanding the requirements of ethics and anticipating difficulties in the process of doing the research, I have carried out the project while taking care to protect the privacy of individuals and organisations in order to be able to achieve the purpose of the research and bring benefits to society, but while not damaging stakeholders.

## 1.6 Contribution of the Thesis

The central aim of the thesis is to evaluate the current situation and indicate the requirements for Vietnam to be able to reach international juvenile justice standards. We will see that Vietnam's mechanisms for child protection have not yet fully satisfied its state party obligations under the *CRC*, especially in juvenile justice.<sup>127</sup> Furthermore, the state of Vietnam has been conducting a National Program for Child Protection<sup>128</sup> and judicial reforms including the revision of criminal law, and the restructure of judicial bodies.<sup>129</sup> Therefore, research on improving the juvenile justice system, particularly about crimes concerning juveniles, the structure and functions of juvenile courts, child-friendly procedures, training professionals, and services for children in contact with the judicial system is important work. Hence, the thesis can be really meaningful for Vietnam. It contributes not only to the national program and

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<sup>127</sup> See CRC Committee's Observations 1993, above n 11; CRC Committee's Observations 2003, above n 12; CRC Committee, 'Consideration of Reports Submitted by States Parties under Article 12(1) of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* — Concluding Observations: Vietnam' UN Doc CRC/C/OPSC/VNM/CO/1 (2006).

<sup>128</sup> *National Program for Child Protection 2011–2015*.

<sup>129</sup> See *Resolution 08-NQ/TW 2002*; *Resolution 48-NQ/TW 2005*; *Resolution 49-NQ/TW 2005*.

judicial reform, but also other aspects, including Vietnam's fulfilment of its obligations under the *CRC* and other instruments in the field of human rights and criminal justice.

Researchers, practitioners, policy makers and others who are interested in the rights of the child in the judicial sector under international law and in the protection of child rights in Vietnam can gain valuable information. First, the thesis systematically presents international standards for the protection of child rights in justice based on many provisions enshrined in the *CRC* and other instruments. In other words, it clearly shows the rights of the child in contact with the judicial system and mechanisms for child protection and state parties' obligations according to international law. Second, the research presents the legal norms and evaluates the degree of compliance with international standards of Vietnam's current legal and justice system. This helps readers to quickly grasp the issue among diverse legal norms of international juvenile justice recorded in many different documents. Third, the thesis provides an overview of the situation of children in contact with the law in Vietnam, which has received little academic attention. Fourth, common mistakes while enforcing the law are analysed — such analysis may be useful for judges and other practitioners to help them avoid similar faults while performing their roles. Finally, as the situation and trend of judicial reform in Vietnam and possible solutions are analysed, the thesis will provide helpful information for anyone who is interested in human rights, children's rights and justice in Vietnam.

With the expectation for realising significance of the thesis, I understand that it requires at the same time great effort by many groups of persons in society. So the groups of people whom I want to read the thesis include but are not limited to: policy makers, judicial staff (police, investigators, prosecutors, judges and court officers), practitioners (lawyers, legal assistants and social workers who working with children in contact with the law), and administrative staff whose work relates to children. Scholars and researchers working on law and policy studies in Vietnam, and scholars working on the implementation of the *CRC* in other countries, will find this work to be of comparative interest.

## 1.7 Synopsis of the Thesis

This thesis has eight chapters. Each chapter deals with a specific task.

Chapter 1 provides the background for the study. It includes a brief review of the literature of children's rights and juvenile justice, research questions, methods, and the scope and contribution of the study.

Chapter 2 presents basic definitions of the child and children's rights, and reviews international regulations on juvenile justice and the protection of children in contact with the justice system.

Chapter 3 provides background information about the structures of the state, legal and judicial system, and the mechanisms for the protection of children in Vietnam.

Chapters 4–6 present three aspects of juvenile justice: the prevention of juvenile delinquency, the treatment of juvenile offenders and the protection of child victims and witnesses of crime. In each chapter, after a review of international standards, Vietnam's legal regulations and their practical implementation are analysed and evaluated. The evaluation and comments on the law and practice in Vietnam are considered from the perspective of international standards and the local context of Vietnam.

Chapter 7 recaps shortcomings of the juvenile justice system and the progress of the current judicial reform in Vietnam. Finally the thesis closes with practical recommendations for Vietnam to revise the law and law enforcement with respect to children who come in contact with the juvenile justice system.

## **Chapter 2: AN OVERVIEW OF INTERNATIONAL LEGAL STANDARDS FOR THE RIGHTS OF THE CHILD IN THE JUDICIAL SECTOR AND VIETNAM'S COMMITMENTS**

### **2.1 Understanding Basic Concepts**

#### 2.1.1 'Child' in the *CRC* and International Documents

Under the system of international human rights law, those who have not reached the age of majority are often the subject of special protection. These persons can be called by different terms including 'children', 'young children', 'juveniles', 'juvenile persons', 'adolescents', 'young persons', and 'minors'.<sup>130</sup> Of these, 'child' is most often used and indicated in several treaties while other terms are not clearly and consistently defined.

Article 1 of the *CRC* provides that:

For the purpose of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

This provision seems to bring flexibility to the understanding of the age limitation used to distinguish between a child and an adult; depending on the law applied, a person under 18 years may not be defined as a child. However, the *CRC* Committee and organisations working with children, nevertheless, usually encourage states parties to ensure the rights contained in the *CRC* for every person below 18 years old. In its *General Comment No 14 (2013) on the Right of the Child to have his or her Best Interests Taken as a Primary Consideration*, and *General Comment No 4 (2003) on Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, the *CRC* Committee provides that:

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<sup>130</sup> See *Universal Declaration of Human Rights*, GA Res 217 A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) (hereafter *UHDHR*) art 25(2); *Guidelines for the Prevention of Juvenile Delinquency* (the *Riyadh Guidelines*) GA Res 45/112, UN GAOR, 68<sup>th</sup> plen mtg (14 December 1990) (hereafter *Riyadh Guidelines*) [2]; *Standard Minimum Rules for Administration of Juvenile Justice* (the *Beijing Rules*), GA Res 40/33, UN GAOR, 96<sup>th</sup> plen mtg (29 November 1985) (hereafter *Beijing Rules*); *Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/133, UN GAOR, 68<sup>th</sup> plen mtg (14 December 1990) (hereafter *Havana Rules*).

The term ‘children’ refers to all persons under the age of 18 within the jurisdiction of a State party, without discrimination of any kind, in line with articles 1 and 2 of the *Convention*.<sup>131</sup>

Adolescents up to 18 years old are holders of all the rights enshrined in the *Convention*; they are entitled to special protection measures and, according to their evolving capacities, they can progressively exercise their rights.<sup>132</sup>

In concluding observations on the implementation of the *CRC*, the Committee repeatedly reminds Vietnam to revise its law to ensure that a child means any person below 18 years of age.<sup>133</sup> Similarly, in the ‘Manual for the Measurement of Juvenile Justice Indicator’, which provides ‘a framework of measuring and presenting specific information about the situation of children in conflict with the law’, the United Nations Office on Drugs and Crime (UNODC), and UNICEF presume that ‘a child is any person below the age of eighteen years’.<sup>134</sup> This is completely congruent with definitions given in many international treaties. Those affirm that all persons under 18 are children, such as,

a child means every human being below the age of 18 years;<sup>135</sup>

the term child shall apply to all persons under the age of 18;<sup>136</sup> or

child shall mean any person under eighteen years of age.<sup>137</sup>

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<sup>131</sup> *General Comment No 14 (2013) on the Right of the Child to have his or her Best Interests Taken as a Primary Consideration*, UN CRCOR, 62<sup>nd</sup> sess, UN Doc CRC/CGC/14 (29 May 2013) (hereafter *GC 14 on the Best Interests of the Child*) [21].

<sup>132</sup> *General Comment No 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, UN CRCOR, 33<sup>rd</sup> sess, UN Doc CRC/GC/2003/4 (1 July 2003) [4].

<sup>133</sup> Eg, CRC Committee’s Observations 1993, above n 11; 1 CRC Committee, ‘Consideration of the Reports Submitted by States Parties under the Article 44 of the Convention — Concluding Observations: Vietnam’, UN Doc CRC/C/VNM/CO/3-4 (15 June 2012) (hereafter *CRC Committee’s Observations 2012*).

<sup>134</sup> UNODC and UNICEF, *Manual for the Measurement of Juvenile Justice Indicators* (United Nations, 2006) 2, 53.

<sup>135</sup> *African Charter on the Rights and Welfare of the Child*, opened for signature 11 July 1990, CAB/LEG/24.9/49 (entered into force 29 November 1999) art 2.

<sup>136</sup> *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, opened for signature 17 June 1999, ILOTS 182 (entered into force 19 November 2000) art 2.

<sup>137</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention against Transnational Organized Crime* of 2000, opened for signature 15 November 2000, 2237 UNTS 000 (entered into force on 25 December 2003) (hereafter *Protocol to*

In the national legal systems of countries around the world, there may be variations in articulating concepts related to children and those who have not reached the age of maturity because of diverse traditions and cultures. While discussing ‘childhood, adolescence, youth and young people’, Lansdown agrees that these terms ‘have different meaning in different cultural contexts’.<sup>138</sup> A parallel opinion by Van Bueren stresses that ‘the international community is still some way from agreeing on a universal definition of childhood’.<sup>139</sup>

Regarding the concept of the child, it is also indicated in the *Declaration of the Rights of the Child* of 1959 and recalled in the preamble of the *CRC* 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’. This text seems to extend the scope of ‘the child’. Herein a child can be not only a particular person who has been born and alive but also an unborn human. It can be seen that if the concept of ‘a child’ includes the unborn human, this may have special meaningfulness in the protection of the very life as well as health of the unborn child/foetus. With the purpose of studying the rights of the child in the judicial sector, in this thesis I am interested in children who are physically in contact with the judicial system, thus I do not focus on foetuses or unborn children.

In short, under international law, including the *CRC* and instruments focusing on juvenile justice, there are various terms implying those who should be specially treated as they have not reached the age of maturity. ‘Child’ is the formal concept in the *CRC* and is commonly encouraged to be understood as anyone below 18 years of age. Within the purpose of this thesis, the child is the basic concept, implying any person who has been born and is under the age of 18, except in cases where exceptions are clearly indicated. Other terms, including ‘children’ ‘young children’,

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*Prevent Trafficking in Persons*) art 3(d). See also *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, concluded 29 May 1993, HCCH TS, (entered into force 1 May September 1995)

<sup>138</sup> Gerison Lansdown, ‘Programming Strategy with and for Adolescents in East Asia and Pacific’ (UNICEF EAPRO, 2004) 4.

<sup>139</sup> Geraldine Van Bueren, *The International Law on the Rights of the Child* (Martinus Nijhoff Publishers, 1995) 38.

‘juveniles’, ‘juvenile persons’, ‘adolescents’, ‘young persons’, ‘the young person’ and ‘minor’ generally refer to the person(s) under 18 years old. However, some terms may have certain special meanings or limitations, corresponding with the purpose and goal of relevant international legal documents. Such meanings will be plainly shown in relevant circumstances.

### 2.1.2 ‘Child’ and ‘Juvenile’ in the Context of Vietnam

There are various concepts referring to persons who are not fully mature in Vietnam’s legal documents. Those consist of ‘*nhi dong*’ (young children), ‘*thieu nien*’ (teenagers), ‘*tre em*’ (child/children),<sup>140</sup> ‘*nguai chua thanh nien*’ (juveniles/minors) and ‘*thanh nien*’ (youth). Of these, ‘*tre em*’ is usually translated into English as the child or children and has a meaning equivalent to ‘the child/children’ in the CRC and international legal documents. It is also one of three concepts that are defined by the law, consisting of ‘child’ (‘*tre em*’), ‘juvenile’ (‘*nguai chua thanh nien*’) and ‘youth’ (‘*thanh nien*’).

According to the *Ordinance on Child Protection, Care and Education* of 1979, the ‘child’ denotes any person from birth to below 15 years old.<sup>141</sup> ‘After Vietnam’s ratification of the *CRC*, this concept was redefined. Under the *Law on Child Protection, Care and Education* of 1991, ‘child’ meant any Vietnamese person younger than 16 years old.<sup>142</sup> The validity of this Law was terminated when a revised version, the *Law on Child Protection, Care and Education* of 2004 came into force. This new version provides a significant change in the view of children’s rights as well as more detailed obligations for child care, protection and education. However, the definition of children has remained stable in that:

Children prescribed in this Law are Vietnamese citizens aged below 16 years.<sup>143</sup>

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<sup>140</sup> In the Vietnamese language there is no grammatical distinction between singular and plural, so ‘*tre em*’ can be translated into English as a child or children, depending on the context.

<sup>141</sup> *Phap Lenh ve Bao Ve, Cham Soc va Giao Duc Tre Em nam 1979* [Ordinance on Child Protection, Care and Education of 1979] (hereafter *Ordinance on Child Protection*) art 1.

<sup>142</sup> *Luat Bao Ve, Cham Soc va Giao Duc Tre Em nam 1991* [Law on Child Protection, Care and Education of 1991] art 1.

<sup>143</sup> See *Luat 25/2004/QH11 Bao ve, Cham soc va Giao duc Tre Em* [Law 25/2004/QH11 on Child Protection, Care and Education] (hereafter *Law on Child Protection*) art 1. This content is planned to



‘Juvenile’ was determined quite early in Vietnam’s legal documents. In 1950, it was stated that ‘juvenile’ meant a male or a female below 18 years of age.<sup>144</sup> During the development of Vietnam’s legislation with the appearance of the *Civil Codes* of 1995 and 2005, although there had been some amendments to the definition of ‘juvenile’, the core content remained. Under the *Civil Code* of 1995, juveniles are persons who are not yet full 18 years of age.<sup>145</sup> Similar to the consistency in the definition of ‘children’, the definition of ‘juveniles’ stays the same in the *Civil Code* of 2005, which replaced the *Civil Code* of 1995.

Persons who are a full 18 years old or older are adults. Persons who are not yet a full 18 years old are juveniles.<sup>146</sup>

‘Youth’ has been used in legal documents and policies for a long time. However, a precise delineation was first given in the *Law on Youth* of 2005.

Youths provided for in this Law are Vietnamese citizens aged between a full 16 and 30 years of age.<sup>147</sup>

Looking at these three definitions, it can be seen that the age limitation of a juvenile under Vietnamese law is similar to that of a child in the *CRC* and relevant international documents, which denote persons below 18 years who have not reached the age of maturity.

In Vietnam’s legal normative documents, it can be seen that, of the above-mentioned concepts concerning immature persons above, the terms ‘*tre em*’ (child) and ‘*ngươi*

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be amended in order to comply with the *CRC* as stated in Vietnam’s last report on the implementation of the *CRC*; Vietnam, ‘Updating period 2008–2011 for the 3<sup>rd</sup> and the 4<sup>th</sup> National Reports on Vietnam’s Implementation of the *Convention on the Rights of the Child* and Responses to the Questions of the Committee on the Rights of the Child’ (Government of Vietnam, 2012) (hereafter Vietnam’s *CRC* Report 2008–2011).

<sup>144</sup> *Sac Lenh 97-SL ngay 22/5/1950 cua Chu Tich Chinh Phu ve Sua Doi mot so Quy Le va Che Dinh trong Dan Luat* [Edict 97-SL dated 22 May 1950, issued by the President of the Government on Amending a Number of Rules and Regulations in the Civil Law] art 7.

<sup>145</sup> *Bo Luat Dan Su nam 1995* [Civil Code of 1995] art 20.

<sup>146</sup> *Bo Luat 33/2005/QH11 ve Dan Su* [Code 33/2005/QH11 on Civil Law] (hereafter *Civil Code*) art 18.

<sup>147</sup> *Luat 53/2005/QH11 ve Thanh Nien* [Law 53/2005/QH11 on Youth] art 1.

*chua thanh nien*’ (juvenile/minor)<sup>148</sup> are employed frequently. In a pilot survey of the Vietnamese legal database (<http://www.luatvietnam.vn>),<sup>149</sup> the results showed that: ‘*tre em*’ (‘child’/ ‘children’) is used in 2290 legal normative documents, including 62 laws and codes, while ‘*nguai chua thanh nien*’ (‘juvenile (s)’) appears in 392 documents, consisting of 34 laws and codes.<sup>150</sup>

The term ‘child’/‘children’ (*tre em*) is usually used in legal documents that prescribe general issues of child care and protection. Therein, children are considered as special subjects of care, protection and education. Such documents consist of the *Laws on Child Care, Protection and Education* of 1991 and 2004; the *Law on Universal Primary Education* of 1991; the *Law on Adoption* of 2010;<sup>151</sup> and the *Law on Preventing and Combatting Human Trafficking* of 2011 or *Law against Human Trafficking*.<sup>152</sup>

At the same time, the term ‘juvenile(s)’ (*nguai chua thanh nien*) is more frequently employed in documents that regulate detailed legal rights, duties or obligations of each juvenile in cases where they are a party to contracts or subjects of the law in particular situations, such as the violation of the law and breach of the peace. Those documents include the *Civil Code* of 2005, the *Civil Procedure Code* of 2004, the *Ordinance on the Handling of Administrative Violations* of 2002,<sup>153</sup> and the *Law on the Handling of Administrative Violations* of 2012.<sup>154</sup>

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<sup>148</sup> ‘*Nguoi chua thanh nien*’ is often translated in to English as ‘juvenile(s)’ or ‘minor(s)’ (see Ministry of Justice, *Juvenile Justice Lexicon* (Tu Phap, 2009) 72). In this thesis I prefer using ‘juvenile(s)’.

<sup>149</sup> This is the most popular Vietnamese legal database, established in 1990. It is the first website specialising in collecting state legal normative documents from Vietnam’s independence in 1945. See more at: <<http://luatvietnam.vn/>>.

<sup>150</sup> The search was updated 6 April 2015.

<sup>151</sup> *Luat 52/2010/QH12 ve Nuoi Con Nuoi* [Law 52/2010/QH12 on Adoption].

<sup>152</sup> *Luat 66/2011/QH12 ve Phong, Chong Mua Ban Nguoi* [Law 66/2011/QH12 on Preventing and Combatting Human Trafficking] (hereafter *Law against Human Trafficking*).

<sup>153</sup> *Phap Lenh 44/2002/PL-UBTVQH10 ve Xu Ly Vi Pham Hanh Chinh, duoc Sua doi theo cac Phap Lenh 31/2007/PL-UBTVQH11 va 04/2008/PL-UBTVQH12* [Ordinance 44/2002/PL-UBTVQH10 on Handling Administrative Violations, Amended by Ordinances 31/2007/PL-UBTVQH11 va 04/2008/PL-UBTVQH12].

<sup>154</sup> *Luat 15/2012/QH13 ve Xu Ly Vi Pham Hanh Chinh* [Law 15/2012/QH13 on the Handling of Administrative Violations] (hereafter *Law on the Handling of Administrative Violations*).

In the *PC* the terms ‘children’ and ‘juveniles’ are recorded 27 and 50 times respectively. Therein, children are always mentioned as objects or victims of crime. ‘Committing a crime against a child’ is a circumstance where the penal liability is increased.<sup>155</sup> The *PC* employs ‘juvenile’ in both senses of juvenile offenders and juvenile subjects affected by crimes with a more frequent use in regard to offenders. The *CPC* uses the term ‘juvenile’ 31 times, referring to juvenile offenders, witnesses and involved parties.<sup>156</sup> Of these, ‘juvenile offenders’ is used most; all other juvenile subjects are mentioned a few times. In the *CPC*, ‘child/children’ is not used, but there are few specific provisions on criminal procedures which particularly refer to child participants by age. For example, articles 133/3, 135/5 and 197/4 specify procedures for summoning and taking statements from witnesses aged below 16 years old, and prohibiting persons aged below 16 years from entering courtrooms unless they are summonsed.

It can thus be confirmed that under Vietnamese law, the legal statuses of children and juveniles aged between 16 and 18 are significantly different. The law shows more consideration for children with fewer duties for children involved in criminal proceedings and heavier penalties for offenders abusing children. In other words, in the judicial sector, Vietnam has afforded less protection for persons aged between 16 and 18 years old than for persons aged below 16 years old.

The above analysis indicates that although there have been changes since 1990; Vietnamese law is still not in full compliance with the *CRC* in terms of the definition of the child. Children, according to Vietnamese legislation, means persons aged below a full 16 years old instead of below 18 years of age as defined in the *CRC*. Thereby, it should be noted that in this thesis, where the research presents, analyses or discusses the law or practice in Vietnam, the term ‘child’ means a person who has not attained 16 years of age while ‘juvenile’ means a person who has not yet attained

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<sup>155</sup> See more details in chapters 5 and 6.

<sup>156</sup> Under the *CPC* (art 59), involved parties consist of victims, civil plaintiffs, civil defendants and persons with interests and obligations related to criminal cases.

18 years of age. In situations mentioning children when comparing the context of international law with Vietnamese law, an explicit distinction is indicated.

### 2.1.3 The Rights of the Child

It can be seen that the documents that contain the terms ‘children’s rights’, ‘child rights’ or ‘the rights of the child’ as key words are abundant. These include not only legal normative documents and academic research, but also newspapers, television programs and so on. While researching literature concerning the human rights of children, readers can at times find the question of ‘what are children’s rights?’ that is posed as a sub-object of research.<sup>157</sup> Several studies also mention the notion of ‘children’s rights’, including ‘Children’s Human Rights: Challenging Global Barriers to the Child Liberation Movement’,<sup>158</sup> ‘Human Rights in Light of Childhood’,<sup>159</sup> and ‘Human Rights and Child Health’.<sup>160</sup> Despite this, it is often difficult to find a clear definition of the children’s rights concept. Surveying publications from the adoption of the *CRC*, it may be seen that studies on the topic of children’s rights sometimes refer to research published before the adoption of the *CRC*, and such works cite some international legal instruments, such as the *Geneva Declaration of the Rights of the Child* of 1924 and the *Declaration of the Rights of the Child* of 1954. However, the main content of those works focuses on and is based on the rights now set forth in the *CRC* to analyse, discuss or propose indicators for children’s rights and so on, without debating the notion, features and content of ‘children’s rights’ or ‘the rights of the child’.

In addition, while discussing a particular right of the child, researchers often mention other relevant instruments which relate to, or clarify, aspects of the *CRC*. For

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<sup>157</sup> Ken Reid, ‘Some Reflections on Children’s Rights’ (2007) 25(1) *Pastoral Care in Education* 46, 46; Gill Handley, ‘Children’s Right to Participation’ in Tim Waller (ed), *An Introduction to Early Childhood: A Multidisciplinary Approach* (Sage, 2009) 83; R Brian Howe and Katherine Covell, ‘Miseducating Children about their Rights’ (2010) 5(2) *Education, Citizenship and Social Justice* 91, 92.

<sup>158</sup> Sonja C Grover, *Children’s Human Rights: Challenging Global Barriers to the Child Liberation Movement* (Sandstone Academic Press, 2007) 1.

<sup>159</sup> John Wall, ‘Human Rights in Light of Childhood’ (2008) 16(4) *International Journal of Children’s Rights* 523, 523.

<sup>160</sup> Shanti Raman et al, ‘Human Rights and Child Health’ (2007) 43(9) *Journal of Paediatrics and Child Health* 581, 581–2.

instance, Veerman and Sand<sup>161</sup> have studied the right of the child to freedom of thought, conscience and religion recognised in the *CRC* (art 14) in relation to regulations of the *ICCPR* (art 18) and the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.<sup>162</sup> The authors find that there is a contradiction between the *CRC*'s article and two others. In the *ICCPR* and *Declarations*, the 'liberty of parents is stressed to ensure the religious and moral education of their children with their own convictions' while following the *CRC* it can be understood that 'under certain circumstances, a child may choose a religion other than that of her or his parents'.<sup>163</sup> However, this work does not issue any criticism on, or suggestion for changing related provisions of the *CRC*.

From the legal viewpoint, the implementation of the *CRC* is legally mandatory for its 195 states parties, almost every country in the world. Therefore, the human rights of children enshrined in the *CRC* are formally accepted by almost all governments. These governments, including Vietnam, have obligations to realise the rights of all children within their jurisdiction. In practice, particular provisions of the *CRC* have been constantly cited as common standards when the *CRC* Committee observes and evaluates the responsibility of states parties in terms of ensuring children's rights or proposes solutions for encouraging children's rights, even where a country has entered reservations to the *Convention*. Vietnam, it should be noted, entered no reservations in regard to the *CRC*.

From the above analysis, it can be concluded that studies on human rights for the child are different in some ways but share the same approach as noted by Alanen, 'children's rights are assumed straightforwardly to be those enshrined in the *CRC*';<sup>164</sup> and the *CRC* provides a common framework for research referring to children's

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<sup>161</sup> Philip Veerman and Caroline Sand, 'Religion and Children's Rights' (1999) 7(4) *International Journal of Children's Rights* 385.

<sup>162</sup> *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, UN GA Res 36/55 (25 November 1981).

<sup>163</sup> Veerman and Sand, above n 161, 386.

<sup>164</sup> Leena Alanen, 'Editorial: Taking Children's Rights Seriously' (2010) 17(1) *Childhood* 5, 6.

rights or the rights of the child. In line with this trend, in this thesis children's rights are understood as the rights recognised in the *CRC*.

The *CRC* embraces a preamble and 54 articles. The rights of the child in the *CRC* are expressed directly or indirectly through requirements for the state or parents' responsibilities in articles 1–41. Each of these articles describes one or several aspects of children's rights, such as the rights to life, protection and education. Therein, four articles — 2, 4, 6 and 12 — of the *CRC* are often regarded as general principles in applying the rights of the child in practice as well as evaluating the performance of states parties' obligations, namely non-discrimination, the best interests of the child, the right to life and development; and the right to be heard.<sup>165</sup> Together these principles present a common ideology that every child has the right to life and development, being respected and protected without discrimination; and their best interests shall be 'a primary consideration' in all actions involved. The principles can be explained in specific terms appropriate to particular rights regulated in other articles of the *CRC*. The rights of the child in the judicial sector or in juvenile justice are detailed below.

#### 2.1.4 Understanding International Legal Standards for the Rights of the Child in the Judicial Sector or Juvenile Justice

The term 'juvenile justice' appears quite often in the law, academic research and relevant situations of daily lives while mentioning the matters of children in contact with law or judicial system. However, there are sometimes inconsistencies in the meaning of this term. 'Juvenile justice' may refer only to matters of children in conflict with the law, but has no connection to child victims or witnesses.<sup>166</sup> In some

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<sup>165</sup> Two principles 'the right to be heard' and the 'best interest of the child' respectively are clearly explained in the CRC Committee's General Comments 12 (2009) and 14 (2013).

<sup>166</sup> See *General Comment No 10 (2007): Children's Rights in Juvenile Justice*, UN CRCOR, 54<sup>th</sup> sess, UN Doc CRC/CGC/10 (25 April 2007) (hereafter *GC 10 on Juvenile Justice*); (A212) UNICEF, *Juvenile Justice*, Innocenti Digest (UNICEF ICDC, Florence, 1998); Stacy C Moak and Lisa Hutchinson Wallace, 'Legal Changes in Juvenile Justice: Then and Now' (2003) 1(3) *Youth Violence and Juvenile Justice* 289; Abramson, above n 95; Thomas Hammarberg, 'A Juvenile Justice Approach Built on Human Rights Principles' (2008) 8(3) *Youth Justice* 193; Inter-Parliamentary Union and UNICEF Regional Office for South Asia, *Improving the Protection of Children in Conflict with the Law in South Asia: A Regional Parliamentary Guide on Juvenile Justice* (Kathmandu, 2007).

other papers, nevertheless, the topic ‘juvenile justice’ involves all children in contact with the law, including the child victim and child witness of crime.<sup>167</sup>

There is a similar situation with the terms ‘international (legal) framework(s)’, or ‘international (legal) standard(s)’ in human rights, child rights and juvenile justice. Relevant documents consist of not only academic studies, manuals and handbooks but also legislation or legal normative documents. Therein these terms are often not clearly defined or limited in meaning, with the presumption that treaties, instruments or provisions which prescribe the rights of related persons and are thought to apply worldwide or sometimes in a group of countries in the same region.<sup>168</sup> ‘International human rights standards’ can be understood as the UN instruments which stipulate the rights of persons,<sup>169</sup> while ‘international standards concerning the Rights of the Child’ encompass six instruments, including not only those of the UN but also the International Labour Organization (ILO) *Convention 138 Concerning the Minimum Age for Admission to Employment*.<sup>170</sup> The *EU Guidelines for the Promotion and Protection of the Rights of the Child* acknowledge that the *CRC* in conjunction with its protocols ‘contain a comprehensive set of legally binding international standards for promotion and protection of children’s rights’.<sup>171</sup>

According to Hamilton and Harvey, ‘international juvenile justice standards’ refers to the articles of the *CRC* which relate to justice for children.<sup>172</sup> This opinion is very different from many others, who see that international standards in justice for

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<sup>167</sup> See Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (United Nations, 2003); United Nations Office on Drugs and Crime, *Cross-Cutting Issue: Juvenile Justice — Criminal Justice Assessment Toolkit* (United Nations, 2006).

<sup>168</sup> The instruments which are adopted by regional organisations can be called international or regional instruments, depending on each writer’s perspective.

<sup>169</sup> Dilip Das and Michael J Palmiotto, ‘International Human Rights Standards: Guidelines for the World’s Police Officers’ (2002) 5(2) *Police Quarterly* 206, 215; Dilip K Das, Stephen C Light and Arvind Verma, ‘Using Police as Custodial Officers: An Analysis from the Perspective of International Human Rights Standards’ (2001) 4(2) *Police Quarterly* 215.

<sup>170</sup> Ricardo Dominicé, ‘International Standards concerning the Rights of the Child’ (2012) <[http://www.child-abuse.com/childhouse/childrens\\_rights/dci\\_home.html](http://www.child-abuse.com/childhouse/childrens_rights/dci_home.html)>.

<sup>171</sup> *EU Guidelines for the Promotion and Protection of the Rights of the Child*, EC (10 December 2007).

<sup>172</sup> Carolyn Hamilton and Rachel Harvey, ‘The Role of Public Opinion in the Implementation of International Juvenile Justice Standards’ (2004) 11(4) *International Journal of Children’s Rights* 369, 396.

children can refer to not only the *CRC* but also the *ICCPR*, *Beijing Rules* and several other instruments adopted by the UN, the CRC Committee, and the European Union for European countries.<sup>173</sup>

From the above review of literature, it can be concluded that ‘international legal standards’ for the rights of the child in the judicial sector or juvenile justice can be utilised flexibly, depending on the respective goals of studies and authors. For the purpose of this thesis, ‘international standards for the rights of the child in the judicial sector’ or ‘international juvenile justice standards’ imply the system of provisions of international law concerning children’s rights in justice. These standards should be adequately applied to deal with people below 18 years of age who are in contact with the judicial system (as offenders or victims and witnesses of crime). They are the legal basis to address any other relevant matters, including the prevention of juvenile delinquency.

To establish the context of the research, an overview of international standards for the rights of the child in the judicial sector will be provided. After this, a brief introduction of the most important instruments is presented. They consist of the *CRC* (in particular articles 37, 39 and 40), the *Riyadh Guidelines*, the *Beijing Rules*, the *Havana Rules*, and the *UN Guidelines 2005*. In addition, the relationship between relevant instruments follows.

## **2.2 International Legal Instruments regarding the Rights of the Child in the Judicial Sector**

### **2.2.1 Overview**

The principles as well as fundamental rights for children in the judicial sector or in juvenile justice are set forth in the *CRC*. However, this area is also supported by various international frameworks and standards on human rights, both child-specific

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<sup>173</sup> See Ursula Kilkelly, ‘Youth Justice and Children’s Rights: Measuring Compliance with International Standards’ (2008) 8(3) *Youth Justice* 187, 188; Inter-Parliamentary Union and UNICEF, *Child Protection: A Handbook for Parliamentarians* (Inter-Parliamentary Union, 2004); UNODC and UNICEF, above n 134; No Peace Without Justice and UNICEF Innocenti Research Centre, *International Criminal Justice and Children* (UNICEF, 2002).



and non-child-specific instruments. The main child-specific normative legal documents dealing with children in contact with the law include:

- *Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*;
- *Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*;
- *Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*;
- *Guidelines for Action on Children in Criminal Justice System (UN Guidelines 1997)*;<sup>174</sup>
- *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime (UN Guidelines 2005)*;<sup>175</sup>
- *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Protocol on the Sale of Children)*;<sup>176</sup>
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention against Transnational Organized Crime (Protocol to Prevent Trafficking in Persons)*;
- *General Comment No 10 (2007) on Children's Rights in Juvenile Justice (GC 10 on Juveniles Justice)*;
- *General Comment No 12 (2009) on the Right of the Child to be Heard (GC 12 on the Right to be Heard)*;<sup>177</sup>
- *General Comment No 14 (2013) on the Right of the Child to have his or her Best Interests Taken as a Primary Consideration (GC 14 on the Best Interests of the Child)*.

These documents mention different aspects of children's rights in justice and have distinct influences. The *Beijing Rules*, the *Riyadh Guidelines* and the *Havana Rules* are more popular and usually cited when discussing the rights of the child in conflict with the law or at social risk. Together, these three instruments are often referred to

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<sup>174</sup> *Guidelines for Action on Children in the Criminal Justice System*, UN ESC Res 1997/30, 36<sup>th</sup> plen mtg (21 July 1997) (hereafter *UN Guidelines 1997*).

<sup>175</sup> *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime*, UN ESC Res 2005/20, 36<sup>th</sup> plen mtg (20 July 2005) (hereafter *UN Guidelines 2005*).

<sup>176</sup> *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, opened for signature 25 May 2000, 2171 UNTS 000 (entered into force 18 January 2002) (hereafter *Protocol on the Sale of Children*).

<sup>177</sup> *General Comment No 12 (2009): The Right of the Child to be Heard*, UN CRCOR, 51<sup>st</sup> sess, UN Doc CRC/CGC/12 (1 July 2009) (hereafter *GC 12 on the Right to be Heard*).

as ‘United Nations standards and norms in juvenile justice’.<sup>178</sup> Meanwhile the *UN Guidelines 2005* are more important than any others when mentioning child victims’ and witnesses’ rights. The *UN Guidelines 1997* provide a common framework for working with children in the justice system, either children in conflict with the law or child victims and witnesses of crime.

In addition to the above documents, many other human rights instruments are also referred to while considering the rights of the child in the judicial sector. This is because children are also human beings, subjects of those treaties, and each treaty usually contains particular provisions for children or provides guidelines for the criminal justice in certain areas. Such documents include:

- *Universal Declaration of Human Rights (UDHR)*;
- *Standard Minimum Rules for the Treatment of Prisoners*;<sup>179</sup>
- *International Covenant on Civil and Political Rights (ICCPR)*;
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;<sup>180</sup>
- *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power*;<sup>181</sup>
- *Standard Minimum Rules for Non-custodial Measures*;<sup>182</sup>
- *Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention (UN Guidelines 1995)*;<sup>183</sup>
- *Guidelines for the Prevention of Crime (UN Guidelines 2002)*;<sup>184</sup>

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<sup>178</sup> *UN Guidelines 1997* [3].

<sup>179</sup> *Standard Minimum Rules for the Treatment of Prisoners*, UN ESC Res 663 C (XXIV) (31 July 1957).

<sup>180</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

<sup>181</sup> *Declaration of the Basic Justice Principles for Victims of Crime and Power Abuse*, GA Res 40/34, UN GAOR, 96<sup>th</sup> plen mtg (29 November 1985).

<sup>182</sup> *Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)*, GA Res 45/110, UN GAOR, 68<sup>th</sup> plen mtg (14 December 1990).

<sup>183</sup> *Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention*, ESC Res 1995/9, UN ESCOR, 49<sup>th</sup> plen mtg (24 July 1995) (hereafter *UN Guidelines 1995*).

<sup>184</sup> *Guidelines for the Crime Prevention*, ESC Res 2002/13, UN ESCOR, 37<sup>th</sup> plen mtg (24 July 2002) (hereafter *UN Guidelines 2002*).

- *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters.*<sup>185</sup>

The listed treaties are not as relevant as the child-specific instruments in this research; but these documents do contribute a certain value in clarifying the issues mentioned.

Together child-specific and non-child-specific documents establish international juvenile justice standards, providing legal basis for, and practical guidance about, the prevention of juvenile delinquency, the treatment of juvenile offenders and the protection of child victims and witnesses of crime.

### 2.2.2 The *Convention on the Rights of the Child*

The *CRC* was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, and entered into force on 2 September 1989. To date, its members are 195 states parties — almost all the world.<sup>186</sup> The *CRC* has a legally binding effect on states parties, whereby they need to complete certain obligations in order to ensure the rights of the child recognised in the *Convention*. It can be affirmed that the *CRC* is the most important instrument in terms of human rights for children. As mentioned in section 2.1.2 on Children's Rights, most recent studies have popularly understood the *CRC* as the universal standard for, and a desirable achievement in, the protection of children without any noticeable argument while discussing any aspect of the rights of the child.

Under the *CRC*, the rights of children as well as the obligations of the states parties are expected to satisfy four general principles and particular provisions conveyed by articles 37, 39 and 40. This is particularly the case in the judicial sector.

Articles 37 and 40 regulate the rights of children in conflict with the law. They emphasise that:

- (a) Children are not to be subjected to torture or inhuman treatment (art 37(a));

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<sup>185</sup> *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ESC Res 2001/12, 37<sup>th</sup> plen mtg (24 July 2002).

<sup>186</sup> For details, see United Nations, *Status of Treaties*, above n 7; see also UN News Centre, above n 7; UNICEF Press Centre, above n 7.

- (b) Capital punishment and life imprisonment are not to be imposed for offences committed by persons below 18 (art 37(a));
- (c) The deprivation of children's liberty is only used as the last resort for the shortest period of time (art 37(b));
- (d) Children deprived of their liberty are to be kept separately from adults; have a right to maintain contact with their family; and to have prompt access to legal appropriate assistance (art 37 (c), (d));
- (e) Children under the minimum age of criminal responsibility are to be presumed not to have the capacity to infringe the penal law (art 40(3));
- (f) Children in conflict with the penal law are to be treated in a manner consistent with the promotion of their sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of other persons and which takes into account the desirability of promoting the child's reintegration and constructive role in society (art 40(1));
- (g) Children in conflict with the penal law are ensured minimum rights including: to be presumed innocent until proven guilty; to have legal or other appropriate assistance; not to be compelled to give testimony or to confess guilt; and to have their privacy fully respected at all stages of the proceedings (art 40(2)).

Article 39 of the *CRC* is about child victims who suffer various forms of harm, including crime. This provision does not directly provide for the rights of related children, but shows the obligation of the *Convention's* members. It provides:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Throughout the *Convention*, particularly articles 37, 39 and 40, the *CRC* sets out central provisions for protecting children's rights in justice, embodying the rights of children in conflict with the law and of child victims. However, it has no particular

provision mentioning child witnesses or the prevention of juvenile delinquency. To apply the *CRC* effectively, these regulations of the *CRC* (as well as those that need to be inserted regarding the matters of child witnesses and the prevention of juvenile delinquency) need clarification, explanation and reference to relevant supplementary protocols, rules and guidelines in the field of juvenile justice.

### 2.2.3 *The Guidelines for the Prevention of Juvenile Delinquency*

The *Guidelines for the Prevention of Juvenile Delinquency* or *Riyadh Guidelines* were adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990. This is the result of a long-term discussion among ‘the world’s national Governments, experts in criminal prevention and criminal justice, scholars of international repute and members of the NGOs concerned’ since 1955 (since which date congresses on Crime Prevention and Treatment of Offenders have been organised every five years by the UN).<sup>187</sup> This instrument is similar to other guidelines and rules in the area of justice for children — member states are encouraged to apply such guidelines but the instruments have no legal binding effect. The distinguishing feature of the *Riyadh Guidelines* is that they do not enumerate particular rights of the child or specify provisions of the *CRC*. This is because the central purpose of the document is preventing children from breaking the law, not dealing with particular children in specific situations.

The *Riyadh Guidelines* encompass 66 guidelines, divided into seven sections, consisting of Fundamental principles; Scope of the Guidelines; General prevention; Socialization process; Social policy; Legislation and juvenile justice administration; and Research, policy development and co-ordination.

In the *Riyadh Guidelines*, concepts referring to the object of the instrument consist of ‘adolescent(s)’, ‘young person(s)’, ‘child/children’ and ‘youth’, and their violations of the law are called ‘juvenile delinquency’ and ‘youth crime’. Among these terms, ‘young person’ and ‘juvenile delinquency’ are repeated more frequently. However,

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<sup>187</sup> Eugeen Verhellen and Geert Cappelaere, ‘*United Nations Guidelines for the Prevention of Juvenile Delinquency: Prevention of Juvenile Delinquency or Promotion of a Society which Respects Children too?*’ (1996) 4(1) *International Journal of Children’s Rights* 57, 56.

there is not any definition of these terms. In addition, at times, these terms are placed side by side. For example, guidelines 7 and 9 (g) provide in turn that:

The present *Guidelines* should be interpreted and implemented within the broad framework of the *Universal Declaration of Human Rights*... as well as other instruments and norms relating to the rights, interests and well-being of **all children and young persons**.

Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent **juvenile delinquency and youth crime** (emphasis added).

In these provisions, between the terms ‘children’ and ‘young person’ as well as ‘juvenile delinquency’ and ‘youth crime’ there seem to exist differences not only in words but also in intended purpose. However, such differences are difficult to clearly distinguish. As a result, the use of various technical terms without definitions in this instrument creates some confusion in understanding particular guidelines. For this reason, each national legal system should consistently use terms with clear definitions when introducing related policies in the prevention of juvenile delinquency.

Despite some weaknesses, the *Riyadh Guidelines* provide a practical tool for the *CRC*’s states parties in preventing children from breaking the law. The *Guidelines* highlight that the ‘prevention of juvenile delinquency is an essential part of crime prevention in society’ in which children ‘can develop non-criminogenic attitudes’, especially those who live in difficult circumstances, who are ‘demonstrably endangered or at social risk’ or are ‘in need of special care and protection’. The *Riyadh Guidelines* also underline that the prevention of juvenile delinquency should not only counter negative circumstances but should also promote the well-being and interests of children.

To achieve successful prevention, the *Riyadh Guidelines* indicate that member states’ preventative programs and policies should contain the following principles:

- (a) Pursue a child-centred orientation;
- (b) Focus on children's well-being in any program of prevention;
- (c) Respect and promote children's personality;
- (d) Consider that children not only are objects of social control but also play an active role in society;
- (e) Avoid criminalising and penalising a child for behaviour not causing serious harm or damage;
- (f) Be aware that labelling a child as 'deviant', 'delinquent' or 'pre-delinquent' can lead to undesirable behaviour;
- (g) Develop services and programs for preventing juvenile delinquency based on communities; utilise formal agencies of social control as a means of last resort.

In short, the *Riyadh Guidelines* provide states with a framework for preventing delinquency and crime among children. Although there remain certain limitations, the *Guidelines* are very complete and 'promote a proactive approach of prevention'.<sup>188</sup>

#### 2.2.4 The *Standard Minimum Rules for the Administration of Juvenile Justice*

The *Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)* were adopted by General Assembly resolution 40/33 of 29 November 1985. This document is the only child-specific instrument on children's rights in the field of justice that was introduced earlier than the *CRC*. It provides a framework with minimum standards that the national juvenile justice system should meet to enable the effective protection of children in conflict with the penal law<sup>189</sup> as well as the maintenance of a peaceful social order. In the light of this instrument, 'juvenile justice shall be conceived as an internal part of the national development process of each country'<sup>190</sup> with its aims of promoting the well-being of juveniles and ensuring

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<sup>188</sup> Ibid 59.

<sup>189</sup> In this instrument they are called 'juvenile offenders'.

<sup>190</sup> *Beijing Rules* r 1(4).

that the response to juvenile offenders is in proportion to the gravity of the offence and the offender's circumstances.<sup>191</sup>

The *Beijing Rules* comprise 30 rules on six main issues: General principles; Investigation and prosecution; Adjudication and disposition; Non-institutional treatment; Institutional treatment; and Research, planning, policy formulation and evaluation.

Each rule of this instrument stipulates an aspect or a point of juvenile justice, which is followed by a respective commentary. The commentary supplies explanations, comments or related details, which is useful for fully understanding the regulation within the view of the international context and various national legal systems.

The *Beijing Rules* present quite clearly and sufficiently the rights of juvenile offenders as well as the obligations of states in both general and particular conditions corresponding with respective stages of criminal proceedings and situations. They also stress the importance of training professionals and of research on juvenile justice. Such statements are convenient for applying these rules in practice. An interesting point of this instrument is that several important contents of the *Rules* are also contained in the *CRC*, such as the age of criminal responsibility, no application of death penalty and corporal punishment, and the right to privacy. Consequently, despite having no official legal binding effect, the *Beijing Rules* seem to have effective force in practice. This instrument is often cited when the *CRC* Committee observes the implementation of the *CRC* by states members.

However, there also exists some confusion while implementing the *Beijing Rules*. In this instrument, three basic terms are defined, 'a juvenile', 'an offence' and 'a juvenile offender', as below:

- (a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;
- (b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

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<sup>191</sup> Ibid r 5.



(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.<sup>192</sup>

Looking at these definitions, it appears that the meaning of ‘juvenile’ is unclear, depending on two other terms ‘child’ and ‘young person’. However, in the *Beijing Rules* there is not any clarification of the concepts of ‘child’ and ‘young person’. In the commentary of rule 2.2, it provides that the age limits of ‘juvenile’ should rely on respective legal systems, varying between 7 and 18 or above. This commentary perhaps does not bring much clearer guidance for the rule. This is because ‘7’ seems too low for the age of criminal responsibility and ‘over 18’ is vague. In addition, under national legal systems, persons over 18 are usually mature and no longer have any special protection as a child. Regarding this point, Van Bueren has commented that ‘[t]he definition enshrined in the *Beijing Rules* contains a gaping hole... This circular definition of a juvenile runs counter to logic and common sense’.<sup>193</sup> Under the Human Rights Committee’s opinion ‘all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice’.<sup>194</sup> However, the Model Code of Criminal Procedure provided by the United States Institute of Peace suggests that ‘juvenile’ means a child between the ages of 12 and 18 years, while in Australia ‘juvenile’ is defined as a person aged between 10 and 16 years (in Queensland) or 10 and 17 years (in other states).<sup>195</sup>

From different opinions on the term ‘juvenile’, it can be said that it is not easy to propose an unquestionable definition of ‘juvenile’. Based on the purpose of this research, the meaning of ‘juvenile’ in personal suggestions or comments of the

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<sup>192</sup> Ibid r 2.2.

<sup>193</sup> Geraldine Van Bueren, ‘Administration of Juvenile Justice and the Prevention of Juvenile Delinquency’ in *The International Law on the Rights of the Child* (Martinus Nijhoff Publishers, 1994) vol 35, 169, 171.

<sup>194</sup> *General Comment No 21: Article 10 (Humane Treatment of Person Deprived of Liberty)* UN CCPR/C, 44<sup>th</sup> sess, UN Doc HRI/GEN/1/Rev9 (Vol I) (10 April 1992) (hereafter *CCPR General Comment No 21*).

<sup>195</sup> United States Institute of Peace, *Volume II Model Code of Criminal Procedure*, Model Codes for Post-Conflict Criminal Justice (United States Institute of Peace Press, 2008) 36; Kelly Richards, ‘What Makes Juvenile Offenders Different from Adult Offenders?’ *Trends & Issues in Crime and Criminal Justice No 409* (Australian Institute of Criminology, February 2011).

author is understood as any person who is under the age of 18. This presumption is in compliance with the definition of ‘juvenile’ in the *Havana Rules* (rule 11).

### 2.2.5 The *Rules for the Protection of Juveniles Deprived of their Liberty*

The *Rules for the Protection of Juveniles Deprived of their Liberty* or *Havana Rules* were adopted by General Assembly resolution 45/113 of 14 December 1990. It came into the world by the significant attempt of non-government organisations, especially Amnesty International, Defence for Children International and Save the Children when specific international legal instruments on the protection of children deprived of their liberty were scarce.<sup>196</sup>

The *Havana Rules* along with the *Riyadh Guidelines*, which were adopted at the same time, are regarded as a complement to the *Beijing Rules*.<sup>197</sup> Together these three instruments establish global standards and frameworks for juvenile justice.<sup>198</sup> As shown in rule 3, the *Havana Rules* aim to establish minimum standards for the protection of juveniles deprived of their liberty in all forms, reducing the negative effects of detention and promoting social integration.

The *Havana Rules* consist of 87 rules arranged in five parts: Fundamental perspectives; Scope and application of the rules; Juveniles under arrest or awaiting trial; The management of juvenile facilities; and Personnel.

Throughout the document, the *Havana Rules* express a common idea that the rights and well-being of juveniles should be supported and promoted; the deprivation of liberty of juveniles should only be used as a measure of last resort for the shortest appropriate period of time. Juveniles deprived of their liberty have rights to humane treatment, to privacy, rights to remain in contact with their family, access to legal assistance and to be held separate from adults. A point worth noting in this document is that the central subject, ‘juvenile’ is clearly defined as ‘every person under the age

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<sup>196</sup> Geraldine Van Bueren, ‘The Rights of Children Deprived of their Liberty’ in *The International Law on the Rights of the Child* (Martinus Nijhoff Publishers, 1995) vol 35, 206 , 208.

<sup>197</sup> Verhellen and Cappelaere, above n 187, 57.

<sup>198</sup> *UN Guidelines 1997* [3].

of 18'.<sup>199</sup> This clear definition brings convenience to the implementation of the *Rules* on a global scale as it avoids differences in understanding and explanation due to the existence of various national legal systems (as occurred with the *Beijing Rules* and *Riyadh Guidelines*).

The *Havana Rules* cover a very large ambit of matters referring to child deprivation of liberty, including juvenile justice, refugee, reformatory schools and medical treatment. The scope is more extensive than the *Beijing Rules* and articles 37 and 40 of the *CRC*. This document indicates that:

‘the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by the order of any judicial, administrative or other public authority’.<sup>200</sup>

In this instrument, matters concerning juvenile justice are still the core. The *Havana Rules* have major provisions dealing with issues involving children in all stages of criminal proceedings. Rule 5 states that:

The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

For the purpose of this study, while discussing the rights of children deprived of their liberty, the central focus is about matters relating to children who are detained because of their legal violations or as juvenile offenders.

#### 2.2.6 The *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime*

The *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime* or *UN Guidelines 2005* were adopted by the Economic and Social Council in its resolution 2005/20 of 22 July 2005. These *Guidelines* were born in the context that international law on the protection of victims or witnesses was quite limited and there existed a common belief that victims of crime are usually forgotten in the

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<sup>199</sup> *Havana Rules* r 11(a).

<sup>200</sup> *Ibid* r 11(b).

administration of justice.<sup>201</sup> At that time, the attention the global community paid to child victims and witnesses was at even a lower level compared with that for adults. In 1985, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* was adopted but this document contains no particular provisions for dealing with related children, who are often far more vulnerable. The *CRC*, a child-specific instrument regarded as the most important legal normative document on children's rights, only has very common provisions, including Article 39 on the protection of child victims and witnesses. As a result, the appearance of the *UN Guidelines 2005* is worthy of note. It is considered that '[t]he *Guidelines* filled an important gap in international standards in the area of the treatment of children as victims or witnesses of crime'.<sup>202</sup>

The *UN Guidelines 2005* contain 46 guidelines divided into 15 sections, including Objectives; Special consideration; Principles; Definitions; The right to be treated with dignity and compassion; The right to be protected from discrimination; The right to be informed; The right to be heard and to express views and concerns; The right to effective assistance; The right to privacy; The right to be protected from hardship during the justice process; The right to safety; The right to reparation; The right to special preventive measures; and Implementation.

As can be seen from the structure of the *UN Guidelines 2005*, most aspects of the rights of the child who is in contact with the criminal justice system in the role of a victim or witness are mentioned in this instrument. The *Guidelines* are expected to provide a framework for states, interested organisations and professionals in reforming national law, designing and implementing programs and policies and dealing with related issues to ensure full respect for child victims and witnesses of

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<sup>201</sup> United Nations Office for Drug Control and Crime Prevention, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (United Nations, 1999) 1; United Nations Office for Drug Control and Crime Prevention, *Guide for Policy Makers: On the Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (United Nations, 1999) 1; UNICEF and UNODC, *Handbook for Professionals and Policy Makers on Justice Matters involving Child Victims and Witnesses of Crime*, Criminal Justice Handbook Series (United Nations, 2009) 1.

<sup>202</sup> UNICEF and UNODC, above n 201, 2.

crime, and to contribute to the implementation of the *CRC*.<sup>203</sup> The document also emphasises the important roles of professionals as well as the importance of training and education for persons working with child victims and witnesses.

In short, in comparison with criminals or offenders, especially juvenile offenders who are protected quite sufficiently by various normative instruments including the *Beijing Rules*, *Riyadh Guidelines* and *Havana Rules*, the care for child victims and witnesses is fairly limited. In this situation, the *UN Guidelines 2005* seem late but still significant, supplementing the human rights law system and especially human rights for child offenders, victims and witnesses of crime.

#### 2.2.7 The Interdependence of International Instruments in Juvenile Justice

As stated in the *Universal Declaration of Human Rights*, all human rights are indivisible, interdependent and interrelated, whereby the fulfilment or improvement of each right depends on the others as well as supporting them; at the same time the violation of one right contributes to adverse effects on other rights.<sup>204</sup> Human rights laws embracing declarations, conventions, covenants, rules, guidelines and other instruments are numerous. Each instrument contains common rights of every member of the human family, or focuses on a group of persons or particular aspects of human rights. The rights of each person are dealt with simultaneously by many instruments. Consequently, there exists a correlation between different legal normative documents on human rights. Each human rights treaty usually refers to others to remind us of the general background of human rights or to establish a contemporary context of issues provided. For instance, in the Preamble of the *CRC*, nine international instruments are mentioned, including the *Charter of the United Nations*, the *UDHR*, the *Declaration of the Rights of the Child*, the *ICCPR*, the

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<sup>203</sup> *UN Guidelines 2005* [3].

<sup>204</sup> See also *UN Guidelines 1997* [10]; *Vienna Declaration on Human Rights 1993*, UN GAOR, World Conference on Human Rights (25 June 1993) pt I [5]; Antonio A Cancado Trindade, 'The Interdependence of all Human Rights: Obstacles and Challenges to their Implementation' (1998) 50(4) *International Social Science Journal* 513; Office of the High Commissioner for Human Rights, *Your Human Rights* (19 January 2012) United Nations Human Rights <<http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>>; (E27) United Nations Population Fund, *Human Rights Principles* UNFPA <<http://www.unfpa.org/rights/principles.htm>>.

*ICESCR*, and the *Beijing Rules*. The mention of these instruments supports the principle that everyone is entitled to all rights and freedom, while at the same time children need special care and assistance. It is in this context that the *CRC* prescribes the rights of the child.

In the field of justice, the interdependence between international legal instruments regarding children's rights is not only a common relationship but also a closer interdependence and interrelatedness, which is often mentioned in other instruments.<sup>205</sup> There may be instruments that provide guidance for the implementation of the others. For example, the *UN Guidelines 1997* aim to support the implementation of the *CRC* in the aspect of the administration of juvenile justice, the UN standards and norms in juvenile justice,<sup>206</sup> the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and other related instruments.<sup>207</sup>

With regard to the validity of these instruments, most child-specific instruments dealing with children in contact with the law, excluding the *CRC* and its optional protocols, are voluntary. They do not directly create legal obligations for states. However, these instruments present valuable guidance and produce an undeniable moral effect on protecting children in every country. Each nation may be criticised by the international community if its children sustain damage because of a failure to apply related instruments. Moreover, several fundamental rules or guidelines contained in such documents are also enshrined in the *CRC*, while other provisions 'can be considered to provide more details on the contents of existing rights'.<sup>208</sup> This means that the instruments seem to become no longer voluntary. The *CRC* Committee constantly invokes these instruments when guiding the implementation of

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<sup>205</sup> *CRC* Preamble; *Riyadh Guidelines* [7].

<sup>206</sup> In this context the UN standards and norms in juvenile justice imply the *Riyadh Guidelines*, *Beijing Rules* and *Havana Rules*.

<sup>207</sup> *UN Guidelines 1997* [4].

<sup>208</sup> Office of the High Commissioner for Human Rights and International Bar Association, above n 167, 400.

articles 37, 39 and 40 of the *CRC* as well as examining the fulfilment of states parties' obligations in this area.<sup>209</sup>

In conclusion, there are various instruments in terms of the rights of the child in justice, and these documents have an interdependent relationship. The *CRC* sets up common children's rights and has a legally binding effect on almost every country around the world. Other instruments specify the rights of the child in smaller facets with more details, or provide guidance and frameworks which are necessary to enable the achievement of the goals of protecting and promoting the wellbeing and harmonious development of children. In order to achieve the protection of children's rights in justice, understanding and appropriately applying all of these documents is necessary.

### 2.3 Vietnam's Ratification of the *CRC* and Commitments on the Implementation of Juvenile Justice

Child protection, care and education have been traditions and one of the priorities of Vietnam, especially in the area of human rights. The care of children has been indicated to be the task not only of parents and families but also of state agencies, political and social institutions, and communities. In 1961 even though the country was in very difficult circumstances due to the intense warfare and conflict, the Government issued the legal document on the Establishment of the Committee on Adolescents and Young Children.<sup>210</sup> The Committee was a public organisation responsible for educating young children and adolescents, established nationwide at three levels (central, provincial and district) with boards for children at communes.<sup>211</sup> In 1979, the *Ordinance on Child Protection, Care and Education* was adopted. This was the first legal normative document covering basic issues of children, declaring that all children should be protected, cared for and educated with love and responsibility so as to become socialist citizens with balanced and comprehensive

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<sup>209</sup> Ibid; Hodgkin and Newell, above n 47, 548, 590, 603.

<sup>210</sup> *Quyết Định 112/NV ngày 02/5/1961 của Bộ Nội Vụ về việc Thành Lập Ủy Ban Thiểu Niên Nhi Đông Việt Nam* [Decision 112/NV dated 2 May 1961, issued by the Minister of Home Affairs on the Establishment of the Committee on Adolescents and Young Children of Vietnam].

<sup>211</sup> Ibid art 1.

development.<sup>212</sup> The family, State and society all had responsibility for the protection, care and education of children.<sup>213</sup> Moreover, the year 1989 was named as the ‘Year of Vietnamese Young Children’ and the Vietnam Committee on Adolescents and Young Children was established with the purpose of promoting child protection, care and education.<sup>214</sup>

On 26 January and 20 February 1990, very soon after the introduction of the *CRC*, Vietnam signed and fully ratified this *Convention*. By these actions, Vietnam has committed to a state party’s obligations under the *CRC*. It requires the Vietnamese Government to undertake all appropriate measures in its jurisdiction to realise the children’s rights recognised in the *Convention*.

In Vietnam’s jurisdiction, international law, including conventions officially accepted by the State, often has no direct effect. Their provisions need to be converted into domestic laws before coming into force.<sup>215</sup> Therefore, the implementation of the *CRC*’s international standards in juvenile justice requires Vietnam to revise its law to fully recognise children’s rights as set forth in the *CRC* and relevant instruments, and then have effective mechanisms for application to realise these provisions in practice.

Looking at the situations of children in Vietnam (detailed in section 3.1—The Situation of Children and Juveniles in Vietnam), it can be said that since the ratification of the *CRC*, the Government has made efforts to meet its obligations. It has stated that the care and protection of children is a national tradition and a

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<sup>212</sup> *Ordinance on Child Protection*.

<sup>213</sup> *Ibid* art 4.

<sup>214</sup> *Chi Thi 102/CT ngay 28/4/1989 cua Chu Tich Hoi Dong Bo Truong ve Tiep tuc Day Manh Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em* [Directive 102/CT dated 28 April 1989, issued by the President of Cabinet Council on the Continuity of Promoting the Protection, Care and Education of Young Children]; *Quyết Định 259-CT ngay 25/9/1989 cua Chu Tich Hoi Dong Bo Truong ve viec Thanh Lap Uy Ban Thieu Nien va Nhi Dong Viet Nam* [Decision 259-CT dated 25 September 1989, issued by the President of Cabinet Council on the Establishment of the Vietnam Committee on Adolescent and Young Children] (hereafter *Decision 259-CT 1989*).

<sup>215</sup> See *Luat 41/2005/QH11 Ky Ket, Gia Nhap va Thu Hien Dieu Uoc Quoc Te* [Law 41/2005/QH11 on the Conclusion, Accession to and Implementation of Treaties] art 72.



consistent policy, and that the implementation of the *CRC* is a focus of Vietnam.<sup>216</sup> Further, it is said that that people are regarded as the goal and driving force for all policies toward socio-economic development and promotion of human rights, including children's rights.<sup>217</sup> In 2000 and 2001, Vietnam signed and ratified the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography*. It has yet to sign the *Optional Protocol on to the Convention of the Rights of the Child on a Communications Procedure*.

Since 1990, numerous domestic laws regulating children's rights and the responsibilities for the care and protection of children have been adopted or amended, such as the *Law on Child Protection, Care and Education* 1991 amended in 2004; the *Law on Universal Primary Education* in 1991;<sup>218</sup> and the *Law on Adoption* in 2010. Many national programs to protect children and promote their development have been established and carried out. For example, in the period 2002–2007, 15 national goal programs for social issues of poverty reduction, employment and health care have been introduced.<sup>219</sup> Programs that could benefit children are embodied in the National Action Program for Vietnamese Children for the periods 2001–2010 and 2012–2020;<sup>220</sup> the Program for Children in Difficult Circumstances for the period 1999–2002, the current National Program on Child Protection for 2011–2015,<sup>221</sup> the National Target Program on Hunger Eradication, Poverty

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<sup>216</sup> Vietnam's CRC Report 1993–1998, above n 8, 3; Vietnam's CRC Report 1992, above 77, [21]–[34].

<sup>217</sup> Vietnam's CRC Report 2008–2011, above n 143.

<sup>218</sup> *Luat Pho Cap Giao Duc Tieu Hoc nam 1991* [Law on Universal Primary Education of 1991].

<sup>219</sup> Vietnam's CRC Report 2008–2011, above n 143.

<sup>220</sup> *Quyét Dinh 23/2001/QĐ-TTg của Thủ Tướng Chính Phủ về việc Phe Duyệt Chương Trình Hành Động Quốc Gia vì Trẻ Em Việt Nam giai đoạn 2001–2010* [Decision 23/2001/QĐ-TTg issued by the Prime Minister on the Approval of the National Program of Action for Children in Vietnam for the period 2001–2010] (hereafter *Decision 23/2001/QĐ-TTg*); *Quyét Dinh 1555/QĐ-TTg ngày 17/10/2012 của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Hành Động Quốc Gia Vì Trẻ Em giai đoạn 2012–2020* [Decision 1555/QĐ-TTg dated 17 October 2012, issued by the Prime Minister on the Approval of the National Action Program for Children for the period 2012–2020].

<sup>221</sup> *National Program for Child Protection 2011–2015*.

Reduction and Jobs,<sup>222</sup> and the programs on the prevention of trafficking in women and children.<sup>223</sup> These documents have presented Vietnam's policies on such matters as: supporting free primary education and health care for children under six years old, setting targets for reducing malnutrition and child mortality; increasing education; providing pure water and sanitation for children; and protecting children from abuse and human trafficking.

In accordance with changes in the law, the socio-economic situation and the state apparatus since the acceptance of the *CRC*, Vietnam's state bodies responsible for the care of children have also changed. These include the Committee on Adolescents and Young Children in the period 1989–1991, the Committee for Child Protection and Care in the period 1991–2002 and the National Commission for Population, Family and Children in the period 2002–2007.<sup>224</sup> Since 2007, the Ministry of Labour, Invalids and Social Affairs has been responsible for the protection and care of children nationwide.<sup>225</sup>

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<sup>222</sup> *Quyết Định 143/2001/QĐ-TTg của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Mục Tiêu Quốc Gia Xóa Đói Giảm Nghèo và Việc Làm giai đoạn 2001–2005* [Decision 143/2001/QĐ-TT issued by the Prime Minister on the Approval of the National Target Program on Hunger Eradication, Poverty Reduction and Jobs for the period 2001–2005].

<sup>223</sup> Ban Chi Đạo 130/CP, 'Tong Ket 05 nam Thuc Hien Chuong Trinh Hanh Dong Phong Chong Toi Pham Mua Ban Nguoi (2004–2009)' [Summarising the Five-year Performance of the Action Program for Preventing and Combatting Human Trafficking 2004–2009] (421/BCA-VPTT 130/CP, Ministry of Public Security, 2009) (hereafter Report on Human Trafficking 2009).

<sup>224</sup> See *Decision 259-CT 1989*; *Quyết Định 329/CT ngày 12/09/1990 của Chủ Tịch Hội Đồng Bộ Trưởng về việc Đổi Tên của Ủy Ban Thiệu Niên, Nhi Đồng Việt Nam thành Ủy Ban Bảo Vệ và Chăm Sóc Trẻ Em Việt Nam* [Decision 329/CT dated 12 September 1990, issued by the President of Cabinet Council on Changing the Name of Vietnam's Committee on Adolescents and Young Children to Vietnam's Committee on Child Protection and Care]; *Nghị Định 362/HĐBT ngày 06/11/1991 của Hội Đồng Bộ Trưởng về Chức Năng, Nhiệm Vụ, Quyền Hạn, Tổ Chức Bộ Máy của Ủy Ban Bảo Vệ và Chăm Sóc Trẻ Em Việt Nam* [Decree 362-HĐBT dated 6 November 1991 issued by the Cabinet Council on Functions, Duties, Powers and Organisational Structure of Vietnam's Committee on Child Protection and Care]; *Nghị Định 94/2002/ND-CP về Chức Năng, Nhiệm Vụ, Quyền Hạn, Tổ Chức Bộ Máy của Ủy Ban Dân Số, Gia Đình và Trẻ Em* [Decree 94/2002/ND-CP on the Functions, Duties, Powers and Organisational Structure of the Committee on Population, Families and Children].

<sup>225</sup> See *Nghị Định 186/2007/ND-CP Quy Định Chức Năng, Nhiệm Vụ, Quyền Hạn và Cơ Cấu Tổ Chức của Bộ Lao Động, Thương Binh và Xã Hội* [Decree 186/2007/ND-CP on the Functions, Duties, Powers and Organisational Structure of the Ministry of Labour, Invalids and Social Affairs]; *Nghị Định 106/2012/ND-CP Quy Định Chức Năng, Nhiệm Vụ, Quyền Hạn và Cơ Cấu Tổ Chức của Bộ Lao Động, Thương Binh và Xã Hội* [Decree 106/2012/ND-CP on the Functions, Duties, Powers and Organisational Structure of the Ministry of Labour, Invalids and Social Affairs] (hereafter *Decree 106/2012/ND-CP*).

In practice, the living standards of children in Vietnam have generally improved since 1990 in many aspects, from nutrition, health and education to entertainment and recreation. Progress in the care and protection of children in Vietnam has been acknowledged not only by the Vietnamese Government but also by the international community. UNICEF states that Vietnam ‘has continued to demonstrate visible and forward-looking leadership for its approximately 30 million children.... By any measure, Vietnam has made tremendous progress for its children in a remarkably short period of time’.<sup>226</sup> However, there are still a noticeable proportion of Vietnamese children living in difficult circumstances. The laws, regulations and programs dealing with child issues, especially child protection, have been formulated in various legal documents but sometimes lack coherence and clarity.<sup>227</sup> In its concluding observations on Vietnam’s reports on the implementation of the *CRC*, the Committee often repeats specific concerns and recommendations of matters in juvenile justice.<sup>228</sup> Particular matters concerning children in contact with the judicial system will be presented in the next chapters.

Recognising the existing limitations and weaknesses in its system for child protection and harmonious development, the Vietnamese Government has promised to mobilise the whole political system and NGOs to become involved in child issues in order to further exercise and fully realise children’s rights.<sup>229</sup> Various actions and programs considered as practical measures to assure children’s rights have been applied, such as the National Action Program for Children 2011–2020 which aims to establish a safe, friendly and healthy environment to better exercise the rights of children and increase equal opportunities for children’s development,<sup>230</sup> and the National Program for Child Protection for the period 2011–2015 which has the goals of building a safe living-environment for all children, actively preventing children from falling into risk and difficult circumstances, and assisting children who are abused or in need of

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<sup>226</sup> UNICEF’s Report on Children in Viet Nam, above n 86.

<sup>227</sup> Ibid 255.

<sup>228</sup> See CRC Committee’s Observations 1993, above n 11; CRC Committee’s Observations 2003, above n 12; CRC Committee’s Observations 2012, above n 133.

<sup>229</sup> Vietnam’s CRC Report 2002–2007, above n 89; Vietnam’s CRC Report 2008–2011, above n 143, 34.

<sup>230</sup> Vietnam’s CRC Report 2008–2011, above n 143.

reintegration.<sup>231</sup> In these programs, juvenile justice can be seen as a part of their concerns. The particular regulations and actual implementation of the rights of the child in the judicial sector are detailed and carefully evaluated in the next chapters.

In short, the protection, care and education of children have been given much attention by the Vietnamese Government. Since ratifying the *CRC*, Vietnam has taken many actions on the adoption of relevant laws, the establishment of institutions responsible for caring for children, and the implementation of legislation and programs for children. However, there are still shortcomings. Recognising weaknesses in the implementation of the rights of children, the government has shown a determination to encourage the whole national political system, organisations and individuals together to support Vietnamese children. It has also presented programs and plans for promoting children's rights in Vietnam to comply with the requirements of the *CRC* and relevant documents.

## 2.4 Conclusion

In summary, 'international legal standards for the rights of the child in the judicial sector' denotes the system of provisions of international law dealing with people below 18 years old in contact with the judicial system, who are either offenders or victims or witnesses of crime. The standards improve over time along with the improvement of human rights in general and children's rights in particular. At present, the provisions are enshrined in the *CRC*, *Riyadh Guidelines*, *Beijing Rules*, *Havana Rules*, *UN Guidelines 1997*, *UN Guidelines 2005*, and several other instruments. The provisions are interdependent and inter-related. Therein, three articles — 37, 39 and 40 — of the *CRC* perform a central role and impose binding legal obligations on 195 countries; while the others provide practical guidance for the implementation of children's rights in the justice system.

Vietnam ratified the *CRC* in 1990. The Government has improved children's lives in its jurisdiction. However, in Vietnam, those who are aged from 16 to below 18 years of age are no longer considered to be children as they are in the international

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<sup>231</sup> *National Program for Child Protection 2011–2015* art 1.

standards. The implementation of children's rights in general and their rights in juvenile justice still need to be improved to approach the *CRC* and international juvenile justice standards.

