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## Some reflections on juvenile prosecution system

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### **1. International laws on the legal status of juveniles**

#### ***1.1. International legal documents on juvenile legal status***

Child violation has always been concerned by the international community. Internationally, the UN and many countries have shifted to change international and national standards on the prosecution of juveniles who commit violations towards a more humanitarian perspective, prevention, and application of special procedures appropriate with physical characteristics and age of committed juveniles.

Various international laws on juvenile legal status have provided definitions on the juveniles including:

- The international convention on the right of the child approved by the UN National Assembly on 20 November 1989, and came into effect on 2 September 1990.

- UN minimum standards on the legal practices applied to juveniles (Beijing Covenant) approved by the UN National Assembly on 29 November 1985 (ever since called Beijing Covenant);

- Riyadh guidelines on the prevention of juvenile crimes approved by the UN National Assembly on 14 December 1990;

- The UN Common Minimum Standards on the protection of Juveniles deprived of the right to freedom approved by the UN National Assembly 14 December 1990 (1990 Code of Conduct).



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The above documents provides provisions on different aspects relating to legal status of juveniles, and recommendations on the creation of a judicial system of juveniles stipulated within legal framework of each country to protect and respect the rights of children, at the same time ensure social safety. These documents are designed to help member countries in policy planning related to juveniles, and provides instructions on the practice of juvenile judiciary within the International convention on the right of the child.

## **1.2. Definition of committed juvenile, the concept and purpose of the juvenile judiciary.**

According to the Beijing Covenant, Juveniles are children or younger people (depending on particular legal system definition). Juvenile criminals are children or younger people considered to be found guilty and can be prosecuted in a manner different from that applied to adults (Standards 2.2).

The concept and purpose of juvenile judiciary was also introduced in Beijing Covenant (Standards 1.4, 1.6 and 5.1). in which it could be understood as:

*Juvenile judiciary is a component of the national judicial system which consists of legal regulations and their applications to juvenile criminals through the system of legislative agencies and their members based on a principle of taking happiness and recorection for juveniles as the first priorities, at the same time maintain social order and ethics, and ensure the prosecution of juveniles are legal and appropriate to their behaviours.*

To enforce a system of juvenile judiciary as mentioned above, the International convention on the right of the child has established international standards on the rights of children deprived of freedom (Article 37) and rights of children suspected of committed crimes (Article 40), so that this will enable the creation in each member country, institutions and prosecutorial procedures, as well



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as measure which are non-aligned to the official judiciary system applied to children criminals.

The concept of juvenile criminals is an important standards for countries to develop legal system targeting juvenile criminals in their own country. However, in reality, criminal age for juveniles are different from country to country.

- Most countries show common agreement on the highest age limit considered as juveniles; some other countries have stipulated highest legal age of 21 or 16. However, the majority of countries have approved 18 as the ceiling age to be considered as juvenile. We think this is compatible to juveniles' physical and psychological as well as social and legal conditions;

- The minimum age responsible under criminal charges are equally defined, normally between 12 to 14 years of age; in particular case, some countries may consider earlier age. Some countries distinguish minimal age to responsible for criminal charges to serious crimes (lower age), and to less serious or neglected crimes (for higher age).

We assume that there might be differences, but in general, criminal policies in many countries are fairly consistent and suitable to the provisions under international laws and the above-mentioned documents.

### *1. 3. Chain of international standards on juveniles considered to be criminals*

Article 40 under the international convention on the right of the child provides 4 general principles on the treatments of charged juveniles, 8 guarantees to the prosecution process to penalise children, and other standards to promote the creation of legal system for juveniles in other countries, specifically:

#### *3.1. Four principles to the charged juveniles:*



- Firstly, the treatment be provided in a manner suitable to children's dignity and values;

- Secondly, promote children's respect for people's rights and the basic rights of others;

- Thirdly, the treatment is provided in accordance with children's age and hence their psychological conditions;

- Fourthly, promote children's re-integration and their role in society.

