

# **Justice for children**

## **Vietnam on cross-border issues**

Ministry of Justice of Vietnam

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# Contents

- Overview
- Legal framework on justice for children,  
including stateless children in conflict with law
- Practice
- Challenges

# Overview

- Minor: under 18 years old
- Children: under 16 years old
- No separate law on juvenile justice
- 2 systems to handle violations of minors:
  - ✓ Administrative system
  - ✓ Criminal system
- Many laws stipulate for juvenile justice: Child Law, Penal Code, Law on handling administrative violations; Criminal Procedure Code, Law 2010 on criminal judgments execution; Ordinance on procedures to apply administrative measures at the court

# Overview

- **Law on Vietnamese Nationality:**
  - ✓ **Foreigners** residing in Vietnam are **foreign nationals** and **stateless persons** who permanently or temporarily reside in Vietnam.
  - ✓ The State of the Socialist Republic of Vietnam creates conditions for **children born in the Vietnamese territory** to have a nationality and stateless persons permanently residing in Vietnam to acquire Vietnamese nationality under this Law.
    - 20 years – a child born in other countries become adult

# Overview

- Legal reform:
  - ✓ Constitution 2013
  - ✓ Law on handling administrative violations 2012
  - ✓ Ordinance on procedures to apply administrative measures at the court 2014
  - ✓ Law on Organization of the Courts
  - ✓ Penal Code 2015
  - ✓ Criminal Procedure Code 2015
  - ✓ Child Law 2016

# Legal framework

- Constitution
- Child Law
- Penal Code
- Criminal Procedure Code
- Law on organization of the Court
- Law on handling administrative violations

# Legal framework - Constitution

- Constitution of Vietnam 2013:
  - ✓ *In the Socialist Republic of Vietnam, **human rights** and citizens' rights in the political, civic, economic, cultural and social fields are recognized, respected, protected and guaranteed in concordance with the Constitution and the law*
  - ✓ *Human right: Everyone shall...*
  - ✓ *Citizen right: Citizen shall...*

# Human rights in Constitution

- Equal before the law
- No one shall be discriminated against based on his or her political, civic, economic, cultural or social life
- Right to live
- Right to enjoy inviolability of the person and the legal protection of his or her life, health, honour and dignity; and is protected against torture, harassment and coercion, and any forma of violation of his or her life and health, and offence of honour and dignity.



# Human rights in the Constitution

- No one shall be arrested in the absence of a decision by the People's Court, a decision or sanction of the People's Procuracy except in case of flagrant offences. Taking a person into, or holding him in, custody shall be provided by the statute
- Right of privacy
- Right of inviolability of his/her domicile
- freedom of belief and religion

# Human rights in the Constitution

- Right of privacy
- Right of inviolability of his/her domicile
- freedom of belief and religion
- Right to enjoy due process in criminal proceedings
- Property rights
- freedom of enterprise in industries and trades
- health care and protection
- right to carry out scientific and industrial research
- Culture rights
- live in a clean environment

# Constitution

- **Human rights:** for every person residing in Vietnam, including Vietnamese citizen, **foreign nationals** and **stateless persons** who permanently or temporarily reside in Vietnam
  - ✓ Equal before the law
  - ✓ Right to enjoy due process in criminal proceedings
  - ✓ No one shall be arrested in the absence of a decision by the People's Court, a decision or sanction of the People's Procuracy except in case of flagrant offences. Taking a person into, or holding him in, custody shall be provided by the statute
  - ✓ Right of privacy

# Legal framework – The Child Law

- Come into effect from June 1, 2017
- Principle: ensures that children fully exercise their rights and ensure no discrimination for all children
- Recognizes rights of the child in CRC for all children, except the right to guarantee of the social security.
- Just ensure the right to guarantee of social security for Vietnamese children because it depends on the socio-economic conditions of the locations where the children live and conditions of parents and caregivers.

# Rights of the child

- **Right to life**
- **Rights to birth registration and nationality**
- Right to health care
- Right to care and nurturing
- Rights to learning, education and talent development
- Right to leisure and recreational activities
- Right to preservation and promotion of cultural identity
- Right to freedom of beliefs and religions
- Right to property
- **Right to privacy**

# Rights of the child

- Right to living with parents
- Right to reunion, communication and contact with parents
- Right to alternative care and adoption
- **Rights to being protected from sexual abuse**
- **Right to being protected from labor exploitation**
- **Right to being protected from violence, neglect, abandonment**
- **Right to be protected from trafficking, abduction, fraudulent exchange and appropriating**
- Right to being protected from narcotic substances

# Rights of the child

- **Right to protection during judicial and administrative handling proceedings**
- Right to being protected from natural disaster, calamity, environmental pollution and armed conflict
- *Right to guarantee of social security (Vietnamese)*
- Right to access to information and engagement in the social activities
- Right to expression of views and to assembly
- Right of children with disabilities
- **Right of stateless children** and refugee children for Stateless children residing in Vietnam and refugee children

# The Child Law

- **Article 30. Right to protection during judicial and administrative handling proceedings**
  - ✓ the right to defense and self-defense guaranteed;
  - ✓ have their rights and legitimate interests protected;
  - ✓ be provided with legal aid;
  - ✓ are allowed to express their opinions;
  - ✓ shall not be subject to illegal deprivation of liberty, coercion, torture, infringement upon dignity, honor, body, psychological pressure and other forms of abuse.