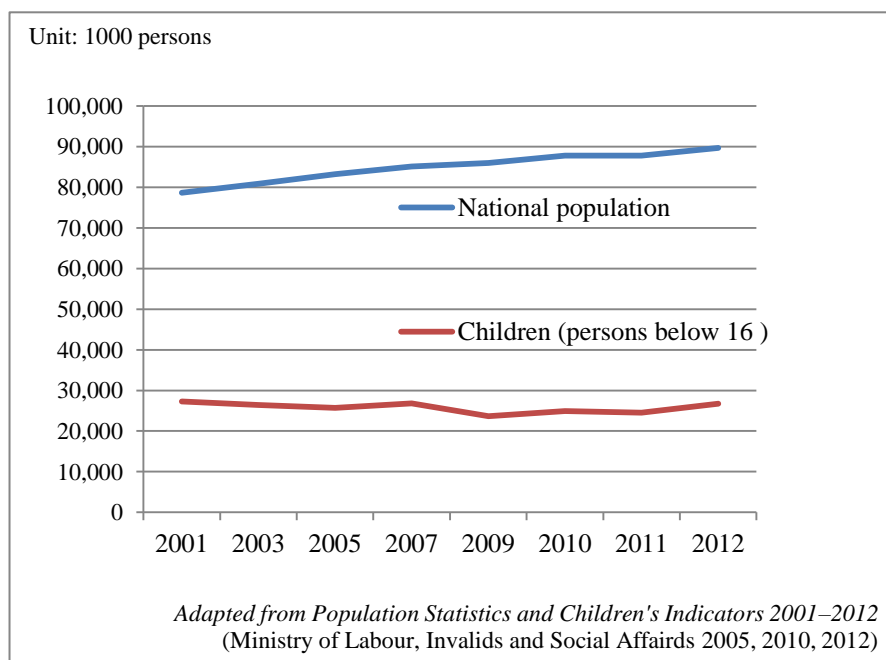
This chapter has presented information about basic concepts and about Vietnam's commitments as general background for the research. In the next chapter I provide the national context and national mechanisms for child protection in Vietnam.

### Chapter 3: THE CONTEXT FOR THE IMPLEMENTATION OF CHILDREN’S RIGHTS IN THE JUDICIAL SECTOR IN VIETNAM

#### 3.1 The Situation of Children and Juveniles in Vietnam

According to national statistics, Vietnam’s population reached 90.5 million in 2014.<sup>232</sup> The population is steadily increasing: approximately 78.69 million in 2001, 83.12 million in 2005,<sup>233</sup> 85.85 million in 2009,<sup>234</sup> and 88.78 million in 2012.<sup>235</sup> In contrast, the number of people below 16 years of age decreased between 2001 and 2012 with an unstable trend, fluctuating over these years as can be seen in Figure 3.1.

Figure 3.1 Vietnam’s Total Population and Child Population: 2001–2012



<sup>232</sup> Vuong Linh, ‘Viet Nam co gan 90,5 trieu Nguoi’ [Vietnam’s Population Reached 90.5 million Persons], *VnExpress* (online), 8 April 2014 <<http://doisong.vnexpress.net/tin-tuc/gia-dinh/dan-so-viet-nam-co-gan-90-5-trieu-nguoi-3121884.html>>.

<sup>233</sup> Vietnam Commission for Population, Family and Children, *Child Indicators in Vietnam 2005* (Lao Dong Xa Hoi, 2006) 13.

<sup>234</sup> Central Population and Housing Census Steering Committee, above n 2, 36.

<sup>235</sup> Tong Cuc Thong Ke, ‘Bao Cao 145/BC-TCTK ngay 24/12/2012 ve Tinh Hinh Kinh Te Xa Hoi nam 2012’ [Report 145/BC-TCTC dated 24 December 2012 about the Socio-economic Situation of 2012] (General Statistics Office, 2012); General Statistics Office, *Statistical Handbook 2013* (Statistical Publishing House, 2013).

The numbers of children in 2001, 2005, 2009, and 2012 were 27.26 million, 25.69 million, 23.63 million and 26.74 million, accounting for about 34.65; 30.88; 27.47 and 29.81 per cent of the national population respectively.<sup>236</sup>

It is forecast that children will account for about 30 per cent of the population in 2020 when the national populace will likely exceed 96 million people.<sup>237</sup> At that time persons below 18 years old will comprise around 34 per cent. This situation can be explained by Vietnam's policy on population control and family planning. Since the 1960s Vietnam has set up policies on birth control in order to bring down a very high birth rate.<sup>238</sup> As a result the birth rate has been approaching replacement level since the first years of the twenty-first century.<sup>239</sup> Meanwhile, the imbalance in the sex ratio threatens to induce unpredictable changes for the national population including children. In the seven years to 2012, the Vietnamese population's gender ratio at birth was always greater than 111 boys to 100 girls (for example, 112.1 in 2008 and 119.9 in 2011,<sup>240</sup> while it should be 105 boys to 100 girls).

The Gender Ratio at Birth in Vietnam in the period 1999–2013 is illustrated in Figure 3.2. Statistics also reveal that the imbalance is usually more serious in urban areas and some particular regions, where the rate could exceed 114,<sup>241</sup> even 131 or 128 boys to 100 girls.<sup>242</sup> This imbalance is believed to be a consequence of deliberate

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<sup>236</sup> Ministry of Labour, Invalids and Social Affairs, *Children Indicators in Vietnam 2009–2010* (Lao Dong Xa Hoi, 2010); Ministry of Labour, Invalids and Social Affairs, *Quy Mo Dan So Tre Em Du Bao den Nam 2020* [A Forecast of Vietnam's Child Population to 2020] <<http://molisa.gov.vn/news/detail/tabid/75/newsid/54402/seo/Quy-mo-dan-so-tre-em-du-bao-den-nam-2020/language/vi-VN/Default.aspx#>>.

<sup>237</sup> Ministry of Labour, Invalids and Social Affairs, A Forecast of Vietnam's Child Population, above n 236.

<sup>238</sup> Truong Cao Dang Y te Ha Dong, *Giao Trinh Chinh Sach Dan So* [Textbook on the Population Policy] (Truong Cao Dang Y te Ha Dong, 2011) 20.

<sup>239</sup> Ibid 23.

<sup>240</sup> Tong Cuc Thong Ke, *Dieu Tra Bien Dong Dan So va Ke Hoach Hoa Gia Dinh: Cac Ket qua Chu yeu 01/4/2010* [Survey on the Changes of Population and Family Planning: Major Findings, 1 April 2010] (Thong Ke, 2011) 53–4.

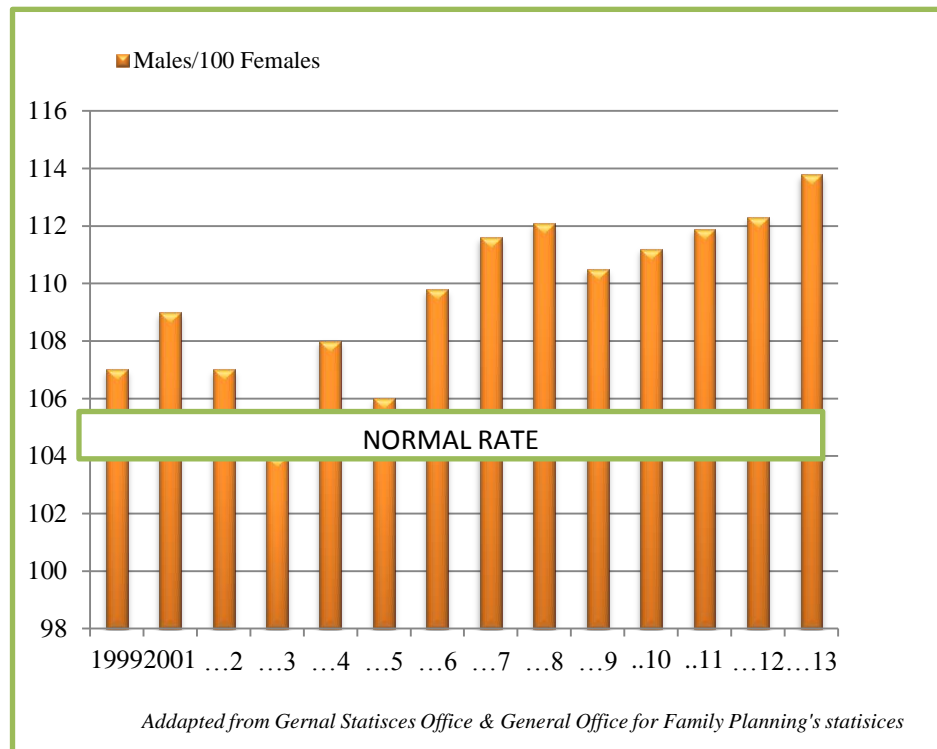
<sup>241</sup> Ibid 54.

<sup>242</sup> Nam Phuong, 'Dan So Viet Nam can moc 90 trieu' [Vietnam's Population hit 90.5 million], *VnExpress* (online), 2013 <<http://vnexpress.net/tin-tuc/thoi-su/dan-so-viet-nam-can-moc-90-trieu-2884567.html>>; Nguyen Khac Binh, 'Mat Can Ban Gioi Tinh Khi Sinh Thuc Trang va Giai Phap' [The Imbalance in Gender Ratios at Birth: Current Situation and Solution], *Phu Tho* (online), 2009 <<http://soyte.phutho.gov.vn/>>.

foetal sex selection. Some studies focusing on this topic show that male chauvinism still has influence over many Vietnamese families; many couples, especially people from wealthy families or those with old-fashioned values try to use all possible methods (including abortion of female foetuses) in order to produce a male baby.<sup>243</sup>

In this regard, the CRC Committee has suggested that Vietnam should have programs and campaigns to eliminate all forms of discrimination against girls, including the practice of aborting female foetuses.<sup>244</sup> This data indicates that Vietnam needs a more suitable strategy for healthy population management.

Figure 3.2 Gender Ratio at Birth in Vietnam: 1999–2013



<sup>243</sup> Phu Dung, *Tu Tuong 'Trong Nam' o Thanh Pho* [The Male Chauvinism in Cities] (20 January 2014) Bay Vut <<http://www.bayvut.com.au/>>; Nam Phuong, above n 242; Nguyen Khac Binh, above n 242.

<sup>244</sup> CRC Committee's Observations 2012, above n 133 [30].



Statistics on Vietnamese juveniles or people below 18 years of age are scarce among available data concerning population. In yearbooks on national statistics, and surveys on employment, education, marriage and living standards, there are various population data, but there is no indicator for juveniles. In population-related surveys, statistics are often arranged in five-year age groups,<sup>245</sup> which cannot help in determining the numbers of people aged below 18. Therefore, the number of juveniles in Vietnam is not often annually updated; the figure is just found by calculating statistics from central population censuses. These censuses have been conducted every 10 years, and provide detailed information related to the national population.<sup>246</sup> Therein, the number of persons at each age (0–95<sup>+</sup>) is counted separately. Based on data extracted from the last census conducted in 2009, it is found that there were 26,230,030 juveniles (0–18) accounting for 30.6 per cent of the national population with about 51.6 per cent males and 48.4 per cent females. At that time, the number of children (0–16) was 22,711,255 people, making up 26.5 per cent of the whole populace with approximately 52 per cent males and 48 per cent females. It is also indicated that 26 per cent of children or juveniles lived in urban areas while 74 per cent resided in rural areas.

With regard to children's welfare, it is believed to be gradually improving, along with significant improvements in socio-economic conditions during recent decades. Basic services for children have improved in the fields of health care, social welfare, education and so on. For example, 88 per cent of households self-evaluated that their standard of living in 2010 was better than five years ago.<sup>247</sup> The mortality rate of children under five years old decreased from 4.2 to 1.6 per cent between 2000 and

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<sup>245</sup> See General Statistics Office, *Result of the Survey on Household Living Standards 2008* (Statistical Publishing House, 2009); Central Population and Housing Census Steering Committee, above n 2; Tong Cuc Thong Ke, *Dieu Tra Bien Dong Dan So va Ke Hoach Hoa Gia Dinh: Cac Ket Qua Chu Yeu 01/4/2011* [Survey on the Changes of Population and Family Planning: Major Findings, 1 April 2011] (Thong Ke, 2011); Tong Cuc Thong Ke, *Bao Cao Dieu Tra Lao Dong va Viec Lam: Viet Nam 2011* [Investigative Report on Labour and Employment: Vietnam 2011] (Thong Ke, 2012).

<sup>246</sup> So far, Vietnam has carried out four censuses in 1979, 1989, 1999 and 2009.

<sup>247</sup> General Statistics Office, *Result of the Viet Nam Household Living Standards Survey 2010* (Statistical Publishing House, 2011) 22.

2011.<sup>248</sup> The percentage of children attending primary, junior secondary and senior secondary schools at appropriate ages has increased consistently since 2000, respectively reaching 97, 83 and 50 per cent in 2010.<sup>249</sup> Children from poor households or minority ethnic groups were provided free legal assistance when needed.<sup>250</sup>

However, Vietnam has not succeeded in the area of care and protection of children to the level expected. The Report on the Implementation of the Goals for the National Program of Action for Children 2001–2010<sup>251</sup> revealed that of 29 indicators recorded, 12 were lower than the expected targets. No indicators concerning children in contact with the law and the justice system reached the goals while the rate of children committing extremely serious crimes doubled.<sup>252</sup> A new issue emerging with economic development is the increasing gap between rich and poor; between urban areas and the rural, mountainous or isolated areas, and between different ethnic groups. The degree of child poverty was much greater in rural or mountainous areas (20.4 per cent compared with 3.9 per cent in urban areas); and the child poverty rate for ethnic minority groups was significantly higher (63 per cent) in comparison with the rate for Kinh and Hoa groups (25 per cent).<sup>253</sup> In addition, problems were found in particular areas concerning children's rights. For example, in education, children with disabilities, with HIV-AIDS, and poor and migrant children are facing discrimination, having far fewer opportunities to attend schools.<sup>254</sup> The right to

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<sup>248</sup> Ministry of Labour, Invalids and Social Affairs, *Children Indicators in Vietnam 2009–2010*, above n 236, 17; Tong Cuc Thong Ke, *Viet Nam: Dieu Tra Danh Gia cac Muc Tieu Tre Em va Phu Nu* [Vietnam: Investigation and Assessment of Targets concerning Children and Women] (Thong Ke, 2011) 45.

<sup>249</sup> Vietnam's CRC Report 2008–2011, above n 143, 4.

<sup>250</sup> *Ibid.*

<sup>251</sup> Ministry of Labour, Invalids and Social Affairs, *Children Indicators in Vietnam 2009–2010*, above n 236, 17–20.

<sup>252</sup> *Ibid.* 19.

<sup>253</sup> CeSVI et al, 'Complementary Report to the Third and Fourth Periodical Country Report on Vietnam's Implementation of the *UN Convention on the Rights of the Child* 2002–2007' (Hanoi, 2011) 6; Ministry of Labour, Invalids and Social Affairs and UNICEF, *Children in Vietnam: Who and Where are the Poor? The Development and Application of a Multidimensional Approach to Child Poverty* (UNICEF, 2008) 9.

<sup>254</sup> Vietnam's CRC Report 2008–2011, above n 143, 8; CeSVI et al, above n 253, 12, 23.

participation by children in the process of making decisions affecting them has not been fully understood. The child is still considered to be dependent on adults; and their participation in matters affecting them happens at certain events or particular activities, but not as a stable program reflecting a consistent approach.<sup>255</sup> In the field of child protection, ‘the maltreatment, abuse, violence toward, exploitation, trafficking and neglect of children and juveniles violating the laws were complicated and some cases were serious’;<sup>256</sup> and ‘60 per cent of child respondents said that they were still suffering from violence, including corporal punishment in schools’.<sup>257</sup>

### 3.2 Vietnam’s Political and State Systems

As stated in its Constitutions,<sup>258</sup> Vietnam is a ‘socialist State ruled by law and of the People, by the People and for the People’.<sup>259</sup> The State is unified under one government, but there is responsible division and co-ordination among state bodies in the exercise of legislative, executive and judicial powers. The Communist Party of Vietnam (the Party) is the controlling force of the State and society; and the State administers society by the rule of law and ceaselessly strengthens the socialist legislation.<sup>260</sup> Strongly confirming the crucial role of the Party, it is stated that there is no division of political power between the Party and the State and no separation between the Party line and State law.<sup>261</sup> With such statements, it can be seen that

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<sup>255</sup> CeSVI et al, above n 253, 13.

<sup>256</sup> Vietnam’s CRC Report 2008–2011, above n 143, 8.

<sup>257</sup> CeSVI et al, above n 253, 24.

<sup>258</sup> Since proclaiming independence in 1945, Vietnam has promulgated the *Constitutions* in 1946, 1959, 1980, 1992 (amended in 2001), and 2013. The new *Constitution* of 2013 was stated to enter in to force on 1 January 2014. So far, the political and state systems have been based on the *Constitution* of 1992. The *Constitution* of 1992 has also been the legal basis of most current codes, laws and other legal documents. Hence, the *Constitution* of 1992 is mainly cited. New points of the *Constitution* of 2013 are sometimes mentioned when appropriate in this chapter with further discussion in the last chapter of the thesis in order to show new trends in the legal and judicial reform in Vietnam. All of the case studies in this thesis refer to the situation before the promulgation of the *Constitution* of 2013.

<sup>259</sup> *Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 1992, duoc Sua Doi theo Nghi Quyet 51/2001/QH10 cua Quoc Hoi* [Constitution of the Socialist Republic of Vietnam of 1992, Amended by Resolution 51/2001 of the National Assembly] (hereafter *Constitution 1992*) art 2/1.

<sup>260</sup> *Constitution 1992* arts 1, 2, 4, 12.

<sup>261</sup> Nguyen Phuoc Tho, ‘Phuong Thuc Lanh Dao cua Dang voi Viec Xay Dung Nha Nuoc Phap Quyen XHCN Viet Nam’ [The Party’s Leadership Method with the Construction of the Rule of Law of Socialist Vietnam] (2009) (2–3) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 60; Phuoc Tho

Vietnam's political, legal and judicial systems are complicated and hard to quickly master. In this regard, there have even been some observations that there is an entanglement or ambiguity;<sup>262</sup> that the political system places the Party policy above legal regulation, and that law is undervalued or used as the Party's instrument.<sup>263</sup> Regarding the topic of judicial independence, some authors propose the elimination or reduction of the one-party dominance in the courts.<sup>264</sup> The leadership of the Vietnamese communist party has its origin in Vietnam's particular historical context. Herein, I will not discuss this issue thoroughly, but present basic information about the systems of politics, law and justice in Vietnam, which will assist in creating an understanding of Vietnam's mechanisms for the implementation of international instruments, particularly the *CRC*, relevant policies and domestic legal normative documents concerning the rights of the child in the judicial sector. From the viewpoint that international human rights treaties should be implemented in the context of the economic, social, and cultural conditions prevailing in each member state — clearly indicated in *Beijing Rules* (rule 1.1) and *Riyadh Guidelines* (para 8), the specific local circumstances of Vietnam and the one-party state should be taken into account.

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Nguyen, 'Mot so Suy Nghi ve Doi Moi Phuong Thuc Lanh Dao Dang voi Nha Nuoc trong Boi Canh hien nay o Viet Nam' [Ideas on Innovating the Method of the Party's Leadership on Controlling the State in Vietnam's Current Context] (2008) (10) *Nha Nuoc va Phap Luat* [State and Law] 3, 3–4.

<sup>262</sup> See Penelope Nicholson, 'Judicial Independence and the Rule of Law: The Vietnam Court Experience' (2001) 3(1) *Australian Journal of Asian Law* 37, 38–40; Van Nghia Hoang, above n 72, 99.

<sup>263</sup> See Australian Government Overseas Aid Program, 'Viet Nam: Legal and Judicial Development' (Working Paper No 3, 2000) 5; Mark Sidel, *Law and Society in Vietnam: The Transition from Socialism in Comparative Perspective*, Cambridge Studies in Law and Society (Cambridge University Press, 2008) 1, see also Mark Sidel, *The Constitution of Vietnam: A Contextual Analysis* (Hart Publishing, 2009) 88–9; Mark Sidel, 'Property, State Corruption, and the Judiciary: The Do Son Land Case and its Implications' in Hue-Tam Ho Tai & Mark Sidel (ed), *State, Society and the Market in Contemporary Vietnam: Property, Power and Values* (Routledge, 2013) 123.

<sup>264</sup> Harding and Nicholson, below n 824, 8; Pip Nicholson and Minh Duong, 'Legitimacy and the Vietnamese Economic Court' in Andrew Harding and Penelope (Pip) Nicholson (eds), *New Courts in Asia* (Routledge, 2010) 31; see also Martin Shapiro, 'Courts in Authoritarian Regimes' in Tom Ginsburg and Tamir Moustafa (eds), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press, 2008) 326.

To concludes that the Party's leadership, in principle, does not contradict judicial independence, see Van-Hoa To, *Judicial Independence: A Legal Research on Its Theoretical Aspect, Practice from Germany, the United States of American, France, Vietnam, and Recommendations for Vietnam* (PhD Thesis, Juristforlaget I Lund, 2006) 456.

### 3.2.1 The Political System

As in other socialist states, Vietnam's political system is usually represented as a coalition of socio-political institutions which are established and operate in a close relationship with the leadership belonging to the party of the working people in order to thoroughly manifest the people's power and successfully build socialism.<sup>265</sup> Nonetheless, there is no formal legal document detailing the components of Vietnam's political system. Among studies concerning Vietnam's political system, the Party and State are always mentioned while other institutions as a part of the system have been ignored<sup>266</sup> or described differently, including the Fatherland Front,<sup>267</sup> Trade Union and several other organisations.<sup>268</sup> In practice, many socio-political organisations besides the State and the Party have played a role in political life in Vietnam. Based on relevant articles of the *Vietnamese Constitutions* and actual practices, herein Vietnam's political system is assumed to comprise the Party, the State and socio-political institutions. In this section, I introduce the Party and socio-political institutions while the State is presented in section 3.2.2 The State.

#### 3.2.1.1 The Party

The Communist Party is currently the sole party legally accepted in Vietnam. Its organisational system is equivalent to the administrative system of the State.<sup>269</sup> As recorded by various data, including historical documents, the Party's materials and the *Constitutions* of 1959, 1980 and 1992, since its establishment in 1930 by Ho Chi Minh, the Party has been leading the people in the foundation, protection and

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<sup>265</sup> Le Hong Hanh, 'Nha Nuoc trong He Thong Chinh Tri Xa Hoi Chu Nghia' [The State in the Socialist Political System] in Minh Tam Le (ed), *Giao Trinh Ly Luan Nha Nuoc va Phap Luat* [Textbook on Theory of State and Law] (Tu Phap, 2006) 299, 301–02.

<sup>266</sup> See *ibid* 311–22; Van Nghia Hoang, above n 72, 99–100.

<sup>267</sup> See Hoa Phuong Thi Nguyen, *Legislative Implementation by Vietnam of its Obligations under the United Nations Drug Control Conventions* (PhD Thesis, University of Wollongong, 2008) 29–30.

<sup>268</sup> Le Minh Tam, 'Che Do Chinh Tri' [The Political System] in Vinh Thang Thai and Hong Anh Vu (eds), *Giao trinh Luat Hien Phap Viet Nam* [Textbook on the Constitution of Vietnam] (Tu Phap, 2006) 127, 142; Bo Ngoai Giao, *He Thong Chinh tri* [The Political System] <[http://www.mofa.gov.vn/vi/tt\\_vietnam/nr040810155159/](http://www.mofa.gov.vn/vi/tt_vietnam/nr040810155159/)>.

<sup>269</sup> *Dieu Le Dang Cong San Viet Nam 2011* [The Statutes of the Communist Party of Vietnam of 2011] (hereafter *Statutes of the Party*) art 10.

improvement of the nation.<sup>270</sup> Over time, the Party has been at the top of the political system in Vietnam, the leading force of the State and society. The *Constitution* of 1992 (art 4) proclaims that:

The Communist Party of Vietnam, the vanguard of the Vietnamese working class, the faithful representative of the rights and interests of the working class, the toiling people, and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, is the force leading the State and society.

All Party organisations operate within the framework of the *Constitution* and the law.<sup>271</sup>

The Party plays the leading role in the State and society, ranging across all areas of the political, economic and social life of the country. It decides important lines and policies orienting social development in every aspect, recommends eminent people for state agencies and socio-political organisations and supervises the implementation of the Party's policies.<sup>272</sup> In the area of justice, it is stated that 'the Party tightly controls judicial activities and judicial bodies over politics, organisation and personnel';<sup>273</sup> and 'the construction and improvement of the legal system is inevitably tied to the process of institutionalisation of the Party line on the practical operation of the State apparatus'.<sup>274</sup> Moreover, if there are different perspectives in making the law or passing polices, the National Assembly usually consults the Party; and the congressional debates often cease with the direction of the Party.<sup>275</sup>

In the area of the law and justice, the Party has recently adopted three salient resolutions, including *Resolution 08-NQ/TW 2002 on Several Key Tasks in the*

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<sup>270</sup> See Hoi Dong Trung Uong Chi Dao Bien Soan Giao Trinh Quoc Gia cac Bo Mon Khoa Hoc Mac-Lenin va Tu Tuong Ho Chi Minh, *Giao Trinh Lich Su Dang Cong San Viet Nam* [Textbook on the History of the Communist Party of Vietnam] (Chinh Tri Quoc Gia, 2004); *Statutes of the Party* art 10; see also the Preambles of *Constitutions* 1959, 1980 and 1992.

<sup>271</sup> This provision remains in the *Constitution 2013* (art 4). The *Constitution 1980* (art 4) also stated that the Party was the *only* force leading the State and society.

<sup>272</sup> *Statutes of the Party* art 41.

<sup>273</sup> *Resolution 49-NQ/TW 2005*.

<sup>274</sup> Thai Duong Tran, 'The Che Hoa Duong Loi cua Dang' [The Institutionalisation of the Party's Line] (2004) (12) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 42, 43.

<sup>275</sup> Nguyen Phuoc Tho, The Party's Leadership Method, above n 261, 65.

*Judicial Sector in the Near Future; Resolution 48-NQ/TW 2005 on the Strategy for Development and Improvement of the Vietnamese Legal System to 2010 and Orientation to 2020; and Resolution 49-NQ/TW 2005 on Judicial Reform Strategy to 2020.* These resolutions provide the perspective, targets and procedures to improve the legal and judicial system after reviewing relevant existing shortcomings. Vietnam's goal by 2020 is to have a transparent and feasible legal system, and an effective and clear judiciary with the common objective of building the socialist law-based state of the people, by the people and for the people.

These documents have become not only guidelines for the State to reform the system of law, justice and other related institutions, but also the criteria for assessing the performance of the legislature and judiciary. They are the foundation or common standard for the discussion of State and legal issues, especially the socialist legality, law-based state or the rule of law, and judicial reform in both academic and political spheres in Vietnam.<sup>276</sup>

The Party has also given significant attention to the care, education and protection of children. These matters have been mentioned not only in the National Congress's resolutions but also in several specialised resolutions of the Politburo, which provide strategies, targets and requirements for not only the agencies of the Party but also the

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<sup>276</sup> See Thi Thu Thuy Le, 'Cai Cach Tu Phap o Viet Nam: Mot so Vuong Mac can duoc Thao Go' [Judicial Reform in Vietnam: Some Problems to Be Solved] (2006) (3) *Nha Nuoc va Phap Luat* [State and Law] 66; Manh Hung Hoang, 'Mot So Y Kien ve Tiep Tuc Doi Moi To Chuc va Hoat Dong cua Toa An Nhan Dan trong Boi Canh Cai Cach Tu Phap' [Comments on the Need to Continue Renewing the Organisation and Operation of the People's Court in the Context of Judicial Reform] (2006) (4) *Nha Nuoc va Phap Luat* [State and Law] 40; Tu Long Nguyen, 'Quan Diem cua Dang ve He Thong Phap Luat trong Dieu Kien Xay Dung Nha Nuoc Phap Quyen Xa Hoi Chu Nghia' [The Party's Perspective on the Legal System in the Context of Constructing the Rule of Socialist Law] (2008) (6) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 9; Ha Thanh Nguyen, 'Doi Moi Toa An Nhan Dan theo Dinh Huong Cai Cach Tu Phap' [The Innovation of the People's Court under the Orientation of Judicial Reform] (2009) (6) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 20; Thi Thanh Mai Duong and Van Hien Nguyen, 'Mot so Danh Gia Tinh Hinh Thuc Hien Nghi Quyet so 48-NQ/TW ve Chien Luoc Xay Dung va Hoan Thien He Thong Phap Luat Viet Nam' [Several Assessments of the Implementation of Resolution 48-NQ/TW on the Strategy for Development and Improvement of Vietnam's Legal System] (2010) (3-4) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 55; Kim Chi Nguyen, 'Thuc Trang va Giai Phap Nang Cao Chat Luong Tranh Tung trong Phien Toa Hinh Su' [The Current Situation and Measures to Improve the Quality of Debate at the Criminal Trials] (2011)(6) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 26.

State bodies and other political organisations.<sup>277</sup> Based on such resolutions and directives of the Party, relevant State bodies and political organisations issued regulations and more specific plans for their systems.<sup>278</sup>

### 3.2.1.2 The Socio-political Organisations

Socio-political organisations are considered to be a part of the overall political system in Vietnam. However, there is no formal definition that determines fully which organisations are included. The general opinion is that only large socio-political organisations with deep influence upon society — such as the Fatherland Front, the Trade Union, the Ho Chi Minh Communist Youth Union (the Youth Union), the Farmers' Union, the Women's Union, and the Veterans' Association — are components of the political system.<sup>279</sup> The *Constitution* of 1992 contains two articles stipulating the position of the Vietnam Fatherland Front and Trade Union in the Vietnamese political regime.

The Vietnam Fatherland Front is a political alliance and a voluntary union of political organisations, socio-political organisations, social organisations and individuals representing their social classes and strata, nationalities, religions, and overseas Vietnamese. The Front and its member organisations constitute the political base of the people's power. The Front... joins the State in caring for and

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<sup>277</sup> See *Chi Thi 38-CT/TW ngay 30/5/1994 cua Ban Bi Thu ve Tang Cuong Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em* [Directive 38-CT/TW dated 30 May 1994, issued by the Secretariat on Improvement of the Protection, Care and Education of Children]; *Chi Thi 55-CT/TW ngay 28/6/2000 cua Bo Chinh Tri ve Tang Cuong Su Lanh Dao cua Cap Uy o Co So doi voi Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em* [Directive 55-CT/TW dated 28 June 2000, issued by the Politburo on Strengthening the Leadership of the Party Committees at the Grassroots Level for the Protection, Care and Education of Children]; *Chi Thi 20/CT-TW ngay 05/11/2012 cua Bo Chinh Tri ve Tang Cuong Su Lanh Dao cua Dang doi voi Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em trong Tinh Hinh Moi* [Directive 20/CT-TW dated 5 November 2012, issued by the Politburo on Strengthening the Leadership of the Party for the Care, Education and Protection of Children in the New Situation].

<sup>278</sup> See eg, *Thong Tu Lien Tich 02/1999/TTLT/BVCSTE-HLHPN cua Uy Ban Bao Ve va Cham Soc Tre Em Viet Nam va Trung Uong Hoi Lien Hiep Phu Nu Viet Nam ve Tang Cuong Phoi Hop Xay Dung Gia Dinh Hanh Phuc, Nuoi Day Con Tot, Ngan Chan Tinh Trang Xam Hai Tre Em, dac biet la Tre Em Gai* [Joint Circular 02/1999/TTLT/BVCSTE-HLHPN issued by the Vietnam Committee on the Protection and Care of Children, and the Vietnamese Women's Union on Enhancing Coordination Activities in the Construction of Happy Families and Good Parenting and the Prevention of Child Abuse, especially of Girls] (hereafter Joint Circular 02/1999/TTLT/BVCSTE-HLHPN).

<sup>279</sup> Le Minh Tam, above n 268, 150; see also Bo Ngoai Giao, above n 268.



protecting the legitimate interests of the people... [and] supervises activities of the State agencies, elected deputies, and State employees.<sup>280</sup>

The Trade Union is the socio-political organisation of the working class and the toiling people; together with State bodies and economic and social organisations it cares for and protects the interests of workers; participates in State administration and social management and supervision of the activity of State organs and economic bodies...<sup>281</sup>

In many of the Party's documents, it is recorded that the Party leads the State, Front and socio-political organisations,<sup>282</sup> but no elucidation of which socio-political organisations are to be considered as components of the political system is provided.

At present, the Fatherland Front is a huge institution with 44 member organisations including the Party, Trade Union, Youth Union, Farmers' Union, Women's Union, and Veterans Association.<sup>283</sup> Its structure comprises four levels corresponding to the representative and administrative systems. Based on Article 9 of the *Constitution* of 1992, it can be recognised that the Front and its 44 member organisations are components of Vietnam's political system. Among these organisations, several pay significant attention to children's matters. These organisations include the Youth Union, the Women's Union and the Organisation of Vietnam Relief Association for Handicapped Children. In relevant issues, the law directly indicates the organisations' involvement in the implementation of programs for children; and these organisations, sometimes together with state bodies, introduce joint directives to carry out relevant activities concerning the care, protection and education of children.

In the judicial sector, the role of the Front and its member organisations is undeniable, especially in providing legal assistance. Under the *CPC*, the procedure-

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<sup>280</sup> *Constitution 1992* art 9.

<sup>281</sup> *Ibid* art 10.

<sup>282</sup> See *Statutes of the Party* art 41.

<sup>283</sup> Mat Tran To Quoc Viet Nam, *Gioi Thieu Mat Tran* [An Introduction to the Vietnam Fatherland Front] (15 July 2015) Vietnam Fatherland Front <<http://www.mattran.org.vn/Home/GioithieuMT/gtc4.htm>>.

conducting bodies request the Front or its members to appoint defence counsel for their organisation's members, children included.<sup>284</sup> In practice, several political organisations have legal centres for their members and other people, including children.<sup>285</sup> Moreover, political organisations sometimes join state bodies in issuing legal normative documents or conducting programs to enhance public legal awareness or child protection.<sup>286</sup>

### 3.2.2 The State<sup>287</sup>

The State is a central component of the political system. It is a large and powerful organisation, representative of the people and has a position and role which differs from those of the Party and other political organisations.<sup>288</sup> As a socialist nation, the State of Vietnam is considered to be the most concentrated expression of the people's power and the most effective instrument to exercise the people's power and ensure social equality.<sup>289</sup> In Vietnam, all state power belongs to the people;<sup>290</sup> the people exercise state power via the National Assembly and the People's Councils, which are elected by and accountable to the people.<sup>291</sup> State power is unified but there is responsible division and co-ordination among state bodies in the exercise of legislative, executive and judicial powers.<sup>292</sup>

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<sup>284</sup> CPC arts 57, 305.

<sup>285</sup> Hoi Luat Gia Viet Nam and UNICEF Vietnam, *Bao Cao Danh Gia Phap Luat, Chinh Sach va Mo Hinh Tro Giup Phap Ly cho Tre Em* [Assessment of Laws, Policies and Models for Legal Aid for Children] (GTVT, 2012) 54–7.

<sup>286</sup> For example, the Women's Union together with the Vietnam Committee on Protection and Care of Children issued *Joint Circular 02/1999/TTLT/BVCSTE-HLHPN*; the Lawyers Association had agreements with the Police in law education, see Xuan Anh, *Le Ky Thoa Thuan Hop Tac giua Hoi Luat Gia Viet Nam va Tong Cuc VIII-Bo Cong An* [The Signing of a Cooperation Agreement between the Lawyers' Association and the General VIII of the Ministry of Public Security] (5 January 2013) Vietnam Lawyers Association <<http://www.doisongphapluat.com/phap-luat/hoi-luat-gia/1e-ky-ket-thao-thuan-hop-tac-giua-hoi-luat-gia-vn-va-tong-cuc-viii-bo-cong-an-a640.html>>.

<sup>287</sup> In Vietnam, the constitutional name of many State bodies contains the same word 'people's', such as people's councils, people's committees, people's courts and people's procuracies. In order to avoid verbose writing, 'people's' may be omitted at times.

<sup>288</sup> Le Hong Hanh, above n 265, 306.

<sup>289</sup> Ibid 307; Le Minh Tam, above n 268, 147.

<sup>290</sup> *Constitution 1992* art 2.

<sup>291</sup> Ibid art 6.

<sup>292</sup> Ibid art 2.

In practice, the state apparatus is complicated with various bodies at different levels and in different areas. Based on their functions as defined by the law, state bodies can be grouped into representative bodies, the President, executive bodies, and the court and procuracy systems. Herein, I present a brief introduction relevant to rights and justice where appropriate.

### 3.2.2.1 The Representative Bodies

The representative bodies, whose prominent members are elected by the people through direct vote, comprise the National Assembly and the People's Councils at the three levels of province, district and commune. The National Assembly is the highest representative body of the people, the highest authority of Vietnam; and it exercises supreme supervision of all state activities.<sup>293</sup> Its functions include making, amending and overseeing compliance with the constitution and laws; deciding the national development plans, and electing the President, the Chairperson of the National Assembly, the Prime Minister, the Chief Justice of the Supreme Court and the Chief Prosecutor of the Supreme Procuracy.<sup>294</sup>

The Councils are the state authorities or representative bodies of the people in respective localities, elected by the local population.<sup>295</sup> Their functions include the selection of Committee members and the adoption of resolutions on socio-economic development plans and budgets. The Councils' representatives have the right to question the Chairperson of the Council, the Chairperson and members of the Committee, the Chief Justice of the Court, and the Chief Prosecutor of the Procuracy.<sup>296</sup>

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<sup>293</sup> Ibid art 83.

<sup>294</sup> Ibid art 84; *Luat 30/2001/QH10 ve To Chuc Quoc Hoi, duoc sua doi theo Luat 83/2007/QH11* [Law 30/2001/QH10 on the Organisation of the National Assembly, Amended by the Law 83/2007/QH11].

<sup>295</sup> *Constitution 1992* art 119.

<sup>296</sup> Ibid art 122; see also *Luat 11/2003/QH11 ve To Chuc Hoi Dong Nhan Dan va Uy Ban Nhan Dan* [Law 11/2003/QH on the Organisation of the People's Councils and the People's Committees] art 1.

### 3.2.2.2 The President

The President is the Head of State, representing Vietnam in domestic and foreign affairs.<sup>297</sup> He is elected by the National Assembly from among its members and is responsible to it.<sup>298</sup> The major obligations and powers of the President include promulgating the *Constitution* and laws adopted by the National Assembly; recommending to the National Assembly the election, removal or dismissal of the Prime Minister, Chief Justice of the Supreme Court, and the Chief Prosecutor of the Supreme Procuracy.<sup>299</sup> In the area of justice, the President shall appoint, remove and dismiss the Deputy Chief Justice and Judges of the Supreme Court, the Deputy Chief Prosecutor and Prosecutors of the Supreme Procuracy; and grant pardons and special amnesties to prisoners and people sentenced to death.<sup>300</sup>

### 3.2.2.3 The Executive Bodies

The executive bodies are selected by the representative bodies at the same level, and are responsible for the implementation of the law and policies on the improvement of socio-economic and other areas of social life. These are the largest number of state agencies and personnel, consisting of the Government, ministries, the committees at the three council levels, and many departments at the levels of province and district. The Government, consisting of the Prime Minister, Ministers and other members, is the executive body of the National Assembly and the highest administrative state body.<sup>301</sup> With the function of the implementation of the law, the executive bodies are mainly responsible for the care, education and protection of children. Currently, the Ministry of Labour, Invalids and Social Affairs is responsible for the general protection and care of children nationwide.<sup>302</sup> At local levels of province and district,

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<sup>297</sup> *Constitution 1992* art 101.

<sup>298</sup> *Ibid* art 102.

<sup>299</sup> *Ibid* art 103.

<sup>300</sup> *Ibid* art 103/12; see also *CPC* art 258; *Luat 07/2007/QH12 ve Dac Xa* [Law 07/2007/QH12 on Amnesty] art 3/1.

<sup>301</sup> *Constitution 1992* art 109.

<sup>302</sup> *Decree 106/2012/ND-CP*.

officers of the Department of Labour, Invalids and Social Affairs perform the central tasks for the care and protection of children.

The executive bodies participate in criminal proceedings, including the police and the army. Most investigation activities are conducted by the police who are under the management of the Ministry of Public Security. Most judicial activities concerning crimes related to the army are resolved by a system (including the investigating body, procuracy and court) under the management of the Ministry of National Defence, although the Supreme Court and Supreme Procuracy have a certain influence in terms of professional issues in criminal justice.

Over time, the Government, Prime Minister and relevant bodies have issued a large number of directives and programmes for child care, protection and education.

#### 3.2.2.4 The Court and the Procuracy Systems

The Courts and the Procuracies are two systems having different functions specified in different laws. The Courts adjudicate criminal, civil, marriage and family, labour, economic and administrative cases, and settle other matters as prescribed by law.<sup>303</sup> The Procuracies exercise the power to prosecute and control judiciary activities according to the *Constitution* and laws.<sup>304</sup> The court and procuracy systems have the same structure and a common obligation to protect the socialist regime, State and collective property, and the lives, property, freedom and dignity of citizens.<sup>305</sup> In academic studies, the courts and procuracies are often referred to together as the judicial system.<sup>306</sup> In the judicial sector generally, as well as in relation to juvenile justice specifically, the courts and procuracies play crucial roles. More details are presented in the following section on the legal and judicial systems.

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<sup>303</sup> *Constitution 1992* art 127; *Luat 33/2002/QH10 ve To Chuc Toa An Nhan Dan* [Law 33/2002/QH10 on the Organisation of the People's Courts] (hereafter *Law on the Organisation of the People's Courts 2002*) art 1.

<sup>304</sup> *Constitution 1992* art 137; *Luat 34/2002/QH10 ve To Chuc Vien Kiem Sat Nhan Dan* [Law 34/2002/QH10 on the Organisation of the People's Procuracies] (hereafter *Law on the Organisation of the Procuracies 2002*) art 1.

<sup>305</sup> *Constitution 1992* art 126.

<sup>306</sup> See Van Nghia Hoang, above n 72, 104–05; Luu Anh and Le Thi Hanh, *Updated Vietnam Legal Research* (20 September 2014) Hauser Global Law School Program <[http://www.nyulawglobal.org/globalex/vietnam1.htm#\\_Judicial\\_System](http://www.nyulawglobal.org/globalex/vietnam1.htm#_Judicial_System)>.

### 3.3 Vietnam's Legal and Judicial Systems

#### 3.3.1 The Legal System

Here, I present an overview of the legal system, regulations concerning children's rights, and criminal law in order to provide a basic background for the analysis and assessment of the implementation of juvenile justice in Vietnam from the three aspects of the prevention of juvenile delinquency, the treatment of juvenile offenders and the protection of child victims and witnesses of crime in the following chapters.

##### 3.3.1.1 Overview

Shortly after declaring independence, the Vietnamese Government issued an edict which extended the validity of existing legal normative documents until reform could be undertaken, as long as provisions were not contrary to the regime of Vietnam.<sup>307</sup> After that, it issued several edicts or decrees to adapt to changing social circumstances and stated the cessation of the application of the old laws (the law of the empire and feudalism).<sup>308</sup> However, Vietnam did not achieve unification until 1975. During that time, from 1945 to 1975, its territory was divided into three regions (North, Central and South) with different political systems and different legal documents applicable.<sup>309</sup> Therefore, a common legal system applicable nationwide in

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<sup>307</sup> *Sac Lenh 47-SL ngay 10/10/1945 cua Chu Tich Chinh Phu Lam Thoi ve Giu Nguyen cac Luat Le Hien Hanh cho den khi Ban Hanh nhung Bo Luat Phap cho Toan Quoc* [Edict 47-SL dated 10 November 1947, issued by the President of the Provisional Government on Prolonging the Validity of Existing Legal Normative Documents until New Codes are Introduced throughout the Whole Country] art 1.

<sup>308</sup> *Chi Thi 772-TATC ngay 10/07/1959 cua Toa An Nhan Dan Toi Cao ve van de Dinh Chi Ap Dung Luat Cu cua De Quoc va Phong Kien* [Directive 772-TATC dated 10 July 1959 issued by the Supreme People's Court on the Issue of Terminating the Application of the Old Law of the Empire and Feudalism].

<sup>309</sup> From 1884 to 1945, before Vietnam's declaration of independence, France had established dominion over the territory of Vietnam with different levels in the three regions. The South and three big cities, Ha Noi, Hai Phong and Da Nang, were considered to be French colonies, the North was a French protectorate, and the Central region, where the Nguyen Dynasty retained some power, was a partial protectorate. The laws in the three regions were correspondingly different. See also Ngoc Huy Nguyen, Van Liem Tran and Van Tai Ta, *The Lê Code: Law in Traditional Vietnam — A Comparative Sino-Vietnamese Legal Study with Historical-Judicial Analysis and Annotations* (Ohio University Press, 1987) vol 1, 31, 85; Dao Tri Uc, 'Khai Quat ve Lich Su Phap Luat Viet Nam' [An Overview of Vietnamese Legal History] in Tri Uc Dao (ed), *Nhung Van De Ly Luan Co Ban ve Nha Nuoc va Phap Luat* [Basic Theory Issues on State and Law] (Quoc Gia, 1995) 362, 377–82; Dao Tri

Vietnam only began after 1975. Since then, Vietnam has experienced significant improvement in the legal area. Research on the legal system divides its development into several stages corresponding with national historical milestones such as the reunification of 1975, the Reform ‘*Doi Moi*’ policy of 1986 and the accession to the World Trade Organisation.<sup>310</sup> Of these, the profound changes since the introduction of *Doi Moi* have been recognised by most researchers in the field.<sup>311</sup> Throughout the process, Vietnam’s legal system has retained common characteristics as set out below.

- a) Law means written law. The system is generally recognised as civil law or continental law<sup>312</sup> with influence from several legal cultures embracing French, Chinese and socialist law,<sup>313</sup> particularly Soviet laws.<sup>314</sup> Only written

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Uc, ‘Basis Information for Legal Research — A Case Study of Vietnam’ in Ajia Keizai Kenkyūjo, Institute of Developing Economies and Nihon Bōeki Shinkōkai (eds), *Doing Legal Research in Asian Countries: China, India, Malaysia, Philippines, Thailand, Vietnam* (Institute of Developing Economies, 2003) 195, 196; Carol V Rose, ‘The “New” Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study’ (1998) 32(1) *Law & Society Review* 93, 96; Vinh Thang Thai, ‘Van Hoa Phap Luat Phap va nhung Anh Huong to Phap Luat o Viet Nam’ [France’s Legal Culture and its Influence in Vietnam’s Law] (2004)(15) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 11, 15–16; Bo Cong Thuong, *Gioi Thieu Lich Su Phat Trien truoc Cach Mang Thang Tam* [Introduction to History before the Vietnamese August Revolution], Ministry of Industry and Trade <<http://www.moit.gov.vn/vn/Pages/lichsuphattrien.aspx?IDNews=498>>.

<sup>310</sup> See Dao Tri Uc, *Basis Information for Legal Research*, above n 309, 97–9; Hoa Phuong Thi Nguyen, above n 267, 36.

<sup>311</sup> See Australian Government Overseas Aid Program, above n 263, 1; Penelope Nicholson and Quan Hien Nguyen, ‘Vietnamese Law: A Guide to Sources and Commentary’ (2007) 2(1) *Journal of Comparative Law* 219, 219.

<sup>312</sup> But, in ‘The New Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study’ Rose argues that, beside significant influence from Confucian ideology, French and Soviet law, the Vietnamese legal tradition has, to a lesser extent, been influenced by US law, especially since the early 1960s. The constitutional framework and legal education provided evidence of this (see Rose, above n 309, 97).

<sup>313</sup> *Ibid*; Minh Tam Le, ‘Hinh Thuc Phap Luat Xa Hoi Chu Nghia’ [The Form of the Socialist Law] in Minh Tam Le (ed), *Giao Trinh Ly Luan Nha Nuoc va Phap Luat* [Textbook on Theory of State and Law] (Tu Phap, 2006) 352; Thai, above n 309, 13–16; University of Wollongong, *Law 101: Law, Business and Society* (Pearson Education Australia, 2009) 7; see also John Quigley, ‘Vietnam’s First Modern Penal Code’ (1988) 9(2–3) *New York Law School Journal of International and Comparative Law* 143, 144.

<sup>314</sup> See Nguyen, Tran and Ta, above n 309; Duy Nghia Pham, ‘Tiep Nhan Phap Luat Nuoc Ngoai: Thoi Co va Thach Thuc Moi cho Viec Nghien Cuu Lap Phap’ [The Reception of Foreign Law: Opportunities and Challenges for Legislative Studies] (2002) (5) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 50; John Gillespie, ‘Changing Concepts of Socialist Law in Vietnam’ in John Gillespie and Nicholson (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (Asia Pacific Press at the Australian National University 2005) 45; Nhat Thanh Phan,

regulations issued by authorities are the official source of law in Vietnam.<sup>315</sup> No customary law or case law is applied formally by state agencies to deal with specific issues except for certain cases in which the legal system is inadequate,<sup>316</sup> and there has been no specific law to handle particular civil cases, the customs or practices and analogy of the law.<sup>317</sup>

- b) The *Constitution* is the fundamental law of the State and has the highest legal effect; all other legal documents must conform to the *Constitution*.<sup>318</sup> It stipulates the most basic and important issue of the state. Acts (codes or laws) provide common rules in each area of life. Other legal normative documents usually interpret or elucidate acts in a smaller scope.
- c) Many state agencies embracing representative, executive and judicial bodies have the legal authority to promulgate legal normative documents. Sometimes, state agencies join socio-political organisations to issue joint documents on a matter that the relevant organisation works on. Legal normative documents can be classified according to their hierarchy or legal validity and the names and kinds of documents.

At the time of writing, the promulgation of legal normative documents is set forth in the *Law on the Promulgation of Legal Documents*,<sup>319</sup> and the *Law on the Promulgation of Legal Documents of People's Councils and People's Committees*.<sup>320</sup>

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*Recognising Customary Law in Vietnam: Legal Pluralism and Human Rights* (PhD Thesis, University of Wollongong, 2011) 189.

<sup>315</sup> Minh Tam Le, above n 313, 353–4.

<sup>316</sup> *Ibid* 355.

<sup>317</sup> According to the *Civil Code* (art 3), 'where it is neither provided for by law nor agreed upon by the parties, practices can be applied; if practices are unavailable, the analogy of existing law may be applied. Practices and analogies must not contravene the principles provided for in this *Code*.' The *Civil Procedure Code* (arts 82/7, 83/7) also accepted practices as a kind of evidence if the practices are recognised by the local community where such practices exist (see *Bo Luat 24/2004/QH11 ve To Tung Dan Su, duoc Sua Doi theo Luat so 65/2011/QH12* [Code 24/2004/HQ11 on Civil Procedures, Amended by the Law 65/2011/QH12] (hereafter *Civil Procedure Code*))

<sup>318</sup> *Constitution 1992* art 146.

<sup>319</sup> *Luat 17/2008/QH12 ve Ban Hanh Van Ban Quy pham Phap Luat* [Law 17/2008/QH12 on the Promulgation of Legal Documents] (hereafter *Law on the Promulgation of Legal Documents*).

<sup>320</sup> *Luat 31/2004/QH11 ve Ban Hanh Van Ban Quy Pham Phap Luat cua Hoi Dong Nhan Dan, Uy Ban Nhan Dan* [Law 31/2004/QH11 on the Promulgation of Legal Documents of People's Councils, People's Committees] (hereafter *Law on the Promulgation of Legal Documents of People's Councils and People's Committees*).



These laws define legal documents as documents issued or jointly issued by State agencies in accordance with the authorities, formats and procedures prescribed in these laws, containing common codes of conduct, having compulsory effectiveness; documents which do not comply with these laws are not legal documents.<sup>321</sup>

There are 19 kinds of legal normative documents recognised in the current legal system in Vietnam.<sup>322</sup> Based on the kinds of legal normative documents and authorities, the system of legal normative documents can be divided into 13 groups shown in Table 3.1 — Vietnam's Legal Normative Document System. In this system, the legal normative documents issued by higher authorities have higher effectiveness. Those enacted by the National Assembly are at a higher level than any others. However, it is not possible to compare the levels of legal validity of documents promulgated by the Government, Prime Minister and Ministers with those of the Supreme Court and Supreme Procuracy because they belong to different systems of state agencies and there is no law specifying this matter.

In practice, legal documents issued by the Government and Prime Minister which sometimes mention that Ministry of Justice or Ministry of Public Security needs to cooperate with the Supreme Court and Supreme Procuracy in order to carry out certain tasks, lead to the misunderstanding that these documents have a higher effectiveness than those of the Supreme Court and Supreme Procuracy.<sup>323</sup>

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<sup>321</sup> Ibid art 1; *Law on the Promulgation of Legal Documents* art 1/1.

<sup>322</sup> See *Law on the Promulgation of Legal Documents* art 2; *Law on the Promulgation of Legal Documents of People's Councils and People's Committees* art 1/2.

<sup>323</sup> But see Nhat Thanh Phan, above n 314, 194; Dao Tri Uc, *Basis Information for Legal Research*, above n 309, 214. Both authors provide tables of the Vietnamese law hierarchy without any logic. In Dao's work, several documents which are not officially recognised as the law are counted, such as annual reports, court sentences, and reports on checking law drafts and legislative initiatives.

Table 3.1 Vietnam's Legal Normative Document System

<b>Kinds of legal documents</b>	<b>Authorities</b>
Constitution, Code Law Resolutions	National Assembly
Ordinance Resolution	Standing Committee of National Assembly
Order Decision	National President
Decree	Government
Decision	Prime Minister
Resolution	Justice Council of the Supreme People's Court
Circular	Chief Justice of the Supreme People's Court
Circular	Chief Prosecutor of the Supreme Procuracy
Circular	Ministers Heads of Ministry-level Bodies
Decision	State Auditor General
Joint Resolution	Standing Committee of the National Assembly Government Central Offices of Social-political Organisations
Joint Circulars	Chief Justice of the Supreme People's Court Chief Prosecutor of the Supreme Procuracy Ministers Heads of Ministry-level Bodies
Resolution	People's Councils
Decision	People's Committee
<i>Adapted from: Law on the Promulgation of Legal Documents and Law on the Promulgation of Legal Documents of People's Councils and People's Committees</i>	

Concerning this topic, recent commentaries have shared the opinion that the Vietnamese legal system has reached certain achievements in general, in the structure of the system, as well as the content of each document.<sup>324</sup> There has been a great increase in quantity;<sup>325</sup> and the law stipulates human rights quite comprehensively in aspects of politics, society, culture and so on, and provides mechanisms for their implementation.<sup>326</sup> However, there is a common observation that Vietnamese law has not reached certain criteria for social development. The shortcomings of Vietnam's legal system are mentioned in various studies. The main issues are set out below.

- a) There exist too many forms and a huge number of legal normative documents issued by various state bodies. For example, there were 19,128 legal normative documents adopted by state agencies at the central level (excluding documents issued by local governments) between 1987 and 2007; of which, about 126 and 300 documents are mentioned in the implementation of the *Law on Land* of 2003 and the *Law on Protection of Environment* of 2005 respectively.<sup>327</sup>

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<sup>324</sup> See Inter-Agency Steering Committee for Vietnam's Legal System Development Needs Assessment, 'Report on the Comprehensive Needs Assessment for the Development of Vietnam's Legal System to the Years 2010' (UNDP Vietnam, 2002) <<http://www.un.org.vn/undp/project/vie1002/lnafinalrep.pdf>>; Ha Thi Mai Hien, 'Nhưng Phát Triển Mới của Hệ Thống Pháp Luật Việt Nam giai đoạn 2004–2009' [New Improvement of the Vietnamese Legal System in the period 2004–2009] (2010) (3–4) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 62, 62–3; Duong and Nguyen, above n 276.

<sup>325</sup> Ha Thi Mai Hien, above n 324, 64; Phu Trong Nguyen, 'Quoc Hoi Viet Nam voi Viec Bao Dam Thuc Hien Quyen Con Nguoi' [Vietnam's National Assembly and the Assurance about the Implementation of Human Rights] (2009) (24) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 5, 6.

<sup>326</sup> Phu Trong Nguyen, above n 325.

<sup>327</sup> Ha Hung Cuong, 'Hoan Thien He Thong Phap Luat Dap Ung Yeu Cau Xay Dung Nha Nuoc Phap Quyen Xa Hoi Chu Nghia' [Perfecting the Legal System in Order to Meet the Requirements of Constructing the Law-based Socialist State] (2009) (2–3) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 17. The author is the Justice Minister.

- b) The legal system lacks a comprehensive framework and uniform notions.<sup>328</sup> This at times leads to contradictions between legal normative documents handling the same issues.<sup>329</sup>
- c) The effectiveness of legislative action and the law is not high;<sup>330</sup> the creation of the law is sometimes not associated with the practical needs of life.<sup>331</sup> Legislative activities recently have occasionally tried to accomplish planned targets without focusing on the quality of the law and the priority for essential projects.<sup>332</sup>
- d) Many laws, including the *Constitution*, lack practical provisions but contain general unclear statements or slogans, resulting in difficulties in implementation.<sup>333</sup>

The listed shortcomings of the legal system are factors contributing to the ineffectiveness of law enforcement. There is often said to be a noticeable gap between the law and practice, and there are inadequacies in implementation.<sup>334</sup>

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<sup>328</sup> See *ibid*; Inter-Agency Steering Committee for Vietnam's Legal System Development Needs Assessment, above n 234, 15; Hoang Van Tu, 'Danh Gia Chat Luong Du An Luat' [The Evaluation of the Quality of Draft Laws] (2006) (67) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 20, 23.

<sup>329</sup> Hoang Van Tu, above n 328; Sidel, *The Constitution of Vietnam*, above n 263.

<sup>330</sup> Phan Trung Ly, 'To Chuc va Hoat Dong cua Quoc Hoi theo Yeu Cau Nha Nuoc Phap Quyen Xa Hoi Chu Nghia' [The Organisation and Operation of the National Assembly at the Requirements of Constructing the Law-based Socialist State] (2009) (2–3) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 31, 34; Ha Thi Mai Hien, above n 324, 66.

<sup>331</sup> Ha Hung Cuong, above n 327, 14; Ha Thi Mai Hien, above n 324, 67.

<sup>332</sup> Minh Hieu Hoang and Thi Ninh Tran, 'Tieu Chi Xem Xet, Danh Gia Chuong Trinh Xay Dung Luat, Phap Lenh' [Criteria for the Consideration and Evaluation of the Promulgation of the Laws and Ordinances] (2009) (6–7) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 10, 11.

<sup>333</sup> Ha Hung Cuong, above n 327, 13; Inter-Agency Steering Committee for Vietnam's Legal System Development Needs Assessment, above n 324, 15; Phan Trung Ly, above n 330, 34; Duy Kien Tuong, 'Pham Vi, Noi Dung Sua Doi, Bo Sung Hien Phap 1992 ve Quyen va Nghia Vu Co Ban cua Cong Dan' [The Scope and Content of the Amendment and Supplement of the Constitution of 1992 about the Basis Rights and Duties of the Citizens] (2011) (21) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 5.

<sup>334</sup> Nicholson and Nguyen, above n 311, 220; Bui Ngoc Son, 'Mot so Yeu To Van Hoa Truyen Thong voi viec Xay Dung Nha Nuoc Phap Quyen' [Several Elements of Culture and Tradition with the Construction of the Rule of Law] (2003)(6) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 22, 28.

These defects of the national legal system are also acknowledged by the Party and State. It is said that:

- a) The legal system is generally still incomplete, inconsistent, with low feasibility of enforcement in real life;<sup>335</sup> or low quality and a lack of links between the law and its implementation.<sup>336</sup>
- b) The Vietnamese legal system in general, and in the field of human rights in particular, still contains inconsistencies and overlaps and conflicting provisions at several points, leading to difficulties, and even misinterpretations in application and enforcement at the grass-roots level.<sup>337</sup>

Vietnam is reforming its legal system as set out in *Resolution No 49-NQ/TW* with its aims: the reconstruction and perfection of the legal system with synchronisation, consistency, feasibility, and transparency; the construction of a law-based socialist state; fundamental innovation in the mechanisms for constructing and implementing the law; encouragement of the role of the law in social management, political stability, economic development, international integration, the protection of human rights, and freedom and democracy for citizens.<sup>338</sup>

### 3.3.1.2 Regulations on Children's Rights

'Children's rights' is a topic which crosses over several areas of Vietnamese law. There is not any one legal document covering all of children's rights enshrined in the *CRC*. The rights of the child are stipulated and specified in a large range of legal normative documents adopted by representative bodies, or executive bodies and judicial bodies.

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<sup>335</sup> *Resolution 48-NQ/TW 2005*, 1.

<sup>336</sup> Hong Hanh Le, 'Government Report on Preliminary Review of the Implementation of Resolution No 48-NQ/TW of the Politburo on the Strategy for Development and Improvement of Vietnam's Legal System to 2010 and Orientation to 2020' in The Lien Hoang (ed), *The Seventh Legal Partnership Forum: 'Strengthening Access to Justice'* (Judicial Publishing House, 2010) 77, 82. This report is a part of the Vietnamese Government's project on reviewing its implementation of judicial reform.

<sup>337</sup> Vietnam's National Report 2009, above n 9 [72].

<sup>338</sup> *Resolution 49-NQ/TW 2005* pt I/1.

At present, the most prominent and specialised law on children is the *Law on Child Protection*. It provides the definition of the child, fundamental rights and duties of the child, and responsibilities of parents, the state and related organisations for the protection, care and education of children. This law provides most children's rights set out in the *CRC*.

The rights of children in certain aspects are regulated in numerous other laws.<sup>339</sup> These include the laws where children are the main subject. Such laws include the *Law on Adoption*, the *Law on Universal Primary Education*, and the *Law on Education*,<sup>340</sup> as well as laws that contain articles mentioning more specific points of children's rights in aspects of civil rights, child labour, health care, children as victims of crimes, or children with disabilities, such as the *Civil Code* of 1995 and 2005, the *Law on Marriage and Family* of 2000,<sup>341</sup> the *Labour Code* of 1993 and 2012,<sup>342</sup> the *Law on Health Care Insurance* of 2008,<sup>343</sup> the *Law against Human Trafficking* of 2010, the *Law on Legal Aid* of 2006 and the *Law on Persons with Disabilities* of 2010.<sup>344</sup> All these laws are supplemented by several decrees, circulars and joint circulars.

All laws and other legal normative documents that have provisions concerning children together create the legal ground for the protection of children's rights, or the care, protection and education of children in Vietnam, including the rights of the child in juvenile justice.

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<sup>339</sup> A pilot survey on the Vietnamese law database on 6 April 2015 found that 2290 legal normative documents contain the term '*tre em*' [child/children]

<sup>340</sup> *Luat 38/2005/QH11 ve Giao Duc* [Law 38/2005/QH11 on Education].

<sup>341</sup> *Luat 22/2000/QH10 ve Hon Nhan va Gia Dinh* [Law 22/2000/QH10 on Marriage and Family]. This law has no longer valid from 1 January 2015 when the newer version entered effect, *Luat 52/2014/QH13 ve Hon Nhan va Gia Dinh* [Law 52/2014/QH13 on Marriage and Family].

<sup>342</sup> *Bo Luat ve Lao Dong nam 1994* [Labour Code of 1994]; *Bo Luat 10/2012/QH13 ve Lao Dong* [Code 10/2012/QH13 on Labour].

<sup>343</sup> *Luat 25/2008/QH12 ve Bao Hiem Y Te* [Law 25/2008/QH12 on Health Care Insurance].

<sup>344</sup> *Luat 51/2010/QH12 ve Nguoi Khuyet Tat* [Law 51/2010/QH12 on Persons with Disabilities]

### 3.3.1.3 Criminal Law and Juvenile Justice

In Vietnam, ‘criminal law’ (*phap luat hinh su*) generally means all regulations or laws concerning crimes,<sup>345</sup> and is distinguished from civil law, which is about non-criminal issues, rights, contract and compensation. In an extended meaning, criminal law or criminal justice is an area of the law which deals with crimes and penalties ranging from the prevention and treatment of crime to the enforcement of judicial judgments and other relevant activities, such as supporting persons involved in crimes. Regulations regarding juvenile justice, the prevention of juvenile delinquency, the treatment of juvenile offenders and the protection of child victims and witnesses of crime, are therefore components of criminal law. Among regulations on criminal law, regulations on the treatment of crime are central, embodying the penal law which regulates all crimes and penalties, and the criminal procedure law which prescribes the procedures to solve crimes. These regulations also provide a framework for crime prevention and the protection of victims and witnesses of crime.

In the modern history of Vietnamese law, the nation and its legal system were not unified until 1975. In fact, the consistent application of legal codes nationwide has only really occurred since the appearance of the *Penal Code* of 1985<sup>346</sup> and the *Criminal Procedure Code* of 1988.<sup>347</sup> As the first codes of the Vietnamese legal system these were significant milestones although they have since been replaced by newer versions. The *Penal Code* set forth all crimes and penalties, stating that ‘only those persons who have committed crimes prescribed in the *Penal Code* shall bear penal liabilities’.<sup>348</sup> The *Criminal Procedure Code* prescribes the procedures for investigating, prosecuting and hearing criminal offences, as well as setting out the

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<sup>345</sup> Sometimes criminal law can be realised as penal law or the law on punishments when compared with the procedural law.

<sup>346</sup> *Bo Luat Hinh Su nam 1985* [Penal Code of 1985] (hereafter *Penal Code 1985*).

<sup>347</sup> *Bo Luat To tung Hinh Su nam 1988* [Criminal Procedure Code of 1988] (hereafter *Criminal Procedure Code 1988*).

<sup>348</sup> *Penal Code 1985* art 2. Under Vietnamese law, only natural persons can commit crimes, corporations are not subject to criminal law. If the persons who are under the age of penal liability commit dangerous actions like crimes, they shall not be punished by the criminal law, but judicial measures under the *Law on Handling Administrative Violations* may be applied if they are 12 years or older.

rights and obligations of the parties to the process.<sup>349</sup> These codes were more than a simple systematisation in one instrument of the many different edicts, decrees and ordinances from previous governments. They combined the essence of different legal traditions to build a consistent legal document in the context of numerous difficulties in Vietnamese society.<sup>350</sup> The *Penal Code* of 1985 was also the first legal document to present a legal definition of crime,<sup>351</sup> which has been retained in the existing criminal law.

A crime is an act dangerous to society as prescribed in the *Penal Code*, committed intentionally or unintentionally by a person having the capacity for penal liability...<sup>352</sup>

Although neither of these codes uses the term ‘human rights’, the *Penal Code* of 1985 and the *Criminal Procedure Code* of 1988 provided the fundamental legal basis for the protection of human rights in general, including human rights for children, until the *Penal Code* of 1999 and the *Criminal Code* of 2003 came in to effect.

Currently, the *Penal Code* of 1999 amended in 2009 (or *PC*) and the *Criminal Procedure Code* of 2003 (*CPC*) are the basis for defining criminal violations, determining penalties and solving crimes. These two codes have inherited and enhanced the essence of their predecessors to accommodate changes in Vietnam’s socio-economic situation and its responsibilities when ratifying international treaties, including the *CRC*.

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<sup>349</sup> *Criminal Procedure Code 1988* art 1.

<sup>350</sup> According to Quigley, the *Penal Code* of 1985 is the first code that qualifies as ‘indigenous’ and addresses the situation of Vietnam, although it also has influence from several major legal traditions. See John Quigley, ‘Vietnam at the Legal Crossroads Adopts a Penal Code’ (1988) 36(2) *American Journal of Comparative Law* 351, 351–2.

<sup>351</sup> Before the *Penal Code* of 1985, there were several ordinances regulating particular crimes in certain areas without a definition of crime, such as Kidnapping, Murder, Destruction of State Property and Corruption. See *Sac Lenh 27 ngay 29/02/1946 cua Chu Tich Chinh Phu Lam Thoi ve Trung Tri Cac Toi Bat Coc, Tong Tien va Am Sat* [Edict 27 dated 28 February 1946, issued by the President of the Provisional Government on the Punishment for Kidnapping, Extortion and Murder]; *Sac Lenh 267-SL ngay 15/06/1956 cua Chu Tich Chinh Phu ve Trung Tri Cac Toi Xam Pham Tai San Nha Nuoc* [Edict 267-SL dated 15 June 1956, issued by the President of the Government on the Punishment for Destruction of State Property]; *Phap Lenh Trung Tri Toi Hoi Lo nam 1981* [Ordinance on the Punishment for Corruption of 1981].

<sup>352</sup> *Penal Code 1985* art 8/1; *PC* art 8.



As defined in the *PC* (art 8), crime means socially dangerous acts prescribed in the *Penal Code*, committed by persons having the capacity for criminal responsibility.<sup>353</sup>

A natural person is considered as having the capacity of criminal responsibility when they have reached the age of criminal responsibility and do not suffer from mental disease or other conditions which deprive them of the capacity to be aware of or to control their acts.<sup>354</sup> The age of criminal responsibility is determined also by the seriousness of crime as set out below:

A person aged a full 16 years or older shall have to bear penal liability for all crimes they commit;

A Person aged a full 14 years or older but below 16 shall have to bear penal liability for very serious crimes intentionally committed or for extremely serious crimes.<sup>355</sup>

Under the *PC*, criminal acts are classified into four groups based on the maximum penalty prescribed in the penal code for particular crimes: less serious crimes (corresponding to the maximum penalty of up to three years imprisonment), serious crimes (between three and seven years imprisonment), very serious crimes (between seven and fifteen years imprisonment) and extremely serious crimes (over fifteen years of imprisonment, life imprisonment or capital punishment).<sup>356</sup>

Thus, there is no criminal responsibility for acts committed by those younger than 14 years of age. However, for those 12 years of age or older but below the age of criminal liability infringing the penal law, they can be dealt with by the administrative procedures under the *Law on the Handling of Administrative Violations*. These measures are seen as educative methods rather than as a punishment.

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<sup>353</sup> Currently, corporations or legal entities are not the subjects of crimes and punishments in Vietnam. However, in the discussion of revising the *Penal Code*, legal entities are considered to be subjects of criminal law.

<sup>354</sup> *PC* arts 12–13.

<sup>355</sup> *Ibid* art 12.

<sup>356</sup> *Ibid* art 8/3.

Table 3.2 Categories of Crime: *Vietnamese Penal Code of 1999*

Category of crime	Description of crime	Maximum penalty bracket	Age of criminal Liability (age in years)
<b>Less serious</b>	Causes no great harm to society	3 years of imprisonment	≥ 16
<b>Serious</b>	Causes great harm to society	(3, 7] years of imprisonment	
<b>Very serious</b>	Causes very great harm to society	(7, 15] years of imprisonment	≥ 16
			[14, 16) if intentionally committed
<b>Extremely serious</b>	Causes exceptionally great harm to society	(15, 20] years of imprisonment - Life imprisonment - Capital punishment	≥ 14
(PC arts 8, 12)			

In 2009 the *Penal Code* of 1999 was amended. In this amendment, one of the important changes concerns the decriminalisation of petty offences aimed at appropriating property or offering bribes in 13 kinds of crimes. According to this amendment the minimum monetary penal liabilities is raised from 500,000 Vietnam dong (VND) to VND 2 million for 11 crimes; from 1 million to 1 million for one crime; and from 5 million to 10 million for one crime.<sup>357</sup>

In addition to the *PC* and *CPC*, a number of other laws can be referred to while dealing criminal cases, as well as the protection of human right, including the *Law on Execution of Criminal Judgments*,<sup>358</sup> *Law on Legal Aid*<sup>359</sup> and *Law on Lawyers*.<sup>360</sup> As in other areas of the legal system in Vietnam, criminal law encompasses a wide range

<sup>357</sup> *Luat 37/2009/QH12 ve Sua doi, Bo sung mot so Dieu cua Bo luat Hinh su nam 1999* [Law 37/2009/QH12 on Amending and Supplementing a Number of Articles of the *Penal Code of 1999*] art 1/2.

<sup>358</sup> *Luat 53/2010/QH12 ve Thi Hanh An Hinh Su* [Law 53/2010/QH12 on the Execution of Criminal Judgments] (hereafter *Law on the Execution of Criminal Judgments*).