*3.2. 8 assurances for the legal prosecution process to charged children:*

- First, criminal law is not retrospective (section a);

- Second, enjoy the right of innocence assumption (section bI);

- Third, prior to trials, children must be informed immediately of the charges, and must be aided with legal counseling or other assistance necessary for defenses (section bII);

- Fourth, at court, children must be legally aided to participate with parents or sponsors in a fair explanation, interview before a council of judges which are independent, impartial and capable of making no-delay decisions (section bIII);

- Fifth, children are not forced to make confessions or provide evidence; have the right to interview or ask some one to interview witnesses, at the same they can provide witness in their defense against charges (section b IV);

- Sixth, children have the right to defense and appeal against primary decisions at higher council of judges, which are independent and impartial (section bV);

- Seventh, is entitled to free translation in cases necessary (section bVI);

- Eighth, private matters are kept confidential during the prosecution process (section bVII).



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*3.3. Standards to promote the creation of juvenile legal system in other countries:*

- First, there should be separate laws, procedures, and institutions applied to children subject to criminal charges;
- Second, there should be a system of non-judicial, non-prosecutable measures in particular cases to respect human rights and laws and order;
- Third, beside legislative institutions and agencies, there should be community-based systems (for counseling, parent-replacement care, and education and vocational training ...) to ensure children are given fair treatment and paramount to their violations.

The Beijing Covenant has specified provisions under the International Convention on the right of the child through "investigations and prosecution" principle (Part II), on trials and judgment (Part III), and on non-detained dealings (Part IV).

In line with investigations, prosecution, judgment, international laws are also concerned about community reintegration of juvenile criminals. Code 1990 has provided two recommendations on community reintegration for juvenile criminals after the freedom-depriving period. They are:

- To detaining authorities: organise special vocational courses for juveniles, reduce sentence period, release before due date; enable families or service providers to approach juvenile criminals at their cells and quickly reintegrate them when they are released.
- To competent authorities: provide services and ensure juveniles' right to housing, working, eating and clothing, and ensure their subsistence after they are released; and reduce biases against charged juveniles.



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In conclusions: the International Convention on the right of the child and other recognised legal documents have constituted a system of sufficient standards and orientations for countries to develop and enact related legal framework for juveniles depending on each country's context.

## **2. Vietnam's policies and laws in the field of juvenile legality**

Juvenile judiciary is but a special concern paid by the Party and State of Vietnam, it is the concern for each family, organisation and the society as a whole. Following the Party and the State's guidance on education, punishment and protection of the rights of juveniles charged with violations, the Government of Vietnam has done every efforts to domesticise the provisions stipulate within the international convention on the right of the child, and mainstream them into internal legal system. Juvenile judiciary has been thoroughly stated in the newly amended Constitution of 1992, in Vietnam Criminalisation and prosecution laws of 1999, Criminal Law of 2003, Prison term performance ordinance, and other legal documents providing guidelines for legal counseling of juvenile issues. Within these documents, important issues have been pointed out such as the assurance of human rights, children's rights, and the maintaining of a prosecution process compatible with children's physical and psychological conditions; and hence protect and enable their fully physical and mental development; defining clearly the role and obligations of each prosecuting authorities, social organizations, schools and families in the prevention of juvenile crimes and reintegration of charged children into community.

All these important documents relating to juveniles have created a fundamental legal system for juveniles.

### ***2.1 Principles and treatments of criminal juveniles in Vietnam***

The guiding principles and treatments towards juvenile charges in Vietnam are clearly mentioned in various legal documents. The Law on protection, care and



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education of children provides: ‘The pursuit of administrative, civil and criminal responsibilities on children facing charges must be following juvenile-related regulations’ (Article 15). The criminal code, in addition to providing general provisions on juveniles, has created a separate chapter on juvenile charges (Chapter X).

The criminal regulation on juvenile charges are illustrated in the following fundamental points:

- Criminal age: in general, mainly juveniles of above 16 years of age shall be obliged to all types of criminal allegations. Children between 14 and 16 years of age shall only be obliged to extremely and intentionally serious criminal charges (crimes and violations may be subject to 7 to 15 years of imprisonment) or charged for committing serious crimes (with highest sentence of above 15 years in imprisonments, life imprisonment or death penalty).

- The purpose of prosecuting juvenile’s crimes is to education, recorrect their mistakes, and develop them to become good citizens (section 1, Article 69 of the Criminal Code). The general regulations show 4 principles of children’s legal treatment as stated within the International Convention on the right of the child at section 1, Article 40);

- The criminal charges are mainly to education, prevent juveniles from the commitment of crimes; prosecution of juveniles are only resorted as the last measure and only in cases of redressing particular dangerous behaviours, personal concerns and the needs to prevent further violations (section 3, Article 69 of the civil code).