# The Child Law

- One section regulated rights of the child during judicial proceeding and administrative handling proceedings
  - ✓ Principles are compatible with the Guidance Note of the Secretary – General: United Nations Approach to Justice for Children
  - ✓ Protection for offenders, victims and witnesses
  - ✓ Linkage between social welfare and criminal/administrative handling proceedings

# The Child Law

- To ensure that children shall be **treated in a fair, equal, and respectful manner in accordance with their age and level of maturity.**
- To prioritize and handle cases involving children in expedited manner to **minimize any physical and mental harm caused to the child;**
- To ensure that **children are supported by their parents, guardians or other lawful representatives** throughout the judicial or administrative violation handling proceedings to protect their rights and legitimate interests.
- Persons conducting judicial proceedings, persons of competence to handle administrative violations, lawyers, legal aid officers must possess necessary knowledge in psychology and child education, and shall **use the language that is child friendly and easy to understand for children.**

# The Child Law

- To ensure the right of children to **defense and legal aid.**
- To proactively prevent children from offending and reoffending through timely intervention and support to address the causes and conditions of offending, and to **promote rehabilitation and social reintegration.**
- To ensure timely provision of **prevention, support, and intervention measures** that are safe, continuous, sufficient, and flexible to the child **in accordance with his/her individual needs, circumstances, age, psychological and physical characteristics,** taking into account and **respecting his/her views, wishes, feelings and attitudes.**

# The Child Law

- To ensure close and timely collaboration among agencies, organizations, child protection services providers, families, educational institutions, and bodies conducting judicial and administrative violation handling proceedings.
- To prioritize the application of prevention, support and intervention measures, measure of education in the commune, ward and district township, and alternatives to handling of administrative violations to children in conflict with the law; **coercive and deprivation of the liberty of children shall only be applied once deeming that other preventive and rehabilitative measures are not appropriate.**
- To ensure protection of the child's **privacy**; apply any measures as necessary to **limit the child's appearance in public during the proceedings.**

# The Child Law

- No discrimination between national and non-national child
- Recognized all the rights of the child in CRC
- Compatible with the 9 Guiding principles in the Guidance Note of the Secretary – General
- However, under 16 years old !!!
- Gap: 16-18 year person is not a child, cannot apply protection measures (prevention, support and intervention) under the Child Law

# Penal Code

- The Penal Code applies to all acts of criminal offenses committed in the territory of the Socialist Republic of Vietnam
- No distinction between citizen and foreigner, including stateless person

# Penal Code

- No distinction between citizen and stateless person
- **Ages subject to penal liability**
  - ✓ Persons aged full 16 or older shall have to bear penal liability for all crimes they commit.
  - ✓ Persons aged full 14 to under 16 shall have to bear penal liability for very serious crimes intentionally committed or extremely serious crimes.

# Penal code

- Great reform in the Penal Code 2015
- Recognize principles of the CRC and Guidance Note of General Secretary of UN
- Diversions
- To widen the exemption of penal liability for minor under 18 years old
- Etc



# Criminal Procedure Code

- Particular provisions of Procedure of the Criminal Procedure Code applying for minor under 18 years old is expanded, including victims, witnesses
- Recognized in the Code all principles of the CRC and Guidance Note of the General Secretary of UN
- One chapter on international cooperation

# Criminal Procedure Code

- Big reform in the new code
- No distinction between national and non-national person

# Law on organization of the Court

- Family and Juvenile Court in People's Court system: at Supreme Court, provincial Court. At district level, depends on specific situation.
- Important milestone in the legal reform process
- The Family and Juvenile Court is multi-jurisdictional, covering children's matters in the civil, administrative and criminal law.

# Law on handling administrative violations

- Sanction for single violation: every person, including citizen, foreigner, stateless person
- Administrative measures: Community-base measures; sending minor to reformatory schools, diversions... **do not apply to a foreigner, including non-national children**
- Minor under 18 years old are foreigner, including stateless children are not subject to the administrative measures

# Practice

- National program on child protection: one part mentioned about protection of children during justice proceedings, but nothing about cross-border issues

# Practice

- 4 April 2016: Launching the 1<sup>st</sup> Family and Juvenile Court in Ho Chi Minh City, Viet Nam.
- The first ever specialized court for children in the country, aiming to provide better support and protection for children in contact with the law.
- It is expected that the Family and Juvenile Court will be rolled out across all the provinces of Viet Nam.

# Practice

- 2006- 2007: Ministry of Public Security and UNICEF Viet Nam proposed Training Manual on Child Friendly Investigation
- 10 Child Friendly Investigation Rooms
- Guidance on development of Child Friendly Investigation Room
- Video for training child friendly investigation proceeding (50 min) will be delivered to police
- For all children

# Practice

- Data from police

## Children in conflict with law

- ✓ 2011: 13,600 (boy: 13,062; girl 538)
- ✓ 2012: 13,289 (boy: 12,789; girl: 508)
- ✓ 2013: 10,603 (boy: 10,211; girl 392)
- ✓ 2014: 9,156 (boy: 8,877; girl 270)
- ✓ 2015: 8,405 (boy: 8,148; girl 257)



# Practice

- Data from Courts

Children was on trial

✓ 2011: 3,243

✓ 2012: 6,289

✓ 2013: 5,334

✓ 2014: 4,513

✓ 2015: 3,557

# **Stateless children**

## **Practice - challenges**

- No information/data about stateless children !
- No research on cross-border issue

# Challenges

- Legal framework is compatible with the CRC and the Guidance Note, however, enforcement is big challenge!!!
- No research on violence against children in conflict with law
  - ✓ Overall national report on violence against children: over 100 report, article, research... nothing about children in conflict with law
- Violence may be sensitive issue
- Capacity: week!

# Suggestion

- Research
- Data collection system
- Capacity building, esp. training is very important!
- Advocate

Thank you