<sup>359</sup> *Luat 69/2006/QH11 ve Tro Giup Phap Ly* [Law 69/2006/QH11 on Legal Aid] (hereafter *Law on Legal Aid*)

<sup>360</sup> *Luat 65/2006/QH11 ve Luat Su, duoc sua doi theo Luat 20/2012/QH13* [Law 65/2006/QH11 on Lawyers, Amended by the Law 20/2012/QH13] (hereafter *Law on Lawyers*).

of legal normative documents promulgated by the National Assembly, Government, Supreme Court, Supreme Procuracy, and so on. Codes and Laws adopted by the National Assembly are fundamental while the others often provide elucidation and interpretation of the laws.

As for juvenile justice, Vietnam has no separate law for dealing with children or juveniles in contact with the justice system. The resolution of criminal issues relating to juveniles is by the common court system which is also used to handle adults, but with additional special regulations. In the *PC*, *CPC* and *Law on Execution of Criminal Judgments*, each has a chapter on juveniles while other laws often provide several articles conveying special principles for dealing with juvenile offenders. With regard to child victims and witnesses, although recently this issue has been paid more attention, the number of regulations detailing child victims and witnesses' rights seems insufficient. An exception is children who are the victims of human trafficking. Such children may receive some support from relevant governmental programs. More details are presented in the chapters below.

### 3.3.2 The Judicial System

#### 3.3.2.1 An Overview of the Judicial System

In the Vietnamese language, the term '*tu phap*', which is usually translated as 'justice'/'judicial' (either a noun or an adjective, depending on the context where it is used) is employed quite flexibly in contemporary society, including in the political and legal arena.

This term '*tu phap*' can be found in many legal normative documents and Party documents. However, no official definition is given and the meaning of this word is sometimes inconsistent in documents.

The *Constitution* of 1992 states that 'the state power is unified but there is responsible division and co-ordination among state bodies in the exercise of legislative, executive and judicial powers'; and 'the People's Procuracies shall

exercise the power to prosecute and supervise judicial activities'.<sup>361</sup> These provisions appear vague and it is difficult to clearly grasp the state power, its divisions and the powers of the People's Procuracies. At present, there is no official document giving an explanation of what judicial power and judicial activities are, not even the document of the National Assembly which provides statements for the constitutional amendment in 2001 where judicial activities are officially recognised in the *Constitution* for the first time. This vagueness creates some difficulties in the implementation of the law, including the power of the People's Procuracies in the supervision of judicial activities. Such regulations are mostly retained in the new *Constitution* of 2013, which is perhaps more confusing when it adds a clause that the Court exercises judicial power.<sup>362</sup>

In the *PC*, there is a Chapter on Crimes Infringing upon Judicial Activities, which presents the definition of those crimes as 'acts of infringing upon the legitimate activities of investigating, prosecuting, adjudicating and judgment-executing agencies in the protection of the interests of the State, the legitimate rights and interests of organisations and citizens'.<sup>363</sup> Based on this definition 'judicial activities' refer to all activities of investigative bodies, procuracies, courts and judgment-executing bodies.<sup>364</sup>

The *Law on Mutual Judicial Assistance* of 2007,<sup>365</sup> regulating the mutual assistance in justice (or in the judicial sector) between Vietnam and other countries, also lacks a common definition of the term 'judicial' ('*tu phap*'). It indicates the scope of regulation by listing domains, including mutual assistance in the civil and criminal proceedings, and the extradition and transfer of persons serving prison sentences.

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<sup>361</sup> *Constitution 1992* arts 2, 137.

<sup>362</sup> *Constitution 2013* art 102.

<sup>363</sup> *Penal Code 1985* art 230; *PC* art 292.

<sup>364</sup> According to the laws on investigation and the execution of court judgments, there are various agencies involved in these activities.

<sup>365</sup> *Luat 08/2007/QH12 ve Tuong Tro Tu Phap* [Law 08/2007/QH12 on Mutual Judicial Assistance].

Article 341 of the *CPC* on judicial assistance stipulates that:

When rendering [international] judicial assistance, the bodies as well as persons with procedure-conducting competence of the Socialist Republic of Vietnam shall apply the provisions of relevant international agreements which the Socialist Republic of Vietnam has signed or acceded to and the provisions of this *Code*.

It can thus be seen that in Vietnam's legal normative documents, 'judicial' refers to the matters connected with procedure-conducting bodies, which encompass investigative bodies ('*co quan dieu tra*'), procuracies ('*vienkiem sat*'), courts ('*toa an*') and judgment-executing agencies ('*co quan thi hanh an*'), not only connected with the court of law as in the popular meaning explained in English dictionaries.<sup>366</sup>

In the Party's *Resolution 08-NQ/TW 2002* and *Resolution 49-NQ/TW 2005*, which indicate fundamental policies and strategy for judicial reform, as mentioned above, 'judicial' can be understood in a broader meaning. It refers to matters connected with not only procedure-conducting bodies but also other activities which may affect the procedure-conducting bodies' activities, such as scientific research, education, and legal information dissemination, legal assistance and judicial examination. Related to this issue, by analysing *Resolution 08-NQ/TW 2002*, Pip Nicholson suggests that the term 'judicial work' ('*cong tac tu phap*') in Vietnam, which is the work of not only judges and court staff but also all agencies that feed into the court, should be translated as 'justice work' or 'court-related work'.<sup>367</sup>

In the academic area, there has been extensive domestic research concerning judicial power, judicial reform and the judicial system, especially since the appearance of *Resolution 08-NQ/TW 2002*. In these works, relevant concepts and notions are seldom clarified or interpreted. The issues mentioned in the law and the Party's resolutions are usually accepted as the background for discussion and the evaluation

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<sup>366</sup> See, eg, Jay M Feinman and Erin McKean, *1001 Legal Words You Need to Know* (Oxford University Press, 2003) 103; Oxford Dictionaries, *Definition of 'Judicial'*, Oxford University Press <<http://oald8.oxfordlearnersdictionaries.com/dictionary/judicial>> .

<sup>367</sup> Pip Nicholson, 'Vietnam Jurisprudence: Informing Court Reform' in John Gillespie and Pip Nicholson (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (Asia Pacific Press at the Australian National University 2005) 159, 160.

of relevant agencies' functional performance and suggestions for innovation. The number of scholarly studies discussing the meaning of '*tu phap*' ('justice'/ 'judicial') is small, however, basic characters of using this term in Vietnam's context are somewhat indicated. In sum,

- a) The use of the term 'judicial' ('*tu phap*') in Vietnam is different from other countries, referring not only to courts but also other state bodies whose functions involve the court's activities. However, the court's activities are still the basis of judicial activities.<sup>368</sup>
- b) The judicial system is usually understood as the organisational and professional system of courts, procuracies, investigative bodies, judicial management bodies, judgment-executing bodies, and judicial support agencies such as lawyers, notaries, judicial examinations and others with the centre belonging to the courts' activities.<sup>369</sup>
- c) Vietnam's legal system has no definition of the judicial system while jurisprudence retains two meanings, one narrow and one broad — the courts, and the group of state bodies encompassing courts, procuracies, investigative bodies and judgment-executing bodies.<sup>370</sup>

From the above analysis, it can be seen that 'judicial' ('*tu phap*') and 'judicial system' ('*he thong tu phap*') are understood inconsistently and without official definition. In the area of criminal law, the most popular understanding is that 'judicial' implies the actions or system that connect the courts, procuracies, investigative bodies and judgment-executing agencies. This convention is followed in this study. The judicial system refers to the investigative bodies, procuracies, courts and judgment-executing bodies. With the purpose of providing a background

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<sup>368</sup> Dang Dung Nguyen, 'Cai Cach Tu Phap trong Co Cau To Chuc Quyen Luc Nha Nuoc' [Judicial Reform in the Structural Organisation of State Power] (2009) (2) *Phap Luat va Dan Chu* [Law and Democracy] 36, 38.

<sup>369</sup> Nhu Phat Nguyen, 'Mot so Y Kien ve Cai Cach Tu Phap o Viet Nam trong Giai doan Hien nay' [Comments on Vietnam's Judicial Reform in the Present] (2004) (3) *Nha Nuoc va Phap Luat* [State and Law] 26.

<sup>370</sup> Van Hung Pham, 'Toa An va Van De Cai Cach Tu Phap' [The Court and the Issue of Judicial Reform] (2009) (135) *Nghien Cuu Lap Phap* [Journal of Legislative Studies] 1, 1–2. The author believes that the second meaning is popularly accepted by legal scholars.

for the consideration of Vietnam's legal and practical implementation of juvenile justice until 2014, the functions and structure of these bodies under the *Constitution* of 1992 and relevant laws which are based on this Constitution are introduced briefly below.

The new points of the *Constitution* of 2013 concerning the judicial system, and new laws on the organisation of judicial bodies, which were adopted in late 2014 and entered into effect mid-2015, are not presented here, but will be considered in the last chapter, showing the developmental trends in judicial reform in Vietnam.

### 3.3.2.2 The Court System

As mentioned above, in Vietnam the court system is not the same as the judicial system although it follows the judicial system's code. According to the *Constitution* of 1992 and the *Law on the Organisation of the People's Courts* of 2002, the courts are adjudicating bodies of the State.<sup>371</sup> The courts' functions are the adjudication of criminal, civil, marriage and family, labour, economic and administrative cases, and the settlement of other matters as prescribed by the law.<sup>372</sup> The court system embodies the Supreme Court, local courts and military courts.

The Supreme Court is the highest adjudicating body of the State with its structure consisting of the Council of Judges, the Central Military Court, the Criminal Court, the Economic Court, the Labour Court, the Administrative Court, three Appeal Courts and the assisting apparatus.<sup>373</sup> The Supreme Court has power and duties in guiding courts to apply the law uniformly, by summarising experiences in trials; supervising the trials by tribunals at different levels; conducting appeal trials and review trials of cases with judgments taking legal effect as prescribed by the law.<sup>374</sup>

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<sup>371</sup> *Constitution 1992* art127; *Law on the Organisation of the People's Courts 2002* art 1.

<sup>372</sup> *Law on the Organisation of the People's Courts 2002* art 1.

<sup>373</sup> *Ibid* art 18.

<sup>374</sup> *Ibid* arts 19–20.

The local courts are organised at two levels; the people's courts of the province and centrally run cities; and the people's courts of districts and equivalents. The military courts are organised within the army to adjudicate army-related cases.

In terms of juvenile justice, the military courts seem not to be relevant. The authority of dealing with juvenile cases consists of the Supreme Court (its three Appeal Courts and Criminal Court), provincial courts (64 units) and district courts (695 units).<sup>375</sup> The authority to address specific juvenile cases is determined under the *CPC*, depending on the seriousness of the crime, the place where the criminal act was committed, and the stages of hearing (first-instance, appeal or review trial). There is not a specialised court for hearing juvenile cases.

### 3.3.2.3 The Procuracy System

The People's Procuracies have the functions of public prosecution and supervision of judicial activities.<sup>376</sup> As listed in the *Law on the Organisation of the People's Procuracies* of 2002 (art 3), they perform their functions through the exercise of the powers of public prosecution and control of law observance in the investigation and adjudication of criminal cases; investigation of crimes infringing judiciary activities committed by judicial staff; and the control of law observance in the settlement of non-criminal cases, the execution of courts' judgments and decisions.

The structural organisation of the procuracy system is similar to the court system. It comprises the Supreme Procuracy, local procuracies and military procuracies.

With regard to juvenile justice, Procuracies conduct the public prosecution and control of law observance in the investigation, adjudication and execution of judgment; and control the observance of law in the custody, detention, management and the education of prisoners.

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<sup>375</sup> Toa An Nhan Dan Toi Cao, 'Quy Hoach Phat Trien Nhan Luc Nghanh Toa An Nhan Dan giai doan 2012–2020' [The Plan for Human Resource Development of the People's Courts for the Period 2012–2020] (Supreme People's Court, 2012) 6.

<sup>376</sup> *Constitution 1992* art 137; *Law on the Organisation of the Procuracies 2002* art 1.



### 3.3.2.4 Investigative Bodies

At present, the system of investigative bodies is regulated in the *Ordinance on the Organisation of Criminal Investigation* of 2004.<sup>377</sup> According to this *Ordinance*, the system of investigative bodies is a range of bodies, which are organised into the sections of the public security, the army, the Supreme Procuracy and others tasked to conduct a number of investigating activities.<sup>378</sup>

The public security and army have two levels (ministry and province) for the investigation of national security infringements and three levels (at ministry, province and district) for other investigations.<sup>379</sup>

The investigative body of the Supreme Procuracy investigates crimes infringing on judicial activities when offenders are judicial staff.<sup>380</sup>

The state agencies in the field of border control, customs, forest management, firefighting, traffic and prison management have the power to conduct investigations if, while conducting their functions, they detect signs of criminal activity.<sup>381</sup>

In practice, the investigation of juvenile cases is often conducted by public security bodies because juvenile offences and offences against children usually infringe upon ownership rights and human life, health or public order. These bodies are organised in the Ministry of Public Security, and police offices at provisional and district levels.

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<sup>377</sup> *Phap Lenh 23/2004/PL-UBTVQH11 ve To Chuc Dieu Tra Hinh Su, duoc sua doi theo Phap Lenh 09/2009/PL-UBTVQH12* [Ordinance 23/2004/PL-UBTVQH11 on the Organisation of the Criminal Investigation, Amended by Ordinance 09/2009/PL-UBTVQH12].

<sup>378</sup> *Ibid* art 1.

<sup>379</sup> *Ibid* arts 1, 11–12, 15–16.

<sup>380</sup> *Ibid* art 18.

<sup>381</sup> *Ibid* arts 2, 19–25.

### 3.3.2.5 Judgment-executing Bodies

Under Vietnamese law, the execution of court judgments is divided into two groups — civil and criminal — with differences of legal bases, order and procedures, and the judgment-executing agencies.

The *Law on the Execution of Civil Judgments* of 2008<sup>382</sup> stipulates the enforcement of judgments on civil or non-criminal cases, and parts of criminal judgments that are about money, assets and fees.<sup>383</sup> The bodies enforcing these judgments consist of the civil judgment-executing bodies of provinces and centrally run cities; civil judgment-executing bodies of rural districts, urban districts, towns or provincial cities; and judgment-executing bodies of military zones or the equivalent level.

The *Law on the Execution of Criminal Judgments* prescribes the execution of criminal judgments with penalties of imprisonment, death, warning, non-custodial reform, residence ban, probation, expulsion, deprivation of certain civil rights, banning from holding certain positions, practising certain professions or doing certain jobs, suspended sentences and judicial measures.<sup>384</sup> The bodies exercising powers and duties to directly execute criminal judgments are grouped into criminal judgment-executing bodies and bodies assigned some tasks of criminal judgment execution.

Criminal judgment-executing bodies are responsible for the enforcement of major criminal judgments. They are prisons of the Ministry of Public Security, the Ministry of National Defence, and military zones; criminal judgment-executing bodies of the police offices at provincial and district levels; criminal judgment-executing bodies of military zones and the equivalent level.<sup>385</sup>

Bodies assigned some tasks of criminal judgment execution embrace detention camps of the Ministry of Public Security, the Ministry of National Defence, police

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<sup>382</sup> *Luat 26/2008/QH12 ve Thi Hanh An Dan Su* [Law 26/2008/QH12 on the Enforcement of Civil Judgments] art 13/2.

<sup>383</sup> *Ibid.*

<sup>384</sup> *Law on the Execution of Criminal Judgments.*

<sup>385</sup> *Ibid* art 10/2.

offices at provincial and district levels; people's committees at commune level; and military units at regiment and equivalent levels. These bodies carry out several activities involving persons sentenced to death; or persons serving sentences of non-custodial reform; residence ban; probation; ban from holding certain positions, practising certain professions or performing certain jobs; deprivation of certain civil rights or suspended sentences.<sup>386</sup>

In practice, both civil and criminal judgment-executing bodies are involved in juvenile justice. The criminal judgment-executing bodies are more frequently referred to when discussing penalties, the enforcement of penalties and reintegration into society regarding juvenile offenders.

### 3.4 Conclusion

Since the Government's ratification of the *CRC*, children's lives in Vietnam's jurisdiction have been improved noticeably in many aspects. However, Vietnam has not fully reached the requirements for a signatory of the *CRC*. In the aspect of child protection, including juvenile justice, there has been less progress than in other areas. In Vietnam's juvenile justice, there is still a gap between the legal regulations and law enforcement of Vietnam and international standards.

In Vietnam, the Party has the role of leadership in the State and society; the political, state and legal systems have some local peculiarities. The state power is unified. The Party line has strong influence in the legal system. These could be considered as aspects of cultural diversity in the context of the implementation of human rights treaties in Vietnam.

The law in Vietnam is written law. The system of legal normative documents is various in types, names and adopted agencies including not only legislative state bodies but also executive and judicial bodies. The *PC* and *CPC* are the fundamental documents for the identification and settlement of crimes. Vietnam has no separate law on juvenile justice. The prevention of juvenile delinquency, the treatment of

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<sup>386</sup> Ibid arts 10/3, 17–19.

juvenile offenders and the protection of child victims and witnesses of crime should refer to these documents as the common source of criminal justice in Vietnam.

In the next chapters, the situation of juvenile justice in each particular field of the prevention and treatment of juvenile delinquency, protection of child victims and witnesses in Vietnam are analysed in relation to international standards. Suggestions for improving Vietnam's mechanisms in order to approach international standards are also presented. These analyses and proposals are placed in the context of Vietnam as provided in this chapter.

## Chapter 4: THE PREVENTION OF JUVENILE DELINQUENCY

### 4.1 Introduction

Crime and crime prevention are issues that no state can disregard. It is believed that all countries face crime, violence and victimisation;<sup>387</sup> and all human beings can be affected by criminal acts.<sup>388</sup> Within the UN, more and more attention is being paid to crime prevention. It is said that ‘prevention is the first imperative of justice’.<sup>389</sup>

It is unlikely that crime can be eliminated, but it can be reduced and controlled through prevention.<sup>390</sup> The possible benefits of crime prevention are significant, as summarised in the introduction to the *UN Guidelines for the Prevention of Crime of 2002* (or *UN Guidelines 2002*).

[W]ell-planned crime prevention strategies not only prevent crime and victimisation, but also promote community safety and contribute to sustainable development of countries. Effective, responsible crime prevention enhances the quality of life of all citizens. It has long-term benefits in terms of reducing the costs associated with the formal criminal justice system, as well as other social costs that result from crime.<sup>391</sup>

Following this logic, the prevention of children breaking the law or the prevention of juvenile delinquency can be significantly beneficial. Such prevention not only deters juveniles from committing violations but also contributes to reducing the number of adult criminals in the future. Research has proven that most adult offenders first committed a crime as juveniles.<sup>392</sup>

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<sup>387</sup> UNODC, *Handbook on the Crime Prevention Guidelines: Making them Work* (United Nations, 2010) (hereafter UNODC, *Handbook on Crime Prevention Guidelines*) 1.

<sup>388</sup> National Crime Prevention Institute, *Understanding Crime Prevention* (Butterworth-Heinemann, 2<sup>nd</sup> ed, 2001).

<sup>389</sup> Secretary-General’s Report, UN Doc S/2004/616, above n 98 [4].

<sup>390</sup> *Ibid.*

<sup>391</sup> *UN Guidelines 2002* [1].

<sup>392</sup> Peter Greenwood, ‘Prevention and Intervention Programs for Juvenile Offenders’ (2008) 18(2) *Future of Children* 185, 186.

Theories about crime prevention have a long history, as old as, ‘if not older than, criminology itself’.<sup>393</sup> Since the 1980s there has been a significant increase in interest among academics and practitioners (reflected in an increase in the number of studies and evaluations) and the public as well.<sup>394</sup> There has also been a marked shift in ideas about who is responsible for crime prevention, from mainly the police and formal criminal justice system to local governments, communities and ‘shared responsibility’, involving many institutions and sectors of society.<sup>395</sup>

However, there is no consensus about the definition of crime prevention. There are various views presented in the literature. For example, when discussing England and Wales’ policy on crime prevention, Koch referred to at least 15 different perspectives before stating his opinion that ‘the definition of crime prevention was open to whatever the policy makers said and how their respective agency portrayed it in their publications’.<sup>396</sup> There are several reasons for this situation. First, changes in the definition of crime in societies lead to changes in crime prevention.<sup>397</sup> Second, ‘crime prevention’ is a notoriously difficult notion to define.<sup>398</sup> It is a vague, or slippery and free-floating concept, meaning different things to different persons.<sup>399</sup> The term ‘crime prevention’ can be applied to all activities with the purpose of

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<sup>393</sup> Pat O’Malley and Adam Sutton, *Crime Prevention in Australia: Issues in Policy and Research* (Federation Press, 1997) 1; Rob White and Santina Perrone, *Crime and Social Control* (Oxford University Press, 2<sup>nd</sup> ed, 2005) 273.

<sup>394</sup> Gordon Hughes, *Understanding Crime Prevention: Social Control, Risk, and Late Modernity* (Open University Press, 1998) 12; Kate Moss, ‘Crime Prevention as Law: Rhetoric or Reality?’ in Mike Stephens and Kate Moss (eds), *Crime Reduction and the Law* (Routledge, 2006) 1.

<sup>395</sup> Moss, above n 394, 2–3; Mike Stephens, ‘Local Authorities, Crime Reduction and the Law’ in Mike Stephens and Kate Moss (eds), *Crime Reduction and the Law* (Routledge, 2006) 34, 35; UNODC, *Handbook on the Crime Prevention Guidelines*, above n 387, 9.

<sup>396</sup> Brigitte C M Koch, *The Politics of Crime Prevention* (Ashgate, 1998) 21–4.

<sup>397</sup> Moss, above n 394, 2.

<sup>398</sup> Hughes, above n 394, 3; Rick Sarre, ‘Crime Prevention and Police’ in Pat O’Malley and Adam Sutton (eds), *Crime Prevention in Australia: Issues in Policy and Research* (Federation Press, 1997) 64, 66.

<sup>399</sup> Hughes, above n 394, 17–18; Koch, above n 396, 21.

criminal behaviour management.<sup>400</sup> Even, ‘any good work is arguably crime prevention’.<sup>401</sup>

In a similar vein, the strategies or models of preventing crime also vary around the world, reflecting various orientations of divergent political views toward crime and its prevention. Approaching from different perspectives, scholars present different types or strategies of crime prevention. At the general level, among scholars there exist several main perspectives on classifying crime prevention. The first view identifies ‘four major prevention strategies: law enforcement, and developmental, community, and situational prevention’.<sup>402</sup> The second view divides crime prevention into three levels: primary, secondary and tertiary crime prevention.<sup>403</sup> The third view — the most popular view discussed — divides crime prevention into two types, situational crime prevention and social crime prevention.<sup>404</sup> Situational crime prevention focuses on reducing opportunities for crime by changing physical environments or through physical environmental design. Social crime prevention emphasises changing social and spiritual environments, in order to diminish the motivation for perpetrating crimes or to reduce antisocial behaviour. Several other authors hold views that approaches to crime prevention include: situational, multi-agency and ‘community’ crime prevention;<sup>405</sup> traditional primary prevention,

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<sup>400</sup> National Crime Prevention Institute, above n 388, 2.

<sup>401</sup> Linda Harvey, Penny Grimshaw and Ken Pease, ‘Crime Prevention Delivery: The Work of Crime Prevention Officers’ in R Morgan and D Smith (eds), *Coming to Terms with Policing: Perspectives on Policy* (Routledge, 1989) 82, 85.

<sup>402</sup> Michael Tonry and David P Farrington, ‘Strategic Approaches to Crime Prevention’ (1995) 19 *Crime and Justice* 1, 2.

<sup>403</sup> Paul J Brantingham and Frederic L Faust, ‘A Conceptual Model of Crime Prevention’ (1976) 22(3) *Crime & Delinquency* 284; Elmer H Johnson, ‘Introduction: The “What”, “How”, “Who”, and “Where” of Prevention’ in Elmer H Johnson (ed), *Handbook on Crime and Delinquency Prevention* (Greenwood Press, 1987) 1; Scott A Fields and John R McNamara, ‘The Prevention of Child and Adolescent Violence — A Review’ (2003) 8(1) *Aggression and Violent Behavior* 61, 66–7.

<sup>404</sup> Hughes, above n 394, 21; White and Perrone, above n 393, 307; Moss Kate, ‘The Future of Crime Reduction’ in Mike Stephens and Kate Moss (eds), *Crime Reduction and the Law* (Routledge, 2006) 175, 186; Patricia L Brantingham, Paul J Brantingham and Wendy Taylor, ‘Situational Crime Prevention as a Key Component in Embedded Crime Prevention’ (2005) 47(2) *Canadian Journal of Criminology and Criminal Justice* 271; John Muncie, *Youth & Crime* (Sage, 3<sup>rd</sup> ed, 2009) 310.

<sup>405</sup> Hughes, above n 394, 28.

developmental primary prevention and law enforcement approaches;<sup>406</sup> traditional law enforcement, situational and social crime prevention approaches;<sup>407</sup> situational, ‘stake in conformity’ and informal control approaches;<sup>408</sup> or developmental, situational and community prevention.<sup>409</sup>

The prevention of juvenile delinquency, as ‘an essential part of crime prevention in society’,<sup>410</sup> is also discussed by numerous authors from different perspectives. Many examples can be taken from the analyses in the ‘Handbook on Crime and Delinquency Prevention’.<sup>411</sup> Most types of crime prevention listed above can also be used in preventing juvenile delinquency. Additionally, the approaches of juvenile delinquency prevention can be divided into the three groups of ‘coercive’, ‘developmental’ and ‘accommodating’ approaches.<sup>412</sup> In 1999, Muller and Mihalic noted that dozens of delinquency prevention models and strategies had been proven and 20–30 other promising programs were being tested.<sup>413</sup>

Studying the classification of crime and juvenile delinquency prevention, it can be seen that distinctions between different types of crime prevention are not always clear-cut — ‘overlaps exist among them’.<sup>414</sup> Each perspective is based on different theories and focused on different purposes so that none of them fully reflect the diversity of interdisciplinary thinking and practice. Further, there is inconsistency in

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<sup>406</sup> Christy A Visher and David Weisburd, ‘Identifying What Works: Recent Trends in Crime Prevention Strategies’ (1997) 28(3) *Crime, Law and Social Change* 223, 224.

<sup>407</sup> Brian R Howe, ‘Children’s Rights as Crime Prevention’ (2008) 16(4) *International Journal of Children’s Rights* 457, 458–9.

<sup>408</sup> Robert P Weiss, ‘The Community and Prevention’ in E Johnson (ed), *Handbook on Crime and Delinquency Prevention* (Greenwood Press, 1987) 113, 117.

<sup>409</sup> Brandon C Welsh and David P Farrington, ‘Science, Politics, and Crime Prevention: Toward a New Crime Policy’ (2012) 40(2) *Journal of Criminal Justice* 128.

<sup>410</sup> *Riyadh Guidelines* [1].

<sup>411</sup> E Johnson (ed), *Handbook on Crime and Delinquency Prevention* (Greenwood Press, 1987).

<sup>412</sup> Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 3<sup>rd</sup> ed, 2007) 306–17.

<sup>413</sup> Janine Muller and Mihalic Sharon, ‘Intervention: Blueprint for Violence Prevention’ (1999) 5(4) *Alternatives to Incarceration* 13; Greenwood, above n 392; Peter Greenwood and Susan Turner, ‘An Overview of Prevention and Intervention Programs for Juvenile Offenders’ (2009) 4(4) *Victims & Offenders* 365.

<sup>414</sup> Ruohui Zhao and Jianhong Liu, ‘A System’s Approach to Crime Prevention: The Case of Macao’ (2011) 6(2) *Asian Journal of Criminology* 207, 210.



terms among authors. This can lead to some confusion when looking at the literature on crime prevention. In this regard, UNODC said that:

Various approaches to preventing crime have been developed... The major fields of crime prevention include a range of responses developed over many years, including developmental, environmental, situational, social and community-based crime prevention, and interventions may be classified into a number of groups.<sup>415</sup>

Approaches and programs in the *UN Guidelines 2002* can be grouped into four categories: crime prevention through social development; community, or locally-based crime prevention; situational crime prevention; and reintegration programs.<sup>416</sup> This division is not the same as the authors who recognise the fourth approach to crime prevention in this instrument as the ‘reduction of recidivism’.<sup>417</sup>

Preventing juvenile delinquency is not only a part of crime prevention but also a part of the juvenile justice system. It has a longer history in countries where the juvenile justice system was established earlier, such as the United States, the United Kingdom, Canada and Australia.<sup>418</sup> Along with ‘prevention’, the term ‘intervention’ is often used in the prevention of juvenile delinquency. Among various methods aiming to reduce or control juvenile delinquency, the developmental or social prevention approach and early intervention are more frequently discussed.<sup>419</sup>

Recently, UNODC has highlighted that each type of crime prevention has both advantages and disadvantages and no one approach is superior to the others, so a

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<sup>415</sup> UNODC, *Handbook on the Crime Prevention Guidelines*, above n 387, 12.

<sup>416</sup> *Ibid* 12–14.

<sup>417</sup> International Centre for Prevention of Crime, ‘International Report on Crime Prevention and Community Safety: Trends and Perspectives’ (2010) <<http://www.crime-prevention-intl.org/en/publications.html>>.

<sup>418</sup> In these countries, the first juvenile courts were established between 1895 and 1908. See John Muncie and Barry Goldson, ‘States of Transition: Convergence and Diversity in International Youth Justice’ in John Muncie and Barry Goldson (eds), *Comparative Youth Justice: Critical Issues* (Sage, 2006) 196, 197; Cunneen and White, above n 412, 13–14.

<sup>419</sup> David P Farrington, ‘Early Developmental Prevention of Juvenile Delinquency’ (1994) 4(3) *Criminal Behaviour and Mental Health* 209; Richard E Tremblay and Wendy M Craig, ‘Developmental Juvenile Delinquency Prevention’ (1997) 5(2) *European Journal on Criminal Policy and Research* 33; Howe, above n 407, 460.

combination of approaches should be used.<sup>420</sup> This opinion reflects the UN's attitude on crime prevention as well as the prevention of juvenile delinquency.

In this thesis, theories and arguments over crime prevention are not the main focus. The state's obligation in the prevention of juvenile delinquency is considered as a part of its obligations in the implementation of children's rights. Therefore, in the next sections, UN guidelines on juvenile delinquency prevention and their practical application in Vietnam are analysed in detail. Crime prevention is understood as provided in the UN instrument.

Crime prevention comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes.<sup>421</sup>

#### 4.2 International Legal Standards for the Prevention of Juvenile Delinquency

There are various instruments regarding human rights and criminal justice. If we accept Harvey, Grimshaw and Pease's argument that any good work means crime prevention,<sup>422</sup> all these instruments can be arguably related to crime prevention and the prevention of juvenile delinquency. This is because the ultimate goal of conventions, treaties and guidelines is to build, maintain and develop a world of peace and prosperity without fear of crime and delinquency. Each instrument, including documents directly guiding crime prevention, should be implemented in relation to various other documents. Herein, focusing on the implementation of children's rights in the area of preventing children violating the law, the basic framework is indicated in the *Riyadh Guidelines* as introduced in Chapter 2. In addition, with respect to the prevention of juvenile delinquency as part of crime prevention in society, two sets of guidelines on crime prevention, the *UN Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention of 1995* (or *UN Guidelines 1995*) and the *UN Guidelines 2002*, are sometimes

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<sup>420</sup> UNODC, *Handbook on the Crime Prevention Guidelines*, above n 387, 15.

<sup>421</sup> *UN Guidelines 2002* [3].

<sup>422</sup> Harvey, Grimshaw and Pease, above n 401, 85.

referenced. These instruments were adopted by the UN Economic and Social Council in 1995 and 2002 respectively, reflecting the evolution of contemporary knowledge and experience of crime prevention from many countries and regions.<sup>423</sup>

#### 4.2.1 Fundamental Principles and General Prevention

Both the *UN Guidelines 2002* and the *Riyadh Guidelines* describe a number of essential requirements for the prevention of crime and the prevention of juvenile delinquency in the section on basic or fundamental principles. With the purpose of reviewing international standards in the prevention of children violating the law, and then evaluating their practical implementation, those principles can be summarised as follows.

##### 4.2.1.1 Juvenile Delinquency Prevention: An Essential Part of Crime Prevention

‘The prevention of juvenile delinquency is an essential part of crime prevention in society’ is the first statement of the *Riyadh Guidelines*. This principle embodies two messages: that juvenile delinquency prevention needs to be considered in relation to the common context of crime prevention; and that programs on preventing crime should target juvenile delinquency wherever appropriate.

This principle comes from awareness that crime and victimisation are driven by many causal factors and circumstances. Risk factors include common environments or opportunities facilitating offences by both adults and juveniles, and factors influencing juveniles more severely because of their immaturity or vulnerability. An example illustrating this principle can be taken from the design of the integrated crime prevention action plan in the *UN Guidelines 1995*. One of the requirements for that plan is defining the nature and type of crime problems to tackle, such as theft, robbery, burglary, racially motivated attacks, drug related crimes, juvenile delinquency and illegal possession of firearms.<sup>424</sup>

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<sup>423</sup> UNODC, *Handbook on the Crime Prevention Guidelines*, above n 387, 9; UNODC and United Nations Human Settlements Programme, *Crime Prevention Assessments Tool: Criminal Justice Assessment Toolkit* (United Nations, 2009) 2.

<sup>424</sup> *UN Guidelines 1995* [3].

In short, programs on crime prevention should pay due attention to matters of juvenile delinquency and programs specialising in juvenile delinquency prevention should be placed in the context of crime prevention generally.

#### 4.2.1.2 The Best Interests of the Child

As a special and fundamental principle of children's rights, 'the best interests of the child' is expressed regularly in aspects of the *Riyadh Guidelines*. Generally, juvenile delinquency prevention requires focusing on the well-being and harmonious development of children, with respect for and promotion of their personality from early childhood. In official interventions, policies should pursue primarily the overall interest of the young person and be guided by fairness and equity. The *Riyadh Guidelines* also advise that such policies and measures should involve the provision of opportunities, in particular educational opportunities, to meet the varying needs of children and serve as a supportive framework for safeguarding the personal development of all children, particularly those who are demonstrably endangered or at social risk or in need of special care and protection.

#### 4.2.1.3 Avoidance of Labelling

Avoiding negatively labelling children in the prevention of juvenile delinquency is an important message in the *Riyadh Guidelines*. Guideline 5(f) provides that labelling a child as 'deviant', 'delinquent' or 'pre-delinquent' often contributes to their development of a consistent pattern of undesirable behaviour. It is believed that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood. Therefore delinquency policies, measures and programs should avoid criminalising and penalising a child for behaviour that does not cause serious damage.

#### 4.2.1.4 The Participation of Children and Community

The participation of children is integral to the success of juvenile delinquency prevention. The *Riyadh Guidelines* state that by engaging in lawful, socially useful

activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes. The prevention of juvenile delinquency should pursue a child-centred orientation. More clearly, the *Guidelines* recommend that in crime prevention programs, children should have an active role and partnership within society, and should not be considered as mere objects of socialisation or control.

Community-based prevention is a popular term in crime prevention. This means that the prevention of crime is based on the community. Recently, most crime prevention plans mention community involvement and co-operation or partnerships. The *Riyadh Guidelines* state that:

Community-based services and programs should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.<sup>425</sup>

The *UN Guidelines 2002* reaffirm the important role of communities as well as cooperation and partnerships in crime prevention.

Governments bear the primary responsibility. However, the active participation of communities and other segments of civil society is an essential part of effective crime prevention. Communities, in particular, should play an important part in identifying crime prevention priorities, in implementation and evaluation, and in helping to identify sustainable resource base.<sup>426</sup>

In this regard, the CRC Committee also emphasises the necessity of children's and communities' participation in programs for the prevention of juvenile delinquency.

States parties should fully promote and support the involvement of children, in accordance with article 12 of *CRC*, and parents, community leaders and other key actors..., in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.<sup>427</sup>

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<sup>425</sup> *Riyadh Guidelines* [6].

<sup>426</sup> *UN Guidelines 2002* [16].

<sup>427</sup> *GC 10 on Juvenile Justice* [20].

#### 4.2.1.5 General Prevention

As indicated in guideline 9 of the *Riyadh Guidelines*, comprehensive prevention plans should be instituted at every level of government. Such plans should clarify important components, including:

- a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
- b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
- c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;
- d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- e) Methods for effectively reducing the opportunity to commit delinquent acts;
- f) Community involvement through a wide range of services and programmes;
- g) Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private sector representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerned action to prevent juvenile delinquency and youth crime;
- h) Youth participation in delinquency prevention policies and processes including recourse to community resources, youth self-help, and victim compensation and assistance programmes;
- i) Specialized personnel at all levels.

These are the general requirements for the prevention of juvenile delinquency. This can be applied in most countries with different circumstances of economy, culture and society. In other words, it provides a framework for assessing the level of improvement in juvenile delinquency prevention among countries.

#### 4.2.2 Legislation, Policies and Socialisation Processes

As a reliable instrument for juvenile delinquency prevention, after showing principles and general prevention, the *Riyadh Guidelines* comprehensively present socialisation processes, social policies, legislation, research and co-ordination. They emphasise that preventive policies should facilitate children's socialisation and integration through families, communities, peer groups, schools, vocational training, and voluntary organisations. Therein the roles and obligations of relevant subjects including individuals, families, schools, communities, media and governments, and the necessary processes and activities are all mentioned and described. The family is the central unit responsible for the primary socialisation of children. Education systems provide academic and vocational training activities, encouragement of sociocultural values and special assistance where necessary. Community-based services respond to the special needs, problems, interests and concerns of children. The mass media provide children with access to information and material from various sources. These *Guidelines* also indicate that families, schools, communities and media can not afford to conduct their responsibilities without governmental support. It is clearly stated that:

- (a) Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments; take measures to promote family cohesion and harmony, and to discourage the separation of children from their parents; and provide measures ensuring the right of the child to proper socialisation;
- (b) Governments are under an obligation to make public education accessible to all children;
- (c) Governments should give financial and other support to voluntary organisations providing services for children;
- (d) Governments should begin or continue to explore, develop and implement policies, measures and strategies within or outside the criminal justice system to prevent domestic violence against and affecting children and to ensure fair treatment of these victims of domestic violence;

- (e) Government agencies should take special responsibility and provide necessary services for homeless or street children; give high priority to plans and programs for children, and provide sufficient resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing, the prevention and treatment of drug and alcohol abuse, and other relevant services; and provide children with the opportunity of continuing in full-time education;
- (f) Governments should enact and enforce specific laws and procedures to promote and protect children's rights, prevent child victimisation, abuse, and exploitation; and protect children from drug abuse and drug traffickers;
- (g) Law enforcement and other relevant personnel should be trained to respond to the special needs of children, and should be familiar with and use, to the maximum extent possible, programs and referral possibilities for the diversion of children from the justice system.

In short, the prevention of crime in general and juvenile delinquency in particular requires the efforts of many individuals and groups in society with the leadership of the government. As confirmed in the *UN Guidelines 2002*, all levels of government should play a leadership role in developing effective and humane crime prevention strategies and in creating and maintaining institutional frameworks for their implementation and review.<sup>428</sup> Supplementing the relevant instruments, the *Riyadh Guidelines* provide a framework for planning juvenile crime prevention. The above-mentioned principles, measures and processes are considered as international standards of juvenile delinquency prevention. They present a basis for considering the legal system and practice of preventing juvenile delinquency in each country.

### 4.3 The Prevention of Juvenile Delinquency in Vietnam

#### 4.3.1 Overview of Crime Prevention in Vietnam

In the Vietnamese literature, research concerning crime prevention and juvenile delinquency prevention is quite limited. Almost no debate or publication presents the

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<sup>428</sup> *UN Guidelines 2002* [7].



general outline, history, approach and classification of preventing crime and juvenile delinquency in Vietnam. The studies concerning either crime prevention or the prevention of juvenile delinquency often include a simple comparison between ‘crime prevention’ and ‘combatting crime’, the analysis of relevant regulations of criminal laws, statistics on dealing with crime, and recommendations.<sup>429</sup> None of them has analysed Vietnam’s regulations and practice in relation to international legal standards for preventing crime and juvenile delinquency.

Surveying legal documents, it is recognised that before the 1990s the main instruments concerning crime were about solving crimes and dealing with criminals when violations of the law had already occurred. Crime prevention seldom appeared as a main item on the national agenda. It was usually mentioned when particular matters related to criminal laws were discussed. In this context, the criminal justice system was mainly seen as responsible for crime prevention and combatting crime through carrying out their functions, as is common in the international history of crime prevention.

The term meaning ‘prevention of crime’ (*phong ngua toi pham*) has often been used together with term ‘combat crime’ (*chong toi pham*) in legal normative documents which regulate crimes and penalties or in documents on the organisation and function of criminal procedural bodies.<sup>430</sup> These documents embrace the *Penal Code* of 1985 and 1999, the *Criminal Procedure Code* of 1989 and 2003, the *Law on*

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<sup>429</sup> See Xuan Thuy Nguyen, *Phong Ngua va Dau Tranh voi Toi Pham cua Nguoi Chua Thanh Nien trong Dieu Kien ngay nay o Viet Nam* [The Prevention and Combatting of Juvenile Delinquency in the Current Situation in Vietnam] (PhD Thesis, Institution of State and Law, 1997); Xuan Yem Nguyen, *Phong Ngua Thanh Thieu Nien Pham Toi: Trach Nhiem cua Gia Dinh, Nha Truong va Xa Hoi* [Preventing Youth Crime: The Responsibility of Families, Schools and Society] (Cong An Nhan Dan, 2004); Ngo Lan Quach and Hoai Nam Le, *Tre Em Lang Thang Pham Toi o Viet Nam va Cac Giai Phap Phong Ngua cua Luc Luong Canh Sat Nhan Dan* [Street Children in Vietnam and Preventive Measures of the Police] (Cong An Nhan Dan, 2009); Nguyen Ngoc Hoa, ‘Phong Ngua Toi Pham’ [The Prevention of Crime] in Thi Son Le (ed), *Giao Trinh Toi Pham Hoc* [Textbook on Criminology] (Cong An Nhan Dan, 2012) 189 .

<sup>430</sup> In Vietnamese documents, the term ‘*phong chong toi pham*’ or ‘*phong, chong toi pham*’ is also often utilised to signify both ‘prevention of crime’ and ‘combatting crime’. This term is often translated as ‘crime prevention and combat’ or ‘preventing and combatting crime’ in English.

*the Organisation of the People's Courts* of 1981<sup>431</sup> and the *Law on the Organisation of the People's Procuracies* of 1981.<sup>432</sup> Such documents contain the common idea that adequately addressing particular criminal cases significantly contributes to effective crime prevention.

The first legal normative document showing a clear direction in crime prevention was *Directive 135-CT* of 1998 on Intensifying the Protection of Public Order and Safety in the New Situation.<sup>433</sup> Though a short document, focusing on a narrow group of violent crimes and crimes of infringing upon public order and ownership rights, this directive contained strategic directions and practical measures for crime prevention:

- (a) Mobilising the masses, all people are to participate in the prevention and combatting of crime and social evils, encouraging the movement for self-management among communities, especially at the grassroots level;
- (b) Strengthening the management, monitoring and inspection, and investing in facilities for protection within organisations...;
- (c) Focusing on dealing with social evils: homelessness, alcohol or drug addiction, prostitution, and gambling.

The second instrument was *Decision 240-HDBT* of 1990 on combatting corruption.<sup>434</sup> Detailed targets include combatting the abuse of authorities who embezzle state assets through joint ventures, associations or enterprise reform; the offer and receipt of bribes; the addition of standards in the areas of housing, vehicles,

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<sup>431</sup> *Luat To Chuc Toa An Nhan Dan nam 1981* [Law on the Organisation of the People's Courts of 1981] art 1.

<sup>432</sup> *Luat To Chuc Vien Kiem Sat Nhan Dan nam 1981* [Law on the Organisation of the People's Procuracies of 1981] art 4.

<sup>433</sup> *Chi Thi 135-CT ngay 14/05/1989 cua Chu Tich Hoi Dong Bo Truong ve Tang Cuong Cong Tac Bao Ve Trat Tu, An Toan Xa Hoi trong Tinh Hinh Moi* [Directive 135-CT dated 14 May 1989 issued by the President of Cabinet Council on Intensifying the Protection of Public Safety and Order in the New Situation].

<sup>434</sup> *Quyet Dinh 240-HDBT ngay 26/06/1990 cua Chu Tich Hoi Dong Bo Truong ve Dau Tranh Chong Tham Nhung* [Decision 240-HDBT dated 26 June 1990, issued by the President of Cabinet Council on Fighting Corruption].

public funds and banquets. This decision required relevant state bodies to strictly implement the fight against corruption,<sup>435</sup> but no specific method was stated.

Two other documents that could be considered when researching crime prevention in Vietnam are: *Resolution 5-CP* of 1993 issued by the Government on the Prevention and Suppression of Prostitution;<sup>436</sup> and *Resolution 6-CP* of 1993 issued by the Government on Strengthening the Work on the Direction for Drug Prevention, Combat and Control.<sup>437</sup> These documents stated that prostitution, addiction and drug trafficking were social evils to be prevented and suppressed. They were the legal basis for related programs on the prevention of illegal activities related to prostitution and drugs before the laws and ordinances in these fields were introduced.

The situation of crime prevention significantly changed when Vietnam's economy reached a certain stage of development after introducing *Doi Moi*, the innovative economic policy, in 1986. From the late 1990s, the Government realised that crime problems were increasing, affecting socio-economic development negatively.<sup>438</sup> Traditional methods were no longer sufficient for social management and crime control. It was realised that crime prevention could be intensified by combined and collective efforts of the whole political system and society. In political and legislative agendas, more attention has gradually been paid to issues of crime prevention and proactive prevention. The number of policies, laws and programs concerning the

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<sup>435</sup> Continuing the *Directive 240-HDBT 1990*, several other legal documents on fighting corruption in more specific areas or locales were promulgated and the Committee on Anti-corruption and Anti-smuggling was established under the Decision 35/TTg of the Prime Minister. See *Quyết Định 35/QĐ-TTg ngày 19/01/1996 của Thủ Tướng Chính Phủ về Thành Lập Ban Công Tác Chống Tham Nhũng, Chống Buôn Lậu* [Decision 35/QĐ-TTg dated 19 January 1996, issued by the Prime Minister on the Establishment of the Anti-Corruption and Anti-Smuggling Board].

<sup>436</sup> *Nghi Quyết 5-CP ngày 29/01/1993 của Chính Phủ về Ngăn Chặn và Chống Tệ Nạn Mại Dâm* [Resolution 5-CP dated 29 January 1993, issued by the Government on the Prevention and Suppression of Prostitution] (hereafter *Resolution 5-CP* of 1993).

<sup>437</sup> *Nghi Quyết 6-CP ngày 29/01/1993 của Chính Phủ về Tăng Cường Chỉ Đạo Công Tác Phòng, Chống và Kiểm Soát Ma Túy* [Resolution 6-CP dated 29 January 1993, issued by the Government on Strengthening the Work on Direction for the Prevention, Combat and Control of Drug] (hereafter *Resolution 6-CP* of 1993).

<sup>438</sup> The development of the market economy is also often said to be one of the main causes of the increase in crime in Vietnam, see *Nghi Quyết 09/1998/NQ-CP của Chính Phủ về Tăng Cường Công Tác Phòng, Chống Tội Phạm trong Tình Hình Mới* [Resolution 09/1998/NQ-CP issued by the Government on Intensifying the Work on Preventing and Combatting Crime in the New Situation] (hereafter *Resolution 09/1998/NQ-CP*).

prevention and combatting of crime is increasing. So far, this issue has been a topical question, included in the policies of socio-economic development, and a part of annual government programs.

#### 4.3.2 Regulations on the Prevention of Crime and Juvenile Delinquency

##### 4.3.2.1 Regulations on Crime Prevention

Currently, albeit having several laws to prevent crime in some particular areas, Vietnam's legal system has no law to prevent crime in general or to prevent juvenile delinquency. The legal and technical basis of programs for preventing any kind of crime is *Resolution 09/1998/NQ-CP on Intensifying the Work on Preventing and Combatting Crime in the New Situation*.<sup>439</sup> This *Resolution* sets out guidelines and measures to prevent and combat crime, and assigns overall responsibilities to relevant agencies. The main measures for crime prevention are:

- (a) Providing and activating a mechanism to promote the synergy of the whole political system, especially the coordination between law-enforcement agencies, increasing the active role and accountability of communities and all the people, particularly state agencies, in the prevention and combatting of crime and social evils;
- (b) Developing action plans with a linkage between socio-economic development and crime prevention and combat;
- (c) Building the integrity and efficiency of police and other law enforcement agencies;
- (d) Improving the legal system, disseminating legal information and educating in law to enhance the legal awareness of the public; enhancing the quality of re-education and rehabilitation of criminals with various methods;
- (e) Enhancing international cooperation in crime prevention;
- (f) Placing crime prevention and combat in the national program with specific contents and projects, at first focusing on crime and social evils concerning corruption, prostitution, smuggling, organised crime, child abuse, trafficking

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<sup>439</sup> Ibid.

in women and children, and the enticement of young persons to use and become addicted to drugs.

This Resolution was quickly elucidated by a national program for crime prevention and combat, called Program 138.<sup>440</sup> Since then, the program has continued with several changes in the targets and specific measures over time periods.

Also based on *Resolution 09/1998/Q-CP*, an action program for crime prevention and combatting trafficking in women and children (called Program 130) was introduced in 2004.<sup>441</sup> Now although the legal basis of this program was changed with the adoption of the *Law against Human Trafficking*, the preventive measures are almost the same.

In the current legal system, Vietnam has a number of legal instruments regarding the prevention and combatting of law violations in particular areas. Notable instruments include the following:

- *Law on Preventing and Combatting Drugs* of 2000, amended in 2008 (*Law on Drug Control*);<sup>442</sup>
- *Ordinance on Preventing and Combatting Prostitution* of 2003 (*Ordinance against Prostitution*);<sup>443</sup>
- *Law on Preventing and Combatting Corruption* of 2005, amended in 2007 and 2012 (*Law against Corruption*);<sup>444</sup>

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<sup>440</sup> *Quyết Định 138/1998/QĐ-TTg của Thủ Tướng Chính Phủ về việc Phe Duyệt Chương Trình Hành Động Quốc Gia Phòng Chống Tội Phạm* [Decision 138/1998/QĐ-TTg issued by the Prime Minister on the Approval of the National Program for Preventing and Combatting Crime] (hereafter *Decision 138/1998/QĐ-TTg*).

<sup>441</sup> *Quyết Định 130/2004/QĐ-TTg của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Hành Động Quốc Gia Phòng Chống Tội Phạm Buôn Bán Phụ Nữ và Trẻ Em giai đoạn 2004–2010* [Decision 130/2004/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for Crime Prevention and Combat against the Trafficking of Women and Children for the period 2004–2010] (hereafter *Decision 130/2004/QĐ-TTg*).

<sup>442</sup> *Luật 23/2000/QH10 về Phòng, Chống Ma Túy, được Sửa đổi theo Luật 16/2008/QH12* [Law 23/2000/QH10 on Drug Control, Amended by the Law 16/2008/QH12].

<sup>443</sup> *Pháp Lệnh 10/2003/PL-UBTVQH11 về Phòng, Chống Mại Dâm* [Ordinance 10/2003/PL-UBTVQH11 on Preventing and Combatting Prostitution] (hereafter *Ordinance against Prostitution*).

<sup>444</sup> *Luật 55/2005/QH11 về Phòng, Chống Tham Nhũng, được sửa đổi theo Luật 01/2007/QH12 và Luật 27/2012/QH13* [Law 55/2005/QH10 on Preventing and Combatting Corruption, Amended by Laws 01/2007/QH12 and 27/2012/QH13 (hereafter *Law against Corruption*).

- *Law on Preventing and Combatting Domestic Violence* of 2007 (*Law against Domestic Violence*);<sup>445</sup>
- *Law on Preventing and Combatting Human Trafficking* of 2009 (*Law against Human Trafficking*);
- *Decree on Preventing and Combatting Crimes and other Violations of the Environment* of 2010;<sup>446</sup>
- *Law on Preventing and Combatting Money Laundering* of 2012 (*Law against Money Laundering*).<sup>447</sup>

As indicated in their titles, the above instruments govern both the prevention of and fight against illegal activities in corresponding areas. Each instrument usually regulates prohibited acts, actions to be done to prevent violations of the law, and the responsibilities of relevant subjects. Major illegalities listed in these laws are crimes as described in the *PC*. Some of them, however, are not crimes, but are dealt with pursuant to the *Law on the Handling of Administrative Violations*. As with other aspects of Vietnam's legal system, the instruments above are often elucidated and specified by a number of legal normative documents.

The Party has also issued several directives and resolutions on preventing and combatting violations of the law. These include *Directives 06/CT/TW* of 1996 and *21/CT-TW* of 2008 on strengthening the leadership and guidance for drug control and preventing and combatting illegal drug-related activities;<sup>448</sup> *Directive 48-CT/TW* of

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<sup>445</sup> *Luật 02/2007/QH12 về Phòng, Chống Bao Lũc Gia Đình* [Law 66/2011/QH12 on Preventing and Combatting Domestic Violence] (hereafter *Law against Domestic Violence*).

<sup>446</sup> *Nghi Định 72/2010/NĐ-CP Quy Định về Phòng Ngừa, Đấu Tranh Chống Tội Phạm và Vi Phạm Pháp Luật khác về Môi Trường* [Decree 72/2010/NĐ-CP on Preventing and Combatting Crime and other Violations of Environment].

<sup>447</sup> *Luật 07/2012/QH13 về Phòng, Chống Rửa Tiền* [Law 07/2012/QH13 on Preventing and Combatting Money Laundering] (hereafter *Law against Money Laundering*).

<sup>448</sup> *Chi Thi 06/CT/TW ngày 30/11/1996 của Ban Chấp Hành Trung Ương Đảng về Tang Cuong Lanh Dao, Chi Dao Cong Tac Phong, Chong va Kiem Soat Ma Tuy* [Directive 06/CT/TW dated 30 November 1996, issued by the Party Central Committee on Strengthening the Leadership and Direction of Prevention, Combat and Control of Drugs]; *Chi Thi 21/CT-TW ngày 26/03/2008 của Ban Chấp Hành Trung Ương Đảng về Tiếp Tục Tang Cuong Lanh Dao, Chi Dao Cong Tac Phong, Chong va Kiem Soat Ma Tuy* [Directive 21/CT-TW dated 26 March 2008, issued by the Party Central Committee on the Continuance of Strengthening the Leadership and Direction for the Prevention, Combat and Control of Drugs].

2010 on strengthening the party leadership in crime prevention and combat.<sup>449</sup> These documents present general directions and requirements for state agencies as well as party organisations and other members of political systems on preventing and combatting crimes. Their ideologies have been reaffirmed or specified by the State's legal normative documents in corresponding areas.

Among these legal normative documents and policies, no one document specifies the prevention of juvenile delinquency. Overall, Vietnam's regulations on crime prevention are applied to prevent any criminal actions whether by adults or juveniles.

#### 4.3.2.2 Vietnam's Regulations on Juvenile Delinquency Prevention in Relation to International Standards

As noted above, Vietnam has neither a law on crime prevention in general nor a law on the prevention of juvenile delinquency in particular. Instruments regarding crime prevention have no regulations directly addressing the prevention of juvenile delinquency. Therefore there are no fundamental principles, general prevention or comprehensive prevention plans as recognised in the international standards of juvenile delinquency prevention.

In broader terms, however, including child protection and children's rights, Vietnam's law has several regulations that are similar to the international guidelines for preventing juvenile delinquency. Examples include the following:

The *Law on Child Protection* shows the importance of preventing and stopping children from falling into homelessness, street life, drug addiction, abuse, hard work, violations of the law and other disadvantaged circumstances. It includes provisions for supporting disadvantaged children in the restoration of physical and mental health, and moral education; and in regard to detecting, preventing and promptly handling situations where children fall into disadvantaged circumstances;<sup>450</sup>

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<sup>449</sup> *Chi Thi 48-CT/TW ngày 22/10/2010 của Bộ Chính Trị và Tổng Cục Cảnh Sát của Đảng đối với Công Tác Phòng, Chống Tội Phạm trong Tình Hình Mới* [Directive 48-CT/TW dated 22 October 2010, issued by the Politburo on Strengthening the Party Leadership in the Prevention and Combatting of Crime in the New Situation].

<sup>450</sup> *Law on Child Protection* arts 41/1, 54–5, 57–8.

The law prohibits seducing children or forcing children to live on the street or commit illegal acts, such as drug trafficking, gambling, smoking, drug and alcohol use, or prostitution;<sup>451</sup>

The law forbids the use of child labour in discos, karaoke bars, massage facilities, pubs and other places containing the risk of harming children's development; or the employment of children without parental consent;<sup>452</sup>

The law prohibits the application of measures that offend, lower honour and dignity, torture or other degrading treatment of children violating the law;<sup>453</sup>

Most legal normative documents and programs concerning the prevention of crime and social evils attach importance to disseminating and teaching relevant laws and policies in educational institutions.<sup>454</sup> The Ministry of Education also requires educational institutions and students to sign up for participating in crime prevention of crime, drugs, prostitution and other social evils as a measure to ensure most children and young people know and take action.<sup>455</sup>

The above regulations have been specified and integrated into action programs in the area of child protection, prevention and combatting of crime and social evils to some degree. However, the lack of comprehensive guidelines and measures for the prevention of juvenile delinquency in the legal system results in a major limitation on the effectiveness of the programs in practice.

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<sup>451</sup> Ibid art 7/2–5; *Nghi Dinh 71/2011/ND-CP Quy Dinh Chi Tiet va Huong Dan Thi Hanh mot so Dieu cua Lat Bao Ve, Cham Soc va Giao Giuc Tre Em* [Decree 71/2011/ND-CP on Specifying and Guiding the Implementation of Several Articles of the Law on Child Protection, Care and Education] (hereafter *Decree 71/2011/ND-CP*) arts 4–8.

<sup>452</sup> *Law on Child Protection* art 7/7; *Decree 71/2011/ND-CP* art 9.

<sup>453</sup> *Decree 71/2011/ND-CP* art 11.

<sup>454</sup> See *Resolution 09/1998/NQ-CP* pt II/7; *Law on Drug Control* arts 10, 42; *Ordinance against Prostitution* arts 12, 34; *Law against Human Trafficking* arts 14, 49.

<sup>455</sup> *Quyét Dinh 46/2007/QĐ-BGGDT của Bộ Trưởng Bộ Giáo Dục và Đào Tạo: Quy Định về Công Tác Bảo Vệ An Ninh Chính Trị, Trật Tự An Toàn Xã Hội trong Các Cơ Sở Giáo Dục thuộc Hệ Thống Giáo Dục Quốc Dân* [Decision 46/2007/QĐ-BGGDT issued by the Minister of Education and Training on the Tasks of Ensuring Security and Order in Educational Establishments].



### 4.3.3 Programs for Crime Prevention

Along with promulgating legal normative documents on prohibiting illegal activities, Vietnam has conducted programs for preventing and combatting crime and violations of the law in several areas. Corresponding to such programs, standing committees of leadership were established. The first programs started in the 1990s. Since then, there have been significant changes in the content of programs, and the functions and organisation of committees. Some of them have been merged or dissolved, including the Action Program for Crime Prevention and Combatting the Trafficking of Women and Children, and Program for Preventing and Resolving Issues of Street Children, Child Sexual Abuse and Child Labour. At present, there are two programs for preventing and combatting crime, and several other programs with the main purpose of crime prevention in areas of drug control, prostitution, corruption, and money laundering. The leadership of these programs consists of three key committees having authority nationwide, and corresponding committees at provincial level. Three key committees consist of the National Committee for AIDS, Drugs and Prostitution Prevention and Control;<sup>456</sup> the Central Steering Commission on Preventing and Combatting Corruption;<sup>457</sup> and the Steering Committee on Preventing and Combatting Crime of the Government, which is established under *Decision*

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<sup>456</sup> *Quyết Định 60/2000/QĐ-TTg của Thủ Tướng Chính Phủ về việc Thành Lập Ủy Ban Quốc Gia Phòng, Chống AIDS, Trẻ Nạn Mại Dâm* [Decision 60/2000/QĐ-TTg issued by the Prime Minister on the Establishment of the National Committee for AIDS, Drugs and Prostitution Prevention and Control] art 1.

<sup>457</sup> In 2006, the Central Steering Commission on Preventing and Combatting Corruption was established under the *Law against Corruption* (art 73) and *Resolution 1039/2006/NQ-UBTVQH11 on the Organisational Structure, Duties, Powers and Operational Regulation of the Central Steering Commission on Preventing and Combatting Corruption*. See *Nghi Quyết 1039/2006/NQ-UBTVQH11 của Ủy Ban Thường Vụ Quốc Hội về Tổ Chức, Nhiệm Vụ, Quyên Hạn và Quy Chế Hoạt Động của Ban Chỉ Đạo Trung Ương về Phòng Chống Tham Nhũng* [Resolution 1039/2006/NQ-UBTVQH11 issued by the Standing Committee of the National Assembly on the Organisational Structure, Duties, Powers and Operational Regulation of the Central Steering Commission on Preventing and Combatting Corruption]. The Head of this agency was the Prime Minister. However when the *Law against Corruption* was amended the second time in late 2012, it removed Article 73, resulting in the abolition of the Central Steering Commission on Preventing and Combatting Corruption. In early 2013, a new Commission was established under the *Decision 162-QĐ/TW 2013 of the Politburo*, the Head of this Commission is the General Secretary of the Party. See *Quyết Định 162-QĐ/TW ngày 01/02/2013 về việc Thành Lập Ban Chỉ Đạo Trung Ương về Phòng, Chống Tham Nhũng* [Decision 162-QĐ/TW dated 1 February 2013, issued by Politburo on the Establishment of the Central Steering Commission on Preventing and Combatting Corruption].

187/QD-TTg of 2013<sup>458</sup> as a merger between two committees, and established the Steering Committee of the National Target Program for Preventing and Combatting Crime, and the Steering Committee of the Action Program for Preventing and Combatting Trafficking in Women and Children.

Although the law and programs for crime prevention make no distinction between adult and juvenile delinquency, juveniles are generally not potential subjects in crimes of money laundering and corruption. They can be involved in crimes in the fields of violence, property, human trafficking, prostitution and drugs. The following sections introduce programs which juveniles could be subjected to.

#### 4.3.3.1 National Programs for Preventing and Combatting Crime — Program 138

Following the Government's *Resolution 09/1998/ND-CP* about the intensification of the prevention and combatting of crime in the new situation as mentioned, the National Program for Preventing and Combatting Crime was introduced, called Program 138.<sup>459</sup> Besides reaffirming the main objectives and measures of preventing and combatting crime in the *Resolution*, Program 138 first planned four major component projects.

Project I aimed to mobilise the whole population to participate in crime prevention, detection and denunciation; and rehabilitate criminals in families and residential communities. Detailed plans included: building safe hamlets, streets and offices; settling conflicts and paying attention to the prevention of murders, and crimes committed by juveniles; enhancing social management relating to residents and households; encouraging criminals to report themselves to authorities and to confess; and helping law offenders participate in community activities so as to avoid repeat

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<sup>458</sup> *Quyết Định 187/QĐ-TTg ngày 18/01/2013 của Thủ Tướng Chính Phủ về việc Sáp Nhập Ban Chỉ Đạo Chương Trình Hành Động Phòng, Chống Tội Phạm Buôn Bán Phụ Nữ, Trẻ Em và Ban Chỉ Đạo Thực Hiện Chương Trình Mục Tiêu Quốc Gia Phòng, Chống Tội Phạm thành Ban Chỉ Đạo Phòng, Chống Tội Phạm của Chính Phủ* [Decision 187/QĐ-TTg dated 18 January 2013, issued by the Prime Minister on the Merger between the Steering Committee of the Action Program for Preventing and Combatting Crime and the Fight against Trafficking in Women and Children, and the Steering Committee of the National Target Program for Preventing and Combatting Crime into the Government's Steering Committee on Preventing and Combatting Crime].

<sup>459</sup> *Decision 138/1998/QĐ-TTg*.

offences. The Vietnam Fatherland Front was requested to assume primary responsibility for this project. The Ministry of Public Security, the Vietnam Women's Union, the Youth Union, the Vietnam War Veterans' Association and other ministries and organisation were also to participate.

Project II was to improve the law on preventing and combatting crime, improving education in and the dissemination of information about the law, and encouraging civic responsibilities in regard to the protection of public security and order. Detailed plans consisted of revising several related laws; and introducing laws concerning public security and crime prevention into school curricula at all levels. The Ministry of Justice was to assume primary responsibility for this project; other ministries and organisations would also participate.

Project III aimed at preventing and combatting organised crime, serious crimes and transnational crime. Detailed plans focused on preventing the formation of and combatting gangs; deterring professional criminals; preventing murder, rape, robbery, crimes against officials on duty as well as smuggling, money laundering, terrorism and piracy. The Ministry of Public Security was to assume primary responsibility for this project; other ministries and organisations would also participate.

Project IV was proposed to prevent and combat crimes against children, and crimes committed by juveniles. It included detailed plans on preventing and combatting child murder, rape and prostitution, preventing drug use by children; and preventing and combatting juveniles committing crimes at school or in the wider society.

After five years of implementation, Program 138 was reviewed. The program was reported to have achieved significant results, contributing to socio-economic development. However, the criminal situation was still complicated in different ways, including by the emergence of hi-tech crimes.<sup>460</sup> Confirming the necessity of

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<sup>460</sup> *Chi Thi 37/2004/QĐ-TTg của Thủ Tướng Chính Phủ về Tiếp Tục Thực Hiện Nghị Quyết số 09/NQ-CP và Chương Trình Quốc Gia Phòng, Chống Tội Phạm của Chính Phủ đến năm 2010* [Directive 37/2004/QĐ-TTg issued by the Prime Minister on the Continuance of Implementing Resolution 09/NQ-CP and the National Program on Preventing and Combatting Crime of the Government until 2010].

continuing the implementation of *Resolution 09/1998/NQ-CP*, and introducing relevant policies set forth in *Resolution 08-NQ/TW 2002*, in 2004 the Prime Minister approved the continuance of Program 138 as well as its four component projects, and the program set up some more tasks, such as preparing new projects or plans to increase international cooperation and increase the effectiveness of measures to prevent and combat crime.<sup>461</sup>

Focusing on Project IV, it can be recognised that over its ten-year implementation, the main preventive measures were popularising and educating on crime prevention and strengthening administrative control over gangs, people at risk and places with high incidence of crimes. In its plan, the hearing of juvenile cases in public, using show trials, is also used as a measure of juvenile delinquency prevention. In the reports on the implementation of the project,<sup>462</sup> models of Managing and Educating Street Children and Delinquents at Residential Communities or community-based models of prevention of juvenile delinquency, or assistance for juvenile delinquents are mentioned, but no detailed designs are indicated.

Since 2012, ‘preventing and combatting crime’ is one of 16 national programs for the period 2012–2015.<sup>463</sup> In this period, the program comprises six component projects: investing in more professional facilities for investigating police; enhancing the ability to prevent and combat crimes against environmental protection law; preventing and combatting hi-tech crimes; building a national centre for crime information; enhancing vocational training for prisoners; and enhancing education,

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<sup>461</sup> Ibid pt II/1, 6, 7.

<sup>462</sup> Tong Cuc Canh Sat Phong Chong Toi Pham, ‘Tai Lieu Tong Ket 5 Nam Thuc Hien De An IV, Dau Tranh Phong, Chong Toi Pham Xam Hai Tre Em va Toi Pham Trong Lua Tuoi Vi Thanh Nien tu nam 2006 den nam 2010 va Trien Khai Cac Ke Hoach Chuyen De Bao Ve Tre Em nam 2012’ [Documents on the Summary of Five-Year Performance of Project IV on Combatting and Preventing Crimes against Children and Juvenile Delinquency between 2006 and 2010, and the Implementation of Thematic Plans to Protect Children in 2012] (311/C45-BCNDA IV, Ministry of Public Security, 2012) 19–22; Cuc Canh Sat Hinh Su, ‘Bao Cao Ket Qua Thuc Hien Cong Tac Dau Tranh, Chong Toi Pham Xam Hai Tre Em va Toi Pham Trong Lua Tuoi Chua Thanh Nien nam 2013’ [Report on the Results of Combatting and Preventing Crimes against Children and Juvenile Delinquency in 2013] (Report 87/C45-P6, Ministry of Public Security, 2014) (hereafter Project IV’s Report 2014).

<sup>463</sup> *Nghi Quyet 13/2011/QH13 cua Quoc Hoi ve Chuong Trinh Muc Tieu Quoc Gia giai doan 2011–2015* [Resolution 13/2011/QH13 issued by the National Assembly on National Target Programs for the period 2011–2015].

dissemination and evaluation of the implementation of programs.<sup>464</sup> Specific expected goals, responsibilities and expenditure and component plans of the program are detailed in the National Target Program for Preventing and Combatting Crime for the period 2012–2015.<sup>465</sup> No part of this program specifically mentions or focuses on preventing juvenile delinquency. This means that the prevention of juvenile delinquency is not recognised as an essential part of crime prevention in society and it has no adequate resources.

#### 4.3.3.2 Programs for Preventing and Combatting Human Trafficking—Program 130

In 2004, in the framework of preventing and combatting crime pursuant to *Resolution 09/1998/NQ-CP* mentioned above, the Action Program for Crime Prevention and Combat against the Trafficking of Women and Children was introduced, called Program 130.<sup>466</sup> As shown in its title, this program focused on preventing and fighting against a group of crimes, trafficking in women and children. At that time, Vietnamese law had not criminalised the action of trafficking in men. Four main component projects of Program 130 consisted of: disseminating and propagating the law on crime prevention and combatting trafficking in women and children; dealing with crimes of trafficking in women and children; receiving and supporting victims of crimes who return from other countries; and establishing and improving legal normative documents on crime prevention and combatting trafficking in women and children. These projects were detailed in the Prime Minister's *Decision 312/2005/QĐ-TTg*.<sup>467</sup> After the five-year implementation, a

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<sup>464</sup> *Quyết Định 2406/QĐ-TTg ngày 18/12/2011 của Thủ Tướng Chính Phủ về Ban Hành Danh Mục các Chương Trình Mục Tiêu Quốc Gia giai đoạn 2012–2015* [Decision 2406/QĐ-TTg dated 18 December 2011, issued by the Prime Minister on the List of National Target Programs for the period 2012–2015] art 1.

<sup>465</sup> *Quyết Định 1217/QĐ-TTg ngày 06/9/2012 của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Mục Tiêu Quốc Gia Phòng Chống Tội Phạm giai đoạn 2012–2015* [Decision 1217/QĐ-TTg dated 6 September 2012, issued by the Prime Minister on the Approval of the National Target Program for Preventing and Combatting Crime for the period 2012–2015].

<sup>466</sup> *Decision 130/2004/QĐ-TTg*.

<sup>467</sup> *Quyết Định 312/2005/QĐ-TTg của Thủ Tướng Chính Phủ về Phe Duyệt các Dự Án thuộc Chương Trình Hành Động Phòng, Chống Tội Phạm Buôn Bán Phụ Nữ, Trẻ Em từ năm 2005 đến năm 2010* [Decision 312/2005/QĐ-TTg issued by the Prime Minister on Approving the Projects of the Action Program for Crime Prevention and Combatting Trafficking in Women and Children for the period 2005–2010].

summary of the program results was released. The general report concluded that the program had reached targets in improving public awareness and international cooperation, but in many cases it was implemented perfunctorily, lacking coordination with socio-economic development programs.<sup>468</sup>

At present, Program 130 is carried out pursuant to *Decision 1427/QĐ-TTg* of 2011 on the Approval of the Action Program for Preventing and Combatting Human Trafficking for the period 2011–2015.<sup>469</sup> The key legal basis of Program 130 now is the *Law against Human Trafficking* instead of *Resolution 09/1998/NQ-CP*. One outstanding feature of the program in this period is the change in its protected subjects, recognising that the probable victims of human trafficking include not only women and children but also men. This extension updated legal changes because of the revision of the *Penal Code* and the introduction of the *Law against Human Trafficking* in 2009, as well as the real state of trafficking of men for slavery and internal organs.<sup>470</sup> The program period 2011–2015 also includes four main component projects (as was the case in the period 2004–2010).