The 1999 criminal code provides immunity in case of insignificant danger and violations, less destructions, and evidence of reduced responsibilities, and could be sponsored for reeducation by social organizations and/or families. Even in case, a juvenile has been introduced for court prosecution, a penalty is considered unnecessary, a Court can issues counseled measures;



- Type and level of penalty applied to juveniles are less than that applied to adults, and there is a distinction between ranges of ages (Article 69- Article 75 of the Civil code). Life imprisonment and death penalty are not applied to juvenile criminals; a court at session can give less strong judgment to juveniles than giving to adults; no additional charges shall be made to juveniles (section 5 of Article 69 of the Civil code). There is a difference to the consideration of reduced terms and early term cancellation to reintegrate children back in communities (Article 76, Article 77 of the Civil code);

## *2.2. Prosecution procedure applied to juvenile criminals in Vietnam*

The Prosecution Law of Vietnam reserves a singly chapter providing provisions on juvenile prosecution procedures. The common sense is:

- General and important prosecution principles could be applied to juvenile cases such as the assumption of innocence recognised by both Constitution and the Law in that "No one shall be considered as guilty until a verdict has been reached by a competent people's court " (Article 72 of the constitution, and Article 10 of the Prosecution of Criminal charges Law); Retrospective effects shall only be applied to the cancellation of on crime or for a lighter sentence (Article 7 of the Criminal Code); Criminal charges must be convinced by prosecuting agencies (investigation agencies, Procuracy and Court), therefore these institutions shall apply all legal measures to identify the true facts in an impartial, comprehensive manner. The defendants have the right and not obligation to prove their innocence (Article 10 of the Prosecution of Criminal Charges Law); during investigation and prosecution process, the warrants of arrest and custody must follow strictly provisions of the Prosecution of Criminal Charges Law, and can only be exercised in case of serious and/or especially serious juvenile crimes (Article 303 of the Prosecution of Criminal Charges Law) etc...

- Prosecution procedures must be carried by specialists who have good knowledge in the fields of psychology and educational science, together with schools, families and the whole society (Article 302, Article 306 the Prosecution of Criminal Charges Law). Under criminal cases, the defendants are juveniles, there



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must be a dependence lawyer (Article 305 of the Prosecution of Criminal Charges Law), and there must be teachers or Youth Union staff as members of the Court council (Article 307 of the Prosecution of Criminal Charges Law). The Defendants, themselves or through a legal representative and/or lawyer, have the right to know what charges they are being prosecuted, present evidence and demands and/or request to change judges (Article 34 of the Prosecution of Criminal Charges Law); appeals to Investigation agencies and court of appeals, an within 15 days such appeal must be dealt with (Article 144 of the Prosecution of Criminal Charges Law).

- During the term service, juvenile criminal are placed in separate cells with separate managements; during the service, juveniles are entitles to ethnic and legal education, cultural learning, vocational training in order for them to recorrect their mistakes, and to become good citizens (Article 308 of the Prosecution of Criminal Charges Law) etc...

The way the Vietnam government provides for minimum age subject to criminal responsibilities, and the development of related legal documents specifically for juveniles are compatible with Article 40, Section 3 of the International Convention on the right of the child. In reality, such regulation are properly observed and have contributed to the prevention of crimes, and the caring of and educating juveniles in Vietnam.

### **3. Conclusion**

Juvenile legal counseling is a very important component of the legislative system of each country. The UN conventions and international laws on human rights, and the right of children are highly guiding documents for each member country in this area. In contrast, the national law system on juveniles shows the humanitarian stand, the educational orientation, and prevention of juvenile crimes as well as respect freedoms, dignities and the healthy development of children.



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In the context of judicial reform in Vietnam, juvenile judiciary has always been given attention by the Party, the State of Vietnam and whole society. These are continually illustrated in the work of legislation and practice of laws in Vietnam in the coming time.

Within this spirit, we may say that:

1/ Some countries have defined and set a low level of juvenile criminal charges (10 to 12 years of age), resulting in the insufficient consideration of physical and mental conditions, the educational lines and prevention of juvenile crimes as stated by international laws.

2/ There is a need for the organisation of separate juvenile prosecution agency; juvenile court with separate prosecution procedures, and with personnel of good knowledge of juvenile development conditions, and appropriate educational methods and recorection, together with appropriate prosecution and charge. These are important and necessary to have a separate ways of dealing with juvenile issues. Only until then shall the purpose of juvenile judiciary be accomplished.