In this program, children are usually referred to as an object of protection. In the period 2004–2009, in order to avoid the risk of human trafficking, disadvantaged children along with poor women, were deemed as special targets for assistance. However, there was a gap between plans and actual implementation as can be seen in

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<sup>468</sup> Report on Human Trafficking 2009, above n 223, pt III/1–2.

<sup>469</sup> *Quyết Định 1427/QĐ-TTg ngày 18/08/2011 của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Hành Động Phòng Chống Tội Phạm Mua Bán Người giai đoạn 2011–2015* [Decision 1427/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for Preventing and Combatting Human Trafficking for the period 2011–2015].

<sup>470</sup> According to the Steering Committee 130/CP's reports, in the period 2006–2010 at least six Vietnamese men were trafficked to China for forced labour, and 75 people sold their kidneys in China. One of the young men (20 years old) died very soon after returning to Vietnam; and in 2011, two of 77 cases of human trafficking discovered involved men. See Report on Human Trafficking 2009, above n 223, pt I/1; Ban Chi Dao 130/CP, 'Tình Hình và Kết Quả Thực Hiện Chương Trình Hành Động Phòng, Chống Tội Phạm Mua Bán Người nam 2011' [The Situation and Result of Implementing the Action Program for Preventing and Combatting Human Trafficking in 2011] (06/BC-BCA-C41, Ministry of Public Security, 2012) (hereafter Report on Human Trafficking 2012) pt II/3; Ban Chi Dao 130/CP, 'Tai Lieu Tap Huan ve Phong, Chong Toi Pham Mua Ban Nguoi' [Training Materials on Preventing and Combatting Human Trafficking Crimes] (Government of Vietnam, 2012) (hereafter Ban Chi Dao 130/CP's Training Materials 2012) pt III, ch I/I/1.

the summary report. This program has no clarification of preventing juvenile delinquency either for 2004–2009 or in the current program.

#### 4.3.3.3 Programs for the Prevention, Combat and Control of Drugs

Located in a favourable climate for opium poppy growth, having a history of opium cultivation among some ethnic groups and lying close to a major source of the illegal global drug market (the so-called ‘Golden Triangle’),<sup>471</sup> Vietnam has long faced problems of opium cultivation, drug trafficking and addiction. Among topics concerning crime and social control, the prevention, combat and control of drugs have received the attention of the State and Party. A number of legal normative documents and programs focusing on drug prevention, combat and control have been issued. Drug-related crimes are often the most serious crimes with penalties including life imprisonment and the death penalty under Vietnam’s *Penal Code*.

The first milestone for drug-related crime prevention was *Resolution 6-CP* of 1993 although drug matters were called a ‘social evil’ (*te nan xa hoi*) as a common way of describing immoral activities and minor illegality.<sup>472</sup> This resolution provided six main measures: increasing the awareness of the ill effects of drugs for all people, especially youth; encouraging ethnic groups to stop cultivating poppies and providing them with adequate support; strictly controlling drugs nationwide especially in localities where poppies were grown or at borders or harbours where the drug is transported; strengthening international cooperation in drug control; eradicating organisations and groups engaged in illegal drug use; and organising drug addicts to enter rehabilitation and vocational training. This *Resolution* also indicated that drug prevention, combat and control would be put into a comprehensive national program.

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<sup>471</sup> Hoa Phuong Thi Nguyen, above n 267, 1–2.

<sup>472</sup> In Vietnam, ‘social evils’ are often understood as immoral acts and minor illegalities, including prostitution, drug use and gambling. See Chi Cuc Phong Chong Te Nan Xa Hoi Hai Phong, *Khai Niem Te Nan Xa Hoi va cac DAC Trung* [The Concept of Social Evil and its Characteristics] (23 May 2012) Hai Phong <<http://dsephaiphong.vn/>>; *Nghi Dinh 87/CP ngay 12/12/1995 cua Chinh Phu ve Tang Cuong Quan Ly cac Hoat Dong Van Hoa va Dich Vu Van Hoa, Day Manh Bai Tru mot so Te Nan Xa Hoi Nghiem Trong* [Decree 87/CP dated 12 December 1995 on Strengthening the Management of Cultural Activities and Services, Promoting the Fight against Serious Social Evils].

Following *Resolution 6-CP* of 1993, general plans, action plans and national target programs for drug prevention and control have been issued, approved and implemented consistently, including programs for the periods 1998–2000, 2001–2005 and 2007–2010.<sup>473</sup> The considerable attention to drug matters is proven by the earlier introduction of a specialised law compared with the provision of such laws in other areas of crime prevention. The *Law on Drug Control* was first introduced in 2000 and amended in 2008. Furthermore, there are task forces for the prevention, combat and control of drugs in the Police, Border Guards, Marine Police and Customs.

At present, Vietnam's program for drug control follows the national target program period 2012–2015.<sup>474</sup> This can be seen as a part of the national strategies for the prevention, combat and control of drugs in Vietnam to 2020 and orientation to 2030.<sup>475</sup> Its general goals and measures are similar to those presented in *Resolution 6-CP* of 1993. One notable solution given in this Program is to socialise the task of drug prevention and control. The Program stresses that drug prevention and control is a central mission in strategies for socio-economic development. It proposes diversifying the kinds of drug rehabilitation and treatment for drug dependence, developing vocational training and jobs for former drug users; and attaches special importance to rehabilitation in the family, community and private sectors.

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<sup>473</sup> *Quyết Định 743/TTg ngày 14/11/1995 của Thủ Tướng Chính Phủ về việc Phe Duyệt Kế Hoạch Tổng Thể Phòng, Chống và Kiểm Soát Ma Túy giai đoạn 1996–2000* [Decision 743/ TTg dated 14 November 1995, issued by the Prime Minister on the Approval of the General Plan for the Prevention, Combat and Control of Drugs for the period 1996–2000]; *Quyết Định 139/1998/QĐ-TTg của Thủ Tướng Chính Phủ Phe Duyệt Chương Trình Hành Động Phòng, Chống Ma Túy 1998–2000* [Decision 139/1998/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for the Prevention and Combat of Drugs 1998–2000]; *Quyết Định 150/2000/QĐ-TTg của Thủ Tướng Chính Phủ Phe Duyệt Chương Trình Hành Động Phòng, Chống Ma Túy giai đoạn 2001–2005* [Decision 150/2000/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for the Prevention and Combat of Drugs for the period 2001–2005].

<sup>474</sup> *Quyết Định 1203/QĐ-TTg ngày 31/08/2012 của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Mục Tiêu Quốc Gia Phòng, Chống Ma Túy giai đoạn 2012–2015* [Decision 1203/QĐ-TTg dated 31 August 2012, issued by the Prime Minister on Approval of the National Target Program for the Prevention and Combat of Drugs for the period 2012–2015].

<sup>475</sup> *Quyết Định 1001/QĐ-TTg ngày 27/06/2011 của Thủ Tướng Chính Phủ Ban Hành Chiến Lược Quốc Gia Phòng, Chống và Kiểm Soát Ma Túy ở Việt Nam đến năm 2020 và Định Hướng đến năm 2030* [Decision 1001/QĐ-TTg dated 27 June 2011, issued by the Prime Minister on Adopting the National Strategies for the Prevention, Combat and Control of Drugs in Vietnam to 2020 and Orientation to 2030].



In programs for drug prevention and control, children and young people are focused on for the prevention of drug use and addiction. Containing and reducing the number of addicted pupils and students is one of the targets of Project 6 of the current Program. Component plan 3 of this Project — Intensifying Abilities in Preventing and Combatting Drugs in Schools — plans to establish and improve youth clubs to prevent and combat drug use; and to train educational staff and others who work with pupils in the necessary skills of preventing and combatting drug use. The main measures used to influence children and young people are administrative management and legal education. Preventing juveniles from committing drug-related crimes is not mentioned in these programs although in practice juveniles are sometimes sentenced because of drug trafficking.

#### 4.3.3.4 Programs for Preventing and Combatting Prostitution

In Vietnam, prostitution is illegal, and often considered a ‘social evil’. The *Ordinance against Prostitution* regulates nine prohibited acts, such as buying sex, selling sex and harbouring prostitution.<sup>476</sup> These illegal acts are crimes in circumstances recognised in the *Penal Code*, as are sexual intercourse with juveniles, and harbouring and/or procuring prostitutes.<sup>477</sup>

*Resolution 5-CP* of 1993 is the technical and legal basis of the first program for prostitution prevention. This Resolution stated that in order to eliminate prostitution, various measures need to be utilised at the same time: education, propaganda, punishment, treatment, and employment. It also stressed educating young people about a healthy lifestyle. In 2003, the *Ordinance against Prostitution* was adopted, creating a firmer basis for preventing and combatting prostitution. Programs for preventing and combatting prostitution have started, developed and continued, including the Action Programs for Preventing and Combatting Prostitution for the periods 2001–2005; 2006–2010 and 2011–2015.<sup>478</sup>

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<sup>476</sup> *Ordinance against Prostitution* art 9.

<sup>477</sup> *PC* arts 254–6.

<sup>478</sup> *Quyết Định 151/2000/QĐ-TTg của Thủ Tướng Chính Phủ về việc Phê Duyệt Chương Trình Hành Động Phòng, Chống Tệ Nạn Mại Dâm giai đoạn 2001–2005* [Decision 151/2000/QĐ-TTg issued by

Programs for preventing and combatting prostitution usually pay significant attention to the prevention of child prostitution. The first programs aimed to eliminate child prostitution and suppress prostitution among pupils and students but failed in their implementation.<sup>479</sup> The existing program does not set a goal for eliminating child prostitution, but children are specially protected. The aims of the program consist of improving the law concerning juveniles who are forced into prostitution, and supporting juvenile prostitutes to be re-socialised into communities; and strictly addressing criminal cases relating to child prostitution.<sup>480</sup>

In this program, children are seen as potential victims rather than offenders. The prevention of juveniles committing crimes is not a focus. The main measure used to influence children is information dissemination, education and administrative control.

#### 4.3.3.5 Program for Preventing and Resolving Issues of Street Children, Child Sexual Abuse and Child Labour

Between 2004 and 2010, Vietnam conducted a Program for Preventing and Resolving Issues of Street Children, Child Sexual Abuse and Child Labour.<sup>481</sup> This program was not recognised in the framework of crime prevention in Vietnam. Its legal bases were the *Law on Child Protection, Care and Education* of 1991 and

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the Prime Minister on the Approval of the Action Program for Preventing and Combatting the Evil of Prostitution for the period 2001–2005]; *Quyết Định 52/2006/QĐ-TTg của Thủ Tướng Chính Phủ Phe Duyệt Chương Trình Phối Hợp Liên Ngành Chống Mại Dâm giai đoạn 2006–2010* [Decision 52/2006/QĐ-TTg issued by the Prime Minister on the Approval of the Intersectional Collaboration Program for Preventing and Combatting Prostitution for the period 2006–2010]; *Quyết Định 679/QĐ-TTg ngày 10/05/2011 của Thủ Tướng Chính Phủ về việc Phe Duyệt Chương Trình Hành Động Phòng, Chống Mại Dâm giai đoạn 2011–2015* [Decision 679/QĐ-TTg dated 10 May 2011, issued by the Prime Minister on the Approval of the Action Program for Preventing and Combatting Prostitution for the period 2011–2015].

<sup>479</sup> *Decision 151/2000/QĐ-TTg*, Program: pt II; *Decision 52/2006/QĐ-TTg*, Program: pt I/2; *Decision 679/QĐ-TTg 2011*, Program: pt II.

<sup>480</sup> *Decision 679/QĐ-TTg 2011*, Program: pt III/1, 3.

<sup>481</sup> *Quyết Định 19/2004/QĐ-TTg của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Ngăn Ngừa và Giải Quyết Tình Trạng Trẻ Em Lang Thang, Trẻ Em bị Xâm Hài Tinh Dục và Trẻ Em phải Lao Động Nặng Nhọc trong Điều Kiện Độc Hại, Nguy Hiểm giai đoạn 2004–2010* [Decision 19/2004/QĐ-TTg issued by the Prime Minister on the Approval of the Program for Preventing and Resolving Issues of Street Children, Child Sexual Abuse, and Children Working in Hard, Hazardous and Dangerous Situations for the period 2004–2010].

*Decision 23/2001/QĐ-TTg* on the National Action Program for Children for the period 2001–2010.<sup>482</sup> Nevertheless, the measures and targets of this program somewhat approached international standards in the prevention of juvenile delinquency. The targets were reducing numbers of street children and children working in harmful circumstances by 90 per cent; and decreasing substantially the number of children sexually abused. The program comprised four component projects: Communication, campaign and the increase of management ability; Preventing and supporting street children; Preventing and resolving child sexual abuse; and Preventing and resolving the situation of children working in hard, hazardous and dangerous circumstances.

A notable feature of this program was establishing models of intervening in situations of child abuse and returning street children to their homes; supporting poor children in education, vocational training and employment; helping poor families and households with children working in harmful circumstances to arrange different employment. This design seemed to have the potential for preventing children from falling into risky circumstances. It could be a promising program in the Vietnamese context, where most juvenile criminals were from poor families or street children, and infringing upon of ownership rights of individuals or organisations. However, these models were applied in limited locations. The Project on preventing and supporting street children was implemented in only 55 communes<sup>483</sup> and the Project on preventing and resolving the situation of children working in hard, hazardous and dangerous circumstances was conducted in 40 provinces,<sup>484</sup> while Vietnam had a total of 63 provinces with 11,121 communes and equivalents.

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<sup>482</sup> *Law on Child Protection, Care and Education 1991; Decision 23/2001/QĐ-TTg.*

<sup>483</sup> ‘Commune’ is the smallest division of local government in Vietnam. The government is divided into four levels: nation, province, district and commune.

<sup>484</sup> Bo Lao Dong, Thuong Binh va Xa Hoi, ‘Bao Cao 17/BC-LDTBXH ngay 15/03/2011 Tong Ket viec Thuc Hien Quyét Dinh 19/2004/QĐ-TTg cua Thu Tuong Chinh Phu ve Phe Duyet Chuong Trinh Ngan Ngu va Giai Quyét Tinh Trang Tre Em Lang Thang, Tre Em bi Xam Hai Tinh Duc va Tre Em phai Lao Dong Nang Nhoc trong Dieu Kien Doc Hai, Nguy Hiem giai doan 2004–2010’ [Report 17/BC-LDTBXH dated 15 March 2011 on Summarising the Implementation of the Decision 19/2004/QĐ-TTg issued by the Prime Minister on the Approval of the Program for Preventing and Resolving Issues of Street Children, Child Sexual Abuse, Children Working in Hard, Hazardous and Dangerous Situations for the Period 2004–2010] (Ministry of Labour, Invalids and Social Affairs, 2011).

This program finished in 2010, unlike other programs for crime prevention which were continued. While summarising this program, however, the Ministry of Labour, Invalids and Social Affairs also proposed an outline for continuing the protection of the child. The main ideas of this proposal have been integrated into the National Program for Child Protection for the period 2011–2015.<sup>485</sup>

At present, two programs regarding child protection, the National Program for Child Protection for the period 2011–2015 and the National Action Program for Children for the period 2012–2020<sup>486</sup> have been implemented. These programs set many targets, including the reduction of the number of children living in difficult circumstances and numbers of children breaking the law. In the National Program for Child Protection, projects for dealing with street children, child abuse and child labour are different from the project for preventing children breaking the law. These projects are to be conducted on a small scale with 948 selected communes, while projects on communication, campaign and increase of management ability take place nationwide with 11,121 communes. This design reflects two shortcomings, namely that:

- (a) Projects that have the potential for protecting children from risky circumstances are carried out on a small scale; and
- (b) The significance of protecting children from risky circumstances for the prevention of juvenile delinquency has not been clearly realised.

Therefore this Program should be reviewed and expanded to support all children in need over the country.

#### **4.4 Juveniles in Conflict with the Law and the Effectiveness of Juvenile Delinquency Prevention in Vietnam**

In the Vietnamese context, the common situation of juveniles in conflict with the law should be indicated through the total cases of juveniles breaking the law, embracing juveniles who have been dealt with by the formal criminal justice system,

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<sup>485</sup> *National Program for Child Protection 2011–2015.*

<sup>486</sup> *National Action Program for Children 2012–2020.*

administrative proceedings or community-based mechanisms, and estimated numbers of hidden or unsolved cases. As stated by the law, every legal violation shall be handled adequately as prescribed by the law. However, there exist in fact many cases where offenders and victims negotiate together or through their families or local communities without a report to the state competent agencies.<sup>487</sup> This trend is contributed to by a cultural attitude that it is ill-fated or unfortunate to go to the court or authorities for arguments or addressing anything concerning a legal violation.<sup>488</sup> As a result, there is no reliable information on the common situation of juveniles breaking the law with accurate total data of juvenile violators, especially the cases addressed between offenders, victims and their families or under a community-based mechanism.

In this regard, Cox comments that ‘there is no reliable means of recording all administrative cases, a fact which has huge implications for attempts to measure criminal justice trends’,<sup>489</sup> while UNICEF recognises that ‘there is little reliable and systematic information on the situation of juveniles in conflict with the law’ in Vietnam.<sup>490</sup> Recognising the weakness of data about children in conflict with the law, Vietnam issued a *Joint Curricular* in 2013, providing guidelines for the collection, management and use of data on juvenile law violations.<sup>491</sup> This brings hope that more comprehensive information about children in conflict with the law will be available in the next few years.

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<sup>487</sup> See Uy Ban Van Hoa, Giao Duc, Thanh Nien, Thieu Nien va Nhi Dong, ‘Bao Cao Ket Qua Giam Sat viec Thuc Hien Chinh Sach, Phap Luat Phong Chong Bao Luc Xam Hai Tre Em giai doan 2008–2010’ [Report on the Results of Supervising the Implementation of Laws, Policies on the Prevention of Child Abuse for the period 2008–2010] (417/BC-UBVHGDTTN13, National Assembly, 2012); Tong Cuc Canh Sat Phong Chong Toi Pham, above n 462.

<sup>488</sup> There are sayings that ‘*vo phuc dao tung dinh*’ [‘bad luck if it involved the court’] or ‘*mot dieu nhin chin dieu lanh*’ [‘one tolerance can bring nice propitious things’].

<sup>489</sup> Pamela Cox, ‘Juvenile Justice Reform and Policy Convergence in the New Vietnam’ (2010) 10(3) *Youth Justice* 227, 232

<sup>490</sup> UNICEF’s Report on Children in Viet Nam, above n 86, 232.

<sup>491</sup> *Thong Tu Lien Tich 02/2013/TTLT-BLDTBXHG-BCA-VKSNDTC-TANDTC cua Bo Lao Dong, Thuong Binh va Xa Hoi, Bo Cong An, Vien Kiem Sat Nhan Dan Toi Cao va Toa An Nhan Dan Toi Cao ve Huong Dan viec Thu Thap, Quan Ly, Cung Cap va Su Dung So Lieu ve Ngoai Chua Thanh Nien Vi Pham Phap Luat* [Joint Circular 02/2013/TTLT-BLDTBXHG-BCA-VKSNDTC-TANDTC issued by the Ministry of Labour, Invalids and Social Affairs, Ministry of Public Security, Supreme People’s Procuracy, and Supreme People’s Court on Guidelines for the Collection, Management, Supply and Use of Data on Juvenile Law Violations].

Currently, the statistics concerning juvenile violators can be found from two main sources. The first is from ‘Children Indicators in Vietnam’, which is published by the Ministry of Labour, Invalids and Social Affairs, the state agency responsible for the care and protection of children nationwide. The second is from reports of Project IV, part of national program for crime prevention (Program 138), which focuses on the prevention of juvenile delinquency and crimes against children. However, statistics from these sources are sometimes very different. For example, the numbers of juvenile violators in 2008 and 2011 shown in Children Indicators are 21,542 and 16,222 respectively; but they are 16,207 and 13,600 in Project IV’s reports.<sup>492</sup> So far, there has been no adequate explanation given for this inconsistency, though the Ministry of Labour, Invalids and Social Affairs’ publications stated that the data was provided by the Ministry of Public Security — the state agency coordinates Project IV. In this circumstance, based on Project IV’s Reports and statistics to describe and evaluate the situation of juveniles in conflict with the law and the effectiveness of juvenile delinquency prevention, Project IV’s reports should be the best choice. Project IV, a part of the national program on crime prevention, focuses on the prevention of juvenile delinquency and directly collects data on juvenile delinquency. Further, it provides data on juveniles in comparison with the common data on crime nationwide.

If relying on Project IV’s reports and statistics, it can be said that the situation of juveniles breaking the law in Vietnam is complicated. There is no clear trend in the numbers of juvenile violators and cases, but there seems to be an increase in the seriousness of criminal actions and a stable trend in the rates of male and female violators and juveniles living in difficult circumstances.

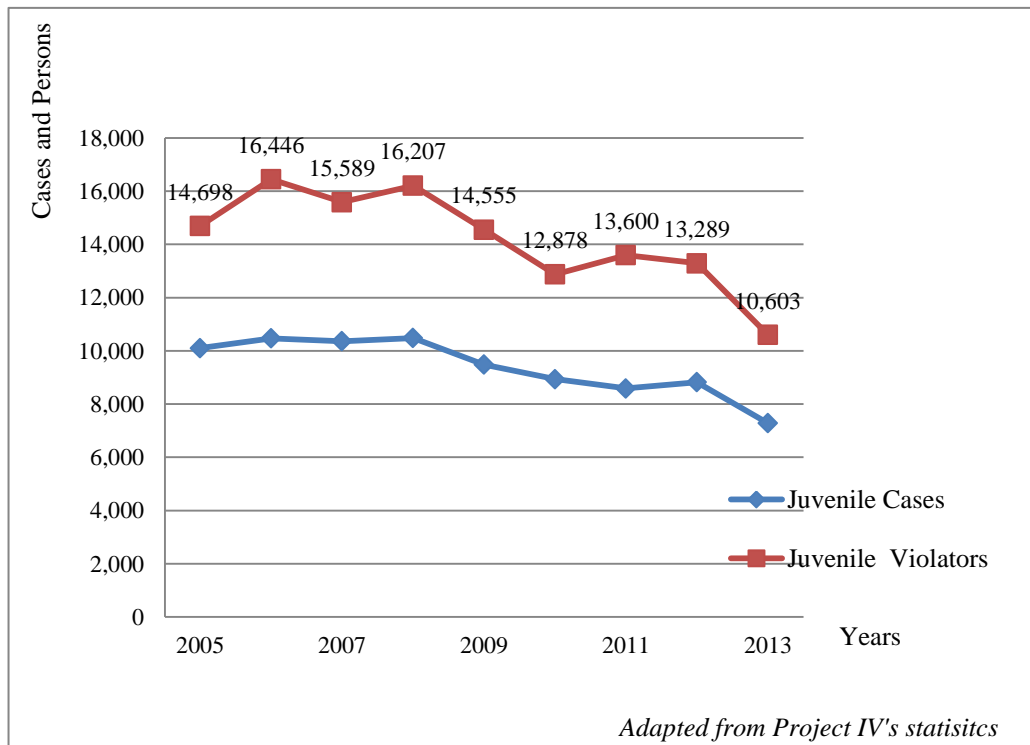
Figure 4.1 illustrates juvenile violators and cases between 2005 and 2013. The number of juveniles infringing the penal law fluctuated between 10,603 and 16,446, the number of juvenile cases is between 7820 and 10,482. It seems the numbers follow a decreasing trend, particularly in 2013 where there was a noticeable decrease

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<sup>492</sup> See Cuc Bao Ve Tre Em, ‘Bao Cao ve Bao Ve Tre Em nam 2013’ [Report on Child Protection of 2013], (Ministry of Labour, Invalids and Social Affairs, 2013); Tong Cuc Canh Sat Phong Chong Toi Pham, above n 462.

in both cases and people. However, if considering the five-year term of juvenile delinquency prevention from 2006 to 2010, Project IV recorded 49,235 cases of infringement of the criminal law committed by 75,594 juveniles, an increase of 6.70 per cent in comparison with the previous period from 2001 to 2005.<sup>493</sup>

Figure 4.1 Juveniles in Conflict with the Law: 2005–2013



From relevant reports, it can be seen that in comparison with the total criminal law violations nationwide, the rate of juveniles breaking the law is quite stable, accounting for 20 per cent on average since 2001.<sup>494</sup> However, the rate of juvenile

<sup>493</sup> Ban Chu Nhiem De An IV- Ban Chi Dao 138/CP, 'Tong Ket Thuc Hien De An IV "Dau Tranh Phong, Chong Toi Pham Xam Hai Tre Em va Toi Pham Trong Lua Tuoi Vi Thanh Nien" CTQGCTP giai doan 2006–2010' [Summarising the Performance of Project IV on Combatting and Preventing Crimes against Children and Juvenile Delinquency for the period 2006–2010] (311/C45-BCNDA IV Ministry of Public Security, 2012) 16.

<sup>494</sup> Ibid 16; Cuc Canh Sat Hinh Su, 'Ket Qua Thuc Hien De An IV-CT138/CP nam 2011' [The Performance of Project IV-CT138/CP in 2011] (310/BC-C45-P6, Ministry of Public Security, 2012) (hereafter Project IV's Report 2012) 33.

offenders dealt with by the formal criminal proceedings has been significantly increasing while the rate of juvenile violators handled under the administrative processes has been decreased. In the total cases of juveniles breaking the law, the numbers of juvenile violators investigated by the formal criminal investigation accounted for 18 and 30 per cent in periods 2001–2005 and 2006–2010, and 34, 42 and 46 per cent in 2011, 2012 and 2013 respectively.<sup>495</sup> Considering the increasing numbers and rates of juveniles breaking the law and being dealt with in criminal proceedings from 2000 to 2013 (in the context of decriminalising a number of law violations concerning the infringement of ownership rights when the *Penal Code* was amended in 2009),<sup>496</sup> it can be said that there is a slightly rising trend in the violations of the law among children in Vietnam, particularly children dealt with by the criminal justice system. Specific numbers of juveniles dealt with in formal criminal proceedings are presented in the next Chapter.

Reports on the implementation of Project IV also indicate that most juvenile violators were males (96 per cent) and the majority were aged between 16 and 18 years of age. The percentages of the three age groups of from 12 years to below 14 years, 14 years to below 16 years, and 16 years to below 18 years old are roughly 7, 30 and 63 per cent respectively.<sup>497</sup>

Based on Project IV's statistics and the population in 2009, Figure 4.2 (below) illustrates the average rates of persons infringing the penal law in the population. The statistics here were recorded by the police, and offenders were handled by either the administrative system or the criminal justice system. These rates are calculated for the age groups of legal liability with a focus on juveniles. These statistics, however, are perhaps not so helpful to compare with juvenile crime rates in other countries

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<sup>495</sup> See Ban Chu Nhiem De An IV- Ban Chi Dao 138/CP, above n 493; Project IV's Report 2012, above n 494; Cuc Canh Sat Hinh Su, 'Bao Cao Ket Qua Thuc Hien Cong Tac Dau Tranh, Chong Toi Pham Xam Hai Tre Em va Toi Pham Trong Lua Tuoi Chua Thanh Nien nam 2012' [Report on the Results of Combatting and Preventing Crimes against Children and Juvenile Delinquency in 2012] (257/C45-P6, Ministry of Public Security, 2013) (hereafter Project IV's Report 2013); Project IV's Report 2014, above n 462.

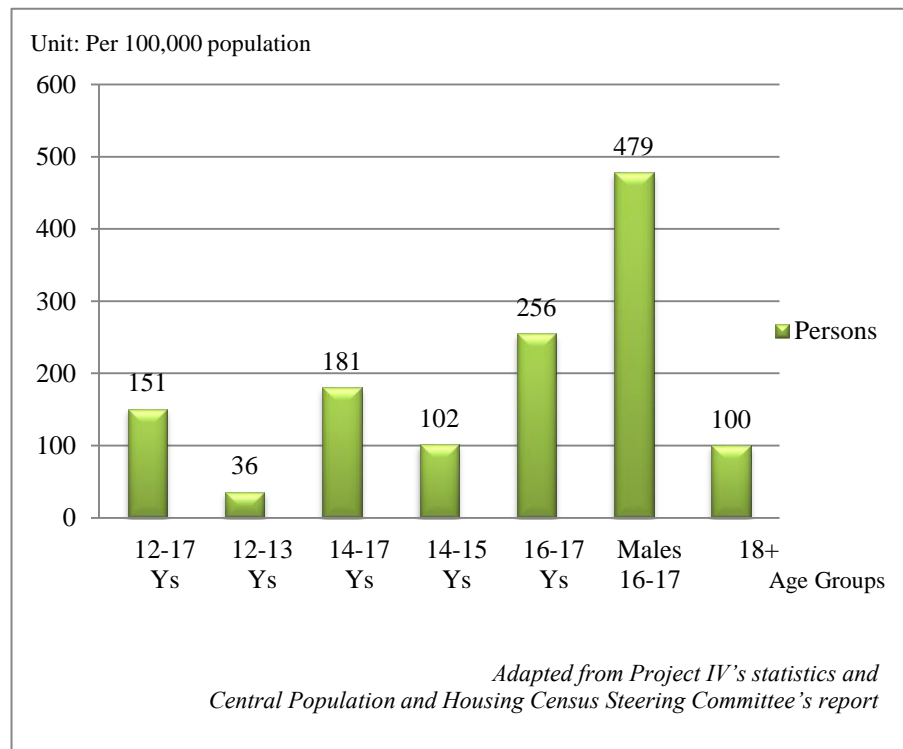
<sup>496</sup> Mentioned in section 3.4.1.3 — Criminal Law and Juvenile Justice.

<sup>497</sup> See Ban Chu Nhiem De An IV- Ban Chi Dao 138/CP, above n 493, 34; Project IV's Report 2012, above n 494, 38.



because of the great differences in penal codes, definitions of crime, and methods of counting and treating offenders across the world.<sup>498</sup> However, in the circumstances in Vietnam, the numbers shown in the bar chart should be considered seriously, especially when considering the prevention of juvenile delinquency. There is a significantly higher rate of juvenile violators compared with adults. The rate of juvenile violators is 151 per 100,000 while it is 100 per 100,000 among adults. The number of male violators aged between 16 and 17 years old is particularly prominent: 479 per 100,000 juvenile males, equalling 4.79 times the adult rates.

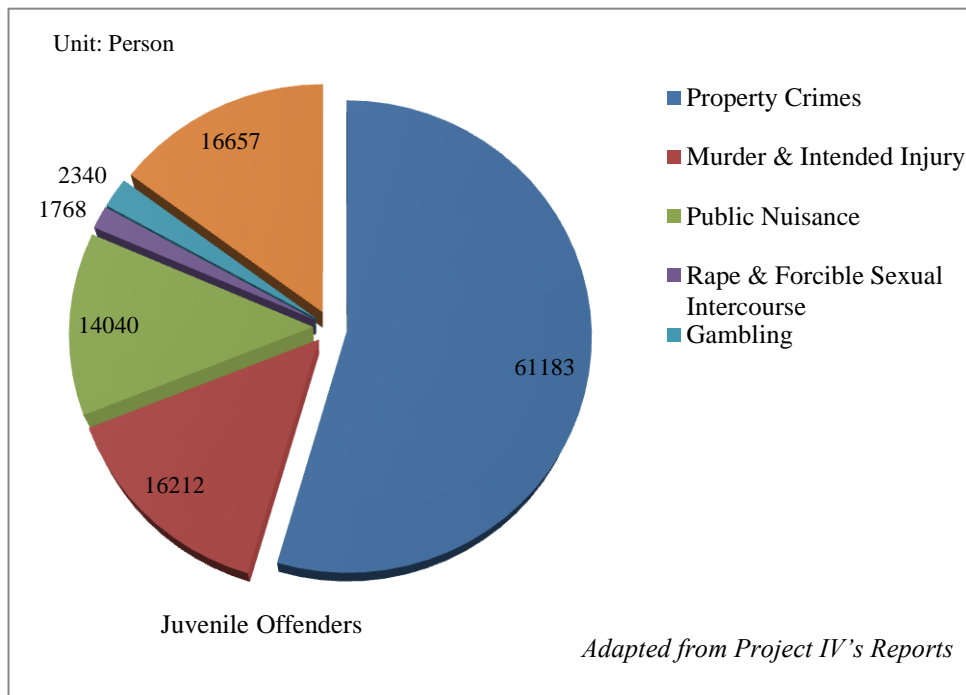
Figure 4.2 Rate of Juvenile Violators: 2000–2010



<sup>498</sup> See Markku Heiskanen, 'Trends in Police Recorded Crime' in S Harrendord, M Heiskanen and S Malby (eds), *International Statistics on Crime and Justice* (UNODC, 2010) 21; United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank, 'Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean' (No 37820, UNODC & World Bank, 2007) <<http://www.unodc.org/unodc/>>; Steven Malby, 'Juvenile Justice and the United Nations Survey on Crime Trends and Criminal Justice Systems' in Kauko Aromaa and Markku Heiskanen (eds), *Crime and Criminal Justice Systems in Europe and North America 1995–2004* (European Institution for Crime Prevention and Control, 2008) 118.

It is also recognised that the percentage of juveniles committing crimes repeatedly, and juvenile offenders living in difficulties of food shortage or problems with parental care remained high, about 45 per cent, and 80 per cent respectively of the total juvenile violators,<sup>499</sup> while the percentage of juvenile offenders dropping out of school and living on the streets noticeably increased from 40.9 per cent in 2006–2010 to 44 per cent in 2011 and 47 per cent in 2013.<sup>500</sup> The most common crimes committed by juveniles embrace Theft; Intentionally inflicting injury on other persons; Causing public nuisance; Plundering property; Property robbery by snatching; Gambling; Extortion of property; Rape and Forcible sexual intercourse; and Murder.<sup>501</sup> Approximately 62 per cent of these juveniles perpetrated offences with the purpose of illegally taking another person’s property, or property-related crime.

Figure 4.3 Categories of Crimes Committed by Juveniles: 2006–2013



<sup>499</sup> Ban Chu Nhiem De An IV- Ban Chi Dao 138/CP, above n 493, 16, 18.

<sup>500</sup> Ibid 16, 18, 38; Project IV's Report 2014, above n 462. See also Tong Cuc Canh Sat PCTP, 'Bao Cao Tinh Hinh, Ket Qua Cong Tac Phong, Chong Toi Pham nam 2011' [Report on the Implementation of Preventing and Combating Crime of 2011] (Ministry of Public Security, 2011).

<sup>501</sup> These crimes were arranged according to frequency.

Besides specific statistics on juveniles breaking the law, the Project IV reports also revealed that in a number of localities, the Project was conducted formalistically, consisting of general statements without real implementation; co-operation among partners in the project was sometimes ineffective; and almost all tasks were conducted by the police.<sup>502</sup> Further, since 2011 when Project IV was not recognised as a part of the national program for crime prevention, the prevention of juvenile delinquency was not given enough support, lacking financial resources for running clubs designed for the prevention of juvenile delinquency or to assist juveniles at risk.<sup>503</sup>

In short, over the ten-year implementation of Project IV focusing on the prevention of juvenile delinquency it has not achieved significant change. The rates of recidivism, prevalence among juveniles from poor families, those living in streets, or dropping out of school still remain high. The number of juveniles violating the law has no clear decreasing trend. There is no stable model for assisting juveniles or children to stay away from violating the law. It neither created good co-operation and partnership during the process nor reached the project's primary target of reducing juvenile crimes.

The lack of success of Project IV on juvenile delinquency prevention somewhat reflected common results of crime prevention programs in Vietnam. Many documents concerning the prevention of crime in different localities across the country reveal that the implementation of programs for preventing and combatting crime did not reach their targets, criminal offences increased and the common situation remained complicated.<sup>504</sup> At the national conference on crime prevention, the Head of Program 138 summarised the situation:

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<sup>502</sup> Tong Cuc Canh Sat Phong Chong Toi Pham, above n 462, 29–30.

<sup>503</sup> See Project IV's Report 2014, above n 462.

<sup>504</sup> *Chi Thi 25/CT-UBND ngay 02/10/2010 ve Tang Cuong cac Bien Phap Dau Tranh Phong, Chong Toi Pham va Dam Bao Trat Tu An Toan Xa Hoi tren Dia Ban Thanh Pho Ha Noi* [Directive 25/CT-UBND dated 2 October 2010 on the Reinforcement of Measures of Preventing and Combatting Crime, Ensuring Social Order and Safety in Hanoi]; Van Phong Chinh Phu, 'Thong Bao 34/TB-VPCP ngay 17/01/2013 ve Ket Luan cua Truong Ban Chi Dao 138/CP, Truong Doan Kiem Tra Cong Tac Phong, Chong Toi Pham, Trat Tu An Toan Xa Hoi tai Thanh Pho Hai Phong' [Announcement 34TB-VPCP dated 17 January 2013 on the Conclusion of the Head of Steering Committee 138/CP, Chief of

- (a) Although many drastic measures were applied, the effectiveness of crime prevention was low. The situation of crime still remained complicated with many gangs, felonies, and organised crimes.
- (b) In a number of localities, the law enforcement did not carry out their functions and responsibilities well; the people disregarded the prevention and combatting of crime; the law dissemination and propagation was not really interested in those at high-risk of crime, especially workers in industrial areas and those who were not members of public unions.<sup>505</sup>

Once again, the above results show that Vietnam should follow guidelines in the international standards and re-design programs for the prevention of juvenile delinquency as well as crime prevention in general. The roots and factors of crime or juvenile violations should be seen and addressed for early intervention rather than emphasis placed only on solving crimes and punishing violators.

#### 4.5 Conclusion

There exist different opinions on the definition of crime prevention and on approaches to this issue. However, the importance and possible effects of crime prevention are popularly accepted. The UN has adopted a number of conventions and guidelines to prevent crimes. Such instruments have created common standards and

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Test on the Task of Crime Prevention and Combat, Social Order and Safety in Hai Phong] (Government Office, 2013); Van Phong Chinh Phu, 'Thong Bao 36/TB-VPCP ngay 21/01/2013 ve Ket Luan cua Truong Ban Chi Dao 138/CP, Truong Doan Kiem Tra Cong Tac Phong, Chong Toi Pham, Trat Tu An Toan Xa Hoi tai Thanh Pho Can Tho' [Announcement 36/TB-VPCP dated 21 January 2013 on the Conclusion of the Head of Steering Committee 138/CP, Chief of Test on the Task of Preventing and Combating Crime, Social Order and Safety in Can Tho] (Government Office, 2013). See also Tong Cuc Canh Sat PCTP, above n 500; Vien Kiem Sat Nhan Dan Toi Cao, 'Bao Cao Tong Ket Cong Tac Nganh Kiem Sat Nhan Dan nam 2010' [Report on Sumarising Tasks of the Procuracy System of 2010] (112/BC-VKSTC, Supreme Procuracy, 2010) (hereafter Supreme Procuracy's report 2010); Vien Kiem Sat Nhan Dan Toi Cao, 'Bao Cao Tong Ket Cong Tac Nganh Kiem Sat Nhan Dan nam 2011' [Report on Sumarising Tasks of the Procuracy System of 2011] (123/BC-VKSTC, Supreme Procuracy, 2011) (hereafter Supreme Procuracy's report 2011).

<sup>505</sup> Van Phong Chinh Phu, 'Thong Bao 303/TB-VPCP ngay 19/12/2011 ve Ket Luan cua Truong Ban Chi Dao 138/CP tai Hoi Nghi So Ket 01 nam Trien Khai Thuc Hien Chi Thi 48-CT/TW cua Bo Chinh Tri ve Tang Cuong su Lanh Dao cua Dang doi voi Cong Tac Phong, Chong Toi Pham trong Tinh Hinh Moi' [Announcement 303/TB-VPCP dated 19 December 2011 on the Conclusion of the Head of Steering Committee 138/CP at the Conference on Summarising the First Year of the Implementation of Directive 48-CT/TW of the Politburo on Strengthening the Party Leadership in the Prevention and Combat of Crime Prevention in the New Situation] (Government Office, 2011).

frameworks for preventing crime and juvenile delinquency. The standards of preventing juvenile delinquency include fundamental principles, general prevention, and processes of socialisation, law and policy making. These standards provide a basis for considering the legal system and practice of preventing juvenile delinquency in particular countries.

In Vietnam, crime prevention has been paid significant attention since the 1990s with the introduction of legal documents and programs concerning crime prevention. Currently, Vietnam has no one law on crime prevention generally. The primary legal basis of crime prevention in general is a resolution of the Government issued 15 years ago. However, the National Assembly has adopted laws on preventing and combatting crimes and other violations of the law in the areas of drugs, prostitution, environment, corruption, money laundering, and human trafficking. All these laws are understood to be intended to prevent any crime regardless of whether committed by adults or juveniles. In the whole national legal system, however, there is no clear statement specifically concerning the prevention of juvenile delinquency.

Since the late 1990s, Vietnam has conducted many programs regarding crime prevention, such as the prevention and combatting of drugs, prostitution, crime, human trafficking, corruption, and money laundering. Among these programs concerning crime prevention, only Program 138 had a project focusing on the prevention of juvenile delinquency. This was conducted for over 10 years, but did not reach its targets. This failure is not unusual in programs to prevent crime, human trafficking, drug use, and prostitution. Summary reports during the implementation of the above-mentioned programs and the latest ones concerning crime prevention show that the crime situation is more complicated, the number of drug users and prostitutes is increasing, and the targets for the prevention of crime and social evils have not been met.<sup>506</sup>

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<sup>506</sup> Van Phong Chinh Phu, 'Thong Bao 63/TB-VPCP ngay 06/02/2013 ve Ket Luan cua Chu Tich Uy Ban Quoc Gia Phong, Chong AIDS, Phong Chong Te Nan Ma Tuy, Mai Dam, Truong Ban Chi Dao 138/CP tai Hoi Nghi Trien Khai Chuong Trinh Phong, Chong Toi Pham, Ma Tuy, Mua Ban Nguoi' [Announcement 63/TB-VPCP dated 6 February 2013 on the Conclusion of the Head of the National Committee for AIDS, Drugs and Prostitution Prevention and Control, Head of Steering Committee 138/CP at the Conference Launching Programs for Preventing and Combatting Crime, Drugs and

Between 2004 and 2009, a program for child protection was conducted. Its measures and models had the potential to prevent disadvantaged children falling into risky circumstances. However, it was implemented with a narrow scope so the results were not significant.

Existing programs for crime prevention have no statement on the prevention of juvenile delinquency. The Program for child protection for the period 2012–2015 planned models for dealing with disadvantaged children but the scale of implementation is very small.

From studying the legal system and programs it can be realised that:

- (a) Vietnam has no strategy and comprehensive plan for the prevention of juvenile delinquency;
- (b) The connection of programs for crime prevention with each other, or with programs for child protection or for socio-economic development was weak;
- (c) Attention is not paid to multiple causes of crime;
- (d) Designs of programs are often unclear;
- (e) The main measures for prevention are propaganda, campaign slogans and intensifying administrative control;
- (f) Partnership or cooperation in crime prevention are heavily formalistic;
- (g) The implementation of programs often failed to reach the targets.

There are serious shortcomings in the prevention of juvenile delinquency in Vietnam. These limitations are not always because of Vietnam's economic difficulties. Many of them seem to come from lacking a knowledge base as provided in the *UN Guidelines 2002*.<sup>507</sup>

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Human Trafficking] (Government Office, 2013) pt 2; Van Phong Chinh Phu, 'Thong Bao 241/TB-VPCP ngay 12/07/2013 ve Ket Luan cua Chu Tich Uy Ban Quoc Gia Phong, Chong AIDS, Phong Chong Te Nan Ma Tuy, Mai Dam tai Hoi Nghi So Ket Cong Tac 6 thang Dau Nam va Nhiem Vu, Giai Phap Trong Tam 6 thang Cuoi Nam 2013' [Announcement 241/TB-VPCP dated 12 July 2013 on the Conclusion of the Head of the National Committee for AIDS, Drugs and Prostitution Prevention and Control at the Conference on Summarising the first 6 Months, and Tasks and Main Solutions in the Last 6 Months of 2013] (Government Office, 2013) pt I.

<sup>507</sup> 'Knowledge base' is a basic principle of crime prevention:

In conclusion, there is a wide gap between Vietnam's situation of juvenile delinquency prevention and the international standards and frameworks. Vietnam needs to establish a comprehensive plan so as to improve the situation. This plan should include strategies, promulgation of laws, and program designs and implementation, following the *Riyadh Guidelines*, and the *UN Guidelines 1997* and *UN Guidelines 2002*. The program should pay attention to looking at the root reasons for juvenile delinquency, and at early intervention rather than propaganda and administrative and punitive measures. The program should be clearly designed with necessary details and flexibility for different localities and should be conducted on a long-term basis.

## Chapter 5: THE TREATMENT OF JUVENILE OFFENDERS

### 5.1 Introduction

The treatment of juvenile offenders or children who come into conflict with the law is the central task of juvenile justice, and the main topic in the discussion about the rights of the child in the judicial sector. The number of international legal instruments as well as academic works concerning the treatment of children in conflict with the law is significantly larger than those mentioning the prevention of juvenile delinquency and the protection of child victims or witnesses of crime. In these documents, terms denoting offenders who have not reached maturity in terms of criminal justice are various, including ‘children alleged as, accused of, or recognised as having infringed the penal law’, ‘children breaking the law’ ‘children in conflict with the law’, ‘child offenders’ and ‘juvenile offenders’.<sup>508</sup> Of these, ‘juvenile offenders’ is more frequently used in documents focusing on juvenile justice.

More than 100 years ago, the first juvenile justice systems were established in Australia, the United States, the United Kingdom and Canada.<sup>509</sup> Since then, there has been uneven development in the history of juvenile justice, swinging between toughness and permissiveness in the treatment of juvenile offenders.<sup>510</sup> Two typical models are the welfare model and the justice model. The welfare model focuses on treatment and rehabilitation with specialised juvenile judges having wide discretionary power to help children while the justice model introduced in the 1970s

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<sup>508</sup> CRC art 40; *Beijing Rules*; *UN Guidelines 1997*; *GC 10 on Juvenile Justice*; Richards, above n 195.

<sup>509</sup> Muncie and Goldson, above n 418, 197; Cunneen and White, above n 412, 13–14.

<sup>510</sup> Dean J Champion and G Larry Mays, *Transferring Juveniles to Criminal Courts: Trends and Implications for Criminal Justice* (Praeger, 1991), 33–5; W Jeff Hinton et al, ‘Juvenile Justice: A System Divided’ (2007) 18(4) *Criminal Justice Policy Review* 466, 473; Josine Junger-Tas, ‘Trends in International Juvenile Justice: What Conclusions Can Be Drawn?’ in Barry Goldson and John Muncie (eds), *Youth Crime and Juvenile Justice* (Sage, 2009) vol 2: Juvenile Correction, 225, 226–8; Jerome G Miller, ‘Juvenile Justice Rhetoric’ in Barry Goldson and John Muncie (eds), *Youth Crime and Juvenile Justice* (Sage, 2009) vol 3: Children’s Rights and State Responsibilities, 177, 178; Kimberly Kempf-Leonard and Elicka S L Peterson, ‘Expanding Realms of the New Penology: The Advent of Actuarial Justice for Juveniles’ in Barry Goldson and John Muncie (eds), *Youth Crime and Juvenile Justice* (Sage, 2009) vol 3: Children’s Rights and State Responsibilities, 190, 194.



focuses more on the offence and actions with the three principles of ‘just deserts’, ‘proportionality’ and ‘equality’.<sup>511</sup> There have also been debates on the effectiveness of, or possible abolition of, the juvenile justice system and juvenile courts. Many, however, see a separate juvenile justice system and juvenile courts as necessary for effectively dealing with juvenile offenders.<sup>512</sup>

Since the introduction of the *Beijing Rules* in 1985, the *CRC* in 1989 and a number of supporting documents issued later, the attention paid to this topic has flourished. There are various academic works or handbooks concerning the treatment of juvenile offenders.<sup>513</sup> They address the matter as a whole or in different aspects of penalties, arrest, custody, defence, child-friendly procedures, or statistics. Such matters can be considered in one country, region, general level or comparative studies. Specific research methods can be different among studies but most of them share a similar approach to the topic. The authors often indicate disadvantages of national systems or analyse relevant international instruments and give recommendations for reform.

Herein, after a brief recapitulation of international standards for the treatment of juvenile offenders, the law and practice of dealing with juvenile offenders in Vietnam is closely examined through relevant statistics, reports and case studies.

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<sup>511</sup> John Muncie, ‘The Globalization of Crime Control: The Case of Youth and Juvenile Justice: Neo-liberalism, Policy Convergence and International Conventions’ (2005) 9(1) *Theoretical Criminology* 35, 2–5; Champion and Mays, above n 510, 38; Junger-Tas, above n 510, 227–9.

<sup>512</sup> Arie Freiberg, ‘Abolish Children’s Courts? Juveniles, Justice and Sentencing’ (1993) 4(3) *Current Issues in Criminal Justice* 240, 261; Frank Kopecky, ‘In Defense of Juvenile Court Debate’ (1994) 18(1) *Update on Law-Related Education* 33, 34; John Johnson Kerbs, ‘(Un)equal Justice: Juvenile Court Abolition and African Americans’ (1999) 564(1) *Annals of the American Academy of Political and Social Science* 109, 120–1; Christopher Slobogin and Mark R Fondacaro, ‘Juvenile Justice: The Fourth Option’ (2009) 95(1) *Iowa Law Review* 1, 62.

<sup>513</sup> See Nikki Akhurst-Rasa, *Are International Human Rights’ Standards Upheld When Australia Sentences Its Young Offenders according to Either the Conventional Juvenile Justice System or the New Alternative of Youth Conferencing?* (Honours Thesis, University of Wollongong, 2002); Moak and Wallace, above n 166; Hamilton and Harvey, above n 172; Abramson, above n 95; UNICEF Regional Office for South Asia, *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law* (Geneva, 2006); Anna Volz, *Advocacy Strategies Training Manual: General Comment No 10: Children’s Rights in Juvenile Justice* (Defence for Children International, 2009); Barry Goldson and John Muncie, ‘Towards a Global “Child Friendly” Juvenile Justice?’ (2012) 40(1) *International Journal of Law Crime and Justice* 47.

## 5.2 International Standards for the Treatment of Juvenile Offenders

As mentioned in Chapter 2, the *CRC*, in particular articles 37 and 40, sets out the basic rights of juvenile offenders as well as relevant obligations of states. The *Beijing Rules*, *Havana Rules*, *UN Guidelines 1997*, *GC 10 on Juvenile Justice*, and *GC 12 on the Right to be Heard* are most notable documents that clarify and provide the most detailed specification and elaboration for the implementation of the *CRC* in this regards. Together with the *CRC* they are considered as international standards for the treatment of juvenile offenders.

The system of international regulations on the treatment of juvenile offenders is complicated. Each aspect of the issue is usually regulated, specified and elaborated on in a number of instruments while one instrument deals with several matters concerning solving the problem of juvenile delinquency. These documents are interdependent, as indicated in Chapter 2. In order to provide a framework for evaluating Vietnam's regulations and actual implementation, international standards are herein briefly reviewed, outlining the most basic requirements for each jurisdiction. These are grouped into four domains: fundamental principles; crimes, penalties and alternative measures; rights of juvenile offenders; and personnel and organisations.

### 5.2.1 General Principles

As the main part of protecting children's rights in the judicial sector, the treatment of juvenile offenders shall be in accord with the fundamental principles of the *CRC*. The four fundamental or leading principles are non-discrimination, the best interests of the child, the right to life and development, and the right to be heard. In this section, the principles of non-discrimination and the best interests of the child, focusing on matters of dealing with juvenile offenders, are analysed. The right to life and the right to be heard are particular rights in juvenile justice, which are considered below in the section on the rights of juvenile offenders.

### 5.2.1.1 Non-discrimination

Statistics across the world show that juvenile detainees and prisoners are largely street children, members of ethnic or racial minorities, from poor families, or members of other vulnerable groups.<sup>514</sup> Researchers and experts in juvenile justice have recognised that children in conflict with the law could be considered as ‘unwanted children’ in terms of how the justice system addresses them or rather fails to address their situation adequately.<sup>515</sup> At the same time, it is believed that many children in conflict with the law are also victims of discrimination, being denied access to education, health care, housing or work.<sup>516</sup> Juvenile offenders are also discriminated against because of their vulnerability, and suffer from the public’s intolerance and lack of sympathy.

The implementation of non-discrimination in juvenile justice requires states parties to take all necessary measures to ensure equality in the treatment of all children breaking the law as well as between children and adults. The CRC Committee has commented on this point.

Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious, or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists).

Regulations criminalizing child behaviours, such as vagrancy, truancy and runaways which are not penalized if committed by an adult must be abolished.<sup>517</sup>

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<sup>514</sup> See Goldson and Muncie, above n 513, 55.

<sup>515</sup> See Défense des Enfants International, *Juvenile Justice: ‘The Unwanted Child’ of State Responsibilities: An Analysis of the Concluding Observations on the UN Committee on the Rights of the Child in Regard to Juvenile Justice, 1993–2000* (Defence for Children International, 2000); Bruce Abramson, ‘Juvenile Justice: The “Unwanted Child”: Why the Potential of the Convention on the Rights of the Child is Not Being Realized, and What We can do about It’ in Barry Goldson and John Muncie (eds), *Youth Crime and Juvenile Justice* (Los Angeles, 2009) vol 3: Children’s Rights and State Responsibilities, 156.

<sup>516</sup> *GC 10 on Juvenile Justice* [7]; Nikhil Roy and Mabel Wong, *Juvenile Justice: Modern Concepts of Working with Children in Conflict with the Law* (Save the Children UK, 2006) 11.

<sup>517</sup> *GC 10 on Juvenile Justice* [6].

### 5.2.1.2 The Best Interests of the Child

Pursuant to Article 3 of the *CRC*, in the judicial sector ‘the best interests of the child’ shall be a primary consideration in all actions concerning children. As indicated in the *GC 14 on the Best Interests of the Child* (para 3), this principle is also explicitly referred to in many article of the *CRC*, including articles 37 and 40.

In the treatment of juvenile offenders, ‘the best interests of the child’ can be elaborated on in more detail, including the adequate minimum age of criminal responsibility, lesser culpability under the penal law, and alternative measures and procedures specifically applicable to juvenile offenders. The best interest of the child in this area is promoting juvenile offenders’ reintegration and a constructive role in society. This is the ultimate target of the administration of juvenile justice. Article 40 (1) of the *CRC* provides that:

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

In the *GC10 on Juvenile Justice*, this provision is considered to codify the fundamental principles for the treatment of children in conflict with the law, including four points:

- (a) Treatment that is consistent with the child’s sense of dignity and worth;
- (b) Treatment that reinforces the child’s respect for the human rights and freedoms of others;
- (c) Treatment that takes into account the child’s age and promotes the child’s reintegration and the child’s assuming a constructive role in society;
- (d) Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.

The *GC10 on Juvenile Justice* (para 10) also states that in dealing with juvenile offenders, protecting ‘the best interest of the child’ means traditional objectives of criminal justice must be replaced by rehabilitation and restorative.

Judicial proceedings dealing with crime are serious, complicated and time-consuming. Being involved in these proceedings can seriously affect a child’s life, continuing to affect them even when they reach the age of maturity. At the same time, victims of crimes and the public usually want criminals (without exception for juvenile offenders) to be arrested immediately and have tough penalties imposed on them. In such situations, not only do juvenile offenders face many difficulties, but judicial bodies also endure pressure from different sides, and can easily fail to make the best interests of the child a primary consideration. Therefore, more than any other aspects of children’s rights, the state, the juvenile justice system and other relevant systems should pay due consideration to the treatment of children in conflict with the law. The state’s responsibility is to undertake all appropriate measures to realise these rights of juvenile offenders. Without effective measures undertaken by the state, the best interests of juvenile offenders will never become reality.

### 5.2.2 The Age of Criminal Responsibility and Jurisdiction of Juvenile Justice

The age of criminal responsibility is an important issue in legal systems, closely reflecting state perspectives on criminal policy and measures for the protection of public safety and human rights. Providing appropriate age limits, especially the minimum age of criminal responsibility, is one of the most difficult areas of criminal justice policy.<sup>518</sup> Legal terms concerning the age of criminal responsibility, however, are not clearly defined. Related terminologies are used variously among legal documents. In many documents, including legal documents and academic research, ‘the age of criminal responsibility’ can be understood as the minimum age of criminal responsibility. Many use this term without distinction between different age

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<sup>518</sup> Gregor Urbas, ‘The Age of Criminal Responsibility’ (2000) (November) *Trends and Issues in Crime and Criminal Justice* <<http://www.aic.gov.au>> 1; Don Cipriani, *Children’s Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Ashgate, 2009) xiv; Delmage Enys, ‘The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective’ (2013) 13(2) *Youth Justice* 102, 104.

limits relating to criminal responsibility, embracing ‘the minimum age of criminal responsibility’, ‘the minimum age of criminal responsibility for every crime’; ‘the upper age-limit for juvenile justice’,<sup>519</sup> and the age limit of transferring offenders from juvenile courts to ordinary criminal courts; or the ‘legal age of criminal responsibility’.<sup>520</sup> These terms — including ‘the minimum age of criminal responsibility’ and ‘the minimum age of criminal maturity’ (which have received more attention by international law) — are not always employed clearly and consistently among related documents. In this sense,

- (a) The minimum age of criminal responsibility means the lowest age at which a person may have criminal liability for infringing the penal law. Individuals below this age ‘cannot be held responsible in a penal law procedure’<sup>521</sup> in any circumstances;<sup>522</sup>
- (b) The minimum age of criminal majority means the lowest age at which criminals are dealt with under the penal system and procedures and adult courts instead of juvenile justice procedures and children’s or youth courts as applied to younger criminals. Offenders at this age or above are no longer eligible for special consideration.<sup>523</sup>

When considering the jurisdiction of Vietnam, ‘the minimum age of criminal responsibility for every crime’ may be referred to. It indicates the age at which individuals have to be responsible for any crimes they have committed. Individuals

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<sup>519</sup> *GC 10 on Juvenile Justice*.

<sup>520</sup> *UN Guidelines 1997* [14/c].

<sup>521</sup> *GC 10 on Juvenile Justice* [31].

<sup>522</sup> In several countries, Australia included, there are two minimum ages of criminal responsibility, the lower and the higher. People at or above the lower minimum age but lower than the higher minimum age who commit crimes shall be criminally responsible if they are assessed individually to have the required maturity in the criminal capacity by the court. See Thomas Crofts, *The Age of Innocence: Raising the Age of Criminal Responsibility*, Right Now: Human Rights in Australia (30 July 2012) <<http://rightnow.org.au/topics/children-and-youth/the-age-of-innocence-raising-the-age-of-criminal-responsibility/>>; *GC 10 on Juvenile Justice* [30].

<sup>523</sup> Neal Hazel, *Cross-national Comparison of Youth Justice* (Youth Justice Board, 2008). This age limit is often used in procedural law and rights while the other age limit is more frequently used in penal law, crime and punishment. The minimum age of criminal majority is named as ‘the minimum age of penal maturity’ or ‘the age of adult criminal responsibility’ (Cipriani, above n 518; Frances Reddington, ‘Age and Criminal Responsibility’ (2002) 18(66) *Crime & Justice* <<http://www.cjimagazine.com/archives/cji9e43.html?id=25>>).

below this age may not have to be held responsible for certain crimes, such as petty or unintended crimes. ‘The minimum age of criminal responsibility for every crime’ is somewhat similar to ‘the higher minimum age of criminal responsibility’ in legal systems having two minimum ages of criminal responsibility. The distinguishing feature here is that all relevant issues are regulated by the law, not depending on the court’s assessment.

The minimum age of criminal responsibility is the most basic matter, indicating whether or not those breaking the penal law can be punished. This age threshold is always referred to when setting other ages of criminal responsibility as well as the rights and duties of related people in terms of crime and punishment. In a broader context, this age reflects national perspectives and attitudes in many aspects, covering ‘the certainty of law, jurisdiction concerns, children’s capacity to bear criminal responsibility, and youth policy’.<sup>524</sup> In international instruments, although the term ‘the minimum age of criminal maturity’ is expressed under different phrases in different documents, most important instruments on criminal justice take this matter into serious consideration. These instruments — including not only child-specific but also non-child-specific documents — require states to set an adequate minimum age of criminal responsibility that is not too low and which is suitable to a juvenile’s emotional, physical, mental and intellectual maturity.<sup>525</sup>

In fact, the minimum age of criminal responsibility among the *CRC*’s members is regulated very differently. It is variously defined as between 7 and 18 years of age and in several countries there is no mention or no clarity of definition.<sup>526</sup> Recognising this diversity and the inadequacy of minimum ages of low criminal responsibility, the *CRC* Committee states that a minimum age of criminal responsibility below 12 years of age is considered not to be internationally

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<sup>524</sup> Cipriani, above n 518, 127.

<sup>525</sup> *CRC* art 40(3)(a); *Beijing Rules* r 4; *General Comment No 32, Article 14: Right to Equality before Courts and Tribunal and to a Fair Trial*, UN CCPR, 90<sup>th</sup> sess, UN Doc CCPR/C/GC/32 (23 August 2007) pt VI; *GC 10 on Juvenile Justice*.

<sup>526</sup> Angela Melchiorre, *At What Age?... Are School-Children Employed, Married and Taken to Court?* (Right to Education Project, 2<sup>nd</sup> ed, 2004).

acceptable.<sup>527</sup> The CRC Committee encourages states parties to increase their lower minimum age of criminal responsibility to 12 years old, and to gradually increase it to a higher age level. A higher minimum age of criminal responsibility, such as from 14 to 16 years of age, is believed to be completely appropriate.<sup>528</sup>

In resolving crime, one of the two systems of juvenile justice and ordinary/adult criminal justice may be applied, depending on legal regulations in each jurisdiction. Relevant international instruments, including the *Beijing Rules*, *CRC*, *Havana Rules*, and the *UN Guidelines 1997*, share the same idea that the juvenile justice system has jurisdiction over every child or juvenile. The UN Human Rights Committee also states that ‘all persons under the age of 18 should be treated as juveniles, at least in matters relating to criminal justice’.<sup>529</sup> In another expression, the minimum age of criminal maturity is 18 years of age. All offenders under 18 years of age should be dealt with by the juvenile justice system, and in a manner different from adults.

In practice, the age of criminal maturity and the jurisdiction of juvenile justice are regulated very differently among the *CRC*’s signatories. In many cases, juvenile offenders are transferred to adult criminal courts, especially when they are prosecuted for a serious crime, such as murder, robbery or rape. Cipriani recognised that, at times, the minimum age of criminal responsibility coincides with the minimum age of criminal majority.<sup>530</sup> This means there is no difference in dealing with juvenile and adult crimes; or nothing in the jurisdiction of juvenile justice. Concerning this situation, the CRC Committee commented that:

those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16- or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.<sup>531</sup>

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<sup>527</sup> *GC 10 on Juvenile Justice* [32].

<sup>528</sup> *Ibid* [33].

<sup>529</sup> *CCPR General Comment No 21* [13].

<sup>530</sup> Cipriani, above n 518, xiii.

<sup>531</sup> *GC 10 on Juvenile Justice* [38].



In short, though the practice varies among countries, the international acceptable level of the minimum age of criminal responsibility is 12 years of age, and a higher level, 14–16 year old, is preferable and encouraged. The jurisdiction of juvenile justice should cover all offenders under 18 years of age.

### 5.2.3 Penalties, Diversion and Alternative Measures

In the area of penalties that can be applied to juvenile offenders, international law provides clear statements on the most severe penalties and guidelines for the application of penalties in the interests of the protection of children's well-being and reintegration. Instruments on both juvenile justice and ordinary criminal justice prohibit the application of capital punishment for offences committed by persons below 18 years of age.<sup>532</sup> Under the *CRC*, life imprisonment without the possibility of release is also prohibited for offences committed by persons who have not yet reached 18 years of age.<sup>533</sup> These regulations have legal effectiveness in all state members of the *CRC* regardless of whether the age of maturity under the national law is 18 years or lower. For termed imprisonment or incarceration, many international legal instruments consistently emphasise that the deprivation of liberty shall be used as a measure of last resort and for the shortest appropriate period of time.<sup>534</sup> In practical contexts, each country has various penalties which can be applied to criminals. The penalty system is significantly influenced by the national context of culture, tradition, economics and politics. For this reason it is not possible to have a consistent penalty system throughout the world.

Besides the regulations on penalties above, diversion or interventions which allow for dealing with children in conflict with the law without resorting to formal judicial proceedings and non-institutional measures/alternative measures are an important part of international standards for juvenile justice. The *CRC* stipulates that:

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<sup>532</sup> *Beijing Rules* r 17(2); *General Comment No17: Article 24 (Rights of the Child)*, UN CCPR/C, 55<sup>th</sup> sess, UN Doc HRI/GEN/1/Rev 9 (Vol I) (7 April 1989) [2]; *CRC* art 37(a); *UN Guidelines 1997*; *GC 10 on Juvenile Justice* [75]–[76].

<sup>533</sup> *CRC* art 37(a).

<sup>534</sup> *Beijing Rules* r 17(1); *CRC* art 37(b); *Havana Rules* r 1.

Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected;<sup>535</sup>

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.<sup>536</sup>

The *Beijing Rules* underline that ‘[c]onsideration shall be given, whenever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority’.<sup>537</sup> Besides indicating the power of police, prosecution, and other agencies to dispose of the case at their discretion, this instrument stresses that any diversion involving removal from criminal justice processing and redirection to community services shall require the consent of juveniles, or their parents or guardians.<sup>538</sup>

The *UN Guidelines 1997* emphasise that diversion or other alternative initiatives should be developed, making available a broad range of alternative and educative measures at the pre-arrest, pre-trial and post-trial stages to prevent recidivism, and promote social rehabilitation of child offenders.<sup>539</sup>

In this regard, on reviewing the implementation of the *CRC*, the *CRC Committee* believes that:

... juvenile justice, which should promote, inter alia, the use of alternative measures such as diversion and restorative justice, will provide States parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large.<sup>540</sup>

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<sup>535</sup> *CRC* art 40(3)(b).

<sup>536</sup> *Ibid* art 40(4).

<sup>537</sup> *Beijing Rules* r 11(1).

<sup>538</sup> *Ibid* r 11(2), (3).

<sup>539</sup> *UN Guidelines 1997* [17].

<sup>540</sup> *GC 10 on Juvenile Justice* [3].

The Committee also provides elaborate guidelines about interventions, measures without resorting to judicial proceedings and measures in the context of judicial proceedings. It underlines that measures for dealing with children without resorting to judicial proceedings should be taken as an integral part of juvenile justice, applied widely, and not limited to juvenile offenders who have committed minor offences or have offended for the first time. The exact nature and content of these measures are decided by each country but countries can learn from those countries which have developed a variety of community-based programs. These consist of community service, supervision and guidance by social workers or probation officers, family conferencing and other forms of restorative justice, including restitution to and compensation of victims.<sup>541</sup>

#### 5.2.4 The Rights of Juvenile Offenders

In principle, juvenile offenders have rights to basic procedural safeguards and guarantees for a fair and just trial and treatment as regulated in the *UDHR*, *ICCPR* and *CRC*. These include no retroactive justice; the presumption of innocence; the right to be notified of charges; the right to remain silent, freedom from compulsory self-incrimination; the right to counsel; the right to confront and cross-examine witnesses; and the right to appeal to a higher authority. Besides recognising basic rights, the *CRC* grants juvenile offenders several special rights, precisely listed in Article 40(2) and considered as the minimum guarantees for every child alleged to have or accused of having infringed the penal law. The special rights of juvenile offenders are about the participation of juveniles' parents or legal guardians and legal or other appropriate assistants, and the protection of juvenile offenders' privacy in the course of proceedings.

In addition, as indicated in Article 37 of the *CRC*, juvenile offenders deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so; have the right to maintain contact with their families through correspondence and visits, save in exceptional circumstances; and have the right to

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<sup>541</sup> Ibid [25]–[27].

prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

The above regulations are further elaborated and explained in the *Standard Minimum Rules for the Treatment of Prisoners*, *Beijing Rules*, *Havana Rules*, *UN Guidelines 1997*, *GC 12 on the Right to be Heard*, and *GC 10 on Juvenile Justice*. As the CRC Committee comments, the regulations listed in Article 40(2) of the *CRC* are minimum standards so that states should establish and observe higher standards.<sup>542</sup> Below I briefly summarise the guidance on several issues that may be implemented formalistically or in a problematic manner — including the right to be heard and to participate effectively in proceedings; legal assistance; decisions without delay and with the involvement of parents; full respect for privacy; and the treatment of juvenile offenders deprived of their liberty.

‘To be heard’ is one of the fundamental principles of children’s rights. In juvenile justice, this right closely interacts with the right to participation in proceedings and other procedural rights. It is required to be fully observed throughout every process of juvenile justice, either formal judicial proceedings or alternative measures. During all stages of the judicial process, from pre-trial to adjudication, disposition and the implementation of measures imposed, juvenile offenders have the right to remain silent, to be heard by the police, the prosecutor, judge, and other staff who deal with their cases. For cases of intervention or diversion, juvenile offenders must have the opportunity to give free and voluntary consent and must be given the opportunity to obtain legal and other assistance in determining appropriate and desirable diversion.

In order to effectively participate in the proceedings, juvenile offenders must be informed promptly and directly about the charge against them and if appropriate through their parents, and about the juvenile justice process and possible measures taken by the court. The proceedings should be conducted in an atmosphere of understanding to enable juvenile offenders to participate and to express themselves

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<sup>542</sup> Ibid [40].

freely. The courtroom procedures and practice should be modified to be child-friendly.

Juvenile offenders must be guaranteed legal and other assistance in the preparation and presentation of their defence. Lawyers, paralegal professionals and others providing assistance must have sufficient knowledge and understanding of the various legal aspects of the juvenile justice process and must be trained to work with children in conflict with the law. The juveniles and their assistants must have adequate time and facilities for the preparation of their defence. Their communications, orally or in writing, should take place confidentially, fully respecting privacy. The assistants must be present in decision-making processes, at the interview by the police and at the trial before the court or other judicial body.

The time between the commission of an offence and the final response to this act should be as short as possible. Time limits of judicial processes for dealing with juvenile offenders should be much shorter than those set for adults.

Parents or legal guardians should also be present at the proceedings to assist the child's psychological and emotional wellbeing. Their presence does not, however, mean that they can act in the defence of juvenile offenders or be involved in the decision-making process.

Juvenile offenders' privacy shall be respected at all stages of the proceedings, from the initial contact with the law enforcement authorities to the final decision by the competent authority, or release from supervision, custody, or deprivation of liberty. No information that can lead to the identification of child offenders can be published. Public authorities should be very reluctant to provide press releases related to offences allegedly committed by juveniles and should limit them to very exceptional cases. Journalists violating juvenile offenders' right to privacy should be sanctioned. Court proceedings should be conducted behind closed doors; exceptions to this rule should be very limited, clearly outlined in national legislation and guided by the best interests of the child. The records of juvenile offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case.

The use of detention for juvenile offenders should be kept to a minimum. The law should clearly state the requirements and duration of detention, particularly in the case of pre-trial detention to ensure the appearance of the accused at court proceedings and in cases where there is immediate danger to themselves or others. The legality of pre-trial detention should be reviewed regularly, preferably every two weeks. The exception to the separation of juvenile offenders from adults in detention because of the child's best interests should be interpreted narrowly, not at the state party's convenience. Every child deprived of liberty has the right to adequately communicate with the outside world, to receive care, protection and all necessary individual assistance — social, educational, vocational, psychological, medical and physical — as an integral part of the rights to fair and humane treatment, and preparation for their return to society through correspondence and visits. Juvenile offenders should be placed in facilities as close as possible to their family's residence to facilitate visits by their family, which significantly helps juveniles' rehabilitation and social reintegration.

#### 5.2.5 Organisations and Personnel Relevant to Juvenile Justice

The *CRC* (art 40) and most other instruments concerning juvenile justice, including the *Beijing Rules*, *Havana Rules*, *UN Guidelines 1997* and *GC 10 on Juvenile Justice* expect states parties to establish laws, procedures, authorities and institutions specifically applicable to juvenile offenders.

It is indicated that:

A comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialised defenders or other representatives who provide legal or other appropriate assistance to the child'.<sup>543</sup>

The *GC 10 on Juvenile Justice* (para 93) also recommends that juvenile courts should be established as separate units or as part of existing district courts; or specialised judges should be appointed in places where it is not feasible to establish that court

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<sup>543</sup> Ibid [92]; see also *CRC* art 40(3); *Beijing Rule* rr 12, 22; *Havana Rules* r 81; *UN Guidelines 1997*.

immediately. Specialised services, including probation, counselling and supervision should be established together and promoted for effective coordination.

### **5.3 Vietnam's Regulations on the Treatment of Juvenile Offenders**

Although the law defines 'child' differently from 'juvenile', Vietnam has a common juvenile justice policy in dealing with juvenile offenders. In principle, the law and policy on juvenile justice is applied to people below 18 years old, except for differences clearly indicated.

General information about Vietnam's state structure and criminal law and the judicial system have been introduced in Chapter 3. Here, I describe particular provisions on crime, penalties and relevant policies applicable to juvenile offenders in the Vietnamese legal system and compare them to international reference frames on juvenile justice.

#### **5.3.1 General Principles of Dealing with Juvenile Offenders**

In the Vietnamese criminal law, there is recognition of almost all the fundamental principles of international criminal law, including no punishment without law; equality or non-discrimination; no torture, coercion or cruel treatment; no compulsory self-incrimination, the presumption of innocence; the use of one's own language; the right to be notified of charge; the requirements of a fair trial; and the right to appeal to higher court. Article 5 of the *CPC*, considered the principle of non-discrimination in criminal proceedings provides that:

The criminal procedure shall be conducted on the principle that all citizens are equal before law, regardless of their nationality, sex, belief, religion, social strata and social position.

This principle is also applied in the treatment of juvenile offenders. It can be seen as similar to the non-discrimination principle in international juvenile justice. So far, however, Vietnamese law has neither particular guidelines for the application of this principle nor a precise statement of 'the best interest of the child' in criminal law or juvenile justice.

The principles of dealing with juvenile offenders in Vietnam convey the final target and main points that are regarded as principles of international juvenile justice or the specification of the best interest of the child in the judicial area. Precisely, in the *PC* (art 69) principle for handling juvenile offenders includes that:

- a) The main target of treatment is to educate and help juvenile offenders to redress their wrongs, develop healthily and become useful citizens;
- b) While investigating, prosecuting and hearing juveniles, the authorities shall consider their capability for understanding the possible danger caused by their actions as well as the causes and conditions relating to such criminal acts;
- c) Juvenile offenders may be exempt from criminal liability if they commit less serious crimes or serious crimes which cause no great harm and involve many extenuating circumstances and if they receive supervision and education by their families, agencies or organisations;
- d) The examination of criminal liability and the imposition of penalties on juvenile offenders only apply to cases of necessity and must be based on the nature of their criminal acts, their personal characteristics and crime prevention requirements.

Article 69 of the *PC* also provides several other principles for applying particular penalties to juvenile offenders, which are analysed in the sections below on penalties and alternative measures.

### 5.3.2 Crime and the Age of Criminal Responsibility in Vietnam's Jurisdiction

As mentioned in Chapter 3, crimes are socially dangerous acts regulated in the *PC* and classified into four groups: less serious, serious, very serious and extremely serious. The *PC* prescribes that persons aged 16 years or older have to bear criminal liability for all crimes they commit; and persons aged from 14 to below 16 years have to bear criminal liability for very serious crimes intentionally committed or for extremely serious crimes.<sup>544</sup> This means the minimum age of criminal responsibility is 14 years, and the minimum age of responsibility for all crimes is 16 years old.

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<sup>544</sup> *PC* art 12.



Persons below 14 years old are presumed to have no capacity to commit a crime. There is no criminal responsibility for acts committed by those younger than 14 years old. Further, persons reaching the minimum age of criminal responsibility but below 16 years shall not be criminally liable for their acts if these acts constitute less serious or serious crimes. Therefore, Vietnamese law fully complies with the international standard in the minimum age of criminal responsibility.

Both the *PC* and the *CPC* have provisions specifically applicable to offences committed by juveniles. In the case of having to be responsible for criminal acts, juvenile offenders shall be given lighter penalties and special criminal proceedings different from those for adults. Persons aged 18 or older are the subject of adult criminal proceedings when their crimes are solved regardless of whether they were juvenile or adult when committing a criminal act. This means that the minimum age of criminal maturity is 18; the jurisdiction of juvenile justice is over persons below 18 years of age. Therefore, the minimum age of criminal maturity or the jurisdiction of juvenile justice in Vietnam complies with international standards in this area.

In this regard, the Supreme Court and authorities have issued several guidelines for determining an offender's age in cases where offenders have no records of their exact date of birth, including *Official Dispatch 81/2002/TANDTC* and the *Joint Circular (JC) 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases*.<sup>545</sup> The core of guidelines is that all explanation has to ensure the rights of offenders.

In practice, recently, an appeal court has overturned a first-instance judgment and transferred the case file for re-investigation with the reason that the defendant had

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<sup>545</sup> See *Cong Van 81/2002/TANDTC cua Toa Anh Nhan Dan Toi Cao Giai dap cac van de Nghiep Vu* [Official Dispatch 81/2002/TANDTC issued by the Supreme People's Court on Answering several Questions on Courts' Tasks]; *Thong Tu Lien Tich 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG cua Vien Kiem Sat Nhan Dan Toi Cao, Toa An Nhan Dan Toi Cao, Bo Cong An, Bo Tu Phap, va Bo Lao Dong, Thuong Binh va Xa Hoi ve Huong Dan Thi Hanh mot so Quy Dinh cua Bo Luat To Tung Hinh Su doi voi Nguoi Tham Gia To Tung la Nguoi Chua Thanh Nien* [Joint Circular 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG issued by the Supreme People's Procuracy, Supreme People's Court, Ministry of Public Security, Ministry, and Ministry of Labour, Invalids and Social Affairs on Guiding a Number of Provisions of the Criminal Procedure Code on Juvenile Procedure Participants] (hereafter *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases*) art 6.

not reached the age of criminal responsibility when committing the crime.<sup>546</sup> In another case, a sentence of capital punishment was revoked for a re-trial because the appeal court argued that the offender had not reached 18 years old when he committed the crime.<sup>547</sup> The problems in these court cases were that the birth certificates and related documents reflecting the ages of the offenders were unclear and conflicted.

### 5.3.3 Penalties Applicable to Juvenile Offenders

Vietnam's system of criminal penalties includes seven principal penalties and seven additional penalties. The seven principal penalties are: warning; fine, non-custodial reform; expulsion; termed imprisonment; life imprisonment and capital punishment. Seven additional penalties are: banning from holding certain posts, practising occupations or doing certain jobs; ban on residence; probation; deprivation of some civic rights; confiscation of property; a fine, when it is not applied as a principal penalty; and expulsion, when it is not applied as a principal penalty.

In principle, for each offence, the offender is subject to only one principal penalty and may be subject to one or several additional penalties.<sup>548</sup> However, in certain circumstances when being deemed no longer dangerous to society, offenders may be exempt from criminal liability or penalty.<sup>549</sup> For those who commit acts dangerous to society when they are suffering from mental illness, having no capacity of criminal liability, a compulsory medical treatment shall be applied instead of a criminal penalty.<sup>550</sup> Offenders are no longer considered criminally responsible if their offence has not been discovered in a statutory time period since it was committed, with an exception for crimes infringing upon national security and undermining peace,

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<sup>546</sup> See Judgment No xxx/2014/HSST issued by the Court of XXX city.

<sup>547</sup> Le Nga, 'Thoat An Tu sau Hai Lan bi Tuyen Tu Hinh' [Escaped Death from Two Death Sentences], *Thanh Nien* (online), 16 December 2013 <<http://www.thanhvien.com.vn/pages/20131226/thoat-an-tu-sau-hai-lan-bi-tuyen-tu-hinh.aspx>>.

<sup>548</sup> *PC* art 28/3.

<sup>549</sup> *Ibid* arts 25, 54.

<sup>550</sup> *Ibid* arts 13, 43.

crimes against humanity and war crimes.<sup>551</sup> Time periods depend on the nature of the offence: 5 years for less serious crimes, 10 years for serious crimes, 15 years for very serious crimes, and 20 years for extremely serious crimes.<sup>552</sup>

The applicable penalties for a particular offence are regulated in one article of the *PC* from Article 78 to Article 344. Each article often contains several penalty brackets. When deciding penalties, the court shall consider aggravating and mitigating circumstances listed in articles 46 and 48 of the *PC*. For particular criminal cases, circumstances aggravating and mitigating criminal liability are about special or different characters of the offence and offender compared with common cases.

For juvenile cases, the *PC* has specifically applicable provisions (arts 69–77). Article 69 provides that:

- (a) If it is deemed unnecessary to impose penalties on juvenile offenders, the court shall apply judicial measures of education at the commune or sending to the reformatory school;
- (b) Life imprisonment or the death penalty shall not be imposed on juvenile offenders;
- (c) The application of termed imprisonment to juvenile offenders should be reduced. If applied, termed imprisonment imposed on juvenile offenders shall be lighter than applicable to adults committing similar crimes;  
Pecuniary penalties are not applied to juvenile offenders below 16 years old;
- (d) Additional penalties are not applied to juvenile offenders;
- (e) The judgment imposed on juvenile offenders aged below 16 years shall not be taken into account for determining recidivism or dangerous recidivism.

The particular penalties applicable to juvenile offenders are: a warning, a fine, non-custodial reform, and termed imprisonment.<sup>553</sup> General applicable requirements of these penalties indicate that warnings and fines are for less serious crimes; non-

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<sup>551</sup> Ibid art 24.

<sup>552</sup> Ibid.

<sup>553</sup> Ibid art 71.

custodial reform is for less serious or serious crimes; and termed imprisonment can be applied to all four kinds of crimes.<sup>554</sup> Therefore, warnings, fines and non-custodial reform cannot be applied to juvenile offenders aged from 14 to below 16 years, who shall not bear criminal responsibility for less serious and serious crimes. Hence, the only penalty applicable for juvenile offenders aged from 14 to below 16 years old is termed imprisonment.

Termed imprisonment shall be imposed on juvenile offenders according to the following regulations.

For persons aged between a full 16 and under 18 when they committed the crime, if the applicable legal provisions stipulate life imprisonment or the death sentence, the highest applicable penalty shall not exceed 18 years of imprisonment; if it is termed imprisonment, the highest applicable penalty shall not exceed three quarters of the prison term prescribed by the provisions of the law;

For persons aged from 14 to below 16 when committing crimes, if the applicable provisions stipulate life imprisonment or the death sentence, the highest applicable penalty shall not exceed 12 years of imprisonment; if it is termed imprisonment, the highest applicable penalty shall not exceed half of the prison term prescribed by the law.<sup>555</sup>

For fines and non-custodial sentences, the amount of money and duration of non-custodial sentences applied to juvenile offenders shall not exceed a half of that regulated in the provision on particular crimes.<sup>556</sup>

Beside the above penalties, when dealing with juvenile cases, if it is deemed unnecessary to impose a penalty on juvenile offenders, the court shall apply one of two judicial measures for a period from one to two years: education at a commune or transfer to a reformatory school.<sup>557</sup> Of these, the first measure can only be applied to juvenile offenders who committed less serious or serious crimes, meaning that

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<sup>554</sup> Ibid arts 29–33.

<sup>555</sup> Ibid art 74.

<sup>556</sup> Ibid arts 72–3.

<sup>557</sup> Ibid art 70.

offenders aged from 14 to below 16 years are not subject to these penalties, and the second measure is not appropriate to offenders aged 17 years old because the time period of this measure is between one and two years.<sup>558</sup> The procedure to apply these two measures is the same as applying a criminal penalty — by the court panel and after a formal criminal trial. However, these measures are not recorded in the list of criminal penalties in general as well as the penalties applicable to juvenile offenders.<sup>559</sup> Technically, both measures seem to be rarely applied, as the scope of juvenile offenders who meet relevant requirements is limited. More details are presented in section 5.3.5 Diversion and Alternative Measures.

Comparing the above regulations to the international standards, it can be seen that the penalties and alternative measures in Vietnamese law are quite close to the international standards in terms of principles, and the purpose of punishment. The penalties applicable to juveniles are lighter than those of adults. However, this system is inadequate in providing various options for the court to select. Termed imprisonment is almost the only penalty for offenders aged between 14 and 16 years old. Perhaps this shortcoming in penalties applicable to juvenile offenders is the main reason for UNICEF's comment that Vietnamese law is more punitive than other countries in the region.<sup>560</sup>

#### 5.3.4 Procedures and the Rights of Juvenile Offenders

The process of 'solving a crime' is herein far more than simply identifying the offender; rather it starts when the relevant authority institutes a criminal case and finishes when the offender has been meted out their punishment (whether this means having served a term of imprisonment or paid the fine imposed or fulfilled the required terms of any other measure). The four main stages of criminal procedures are investigation, prosecution, trial and execution of judgment. During the course of criminal proceedings, the offender is named using different legal terms, each having corresponding procedural rights in accordance with each stage of proceedings. In

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<sup>558</sup> See *ibid* arts 12, 70/2.

<sup>559</sup> See *ibid* arts 28, 71.

<sup>560</sup> UNICEF's Report on Children in Viet Nam, above n 86, 234.

certain cases, depending on the nature of the crime and the offender's circumstances, the process can be stopped and offenders can be exempt from criminal liability or penalty. As stated in Chapter 1, this study does not focus on the treatment of children/ juveniles after trial.

The *CPC* (art 13) provides that when detecting signs of a crime within their authority, the investigating body, procuracy or court has to institute a criminal case and apply measures to determine offences and handle offenders. The investigating body issues the decision to initiate criminal proceedings against a person when there are sufficient grounds to determine that a person has committed a criminal act.<sup>561</sup>

Criminal proceedings shall adhere to 28 principles stated in the *CPC* (arts 3–30), recognising all basic human rights and fundamental principles of criminal proceedings as stated in international law. Briefly, the principles concerning the treatment of offenders provide that:

- (a) Persons in charge of dealing with criminal cases must respect and protect the legitimate rights and interests of citizens; regularly examine the lawfulness and necessity of the applied measures; promptly cancel or change such measures if it is deemed that they are in violation of the law or no longer needed;<sup>562</sup>
- (b) All citizens are equal before the law, regardless of their nationality, sex, belief, religion, and social position;<sup>563</sup>
- (c) Nobody shall be arrested without a court decision, or decision made or approved by the procuracies, except for cases where offenders are caught 'red-handed';<sup>564</sup>
- (d) All forms of coercion and corporal punishment are forbidden;<sup>565</sup>
- (e) No persons shall be considered guilty and be punished until a court judgment on their criminality takes legal effect;<sup>566</sup>

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<sup>561</sup> *CPC* art 126.

<sup>562</sup> *Ibid* art 4.

<sup>563</sup> *Ibid* art 5.

<sup>564</sup> *Ibid* art 6.

<sup>565</sup> *Ibid*.

<sup>566</sup> *Ibid* art 9.

- (f) The responsibility to prove offences shall rest with the procedure-conducting bodies. The accused or defendants shall have the right but not be bound to prove their innocence;<sup>567</sup>
- (g) The language used in the criminal procedure is Vietnamese. The participants may use their own other language; and interpreters shall be required;<sup>568</sup>
- (h) The right to defence of detainees, accused and defendants is guaranteed;<sup>569</sup>
- (i) Judges and jurors shall conduct the trial independently and abide by the law;<sup>570</sup>
- (j) Courts shall conduct trials in public, unless in special cases concerning state secrets, morality and national customs and practices, and the involved parties' secrets;<sup>571</sup>
- (k) First-instance judgments of courts can be appealed or protested for appeal trial by offenders, victims and their legal representative, and the procuracy. Appellate judgments and decisions shall be legally valid. For legally valid court judgments and decisions, if legal violations are detected or new circumstances emerge, they shall be reviewed.<sup>572</sup>

During the course of particular criminal cases, the person who is alleged as, or accused of, having infringed the penal law has rights as a person held in custody, as an accused or as a defendant — corresponding to different stages of the criminal procedure. Persons held in custody are persons arrested in urgent cases,<sup>573</sup> offenders caught 'red-handed' (that is, engaged in the commission of the offence), persons

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<sup>567</sup> Ibid art 10.

<sup>568</sup> Ibid art 24. Among 53 ethnic minority groups living in Vietnam (excluding the Kinh or Viet), many of them have their own languages differing from Vietnamese; and a number of members of these ethnic minorities can not communicate well in Vietnamese.

<sup>569</sup> Ibid art 11.

<sup>570</sup> Ibid art 16.

<sup>571</sup> Ibid art 18.

<sup>572</sup> Ibid art 20.

<sup>573</sup> Urgent arrests can be made in the following cases: a) when there exist grounds to believe that the person is preparing to commit a serious crime; b) when victims or persons present at the scene where the crime occurred saw with their own eyes and confirmed the identity of those who committed the crimes and it is deemed necessary to immediately prevent that person from escaping; and c) when traces of the crime are found on the body or at the residence of the person suspected of having committed the crime and it is deemed necessary to immediately prevent such person from escaping or destroying evidence (*CPC* art 81).

arrested under pursuit warrants, offenders who have confessed or given themselves up, and against whom custody decisions have been issued.<sup>574</sup> The accused are defined as ‘persons against whom criminal proceedings have been initiated’.<sup>575</sup> Defendants are defined as ‘persons whom the courts have decided to commit for trial’.<sup>576</sup>

In brief, the offender or person who is dealt with by criminal procedures has the following procedural rights:<sup>577</sup>

- (a) to be informed of the reasons for their custody and the offences which they have been accused of; to be explained their rights and obligations;
- (b) to receive all decisions concerning their offence, including decisions to institute criminal proceedings, written investigation reports, indictments, decisions on their prosecution; to request different procedure-conducting persons, expert witnesses, and interpreters; to complain about relevant decisions and acts of the bodies and persons with procedure-conducting competence;
- (c) to present their statements, evidence and requirements during the course of proceedings; to defend themselves or ask other persons to defend them;
- (d) to participate and present arguments in the trial; to have legal equality with prosecutors, defence counsel, victims and those involved in the proceedings in giving evidence, requests and arguments before the court; to appeal the judgment and decision of the court.

Offenders must obey the summonses of the procedure-conducting bodies. In cases of absence without plausible reason, they may be escorted or searched by the police if they escape.<sup>578</sup>

The above principles and regulations mostly adhere to the provisions of the *CRC* and other international human rights laws concerning the basic procedural rights of persons alleged as, or accused of, having infringed the penal law.

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<sup>574</sup> *CPC* art 48.

<sup>575</sup> *Ibid* art 49/1.

<sup>576</sup> *Ibid* art 50/1.

<sup>577</sup> *Ibid* arts 48/2, 49/2, 50/2.

<sup>578</sup> *Ibid* arts 49/3, 50/3.



During criminal proceedings, the procedure-conducting bodies may apply deterrent measures to stave off further crimes by the accused; to prevent the accused or defendants causing difficulties in the criminal legal process, committing other crimes, or to secure the execution of judgments. The six deterrent measures prescribed in the *CPC* are arrest, custody, temporary detention, banning from travel out of local area, guarantee,<sup>579</sup> and depositing money or valuable property as bail. Of these, custody and temporary detention are measures of deprivation of liberty.

Custody may be applied to persons arrested in urgent cases, offenders caught ‘red-handed’, offenders confessing their crimes, or persons arrested under pursuit warrants.<sup>580</sup> The *CPC* (art 87) strictly states that the custody time limit must not exceed three days from the investigating body receiving the arrestee; in special cases, the custody may be extended twice for no more than three days each time.

Temporary detention may be applied to the accused or defendants who are accused of committing extremely serious crimes, very serious crimes; or other crimes punishable with over two years of imprisonment if there are grounds to believe that they may escape, cause difficulties in solving crimes and in the prosecution of the case, or commit other crimes.<sup>581</sup> The application of temporary detention needs to refer to a number of articles of the *CPC*, including articles 119–21, 166, 176–7, 228, 242–3 and 250. From these regulations it can be recognised that temporary detention can be applied in all stages of criminal proceedings, and while waiting for the execution of the judgment of a termed imprisonment, life imprisonment or the death penalty. The time limit of temporary detention is regulated as no longer than the time limitation for investigating, prosecuting, hearing, and 45 days from the day the court judgment is pronounced. The statutory time for dealing with crimes is different

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<sup>579</sup> Guarantee is a deterrent measure to replace the temporary detention measure; two individuals together may stand guarantee for one accused or defendant who is their relative; organisations may stand guarantee for the accused or offenders who are their members (*CPC* art 92). This differs from standing surety in that no funds or property is transferred; it is more a question of honour. See more in section 5.3.5 Diversion and Alternative Measures.

<sup>580</sup> *CPC* art 86.

<sup>581</sup> *Ibid* art 88.

depending on the stage of procedures and on the seriousness of the crime, illustrated in Table 5.1 and Table 5.2.

Generally, corresponding to four groups of crimes (less serious, serious, very serious and extremely serious crimes), time limits from instituting criminal proceedings to opening the first-instance trial are regulated as no longer than 125, 170, 225 and 255 days respectively, see Table 5.1. These time limits can be extended if the cases are complicated; but in any situation the duration should not exceed 195 days for less serious crimes, 300 days for serious crimes, 420 days for very serious crimes, and 660 days for extremely serious crimes, described in Table 5.2. When the case is returned for additional investigation, the duration for additional investigation is to be no longer than one or two months depending on the court or the procuracy returning the case.<sup>582</sup> For the cases that are returned for re-investigation, the time limits of proceedings are re-counted as new cases from the investigating bodies receiving the case files and re-investigation requests.<sup>583</sup>

Table 5.1 Time Limits for Solving Crimes and Detention Pre-trial: No Extension

Crimes Stages	Less serious	Serious	Very serious	Extremely serious
<b>Investigation</b>	2 months	3 months	4 months	4 months
<b>Prosecution</b>	20 days	20 days	30 days	30 days
<b>Trial Preparation</b>	30 days + 15 days	45 day + 15 days	2 months + 15 days	3 months + 15 days
<b>Total</b>	125 days	170 days	225 days	255 days
Note: When calculating the total time, each month from stages of proceedings is counted as 30 days. (CPC arts 119–21, 166, 176–7)				

<sup>582</sup> Ibid art 121/2.

<sup>583</sup> Ibid art 121/3–4.

Table 5.2 Time Limits for Solving Crimes and Detention Pre-trial with Extension

Crimes Stages	Less serious	Serious	Very serious	Extremely serious
<b>Investigation</b>	2 months + 1 month	3 months + 2 months + 1 months	4 months + 3 months + 2 months	4 months + 4 months + 4 months + 4 months
<b>Prosecution</b>	20 days + 10 days	20 days + 10 days	30 days + 15 days	30 days + 30 days
<b>Trial Preparation</b>	30 days + 15 days + 15 days + 15 days	45 day + 15 days + 15 days + 15 days	2 months + 15 days + 30 days + 15 days	3 months + 15 days + 30 days + 15 days
<b>Total</b>	195 days	300 days	435 days	660 days
Note: When calculating the total time, each month from stages of proceedings is counted as 30 days. (CPC arts 119–21, 166, 176–7)				

The above provisions on deterrent measures and the duration of proceedings are applied to deal with both adult and juvenile offenders. For juveniles, the *CPC* and *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* provide some provisions specifically applicable.

- (a) Deterrent measures of deprivation of liberty (arrest, custody and temporary detention) are applied to offenders aged from 14 years to below 16 years only in cases where they commit very serious crimes intentionally or commit extremely serious crimes; and to persons aged from 16 years to below 18 years in cases where they intentionally committed a serious crime, or committed a very serious or extremely serious offence.<sup>584</sup>

<sup>584</sup> Ibid art 303/1–2.

- (b) Before applying measures of deprivation of liberty, procedure-conducting bodies shall take into account whether other deterrent measures can be used instead.<sup>585</sup>
- (c) The bodies ordering arrest, custody, or temporary detention must immediately notify the juvenile's family or representatives about this application.<sup>586</sup>
- (d) Procedure-conducting bodies shall give priority to quickly and accurately settling juvenile cases.<sup>587</sup>

The treatment of persons held in custody and temporary detention is specified by the *Decree 89/1998/ND-CP on Custody and Detention*.<sup>588</sup> Juveniles are to be placed in a separate area from adults', and have similar rights as adult detainees.<sup>589</sup> They can contact their defence counsel and relatives with the procedure-conducting bodies' acceptance.<sup>590</sup>

In Vietnamese law there is no clear difference in time limits for proceedings and pre-trial detention applicable to adults and juveniles; and no statement showing the use of pre-trial detention as the measure of last resort. The *CPC* has no mention of the duration for handling juvenile cases. The *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* requires that procedure-conducting bodies assign priority to quickly resolving juvenile crimes.<sup>591</sup> This requirement, however, is too general, lacking the necessary details on the speed of resolution in comparison with common time limits for investigation, prosecution and trial. Hence it is impossible to use such vague provisions as the legal basis for evaluating whether or not the procedure-conducting bodies have violated the law if they conduct investigation, prosecution and trial with common time limits for such stages as

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<sup>585</sup> *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* art 8/1.

<sup>586</sup> *CPC* art 303/3.

<sup>587</sup> *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* art 8/1.

<sup>588</sup> *Nghi Dinh 89/1998/ND-CP ve Ban Hanh Quy Che ve Tam Giu va Tam Giam, duoc sua doi theo Nghi Dinh 98/2002/ND-CP va Nghi Dinh 09/2011/ND-CP* [Decree 89/1998/ND-CP on the Rules of Custody and Temporary Detention, Amended by Decree 98/2002/ND-CP and Decreed 09/2011/ND-CP].

<sup>589</sup> *Ibid* art 15/1.

<sup>590</sup> *Ibid* art 22.

<sup>591</sup> *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* art 3/6.

prescribed by the *CPC*. Hence, Vietnamese law does not adhere to the international standard which requires the process of juvenile cases to be much shorter than those applicable to adults. For the duration of pre-trial detention applicable to juvenile offenders, the *CPC* has no specific regulations either. In other words, except for those aged from 16 to below 18 who commit a serious crime with no wilfulness or a less serious offence, juvenile offenders can be detained during criminal processes in the same way and time period as adult offenders. This regulation does comply with international standards requiring the use of detention pending trial as the measure of last resort and for the shortest appropriate period.

To fully describe Vietnamese law concerning this issue, it should be noted that the *CPC* prescribes a shortened process with a total time limit of 23 days.<sup>592</sup> However, this process is only applied for simple, less serious crimes with obvious evidence, where the criminals are caught ‘red-handed’ and have clear personal identification and criminal records.<sup>593</sup> It seems not to be applied to juvenile cases because people under 16 have no criminal liability for less serious crimes and people aged between 16 and 18 in such conditions should be exempt from criminal liability.

Besides the above regulations, in dealing with juvenile cases where persons are held in custody, and the accused and defendants are aged below 18 years old, the main regulations specifically applicable to juvenile proceedings include the following requirements.

Investigators, procurators and judges working with juvenile offenders must possess the necessary knowledge about juvenile psychology and education, and juvenile crime prevention.<sup>594</sup>

In the process of investigation, prosecution and trial, officials must clarify information about juvenile offenders’ age, physical and mental development, and awareness of criminal acts; about their living and education conditions; and about the

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<sup>592</sup> *CPC* arts 321–4.

<sup>593</sup> *Ibid* art 319.

<sup>594</sup> *Ibid* art 302/1.

causes and conditions of crimes.<sup>595</sup> At court hearings, the explanation and questioning of juvenile defendants must be suitable to their age and level of maturity; the jury panels shall allow juveniles to express their viewpoints and take into account such viewpoints before issuing judgments.<sup>596</sup>

During procedural stages handling the accused and defendants aged below 18 years, the participation of their defence counsels is mandatory, unless the juvenile offenders or their representatives have refused a counsel and a record of the refusal is kept in the case files.<sup>597</sup> The absence of defence counsels in these juvenile cases constitutes a serious violation of criminal procedures, resulting in a return of the case files for additional investigation, re-investigation or re-trial.<sup>598</sup>

Representatives of juvenile offenders may hire defence counsel or defend the offenders themselves.<sup>599</sup> In cases where offenders and their representatives do not seek the assistance of counsel and do not refuse to have defence counsel, procedure-conducting bodies must request the bar association or the Vietnam Fatherland Front Committee or the Front's member organisations to appoint defence counsels for their organisation's members.<sup>600</sup> Defence counsels may be lawyers, offenders' representatives or people's advocates, having a special right to appeal against court judgments or decisions if the defendant is a juvenile.<sup>601</sup> It should be noted that

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<sup>595</sup> Ibid art 302/2.

<sup>596</sup> *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* art 11/5.

<sup>597</sup> Ibid art 9/1, 5.

<sup>598</sup> *CPC* arts 57/2, 168/3, 179/1/c, 250, 305; *Thong Tu Lien Tich 01/2010/TTLT-VKSNDTC-BCA-TANDTC cua Vien Kiem Sat Nhan Dan Toi Cao, Bo Cong An va Toa An Nhan Dan Toi Cao ve Huong Dan cac Quy Dinh cua Bo Luat To Tung Hinh Su ve Tra Ho So de Dieu Tra Bo Sung* [Joint Circular 01/2010/TTLT-VKSNDTC-BCA-TANDTC issued by the Supreme People's Procuracy, Ministry of Public Security and Supreme People's Court on Guiding the Implementation of the Provisions of the Criminal Procedure Code on Returning the Files for Additional Investigation] (hereafter *JC 01/2010/TTLT-VKSNDTC-BCA-TANDTC on Returning the Files for Additional Investigation*) art 4/2/b.

<sup>599</sup> *CPC* art 305/1.

<sup>600</sup> Ibid arts 56, 305.

<sup>601</sup> Ibid arts 56/1, 57/2/k.

lawyers are professionals regulated by the *Law on Lawyers* but there is no clear criteria for ‘people’s advocate’.<sup>602</sup>

Representatives of juvenile offenders’ families, and representatives of schools and organisations where offenders study, work and live shall have the right as well as obligation to participate in the procedure under the procedure-conducting bodies’ decisions.<sup>603</sup>

Where the offenders are aged from 14 years old to below 16 years old, or juveniles aged from 16 to below 18 years with mental or physical disabilities, or in other necessary cases, the questioning and interrogation must be witnessed by their family’s representative, except for the case where their family’s representative is deliberately absent, not responding to procedure-conducting bodies’ summons or requests. The family representatives can ask the offender some questions if the investigators agree; and have the right to show documents and evidence, make requests or complaints, and read the case files upon the termination of the investigation.<sup>604</sup>

At the stage of hearing, as prescribed in the *CPC*, in cases of necessity, the court may decide to conduct the trial of juvenile defendants behind closed doors.<sup>605</sup> The composition of the jury panel hearing juvenile offenders should include a juror who is a teacher or Youth Union cadre.<sup>606</sup> The presence of family representatives of juvenile defendants is compulsory, except where they are deliberately absent. Representatives of the defendant’s family, school and other organisations attending the court session have the right to produce documents, request to change the

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<sup>602</sup> The use of ‘people’s advocates’ follows the regulations on professionals for the defence of offenders in criminal proceedings, first introduced in 1945 when Vietnam proclaimed its independence See Thi Thanh Nga Pham, ‘Juvenile Offenders in Vietnam and the Right to Defence’ (2015) 1473225415587737 (as doi:10.1177/1473225415587737) *Youth Justice* 1.

<sup>603</sup> Ibid art 306/1.

<sup>604</sup> Ibid art 306/2.

<sup>605</sup> Ibid art 307.

<sup>606</sup> Ibid art 307. Teachers and Youth Union cadres are often believed to have knowledge and experience of working with children, and that they can therefore support juvenile offenders in the course of a trial. Generally, a first-instance trial panel shall be composed of one judge and two jurors. Jurors are Vietnamese citizens having good moral qualities, legal knowledge and so forth. They are elected by the People’s Councils, and perform tasks under the assignment of the chief judge of the court.

procedure-conducting personnel; participate in the arguing process, and lodge complaints about procedural acts and court decisions.<sup>607</sup> Defence counsel and legal representatives of juvenile defendants have the right to appeal the court decisions relating to juvenile defendants.

*JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* stipulates that all procedural activities related to juveniles must be carried out in an environment conducive to the confidentiality of their personal lives, honour and dignity;<sup>608</sup> the court may decide to hear a trial behind closed doors in order to facilitate juvenile offenders' re-integration into the community; and show trials shall not be carried out, except for cases of necessity for legal education and information dissemination and crime prevention.<sup>609</sup>

The above-mentioned regulations applicable to juvenile offenders are quite close to international legal standards in corresponding issues. However, in a careful consideration of all related regulations, there are significant shortcomings in the issues of professional legal assistance and privacy.

For legal assistance, Vietnamese law provides that defence counsels may be lawyers, juvenile offenders' representatives, or people's advocates. This means that in Vietnam parents or legal guardians of juvenile offenders can act in their defence. This regulation is completely contradictory to the international standard concerning legal assistance and the role of juveniles' parents in juvenile justice. As analysed in the above section, parents or legal guardians' presence at the proceedings is to assist the juvenile offender's psychological and emotional welfare, not so that they can act in the defence or be involved in the decision-making process. Furthermore, as for cases where a people's advocate who is neither a lawyer nor an offender's representative conducts the defence in criminal proceedings, the current law has no criteria as to who can defend juvenile offenders during criminal proceedings. This is not compliant with the international standard in terms of professional requirements.

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<sup>607</sup> Ibid art 306/3.

<sup>608</sup> *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* art 3/3.

<sup>609</sup> Ibid art 11/2.



In such cases, when the representatives of juvenile offenders or people's advocate with no knowledge or experience take the place of defence counsels, the meaning of legal assistance becomes formalistic. This is because they often do not have the necessary legal and professional knowledge, skills or experience to enable them to effectively conduct defence in complicated judicial processes.

As for the protection of juvenile offenders' privacy, the *CPC* only gives the option that courts may conduct trials of juvenile defendants behind closed doors. *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* provides a general principle throughout the course of proceedings that requires the protection of juvenile offenders' privacy. Nevertheless, a circular has a low rank in the hierarchy of legal normative documents and the content of this circular is too loose, vague and inconsistent. There is no article specifying the protection of juvenile offenders' privacy in investigation and prosecution, or regulating the media's involvement. Conducting closed-door trials is optional, and the prohibition of show trials is not applied to all cases, with an exception existing for cases of information dissemination and education of the public concerning the law. Further, in the 'Plan for the Prevention of Juveniles Committing Serious Crimes in 2012',<sup>610</sup> organising show trials is regarded as an important task. As a result, court hearings of juvenile offenders are seldom conducted behind closed doors. Furthermore, legal documents concerning the media do not pay any attention to the protection of children's privacy in general as well as the privacy of juvenile offenders in particular. According to the *Law on the Press*, the media is allowed to report on cases even when the procedure-conducting bodies do not release relevant information.<sup>611</sup> Among various matters on which the media is not permitted to report, there is no mention of children or juveniles.<sup>612</sup> Further, there is no restriction on publishing information and pictures of

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<sup>610</sup> *Ke Hoach 380/C45-P6 ngay 22/3/2012 cua Tong Cuc Canh Sat Phong, Chong Toi Pham ve Phong, Chong Toi Pham trong Lua Tuoi Chua Thanh Nien Gay An Nghiem Trong* [Plan 380/C45-P6 dated 22 March 2012, issued by the General Police Department on the Prevention of Juveniles Committing Serious Crimes].

<sup>611</sup> *Luat Bao Chi nam 1989, duoc Sua Doi theo Luat 12/1999/QH10* [Law on Press of 1989, Amended by the Law 12/1999/QH10] art 7.

<sup>612</sup> *Ibid* art 10; *Nghi Dinh 51/2002/ND-CP Dinh Chi Tiet Thi Hanh Luat Bao Chi, Luat Sua Doi, Bo Sung mot so Dieu cua Luat Bao Chi* [Decree 51/2002/ND-CP on Specifying the Implementation of

public court hearings, offenders who are wanted by the police or persons sentenced for serious crimes.<sup>613</sup> Hence, the legal basis for the protection of juvenile offenders' privacy is very weak and insufficient.

### 5.3.5 Diversion and Alternative Measures

International standards and many academic studies put forward a general idea that diverting juvenile offenders away from criminal proceedings, or intervening by using alternative measures can be more helpful for the development of juveniles or children, correcting various shortcomings of formal justice or hearings.<sup>614</sup> In Vietnamese law, however, there is no technical term corresponding with 'diversion/intervention' as used in the international instruments concerning juvenile justice.<sup>615</sup> Vietnamese law has only a few general provisions involving the handling of juvenile offenders without resorting to formal trials by the court. The *PC* (art 69) provides that juvenile criminals may be exempt from penal liability if they commit less serious or serious crimes, involving many extenuating circumstances and their families or relevant organisations agree to supervise and educate them. This regulation is the legal basis whereby the investigating bodies and procuracies can terminate the investigation or prosecution of juveniles for their criminal acts and liabilities.<sup>616</sup> However, the law has no provisions specifying procedures or the role of communities when diverting juvenile offenders from criminal proceedings.

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the Law on Press, and the Law on Amending and Supplementing a number of Articles of the Law on Press] (hereafter *Decree 51/2002/ND-CP on Press*) art 5.

<sup>613</sup> *Decree 51/2002/ND-CP on Press* art 5/3.

<sup>614</sup> *Beijing Rules* r 11 (commentary); Edwin M Lemert, 'Diversion in Juvenile Justice: What Hath Been Wrought' (1981) 18(1) *Journal of Research in Crime and Delinquency* 34, 36; Richard J Lundman, *Prevention and Control of Juvenile Delinquency* (Oxford University Press, 2001) 144–5; Deborah A Chapin and Patricia A Griffin, 'Juvenile Diversion' in Kirk Heilbrun, Naomi E Sevin Goldstein and Richard E Redding (eds), *Juvenile Delinquency: Prevention, Assessment, and Intervention* (Oxford University Press, 2005) 161; Franklin E Zimring, 'The Common Thread: Diversion in Juvenile Justice' (2000) 88(6) *California Law Review* 2477.

<sup>615</sup> Thi Thanh Nga Pham, 'The Establishment of Juvenile Courts and the Fulfilment of Vietnam's Obligations under the *Convention on the Rights of the Child*' (2013) 14(1) *Australian Journal of Asian Law* 1, 6; Bo Tu Phap and UNICEF Vietnam, *Bao Cao Danh Gia Phap Luat va Thuc Tien Thi Hanh ve Xu Ly Chuyen Huong, Tu Phap Phuc Hoi doi voi Nguoi Chua Thanh Nien Vi Pham Phap Luat* [An Assessment Report about Regulations and Practical Application of Diversion and Restorative Justice to Juveniles Breaking the Law] (Tu Phap, 2012).

<sup>616</sup> *CPC* arts 164/2/a, 169/1.

Considering the above provision in relation to the age of criminal responsibility it can be seen that the scope of this regulation is very narrow, only concerning people aged from 16 years to below 18 years who have committed a less serious or serious crime. Juvenile offenders aged from 14 years to below 16 years are not the subject of penal liability exemption under this provision because they have no criminal liability in such situations.

In Vietnam's justice system, the judge is not empowered to divert juvenile offenders from a formal criminal proceeding or a formal hearing. In the stage of trial preparation even if it is recognised that juvenile offenders can be exempt from penal liability, the judge shall not dispose of the case at their discretion. A formal hearing shall be conducted and a judgment or verdict shall be issued. At a court session, if the trial panel agrees that the defendant has met the criteria to be exempt from penal liability, a judgment of penal liability exemption shall be handed down. Such regulations are not in line with international standards concerning the authority of courts and judges in dealing with offenders in juvenile justice.

For both criminal exemptions before and after a formal hearing, Vietnam has no clear mechanism for the implementation and evaluation of this measure. In practice, during this process, judicial bodies play a decisive role while the social organisations are usually involved more passively. The organisations that are more involved in this process include the person's school, the Youth Union and the Women's Union. Generally, based on the proposal given by the juvenile offender's family, the organisation's representative signs a claim that the organisation will be willing to help the juvenile offender, and be responsible for monitoring and educating that juvenile in the community.

With regard to alternative measures, there are two types of measures applied before and after the trial or two types of 'interventions in the context of judicial proceedings' in international juvenile justice.<sup>617</sup> In Vietnam, as mentioned above, during the process of solving crimes, all six deterrent measures regulated in the *CPC*

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<sup>617</sup> *GC 10 on Juvenile Justice* [22].

can be applied to either adult or juvenile offenders. It is advised that before and after imposing measures of deprivation of liberty or pre-trial detention on juvenile offenders, procedure-conducting bodies need to consider the ability to apply other deterrent measures or alternative measures. The other measures are banning from travel out of local area, guarantee, and the deposit of money or valuable property as bail. Of these, banning from travel out of local area and guarantee are more often used; deposit of money for bail seldom occurs in juvenile cases because juvenile offenders usually have no valuable property.

In regard to banning from travel out of local area, as regulated in the *CPC* (art 92), the offender must make a written pledge not to travel outside their residence and to appear on time and at the place stated in the summons.<sup>618</sup> In practice, when applying this measure to juvenile offenders, the procedure-conducting bodies also require their parents or legal representatives to pledge that the offenders will abide by the summons.

As for a guarantee (defined as an alternative measure to temporary detention), according to the *CPC*, two relatives of offenders can stand guarantee for the accused or defendants; organisations may stand guarantee for offenders who are members.<sup>619</sup> When standing guarantee, individuals or organisations must make written pledges that they will not let the accused or defendants commit offences and will ensure that offenders will present themselves in response to a summons of the procedure-conducting bodies.<sup>620</sup> Juvenile offenders are often guaranteed by their relatives.

In case studies that are fully discussed in sections 5.4.3 (The Treatment of Juvenile Offenders: Case Studies) and 6.4.3 (The Treatment of Child Victims and Witnesses of Crime: Case Studies), among a total of 29 offenders sentenced, cases where the measures of banning from travel out of the local area or guarantee were applied are 7 and 9 respectively. All these 16 offenders were guaranteed by their parents or other

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<sup>618</sup> *CPC* art 91.

<sup>619</sup> *Ibid* art 92/1.

<sup>620</sup> *Ibid* art 92/2.

relatives. None of them were guaranteed by organisations where they studied, worked or was a member.

Besides diversions and alternatives used before trial, two judicial measures can be also understood as alternatives to penalties by a formal hearing. It is prescribed in Vietnam that if it is deemed unnecessary to impose a penalty on juvenile offenders, the courts can apply one of two judicial measures of educative and preventive character, education at a commune or sending the offender to reformatory.<sup>621</sup>

- a) The measure of education at a commune for a period from one to two years can be applied to juvenile offenders who committed less serious or serious crimes,<sup>622</sup>
- b) The measure of sending to a reformatory for a period from one to two years can be applied to juvenile offenders if it is deemed that, due to the seriousness of their offence, their personal identification and living environment, such persons should be sent to re-education organisations with strict discipline.<sup>623</sup>

In practice, these measures are applied in very few cases. From 2007 to 2013, the total numbers of court decisions to educate a juvenile offender at a commune or sending the offender to a reformatory school were 52 and 42 respectively. One of the reasons for the lower number of juvenile offenders who had these judicial measures imposed is the shortcomings of the law as outlined below:

- a) First, education at communes is only applied to juveniles who have committed a less serious or serious crime. This means, as mentioned, that this can only be applied to offenders aged 16 years or older at the time the crime was committed;
- b) Second, time periods of judicial measures are between one and two years. This results in excluding juvenile offenders aged 17 years or older when the courts conduct the trial. In other words, the courts can only impose judicial

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<sup>621</sup> *PC* art 69/4.

<sup>622</sup> *Ibid* art 70/2.

<sup>623</sup> *Ibid* art 70/3.

measures on juvenile offenders aged below 17 years old at the time of the judgment given;

- c) Third, the application of judicial measures instead of a penalty is optional, depending on the will and evaluation of the trial panel when hearing particular cases;
- d) Another reason is the attitude of judges. It is said that judges often hand down a suspended sentence of termed imprisonment rather than a judicial measure in cases where judicial measures can be applied.<sup>624</sup> Judges also believe that the legal shortcomings are a factor contributing to their determination,<sup>625</sup> and that there is nothing wrong in terms of law enforcement when they impose a penalty instead of a judicial measure.

The above analysis shows that the scope of juvenile offenders on whom the court can impose a judicial measure instead of a formal penalty is quite limited, although it seems at first glance that these judicial measures would be applicable to most juvenile offenders.

In conclusion, the Vietnamese juvenile justice system does not meet international standards with respect to diversions and alternative measures. Vietnamese laws have no legal terms corresponding to ‘diversion’ or ‘alternative measure’. There are also shortcomings in terms of the court and the judge’s authority in the exemption of juvenile offenders from a formal hearing. There is no specific mechanism for implementing the re-direction of juvenile offenders out of the formal criminal justice system; the regulations are inadequate or missing; and the attitudes of judges in terms of alternative measures after formal trials are not favourable to their implementation. Such shortcomings should be addressed soon by both policy makers and law enforcement to enable Vietnam to better meet its obligations under the relevant treaties.

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<sup>624</sup> Hoang Yen, ‘Luật Chung Chung, Tre Em Pham Toi Thiet’ [Vague Law, Juvenile Offenders Disadvantaged], *Phap Luat* (online), 2013 <<http://phapluattp.vn/2013072612073689p0c1063/luat-chung-chung-tre-pham-toi-thiet.htm>>.

<sup>625</sup> *Ibid.*

## 5.4 The Implementation of Regulations on the Treatment of Juvenile Offenders in Vietnam

### 5.4.1 The General Situation of Juveniles in Criminal Proceedings

Focusing on criminal cases, the statistics in Table 5.3 (below) record the total numbers of offenders and juvenile offenders infringing the penal law and treated through criminal justice proceeding. We can see a fluctuation or unstable trend in the total numbers of offenders as well as juveniles infringing the law and dealt with under criminal procedures. Between 2005 and 2013 the total numbers of juveniles who were investigated, prosecuted and tried for criminal acts were 64,112, 43,487 and 38,637 respectively. In each year, the numbers corresponding to the three stages of criminal proceedings fluctuated between 5271 and 8821 (investigation); 3645 and 6353 (prosecution); 3262 and 5828 persons (trial). There was a dramatic decrease in the numbers of juvenile offenders and their proportion in the total national criminal statistics in 2009. The numbers of juveniles investigated, prosecuted and tried in 2009 were all less than 60 per cent of the figures recorded for 2008, while the total number of offenders (juvenile and adult) handled in all three stages in 2009 increased noticeably. This situation can be attributed to the amendment of the *PC* in 2009. This amended law decriminalised a number of formerly criminal acts concerning property as mentioned in section 3.3.1.2 Criminal Law and Juvenile Justice, which juveniles committed the most frequently.

Table 5.3 Criminal Statistics on Investigation, Prosecution and Trial: 2005–2013

YEARS	INVESTIGATION			PROSECUTION			TRIAL		
	Total	Juvenile	Juv/Tot	Total	Juvenile	Juv/Tot	Total	Juvenile	Juv/Tot
	P	P	%	P	P	%	P	P	%
<b>2005</b>	87,606	6420	7.33	81,425	4172	5.12	77,772	3404	4.38
<b>2006</b>	97,836	7818	7.99	92,560	5700	6.16	90,781	5171	5.7
<b>2007</b>	99,051	8394	8.47	98,341	5884	5.98	95,074	5247	5.52
<b>2008</b>	108,816	8821	8.11	104,015	6353	6.11	100,970	5828	5.77
<b>2009</b>	134,474	5271	3.92	109,445	3645	3.33	118,511	3262	2.75
<b>2010</b>	123,743	6429	5.2	98,657	3900	3.95	104,801	3371	3.22
<b>2011</b>	111,948	6559	5.86	106,494	4198	3.94	102,081	3803	3.73
<b>2012</b>	120,232	7901	4.48	120,150	5119	4.26	117,100	4657	3.98
<b>2013</b>	121,597	6499	3.87	121,133	4516	3.73	117,401	3894	3.32
<b>Sum</b>	1,005,303	64,112	#	932,220	43,487	#	924,491	38,637	#
<b>Average</b>	111,700	6644	6.14	103,580	4832	4.73	102,721	4293	4.26

*Adapted from the Supreme Procuracy's Statistics*

Considering the rates of juvenile offenders dealt with by the criminal justice system in relation to population statistics, it can be recognised that the rates of juvenile offenders dealt with by criminal justice is significantly lower than that of adults. Juveniles aged from 14 years to below 18 years of age constitute 10.30 per cent of the total population at the age of criminal responsibility, while the rates of juveniles dealt with by the judicial bodies, especially by the court in the stage of trial, were significantly lower compared with the total number of offenders in criminal proceedings. The percentage of juveniles in the total number of offenders was from 3.92 to 8.11 per cent in the investigation stage, from 3.33 to 6.16 per cent in the prosecution stage, and from 2.75 to 5.77 per cent in the trial stage. On average, juvenile offenders in three stages of criminal proceedings accounted for 6.70, 4.94 and 4.44 per cent respectively. The reduction in the percentage of juvenile offenders through the three criminal procedure stages signifies that the percentage of juvenile offenders being exempt from criminal liability in criminal proceedings was higher



than for adults. The differences in the rates of juvenile and adult offenders in criminal proceedings, and the reduction over the stages of procedure can be clearly seen in Figure 5.1 Offender Rates in Criminal Proceedings. Juvenile rates are 104, 76 and 66 per 100,000 residents; while the respective rates for adults are 253, 248 and 240 per 100,000 residents in a year.

Figure 5.1 Offender Rates in Criminal Proceedings: 2005–2013

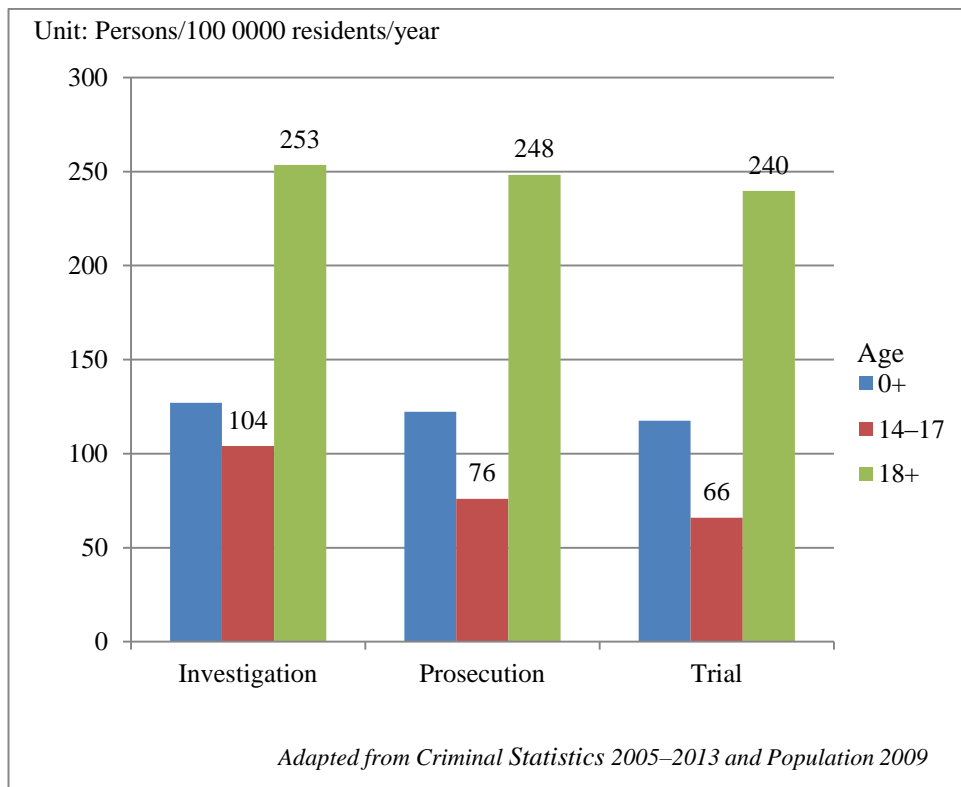
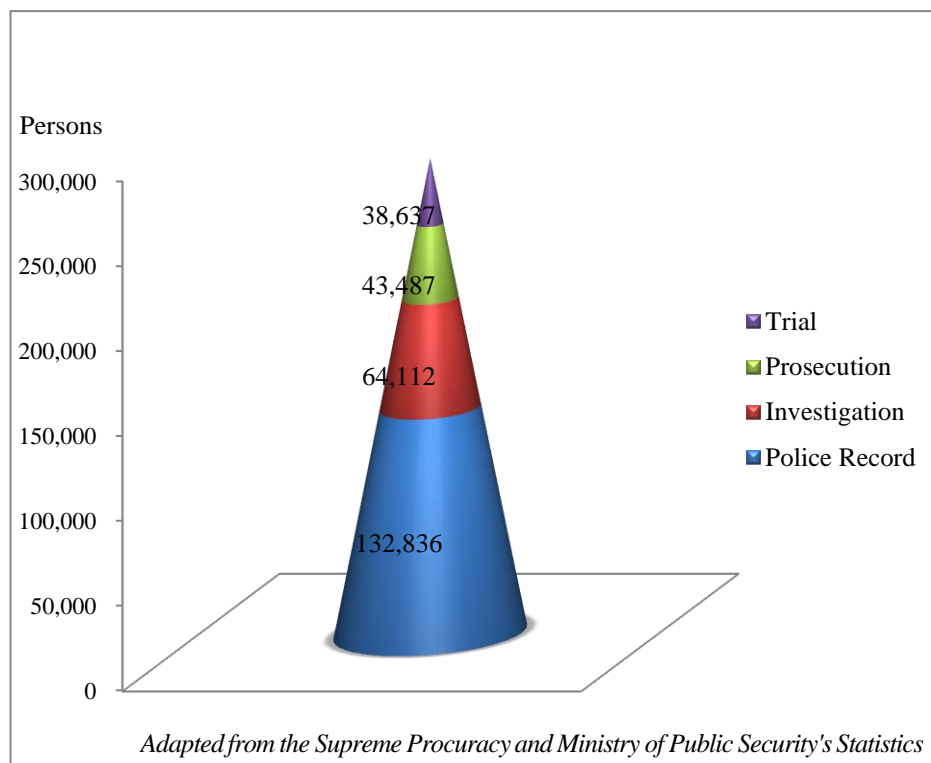


Figure 5.2 (cone bar chart) below shows the number of juveniles (aged from 14) infringing the penal law whose offences were recorded by the police and treated over the three stages of the criminal justice system between 2005 and 2013. The chart with the sharp narrow top signifies that a marked number of juveniles infringing the penal law were handled without resorting to formal court proceedings. Juvenile violators facing investigation, prosecution and trial were respectively about 45.02, 32.74, and 29.09 per cent of recorded juvenile violators. There are two reasons why more than half of juvenile violators recorded as breaking the penal law were not dealt

with by measures other than resorting to judicial proceedings. Juveniles were either considered as having no criminal liability for their offences under the *PC* or competent authorities decided not to initiate criminal proceedings against them. The classification of specific reasons and statistics for not commencing a criminal proceeding against juvenile violators, however, has not been conducted.

Figure 5.2 Juveniles in Conflict with the Law: 2005–2013



Within the court system, in 2007 the Supreme Court started building a specific database focusing on juvenile defendants. The exact numbers from this source are not the same as statistics recorded by the Supreme Procuracy or the court system's common data. The difference is explained by differences in the dates of the working year for the relevant bodies.<sup>626</sup> Criminal proceedings often last quite a long time, so

<sup>626</sup> The court commences its working year on 1 November; the Procuracy commences its year on 1 January.

that a number of juvenile offenders can be under juvenile justice policy at the first stages but by the trial they can be treated as adults if they turn 18 years of age in terms of procedural rights. The data from the Supreme Court provides more detailed information, especially concerning the crimes and penalties imposed on juvenile defendants. Along with relevant reports and selected cases, these statistics are the source for critically analysing the practical implementation of criminal law as well as the protection of children's rights in the judicial sector in Vietnam.

#### 5.4.2 The Implementation of the Law: Relevant Statistics

Here I examine the implementation of domestic regulations in four main aspects: legal assistance, protection of privacy, specialised procedures and personnel, and penalties imposed on juveniles. Each aspect is considered in the relation to domestic regulations, particularly those concerning the rights of juvenile offenders. This will allow a focus on how juvenile offenders' rights are actually implemented, based on data collected (relevant statistics, reports and comments).

##### 5.4.2.1 Legal Assistance

The right to legal assistance or counsel is the most important procedural right of offenders, particularly juvenile offenders. With adequate legal assistance, offenders can not only be defended by legal professionals but also may understand and exercise their rights effectively. In Vietnam, for criminal offenders, legal assistance is often understood as the right to defence or counsel, recognised early in Vietnam's modern legislative history from 1945.<sup>627</sup> It is considered as a fundamental right of offenders and an instrument to enhance the accuracy of criminal proceedings and protect the rights of citizens, and should be adequately applied and objectively evaluated.<sup>628</sup> At present, legal assistance and the right to defence of offenders are related in many

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<sup>627</sup> See Thi Thanh Nga Pham, 'Developments in the Right to Defence for Juvenile Offenders since Vietnam's Ratification of the *Convention on the Rights of the Child*' (2014) 9(3) *East Asia Law Review* 43.

<sup>628</sup> *Huong Dan 16-TANDTC ngay 27/9/1974 cua Toa An Nhan Dan Toi Cao ve Trinh Tu Xet xu So Tham ve Hinh Su* [Guideline 16-TANDTC dated 27 September 1974, issued by the Supreme People's Court on Procedures for First-Instance Trial.

legal documents, including the *Constitution*, the *CPC*, the *Law on Legal Aid* and the *Law on Lawyers*.

As mentioned above, every offender, either juvenile or adult, can conduct their own defence or ask someone else called a defence counsel to do so. In particular cases, defence counsel can be called as selected counsel if they are hired and selected by offenders, and called as appointed counsel if they are appointed on the procedure-conducting bodies' request. However, the information reflecting professional activities of counsels is quite limited. There is no available data on non-lawyers who work as counsel, the proportion of cases in which counsels are lawyers or belong to other categories, or any evaluation concerning the effectiveness of non-lawyers' defence.

It is recorded that by the end of 2013, bar associations had been established in all 63 provinces and cities nationwide with 8281 lawyers and about 3500 law probationers practising in 2900 law offices.<sup>629</sup> The number of lawyers increased almost three times compared with the number in 2006.<sup>630</sup> It is also believed that the quantity and quality of lawyers have seen significant improvement; the effectiveness of the legal profession has also improved.<sup>631</sup>

With regard to the practice of defence, the Ministry of Justice report reveals that, from 2007 to 2011, lawyers had participated in 64,173 criminal cases, including

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<sup>629</sup> Lien Doan Luat Su Viet Nam, 'Bao Cao To Chuc Hoat Dong nam 2013 va Phuong Huong Hoat Dong nam 2014 cua Lien Doan Luat Su Viet Nam' [Report on Implementing the Tasks in 2013 and Direction in 2014 of the Vietnam Bar Federation] (10/BC-LDLSVN, Vietnam Bar Federation, 2013); Lien Doan Luat Su Viet Nam, 'Bao Cao To Chuc Hoat Dong nam 2012 va Phuong Huong Hoat Dong nam 2013 cua Lien Doan Luat Su Viet Nam' [Report on Implementing the Tasks in 2012 and Direction in 2013 of the Vietnam Bar Federation] (01/BC-LDLSVN, Vietnam Bar Federation, 2013) (hereafter Lien Doan Luat Su Viet Nam, Report 2013) 5.

<sup>630</sup> Lien Doan Luat Su Viet Nam, Report 2013, above n 629; Bo Tu Phap, 'Bao Cao Tong Ket 5 Nam Thi Hanh Luat Luat Su' [Summary Report about the Five-year Implementation of the Law on Lawyers] (46/BC-BTP, Ministry of Justice, 2012) 3.

<sup>631</sup> Bo Tu Phap, above n 630; *see also* Tran Van Bay, 'Nguoi Bao Chua va Nhung van de Bao Dam QUYEN cua Nguoi Bao Chua trong To Tung Hinh Su' [Defence Counsels and the Guarantee of the Rights of Defence Counsels in Criminal Procedure] (Paper presented at the Quyen Con Nguoi trong To tung Hinh Su Viet Nam [Human Rights in Vietnam's Criminal Justice], Ho Chi Minh City, 15–18 June 2006) 200; Van Chien Nguyen, *Tham Luan Luat Luat Su sau 5 nam Thuc Hien: Kho Khan, Vuong Mac cua Luat Su trong Qua Trinh Hanh Nghe* [Report on the Law on Lawyers Five Years after Implementation: Difficulties and Problems Confronting Lawyers in the Course of Practice] Vietnam Bar Federation <<http://liendoanluatsu.org.vn/>>.

32,752 cases conducted at clients' request and 31,421 cases conducted by requests from procedure-conducting bodies.<sup>632</sup> At the same time, the Supreme Court's report discloses that, between 2007 and 2011, in criminal justice, lawyers were involved in more than 64,000 of a total of 299,574 court trials, accounting for 21.44 per cent. Of these, 10 per cent conducting the defence were directly selected by offenders or their representatives; and in all of the cases where appointed counsels were requested, the defence was conducted by lawyers.<sup>633</sup>

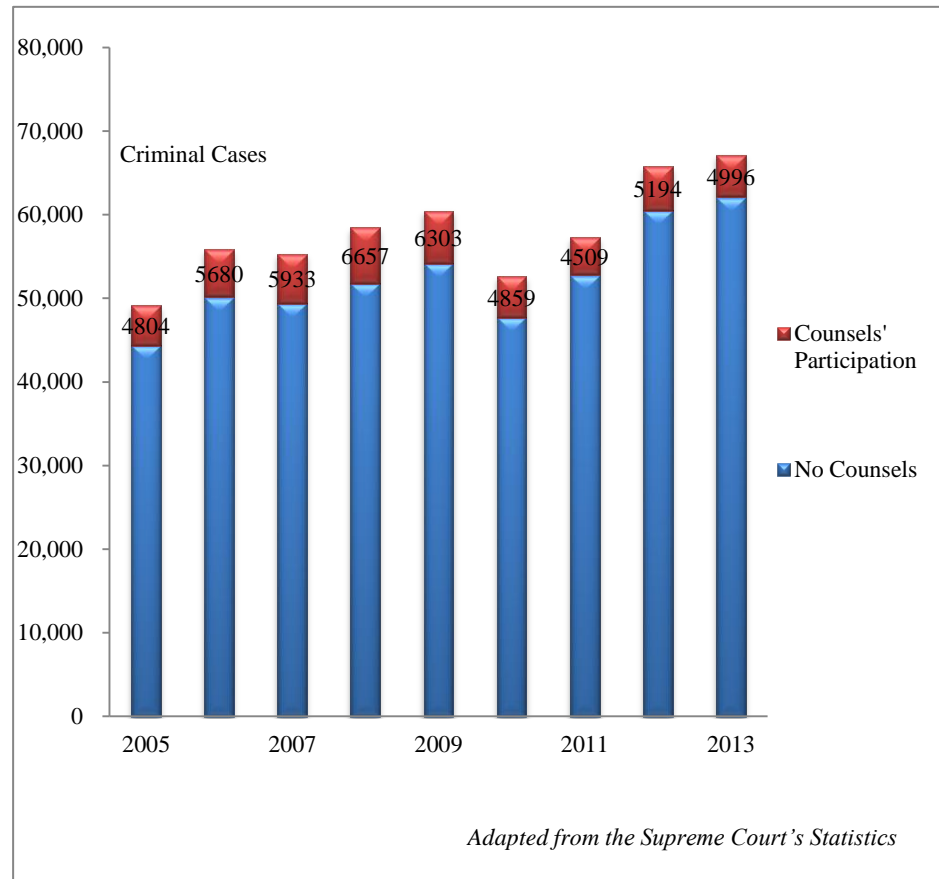
For first-instance trials (not including appellate trials), the rate of defence counsels appearing in the court was much lower than 21.44 per cent as indicated in the Supreme Court's report. According to the annual statistics, the rate of first-instance trials having the participation of counsel either between 2007 and 2011, or between 2005 and 2013 was lower than 9.50 per cent; especially in 2011–2013 when it was below 8 per cent. Precisely 521,881 first-instance trials were conducted from 2005 to 2013, involving 764,883 defendants. Of these, only 48,935 trials (comprising 9.38 per cent) took place with the participation of counsel. The annual statistics of trials and counsels' participation are shown in Figure 5.3. These statistics are the total numbers of criminal cases having the participation of counsel, with no specific data on counsel of offenders or victims, numbers of offenders defended by lawyers or by people's advocates. While the average rate of first-instance trials conducted with counsel participation was 9.38 per cent, the rate of offenders who were defended by counsel in courts could be lower. Often there are several defendants in each criminal trial and not all of them hire lawyers or are provided with appointed counsel. Further, the counsels are sometimes hired by victims or civil plaintiffs to protect their interests but not to defend the defendant.

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<sup>632</sup> Bo Tu Phap, above n 630, 5.

<sup>633</sup> Chanh An Toa An Nhan Dan Toi Cao, 'Bao Cao nhiem ky 2007–2011' [The Report Term 2007–2011] (Supreme People's Court, 2012).

Figure 5.3 Criminal Cases and Defence Counsel's Participation; 2005–2013



The lack of details surrounding defence matters is common in all judicial sectors, including juvenile justice. Though the Supreme Court database on juvenile justice contains various data about juvenile offenders, there is no separate item for defence. In principle, the participation of counsel to defend juvenile offenders is mandatory. Nevertheless, in many cases offenders actually relinquish the right to counsel, or juvenile offenders' representatives take the place of counsel. Case studies presented in the following section show that it was not unusual for non-lawyers, including people's advocates and offenders' representatives to take the defence. Therefore, the report

statement that ‘in 100% of the cases where appointed counsels were statutorily required, the defence was conducted by lawyers’<sup>634</sup> fails to reflect the practical issues.

As for practical activities concerning the implementation of the defence, several comments can be made.

First, while conducting their professional duties, lawyers are often not fairly treated by the procedure-conducting bodies. Many lawyers have experienced difficulties while requesting certification, contacting offenders held in custody or copying documents in case files.<sup>635</sup> There are cases where the lawyer had to apply for seven counsel certificates in different stages while defending one offender during the course of one criminal case;<sup>636</sup> or had to wait for longer than six months to meet the offender remanded in custody.<sup>637</sup> Sometimes, procedure-conducting bodies do not adequately consider and evaluate lawyers’ defence.<sup>638</sup> These complaints may, however, come from the lawyers who are hired by offenders. These selected counsels usually execute their tasks with real enthusiasm and responsibility commensurate with the remuneration received from their clients and for the improvement of their own reputation and future business.

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<sup>634</sup> Ibid.

<sup>635</sup> Trung Hoai Phan, ‘Thuc Trang va Dinh Huong Hoan Thien Phap Luat nham Bao Dam QUYEN cua Luat Su Tham Gia Tranh Tung trong Vu An Hinh Su’ [The Current Situation and Orientation to Improve the Law on Ensuring Lawyers’ Rights in Criminal Proceedings] (Paper presented at the Quyen Con Nguoi trong To tung Hinh Su Viet Nam [Human Rights in Vietnam’s Criminal Justice], Ho Chi Minh City, 15–18 June 2006); Nicholas Booth, ‘Implementing Human Rights in Practice: Some Observations’ (Paper presented at the 1<sup>st</sup> Legal Policy Dialogue in 2012: Improvement of Law on Human Rights, Hanoi, 23 May 2012); Lien Doan Luat Su Viet Nam, ‘Bao Cao Tong Ket Cong Tac nam 2011 va Phuong Huong Hoat Dong nam 2012 cua Lien Doan Luat Su Viet Nam’ [Summary Report on Implementing the Tasks in 2011 and Direction in 2012 of the Vietnam Bar Federation] (01/BC-LDLSVN, Vietnam Bar Federation, 2012).

<sup>636</sup> UNDP, ‘Report on the Right to Counsel in Criminal Law and Practice in Vietnam’ (UNDP Vietnam, 2012) <<http://www.vn.undp.org/>> 39.

<sup>637</sup> Lien Doan Luat Su Viet Nam, ‘Bao Cao ve Thuc Trang Hanh Nghe Luat Su trong Hoat Dong To Tung Hinh Su’ [Report on the Current Situation of Lawyers’ Professional Performance in Criminal Proceedings] (26/BC-LDLSVN, Vietnam Bar Federation, 2013).

<sup>638</sup> See 52ibid; Tien Dat Nguyen, ‘Dam Bao QUYEN cua Nguoi Bi Tam Giu, Bi Can, Bi Cao trong To Tung Hinh Su Viet Nam’ [Ensuring the Rights of Persons Held in Custody, the Accused and Defendants in Vietnam’s Criminal Procedure] (2007) (11) *The People’s Court Journal* 4, 7; Ministry of Justice and UNDP, *Report on Survey of Needs of District People’s Courts Nationwide* (Judicial Publishing House, 2006) 262.

By contrast, it is often said that counsels appointed under procedure-conducting bodies' request are treated more favourably.<sup>639</sup> At a certain level, appointed counsels not only defend offenders but also 'help' procedure-conducting bodies to avoid the exclusion of wrongfully-obtained evidence. The absence of defence counsel while dealing with juvenile offenders can be considered as a serious violation of the law, and would be a reason for additional investigation or a re-trial.<sup>640</sup> A good example could be seen in 2007 when the authorities issued *Official Dispatches 45/C16(P6)* and *26/KHXX* requiring that every offender who is entitled to an appointed counsel had to have the presence of counsel.<sup>641</sup> It is observed that many investigating bodies had implored counsels to sign the minutes of interrogation, and that a storm of returning files or cancelling first-instance trials for additional investigation or re-investigation had occurred until this requirement was loosened six months later.<sup>642</sup>

Regarding the professional responsibilities, it is emphasised that appointed counsels do not always endeavour to find the best evidence to protect offenders.<sup>643</sup> Some counsels have neither experience nor knowledge related to the issues addressed, have no adequate preparation for the defence, or give no assistance to offenders, even making the situation worse for the offenders at the trial.<sup>644</sup> This is a violation of the criminal procedural law as well as the ethical standards of conduct for lawyers. However, so far such misconduct is often only generally mentioned or warned by

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<sup>639</sup> UNDP, above n 636, 51.

<sup>640</sup> *CPC* arts 57/2, 168/3, 179/1/c, 250, 305; *JC 01/2010/TTLT-VKSNDTC-BCA-TANDTC on Returning the Files for Additional Investigation* art 4/2/b.

<sup>641</sup> *Thong Bao 752/C16(P6) ngay 18/07/2007 của Cơ Quan Cảnh Sát Điều Tra thuộc Bộ Công An* [Official Dispatches 752/C16(P6) dated 18 July 2007, issued by the Investigation Police Office of the Ministry of Public Security].

<sup>642</sup> Thai Quy Pham, 'Trao Doi ve Che Dinh Quyen Bao Chua trong Phap Luat To Tung Hinh Su' [Discussion on the Right to Defence in Criminal Law] (2008) 24 *The People's Court Journal* 35, 38–9.

<sup>643</sup> UNDP and Hoi Luat Gia Viet Nam, 'Appointed Counsels in Vietnamese Criminal Law and Practice' (UNDP Vietnam, 2012) <<http://www.undp.org.vn>> 51; Dai Hoc Luat Ha Noi, 'Hoan Thien Phap Luat To Tung Hinh Su nham Nang Cao Hieu Qua Hoat Dong Bao Chua cua Luat Su' [The Amendment of Criminal Procedural Law in order to Improve the Effectiveness of Lawyer Professionals] (LH 2013-17/DHL-HN, Hanoi Law University, 2013) 37–9.

<sup>644</sup> UNDP and Hoi Luat Gia Viet Nam, above n 643, 41, 54; Dai Hoc Luat Ha Noi, *The Amendment of Criminal Procedural Law*, above n 643, 38.



authorities but almost no particular sanctions have been applied to lawyers or counsels.

In juvenile cases, most defence counsels are appointed by procedure-conducting bodies; not many are selected by the offenders or their representatives.<sup>645</sup> However, it is found that there is a very high risk of procedure-conducting bodies recommending offenders and their families to refuse appointed defence counsels or to conduct the defence by themselves or by the legal representative of juvenile offenders;<sup>646</sup> or to request counsels in a perfunctory way or ignore their duties.<sup>647</sup> It is also found that defence counsels, particularly appointed counsels, do not always commit to assisting juvenile offenders. There are cases where they signed declarations and supplied minutes to legitimise the process of investigation without real participation.<sup>648</sup> In many cases, juvenile offenders only see their appointed counsel at the trial; a number of counsels even submitted to the court a paper considered as their defence and absented themselves from the hearing.<sup>649</sup> In such cases, the implementation of legal assistance or juvenile offenders' right to defence is somewhat formalistic.

#### 5.4.2.2 The Protection of Privacy

It should be restated that for juvenile offenders, the protection of privacy is very important. International standards stress the prevention of undue publicity and labelling which can result in stigmatisation, discrimination and other detrimental effects on juvenile offenders.

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<sup>645</sup> Supreme People's Court and UNICEF Vietnam, above n 91.

<sup>646</sup> See Children's Legal Centre, 'Bao Cao Danh Gia cac Quy Dinh cua Bo Luat To Tung Hinh Su lien quan den Nguoi Chua Thanh Nien va Thuc Tien Thi Hanh' [An Assessment Report about the Provisions concerning Juveniles in the Criminal Procedure Code and Practical Application] (Paper presented at the Phap Luat To Tung Hinh Su ve Nguoi Chua Thanh Nien [Criminal Procedural Law concerning Juveniles], Hanoi, 15–16 December 2010) 44; Booth, above n 635, 34.

<sup>647</sup> Thi Thanh Mai Phan, 'Mot so Y Kien ve viec Thanh Lap Toa An Gia Dinh va Nguoi Chua Thanh Nien o Viet Nam' [Comments on the Establishment of the Juvenile and Family Court in Vietnam] in Toa An Nhan Dan Toi Cao and UNICEF Vietnam (eds), *Bao Cao Tong Quan ve Co so Ly Luan va Thuc Tien cua Su Can Thiet Thanh Lap Toa An Chuyen Trach doi voi Nguoi Chua Thanh Nien o Viet Nam* [General Report on the Theoretical and Practical Rationale for Establishing Specialised Courts for Juveniles in Vietnam] (Thanh Nien, 2012) 173, 177.

<sup>648</sup> Ibid 179.

<sup>649</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 81; Dai Hoc Luat Ha Noi, *The Amendment of Criminal Procedural Law*, above n 643, 38.

In Vietnam, among studies concerning children and mass media, journalists' conduct and professional handbooks on working with children, there is no clear discussion about the importance of protecting juvenile offenders' privacy or about the related responsibility of journalists.<sup>650</sup> There is almost no difficulty in finding out identifiable information and photos of juvenile offenders from the internet or newspapers.

In criminal statistics, there is no record of juvenile cases conducted behind closed doors. Trials are almost always public — including even in rape cases where both offenders and victims are juveniles.<sup>651</sup> The public and journalists are free to attend, and to write articles and reports which include juvenile offenders' identifying information.<sup>652</sup> Further, show trials are often emphasised and encouraged while trials behind closed doors are seldom mentioned; particularly, some local courts conducted about 60 per cent of show trials while hearing criminal cases.<sup>653</sup> For the whole country, on average, more than 6000 show trials are conducted each year, including about 224 juvenile cases. The number of juvenile show trials accounted for about 7.28 per cent of all cases involving juvenile offenders, which is significantly lower than the common rate of show trial in criminal justice (10.09 per cent). Particular numbers of show trials in 2007–2013 are presented in Table 5.4.

Publishing juvenile offenders' information happens not only in the trial, but also during the earlier stages of investigation and prosecution. When a crime occurs and

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<sup>650</sup> See Radda Barmen, *Quyền Trẻ Em và Phương Tiện Thông Tin Đại Chúng* [The Rights of Child and Mass Media] (Chính Trị Quốc Gia, 2000); Van Dung Nguyen (ed), *Sổ Tay Phong Viển Báo Chí với Trẻ Em* [Journalist Handbook on Working with Children] (Lao Dong, 2006).

<sup>651</sup> Huu The Le, 'Su Cần Thiệt và những Vấn Đề đặt ra về Thành Lập Tòa An Nguoi Chua Thanh Nien truoc Yeu Cau Cai Cach Tu Phap' [The Need and Issues Raised about the Establishment of Juvenile Courts under Requirements for Judicial Reform] in Toa An Nhan Dan Toi Cao and UNICEF Vietnam (eds), *Bao Cao Tong Quan ve Co so Ly Luan va Thuc Tien cua Su Can Thiet Thanh Lap Toa An Chuyen Trach doi voi Nguoi Chua Thanh Nien o Viet Nam* [General Report on the Theoretical and Practical Rationale for Establishing Specialised Courts for Juveniles in Vietnam] (Thanh Nien, 2012) 145, 147.

<sup>652</sup> Ibid.

<sup>653</sup> See Toa An Nhan Dan Toi Cao, 'Bao Cao Tong Ket Cong Tac nam 2008 va Trien Khai Nhiem Vu Cong Tac nam 2009 cua Nghanh Toa An Nhan Dan' [Report on Sumarising Tasks in 2009 and Implementing Tasks in 2010 of the Court System] (Supreme People's Court, 2008) 146; Toa An Nhan Dan Toi Cao, 'Tham Luan tai Hoi Nghi Trien Khai Cong Tac nam 2014' [Reports Presented at the Conference on Implementing Tasks of 2014 of the Court System] (Supreme People's Court, 2014) 258.

during the process of criminal proceedings, reporters often collect and report full identifying information and photographs of offenders with no exception for juvenile offenders. Furthermore, the summons from procedure-conducting bodies is sometimes sent through juveniles' schools instead of juveniles' parents.<sup>654</sup> Such disclosure of identification is often reported to make juveniles embarrassed and stigmatised.<sup>655</sup>

Table 5.4 Court Hearings and Show Trials: 2007–2013

Years	Juvenile Statistics			Total Criminal Statistics		
	Total Cases	Show Trial		Total Cases	Show Trial	
		Cases	%		Cases	%
2007	2689	207	7.70	55299	4012	7.26
2008	2744	196	7.14	58449	4313	7.38
2009	2722	158	5.80	60433	4904	8.11
2010	2582	118	4.57	52595	4864	9.25
2011	2355	186	7.90	57279	5640	9.85
2012	4612	341	7.46	65711	8613	13.11
2013	3898	363	9.31	67753	9765	14.41
<b>Average</b>	<b>3078</b>	<b>224</b>	<b>7.28</b>	<b>59646</b>	<b>6016</b>	<b>10.09</b>

*Adapted from the Supreme Court's Statistics*

Based on the analysis of the law and practical issues, it can be said that the law and practice of protecting juvenile offenders' privacy in Vietnam is still far from international standards. The contemporary practice of show trials in Vietnam in cases involving juveniles is completely contrary to international standards. These trials do

<sup>654</sup> See Supreme People's Court and UNICEF Vietnam, above n 91.

<sup>655</sup> Ibid 78.

not protect children, but rather can cause stigma, adversely affecting their psychological health and recovery.

#### 5.4.2.3 Procedures and Personnel

Vietnamese legislation recognises procedures and personnel specifically applicable to juvenile offenders. In terms of special procedures, besides the legal assistance or appointed defence counsels, the law requires the interrogation of juvenile offenders to be undertaken in the presence of their parents, guardians or teachers in order to support them in terms of psychology. In practice, however, a survey conducted by the Supreme Court reveals that:

the vast majority of juveniles interviewed did not have a parent, guardian, or other support person present with them when they were being interrogated by the police. Some had a parent for some, but not all of the interrogations. Even where the parents had accompanied the juvenile to the police station or visited the police station during the period of the child's arrest, they were not permitted to be present during the interrogation. Some guardians signed the interrogation record, even though they were not actually present during the interrogation. None of the children had a teacher or representative from the mass organisations present during the interrogation.<sup>656</sup>

It is also found that in a number of cases parents were not informed of the arrest of juvenile offenders within the time period prescribed by the law and that juveniles remanded in custody were not allowed to contact their parents. Some juveniles were threatened or hit in the police station.<sup>657</sup>

For the trial stage, the Supreme Court's representative admits that there is no distinction in procedures between juvenile cases and adult cases and no practical requirement of a teacher or Youth Union cadre to sit on the trial panel.<sup>658</sup>

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<sup>656</sup> Ibid 62–3.

<sup>657</sup> Ibid 60, 62–3.

<sup>658</sup> Van Do Tran, 'Nghien Cuu Thanh Lap Toa An Nguoi Chua Thanh Nien o Viet Nam' [Research on the Establishment of Juvenile Courts in Vietnam] in Toa An Nhan Dan Toi Cao and UNICEF Vietnam (eds), *Bao Cao Tong Quan ve Co so Ly Luan va Thuc Tien cua Su Can Thiet Thanh Lap Toa An Chuyen Trach doi voi Nguoi Chua Thanh Nien o Viet Nam* [General Report on the Theoretical and

With regard to the professional personnel, the law requires judicial staff conducting juvenile cases to possess knowledge of juvenile psychology and the prevention of juvenile delinquency, but it fails in realisation. Recently, with support from international organisations, several training courses have been conducted for personnel in juvenile justice. Such training courses are not only limited in the number of judicial staff attending but also in the content and knowledge provided. The feedback recorded includes that the training was general, not practical to be applied for particular cases.<sup>659</sup> Generally, it is said that Vietnam currently has no specialised teams of police, prosecutors or judges who are especially trained to deal with juvenile offenders.<sup>660</sup> Within the court system, the highest court has admitted that across the country there is no professional judicial staff for handling juvenile cases; and in the entire court system there is not a single judge specialising in juvenile trials.<sup>661</sup>

In short, the judicial staff responsible for dealing with juvenile cases do not meet the legal requirements for specialised knowledge and skills; and the application of special procedures for addressing juvenile cases is somewhat formalistic. In other words, Vietnam fails to realise legislation and regulations specifying personnel and procedures applicable for juvenile justice.

#### 5.4.2.4 Penalties Imposed on Juvenile Offenders

When juvenile offenders are brought to the court, they can be found guilty or not guilty. In cases where they are found guilty, they can be exempt from punishment, have a judicial measure applied or have a penalty imposed. As indicated above, the penalties applicable to juvenile offenders embrace warnings, fines, non-custodial reform, and termed imprisonment. The most severe penalty that can be imposed for offences committed by juveniles aged 14 or 15 is 12 years imprisonment, and for offences committed by juveniles aged 16 or 17 it is 18 years imprisonment.

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Practical Rationale for Establishing Specialised Courts for Juveniles in Vietnam] (Thanh Nien, 2012) 119, 120.

<sup>659</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 80.

<sup>660</sup> Ibid.

<sup>661</sup> See Toa An Nhan Dan Toi Cao and UniCEF Vietnam, above n 94, 40.

According to the Supreme Court's statistics, 29,435 juvenile defendants appeared before the court in 21,602 first-instance trials between 2007 and 2013. Sixteen of these were found not guilty, 15 were exempt from criminal liability, 63 had judicial measures of education at a commune imposed upon them, and 31 were sent to reformatory school. The others had one penalty imposed for each criminal offence. The numbers of juveniles who were condemned to a warning, fine, and non-custodial sentence were 69, 55, and 1230 respectively. Together these convictions accounted for 4.25 per cent of the total penalties imposed for juvenile offences. This means that most juvenile offenders were sentenced to termed imprisonment. However, not all of them had to go to jail or be deprived of liberty at once. More than 30 per cent of sentenced juveniles were given suspended sentences with supervision from one to five years.

Figure 5.4 Penalties Imposed on Juvenile Offenders: 2007–2013

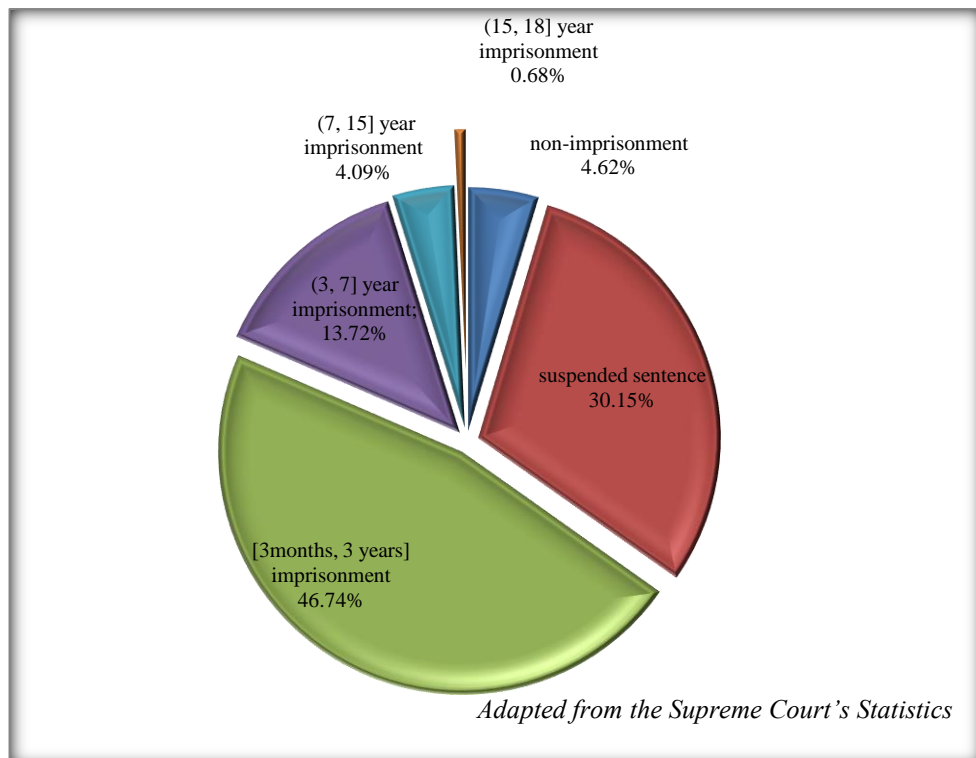


Figure 5.4 (pie chart) illustrates the percentage of penalties (grouped in to six categories) imposed on juvenile offenders by first-instance trial courts throughout Vietnam's jurisdictions in the eight years, 2007–2013. The most common penalty was termed imprisonment for a period from three months to three years, with 13,701 persons so sentenced, accounting for 46.74 per cent of the total convictions. The second group, more than 30 per cent, had a similar penalty but with suspended sentences. Terms of three-years imprisonment or more equalled 18.47 per cent of those sentenced to termed imprisonment, including three groups: between 3 and 7 years (4018 juveniles), 7 and 15 years (1198 juveniles), and from 15 to 18 year sentences (198 juveniles).

Through analysing statistics between 2007–2013, it can be also found that the vast majority of juveniles brought to trial were males (97.23 per cent) and those aged 16 or 17 years constituted 92.86 per cent of juvenile defendants. There were a number of juveniles who had been brought to the court and had sentences imposed more than once. In this period, the courts heard 21,238 juvenile defendants and imposed 29,419 sentences, excluding 16 people found not guilty. These offenders came from both groups: from 14 to below 16, and from 16 to below 18 years of age. The offences committed repeatedly by these offenders included theft, robbery, intended injury, murder and drug trafficking. Nevertheless, the courts have not classified statistics on the specific number of juveniles who were given more than one penalty or sentences.

With regard to common offences, for all juvenile offences, the common crimes that juvenile defendants were accused of were similar to those recognised in Project IV (presented in section 4.4). The majority were property-related crimes. However, focusing more on defendants aged 14 and 15 years old, violent crimes were more prominent. The most common offences that persons at these ages were sentenced for were in the following order: robbery, murder, intended injury, child rape, snatching robbery, and theft. This difference in common offences here does not mean that persons aged 14 and 15 years often committed violent crimes rather than property-related crimes or that they were more violent than older persons. It results from the relevant criminal policy and the age of criminal responsibility. Juveniles aged 14 and

15 years shall bear penal liability only for very serious crimes committed intentionally and extremely serious crimes. This results in an apparent distortion of acts committed as the data does not reflect the nature and total of all juvenile activities that, if committed at an older age, would result in criminal prosecution and penalties.

Considering penalties imposed on juveniles in the larger context of the common data on crime and punishment in criminal justice, the conclusion can be drawn that the penalties imposed on juvenile offenders were significantly softer than on adults. Juvenile defendants equalled 4.06 per cent of total defendants while the rates of juveniles who were given a warning, non-custodial sentence, or suspended sentence accounted for 6.78, 6.50 and 5.18 per cent of the total of such penalties issued by the court. Around 65.22 per cent of juvenile defendants were sentenced to imprisonment; while the common rate of all defendants was 70.27 per cent, consisting of termed imprisonment from three months to 20 years, life imprisonment and the death penalty.

#### 5.4.3 The Treatment of Juvenile Offenders: Case Studies

In order to better understand the practical implementation of the law on treating juvenile offenders, herein 10 criminal proceedings which resolved 10 crimes with 19 offenders are examined. The common feature of these cases is that the offences were committed by one or several juveniles. Among 19 offenders, four persons were 18 or 19 years old when committing the crimes; one person reached 18 when the criminal proceedings commenced; and 14 persons were juveniles when committing the crimes as well as when the cases were concluded. At the time of committing the crime, one person was a college student, five persons were high-school students and 13 other persons had abandoned their studies before finishing high school. Brief information about the crimes, offenders and procedures is shown in Table 5.5 (below), followed by close analysis. The analysis is about the actual implementation of the law on dealing with juvenile offenders, presented under four sub-headings: Proceeding duration and deterrent measures, punishment and penalties; interrogation and defence; and court hearing and privacy.



Table 5.5 Summary of Case Files on Juvenile Offenders

<b>Abbreviations and Notes</b>					
<b>Article and Kind:</b> showing the relevant article in the PC and kind of crimes					
<b>Age of Offenders:</b> counted from their birthdates to the date of the offence committed					
<b>Deterrent Measures:</b> showing information about types and length of measures applied					
<b>Prescribed Penalties:</b> showing the penalties prescribed in the PC that can be imposed on offenders committing corresponding crimes					
<b>Proceeding Duration:</b> showing the total days counted from the initiation of criminal proceedings against the accused to first-instance trial					
<b>Case Number</b> Offences: Off, Article and Kind: Art - Prescribed Penalties: PP	<b>Offender's</b> <b>Name,</b> <b>Gender</b> Age (years)	<b>Deterrent Measures</b> <b>Types, lengths</b>	<b>Lawful</b> <b>Representatives: LR</b> <b>Defence Counsels: DC</b>	<b>Sentence</b>	<b>Proceeding</b> <b>Duration</b> (days)
<b>Case 1</b> Offence: Plundering Property Art: 133/2 — Very serious PP: Imprisonment [7, 15] years	A Male Age: 16	Urgent arrest; Custody: 3 days; Temporary detention: 83 days	LR: offender's father DC: appointed lawyer	5 years imprisonment	81
	B Male Age: 15	Urgent arrest; Custody: 3 days; Temporary detention: 83 days	LR: offender's mother DC: appointed lawyer	4 years imprisonment	
<b>Case 2</b> Offence: Stealing Property, Art: 138/1 — Less serious PP: Non-custody to 3 years; Imprisonment [6 months, 3 years]	C Female Age: 17	Red-handed arrest; Custody: 3 days; Temporary detention: 100 days	LR: an officer of the Vietnam Fatherland Front Committee. DC: appointed lawyer	6 months imprisonment	100
<b>Case 3</b> Offence: Snatching Robbery, Art: 136/2 — Very serious PP: Imprisonment [3, 10] years	D Male Age: 17	Red-handed arrest; Custody: 6 days; Temporary detention: 30 days; Guarantee	LR: none DC: none	24 months imprisonment with a suspended sentence	117
	E	Red-handed arrest;	LR: offender's father.	24 months	

	Male Age: 17	Custody: 6 days; Temporary detention: 30 days; Guarantee	DC: appointed lawyer	imprisonment with a suspended sentence	
<b>Case 4</b> Offence: Abusing Trust in order to Appropriate Property, Art:140/1 — Less serious PP: Non-custodial to 3 years; Imprisonment [6 months, 3 years]	G Male Age: 16	Guarantee	LR: offender's mother. Offender and LR refused an appointed defence	12 months non- custodial reform	85
<b>Case 5</b> Offence: Extortion of Property, Art:135/1 — Serious PP: Imprisonment [1, 5] years	H Male Age: 16	Banning from travel out of local area	LR: offender's mother, Offender and LR refused an appointed defence	12 months imprisonment with a suspended sentence	93
<b>Case 6</b> Offence: Stealing Property, Art:138/1 — Less serious PP: Non-custody to 3 years; Imprisonment [6 months, 3 years]	I Female Age: 17	Banning from travel out of local area	LR: offender's mother; DC: selected lawyer	9 months non- custodial reform	125
<b>Case 7</b> Offence: Stealing Property, Art:138/1 — Less serious PP: Non-custodial to 3 years; Imprisonment [6 months, 3 years]	K Male Age: 16	Guarantee	LR: offender's mother; Offender and LR refused an appointed defence	9 months imprisonment with a suspended sentence	222
	L Male Age: 17–18 (turned 18 in investigation stage)	Guarantee	LR: offender's father appeared in the stage of investigation before L reached 18 years old. Offender and LR refused an appointed defence	9 months imprisonment with a suspended sentence	
	M Male Age: 16	Guarantee	LR: offender's father. Offender and LR refused an appointed defence	12 months non- custodial reform	

	N Male Age: 17	Guarantee	LR: offender's mother. Offender and LR refused an appointed defence	12 months non- custodial reform	
<b>Case 8</b> Offence: Stealing Property, Art: 138/1 — Less serious PP: Non-custodial to 3 years; Imprisonment [6 months, 3 years]	O Male Age: 16	Banning from travel out of local area	LR: offender's parents. DC: selected lawyer	12 months imprisonment;	91
	P; Male Age: 18 <sup>+</sup>	Temporary detention: during the proceedings	None	30 months imprisonment	
	Q; Male Age: 18 <sup>+</sup>	Temporary detention: during the proceedings	None	24 months imprisonment	
<b>Case 9</b> Offence: Snatching Robbery. Art: 136/2 — Very serious PP: Imprisonment [3, 10] years	R Male Age: 17	Urgent arrest Temporary detention: 33 days Ban from travel outside the residence place	LR: offender's father DC: appointed lawyer	30 months imprisonment with a suspended sentence	125
	S Male Age: 18 <sup>+</sup>	Urgent arrest Temporary detention: 33 days Ban from travel outside the residence place	None	36 months imprisonment with a suspended sentence	
	T Male Age: 18 <sup>+</sup>	Urgent arrest Custody: 9 days Temporary detention: 33 days Ban on travel outside place of residence	None	24 months imprisonment with a suspended sentence	
<b>Case 10</b> Offence: Intentionally Damaging Property, Art: 143/1 — Less serious PP: Non-custodial to 3 years; Imprisonment [6 months, 3 years]	U Male Age: 16	Banning from travel out of local area Wanted warrant—Arrest Custody: 9 days Guarantee	LR: offender's mother DC: people's advocate, appointed	9 months imprisonment	63

#### 5.4.3.1 Proceeding Duration and Deterrent Measures

The time period from the initiation of criminal proceedings against the accused to first-instance trial varied between 63 and 222 days. Except for Case 7, nine other proceedings which resolved either very serious, serious or less serious crimes took place within the time limit for solving less serious crimes, no longer than 125 days. In these cases, especially the cases addressing very serious or serious crimes, the procedure-conducting bodies had obeyed the law. However, it should be noted that these cases were not complicated. Almost all offenders were arrested red-handed or clearly identified by the victims. All of these offenders confessed their guilt, incriminating themselves when being questioned by the authorities.

In Case 7, which solved a less serious crime, the proceedings took 222 days. This time period is much longer than the law allowed. In this case, all four offenders were juveniles and confessed their guilt quickly. The reason for this delay is because of different perspectives between the court and the other conducting bodies in determining the article of the *PC* to be applied or the particular name of the crime. The court had returned the case file for additional investigation. Further, this body spent too much time on preparation for the hearing, exceeding the time limit for this process as prescribed by the law.

With regard to pre-trial deterrent measures, while dealing with these cases, the procedure-conducting bodies used five kinds comprising arrest, custody, a ban from travel outside place of residence, guarantee and temporary detention. No offender was granted bail. Generally, it can be recognised that the measure of deprivation of liberty was applied quite commonly. Procedure-conducting bodies, especially investigating bodies, used arrest, custody and temporary detention in all cases where these measures could be used optionally under the law. In Cases 2 and 10, judicial bodies arrested and detained offenders in ways which violated the law. These were two less serious crimes and the accused/defendants were under 18 years of age. In Case 2, offender C, aged 16 years of age, was arrested red-handed and detained during the criminal proceedings for 100 days. In Case 10, offender U, aged 16 years of age, was arrested under a warrant search and detained for nine days in the investigation stage. The use of arrest and pre-trial detention in such cases were

violations of the law. Two other mistakes of the investigating body in this Case are that the authorities did not at once give C the decision to institute a criminal case and apply the deterrent measure of banning travel outside the place of residence. U perhaps did not understand his rights and obligations as an accused, and travelled outside his residence. Then when the authorities went to his house to give relevant decisions but did not see him, this led to a warrant being issued immediately. This warrant seemed unnecessary; actually, C was at his house the day after, before knowing about the warrant for his arrest.

#### 5.4.3.2 Punishment and Penalties

In these 10 cases, the courts applied two kinds of penalties to 19 offenders, including four non-custody decisions and 15 sentences of termed imprisonment. The lightest sentence was nine months of non-custodial sentence, imposed on defendant I (Case 6) who committed a less serious crime for the first time, stealing her housemate's ATM card then withdrawing money. The harshest penalty was a five year term of imprisonment for defendant A (Case 1), who with his friend committed a very serious crime, with the intention of killing a rider to appropriate a motorbike. In 19 sentences issued by the courts, none of them was outside the provisions of the law in terms of penalties and punishment.

However, the penalties imposed on defendants C (Case 2) and U (Case 10) seem harsher than necessary. Both C and U committed criminal offences for the first time, and a less serious crime. C was sentenced to six months of imprisonment, while I in Case 6 who committed a similar crime had a nine month non-custodial sentence imposed upon him. U had imposed upon him a nine month sentence of imprisonment for a less serious crime committed when he had just turned 16 years of age. Focusing on the crimes and the damages, these two offenders, especially U, could be exempt from penal liability as provided for in Article 69 of the *PC*, or a less harsh non-custodial penalty imposed upon them.

From careful examination of the case files, it can be seen that the factors contributing to the misapplication of deterrent measures and harsh punishments to juvenile offenders C and U could include the offenders' personal difficult circumstances and character.

For offender C, a person aged 17 years of age was arrested red-handed when stealing a mobile phone from a shopkeeper. The crime was less serious. According to the *CPC* (art 303), judicial bodies should not detain C before trial. In the proceedings, C was also recognised as a first-time offender, lacked parental care and education, and lived in difficult circumstances, but made an honest declaration and reports and showed her repentance. With such comments, normally the court could have decided on a non-custodial sentence. However, C was actually detained during the criminal proceedings, and sentenced to six months imprisonment. Looking at her personal circumstances, C was not brought up by her parents, having a baby when she was just 15 years of age. Further, she had no stable residence; and no one took responsibility for supervising and re-educating her as the law required. Perhaps such circumstances somewhat influenced the judicial bodies' decisions; and the court might also face a limit of penalty options that could be applied to C.

Offender U was a person aged 16 years of age who damaged property, causing a less serious crime. U had a stable residence, and could be supervised by his parents and family. However, the local commune where U lived and the procedure-conducting bodies had labelled him as deviant, delinquent and a dangerous person because he had violated the administrative law. In the judgment, it is written that:

When being warned and educated by the commune about his law violations, U did not recognise the guilt, but became a thug, damaging the commune's property. Considering the defendant's personal character, he was born and grew up in a farming family and was sent to school, but was lazy, snobbish, and did not obey the family and commune's education, falling deeper into criminal activities, increasingly conducting more serious offences. In order to protect the discipline of law, a harsh punishment should be imposed, to remove the defendants from the society for a period of time and to the offender has a condition to self-educate and then become a good citizen for the future. Further, such punishment contributes to crime prevention in general.<sup>662</sup>

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<sup>662</sup> In Vietnamese, it reads as follows:

*Xét nhan than bì cao, sinh ra và lớn lên trong một gia đình nông dân chất phác, được cha mẹ cho ăn học, nhưng lại lười biếng học tập, đua đòi, ăn chơi leu lộng, không chịu giáo dục của gia đình và chính quyề địa phương nên ngày càng lún sâu vào con đường phạm tội, lần sau vì phạm nghiêm trọng hơn lần trước. Để giữ kỷ cương pháp luật, nghị can phải phạt quyết cho bì cao một hình*

The above comment was illogical and unfair to the juvenile. It is completely unsuited to meeting international standards as well as Vietnam's policy on juvenile justice and the purpose of imposing a punishment on juvenile offenders.

#### 5.4.3.3 Interrogation and Defence

At first glance, all cases in these case files were conducted without serious violation of the law concerning defence and interrogation, which could have led to dismissal of the judgment for re-investigation or re-trial. The offenders were explained their rights, and received relevant procedural decisions. Defence counsels were appointed when accused or defendants were juvenile, except for the cases of offenders and their representatives showing their written statements of refusal. My findings are summarised below.

Every offender in these cases was questioned by police and required to write a description of their criminal violations at once when they were arrested, before the criminal proceedings formally commenced. The questions were similar to those posed during the interrogation in the formal investigation. All 19 offenders answered questions and confessed their guilt and gave written statements of self-incrimination. None of them had counsel or legal assistance at this stage.

The juvenile offenders hardly raised any self-defence. They only answered the questions of the procedure-conducting persons. However, many questions, particularly in the investigation stage, seemed to direct the offenders to plead guilty, stressing their actions as clearly criminal violations. Such questions were too challenging for juveniles' psychology. For example, in Case 5, the offender was asked 'do you think the indictment showing the prosecution against you for the Extortion of Property is correct as for the person and the crime?' In several minutes of interrogation it appears that offenders emphasised their faults rather than the nature and extent of their criminal acts. This can be explained by the lack of right to silence, their ignorance of the law and social knowledge; and fear during the interrogation. However, we could also ask questions about the skills and attitude of

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*phat nghiêm khac, cach ly y khoi xa hoi mot thoi gian de y co dieu kien tu cai tao tro thanh nguoi cong dan tot sau nay. Mat khac nham ran de va phong ngua chung.*

the police toward juvenile offenders during the questioning and interrogation. The lack of child-friendly procedures can be seen quite clearly through such questioning. In fact, so far, Vietnam has had no practical programs to train professionals working in juvenile justice or about child-friendly procedures.<sup>663</sup> Another factor which can cause juvenile offenders to explain why they had done wrong in illogical ways sometimes would be the possibility of bad treatment or extortion during the investigation, particularly with offenders on remand. No official report about bad treatment in prisons has been released, but individual cases can be found.<sup>664</sup> Anyway, when juvenile offenders could not tell about their criminal acts in a normal or logical way, it would be said that juvenile offenders in Vietnam seem not to freely express their views even when they are in severe circumstances, and may suffer from having their freedom restricted or other penalties. Hence, when juvenile offenders cannot really express their views, the right to self-defence becomes worthless. There are serious failings in the implementation juvenile offenders' right to self-defence and right to be heard.

For the defence by counsel, among nineteen offenders, eight juvenile offenders were defended by seven counsels in seven cases, including two lawyers selected by the offender's family, four appointed lawyers and one people's advocate. In the other cases, where six juvenile offenders and their representatives refused appointed counsels, the defence was conducted by the juvenile offender's parents.

In Cases 4, 5 and 7 with six juvenile offenders, there were no formal defence counsels appointed or selected. Six offenders and their parents signed papers to relinquish the right to have an appointed counsel and wished that the defence would be undertaken by the offender's parents. These actions seemed surprising. The legal

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<sup>663</sup> Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, above n 93.

<sup>664</sup> There are reports of cases where juvenile offenders said that they were yelled at, intimidated and hit in the police station. See Supreme People's Court and UNICEF Vietnam, above n 91, 62; Human Rights Watch, 'Vietnam: Children of the Dust — Abuse of Hanoi Street Children in Detention' (Human Rights Watch, 2006); Thi Kim Chung Le, *Vi Pham Phap Luat trong Thuc Tien Giai Quyét cac Vu An Hinh Su* [Violation of the Law in the Practice of Dealing with Criminal Cases] (Tu Phap, 2006) 60–81; Tien Hung Nguyen, 'Hao Anh To bi Ep Cung trong Nghi An Trom Cap' [Hao Anh Said being Extorted as a Suspect of Theft], *Nguoi Dua Tin* (online), 2013 <<http://www.nguoiduatin.vn/hao-anh-to-bi-ep-cung-trong-nghi-an-trom-cap-a73625.html>>. See also Anh Tuan, 'Nhưng Vụ Diều Tra Viên Danh Dáp, Ép Cung gay Rung Dong' [The Cases where Investigators Use Brutal Torture and Extortion], *Nguoi Dua Tin* (online), 2013 <<http://www.nguoiduatin.vn/nhung-vu-dieu-tra-vien-danh-dap-ep-cung-gay-rung-dong-a114044.html>>.



representatives (parents) of juvenile offenders who conducted the defence for their children were all farmers living in rural areas and had not completed high school, except for one who was a primary school teacher with a college degree. They had neither legal education nor experience and skills in defence. Therefore, except for their concern for their children, those representatives had nothing which could be seen as the basis for ensuring that the defence was conducted effectively. In all the case files I could not find any particular argument given by these representatives in order to defend the juvenile offenders during the course of investigation or in the court session. They just answered a few simple questions that the judge or prosecutor asked them as required by the court procedure. It is very hard to clearly explain why offenders and their parents refused appointed counsels. The reasons would be complicated, caused by mixed factors as I sensed. Offenders and their parents might not understand about their rights and the significance of defence and would be influenced by procedure-conducting bodies' suggestions to relinquish this right.

In Cases 1, 2, 3, 9 and 10 with nine offenders including six juveniles, counsels for juvenile offenders were appointed on the procedure-conducting bodies' requests. Generally, the role of the counsels was really vague and somewhat superficial, illustrated by signs that showed the lack of commitment to the law of appointed counsels. In Case 3, before offender E turned 18 years old in the course of the trial, a lawyer was appointed to defend the accused E in the stages of investigation and prosecution. However, the lawyer seemed not to carry out his obligations, and no document proving the lawyer's participation in the case was recorded. In Cases 2 and 10, where deterrent measures were wrongly imposed on juvenile offenders and pre-trial detention occurred without legal grounds, the counsels did not recognise this, or ignored it. In Cases 1 and 10, a compromise between the counsel and the investigating body in legitimating the procedures and documents seems clear. Counsels signed procedural documents before they were legally appointed counsels of juvenile offenders. In Case 1, the signature of counsel on procedural documents was made two days before the formal criminal proceedings commenced, before the offenders were called accused and therefore eligible for appointed defence. Further, all documents concerning the activities of requesting and providing appointed defence in Cases 1 and 10 from the request of the investigating body to the bar

association, law firms, to lawyers acceptance of investigating body, and the lawyer's participation in the interrogation took place on the same day, one minute in Case 10 was even made at 7:30 am. For such documents and activities to occur in such a brief interval would be impossible in practice because normally the correspondence between the procedure-conducting bodies and bar associations is often by post and takes some days for delivery; the bar associations and law firms spend some time on appointing a lawyer, and the appointed lawyer needs time to prepare for participation in a criminal case. This situation raises doubt about the reliability of the counsel's participation. Perhaps, these appointed counsels *helped* the investigating bodies to legitimate procedures and documents' but did not notice the dates on the documents.

A common feature of appointed defence is that the counsels signed the minutes of interrogation that could be seen as evidence of defence counsels' participation in the process. However, they seem completely passive with almost no attempt to argue for additional circumstances or the personal difficulties of offenders to present judicial bodies with grounds for considering a less severe punishment. They participated in interrogations without asking any questions or making suggestions to clarify relevant issues, or to support juvenile offenders in terms of psychology, even when the offenders gave strange or illogical answers. For example, in Case 10, when the interrogation began, the investigator asked U, 'why when the investigating body summoned you did you not appear?' U answered as follows: 'I had known the investigating body summoned me many times, as my mother let me know about that, but I did not go, I do not like to talk with the police'. In the court, these appointed counsels had almost no questions of offenders or victims, or argument with prosecutors. They just followed and repeated the extenuating circumstances that were mentioned by judicial bodies while in several cases additional circumstances extenuating penal liability would have been possible.

In short, reading the case files, all of them made me wonder about the actual effectiveness of the implementation of the right to defence of juvenile offenders. The offenders could not make a good self-defence, and had no adequate assistance in the preparation and presentation of the defence. The appointed counsels did not attempt to carry out their job, while procedure-conducting bodies tended to abuse the law on the right to defence of juvenile offenders.

#### 5.4.3.4 Court Hearing and Privacy

The court hearings and public access to the trial in these 10 cases were a practical demonstration of the findings from statistics and research. All 10 cases were heard publicly, not one was conducted behind closed doors. Not only could the public freely access the trials but also the authorities strongly encouraged the public and media to attend, then spread and broadcast information of the trial. In Case 10, the commune Committee suggested the court should conduct a show trial, hearing U in front of the local community where the crime was committed and where U was living. In Case 1, the judicial bodies decided the hearing should be conducted as a model of implementing judicial reform policies. As a result, many agencies and organisations in the province and journalists were invited to attend the trial.

In all 10 cases, it is easy to find strong statements that the offender should be given a harsh penalty equivalent to their offences, and that this will contribute to education about the law and the prevention of crime. By contrast, typical reasons and difficulties that offenders faced or contributed to their criminal offences are analysed and evaluated adequately as required by the international and national law. Further, the idea of protecting juvenile offenders' privacy was not mentioned in any cases. The real situation here was not different from common statistics and research. These were practical examples, illustrating the findings recognised in the previous section.

### 5.5 Conclusion

From the analysis of the law and practices of handling juvenile offenders, it can be concluded that Vietnam's regulations are close to international standards in terms of principles, the age of criminal responsibility, the purpose and jurisdiction of juvenile justice, lighter penalties for juvenile offenders, no death penalty and no life imprisonment, most procedural rights of offenders, and fair and just trials. Nevertheless, the penalties and alternative measures applicable to juvenile criminals are limited, lacking various possible options for the court's disposition. Termed imprisonment is the one penalty liable for offences committed by offenders aged 14 or 15 years old. The alternative measures are not workable for application to juvenile offenders in terms of requirements and duration. Further, the criminal procedure law significantly lacks provisions specifically applicable to juvenile offenders. Neither

the statement on only using pre-trial detention as the measure of last resort, nor the regulation on shortening the processing time for dealing with juvenile cases is clearly and specifically monitored or regulated. In addition, there is no appropriate measure for the protection of juvenile offenders' privacy, for preventing undue publicity and the process of negative labelling. Hearing juvenile offences in public mobile trials for the purpose of crime prevention is completely in conflict with international standards. These shortcomings are clear and serious. Vietnamese law cannot approach the international standards for the treatment of juvenile offenders if these defects remain. Therefore, Vietnam should revise its criminal law, in particular with respect to the shortcomings outlined here.

There are noticeable problems in the practice of law enforcement. The implementation of the law regarding the right for defence of juvenile offenders and for judicial staff to have special knowledge in child psychology seems to be inefficient and formalistic. Juvenile offenders and their legal representatives do not appear to understand the meaning of the right to have an appointed defence counsel. The procedure-conducting bodies seem to abuse the right, and are less enthusiastic in implementing the provisions of the law to ensure that the right to defence is actually applied in particular criminal cases. The appointed lawyers seem not to fulfil their roles and responsibilities well. These problems require Vietnam to enhance the dissemination of relevant information on the law in order to raise public awareness on the right to defence, and to have a mechanism for supervision and evaluation of law enforcement. The judicial staff working with juvenile offenders should be specialised and trained in skills as the law requires. Further, to improve the quality of counsel, specialised counsels and their conduct should be seriously considered.

## Chapter 6: THE PROTECTION OF CHILD VICTIMS AND WITNESSES OF CRIME

### 6.1 Introduction

Generally, less attention has been paid to the ‘protection of child victims and witnesses’ than to the protection of child offenders. There have been complaints that the victims and witnesses of crimes have been ignored or disregarded by judicial systems.<sup>665</sup> Over the last 50 years since victimology emerged in the 1960s, international and national legislation have been developed to improve victims’ rights, but victims still report feeling shut out of the criminal justice system.<sup>666</sup> In the criminal justice system, victims of crime are basically recognised as witnesses to crimes against the state and public security and order,<sup>667</sup> for proving the accused’s guilt or revealing the existence of reasonable doubt.<sup>668</sup> In the international legal framework, there are few instruments focusing on the protection of victims and witnesses of crime in general, and child victims and witnesses in particular, compared with those on offenders and juvenile offenders.

The number of studies discussing and supporting victims and witnesses’ rights is quite limited. In regard to child victims or witnesses, the major works are concerned with cases of sexual abuse, human trafficking, or homicide, and far fewer are about child victims of simple assault, property crimes, or crimes by juveniles.<sup>669</sup> Handbooks introduced by organisations working with children also often focus on

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<sup>665</sup> See United Nations Office for Drug Control and Crime Prevention, *Handbook*, above n 201, 1; United Nations Office for Drug Control and Crime Prevention, *Guide for Policy Makers*, above n 201, 1; UNICEF and UNODC, above n 201, 1.

<sup>666</sup> Jo-Anne Wemmers, ‘Victims’ Rights are Human Rights: The Importance of Recognizing Victims as Persons’ (2012) 15(2) *Temida* 71, 71–2; see also, ACT Community Law Reform Committee, *Victims of Crime* (The Committee, 1993) 5; Irvin Waller, *Rights for Victims of Crimes: Rebalancing Justice* (Rowman & Littlefield, 2010) 15.

<sup>667</sup> Wemmers, above n 666, 72.

<sup>668</sup> *Ibid* 75.

<sup>669</sup> See David Finkelhor, Theodore P Cross and Elise N Cantor, ‘The Justice System for Juvenile Victims: A Comprehensive Model of Case Flow’ (2005) 6(2) *Trauma, Violence & Abuse* 83, 92; Christine Alder and Kenneth Polk, *Child Victims of Homicide* (Cambridge University Press, 2001); Minodora-Ioana Balan-Rusu and Varvara Licuța Coman, ‘Protecting Children Victims of Crimes of Human Trafficking in the EU’ (2013) 3(2) *Journal of Danubian Studies and Research* 58.

child sexual abuse or trafficking,<sup>670</sup> as in providing guidelines for the implementation of the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (or *Protocol on the Sale of Children*), and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime* (or *Protocol to Prevent Trafficking in Persons*). From 2009, when UNICEF and the UNODC introduced a handbook for professionals and policymakers,<sup>671</sup> the rights of child victims and witnesses generally have been discussed more fully, in regard to victims of all crimes, not only sexual abuse or human trafficking. This handbook is an analysis of the *Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime* (or *UN Guidelines 2005*) with examples and comments from practices in a number of countries across the world.

In the Vietnamese literature, the documents referring to the situation of child abuse as well as the protection of child victims and witnesses of crime are quite limited in both the number of works and their content. Focusing on the victims of crime, two notable works are ‘Investigation and Court Proceedings Involving Children and Juveniles: An Assessment of Child-sensitive Proceedings’ undertaken by the Supreme Court in 2007<sup>672</sup>, and ‘The Legal Mechanism for Protecting the Rights of Victims of Crimes’ undertaken by Hanoi Law University in 2011.<sup>673</sup> The first work surveyed legal provisions concerning child victims and witnesses by interviewing child victims, their parents and judicial staff. The second work was a pilot study on compensation of victims of crimes as well as an introduction to basic theoretical matters regarding victims of crime. There are also a few works that mention victims or child victims and witnesses of crime to some extent, such as ‘Victims of Crime

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<sup>670</sup> See Inter-Parliamentary Union and UNICEF, above n 173, 149–56; United Nations Office on Drugs and Crime, above n 167, 21–9.

<sup>671</sup> UNICEF and UNODC, above n 201.

<sup>672</sup> Supreme People’s Court and UNICEF Vietnam, above n 91.

<sup>673</sup> Dai Hoc Luat Ha Noi, ‘Co Che Phap Ly Bao Ve QUYEN va Loi Ich Hop Phap cua Nan Nhan cua Toi Pham’ [The Legal Mechanism for Protecting the Rights of Victims of Crimes] (LH 2010-17/DHL-HN, Hanoi Law University, 2011).

from the Criminology Perspective’,<sup>674</sup> ‘The Issue of Protecting Child Victims and Witnesses of Crime: Problems and Solutions’,<sup>675</sup> and ‘The Ensurance and Protection of Human Rights of Victims of Crime’.<sup>676</sup> However, no work has provided an overview of protecting child victims and witnesses of crime in Vietnam.

So far, the UN *Guidelines 2005* have been regarded as an essential instrument, filling an important gap in international standards for the treatment of children as victims or witnesses of crime.<sup>677</sup> The definition of ‘child’ that is applied in those guidelines echoes that which is supplied by the *CRC* in that ‘child victims and witnesses’ denotes persons who have not yet attained 18 years of age who are victims of crime or witnesses to crime, regardless of their role in the offence or in the process of treating offenders.<sup>678</sup> This description complies with other legal instruments and popular studies about the victims and witnesses of crime.

In the jurisdiction of Vietnam, however, the definition of a child differs from that of the *CRC* as noted above, as there are separate legal concepts for ‘child’ in relation to whether they are a ‘victim’ or ‘witness’ of crime. A victim signifies a person who suffers from physical, mental or property damage caused by crime,<sup>679</sup> and a witness is a person who knows details pertaining to a crime or crimes and is summonsed by the procedure-conducting bodies to give testimony in a prosecution.<sup>680</sup> In Vietnam, the law regards victims and witnesses as children only if they are below 16 years of age. Therefore, in sections about the law and practice regarding the protection of child victims and witnesses in Vietnam, it should be recalled that the terms ‘child victim/s’ or ‘child witness/es’ only refer to victims or witnesses below 16 years of age, unless otherwise clearly indicated.

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<sup>674</sup> Tuyet Mien Duong, ‘Nan Nhan cua Toi Pham duoi Goc Do Toi Pham Hoc’ [Victims of Crime Seen from the Criminological Perspective] (2005) (20) *The People’s Court Journal* 5.

<sup>675</sup> Hung Binh Tran, ‘Van De Bao Ve Quyen va Loi Ich Hop Phap cua Nan Nhan, Nhan Chung la Tre Em: Thuc Trang va Giai Phap’ [The Issue of Protecting Child Victims and Witnesses of Crime: Problems and Solutions] (2008) (10) *The People’s Court Journal* 14.

<sup>676</sup> Huu Trang Tran, ‘Dam Bao va Bao Ve Quyen Con Nguoi cua Nan Nhan cua Toi Pham’ [Ensure and Protect Human Rights of Victims of Crime] (2012)(4) *The People’s Court Journal* 38.

<sup>677</sup> UNICEF and UNODC, above n 201, 2.

<sup>678</sup> *UN Guidelines 2005* [9].

<sup>679</sup> *CPC* art 51/1.

<sup>680</sup> *Ibid* art 55/1.

## 6.2 International Standards for the Protection of Child Victims and Witnesses of Crime

International standards on the rights of child victims and witnesses of crime include relevant provisions enshrined in the *CRC*; the *UN Guidelines 2005*; the *UN Guidelines 1997*; the *Protocol on the Sale of Children*; the *Protocol to Prevent Trafficking in Persons*; and other instruments concerning victims and witnesses of crime as reviewed in Chapter 2. Though the *CRC* has no provision specifically indicating the rights of child victims and witnesses of crime, it states that:

States Parties shall undertake all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.<sup>681</sup>

To do so, these states parties need to follow relevant protocols and guidelines, which clarify and elucidate the protection of these children (including the rights of child victims and witnesses) as well as the necessary measures to be taken in each jurisdiction.

I briefly review these international standards below, grouped under principles, the rights of child victims and witnesses of crime; and professional requirements and their implementation.

### 6.2.1 Principles

The protection of child victims and witnesses of crime should comply with the fundamental principles of children's rights in the *CRC* and also offer special consideration for those who have suffered from criminal actions. In the *UN Guidelines 2005*, principles are articulated, according to intersecting or 'cross-cutting principles'<sup>682</sup> including dignity, non-discrimination, the best interests of the child and the right to participation.

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<sup>681</sup> *CRC* art 39.

<sup>682</sup> *UN Guidelines 2005*[8].



Besides confirming common requirements for child protection, the distinguishing idea that these principles convey is that while the rights of offenders should be safeguarded, child victims and witnesses must be assured of their rights, prevented from suffering additional hardship or mistakenly being viewed as offenders when participating in the justice process.<sup>683</sup> The *UN Guidelines 2005* state that to ensure justice for child victims and witnesses of crime, these cross-cutting principles must be respected by all persons who are responsible for the well-being of those children.<sup>684</sup>

### 6.2.2 The Rights of Child Victims and Witnesses of Crime

As indicated in the *UN Guidelines 2005*, *UN Guidelines 1997* and relevant instruments, any child victims and witnesses of crime should be treated in a child-sensitive manner during the justice process, taking into account their individual needs, gender, maturity, wishes, and fully respecting their physical, mental and moral integrity. Interference in the child's private life should be limited to the minimum needed, at the same time as maintaining high standards for evidence collection in order to ensure equitable outcomes of the justice process.

Child victims and witnesses are entitled to particular rights recognised in the *UN Guidelines 2005*. These rights include: to be treated with dignity and compassion, protected from discrimination, to be informed and heard; the right to express views and concerns; and the rights to assistance, privacy, safety, reparation and special preventive measures.

Along with each right above, a range of elucidations, guidance or requirements for the judicial system are provided to ensure comprehensive understanding and practical application. Considering child rights as a whole, interdependent and indivisible, for justice for child victims and witnesses of crime, in brief, the following should be assured:

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<sup>683</sup> For their development, see *UN Guidelines 2005* [7(a)], [7(d)], [7(e)], [7(f)]. For the principles themselves, see *UN Guidelines 2005* [8(c)].

<sup>684</sup> *Ibid* [8].

- a) Child victims and witnesses of crime, and their parents and legal representatives should be promptly and adequately informed about relevant information and mechanisms for implementing their rights and duties. Such information may be about support services, the roles of child victims and witnesses, the manner of testimony and questioning during the investigation and trial, the mechanisms for making a complaint, the progress and disposition of the specific case, and the opportunity to obtain reparation.<sup>685</sup>
- b) Child victims and witnesses and, where appropriate, family members should have access to professional assistance with financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. All such assistance should address the child's needs and enable them to participate effectively at all stages of the justice process.<sup>686</sup>
- c) Child victims and witnesses should receive assistance from professionals, such as child victim/witness specialists, commencing at the initial report and available until such services are no longer required.<sup>687</sup>
- d) Child victims and witnesses should be dealt with in a child-sensitive manner, reducing potential intimidation, limiting the number of interviews and testimonies, be protected from being cross-examined from offenders if compatible with the legal system and with due respect for the right of defence, be interviewed and examined in court out of sight of the offenders, and provided with separate courthouse waiting rooms and private interview areas.<sup>688</sup>
- e) Child victims and witnesses should have their privacy protected as a matter of primary importance. Information relating to a child's involvement in the justice process should be protected through maintaining confidentiality, restricting the disclosure of data that may lead to their identification, and

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<sup>685</sup> Ibid [19]–[20]; *UN Guidelines 1997* [51].

<sup>686</sup> *UN Guidelines 2005* [22]–[23]; see also *UN Guidelines 1997* [46].

<sup>687</sup> *UN Guidelines 2005* [24]–[25].

<sup>688</sup> Ibid [29]–[30]; *UN Guidelines 1997* [50].

excluding the public and media from the courtroom during the child's testimony.<sup>689</sup>

- f) Child victims should receive reparation in order to achieve full redress, reintegration and recovery. Reparation may include restitution from offenders, aid from victim compensation programmes, and damages paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care, and legal services should be addressed. Procedures should be instituted to ensure the enforcement of reparation orders and the payment of reparation before fines.<sup>690</sup>

### 6.2.3 Professional Requirements and Implementation

The rights of child victims and witnesses of crime are rather passive, depending on supportive measures and professionals' implementation. In order to realise such rights, child-sensitive approaches conducted by trained professionals are necessary.

Professionals should approach child victims and witnesses with sensitivity; provide support and accompany children throughout their involvement in the justice process and clearly explain the process; ensure investigations and trials are expedited; and use child-sensitive procedures, including the use of interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments, recesses during a child's testimony, appropriate time in the hearing schedule, and an appropriate notification system to ensure the child goes to court only when necessary, and other appropriate measures to facilitate the child's testimony.<sup>691</sup>

The professionals should also implement measures to limit the number of interviews, statements and contact with the judicial process, such as through the use of video-recording.<sup>692</sup>

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<sup>689</sup> *UN Guidelines 1997* [49]; *UN Guidelines 2005* [26]–[28].

<sup>690</sup> *UN Guidelines 2005* [33]–[37]; *UN Guidelines 1997* [45]; *CRC* art 37.

<sup>691</sup> *UN Guidelines 2005* [30]; *UN Guidelines 1997* [44].

<sup>692</sup> *UN Guidelines 1997* [50].

Appropriate measures should be taken to protect child victims and witnesses from risk during and after the justice process. Safeguards could include: avoiding direct contact between those children and offenders, using court-ordered restraining orders supported by a registry system, ordering pre-trial detention of offenders and setting special ‘no contact’ bail conditions, placing offenders under house arrest, giving the child protection by police or other relevant agencies, and safeguarding their whereabouts from disclosure.<sup>693</sup>

Adequate training should be made available to professionals working with child victims and witnesses of crime with a view to effectively and sensitively protecting and meeting the needs of the children. The training should cover a range of matters from human rights law, ethical duties and signs of crimes against children to technical skills to assist child victims and witnesses of crime as well as deal with related matters, cross-cultural and age-related linguistic, religious, social, gender and other issues.<sup>694</sup>

#### 6.2.4 Special Notes concerning Child Victims of Trafficking and Commercial Sexual Exploitation

In addition to the above regulations about the protection of child victims and witnesses of crime in general, for children who are the victims of human trafficking or commercial sexual exploitation, two specialised protocols should be complied with: the *Optional Protocol on the Sale of Children*, and the *Protocol to Prevent Trafficking in Persons*. Signatories to these protocols, including Vietnam, have abiding legal responsibilities to undertake legislative and other measures to protect relevant children. The measures embrace the criminalisation of the conduct, acts and such activities as the sale of children, or child prostitution and pornography; the prevention and combatting of such offences against children; and assistance to and protection of child victims.

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<sup>693</sup> *UN Guidelines 2005* [32]–[34].

<sup>694</sup> *Ibid* [40]–[46]; *UN Guidelines 1997* [44].

The conduct or acts to be criminalised as a minimum are indicated in articles 2 and 3 of the *Optional Protocol on the Sale of Children* and articles 3 and 5 of the *Protocol to Prevent Trafficking in Persons*. Briefly, these cover the acts of:

- a) offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation, transfer of organs for profit, engagement in forced labour;
- b) improperly inducing consent, as an intermediary, for the adoption of a child;
- c) offering, obtaining, procuring or providing a child for child prostitution;
- d) producing, distributing, disseminating, importing, exporting, offering, selling or possessing materials and documentaries for the purposes of child pornography.

Under these two protocols, each state party shall adopt appropriate measures to protect the rights and interests of child victims. These include recognising their vulnerability and special needs; informing them of their role and the scope, timing and progress of the proceedings; allowing their views, needs and concerns to be presented and considered; providing appropriate support services for medical, psychological, material and social assistance and recovery; and protecting their privacy and identity.<sup>695</sup> The rights of child victims as well as the measures for assisting and protecting victims of offences prohibited in the protocols are similar to those indicated in the *UN Guidelines 2005* and the *UN Guidelines 1997*. However, these protocols have abiding legal effects on their members; they are not recommendations or encouragement. In the implementation of the protocols, the *UN Guidelines 2005* and *UN Guidelines 1997* should be referred to as providing illumination and clarification.

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<sup>695</sup> *Protocol on the Sale of Children* arts 8–9; *Protocol to Prevent Trafficking in Persons* arts 6–8.

### 6.3 Vietnam's Regulations concerning Child Victims and Witnesses of Crime

#### 6.3.1 An Overview of Mechanisms for the Protection of Victims and Witnesses of Crime

In Vietnam, there is no separate law or chapter of a code focusing on the victims and witnesses of crimes, neither adults nor children. Legal provisions concerning victims and witnesses of crime are regulated in various documents. Of these, the *PC* and *CPC* are the salient sources. These codes contain basic definitions, legal status of, and mechanisms for the protection of victims and witnesses of crimes, including adults and those who have not reached the age of 18 years. Generally, the protection of victims and witnesses of crime is based on general principles of criminal justice and detailed provisions for particular cases. Within particular areas of offences, the protection of victims and witnesses of crime may need to refer to relevant laws, such as the *Law on Marriage and Family*, *Law against Corruption*, *Law against Domestic Violence*, and the *Law against Human Trafficking*. If victims or witnesses are children, reference may also be made to the *Law on Child Protection*.

In relation to compensation, the *Civil Code* provides the legal basis for calculating the damages and payment when the court decides such matters. In cases where the reparation cannot be addressed while dealing with the crime, the victims can sue offenders or related persons for reparation through civil proceedings as regulated by the *Civil Procedure Code*.

The protection of victims and witnesses of crime can be considered from two sides: penalties applicable to criminals who offend against children; and measures applied to protect child victims and witnesses, including their rights and supportive services.

In Vietnam, juveniles (particularly children) are subjects specially protected under the *PC*. 'Committing a crime against a child' (that is a person under 16 years of age) is a circumstance where the penal liability is increased in every case. For crimes of murder, rape, forcible sexual intercourse, human trafficking, kidnapping in order to appropriate property, organising the illegal use of drugs, and forcing or inducing other persons into the illegal use of a drug, it identifies crimes against children as

particularly serious and the offender may be subject to the most severe penalty: 20 years of imprisonment, life imprisonment or the death penalty.<sup>696</sup>

‘Committing a crime against a child’ is a formulaic factor of six crimes. These six crimes have the term ‘child’ in their titles or names, specifying ‘against a child’ and their victims are only ‘children’. They are prescribed in six articles of the *PC*, including:

1. Infanticide (art 94): The act of a mother who kills or abandons her newborn to death due to her backward ideology or difficult circumstances.
2. Rape of a child (art 112): The act of having sexual intercourse with a child below 13 years of age in any circumstances; or using violence or threatening to use violence or taking advantage of the victim’s state of being unable to defend themselves or where the offender resorted to other tricks in order to have sexual intercourse with a child aged from 13 to below 16 years;
3. Forcible sexual intercourse with a child (art 114): The act of having sexual intercourse with a person aged from 13 to below 16 years despite the child’s reluctance or unwillingness;
4. Having sexual intercourse with a child (art 115): The act of an adult who has consensual sexual intercourse with a person aged from 13 to below 16 years of age;
5. Obscenity against a child (art 116): Sexual activities excluding intercourse of an adult with a person aged below 16 years of age; and
6. Trading in, fraudulently exchanging or appropriating a child (art 120): The act of trafficking in a person aged below 16 years of age.

These six crimes are hereafter referred to as the ‘six crimes against children’, a special group in the discussion of law and practice in Vietnam about the protection of child victims of crime.

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<sup>696</sup> *PC* arts 93/1/2, 112/2–4, 114/3, 120/2, 134/2/e, 197/3/d, 200/3.

‘Committing a crime against a child’ indicates a higher penalty bracket applicable to offenders in many crimes. These include murder and threatening to murder; intentionally causing injury or harm to the health of other persons; ill-treating other persons; illegally stockpiling, transporting, trading in or appropriating drugs; harbouring the illegal use of drugs; and breaching regulations on the employment of child labour.<sup>697</sup> For other offences, committing a crime against a child is a circumstance aggravating the penal liability in the applicable penalty bracket.<sup>698</sup>

‘Committing a crime against a juvenile’ — that is, persons who is either a child (under Vietnamese law) or a juvenile aged from 16 to below 18 years — is a circumstance identifying criminal liability in a higher penal bracket for the crime of spreading HIV to other persons, organising the illegal use of drugs, forcing or inducing other persons into illegal use of drugs, enticing or compelling juveniles to commit crimes or harbouring juvenile offenders, or disseminating debauched cultural products.<sup>699</sup> ‘Inciting a juvenile to commit a crime’ is always an aggravating circumstance for criminal responsibility in the scope of applicable penalty brackets.<sup>700</sup>

As for sex-related crimes, an act against a juvenile aged from 16 to below 18 is a circumstance aggravating the criminal responsibility in the offences of rape, forcible sexual intercourse, harbouring prostitution, and procuring prostitution.<sup>701</sup> This is also the factor in formulating the crime of paid sexual intercourse with a juvenile,<sup>702</sup> while having paid sexual activity between adults is an administrative violation but not a criminal offence.

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<sup>697</sup> Ibid arts 103/2/c, 104/2/d, 110/2/a, 114–16, 194/2/e, 196/2/c, 228.

<sup>698</sup> Ibid art 48/1/h.

<sup>699</sup> Ibid arts 117/2/b, 118/2/c, 197/2–3, 200/2–3, 252, 253/2/c.

<sup>700</sup> Ibid art 48/1/n.

<sup>701</sup> Ibid arts 111/4, 113/4, 254/2/d, 255/2/a.

<sup>702</sup> Ibid art 256.



### 6.3.2 Principles and Common Regulations regarding Victims and Witnesses of Crime

As mentioned above, there is no law or chapter of the criminal code specialising in victims and witnesses of crime in Vietnam. The domestic legal system has no equivalent specialised principles regarding child victims and witnesses of crime as recommended in international legal standards. Generally, the protection of victims and witnesses of crime should comply with the fundamental principles of criminal procedures recognised in the *CPC*, such as the rule of law, equality before the law, and respect for citizens' rights.<sup>703</sup> There are two principles directly referring to victims and witnesses, concerning the safety and equality of the victim as one of the participants in criminal cases.

The competent procedure-conducting bodies shall apply necessary measures according to law to protect the life, health, honour, dignity, property of victims, witnesses and other persons related to the criminal proceedings as well as their relatives when their life and health are endangered or their honour, dignity and property are infringed.<sup>704</sup>

Procurators, defendants, defence counsels, victims, civil plaintiffs, civil defendants, persons with interests and obligations related to the cases and their lawful representatives and defence counsels of the interests of the involved parties shall all have equal rights to present evidence, documents and objects, make claims and argue democratically before court. Courts have to create conditions for them to exercise these rights with a view to clarifying the objective truth of the cases.<sup>705</sup>

In specific provisions, particular rights and duties of victims and witnesses, as well as possible measures applicable to protect them, are regulated separately.

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<sup>703</sup> *CPC* arts 3–5, 7–8.

<sup>704</sup> *Ibid* art 7.

<sup>705</sup> *Ibid* art 19.

### 6.3.3 Rights and Duties of Victims and Witnesses of Crime

#### 6.3.3.1 Rights and Duties of Victims of Crime

The legal status, rights and duties of victims of crime (who suffer from damage caused by criminal acts) are mainly indicated in article 51 of the *CPC*. A number of articles about the defence counsels for the interests of involved parties in criminal cases and about procedural activities also contain clauses concerning the rights and duties of victims.

In general, victims of crime or their representatives have the following rights:<sup>706</sup>

- a) to ask lawyers, people's advocates or other people to protect their interests;
- b) to present relevant documents, objects and requirements;
- c) to be informed of the investigation results;
- d) to request different procedure-conducting persons, expert witnesses and interpreters;
- e) to complain about relevant decisions and acts of the bodies and persons with procedure-conducting competence;
- f) to request reparation and measures to secure such reparation;
- g) to participate in and present arguments in the trial;
- h) to appeal the judgment and decision of the court.

Where the criminal cases are instituted at the request of victims, the victims or their representatives shall present their accusations at court sessions.<sup>707</sup>

Normally, when detecting signs of offences, the procedure-conducting bodies actively institute criminal proceedings. However, for 11 cases that are listed in clause 1 of Article 105 of the *CPC*, proceedings are only instituted when the victims or their representatives have requested it. Those are mostly less serious crimes and the victims may suffer additional hardship when proceedings are conducted. Those victims having to participate in criminal procedures may face feelings of shame, lose

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<sup>706</sup> Ibid arts 51/2, 59/1.

<sup>707</sup> Ibid art 51/3.

reputation and credibility or suffer other damage. More precisely, those offences are described in clause 1 of the following articles of the *PC*:<sup>708</sup>

Article 104: Intentionally causing injury or harm to the health of other persons;

Article 105: Intentionally causing injury or harm to the health of other persons under extreme provocation;

Article 106: Intentionally causing injury or harm to the health of other persons under the excess of adequate defence;

Article 108: Unintentionally causing injury or harm to the health of other persons;

Article 109: Unintentionally causing injury or harm to the health of other persons under the breach of professional or administrative regulation;

Article 111: Rape;

Article 112: Forcible sexual intercourse [having sexual intercourse with other persons despite their reluctance or unwillingness];

Article 121: Humiliating other persons;

Article 122: Slandering other persons;

Article 131: Infringing copyright;

Article 171: Infringing industrial property rights.

The law requires victims to appear in response to the summonses of procedure-conducting bodies. If they refuse to give testimony without a plausible reason, the victims may bear penal liability for refusing to make a declaration.<sup>709</sup> Consequently, victims can be subject to a warning, non-custodial reform from six months to one year, or imprisonment from three months to one year.<sup>710</sup> An additional penalty of being banned from holding certain career positions or practising certain occupations from one to five years may be applied.<sup>711</sup> This is a less serious crime so the penalties are not applicable to child victims because children or people below 16 years old have no criminal liability for less serious or serious crimes. However, the regulation

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<sup>708</sup> Ibid art 105; *PC* arts 104–06, 108–09, 111, 113, 121–2, 131, 171.

<sup>709</sup> *CPC* art 51/4; *PC* art 308.

<sup>710</sup> *PC* art 308/1. This is a less serious crime as its highest possible punishment is less than three years of imprisonment.

<sup>711</sup> Ibid art 308/2.

can take effect with respect to juvenile victims aged from 16 to below 18 years of age.

In particular cases, the victims may be required to participate in certain activities in the course of the criminal proceedings, such as cross-examination, identification, examination of the scene, testing, the examination of traces on human bodies, or psychological examination.<sup>712</sup>

Considering the victim's legal status in the common context of criminal proceedings, it can be recognised that the victims of crime may face difficulties in exercising their rights effectively. According to the law, victims are only formally sent procedural decisions in two situations.

- a) The investigating body issues a decision to temporarily suspend the criminal proceedings on the basis that the offender is mentally or seriously physically ill, or the offenders have not been identified/ located and the procedural time limits are to expire.<sup>713</sup>
- b) The judge issues a decision on ceasing or temporarily suspending the criminal proceedings for the reasons listed in articles 105 (clause 2), 107 (clauses 3–7) and 160 of the *CPC*. These include that the accused had not reached the age of criminal responsibility when committing the crime, or the accused had died or suffered a mental or fatal illness.<sup>714</sup>

After the conclusion of the trial, the court shall provide the victim with a copy or summary of the judgment if the victim requests one.<sup>715</sup>

The victims as well as their counsels are not sent most procedural decisions, including decisions on instituting criminal proceedings, applying deterrent measures to offenders, as well as the investigation report, indictment and judgment.<sup>716</sup> When they are not informed about the result of investigation, prosecution and trial, the victims cannot actively exercise their rights and duties, including lodging a

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<sup>712</sup> *CPC* arts 138, 139, 150, 152–4, 160.

<sup>713</sup> *Ibid* arts 160, 182.

<sup>714</sup> *Ibid* arts 105, 107, 160, 180, 182.

<sup>715</sup> *Ibid* art 229.

<sup>716</sup> *Ibid* arts 104, 126–7, 162/4, 166, 229.

complaint about procedural decisions, a request for reparation, or an appeal to a higher court. Regarding this point, it is said that the victim seems to be eliminated from the proceedings.<sup>717</sup> Therefore the recognition of victims' rights seems somewhat formalistic and unfeasible, or lacking practical measures.

### 6.3.3.2 Rights and Duties of Witnesses of Crime

In Vietnam, a person who knows details about a crime can be summonsed to be a witness in criminal proceedings. This excludes a person performing the role of defence counsel, or persons with physical or mental disabilities which render them incapable of perceiving details and giving truthful statements.<sup>718</sup>

When participating in criminal proceedings, the witness to a crime has the right to request judicial bodies to protect their safety, dignity and property; to complain about procedural decisions and acts of agencies and persons with procedure-conducting competence; and to be paid travel and other expenses as prescribed by law.<sup>719</sup>

The duties of witnesses are quite similar to the victims' duties, including appearing in response to the summonses of procedure-conducting bodies, giving statements through interviews, participating in activities of criminal investigation, and having penal liability according to the *PC* (art 308) if refusing to testify without an adequate reason.<sup>720</sup>

In addition, in the case of a deliberate absence without plausible reasons where their absence causes impediment to criminal proceedings, the witness can be escorted to the proceedings.<sup>721</sup> If the witness intentionally gives false testimony, they shall have penal liability for making a false declaration in accordance with Article 307 of the *PC*.<sup>722</sup> Under this provision, applicable penalties include a warning, non-custodial reform (from six months to a year), a term of imprisonment (varying from three

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<sup>717</sup> Quang Hien Nguyen, 'Bao Ve QUYEN Con NGUOI cua NGUOI BI Hai trong To Tung Hinh Su' [The Protection of Human Rights for the Victim in the Criminal Procedure] (2011)(13) *The People's Court Journal* 4, 6.

<sup>718</sup> *CPC* art 55/2.

<sup>719</sup> *Ibid* art 55/3.

<sup>720</sup> *Ibid* arts 55/4/b, 138, 139, 150, 152–4, 160.

<sup>721</sup> *Ibid* arts 55/4/a, 134, 192.

<sup>722</sup> *Ibid* art 55/4/b.

months up to seven years), and additional penalties of being banned from holding certain career positions or practising certain occupations.<sup>723</sup> This is a less serious but nonetheless criminal offence. Hence, this regulation can create duties for witnesses aged 16 and above but has no effect on child witnesses or child victims.

#### 6.3.4 Reparation and Support Programs

As mentioned above, the ability to lodge a request for compensation is one of the rights of the victims of crime in criminal proceedings. Usually, the offender is the person responsible for paying compensation to victims. Sometimes, other related persons may have to compensate victims if the law so prescribes. There is not any aid or support from state programs that helps victims of crimes, except for the victims of human trafficking.<sup>724</sup> Victims of trafficking and their relatives can benefit from a state program as stated in the *Law against Human Trafficking*. The listed support consists of providing temporary shelter, health care, legal aid and travel expenses; maintaining the confidentiality of personal information, including a consideration of conducting a trial behind closed doors if the victims request it; and providing basic education, vocational training and loans if victims are juveniles or from poor households.<sup>725</sup>

In general, the reparation paid to victims of crime is usually dealt with through the criminal proceedings. Victims and offenders and /or their families and counsels can discuss and negotiate reparation. If not, the court shall award compensation as a part of the case when hearing offences. The scope of reparation complies with provisions on non-contractual damage compensation of the *Civil Code*. Depending on the particular damage in each case, victims of crime can request offenders to pay expenses for medical treatment, mental health care, loss of income and property, and others deemed relevant as prescribed by the law.<sup>726</sup> Where the issue of damage is

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<sup>723</sup> *PC* art 307.

<sup>724</sup> Under the *Law against Domestic Violence*, voluntary and community organisations are encouraged to support victims of domestic violence. However, there are no government programs or state organisations working in this area.

<sup>725</sup> *Law against Human Trafficking* arts 30–9.

<sup>726</sup> *Civil Code* arts 604–30.

complicated, reparation can be addressed in a civil case under the civil procedures after the criminal issues are resolved. The *CPC* also provides that:

The settlement of civil matters in criminal cases shall be undertaken together with the settlement of criminal cases. Where a criminal case involves compensation or indemnification which cannot be proved yet and does not affect the settlement of the criminal case, such civil matters may be separated and settled according to civil procedures.<sup>727</sup>

In cases where the reparation is not addressed within the criminal case, the victims of crime are able to sue the offender for damages. In such cases, there is no participation of criminal procedural bodies; victims of crime have the role of plaintiffs, and the offenders and the others who have responsibility for reparation have the roles of civil defendants. Their rights and duties are regulated by the *Civil Procedure Code*.<sup>728</sup> This code has no provision specifically applicable to those who are either juvenile or child victims of crime who are claiming reparation.

Normally, in each criminal judgment, besides imposing penalties on offenders, the court certifies civil negotiation or decides reparation. The court does not address reparation if the victims make no request, or leaves reparation to be dealt with under civil procedures as regulated by the law. During the process of either criminal or civil cases, victims, offenders and related parties can negotiate the reparations, otherwise the court shall decide.

Once the reparation is decided by either related parties' negotiation or by the courts, implementation depends on the attitude and ability of offenders and those imposed with the responsibility to provide reparation. There is no special mechanism for supporting victims of crime if offenders lack the ability to fulfil their duties of reparation.

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<sup>727</sup> *CPC* art 28.

<sup>728</sup> *Bo Luat 24/2004/QH11 ve To tung Dan Su, duoc sua doi theo Luat 65/2011/QH12* [Code 24/2004/QH11 on Civil Procedures, Amended by the Law 65/2011/QH12] (hereafter *Civil Procedure Code*) arts 56/2, 58–9.

### 6.3.5 Provisions Specifically Applicable to Child Victims and Witnesses

In addition to the above regulations applied to any victim and witness of crime, the *CPC* has several provisions specifically applicable to those who are children and juveniles as below:

- a) The parents or guardians of juvenile victims have rights as for victims to undertake all necessary actions on behalf of victims to protect the legitimate interests of juvenile victims;<sup>729</sup>
- b) The counsel of juvenile victims has the right to be present when the procedure-conducting bodies are taking statements from witnesses, and to appeal the judgment and decision of the court;<sup>730</sup>
- c) The summons of child victims and witnesses of crime shall be handed to their parents or lawful representatives;<sup>731</sup>
- d) The interview and statements of child victims and witnesses shall be carried out in the presence of their parents, representatives or teachers.<sup>732</sup>

Since 2011, after the *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* was introduced, more attention has been paid to the protection of juveniles involved in the judicial system. This *Circular* provides that the procedure-conducting bodies have responsibility for protecting juveniles' personal lives, honour and dignity; ensuring juvenile victims and their relatives' health, dignity and property; and giving priority to dealing with criminal cases related to juveniles in a rapid, accurate and timely manner.<sup>733</sup>

Several support services described in international standards are referred to in the *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases*. It stipulates that the procedure-conducting bodies have obligations:

- (a) to request the Labour, Invalids and Social Affairs agency and related organisations to assist juvenile victims, especially children who are homeless

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<sup>729</sup> *Civil Code* arts 58, 141; *CPC* art 51/2–3.

<sup>730</sup> *CPC* art 59/3.

<sup>731</sup> *Ibid* arts 133/3, 137.

<sup>732</sup> *Ibid*.

<sup>733</sup> *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* arts 3/3, 4, 6.



or trafficked, if they or their families request assistance in obtaining accommodation, counselling, health care, legal and psychological aid in the procedural process or when necessary;<sup>734</sup>

- (b) to request bar associations or relevant organisations to appoint a lawyer or people's advocate to defend the legitimate interests of juvenile victims if the victims and their representatives so request;<sup>735</sup>
- (c) to provide necessary information about the procedural process to juvenile victims as well as their representatives and aid officers.<sup>736</sup>

The *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* also indicates possible measures to be applied with the expectation of providing child-friendly procedures in dealing with criminal cases related to juvenile victims.

- (a) The taking of statements of juvenile victims at the places of investigation or victims' residence must be conducted in a manner that is comfortable for the victims. Investigators and prosecutors should be friendly, and use language suitable to the age, gender, attitude, and maturity of juvenile victims.<sup>737</sup>
- (b) Appropriate measures should be used to minimise the number and length of time of taking juvenile victims' statements, such as using audio- or video-recordings.<sup>738</sup>
- (c) The collection of evidence including the examination of the human body, photography, audio- and video-recording, and taking statements must not affect the psychological well-being, confidentiality and dignity of juvenile victims. Cross-examination between offenders and juvenile victims should be minimised. For cases of sexual abuse, torture and trafficking, cross-examination should be conducted only when the cases could not otherwise be resolved adequately.<sup>739</sup>

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<sup>734</sup> Ibid art 13/2.

<sup>735</sup> Ibid art 14/1.

<sup>736</sup> Ibid art 14/5/a.

<sup>737</sup> Ibid art 15/1–2.

<sup>738</sup> Ibid art 15/4–5.

<sup>739</sup> Ibid art 15/4–6.

- (d) The court may undertake hearings behind closed doors, especially for cases of child sexual abuse and trafficking. The jury panel should include a juror who is a teacher or a member of a Youth Union. The courtroom may be modified in order to reduce tension and fear for the juvenile victims.<sup>740</sup>
- (e) When it is necessary to request juvenile victims to present their statements at court sessions, so as not to directly see the offenders, the jury panel may permit them to stay behind a screen or in another room and present through a camera system.<sup>741</sup>
- (f) If juvenile victims, their representatives or counsels so request, the courts may allow victims to visit the courtroom before the court hearing commences.<sup>742</sup>

The above regulations somewhat conform to the guidance offered by international standards concerning measures applicable to justice for child victims and witnesses of crime in terms of child-friendly procedures. However, these provisions are often optional, and recorded in a circular, which has low ranking in the system of legal normative documents. Further supportive services (including legal, finance and health care) are very weak, having no agency responsible for, or program focusing on these matters. The reparations also cannot be addressed if the offenders escape, die or have no ability to compensate.

#### **6.4 The Implementation of Regulations concerning Child Victims and Witnesses of Crime in Vietnam**

##### **6.4.1 Data on Child Abuse, Child Victims and Witnesses of Crimes**

According to the national authority, the course of care, protection and education of children has achieved significant progress in many aspects, especially in health care and education.<sup>743</sup> However, the prevention of children from becoming victims of

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<sup>740</sup> Ibid art 16/1–3.

<sup>741</sup> Ibid art 15/5.

<sup>742</sup> Ibid art 15/6.

<sup>743</sup> Bo Lao Dong, Thuong Binh va Xa Hoi, 'Bao Cao Tong Quan ve Tinh Hinh Tre Em bi Bao Luc, Buon Ban, Lao Dong va Xam Hai Tinh Duc' [Summary Report on the Situation of the Children Violated, Trafficked and Sexually Abused] (Paper presented at the Hoi Thao ve Phong Chong Bao

crimes has not reached expected targets.<sup>744</sup> Reported cases of child abuse have been increasing in number and have become more complicated.<sup>745</sup> Reports on child protection reveal that the abuse of children happens at home, on the street, at school events, by members of charitable organisations and may be committed by family members, teachers, friends and others, either Vietnamese or non-Vietnamese; and the acts of child abuse were not often detected in a timely manner, but only after serious consequences had occurred and the mass media had highlighted the incidents.<sup>746</sup> It is believed that the number of children actually abused is far higher than the cases presented in reports, which are almost always criminal cases dealt with by police and judicial bodies.<sup>747</sup> Further, these reports do not present data about Vietnamese children who have been recognised as victims of trafficking by other governments, including thousands of children in the United Kingdom.<sup>748</sup> Although there have been a few general acknowledgments of the existence of child abuse; there is almost no adequate and detailed data to build up a comprehensive picture of child abuse, particularly with respect to child victims and witnesses of crime.

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Luc, Xam Hai Tre Em [Conference on the Prevention of Violence and Child Abuse], Hanoi, 24 August 2010) 1.

<sup>744</sup> Ibid.

<sup>745</sup> Ibid; Uy Ban Van Hoa, Giao Duc, Thanh Nien, Thieu Nien va Nhi Dong, above n 487, 1; Bo Lao Dong, Thuong Binh va Xa Hoi, 'Bao Cao Cong Tac Phong Chong Xam Hai Tre Em' [Report on the Prevention of Child Abuse] (Paper presented at the Hoi Nghi ve Phong Chong Xam Hai Tre Em [Conference on the Prevention of Child Abuse], Hanoi, 22 August 2008) 1. See also Tong Cuc Canh Sat PCTP, above n 500, 4; Supreme Procuracy's report 2010, above n 504; Supreme Procuracy's report 2011, above n 504.

<sup>746</sup> Bo Lao Dong, Thuong Binh va Xa Hoi, 'Report on the Prevention of Child Abuse', above n 745; Bo Lao Dong, Thuong Binh va Xa Hoi, 'Summary Report', above n 743; Uy Ban Van Hoa, Giao Duc, Thanh Nien, Thieu Nien va Nhi Dong, above n 487 (In Vietnam, mass media have reports, disclosure a number of cases where children were seriously abused by their relatives, employers, or kindergarteners. Once the reports were broadcast, it created public opinion, questioning the role and responsibility of related individuals and agencies. Referencing data and videos broadcast, the police initiated an investigation, which often leads to criminal proceedings).

<sup>747</sup> Bo Lao Dong, Thuong Binh va Xa Hoi, 'Report on the Prevention of Child Abuse', above n 745, 7; Uy Ban Van Hoa, Giao Duc, Thanh Nien, Thieu Nien va Nhi Dong, above n 487, 2; Bo Lao Dong, Thuong Binh va Xa Hoi, 'Summary Report', above n 743, 3.

<sup>748</sup> See The Guardian, '3,000 Children Enslaved in Britain after Being Trafficked from Vietnam' (2015) <<http://www.theguardian.com/global-development/2015/may/23/vietnam-children-trafficking-nail-bar-cannabis>>; ECPAT UK, 'Advocates Trial for Trafficked Children Falls Short of Legal Guardianship, Warns ECPAT UK' <<http://www.ecpat.org.uk/media/advocates-trial-trafficked-children-falls-short-legal-guardianship-warns-ecpat-uk>>; RACE in Europe Project Partners, 'Trafficking for Forced Criminal Activities and Begging in Europe: Exploratory Study and Good Practice Examples' (2014) <[http://www.antislavery.org/includes/documents/cm\\_docs/2014/t/trafficking\\_for\\_forced\\_criminal\\_activities\\_and\\_begging\\_in\\_europe.pdf](http://www.antislavery.org/includes/documents/cm_docs/2014/t/trafficking_for_forced_criminal_activities_and_begging_in_europe.pdf)>.

In the criminal statistics system adopted in Vietnam, there is no specific item that refers to the witnesses to crimes. There is almost no government report, statistical collection or publication, or any survey that would estimate the number and situation of children involved in criminal proceedings as witnesses of crime. The few studies or surveys that do mention witnesses of crime or the participation of children in criminal proceedings discuss relevant regulations rather than the practical implementation of the law. Statistical and scholarly references to the practical participation of child witnesses in the judicial system and the treatment by relevant agencies of child witnesses of crime are too few and far from adequate. As far as I know, there is no project or research focusing on the individual matter of child witnesses of crime, except for a few surveys mentioning the child witness of crime as part of a broader scope of research about juvenile justice.

More attention is paid to the ‘child victim of crime’ than to the ‘child witness of crime’, although in the criminal statistics system, victims of crimes are not an item separately counted and recorded. The data on child victims can be drawn from data on crimes against children from Program 138 (the National Program for Preventing and Combating Crime, particularly Project IV on the Prevention of Crime against Children and Juvenile Delinquency, and Program 130 for Preventing and Combating Human Trafficking).<sup>749</sup> Court statistics on the trials of, and penalties imposed on, offenders against children somewhat reflect the situation of child victims also. In such reports and statistics, however, the term ‘children’ means persons below 16 years of age. Thus, it is difficult to estimate the number of juveniles or all persons below 18 years old who are victims of crime in Vietnam.

Figures for activities relating to how victims are actually helped and supported or provision made for them to recover, overcome their difficulties or re-integrate into society are too limited. Further complicating matters, relevant statistics on the same matter that are collected and released by different authorities are quite different. They cannot be smoothly articulated when being considered in relation to aspects and connected stages of criminal proceedings. This matter is a common shortcoming of data collection and has been repeatedly noted in relevant comments or studies,

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<sup>749</sup> See the introduction of these projects in section 4.4.3 — Programs for Crime Prevention.

including reports of the CRC Committee and other organisations concerned with the implementation of the *CRC* in Vietnam.<sup>750</sup>

In this circumstance, the common situation of child victims of crime as well as offences and offenders against children in Vietnam is presented here based on mixed sources with some comparison and comments where appropriate.

Calculating statistics from Project IV's reports,<sup>751</sup> it can be found that from 2005 to 2013 the police recorded about 15,205 children below 16 years old who were victims in 14,187 criminal offences with 16,952 offenders. The offenders against children included both adults and juveniles but have no classifying numbers in each category. Since 2000, when the National Program on Crime Prevention was initiated, the statistics on criminal offences, offenders and children abused have changed slightly over the years with no clear trend. In the 5-year period 2006–2010, the reported number of offences against children was 1.2 per cent lower than the previous period of 2001–2005.<sup>752</sup> However, in 2011 and 2012 the number of child abuse related crimes increased 5 per cent compared with the previous year.<sup>753</sup> The reports also reveal that not all offenders were dealt with under criminal procedures; roughly 20 per cent of the offences were dealt with by administrative procedures and administrative measures were applied.

The majority of child victims were aged from 13 to below 16 years. Over the last ten years, in the total child victims recorded by the police about 56 per cent were aged from 13 to 15 years; while the age groups 'below six', and 'six to 12 years old' accounted for 11.9 per cent and 31.5 per cent respectively.

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<sup>750</sup> CRC Committee's Observations 2003, above n 12; CeSVI et al, above n 253, 18; UNICEF's Report on Children in Viet Nam, above n 86.

<sup>751</sup> Tong Cuc Canh Sat Phong Chong Toi Pham, above n 462, 16, 32–3; Project IV's Report 2012, above n 494, 36–7; Project IV's Report 2013, above n 495; Project IV's Report 2014, above n 462.

<sup>752</sup> Tong Cuc Canh Sat Phong Chong Toi Pham, above n 462, 16.

<sup>753</sup> Project IV's Report 2012, above n 494, 36.

Figure 6.1 Child Victims of Crime Grouped by Offences: 2005–2013

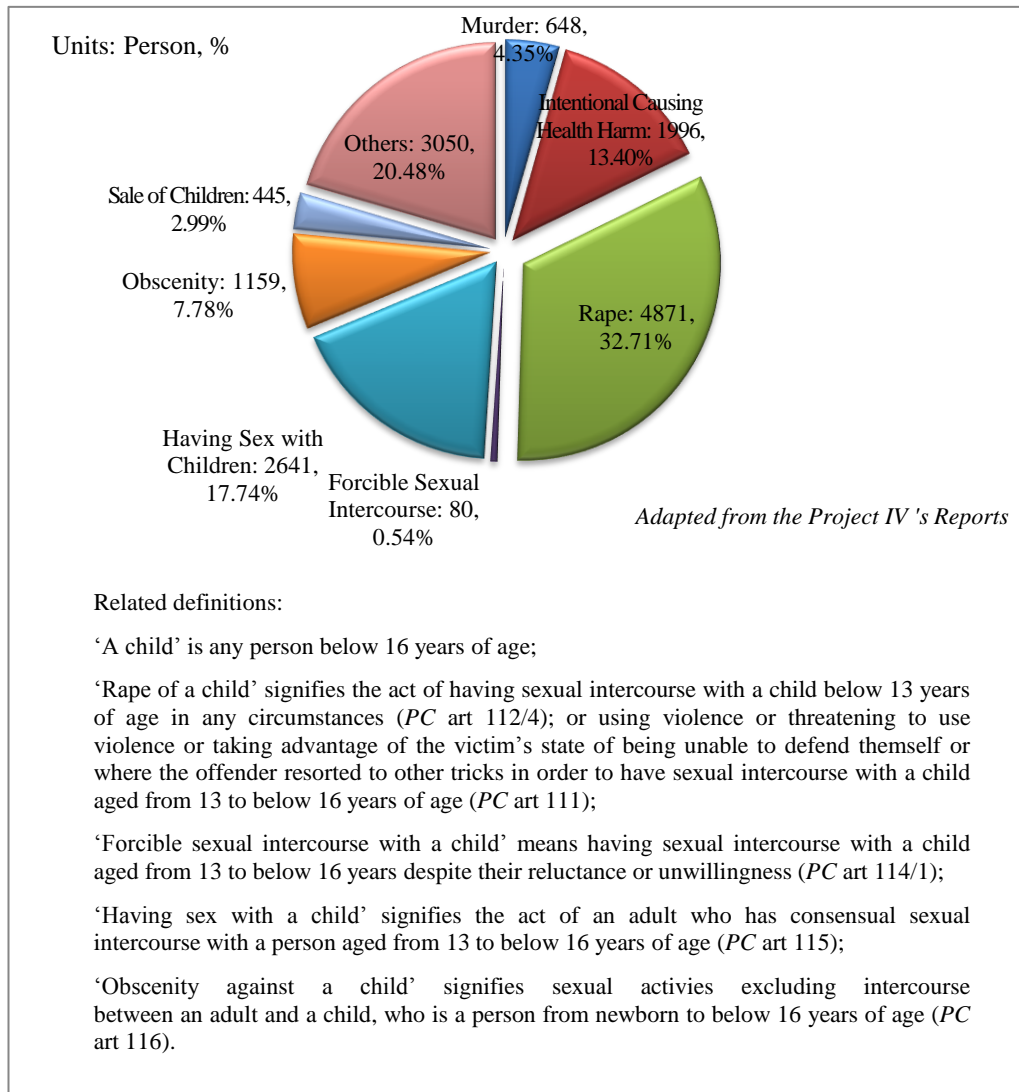


Figure 6.1 (pie chart) above illustrates the numbers and percentage of child victims of crimes grouped by names of offences reported to police during the period 2005–2013. These groups are categorised according to crimes prescribed in the *PC*. As can be seen from this pie chart, children were often affected by crimes infringing upon life, health, and/ or involving sexual activity, and human trafficking. The largest single offence relating to child victims is that of rape, approximately 4900 child victims, and accounting for 32.71 per cent of all child victims of crime. The second largest group also relates to sexuality — the offence of having consensual sexual

intercourse with children (those aged from 13 to less than 16) accounts for 17.74 per cent. Together, the total victims of sexual abuse comprise around 60 per cent of the total child victims of crime. Children who were the victims of murder and intentionally causing harm to health comprise 18 per cent of child victims. It should be noted that some victims fall into both categories, having been raped and then murdered. These are recorded as murdered.

This pie chart also reveals that more than 445 children were trafficked in the nine years from 2005. This number is equal to 2.99 per cent of the total child victims recorded across the country during the period 2005–2013. However, if considering these statistics in relation to reports of Program 130,<sup>754</sup> some questions could be raised. Based on Program 130's reports, the number of child victims of human trafficking averaged more than 100 per year between 2004 and 2012.<sup>755</sup> For example, in the period 2004–2009, competent authorities recorded 192 cases of child trafficking with a total of 491 child victims, and 177 cases of trafficking of women and children with victims totalling 498.<sup>756</sup> In 2009 and 2010, regardless of whether the case was of trafficking of women or children, 201 children were recognised as victims in 146 cases of the 'sale of children'.<sup>757</sup> One of the reasons for this inconsistency is that each authority uses different criteria and perspectives while collecting data. For instance, in the cases involving child foster care centres, where hundreds of children were adopted illegally, Program 130 considered the children as the victims of human trafficking. At the same time, the procedure-conducting bodies prosecuted and sentenced offenders for the abuse of power or the 'sale of children',

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<sup>754</sup> See more about this program at section. 4.4.3.2 — Programs for Preventing and Combatting Human Trafficking.

<sup>755</sup> Report on Human Trafficking 2009, above n 223; Report on Human Trafficking 2012, above n 470; Ban Chi Dao 130/CP, 'Tinh Hinh va Ket Qua Thuc Hien Chuong Trinh Hanh Dong Phong, Chong Toi Pham Mua Ban Nguoi 06 thang dau nam 2011' [The Situation and Result of Implementing the Action Program for Preventing and Combatting Human Trafficking in the First Six Months of 2011] (334/BC-BCA-C41, Ministry of Public Security, 2012); Ban Chi Dao 130/CP's Training Materials 2012, above n 470.

<sup>756</sup> Report on Human Trafficking 2009, above n 223.

<sup>757</sup> Ban Chi Dao 130/CP, 'Thuc Trang va Nhung Giai Phap Nang Cao Hieu Qua Cong Tac Phong Chong Xam Hai Tre Em, Dac Biet la Mua Ban Tre Em' [The Current Situation and Measures to Enhance the Effectiveness of the Prevention of Child Abuse, particularly the Sale of Children] (Government of Vietnam, 2011).

but related children were not referred to as victims, having no procedural role in proceedings.<sup>758</sup>

Figure 6.2 Child Victims of Crime and Offences against Children: 2005–2013

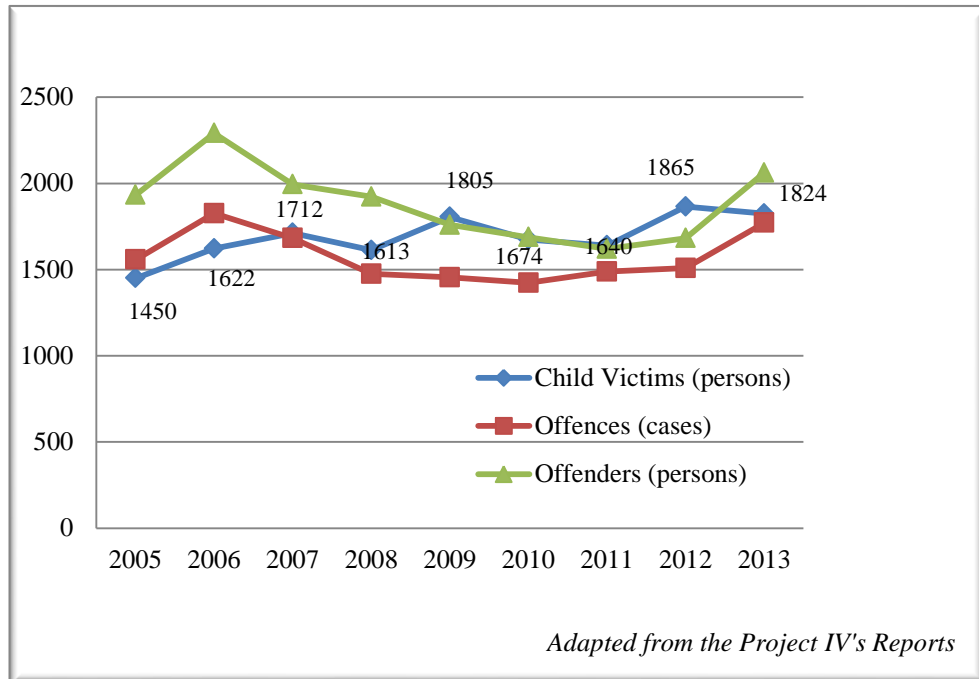


Figure 6.2 (line chart) is drawn from statistics presented in the reports of Project IV on the prevention of crimes against children. It illustrates the numbers and trends of the common situation of child victims, as well as offences and offenders in the period 2005–2013. As can be seen from the line chart, the annual number of child victims of crime recorded by the police follows an upwards trend from 2005 to 2013, although the statistics fluctuate in the middle. In the five years 2005–2008 and in 2013, the numbers of offenders were significantly higher than the numbers of child victims. This means that numerous children were attacked by more than one offender or by a group of offenders.

It can be recognised from the line chart that in two years, 2005 and 2004, the number of victims is significantly lower than the number of offences. If supposing that no criminal case had more than one victim, this would seem to suggest that over 300

<sup>758</sup> See Judgment 44/2009/HSST dated 28 September 2009, Nam Dinh Provincial Court; Judgment 54/2011/HSST dated 8 December 2011, Hoa Binh Provincial Court.



criminal offences against children had no victims. Considering this matter in the context that offences against children are not victimless crimes, it raises some doubt about the quality or reliability of data used in related reports. Perhaps, there might be a change in the method of data collection, or problems in collecting and classifying statistics in general and the number of child victims and offences and offenders against children in particular. So far no appropriate explanation has been given.

#### 6.4.2 The Application of the Law in Dealing with Child Victims and Witnesses, and Penalties Imposed on Offenders against Children

As mentioned above, because of limitations in data collection concerning victims and witnesses in national statistics, materials for considering the practical treatment of child victims and witnesses of crimes are relevant reports, academic works, trial statistics, and my examination of 300 judgments on child abuse cases.

The trial statistics include the data on hearings of ‘six crimes against children’ between 2005 and 2013.<sup>759</sup> It provides information about types of trials, and penalties imposed on the offenders.

The judgments on child abuse cases are the results of 300 first-instance trials hearing offences against children. Below, I provide brief information about those cases as background for understanding and analysing them.

These 300 cases dealt with 422 offenders. The number of child victims and witnesses involved in these cases was 380 persons, including 365 victims and 15 witnesses.<sup>760</sup>

In the 300 criminal cases, the most prevalent offences were related to sexual abuse, accounting for more than 80 per cent; the others were the sale of children, and causing harm to health. In several cases, the children were the victims of two or three offences, like robbery and murder, rape and murder, or sexual intercourse then trafficking. In almost all cases, the offenders and victims knew each other before the

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<sup>759</sup> See the list of these crimes at section 6.3.1 — An Overview of Mechanisms for the Protection of Victims and Witnesses of Crime.

<sup>760</sup> These 300 judgments were issued by provincial courts across Vietnam between late 2010 and early 2013. These judgments were sent to the Criminal Court of the Supreme Court as regulated by the law. All relevant data based on these judgments is counted, analysed and interpreted by the author.

offences occurred, with the offenders including victims' relatives, neighbours, friends and others.

All victims of child sexual abuse were girls, aged 2 to 15 years old. A number of offenders were the father, step-father, grandfather, brother or uncle of victims, living in the same house.<sup>761</sup>

One noticeable point is that in a number of cases of child sexual abuse, offenders and victims were in loving relationships; the offenders were juveniles between 14 and 18 years old or were just over 18. In those cases, the girls were children below 16 years old but in some manner contributed to actively creating conditions for their sexual intercourse, such as by inviting their partners to go out late and staying overnight in the hostel, or staying overnight at their partner's place. Nevertheless, under the law, regardless of their consent, when one of the persons involved was below 13 years old, the older partner had to bear the responsibility of child rape;<sup>762</sup> and if one was aged from 13 to below 16 years old, the other aged 18 or older had to bear penal liability for having sexual intercourse with a child.<sup>763</sup>

The child victims of human trafficking were often about 12 to 15 years of age, living in the countryside and expected to have a paid job. They were frequently tricked and hoped that they would be introduced to a good paid job or have the chance to marry a rich man. However, the offenders often sold them to China for the purpose of prostitution.<sup>764</sup> For other crimes, like fighting or murder, offenders and victims were often schoolmates or peers. Usually, the offences were the result of an argument or group fight at school.

Below, I consider the application of the law in three aspects: the application of procedures to child victims and witnesses of crime, penalties imposed on offenders against children, and reparation.

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<sup>761</sup> If sexual relations are between persons of a direct bloodline (ie, incest), this results in an increase in penalties. *CP* arts 111/2/f, 112/2/a, 113/2/d, 114/2/a, 115/2/c.

<sup>762</sup> *PC* art 112/4.

<sup>763</sup> *Ibid* art 115.

<sup>764</sup> Among these cases, there was no one who was trafficked to the UK or Europe. So far, except for some cases related to child adoption, Vietnamese courts have not dealt with cases of human trafficking or the sale of children to these countries.

#### 6.4.2.1 The Application of Procedures to Child Victims and Witnesses of Crime

##### 6.4.2.1.1 Investigation and Child Friendly Procedures

Reporting crimes and giving statements, and participating in interviews led by the police are the most common activities that every victim and witness of crime has to experience, except for those who are deceased or suffer from a disability that prevents them from doing so.

These activities usually take place in police stations in ordinary rooms used for either adults or children. Except for a few rooms in a pilot project introduced in 2013, there are no child-friendly rooms or places designed for the interview of or for taking statements of child victims and witnesses of crimes.<sup>765</sup> The behaviour of investigators mainly depends on individual experience and skill, as there is little professional training for investigators working with child victims and witnesses of crime.

Regarding interviews, the Supreme Court and UNICEF report that child victims and witnesses were often interviewed in large open rooms in police stations where many people were passing by or working nearby.<sup>766</sup> A number of child victims felt uncomfortable to talk in front of so many people and worried that their stories or problems would be spread.<sup>767</sup> Most children and their parents wished that the testimony could be taken in separate rooms so as to protect the children's privacy.<sup>768</sup>

The number of interviews varied with the most prevalent being three to five times. The duration of most interviews was between 30 minutes and four hours with a majority of more than two hours. In exceptional cases a child was interrogated ten times or the interviews lasted up to five hours.<sup>769</sup>

During the interview at the police station, about half of the children had their parents beside them while in the other half their parents were not allowed to attend and had

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<sup>765</sup> Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, above n 93, 152; Supreme People's Court and UNICEF Vietnam, above n 91, 12, 20.

<sup>766</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 10–11.

<sup>767</sup> Ibid 10.

<sup>768</sup> Ibid 10–11.

<sup>769</sup> Ibid 15–16.

to wait outside; no children were supported by social workers, legal assistance or representatives of mass organisations.<sup>770</sup> In general, children could answer the police questions; however the majority of child interviewees said they felt nervous, scared and ashamed.<sup>771</sup> The reasons for such emotions were various, such as: the police spoke loudly, looked displeased, asked too many questions, or criticised them; children did not understand the questions well or were worried that the police would talk with other persons about their stories; the matters asked about were difficult to talk about; or child victims faced offenders in cross-examinations.<sup>772</sup>

Many police investigators recognised the tension, nervousness and fear of children visiting the police stations.<sup>773</sup> They agreed that it would be preferable to take the testimony of child victims and witnesses at their home or another place comfortable to the children.<sup>774</sup> Taking a statement at the residence of victims or witnesses complies with the law, but it seldom happens in practice.<sup>775</sup> There is almost no example in the literature showing that the interrogation took place at the victim's or witness's house. The reason is perhaps that undertaking interviews and interrogations at the police station would be more convenient for the police officers and investigators.

It is also said that most police officers and doctors conducting interviews, body and medical examinations were male and wore uniforms.<sup>776</sup> This causes children discomfort, particularly those who had been the victims of sexual abuse.<sup>777</sup>

Since 2011, as guided by the *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases*, it is recommended that the interviews of child victims and witnesses should be conducted in a child friendly way.

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<sup>770</sup> Ibid 15.

<sup>771</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 16.

<sup>772</sup> Ibid 15–16.

<sup>773</sup> Ibid 10; Hung Binh Tran, above n 675, 17.

<sup>774</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 10.

<sup>775</sup> See Hung Binh Tran, above n 675, 16.

<sup>776</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 18–19.

<sup>777</sup> Ibid 23.

The investigating bodies might audiotape or videotape the interviews, testimony or interrogation to be used in the court session if needed.<sup>778</sup> However, it seems that in practice this does not take place.

Recently, with the support of international organisations in crime prevention or child protection, particularly UNICEF through the project on the Friendly Justice System for Minors,<sup>779</sup> a pilot program has been testing child-friendly interviews, modified courtrooms and the use of digital equipment. Nevertheless, the scope of this project is very small with only seven pilot interview rooms placed in six provinces.<sup>780</sup> The total number of police stations as well as courts in the justice system, which all probably deal with child victims and witnesses, is thousands nationwide. This project has been planned to 2016 and so far no official report on the effectiveness of conducting child-friendly procedures has been issued.<sup>781</sup>

#### 6.4.2.1.2 Trials and the Support for Child Victims

In Vietnam, most trials are public. A few cases are conducted behind closed doors<sup>782</sup> while a number of show trials were undertaken in open public places for the purpose of education and crime prevention. There are no absolute requirements on when the court has to conduct show trials or trials behind closed doors. Related regulations are optional, most depending on the competent court's decision. It is said that the court can conduct a trial behind closed doors to protect children's privacy. At the same time, the court can also conduct show trials for the purpose of crime prevention without exception for the cases where the victim or witness is a child.

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<sup>778</sup> *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* art 15/5.

<sup>779</sup> See UNICEF and Ministry of Justice, 'Detailed Project Outline: Friendly Justice System for Minors Project 2012–2016' (Ministry of Justice, 2012); Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, above n 93, 157.

<sup>780</sup> See UNICEF and Ministry of Justice, above n 779; Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, above n 93, 147.

<sup>781</sup> See Ban Quan Ly Du An Chuyen Trach, *Hoi Nghi Danh Gia giua ky Du An He Thong Tu Phap Than Thien voi Ngươi Chua Thanh Nien: Giai doan 2012–2016* [The Conference on the Interim Assessment of the Project on Child-Friendly Justice System: 2012–2016] Ministry of Justice <<http://www.moj.gov.vn/ct/tintuc/Pages/hoat-dong-cua-Bo-Tu-Phap.aspx?ItemId=6484>>.

<sup>782</sup> See, eg, James Sturke et al, 'Glitter Jailed for Abusing Young Girls', *Guardian* (Australian edn), 3 March 2003 <<http://www.theguardian.com/world/2006/mar/03/ukcrime.uk>>. The names of the children were suppressed, being replaced by 'D' and Ng' (aged 11 and 10 respectively). The report does however give sufficient detail to potentially identify one victim (the niece of an adult witness who is named and the province where child was resident is also supplied).

The court's statistics reveal that from 2007 to 2013, of the 8479 trials related to cases of child sexual abuse and the sale of children, there were 275 show trials. The number of trials behind closed doors was not recorded.

Among 300 judgements analysed, there were 4 cases of show trials, and 14 trials conducted behind closed doors. These 18 cases of show trials or those held behind closed doors were all sex-related crimes, the rapes or rape and murder of children. Two show trials were attended by the child victim and witness, who were aged six and seven years old respectively.

The existence of show trials where child abuse cases were being heard proves that the privacy of child victims and witnesses was not adequately respected. The judicial bodies seemed to put far greater emphasis on legal education and crime prevention, but ignored the right to privacy of child victims and witnesses of crime. This practice is in complete contradiction of the international standards requiring the protection of child victims and witnesses' privacy as a matter of primary importance.

The rates of child victims participating in the trials was approximately 80 per cent and their parents were there in about 93 per cent of the total cases. Child victims who did not appear in court often included children killed or sold whom the court could not subpoena, and a few who intentionally absented themselves from the court. There were 10 cases where child victims and their parents did not appear in the court sessions without reasons recorded. The reason for not appearing at the trials of child victims and their families in these 10 cases was not investigated but perhaps they were not adequately informed about the trials. As examples taken from the court's survey, several victims and their parents could not attend the trial because they received the announcement of the trials too late, just the day before the trial was to be conducted, or in some cases they did not receive any information about the trial and its results.<sup>783</sup>

The age of child victims in these cases varied between 2 and 15 years old. Many very young children participated in the court proceedings, including those aged 5–10

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<sup>783</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 4, 26; see also Thi Kim Chung Le, above n 664, 109.

years old. In the court, all child victims were accompanied by their parents, while several child witnesses appeared in the court with neither parents nor a supporter.

The high rate of court attendance by child victims and witnesses (including very young children) is due to their being subpoenaed by the court. The court usually issues summonses to all related persons to the trial, including offenders, victims, witnesses, their representatives and defence counsels. Summoning child victims and witnesses of crime to attend the criminal trial in all cases is not intended in international standards, where the use of pre-recorded child evidence at trial is encouraged.<sup>784</sup> However, in Vietnam there is no such procedure available for child witnesses and victims that would allow them to be exempt from personal attendance, no mechanism for notifying the children about going to the court only when necessary.

Going to the court and participating in the court sessions were experienced as unfamiliar and difficult activities for the child victims and witnesses. Normally, they had no preparation for or explanation of the court proceedings.<sup>785</sup> They were often neither greeted nor given directions on where to go when arriving at the court house.<sup>786</sup> Having no waiting area for child victims and witnesses sometimes resulted in child victims and witnesses experiencing tension and fear when faced with the offenders and their families before the court session.<sup>787</sup>

In the courtroom, the child victims and witnesses were usually instructed to sit directly behind or beside the offenders and gave their testimony as required.<sup>788</sup> This is a common arrangement in Vietnam's court proceedings. It would be a very difficult situation for a child, causing them fear and tension.<sup>789</sup> Such an arrangement should be changed, or the courtroom modified as recommended in the international guidelines.

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<sup>784</sup> *UN Guidelines 2005* [28], [30]; UNICEF and UNODC, above n 201, 81.

<sup>785</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 34.

<sup>786</sup> *Ibid* 37.

<sup>787</sup> *Ibid*.

<sup>788</sup> *Ibid*; Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, above n 93, 157.

<sup>789</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 37–9; Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, above n 93, 157.

During the court session, not all child victims and witnesses were required to give testimony. It is said that child victims often did not testify at the trial of their alleged perpetrator/s.<sup>790</sup> The judges and prosecutors often asked them very few questions because children were thought to have limited awareness and capacity to present effective testimony.<sup>791</sup> This is similar to the finding in case studies presented in the next section, where it is found that very few questions or none at all were put to child victims and witnesses.

As for assistance for child victims and witnesses, there is no data available in the national criminal statistics. In 300 judgments examined, about 23 per cent of the child victims had defence counsels, including 12 cases where the counsels were appointed by the state aid legal centres or at the court's request.<sup>792</sup> Almost all of these cases involved child sexual abuse, child rapes and similar offences; and the child victims had suffered extremely seriously. In these cases, none of the child victims and witnesses was assisted by teachers or social workers at the court sessions even though, in a few cases, they had to participate in show trials and one witness had no guardian's company. A similar result is also found in the eight case studies, where no victims and witnesses received legal and social assistance during the proceedings. This data is fairly reliable though it is different from the survey of the Supreme Procuracy that reported 'whenever a child victim or witness went to the court, they had support from one social worker and had their guardians' company'.<sup>793</sup> The lack of social workers' participation in juvenile cases could result from the the desperate shortage of social workers in the whole country.<sup>794</sup>

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<sup>790</sup> Supreme People's Court and UNICEF Vietnam, above n 91, 22.

<sup>791</sup> Ibid.

<sup>792</sup> Twelve cases having appointed counsels for child victims were found in the area of the pilot project on Friendly Justice System for Minors.

<sup>793</sup> Original text: '*moi khi nguoi chua thanh nien la nguoi bi hai, nguoi lam chung ra truoc toa, ho deu duoc mot can bo xa hoi tro giup va phai co nguoi giam ho di cung*'. See Vien Kiem Sat Nhan Dan Toi Cao and UNICEF Vietnam, above n 93, 140.

<sup>794</sup> It was reported in 2010 that Vietnam had only 30 persons with advanced social work degrees, although training of 60,000 was anticipated by 2020: Martha Ann Overland, 'Child-Abuse Case Reveals Vietnam's Lax Social Services', *Time*, 14 July 2010 (citation omitted in original) <<http://content.time.com/time/world/article/0,8599,2003389,00.html>>; Doug Durst, 'A Comparative Analysis of Social Work in Vietnam and Canada: Rebirth and Renewal, 2010(2) *Journal of Comparative Social Work* <[http://jcsw.no/local/media/jcsw/docs/jcsw\\_issue\\_2010\\_2\\_2\\_article.pdf](http://jcsw.no/local/media/jcsw/docs/jcsw_issue_2010_2_2_article.pdf)>.



From the above analysis, it can be recognised that many child victims and witnesses did not have to give testimony at the court but they still suffered in this stressful process. They came to the trial because of the court's subpoenas. They had not been given adequate preparation and support to attend the court. The current situation of subpoenaing every child victim and witness to the court does not comply with the international standards which recommend that children should go to the court only when necessary. The data also demonstrates that the rate of child victims who were provided legal and social assistance is low. There is a gap between the law and law enforcement in Vietnam, and the provisions of the *CRC* and associated guidelines. The system of supportive services for child victims and witnesses of crime in Vietnam is too weak.

#### 6.4.2.2 Penalties Imposed on Offenders against Children

In criminal statistics, penalties imposed on offenders are arranged in correspondence with particular offences, by the name of different crimes regulated in particular articles of the *PC*. Each type of specific crime is a sub-unit in the system of penalties imposed on offenders. For the 'six crimes against children', where the only victims are children as mentioned earlier, the penalties imposed can be calculated. For other crimes, where the victims can be either children or adults, there are no separate statistics on penalties imposed on offenders against children, a serious statistical shortcoming.

According to the criminal statistics, from 2005 to 2013, the courts dealt with 10,483 criminal cases concerning 'six crimes against children' and involving a total of 11,845 offenders. Half of the cases were of child rape, an extremely serious crime; just over half of the offenders were child rapists (the apparent discrepancy caused by cases of multiple offenders raping the same victim).

Figure 6.3 Crimes and Offenders against Children Dealt with by the Court: 2007–2013

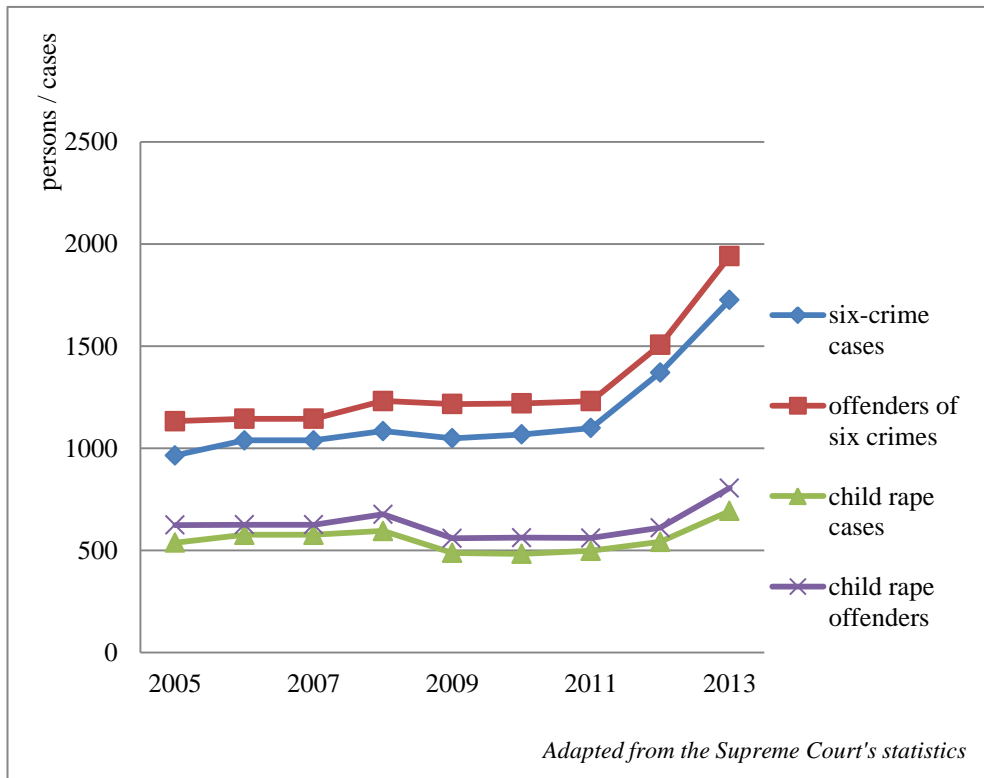
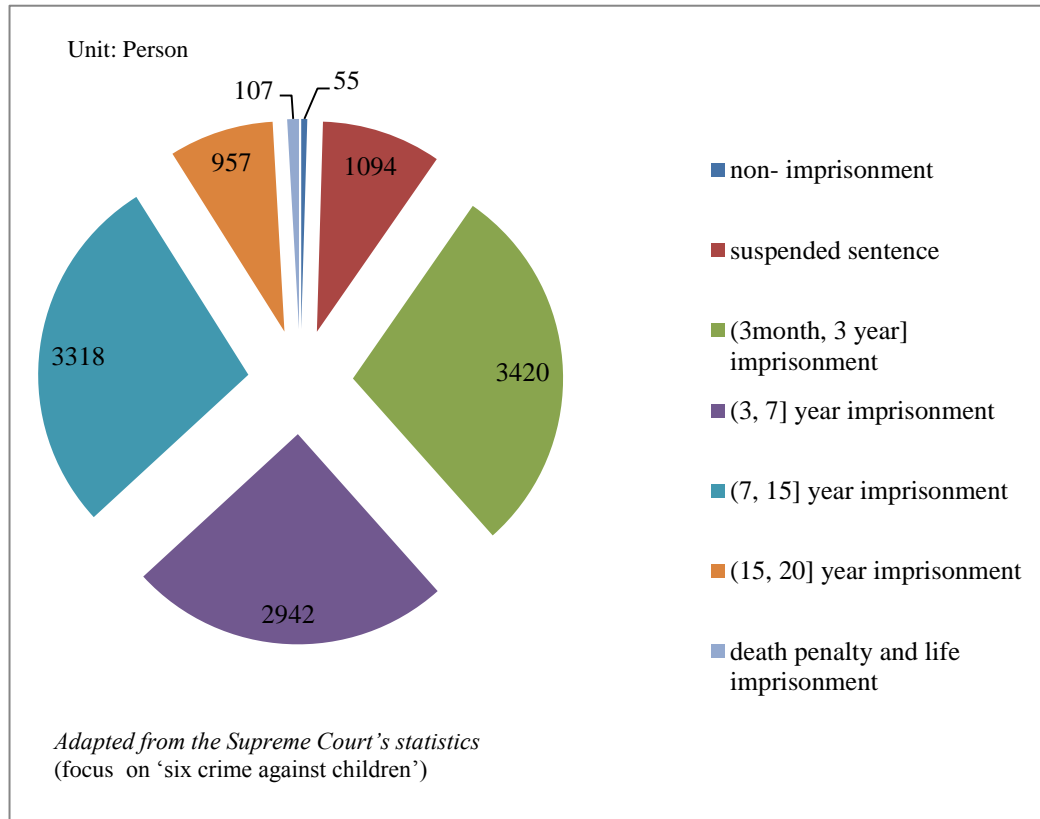


Figure 6.3 (line chart) illustrates figures of ‘six crime against children’ and child rape cases (as the most frequent crimes in this group), which the courts conducted trials between 2007 and 2013. As seen from this chart, the number of total cases and offenders against children in all six crimes increased gradually between 2005 and 2011 and very sharply between 2011 and 2013. At the same time, the numbers of rapes of children reduced slightly in 2009 and rose in 2012 and 2013.

Among 11,845 defendants brought to trial, there were five persons found not guilty, and two persons were exempted from punishment. The others all had at least one penalty for the crime committed. The penalties imposed on offenders is illustrated in Figure 6.4

Figure 6.4 Penalties Imposed on Offenders against Children: 2005–2013

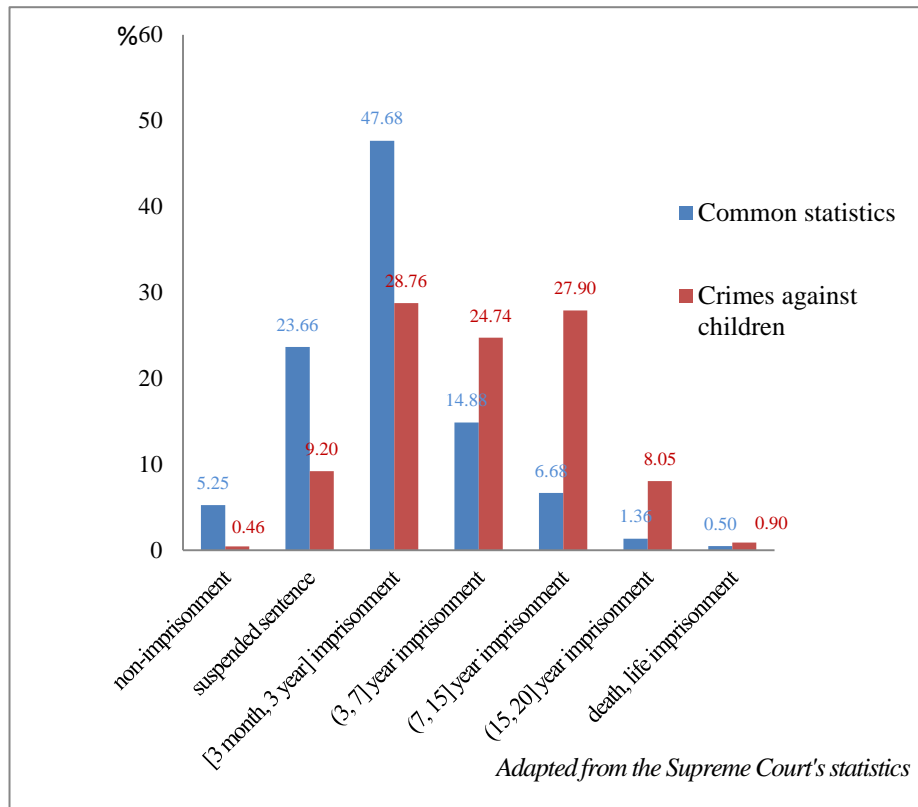


The numbers of offenders who had the death penalty or life imprisonment imposed were 11 and 96 respectively, and almost all for the crime of child rape. The common punishments were imprisonment of three months to three years and from more than 7 years to 15 years, accounting for 29 and 28 per cent (respectively) of the total penalties decided by the court. The number of persons who had suspended sentences equalled nine per cent, one per cent higher than the rate of offenders sentenced to over 15 years of imprisonment.

Non-imprisonment and suspended sentences were just applied in cases where the child victims were aged above 13 years old or where the offences were viewed as incomplete and as without serious consequences. Within the child rape crimes, the most prevalent punishment is termed imprisonment of over seven years to 15 years, accounting for approximately 50 per cent of penalties applied, followed by from over 3 years to 7 years of imprisonment (26 per cent), and of over 15 years to 20 years of imprisonment (15 per cent).

In the wider context, the penalties imposed on offenders against children were significantly heavier than the common penalties applied in the overall criminal statistics. Figure 6.5 (bar chart) illustrates the kinds of penalties imposed on offenders in two groups, the common statistics and the crimes against children.

Figure 6.5 Rates of Punishments Imposed on Offenders: 2005–2013



It can be seen that in the group of crimes against children, the rates of lighter penalties are much lower while severe penalties are clearly higher compared with the corresponding rates of common criminal statistics. For example, the non-custodial and suspended sentences were 5.25 and 23.66 per cent in the common statistics while they were 0.46 and 9.20 per cent in the group of offenders against children. By contrast, the figures of over 15 to 20 years of imprisonment were 1.36 and 8.05 per cent in common statistics and the groups of offenders against children respectively. Hence, in practice as also in law, offenders who committed crimes against children are punished more severely than those who committed crimes against adults in the

same circumstances. This shows that Vietnam's law complies with the international standards in the aspect of punishing crimes against children, not only in its words but in its execution.

#### 6.4.2.3 Reparation

As noted above, the practice of dealing with reparation for victims of crime is not recorded in the national statistics. There is no adequate survey giving a general indication of the situation with respect to reparation.

In the 300 criminal cases considered, compensation was addressed either by negotiation between the related parties or in the court's decision. There were four cases when the victims did not participate in the criminal trials, and the court left the compensation for a civil case if later required by the victims.

Among the cases where compensation was addressed, in about 40 per cent of cases the courts recorded the negotiation between offenders and their families, and the parents of child victims. In these cases, most compensation was paid or partly paid. Such reparations were often higher compared with those decided by the court pursuant to the effective laws. In these cases, the victims and their families often asked for a reduced penalty to be applied to the offenders.

In about 10 per cent of the cases, the parents of victims did not require reparation. In these cases, the offender was often a close relative of the victim, sharing the same family budget. In other cases, the victims and offenders were 'lovers' who had engaged in sexual intercourse when the girl involved had not yet attained 13 years of age.

The court decided the reparation in about 50 per cent of the remaining cases. The amount of money paid to the victims often included the real expenditure for physical medical treatment and income lost, and reparation for mental or spiritual harm. Reparation for psychological impact was based on the state minimum salary at the time of payment, 60 months for a case of death and 10 months for other cases.<sup>795</sup>

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<sup>795</sup> At the time of writing 2015, the minimum salary applied for reparation is VND 1,150,000 (VND 1.15 million), equivalent to US \$50. This monthly minimum salary is often changed annually.

Many offenders and their families, however, were very poor, and had no way to compensate the victims. In such situations, the courts' decision could not bring actual reparation for the victims or their families.

The above statistics indicate that a noticeable number of child victims could not receive adequate compensation. They may therefore face difficulties in paying for services for treatment and reintegration necessary following the commission of crimes against them. This situation seems to be a common problem in compensation in criminal cases. Relevant surveys concerning reparation for the victims of crimes point out that when money is paid to victims, the amount paid was low, and not enough for the victims' recovery, and in more than a half of the cases the offenders had not paid reparation to the victims even though the judgments had ordered it.<sup>796</sup>

#### 6.4.3 The Treatment of Child Victims and Witnesses of Crime: Case Studies

In order to provide a better understanding of actually dealing with child victims and witnesses of crime, eight court case files are examined here. These eight criminal proceedings resolved eight crimes where the victims of crime were children. They were serious and very serious crimes, with nine offenders and eight child victims. There were also three child witnesses involved in two cases. Seven cases were related to child sexual abuse, all with adult offenders. The other case was a snatching robbery, where the offenders were two juveniles and the victim and two witnesses were children. Table 6.1 provides a brief summary of these cases.

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<sup>796</sup> Dai Hoc Luat Ha Noi, *The Legal Mechanism*, above n673 22; Huu Trang Tran, 'Dam Bao va Bao Ve QUYEN CON NGUOI cua Nan Nhan cua Toi Pham' [Ensure and Protect Human Rights of Victims of Crime] (continued)' (2012)(5) *The People's Court Journal* 34, 37.

Table 6.1 Summary of Case Files on Child Victims and Witnesses of Crime

<b>Abbreviations and Notes</b>					
<i>Article and Kind:</i> showing the relevant article in the <i>PC</i> and kind of crimes					
<i>Age of Victims:</i> counted from their birthdate to the date the offence was committed, including years, months and days (y m d)					
<i>Age of Offenders:</i> counted from their birthdate to the date of the offence committed					
<i>Deterrent Measures:</i> kinds and length of measures applied.					
<i>Prescribed Penalties:</i> penalties prescribed in the <i>PC</i> that can be imposed on the offenders committing corresponding crimes					
<i>Proceeding Duration:</i> total days counted from the initiation of criminal proceedings to first-instance trial					
Case information					
Case Number Offences: Off Article and Kind: Art - Prescribed Penalties: PP	Victim & Witness	Offender	Procedures, Penalties & Reparation		Offender-Victim Relationship
	Name, Gender, Age Trial Participation (TP): Yes/No Legal Representative (LR)	Name, Gender, Age Deterrent Measures (DM) Defence Counsel (DC)	Number of interviews/statements with victim/witness (Inte No); Relevant Notes	Proceeding Duration (Time) Penalties on offenders ( <i>Pene</i> ) Reparation ( <i>Repa</i> ; VND million)	
Case 1 Rape against children Art: 112/1, Very serious PP: imprisonment [7, 15] years	Vict: NDM, Female Age: 14y 3m 2d TP: Yes LR: Parents	Offender: NVH, Male Age: 22 years DM: Temporary detention during the proceedings DC: None	Inter No: 4 times + 2 statements All medical examination expert witnesses and persons conducting procedure are male.	Time: 48 days Puni: 5.5 years imprisonment Repa: voluntary, VND 12m, all paid	The victim was attacked while going to school. The crime was incomplete. Victim and her parents suggested mitigating punishment for offender.

<p>Case 2</p> <p>Rape against children</p> <p>Art: 112/1, Very serious</p> <p>Ps: imprisonment</p> <p>[7, 15] years</p>	<p>Vict: TTH, Female</p> <p>Age: 15y 2m 15d</p> <p>TP: Yes</p> <p>LR: Parents</p>	<p>Offender: NVQ, Male</p> <p>Age: 19 years</p> <p>DM: Temporary detention during the proceedings</p> <p>DC: None</p>	<p>Inter No: 3 times</p> <p>All medical examination expert witnesses and persons conducting procedure are male</p>	<p>Time: 49 days</p> <p>Puni: 7 years imprisonment</p> <p>Repa: Negotiation, VND 21m — VND 15m paid,</p>	<p>Neighbour;</p> <p>Victim and her parents suggested mitigating punishment for offender</p>
<p>Case 3</p> <p>Rape against children</p> <p>Art: 112/1, Very serious</p> <p>Ps: imprisonment</p> <p>[7, 15] years</p>	<p>Vict: LTML, Female</p> <p>Age: 15y 11m 29d</p> <p>TP: No</p> <p>LR: Mother</p>	<p>Offender: PVT, Male</p> <p>Age: 25 years</p> <p>DM: Temporary detention during the proceedings</p> <p>DC: None</p>	<p>Inter No: 4 times + 2 statements</p> <p>All medical examination expert witnesses and persons conducting procedure are male.</p>	<p>Time: 106 days</p> <p>Puni: 6 years imprisonment</p> <p>Repa: Voluntary, VND 6m, all paid</p>	<p>Friend.</p> <p>Victim and her parents suggested mitigating punishment for offender</p>
<p>Case 4</p> <p>Having sexual intercourse with children,</p> <p>Art: 115/2, Very serious</p> <p>Ps: imprisonment</p> <p>[3, 10] years</p>	<p>Vict: NTLH, Female</p> <p>Age: 15y 1m 28d</p> <p>TP: No</p> <p>LR: Father</p>	<p>Offender: PVT, Male</p> <p>Age: 19 years</p> <p>DM: Temporary detention during the proceedings</p> <p>DC: None</p>	<p>Inter No: 3 times</p> <p>All medical examination expert witnesses and persons conducting procedure are male.</p>	<p>Time: 85 days</p> <p>Puni: 18 months imprisonment</p> <p>Repa: Voluntary, VND 20m, all paid</p>	<p>Loving relationship.</p> <p>Victim and her parents suggested an exemption of punishment for the offender.</p>
<p>Case 5</p> <p>Having sexual intercourse with children,</p> <p>Art: 115/2, Very serious</p> <p>Ps: imprisonment</p> <p>[3, 10] years</p>	<p>Vict: NTTTT, Female</p> <p>Age: 15y 2m 18</p> <p>TP: Yes</p> <p>LR: Mother, but absent during the trial</p>	<p>Offender: PMD, Male</p> <p>Age: 26 years</p> <p>DM: 45 days of Temporary detention; Guarantee</p> <p>DC: Appointed counsel</p>	<p>Inter No: 4 times + 2 statements</p> <p>All persons conducting procedure are male</p>	<p>Time: 120 days</p> <p>Puni: 36 months imprisonment with suspended sentence</p> <p>Repa: No requirement</p>	<p>Loving relationship.</p> <p>Victim suggested mitigating punishment for offender.</p>



<p>Case 6</p> <p>Having sexual intercourse with children, Art:115/2, Very serious PP: Imprisonment [3, 10] years</p>	<p>Vict: TTL, Female Age: 13y 9m 6d TP: Yes LR: Grandmother</p>	<p>Offender: TVN, Male Age: 26 years DM: Banning from travel out of local area DC: Appointed counsel</p>	<p>Inter No: Vict: 6 times + 1 statement Wit: 1 time Vict participated in screen and medical examinations. All medical examination expert witnesses and investigators are male</p>	<p>Time: 145 days Puni: 24 months imprisonment with suspended sentence Repa: Voluntary, VND 3m, all paid</p>	<p>Neighbour. Offender gave the victim money; Vict suggested mitigating punishment for offender</p>
	<p>Wit: NVC, male, Age: 14 years TP: No LR: Father</p>				
<p>Case 7</p> <p>Obscenity against children Art:116/2, Serious PP: Imprisonment [3, 7] years</p>	<p>Vict: LYMS, Female Age: 15y 6m 29d TP: Yes LR: Father</p>	<p>Offender: HVH, Male Age: 45 years DM: Temporary detention during the proceedings DC: None</p>	<p>Inter No: 1 time Vict participated in screen and medical examinations. All medical examination expert witnesses and investigators are male</p>	<p>Time: 100 days Puni: 18 months imprisonment Repa: Voluntary, VND 50m, all paid</p>	<p>Neighbour. Parents of victim suggested mitigating punishment for offender. Victim had a mental disability.</p>
<p>Case 8</p> <p>Snatching robbery, Art:136/2, Very serious PP: Imprisonment [3, 10] years</p>	<p>Vict: PNV, Male Age: 14 years TP: No LR: Father</p>	<p>Offender 1: DNS, Male Age: 17 y 11 m 26 DM: Temporary detention 30 days; Guarantee DC: Appointed counsel</p>	<p>Inter No: Vict: 2 times + 2 statements; - Wit 1: 2 times + 2 statements; - Wit 2: 1 time + 1 statement</p>	<p>Time: 117 days Puni: 24 months imprisonment with a suspended sentence for each offender Repa: Expropriated property returned</p>	<p>The offenders attacked the victim when he and his friend were riding on the street.</p>
	<p>Wit 1: NLA, female Age: 14 years TP: No LR: Father</p>	<p>Offender 2: NSH, Male Age: 17 y. 9 m. 22 d. M: Temporary detention 30 days; Guarantee DC: Appointed counsel</p>			
	<p>Wit 2: NVC, male Age: 15 years TP: No LR: Sister</p>				

From the summary of cases, it can be seen that the length of proceedings, from the initiation of criminal proceedings to first-instance trials, varied between 48 and 145 days. These periods complied with the law on the time limits for dealing with the corresponding serious and very serious crimes.

Child victims and witnesses involved in these cases were aged 13 to 15 years old. They all had to give statements and answer to the investigators about how they were attacked or witnessed the offences. Except for Case 6, the number of interviews carried out by the police with child victims was three or four times. In Case 6, six interviews were conducted with a few repeated questions in different interviews. The main reason for more interviews was perhaps that the victim gave different numbers of instances of sexual intercourse with the offender, which was crucial in considering criminal liability and the penalty to be applied to the offender.

The interviews with child victims and witnesses often lasted from 45 to 120 minutes and all happened in police stations. All interviewers were male police officers. The lawful representative of the child victims and witnesses present in the interviews above was their parent, grandmother or sister. Questions addressed to child victims and witnesses were often clear and simple. The police often required victims and witnesses to tell their stories, what they experienced, saw or knew about the offences. For victims of sexual abuse, describing all that had happened to the police officer was not easy. Particularly for the victims in Cases 2 and 5, each victim was very upset and ashamed when detailing what the offender did to her and how she reacted. Perhaps, their thoughts and emotions were similar to a number of victims and as expressed in one survey participant: ‘I felt ashamed. I just wanted to talk a little but they want me to tell them everything’.<sup>797</sup>

Seven victims of sexual abuse all experienced a body search and medical examination to evaluate their physical injuries. Such examinations were conducted in a public hospital and victims in six cases were examined by male doctors who qualified as expert witnesses.

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<sup>797</sup> Supreme People’s Court and UNICEF Vietnam, above n 91, 16.

In the trial stage, three victims and all three child witnesses were absent. Five of eight child victims were present in the court. All trials were public. During the court session, the child victims were asked a few questions, which were clear and similar to those posed in the investigative stage.

In no cases did the child victims or witnesses have legal or other assistance from lawyers or social workers. Child-friendly interview rooms did not exist, nor did videotaping or re-arranging courtrooms take place in these eight criminal proceedings. The case files also reflect that no victims or their families were formally informed about the results of the investigation, prosecution and trial. No relevant documents were recorded. Perhaps, they just knew about certain parts of the cases through communication with procedure-conducting bodies in the police station or the courtroom.

As for reparation, in six cases, the offender's family actively made reparation to the victim's families, while in two other cases, the victims did not require reparation. For the cases of reparation, the amounts of money paid to the victims were quite different. The highest amount was VND 50 million, which was almost five times higher than the possible amount decided by the court in the event that no agreement on reparation is reached. The lowest reparation was VND 3 million, about one third of the amount the law sets out in cases where no agreement is made. The voluntary reparation in these cases as well as in the general context often was not only helpful for the victim's recovery but also beneficial for the offenders. After receiving reparation, victims usually petition the court to mitigate the punishment of the offenders. Such voluntary reparation and the victim's petition are circumstances extenuating penal liability under the law.<sup>798</sup> In the eight cases considered, seven of the eight victims and their families suggested mitigating punishment for offenders.<sup>799</sup>

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<sup>798</sup> *PC* art 46/1/b, 2.

<sup>799</sup> In these cases and others where victims suggested mitigating punishment after the offenders made reparation, there might be a comment that a well-heeled offender would be more likely to get a lesser sentence as family would be able to 'buy off' the victim. To some extent it leads to the inequality before the law between wealthy and poor offenders. However, this is a common matter of Vietnam's criminal law, including juvenile cases. According to Article 46/1/b of the *PC*, 'the offender volunteering to repair, compensate for the damage or overcome the consequences' is a circumstance extenuating penal liability. And 'the victim suggesting mitigating punishment for offenders' is often considered as a circumstance extenuating penal liability under the *PC* (art 46/2).

The penalties imposed on offenders were between two and seven years of imprisonment. However, three of the nine sentences were suspended, including two imposed on juvenile offenders.

Through considering all eight case files, I would comment that in general all cases were conducted without any noticeable mistakes. There was no legal reason that could lead to challenging the judgment or verdict. However, child-friendly procedures in dealing with child victims and witnesses were not applied. There was no particular signal regarding child victims and witnesses as a special subject of protection. Though Cases 1 and 2 were considered as special cases requiring rapid solution, the reason given was not that of helping child victims. These were cases where the communities were worried about security. The authorities jointly decided to solve the cases quickly in order to reassure the public, and prevent crime in general. The special rights of child victims and witnesses of crime recognised in Vietnamese law were not practically implemented.

## 6.5 Conclusion

Since being recognised as forgotten and unprotected in terms of human rights and criminal justice, the victims and witnesses of crime (including child victims and witnesses) have been increasingly paid attention by the international community, organisations and governments. The subjects are protected under the law regulating their rights and programs instituted to ensure their safety and recovery. The legitimate requirement for the protection of victims and witnesses of crime is in harmonious balance with principles of criminal justice and satisfies particular issues of victims and witnesses of crime.

The system of international instruments, in particular the *CRC*, *UN Guidelines 1997* and *UN Guidelines 2005* provide primary requirements and practical guidance for the protection of children who are the victims and witnesses of crime. Child victims and witnesses of crime have the right to be treated with dignity and compassion, to be informed about the results of criminal proceedings, to be heard and express concerns. They also have the right to effective assistance, safety, privacy and reparation. At the

same time, governments and relevant organisations are required to criminalise acts against children and provide adequate resources — including trained judicial staff, facilities and supportive programs — to realise the rights of child victims and witnesses.

Over time, the protection of child victims and witnesses of victims has also gradually improved in Vietnam. ‘Victim’ and ‘witness’ are separate roles and such persons have different rights and duties under the law. Child victims and witnesses exclude those who are aged 16 years or older. Currently, Vietnamese law recognises a number of rights of child victims and witnesses of crime. The law states that they have the right to be safe and equal before the law and court, and should be supported by their parents and legal and social workers if required. The victim has the right to give evidence, request reparation, appeal the court judgment and complain about relevant decisions of judicial bodies. However, the law has no adequate specific regulations to ensure that children and their families are informed of the proceedings. They are not entitled to be sent a copy of the investigation report, the indictment, or judgment (the results of the proceedings). Hence, it is difficult for them to exercise their rights in the course of proceedings. Further, the law pays no adequate attention to the privacy of child victims and witnesses of crime, no equivalent article stating that their privacy must be treated as an important matter. The practice of show trials where child victims and witnesses experience undue exposure is a serious violation of their privacy.

In practice, the majority of child victims are girls, and more than half of the crimes against children were sexual abuse. However, most law enforcement staff are male and without training or skills in working with child victims and witnesses of crime. The special support for child victims and witnesses, including legal and other assistance from lawyers and social workers, is very weak. Almost no child victims and witnesses received social worker support except in several cases where child victims were appointed defence counsels in the trials thanks to a pilot project.

Reparation is also a matter of concern. It completely depends on the ability and attitude of offenders and their families. There is no program to support the victims when offenders escape, die or are unable to pay reparation to the victim.

There are still significant shortcomings in the law and practice of the protection of child victims and witnesses of crime. Therefore, in order to reach international standards for the protection of child victims and witnesses of crime, Vietnam needs to revise its law, and renovate the mechanisms of law enforcement.

## **Chapter 7: CONCLUSION**

### **RECAPITULATION OF VIETNAM'S JUVENILE JUSTICE SYSTEM, TRENDS AND RECOMMENDATIONS**

#### **7.1 Recapitulation of Vietnam's Juvenile Justice**

The care and protection of children is recognised as a rich tradition in Vietnam. Since ratifying the *CRC* in 1990, Vietnam has made efforts to implement its obligations concerning the rights of children in juvenile justice. So far, Vietnamese law has recognised a number of rights of children in contact with the justice system, the responsibilities of related agencies and the requirements for professionals working with children. The main achievements of Vietnam's juvenile justice include the following.

The importance of juvenile delinquency prevention has been considered by the Government. Between 2000 and 2012 the prevention of juvenile delinquency was one of four important components of the national program for crime prevention.

The law clearly states that the purpose of handling juvenile offenders is to educate them to be good citizens with an active role in society. In particular, Vietnamese law complied with international standards in aspects of the age of criminal responsibility, no application of capital punishment or life imprisonment to juvenile offenders, and lighter punishment imposed on juvenile offenders. These provisions have been well implemented in practice.

The law clearly recognises almost all fundamental principles of criminal proceedings and procedural rights of juvenile offenders enshrined in the *CRC* and relevant international instruments. It covers principles of no punishment without law; equality or non-discrimination; no torture, coercion or cruel treatment; the presumption of innocence; the use of one's own language; and the guarantee of a fair trial. The representatives and counsel have rights to act on behalf of juvenile offenders in exercising their procedural rights, such as lodging a request for replacing investigators, prosecutors and judges, or appealing against a judgment.

The law criminalises acts of child abuse mentioned in international standards and imposes severe penalties applicable to crimes against children. Related statistics about penalties imposed on offenders against children clearly showed the practical enforcement of these related regulations.

In the global context where a number of countries have set the minimum age of criminal responsibility below 12 years or at no fixed age, or have the death penalty and life imprisonment applicable to juvenile offenders, the above achievements of Vietnam's juvenile justice should be appreciated. However, many noticeable shortcomings in its legal regulations and law enforcement should be soon addressed if Vietnam expects to approach full compliance with the *CRC* and international standards in juvenile justice.

#### 7.1.1 Issues in Legal Regulations

One of the most noticeable shortcomings of Vietnam in the implementation of the *CRC* regards the concept of 'child'. The definition of a child as anyone below 16 years of age does not comply with the international standard. Such regulation prevents juveniles aged from 16 to less than 18 years old from enjoying children's rights as recognised in the *CRC* and international juvenile justice.

In the area of juvenile justice, Vietnam has no laws, authorities or institutions specifically applicable to deal with related matters of juvenile delinquency, offenders or child victims and witnesses of crime. If such laws and institutions as encouraged in the *CRC* were implemented, the handling of children in contact with the justice system would be more effective.

The problems of Vietnam's regulations concerning juvenile justice include inconsistency or conflicting policies, articles that are too general or vague, or lacking necessary provisions, or regulations that do not adhere to international standards.

The principles of international juvenile justice are not expressed adequately in Vietnamese law and policy, particularly in the areas of the prevention of juvenile delinquency and the protection of child victims and witnesses of crime. The principle of using arrest, detention and imprisonment as a measure of last resort and for the shortest appropriate period of time is not clearly expressed by the law.



There is no law or program focusing on the prevention of juvenile delinquency. No document or program provides a comprehensive strategy and plan conveying the ideas, principles and preventive measures as guided in the international instruments on crime prevention and the prevention of juvenile delinquency. Several programs have been undertaken to handle certain aspects of crime prevention but these were not well connected. The preventive measures often focused on propaganda, campaign slogans and intensifying administrative control rather than addressing causal factors or preventing children from falling into recognised risk situations.

Vietnamese law has no adequate regulations on protecting the privacy of juveniles in contact with the justice system, neither juvenile offenders nor child victims and witnesses of crimes. Though the law generally states that the privacy of juveniles is to be cared for and protected in the judicial system, there are no specified provisions and practical measures for preventing their identifying information from undue public disclosure. Further, show trials are allowed for the purpose of crime prevention as indicated in the guidelines on dealing with juvenile cases and programs of prevention of juvenile delinquency and crimes against children. In annual plans of judicial bodies, conducting as many show trials as possible is often encouraged without any exception for juvenile cases.

The measures and penalties applicable to juvenile offenders are very limited. Termed imprisonment is the only measure applied to juvenile offenders aged from 14 to 16 years. Judicial measures such as sending offenders to reformatory school or educating them at the commune level is difficult to broadly apply because of strict conditions. Diversion, restorative justice and child-friendly procedures are not clearly regulated in the law.

There is no clear distinction between the time periods for dealing with cases involving juveniles (whether juvenile offenders or child victims and witnesses) and those that apply in adult cases. Under the *CPC*, the time limits for resolving a crime depend on the seriousness and complexity of the crime regardless of the participant's status. *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* giving guidelines for the application of the *CPC* provides that juvenile cases

should be solved quickly, but this regulation is optional and too vague to be realised in practice.

The legal grounds for the application of deterrent measures on juvenile and adult offenders are almost the same, including for the measures of the deprivation of liberty — arrest, custody and temporary detention — in both conditions and duration. There is only the difference that pre-trial detention is not applied to juveniles aged 16–18 years old if they have committed a less serious crime or a serious crime without intention.

The regulations on the defence counsel do not match international standards in allowing juvenile offenders' representatives to act in defence. It also fails to specify professional requirements for people's advocates who provide juveniles with legal assistance in juvenile justice.

Legal regulations on the procedural rights of child victims and witnesses are very few, and lack detail and practical measures to ensure victims and witnesses are able to exercise their rights. No article indicates that procedure-conducting bodies must inform victims and witnesses of related procedural decisions. There are no specific regulations and measures that ensure child victims and witnesses of crime will be informed of the results of proceedings. This makes it difficult for them to effectively exercise all their rights and duties.

Vietnamese law has neither particular regulations nor supportive measures for child victims and witnesses of crime as well as their families as encouraged in international juvenile justice. The *JC 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXHG on Juvenile Cases* has some regulations concerning legal aid and social support for victims of crimes, but it is optional, and depends on the procedure-conducting body's attitude. The program for the prevention of human trafficking has some concern for children trafficked but it is not connected to judicial proceedings.

### 7.1.2 Issues of Law Enforcement

Remaining gaps between regulations and their implementation or misapplication are found in a number of studies or reports regarding law enforcement in Vietnam.<sup>800</sup> Shortcomings of law enforcement can be found in aspects of juvenile justice, the prevention of juvenile delinquency, the treatment of juvenile offenders, and the protection of child victims and witnesses of crime.

Programs for crime prevention, particular Project IV, focusing on the prevention of juvenile delinquency, often failed to reach their targets. These programs did not connect well with social programs or deal with the causal factors of juvenile delinquency. Recorded statistics indicate that the situation of juvenile delinquency has not improved since 1990. The number of juveniles breaking the law fluctuated, while the rate of juveniles dealt with under formal criminal proceedings increased more than two times. The rates of juveniles who committed property-related crimes and who were illiterate, dropped out of school, or came from poor families remained very high over time.

The protection of juveniles' privacy was not paid due attention. No cases of juvenile offenders tried behind closed doors were recorded while approximately 300 juvenile cases (either juvenile offenders or child victims) were conducted in show trials each year.

The implementation of the right for juvenile offenders to defence and to be heard was ineffective in many cases. This issue results from combined and complicated causal factors. Juvenile offenders seldom raised questions or arguments in their defence because they were nervous and scared, lacking legal understanding and social experience. That stemmed from the lack of adequate legal assistance. Procedural bodies sometimes recommended offenders relinquish the right to have appointed counsel, or perfunctorily carried out their duties of requesting an appointed defence counsel, or did not pay attention to lawyers' arguments and suggestions. Appointed counsels sometimes did not demonstrate a commitment to performing

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<sup>800</sup> See Bui Ngoc Son, above n 334; Thi Kim Chung Le, above n 664; Nicholson and Nguyen, above n 311; Vietnam's National Report 2009, above n 9 [72]; *Resolution 49-NQ/TW 2005*.

their duties of defending juvenile offenders. They might sign minutes of procedural documents without actually having participated, participate in the trial without providing any argument, or even be absent from the hearing. A number of juvenile offenders' parents agreed to carry out the role of counsel while they had not the necessary legal education, skills or experience.

Regulations regarding the participation of juvenile offenders' parents, the representatives of schools or mass organisations in juvenile justice have not been implemented properly. In a number of cases, the parents were prevented from being present while their children were interrogated or questioned in the police station. The participation of teachers or representatives of organisations in criminal cases seldom took place in practice.

Requirements for professional judicial staff working with juveniles during criminal proceedings have also failed in their realisation. In the current justice system, no investigator, prosecutor or judge has full training in working with juvenile offenders, child victims and witnesses of crime.

Other regulations that encouraged child-friendly procedures were rarely implemented in practice. Almost no interviews or interrogations of juveniles took place in the juvenile's residence while almost all occurred in the police station. There is not much difference between juvenile and adult cases in the organisation of interviews, interrogations and the arrangement of courtrooms, or the procedures adopted.

It has also been reported that torture or intimidation while taking statements and interrogation, and the application of deterrent measures without legal grounds has happened at times.

### 7.1.3 Issues of Monitoring, Statistics and Evaluation

It can be said that the monitoring, statistics and evaluation concerning juvenile justice in Vietnam has not received adequate attention from authorities. The law has no clear provision for monitoring and evaluation in the human rights field as well as criminal justice covering children's rights and juvenile justice. Data collection and the evaluation of effectiveness of measures in these fields have been conducted by the law enforcement agencies themselves rather than an independent institution.

Statistics and evaluation about criminals and penalties are not available to the public. General reports about the crime situation as well as juvenile delinquency are often made without reliable statistics, and sometimes such statements conflict with other available relevant statistics or case studies.

Traditionally, while carrying out their functions, the Ministry of Public Security, the Supreme Procuracy and the Supreme Court monitor functional duties, collect data and evaluate the implementation of local state agencies within each system, including data about the prevention of juvenile delinquency, juvenile offenders and crimes against children in the stages of investigation, prosecution and trial.

Since 2005, the Supreme Procurary has been responsible for collecting statistics for each stage of criminal proceedings in a consistent national system based on related data provided by the Ministry of Public Security and the Supreme Court. This system contains basic information about the number of offenders and offences as well as the penalties imposed on the offenders. However, it lacks details about defence counsel, deterrent measures, and the duration of criminal proceedings, and has no data about the victims and witnesses of crime or reparation.

Another problem is the inaccuracy of available relevant statistics. Within collected data (including the numbers of offenders, counsel and child victims of trafficking), it is easy to find inconsistencies when comparing related data provided by different agencies, or by the same authority but in different reports presented in different contexts.

The current situation of data collection can not provide a good basis for the evaluation of defence, the application of deterrent measures and the situation of child victims and witnesses of crime. It creates confusion when considering juvenile justice in Vietnam.

The reports of state agencies responsible for relevant matters in justice do not always reflect the actual situation of crime, defence and related matters. The heads of judicial bodies often present annual reports on evaluating the implementation of functions with a general statement that juvenile crimes have increased in number and

have become more serious and complex in the nature of crimes committed. However, relevant statistics and case studies sometimes reveal different findings.

The inconsistencies in reports and statistics might be caused by various factors. First, there are different criteria of selection and starting date of working year among agencies undertaking data collection. Second, authorities lack careful consideration while making reports or skip relevant statistics and proven facts.

It is very hard to find out critical and adequate analyses fully showing the situation of criminal and juvenile justice in Vietnam. There is no study conducted by independent institutions or researchers in criminal or juvenile justice. In this regard, it has been said that criminology is politically-controlled,<sup>801</sup> data collection relating to children in Vietnam is incomplete and inconsistent, and the capacity of the responsible officials in monitoring and evaluation is inadequate.<sup>802</sup>

The above limitations lead to difficulties in evaluating the real situation of children in contact with the law as well as the effectiveness of the juvenile justice system and relevant programs planning for children.

In short, the analysis of Vietnam's existing juvenile justice system has demonstrated significant shortcomings. In order to approach international juvenile justice standards more closely, improve the implementation of its obligations under the *CRC*, particularly to improve the effectiveness of the prevention of juvenile delinquency and the protection of juveniles in contact with the justice system, Vietnam should address all these problems.

## **7.2 Development Trends and Vietnam's Context of Judicial Reform**

### **7.2.1 Development Trends of Juvenile Justice**

About 100 years before the *CRC* was adopted, a system focusing on dealing with juvenile offenders first appeared in a number of countries across the world. Time has witnessed the uneven development of this system, significant changes of policies on

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<sup>801</sup> Cox, above n 489.

<sup>802</sup> UNICEF's Report on Children in Viet Nam, above n 86, 78.

dealing with juvenile offenders, and debates on the effectiveness or possible abolition of this system.

The trend of developing child-friendly and specialised juvenile systems has become more prominent since the introduction of the *Beijing Rules* in 1985, the *CRC* in 1989, and a number of supporting documents issued later. So far the *CRC* has reached globally abiding effect with 195 states parties. The *CRC* Committee usually encourages state parties to establish or strengthen the juvenile justice system and specialised courts for children. Within Europe, the Council of Europe has issued a number of guidelines and recommendations focusing on dealing with juvenile delinquency by child-friendly justice systems.<sup>803</sup> More recently, the task of juvenile justice also includes the aim of better protecting child victims and witnesses of crimes.<sup>804</sup>

In comparison with past models of juvenile justice, the current international juvenile justice system has become more stable under the *CRC* and relevant international instruments, sharing the common goals of the *CRC*. The target subjects of juvenile justice are also expanded, including not only juvenile offenders but also child victims and child witnesses of crime. A juvenile justice system that depends only on the nation's own ideas is no longer appropriate. All 195 signatories to the *CRC* have legal responsibilities to adhere to the *Convention* and relevant instruments, and develop the juvenile justice system in their countries under the *CRC* Committee's observations and assessment. At the same time, these countries can seek support from UN agencies including UNICEF, UNODC and the UN High Commissioner for Human Rights.<sup>805</sup>

The aim of the current juvenile justice system is to promote physical and psychological recovery, rehabilitation and social reintegration of all children in

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<sup>803</sup> See *Recommendation Rec(2003)20 of the Committee of Ministers of the Council of Europe to Member States concerning New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice*, ECOR, 853<sup>rd</sup> mtg (24 September 2003); *Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe to Member States on the European Rules for Juvenile Offenders Subject to Sanctions or Measures*, ECOR, 1040<sup>th</sup> mtg (5 November 2008); *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice*, ECOR, 1098<sup>th</sup> mtg (17 November 2010).

<sup>804</sup> See United Nations Office on Drugs and Crime, above n 167.

<sup>805</sup> *GC 10 on Juvenile Justice* [4].

contact with the justice system, whether juvenile offenders or child victims or child witnesses of crime. These are very complicated tasks. It requires a tolerant attitude to juvenile offenders, educating them to recognise their wrongs and to respect other people's human rights and freedoms, so as to play a constructive role in society. At the same time, the goal is justice for child victims and witnesses of crime, needing measures to support the victims and prevent them from suffering additional hardship when assisting the justice process. The final goal of juvenile justice can be seen as a mix of targets of many processes and programs. In order to realise such targets, juvenile justice should apply various measures for the prevention of juvenile delinquency, the treatment of juvenile offenders and the protection of child victims and witnesses of crime as recognised in the *CRC* and complemented and elucidated by a number of relevant conventions, protocols and guidelines. In other words, juvenile justice needs the combined efforts of many relevant systems and personnel, including the police, judicial bodies, prisons, rehabilitation programs, social workers, psychologists and lawyers.

Developing and implementing a comprehensive juvenile justice policy is very difficult and complicated work. The difficulties, including both internal and external matters, contribute to slower improvement in juvenile justice in comparison with other aspects of the *CRC* and children's rights. The *CRC* has been ratified almost globally, but most countries have failed to integrate and implement international juvenile justice into their national systems. So far, no existing national justice system has fully satisfied international standards regarding juvenile justice. There remains a big gap between international standards and the real situation in the actual practice of countries.<sup>806</sup> Weaknesses and shortcomings are in either legislation or practice: 'In many countries, there is inadequate legislation, and even where an appropriate legal framework exists, it is not properly implemented'.<sup>807</sup> That no actual system satisfies all international juvenile justice requirements requires Vietnam and other countries to build and develop a national juvenile system to enable them to fulfil their obligations under the *CRC*, but differences of national socio-economic and cultural

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<sup>806</sup> Roy and Wong, above n 516, 30; Inter-Parliamentary Union and UNICEF Regional Office for South Asia, above n 166, 7; Thi Thanh Nga Pham, *Juvenile Court*, above n 615, 13.

<sup>807</sup> Roy and Wong, above n 516, 30; UNICEF Regional Office for South Asia, above n 513, 27.



circumstances demand that such development and implementation be in terms of their own context.

However, when conducting judicial reform, Vietnam (as well as other countries) can benefit from considering promising models of juvenile justice, especially child-friendly procedures, from other countries where such models are well regarded by international organisations working with children. For example, in Australia, the Aboriginal Juvenile Court conducts ‘procedures with as little formality and technicality as possible’ and changes the physical setting to ‘create a more informal and culturally relevant environment’.<sup>808</sup> The Lasi Juvenile Courthouse in Romania has a separate Juvenile Courthouse to hear all juvenile cases with teams of specialists for processing and judging.<sup>809</sup> The Philippines Court Appointed Special Advocates have a good mechanism for child advocates to provide juvenile offenders with needed services.<sup>810</sup>

### 7.2.2 The Context of Judicial Reform in Vietnam

The necessity for legal and judicial reform in Vietnam has been recognised since the early 2000s. The strategies, plan and targets of this reform were clearly indicated in *Resolutions 08-NQ/TW 2002, 48-NQ/TW 2005 and 49-NQ/TW 2005*. The goal is to construct a transparent and effective legal system and an effective and clear judiciary by the year 2020 with the objective of building a socialist state of the people, by the people and for the people. So far, to the middle of 2015, this process has created significant changes in legal regulations and adopted a new structure of judicial bodies. Such contents are shown in the new constitution, laws on the organisation of the courts and procuracies, and a few other legal normative documents passed in 2014. As noted above, the laws and procedures analysed in this thesis were in the period *before* the current phase of judicial reform.

The new *Constitution* was adopted in late 2013 and came in to force in 2014. This is Vietnam’s first constitution which clearly stipulates human rights beside citizens’

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<sup>808</sup> UNICEF Regional Office for South Asia, above n 513.

<sup>809</sup> Ibid.

<sup>810</sup> Ibid.

rights, which were often vague and always referred to as citizens' rights in its predecessors.<sup>811</sup> This *Constitution* of 2013 also provides the authority of the court in implementing judicial power;<sup>812</sup> and more detailed principles of judicial proceedings in comparison with the *Constitution* of 1992, including that the court can conduct trials behind closed doors in order to protect national secrets, national customs, juveniles or related persons.<sup>813</sup>

The *Law on the Handling of Administrative Violations* of 2012 and the *Ordinance on the Procedures for the Application of Administrative-Handling Measures at the Court* of 2014<sup>814</sup> provide new provisions on authority and procedures of the use of administrative measures that limit the freedom of offenders.<sup>815</sup> According to these instruments, from 2014, it is possible to consign offenders to reformatory schools, compulsory education institutions, or rehabilitation centres as decided by the court under judicial procedures based on a proposal of the administrative agencies.<sup>816</sup> This is the first time that Vietnamese law recognises administrative measures to be imposed on offenders ('violators' who are then diverted from the formal criminal justice system), with such measures to be decided by the court and under judicial procedures. In these procedures, the offender/violator has procedural rights clearly indicated in the law, including the right to defence and defence counsel, to request new procedure-conducting persons, and presentation of evidence in the court.<sup>817</sup> As

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<sup>811</sup> See *Constitution 2013* Chapter II — Human Rights, Basic Rights and Duties of Citizens; *Constitution 1992* Chapter V — Basic Rights and Duties of Citizens.

<sup>812</sup> *Constitution 2013* art 102. In the *Constitutions* of 1992, 1989 and 1959 there is no article naming the authority of judicial power.

<sup>813</sup> *Ibid* art 103.

<sup>814</sup> *Phap Lenh 09/2014/UBTVQH13 ve Trinh Tu, Thu Tuc Xem Xet, Quyét Dinh Ap Dung cac Bien Phap Xu Ly Hanh Chinh tai Toa An Nhan Dan* [Ordinance 09/2014/UBTVQH13 on the Order of, and Procedures for, Considering and Deciding on the Application of Administrative-Handling Measures at People's Courts] (hereafter *Ordinance on the Procedures for the Application of Administrative Measures by Courts*).

<sup>815</sup> It should be noted that those who are 12 years or older but below the age of criminal responsibility who have committed an extremely serious or very serious crime with intent shall be sentenced to administrative measures under the *Law on the Handling of Administrative Violations*. Depending on the seriousness of action and the age of the juveniles, they can be sentenced to education in a commune by the local committee, or can be sent to reformatory. These measures are seen as educative methods rather than as a criminal punishment under the national system.

<sup>816</sup> *Law on the Handling of Administrative Violations* arts 98–105; *Ordinance on the Procedures for the Application of Administrative Measures by Courts* art 3.

<sup>817</sup> *Ordinance on the Procedures for the Application of Administrative Measures by Courts* art 18.

for juvenile cases, where it is proposed that offenders/violators aged from 12 to 17 years receive a penalty (administrative measure) of consignment to reformatories for 6–24 months, participants in the court conference can also include juveniles' parents or guardians. This is a noticeable development in the recognition of human rights, an appropriate mechanism to protect such rights, particularly the protection of children in conflict with the law.

In late 2014, the *Law on the Organisation of the People's Courts* and the *Law on the Organisation of the People's Procuracies* were amended. The new laws came into effect on 1 June 2015 and replace two laws and six ordinances on structures, organisations and personnel of courts and procuracies, which were introduced in 2002.<sup>818</sup> Under the new laws, judicial bodies are restructured with a four-tier system, and the court hearing is considered as the central locus of judicial activities. The system of courts includes the Supreme Court, high courts, provincial courts and district courts. A similar restructuring is also being undertaken in the organisation of procuraries and investigating bodies in order to suit their functions to the new judicial system where the court and court hearing is central.<sup>819</sup>

With regard to juvenile justice, the *Law on the Organisation of the People's Courts* of 2014 regulates that the family and juvenile court is a unit/department in the high court.<sup>820</sup> This is a new development that will exist beside the existing units (criminal, civil, labour, commerce and administrative courts) within the people's courts. Family and juvenile courts can also be established within provincial and district courts where necessary under the decision of the Chief Justice of the Supreme Court.<sup>821</sup> The function of family and juvenile courts is to be decided by new laws on judicial

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<sup>818</sup> *Law on the Organisation of the People's Courts 2014* art 98; *Luat 63/2014/QH13 ve To Chuc Vien Kiem Sat Nhan Dan* [Law 63/2014/QH13 on the Organisation of the People's Procuracies] (hereafter *Law on the Organisation of the Procuracies 2014*) art 101.

<sup>819</sup> See *Resolution 49-NQ/TW 2005*; *Law on the Organisation of the Procuracies 2014*; Toa An Nhan Dan Toi Cao, 'Gioi Thieu Luat To Chuc Toa An Nhan Dan' (2014) Supreme People's Court <[http://www.toaan.gov.vn/portal/pls/portal/!PORTAL.wwwpob\\_page.show?\\_docname=6716818.HTM](http://www.toaan.gov.vn/portal/pls/portal/!PORTAL.wwwpob_page.show?_docname=6716818.HTM)>.

<sup>820</sup> *Law on the Organisation of the People's Courts 2014*, art 30.

<sup>821</sup> *Ibid* arts 38, 45.

procedures.<sup>822</sup> It is likely to include hearing juvenile cases, particular in regard to juvenile offenders, and family issues that may affect juveniles as mentioned in the proposal on the establishment of the family and juvenile court.<sup>823</sup> The establishment of these specialised courts brings hope for better treatment of juveniles in contact with the judicial system as ‘a special court can be designed more effectively to deal with a particular policy objective’.<sup>824</sup>

Beside the above new laws, so as to suit the new constitution and restructured judicial system, most laws concerning human rights and justice have been revised to be adopted in 2015–2016, including the *PC*, *CPC*, *Civil Code*, *Civil Procedure Code*, the *Law on the Organisation of Investigation*, and *Law on Child Protection*.<sup>825</sup> As for these drafts, several revisions relating to children and juvenile justice should be reconsidered. The definition of a child in the bill of the *Law on Child Protection* as drafted is anyone under 18 years of age.<sup>826</sup> However, in the draft of the *Civil Code*, there is no definition of a child, while ‘juvenile’ is still defined as any one below 18 years old.<sup>827</sup> In revised drafts of the *PC* and *CPC*, ‘child’ and ‘juvenile’ are still used with different meanings, as similarly used in current criminal laws.<sup>828</sup> These show the inconsistencies in drafts of revised laws.

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<sup>822</sup> *Nghi Quyét 81/2014/QH13 của Quốc Hội về Thi Hành Luật Tố Chức Tòa An Nhân Dân* [Resolution 81/2014/QH13 issued by the National Assembly on the Implementation of the Law on the Organisation of the People’s Courts] art 2/5.

<sup>823</sup> See Toa An Nhân Dân Tối Cao, ‘De An Thanh Lap Toa An Gia Dinh va Ngoai Chua Thanh Nien o Viet Nam’ [Project on the Establishment of the Family and Juvenile Court in Vietnam] (Paper presented at the Adocacy Workshop on the Establishment of the Family and Juvenile Court in Vietnam, Lao Cai, 14–15 May 2012).

<sup>824</sup> Andrew Harding and Penelope Nicholson, ‘New Courts in Asia: Law, Development and Judicialization’ in Andrew Harding and Penelope (Pip) Nicholson (eds), *New Courts in Asia* (Routledge, 2010) 1, 22.

<sup>825</sup> *Nghi Quyét 70/2014/QH13 của Quốc Hội về Điều Chỉnh Chương Trình Xây Dựng Luật, Pháp Lệnh nhiệm kỳ Quốc Hội khóa XIII, năm 2014 và Chương Trình Xây Dựng Luật, Pháp Lệnh năm 2015* [Resolution 70/2014/QH13 issued by the National Assembly on the Revised Plan of Law and Ordinance Adoption of the National Assembly Term XIII in 2014 and the Plan of Law and Ordinance Adoption in 2015].

<sup>826</sup> Chính Phủ, ‘Du Thảo Luật Bảo vệ, Chăm sóc và Giáo dục Trẻ Em sửa đổi’ [The Draft of Revised Law on Child Protection, Care and Education] (Ministry of Labour, Invalids and Social Affairs, 2014).

<sup>827</sup> See Chính Phủ, ‘Du Thảo Bộ Luật Dân Sự sửa đổi’ [The Draft of Revised Civil Code] (Government of Vietnam, 2014).

<sup>828</sup> See Chính Phủ, ‘Du Thảo Phần Chung của Bộ Luật Hình Sự’ [The Draft of General Part of the Revised Penal Code] (Ministry of Justice, 2015) (hereafter Draft of the Revised Penal Code); Chính Phủ and Viện Kiểm Sát Nhân Dân Tối Cao, ‘Du Thảo Bộ Luật Tố Tụng Hình Sự sửa đổi’ [The Draft of Revised Criminal Procedure Code] (Supreme People’s Procuracy, 2015).

During the discussion of revising criminal laws, the opinion is expressed that the juvenile justice policy is sometimes too soft; and that the law should be more severe and strict.<sup>829</sup> The reason for such a stance is that reports on crime prevention or judicial bodies often state that crimes committed by juveniles have been recognised as increasing in both the number of cases and the degrees of seriousness.<sup>830</sup> Such observations, however, do not reflect on whether tougher penalties have the desired effect of reducing such crime, or whether a different approach is needed or has demonstrably better results when put into place elsewhere. The mass media have constantly publicised stories about juveniles carrying out violent crimes in a barbarous way, with extremely serious consequences. For example, newspapers reported on a 17-year old boy who committed robbery and killed a whole family of four;<sup>831</sup> a 15-year old boy who robbed, raped then murdered a female child,<sup>832</sup> or another who cut off an elderly woman's head for some money;<sup>833</sup> or a 15-year-old girl who organised a gang which committed many robberies and child rapes, and conducted fights using dangerous weapons over a long period; a 13-year-old boy

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<sup>829</sup> See Ha Nguyen, 'Ban ve Do Tuoi Chiu Trach Nhiem Hinh Su cua Nguoi Chua Thanh Nien' [Discussion about the Age of Criminal Responsibility], *Pha Luat & Xa Hoi* (online), 7 May 2013 <<http://www.tinmoi.vn/ban-ve-do-tuoi-chiu-trach-nhiem-hinh-su-cua-nguoi-chua-thanh-nien-011263431.html>>; Xuan Hung, 'Giam Tuoi Vi Thanh Nien de Chong Toi Pham Tre Em' [Decreasing the Juvenile Age to Prevent Child Crimes], *VN Media* (online), 1 November 2012 <<http://www.tinmoi.vn/giam-tuoi-vi-thanh-nien-de-chong-toi-pham-tre-011096568.html>>; Hong Thuy, 'Can Nhac Tang Hinh Phat doi voi Nguoi Pham Toi Chua Thanh Nien' [Consideration of Increasing Harsher Punishment Possible Applied to Juvenile Offenders], *Phap Luat & Xa Hoi* (online), 2013 <<http://dantri.com.vn/phap-luat/can-nhac-tang-hinh-phat-voi-nguoi-pham-toi-chua-thanh-nien-718153.htm>>.

<sup>830</sup> See Toa An Nhan Dan Toi Cao, 'Bao Cao Tong Ket Cong Tac nam 2005 va Phuong Huong Nhiem Vu Cong Tac nam 2006 cua Nganh Toa An Nhan Dan' [Report on Sumarising Tasks in 2006 and Implementing Tasks in 2009 of the Court System] (42/BC-TA, Supreme People's Court, 2006) 1; Ban Chu Nhiem De An IV- Ban Chi Dao 138/CP, above n 493, 16; Tong Cuc Canh Sat PCTP, above n 500; Supreme Procuracy's report 2010, above n 504, 1; Supreme Procuracy's report 2011, above n 504, 1.

<sup>831</sup> Anh Thu, 'Le Van Luyen Giet Nguoi Da Man Chua Tung Co' [Le Van Luyen: Unprecedented Murder], *VnExpress* (online), 12 November 2011 <<http://vnexpress.net/tin-tuc/phap-luat/le-van-luyen-giet-nguoi-da-man-chua-tung-co-2210428.html>>.

<sup>832</sup> Tran Dai and Xuan Son, 'Bat Ke Giet Nguoi, Hiep Xac, Vut xuong Song' [The Arrest of the Person Who Murdered, Raped and Threw the Body into the River], *Phap Luat* (online), 14 August 2012 <<http://phapluatxahoi.vn/20120814122841334p1002c1019/thanh-hoa-bat-ke-giet-nguoi-hiep-xac-vut-xuong-song.htm>>.

<sup>833</sup> Nguyen Vu and Xuan Thang, '16 Tuoi Gay Tham An: Bi Kich tu Que Kem' [16 Year Old Boy's Cruel Murder: The Tragedy Caused from an Ice Lolly], *Phap Luat & Xa Hoi* (online) 2012 <<http://us.24h.com.vn/an-ninh-hinh-su/16-tuoi-gay-tham-an-bi-kich-tu-que-kem-c51a439941.html>>.

who killed his friend to appropriate a bicycle;<sup>834</sup> and very young individuals who killed people to obtain gold.<sup>835</sup> Supporters of this harsher opinion come from different areas, including legislators, lawyers, prosecutors and judges.<sup>836</sup> There have been suggestions that the minimum age of criminal responsibility and the age of criminal maturity should be decreased;<sup>837</sup> or more serious punishment on juvenile offences should be imposed, including the application of life imprisonment and the death penalty for particularly serious offences committed cruelly and inhumanely.<sup>838</sup> A number of these suggestions if enacted would breach Vietnam's obligations under the *CRC*.

To date (15 July 2015), the minimum age of criminal responsibility remains 14 years old as presented in first drafts of revised criminal laws, while other matters have been discussed with various different opinions expressed in regard to matters including penalties, authorities and the procedures applicable to deal with juveniles in the judicial system.

### 7.3 Recommendations for Vietnam

The current phase of judicial reform provides a reasonable opportunity for Vietnam to improve the effectiveness of its justice system, including juvenile justice.

Revised laws provide new provisions that more closely approach international standards in juvenile justice. First, the *Constitution* of 2013 has a clause concerning

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<sup>834</sup> Duy Anh, 'Hoc Sinh Lop 8 Giet Ban Cuop Xe Dap Gay Chan Dong' [Year-8 Student Murdered his Friend to Appropriate a Bike: Extreme Perturbation], *Vietnamet* (online), 16 February 2012 <<http://vietnamnet.com.vn/vn/giao-duc/60426/hoc-sinh-lop-8-giet-ban-cuop-xe-dap-gay-chan-dong.html>>.

<sup>835</sup> Tuan Nam, 'Nhưng Sát Thủ "Nhi" Giet người Cuop Vàng có Khuôn Mặt Nại Tô' [Child Murderers Killing People to Appropriate Gold have Baby-faces], *Giao Duc* (online) 8 March 2012 <<http://giaoduc.net.vn/Phap-luat/Nhung-sat-thu-nhi-giet-nguoi-cuop-vang-co-guong-mat-nai-to/123431.gd>>.

<sup>836</sup> See Ha Nguyen, above n 829; The Dung and Pham Dung, 'Lo Sát Thủ Nhi: Có Nên Điều Chỉnh Luật?' [Worries about Child Murderers: Should the Law be Changed?], *Nguoi Lao Dong* (online) 31 March 2012 <<http://www.tinmoi.vn/lo-sat-thu-nhi-co-nen-dieu-chinh-luat-01837212.html>>.

<sup>837</sup> Xuan Hung, above n 829; Le Nhung and Minh Thang, 'De Xuat Ha Tuoi Thanh Nien Xuong 16' [Suggestion for Decreasing the Age of Majority to 16], *Vietnamnet* (online), 2 November 2012 <<http://us.24h.com.vn/tin-tuc-trong-ngay/de-xuat-ha-tuoi-thanh-nien-xuong-16-c46a495427.html>>.

<sup>838</sup> See Hong Thuy, Consideration of Increasing Harsher Punishment, above n 828; Hong Thuy, 'Toi Pham nhu Le Van Luyen co the bi Tu Hinh' [Criminal as Le Van Luyen Could be Applied to the Capital Punishment], *Phap Luat & Xa Hoi* (online) 2013 <<http://tiin.vn/chuyen-muc/24h/toi-pham-nhu-le-van-luyen-co-the-bi-tu-hinh.html>>.

the protection of juveniles' privacy in trial proceedings. Second, sending juveniles to a reformatory is conducted under a judicial process, decided by a district court with the participation of the administrative agency and procuracy. Therein, juvenile offenders/violators and their families and defence counsel are said to have many procedural rights, including the rights to participation, presentation of evidence and appeal to a higher court. Third, the new court system has a specialised unit for dealing with juvenile offenders, the family and a juvenile court within the people's courts. This establishment brings prospects for better protection of children in contact with the justice system as it can be designed specifically to meet particular objectives and has a specialised mechanism and calls for appropriately trained professionals.<sup>839</sup>

However, in order to reach international standards in juvenile justice as well as targets of judicial reform, a list of tasks should be undertaken, in legal regulations and the practical implementation of the law. Requirements for Vietnam to improve its juvenile justice system can be grouped under subheadings: legal regulations and judicial organisation, and resources and mechanisms for implementation.

### 7.3.1 Requirements for Legal Regulation and Judicial Organisation

Having a set of national regulations which is compliant with principles, particular provisions and guidelines in the international juvenile justice system is the first step for every signatory of the *CRC* to fulfil its obligations in the protection of children in contact with the judicial system. Vietnam's regulations concerning juvenile justice have major shortcomings as indicated. To ensure that the term 'child' denotes any person below the age of 18 and has equivalent rights as recognised in the *CRC*, the concept of a child under Vietnamese laws needs re-defining. To do so is not a simple act of presenting a new definition, but also requires extensive changes in policies on child protection and human rights in a broader context. Once the definition of a child is revised, it would affect various regulations and programs concerning children, juvenile delinquency and child abuse. As for legal instruments, it requires not only an amendment in the *Law on Child Protection* and in the *Civil Code* on the definition of

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<sup>839</sup> See Harding and Nicholson, above n 824; see also Thi Thanh Nga Pham, *Juvenile Court*, above n 615.

‘child’/ ‘juvenile’ or the unification of ‘child’ and ‘juvenile’, but also major changes in the related articles concerning the legal status of those people and related subjects including parents, schools and agencies responsible for child protection, as well as those who abuse children.

In the current context of Vietnam, when a separate law on juvenile justice is not really feasible in the near future, and when fundamental legal sources for dealing with children/juveniles in contact with the judicial system are the *PC* and *CPC*, I make the following recommendations on juvenile justice.

The prevention of juvenile delinquency should be clearly stated in the law with clearly recognised principles and general measures as recommended in international standards.

The *PC* and *CPC* should include principles of ‘best interests of the child’<sup>840</sup> and ‘the use of measures of deprivation of liberty as the last resort for the shortest appropriate period of time.’<sup>841</sup> Such statements provide a good platform for particular regulations concerning the treatment of juvenile offenders as well as improving the understanding and actual implementation of relevant regulations.

Judges should be authorised to divert juvenile offenders from formal criminal proceedings wherever possible. This is compliant with international standards, prevents unnecessary formal hearings, and encourages the diversion of juvenile offenders from formal criminal proceedings.

Judicial measures applicable to juvenile offenders (educating at commune and sending to reformatory) should be removed from the system of penalties and measures of criminal proceedings. These measures have the same nature as administrative-judicial measures under the *Law on the Handling of Administrative Violations* and the *Ordinance on the Procedures for the Application of Administrative Measures by Courts*. Therefore it is better if these measures are

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<sup>840</sup> *CRC* art 3; *GC 10 on Juvenile Justice*; *GC 14 on the Best Interests of the Child*.

<sup>841</sup> *CRC* arts 3, 37; *Beijing Rules*; *Havana Rules*; *GC 10 on Juvenile Justice*; *GC 14 on the Best Interests of the Child*.



applied as a result of simpler procedures of administrative-judicial processes, by transferring or diverting juvenile offenders from formal criminal court hearings.

Penalties applicable to juvenile offenders should be expanded, providing the court more options when imposing a particular measure or punishment on juvenile offenders. First, revising the conditions to apply warnings, non-custodial sentences, and suspended sentences to juvenile offenders would expand the scope of juvenile offenders who may meet requirements of such penalties. These requirements for juveniles should be different to those for adults, such as a warning applicable to juveniles committing a serious crime without intention, or suspended sentences able to be applied to sentences of up to five years imprisonment. Second, the alternative of compulsory community work could be added as proposed in the draft of the revised penal code.<sup>842</sup> Such measures provide more options for dealing with juvenile offenders, which can help to educate juvenile offenders without depriving them of their liberty.

The *CPC* should have clear statements and practical measures for the protection of juveniles' privacy, either juvenile offenders or child victims and child witnesses of crime. First, the law should have particular provisions prohibiting show trials of juvenile or child offenders or other cases having the attendance of children/juveniles. Second, the criminal procedure should establish an appropriate notification system to ensure child victims and witnesses of crime go to the courts only if their presence is needed.

The Family and Juvenile Court in the people's courts should be well designed to deal with not only child/ juvenile offenders but also other cases having the participation of children/ juveniles. This court also requires trained professionals. The *CPC* should firmly regulate the child-friendly procedures required to deal with juveniles in criminal proceedings.

The *CPC* should revise articles on defence counsel, eliminating the representatives of offenders from the list of persons who can act in the role of defence counsel. The *CPC* should also have particular provisions to ensure that the victim of crime is

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<sup>842</sup> Draft of the Revised Penal Code.

informed and receives all related procedural decisions of criminal proceedings, and information on measures and punishment applied on offenders and the changes of such measures.

The law should ensure that child victims of crime have legal, financial and other necessary assistance.

The law on mass media should have articles prohibiting the spread of juveniles' identifying information and punishing those who violate such regulations.

The laws on lawyers and legal aid should address the issue of providing services free of charge for juveniles in contact with the judicial system.

### 7.3.2 Requirements for Resources and Mechanisms for Implementation

As analysed in the previous chapters, in Vietnam, there is a large gap between the implementation of the law and international standards. A number of domestic regulations comply with international standards but fail in their actual application when dealing with juvenile cases. The main reason is the lack of necessary resources and mechanisms of supervision and evaluation.

The judicial reforms with the establishment of specialised courts for juveniles can not bring progress without necessary resources, including for relevant elements of juvenile justice and the provision of adequate mechanisms for supervision and evaluation.

Specialised investigating bodies and procuracies, bar associations and other social organisations should be created corresponding to the institutions in the court system. In the process of criminal proceedings, child-friendly investigation is salient. Investigation is often the longest stage and this is where juveniles cope with various practical activities and many difficulties. The operation of juvenile courts requires child-friendly investigation and prosecution and support from social associations — especially bar associations. Conducting child-friendly trials in the courts would have no meaning without these supports.

Infrastructure with child-friendly environments is necessary through all stages of proceedings from investigation to trial. This includes investigating offices and courtrooms, waiting rooms, and supportive equipment.

A victim fund should be also established and available for every victim of crime (including child victims and witnesses). Such a fund can provide victims of crime adequate support when they are in need to recover from criminal attacks and also reduce the ability of inequality before the law if offenders ‘bribe’ victims with ‘conditional’ reparation.

Professional staff working with juveniles in the justice system — that is, investigators, prosecutors, judges, lawyers and social workers — should be extensively trained in international juvenile justice and skills in working with children. Regulations concerning professional knowledge in juvenile justice have not actually been implemented in practice. Relevant training schemes are required for these professionals in law and police universities as are programs before their appointment to related positions within the judicial system.

A significant cause of the big gap in implementation has been inadequate attitudes of and a lack of commitment by individuals in undertaking relevant obligations and duties. Therefore, besides requiring staff to promise to closely follow the legal regulations and maintain professional ethics, judicial bodies and bar associations should regularly monitor and review judicial activities and apply due sanctions on those not meeting their obligations. In addition, these agencies should have a hotline and website to receive free reports or complaints concerning procedural activities from related people as well as the public.

Data collection in juvenile justice really needs to improve. We need accurate figures and classification in relevant groups. To do so, the method of data collection should be diversified and mistakes in data collection should be regularly considered and remedied.

Finally, there should be efforts to improve the understanding of children and the public about juvenile justice. Wider understanding in this area is useful not only in preventing crime and juvenile delinquency but also in implementing the protection of

juveniles in contact with the judicial system. Hence conducting research in the areas of human rights and criminology should be encouraged.

#### 7.4 Further Research and Wider Significance of the Study

Juvenile justice in the contemporary world covers not only the issues of juvenile offenders but also child victims and child witnesses of crime. Various plans and measures for juvenile justice are required, embodying early prevention, alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages, and social reintegration and physical and psychological recovery services.<sup>843</sup> Therefore, a complete project on juvenile justice in each jurisdiction should cover all such matters. While this study has not focused on the situation of juveniles in contact with the justice system after the trial stage, this could be the subject of further research.

This research presents an updated systematisation of international regulations in juvenile justice to mid-2015. This can help researchers and others with an interest in international juvenile justice to quickly understand the basic requirements that each jurisdiction should ensure to protect children in contact with the justice system. It also conveys the message that international standards for the protection of children in contact with the judicial sector should be reviewed coinciding with the development of human rights, particularly children's rights and criminal justice. While considering international standards in juvenile justice, the study also found that there is no currently perfect model of juvenile justice system among the CRC members. However, in particular aspects, there are promising models that countries should consider and learn from while reforming their own juvenile justice system.

This study acknowledges that in Vietnam the Party controls the state and society, and the Party line plays a very important role in the judicial sector, setting up the platform for the current judicial reforms. This information would be very different from other countries and can be helpful for those who are not familiar with Vietnam in understanding the specific situation of Vietnam as well as the diversity of legal and political systems and relations.

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<sup>843</sup> *UN Guidelines 1997.*

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## **B Cases and Judgments**

### Cases of Juvenile Offences

Dang Ngoc Son and Nguyen Thanh Ha were prosecuted for snatching robbery (25/2011/HSST, 15 July 2011, Cam Le District Court, Da Nang)

Dao Duy Thong was prosecuted for abusing trust in order to appropriate property (46/2012/HSST, 17 February 2012, Viet Tri District Court, Phu Tho)



Phan Luc Son Long and company were prosecuted for theft (121/2011/HSPT, 28 November 2011, Lam Dong Provincial Court; 147/2011/HSST, 28 September 2011, Da Lat District Court, Lam Dong)

Nguyen Xuan Thanh and company were prosecuted for snatching robbery (252/2010/HSST, 30 November 2010, Tu Liem District Court, Ha Noi)

Tran Cong Nghia was prosecuted for intentionally damaging property in Phu Tho (26/2012/HSST, 16 January 2012, An Nhon District Court, Binh Dinh)

Hoang Van Hoa and Nong The Hiep were prosecuted for robbery (34/2010/HSST, 27 May 2010, Cao Loc District Court, Lang Son)

Pham Thi Nhai was prosecuted for theft (168/2010/HSST, 3 August 2010, Tu Liem District Court, Ha Noi)

Le Mai Hau and company were prosecuted for theft (06/2012/HSST, 23 February 2012, Loc Ha District Court, Ha Tinh)

Tran Hoai Linh was prosecuted for the Extortion of property (08/2011/HSST, 24 May 2011, Lac Thuy District Court, Hoa Binh)

Nguyen Thi Nga was prosecuted for theft (23/2011/HSST, 12 July 2011, Cam Le District Court, Da Nang)

#### Cases of Child Victims and Witnesses of Crime

Dang Ngoc Son and Nguyen Thanh Ha were prosecuted for snatching robbery against a child (25/2011/HSST, 15 July 2011, Cam Le District Court, Da Nang)

Nguyen Van Ha was prosecuted for rape against a child (80/2011/HSST, 30 November 2011, Yen Son District Court, Tuyen Quang)

Nguyen Van Luan was prosecuted for obscenity against a child (29/2010/HSST, 3 August 2010, Cu Jut District Court, Dak Nong)

Nguyen Van Quyet was prosecuted for rape against a child (92/2013/HSST, 24 November 2013, Krong Pac District Court)

Pham Minh Duong was prosecuted for having sexual intercourse with a child (21/2011/HSST, 22 March 2011, Hai An District Court, Hai Phong)

Pham Van Thoi was prosecuted for having sexual intercourse with a child (121/2013/HSST, 13, December 2013, Lang Giang District Court, Bac Giang)

Pham Van Tuyen was prosecuted for rape against a child (46/2011/HSST, 15 November 2011, Son La District Court, Son La)

Trieu Van Nhay was prosecuted for having sexual intercourse with a child (04/2011/HSST, 26 May 2011, Pac Nam District Court, Bac Kan)

#### Court Judgments

Judgment 44/2009/HSST dated 28 September 2009, Nam Dinh Provincial Court

Judgment 107/2011/HSPT dated 23 November 2011, Appeal Court III of the Supreme Court

Judgment 54/2011/HSST dated 8 December 2011, Hoa Binh Provincial Court

Judgment 16/2012/HSST dated 17 April 2012, Dak Lak Provincial Court

Judgment 30/2014/HSPT dated 10 January 2014, Ho Chi Minh Provincial Court

**C Vietnamese Laws: Available at < <http://luatvietnam.vn>>**

*Bo Luat 10/2012/QH13 ve Lao Dong* [Code 10/2012/QH13 on Labour]

*Bo Luat 19/1999/QH10 ve Hinh Su, duoc Sua Doi theo Luat so 37/2009/QH12* [Code 19/1999/QH10 on Penal Law, Amended by the Law 37/2009/QH12]

*Bo Luat 24/2004/QH11 ve To tung Dan Su, duoc sua doi theo Luat 65/2011/QH12* [Code 24/2004/QH11 on Civil Procedures, Amended by the Law 65/2011/QH12]

*Bo Luat 33/2005/QH11 ve Dan Su* [Code 33/2005/QH11 on Civil Law]

*Bo Luat Dan Su nam 1995* [Civil Code of 1995]

*Bo Luat Hinh Su nam 1985* [Penal Code of 1985]

*Bo Luat so 24/2003/QH11 ve To tung Hinh Su* [Code 24/2003/QH11 on the Procedures of Criminal Proceedings]

*Bo Luat To tung Hinh Su nam 1988* [Criminal Procedure Code of 1988]

*Chi Thi 06/CT-TW ngay 30/11/1996 cua Ban Chap Hanh Trung Uong Dang ve Tang Cuong Lanh Dao, Chi Dao Cong Tac Phong, Chong va Kiem Soat Ma Tuy* [Directive 06/CT-TW dated 30 November 1996 issued by the Party Central Committee on Strengthening the Leadership and Direction for the Prevention, Combat and Control of Drugs]

*Chi Thi 102/CT ngay 28/4/1989 cua Chu Tich Hoi Dong Bo Truong ve Tiep tục Day Manh Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em* [Directive 102/CT dated 28 April 1989, issued by the President of Cabinet Council on the Continuity of Promoting the Protection, Care and Education of Young Children]

*Chi Thi 135-CT ngay 14/05/1989 cua Chu Tich Hoi Dong Bo Truong ve Tang Cuong Cong Tac Bao Ve Trat Tu, An Toan Xa Hoi trong Tinh Hinh Moi* [Directive 135-CT dated 14 May 1989 issued by the President of Cabinet Council on Intensifying the Protection of Public Safety and Order in the New Situation]

*Chi Thi 20/CT-TW ngay 05/11/2012 cua Bo Chinh Tri ve Tang Cuong Su Lanh Dao cua Dang doi voi Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em trong Tinh Hinh Moi* [Directive 20/CT-TW dated 5 November 2012 issued by the Politburo on Strengthening the Leadership of the Party for the Care, Education and Protection of Children in the New Situation]

*Chi Thi 21/CT-TW ngay 26/03/2008 cua Ban Chap Hanh Trung Uong Dang ve Tiep Tuc Tang Cuong Lanh Dao, Chi Dao Cong Tac Phong, Chong va Kiem Soat Ma Tuy* [Directive 21/CT-TW dated 26 March 2008 issued by the Party Central Committee on the Continuance of Strengthening the Leadership and Direction for the Prevention, Combat and Control of Drugs]

*Chi Thi 25/CT-UBND ngay 02/10/2010 ve Tang Cuong cac Bien Phap Dau Tranh Phong, Chong Toi Pham va Dam Bao Trat Tu An Toan Xa Hoi tren Dia Ban Thanh Pho Ha Noi* [Directive 25/CT-UBND dated 2 October 2010 on the Reinforcement of Measures of Preventing and Combatting Crime, Ensuring Social Order and Safety in Hanoi]

*Chi Thi 37/2004/QD-TTg cua Thu Tuong Chinh Phu ve Tiep Tuc Thuc Hien Nghi Quyet so 09/NQ-CP va Chuong Trinh Quoc Gia Phong, Chong Toi Pham cua Chinh Phu den nam 2010* [Directive 37/2004/QD-TTg issued by the Prime Minister on the Continuance of

Implementing Resolution 09/NQ-CP and the National Program on Preventing and Combatting Crime of the Government until 2010]

*Chi Thi 38-CT/TW ngày 30/5/1994 của Ban Bi Thu và Tang Cuong Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em* [Directive 38-CT/TW dated 30 May 1994 issued by the Secretariat on Improvement of the Protection, Care and Education of Children]

*Chi Thi 48-CT/TW ngày 22/10/2010 của Bộ Chính Trị và Tang Cuong Su Lanh Dao của Dang doi voi Cong Tac Phong, Chong Toi Pham trong Tinh Hinh Moi* [Directive 48-CT/TW dated 22 October 2010 issued by the Politburo on Strengthening the Party Leadership in the Prevention and Combatting of Crime in the New Situation]

*Chi Thi 55-CT/TW ngày 28/6/2000 của Bộ Chính Trị và Tang Cuong Su Lanh Dao của Cap Uy o Co So doi voi Cong Tac Bao Ve, Cham Soc va Giao Duc Tre Em* [Directive 55-CT/TW dated 28 June 2000 issued by the Politburo on Strengthening the Leadership of the Party Committees at the Grassroots Level for the Protection, Care and Education of Children]

*Chi Thi 772-TATC ngày 10/07/1959 của Tòa An Nhân Dân Tối Cao về vấn đề Đình Chi Áp Dụng Luật Cựu của Đế Quốc và Phong Kiến* [Directive 772-TATC dated 10 July 1959 issued by the Supreme People's Court on the Issue of Terminating the Application of the Old Law of the Empire and Feudalism]

*Cong Van 81/2002/TANDTC của Tòa An Nhân Dân Tối Cao Giải đáp các vấn đề Nghiep Vu* [Official Dispatch 81/2002/TANDTC issued by the Supreme People's Court on Answering several Questions on Courts' Tasks]

*Dieu Le Dang Cong San Viet Nam 2011* [The Statutes of the Communist Party of Vietnam of 2011]

*Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 1946* [The Constitution of the Socialist Republic of Vietnam of 1946]

*Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 1959* [The Constitution of the Socialist Republic of Vietnam of 1959]

*Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 1980* [The Constitution of the Socialist Republic of Vietnam of 1980]

*Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 1992, duoc Sua Doi theo Nghi Quyet 51/2001/QH10 của Quốc Hội* [The Constitution of the Socialist Republic of Vietnam of 1992, Amended by Resolution 51/2001 of the National Assembly]

*Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 2013* [The Constitution of the Socialist Republic of Vietnam of 2013]

*Huong Dan 16-TANDTC ngày 27/9/1974 của Tòa An Nhân Dân Tối Cao Trình Tu Xét xử Sơ Tham và Hình Su* [Guideline 16-TANDTC dated 27 September 1974, issued by the Supreme People's Court on Procedures for First-Instance Trial]

*Ke Hoach 380/C45-P6 ngày 22/3/2012 của Tổng Cục Cảnh Sát Phòng, Chong Toi Pham và Phong, Chong Toi Pham trong Lua Tuổi Chua Thanh Niên Gay An Nghiem Trong* [Plan 380/C45-P6 dated 22 March 2012, issued by the General Police Department on the Prevention of Juveniles Committing Serious Crimes]

*Luat 02/2007/QH12 về Phòng, Chong Bao Luc Gia Dinh* [Law 66/2011/QH12 on Preventing and Combatting Domestic Violence]

*Luat 07/2007/QH12 về Dac Xa* [Law 07/2007/QH12 on Amnesty]

*Luat 07/2012/QH13 về Phòng, Chong Rua Tien* [Law 07/2012/QH13 on Preventing and Combatting Money Laundering]

- Luat 08/2007/QH12 ve Tuong Tro Tu Phap* [Law 08/2007/QH12 on Mutual Judicial Assistance]
- Luat 11/2003/QH11 ve To Chuc Hoi Dong Nhan Dan va Uy Ban Nhan Dan* [Law 11/2003/QH on the Organisation of the People's Councils and the People's Committees]
- Luat 15/2012/QH13 ve Xu Ly Vi Pham Hanh Chinh* [Law 15/2012/QH13 on the Handling of Administrative Violations]
- Luat 17/2008/QH12 ve Ban Hanh Van Ban Quy pham Phap Luat* [Law 17/2008/QH12 on the Promulgation of Legal Documents]
- Luat 22/2000/QH10 ve Hon Nhan va Gia Dinh* [Law 22/2000/QH10 on Marriage and Family]
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- Luat 25/2004/QH11 Bao ve, Cham soc va Giao duc Tre Em* [Law 25/2004/QH11 on Child Protection, Care and Education]
- Luat 25/2008/QH12 ve Bao Hiem Y Te* [Law 25/2008/QH12 on Health Care Insurance]
- Luat 26/2008/QH12 ve Thi Hanh An Dan Su* [Law 26/2008/QH12 on the Enforcement of Civil Judgments]
- Luat 30/2001/QH10 ve To Chuc Quoc Hoi, duoc sua doi theo Luat 83/2007/QH11* [Law 30/2001/QH10 on the Organisation of the National Assembly, Amended by the Law 83/2007/QH11]
- Luat 31/2004/QH11 ve Ban Hanh Van Ban Quy Pham Phap Luat cua Hoi Dong Nhan Dan, Uy Ban Nhan Dan* [Law 31/2004/QH11 on the Promulgation of Legal Documents of People's Councils, People's Committees]
- Luat 33/2002/QH10 ve To Chuc Toa An Nhan Dan* [Law 33/2002/QH10 on the Organisation of the People's Courts]
- Luat 34/2002/QH10 ve To Chuc Vien Kiem Sat Nhan Dan* [Law 34/2002/QH10 on the Organisation of the People's Procuracies]
- Luat 37/2009/QH12 ve Sua doi, Bo sung mot so Dieu cua Bo luat Hinh su nam 1999* [Law 37/2009/QH12 on Amending and Supplementing a Number of Articles of the Penal Code of 1999]
- Luat 38/2005/QH11 ve Giao Duc* [Law 38/2005/QH11 on Education]
- Luat 41/2005/QH11 Ky Ket, Gia Nhap va Thu Hien Dieu Uoc Quoc Te* [Law 41/2005/QH11 on the Conclusion, Accession to and Implementation of Treaties]
- Luat 51/2010/QH12 ve Nguoi Khuyet Tat* [Law 51/2010/QH12 on Persons with Disabilities]
- Luat 52/2010/QH12 ve Nuoi Con Nuoi* [Law 52/2010/QH12 on Adoption]
- Luat 52/2014/QH13 ve Hon Nhan va Gia Dinh* [Law 52/2014/QH13 on Marriage and Family]
- Luat 53/2005/QH11 ve Thanh Nien* [Law 53/2005/QH11 on Youth]
- Luat 53/2010/QH12 ve Thi Hanh An Hinh Su* [Law 53/2010/QH12 on the Execution of Criminal Judgments]
- Luat 55/2005/QH11 ve Phong, Chong Tham Nhung, duoc sua doi theo Luat 01/2007/QH12 va Luat 27/2012/QH13* [Law 55/2005/QH10 on Preventing and Combatting Corruption, Amended by Laws 01/2007/QH12 and 27/2012/QH13]

*Luật 62/2014/QH13 về Tổ chức Tòa án Nhân dân* [Law 62/2014/QH13 on the Organisation of the People's Courts]

*Luật 63/2014/QH13 về Tổ chức Viện Kiểm sát Nhân dân* [Law 63/2014/QH13 on the Organisation of the People's Procuracies]

*Luật 65/2006/QH11 về Luật Sư, được sửa đổi theo Luật 20/2012/QH13* [Law 65/2006/QH11 on Lawyers, Amended by the Law 20/2012/QH13]

*Luật 66/2011/QH12 về Phòng, Chống Mua Bán Người* [Law 66/2011/QH12 on Preventing and Combatting Human Trafficking]

*Luật 69/2006/QH11 về Trợ giúp Pháp lý* [Law 69/2006/QH11 on Legal Aid]

*Luật Báo chí năm 1989, được Sửa đổi theo Luật 12/1999/QH10* [Law on Press of 1989, Amended by the Law 12/1999/QH10]

*Luật Bảo Vệ, Chăm Sóc và Giáo Dục Trẻ Em năm 1991* [Law on Child Protection, Care and Education of 1991]

*Luật Phổ Cap Giáo Dục Tiểu Học năm 1991* [Law on Universal Primary Education of 1991]

*Luật Tổ chức Tòa án Nhân dân năm 1981* [Law on the Organisation of the People's Courts of 1981]

*Luật Tổ chức Viện Kiểm sát Nhân dân năm 1981* [Law on the Organisation of the People's Procuracies of 1981]

*Nghị Định 106/2012/ND-CP Quy Định Chức Năng, Nhiệm Vụ, Quyền Hạn và Cơ Cấu Tổ chức của Bộ Lao Động, Thương Binh và Xã Hội* [Decree 106/2012/ND-CP on the Functions, Duties, Powers and Organisational Structure of the Ministry of Labour, Invalids and Social Affairs]

*Nghị Định 186/2007/ND-CP Quy Định Chức Năng, Nhiệm Vụ, Quyền Hạn và Cơ Cấu Tổ chức của Bộ Lao Động, Thương Binh và Xã Hội* [Decree 186/2007/ND-CP on the Functions, Duties, Powers and Organisational Structure of the Ministry of Labour, Invalids and Social Affairs]

*Nghị Định 362/HDBT ngày 06/11/1991 của Hội Đồng Bộ Trưởng về Chức Năng, Nhiệm Vụ, Quyền Hạn, Tổ chức Bộ Máy của Ủy Ban Bảo Vệ và Chăm Sóc Trẻ Em Việt Nam* [Decree 362-HDBT dated 6 November 1991, issued by the Cabinet Council on Functions, Duties, Powers and Organisational Structure of Vietnamss Committee on Child Protection and Care]

*Nghị Định 51/2002/ND-CP Quy Định Chi Tiết Thi Hành Luật Báo chí, Luật Sửa đổi, Bổ Sung một số Điều của Luật Báo chí* [Decree 51/2002/ND-CP on Specifying the Implementation of f the Law on Press, and the Law on Amending and Supplementing a number of Articles of the Law on Press]

*Nghị Định 71/2011/ND-CP của Chính Phủ Quy Định về Quy Định Chi Tiết và Hướng Dẫn Thi Hành một số Điều của Luật Bảo Vệ, Chăm Sóc và Giáo Dục Trẻ Em* [Decree 71/2011/ND-CP on Specifying and Guiding the Implementation of Several Articles of the Law on Child Protection, Care and Education]

*Nghị Định 72/2010/ND-CP Quy Định về Phòng Ngừa, Đấu Tranh Chống Tội Phạm và Vi Phạm Pháp Luật khác về Môi Trường* [Decree 72/2010/ND-CP on Preventing and Combatting Crime and other Violations of Environment]

*Nghị Định 87/CP ngày 12/12/1995 về Tăng Cường Quản Lý các Hoạt Động Văn Hóa và Dich Vụ Văn Hóa, Day Mạnh Bài Tru một số Tệ Nạn Xã Hội Nghiêm Trọng* [Decree 87/CP dated 12 December 1995 on Strengthening the Management of Cultural Activies and Services, Promoting the Fight against Serious Social Evils]

*Nghi Dinh 89/1998/ND-CP ve Ban Hanh Quy Che ve Tam Giu va Tam Giam, duoc sua doi theo Nghi Dinh 98/2002/ND-CP va Nghi Dinh 09/2011/ND-CP* [Decree 89/1998/ND-CP on the Rules of Custody and Temporary Detention, Amended by Decree 98/2002/ND-CP and Decreed 09/2011/ND-CP]

*Nghi Dinh 94/2002/ND-CP ve Chuc Nang, Nhiem Vu, Quyen Han, To Chuc Bo May cua Uy Ban Dan So, Gia Dinh va Tre Em* [Decree 94/2002/ND-CP on the Functions, Duties, Powers and Organisational Structure of the Committee on Population, Families and Children]

*Nghi Quyet 08-NQ/TW ngay 02/01/2002 cua Bo Chinh Tri ve Mot So Nhiem Vu Trong Tam Cong Tac Tu Phap trong Thoi Gian Toi* [Resolution 08-NQ/TW dated 02 January 2002 issued by the Politburo on Several Key Tasks in the Judicial Sector in the Near Future]

*Nghi Quyet 09/1998/NQ-CP cua Chinh Phu ve Tang Cuong Cong Tac Phong, Chong Toi Pham trong Tinh Hinh Moi* [Resolution 09/1998/NQ-CP issued by the Government on Intensifying the Work on Preventing and Combatting Crime in the New Situation]

*Nghi Quyet 1039/2006/NQ-UBTVQH11 cua Uy Ban Thuong Vu Quoc Hoi ve To Chuc, Nhiem Vu, Quyen Han va Quy Che Hoat Dong cua Ban Chi Dao Trung Uong ve Phong Chong Tham Nhung* [Resolution 1039/2006/NQ-UBTVQH11 issued by the Standing Committee of the National Assembly on the Organisational Structure, Duties, Powers and Operational Regulation of the Central Steering Commission on Preventing and Combatting Corruption]

*Nghi Quyet 13/2011/QH13 cua Quoc Hoi ve Chuong Trinh Muc Tieu Quoc Gia giai doan 2011–2015* [Resolution 13/2011/QH13 issued by National Assembly on National Target Programs for the period 2011–2012]

*Nghi Quyet 48-NQ/TW ngay 24/5/2005 cua Bo Chinh Tri ve Chien Luoc Xay Dung va Hoan Thien He Thong Phap Luat Viet Nam den nam 2010, Dinh Huong den nam 2020* [Resolution 48-NQ/TW dated 24 May 2005, issued by the Politburo on The Strategy for Development and Improvement of Vietnam’s Legal System to 2010 and Orientation to 2020]

*Nghi Quyet 49-NQ/TW ngay 02/06/2005 cua Bo Chinh Tri ve Chien Luoc Cai Cach Tu Phap den nam 2020* [Resolution 49-NQ/TW dated 2 June 2005, issued by the Politburo on Judicial Reform Strategy to 2020]

*Nghi Quyet 5-CP ngay 29/01/1993 cua Chinh Phu ve Ngan Chan va Chong Te Nan Mai Dam* [Resolution 5-CP dated 29 January 1993, issued by the Government on the Prevention and Suppression of Prostitution]

*Nghi Quyet 6-CP ngay 29/01/1993 cua Chinh Phu ve Tang Cuong Chi Dao Cong Tac Phong, Chong va Kiem Soat Ma Tuy* [Resolution 6-CP dated 29 January 1993, issued by the Government on Strengthening the Work on Direction for the Prevention, Combat and Control of Drug]

*Nghi Quyet 70/2014/QH13 cua Quoc Hoi ve Dieu Chinh Chuong Trinh Xay Dung Luat, Phap Lenh nhiem ky Quoc Hoi khoa XIII, nam 2014 va Chuong Trinh Xay Dung Luat, Phap Lenh nam 2015* [Resolution 70/2014/QH13 issued by the National Assembly on the Revised Plan of Law and Ordinance Adoption of the National Assembly Term XIII in 2014 and the Plan of Law and Ordinance Adoption in 2015]

*Nghi Quyet 81/2014/QH13 cua Quoc Hoi ve Thi Hanh Luat To Chuc Toa An Nhan Dan* [Resolution 81/2014/QH13 issued by the National Assembly on the Implementation of the Law on the Organisation of the People’s Courts]

*Phap Lenh 09/2014/UBTVQH13 ve Trinh Tu, Thu Tuc Xem Xet, Quyet Dinh Ap Dung cac Bien Phap Xu Ly Hanh Chinh tai Toa An Nhan Dan* [Ordinance 09/2014/UBTVQH13 on the

Order of, and Procedures for, Considering and Deciding on the Application of Administrative-Handling Measures at People's Courts]

Phap Lenh 10/2003/PL-UBTVQH11 ve Phong, Chong Mai Dam [Ordinance 10/2003/PL-UBTVQH11 on Preventing and Combatting Prostitution]

*Phap Lenh 23/2004/PL-UBTVQH11 ve To Chuc Dieu Tra Hinh Su, duoc sua doi theo Phap Lenh 09/2009/PL-UBTVQH12* [Ordinance 23/2004/PL-UBTVQH11 on Organisation of the Criminal Investigation, Amended by Ordinance 09/2009/PL-UBTVQH12]

*Phap Lenh Trung Tri Toi Hoi Lo nam 1981* [Ordinance on the Punishment for Corruption of 1981]

*Phap Lenh ve Bao Ve, Cham Soc va Giao Duc Tre Em nam 1979* [Ordinance on Child Protection, Care and Education of 1979]

*Quyét Dinh 1001/QĐ-TTg ngày 27/06/2011 của Thủ Tướng Chính Phủ Ban Hành Chiến Lược Quốc Gia Phòng, Chống và Kiểm Soát Ma Túy ở Việt Nam đến năm 2020 và Định Hướng đến năm 2030* [Decision 1001/QĐ-TTg dated 27 June 2011, issued by the Prime Minister on Adopting the National Strategies for the Prevention, Combat and Control of Drugs in Vietnam to 2020 and Orientation to 2030]

*Quyét Dinh 112/NV ngày 02/5/1961 của Bộ Nội Vụ về việc Thành Lập Ủy Ban Thiếu Niên Nhi Đồng Việt Nam* [Decision 112/NV dated 2 May 1961, issued by the Minister of Home Affairs on the Establishment of the Committee on Adolescents and Young Children of Vietnam]

*Quyét Dinh 1203/QĐ-TTg ngày 31/08/2012 của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Mục Tiêu Quốc Gia Phòng, Chống Ma Túy giai đoạn 2012–2015* [Decision 1203/QĐ-TTg dated 31 August 2012, issued by the Prime Minister on Approval of the National Target Program for the Prevention and Combat of Drugs for the period 2012–2015]

*Quyét Dinh 130/2004/QĐ-TTg của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Hành Động Phòng Chống Tội Phạm Buồn Ban Phụ Nữ và Trẻ Em giai đoạn 2004–2010* [Decision 130/2004/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for Crime Prevention and Combat against the Trafficking of Women and Children for the period 2004–2010]

*Quyét Dinh 133/1998/QĐ-TTg của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Mục Tiêu Quốc Gia Xóa Đói, Giảm Nghèo trong giai đoạn 1998–2000* [Decision 133/1998/QĐ-TTg issued by the Prime Minister on The Approval of the National Target Program on Hunger Eradication, Poverty Reduction for the period 1998–2000]

*Quyét Dinh 138/1998/QĐ-TTg của Thủ Tướng Chính Phủ về việc Phe Duyệt Chương Trình Hành Động Quốc Gia Phòng Chống Tội Phạm* [Decision 138/1998/QĐ-TTg issued by the Prime Minister on the Approval of the National Program for Preventing and Combatting Crime]

*Quyét Dinh 139/1998/QĐ-TTg của Thủ Tướng Chính Phủ Phe Duyệt Chương Trình Hành Động Phòng, Chống Ma Túy 1998–2000* [Decision 139/1998/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for the Prevention and Combat of Drugs 1998–2000]

*Quyét Dinh 1427/QĐ-TTg ngày 18/08/2011 của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Hành Động Phòng Chống Tội Phạm Mua Bán Người giai đoạn 2011–2015* [Decision 1427/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for Preventing and Combatting Human Trafficking for the period 2011–2015]

*Quyét Dinh 143/2001/QĐ-TTg của Thủ Tướng Chính Phủ về Phe Duyệt Chương Trình Mục Tiêu Quốc Gia Xóa Đói Giảm Nghèo và Việc Lâm giai đoạn 2001–2005* [Decision

143/2001/QĐ-TT issued by the Prime Minister on the Approval of the National Target Program on Hunger Eradication, Poverty Reduction and Jobs for the period 2001–2005]

*Quyết Định 150/2000/QĐ-TTg của Thủ Tướng Chính Phủ Phe Duyệt Chương Trình Hành Động Phòng, Chống Ma Túy giai đoạn 2001–2005* [Decision 50/2000/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for the Prevention and Combat of Drugs for the period 2001–2005]

*Quyết Định 151/2000/QĐ-TTg của Thủ Tướng Chính Phủ về việc Phe Duyệt Chương Trình Hành Động Phòng, Chống Tệ Nạn Mại Dâm giai đoạn 2001–2005* [Decision 151/2000/QĐ-TTg issued by the Prime Minister on the Approval of the Action Program for Preventing and Combatting the Evil of Prostitution for the period 2001–2005]

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*Quyết Định 162-QĐ/TW ngày 01/02/2013 về việc Thành Lập Ban Chỉ Đạo Trung Ương về Phòng, Chống Tham Nhũng* [Decision 162-QĐ/TW dated 1 February 2013, issued by Politburo on the Establishment of the Central Steering Commission on Preventing and Combatting Corruption]

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