

WORLD VISION INTERNATIONAL



# **THE STATUS OF CHILDREN IN CONFLICT WITH THE LAW IN CAMBODIA AND VIETNAM**

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## **Glossary of Abbreviations**

AMS	ASEAN Member State
ASEAN	Association of Southeast Asian Nations
CAT	The Convention Against Torture, and Other Cruel Inhuman or Degrading Treatment or Punishment
CC	Criminal Code
CCP	Code of Criminal Procedure
CPU	The Child Protection Unit at the Cambodian National Police
CRC	The Convention on the Rights of the Child
ICRC	International Committee of the Red Cross
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labor Organization
Mol	Ministry of Interior
MoJ	Ministry of Justice
MoSAVY	Ministry of Social Affairs, Veteran and Youth Rehabilitation
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
RC	Registered children that receive sponsorship through World Vision
UN	United Nations
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
WV	World Vision

## **Definitions**

**“Alternatives to detention”** may refer to a police caution or warning; a written or verbal apology; written essays on the effects of the crime committed; community service/work; restitution to the victim; participation in a life skills course; counselling or therapeutic treatment for drug or alcohol abuse; or other restorative justice programmes.

**“Children in Conflict with the Law (CICL)”** refers to children and young people below the age of 18 alleged as, accused of or recognized as having infringed the penal law, and has the same meaning as ‘juvenile delinquents’ and ‘juvenile offenders’ for the purpose of this report.

**“child sexual abuse”** is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.

**“Deprivation of liberty”** refers to placement of a child in any kind of establishment from which he or she cannot leave at will.

**“Diversion”** refers to channeling children away from the formal justice system through alternative procedures and programmes.

**“International Minimum Standards”** for the purpose of this report refers to minimum standards guaranteed to CICL through relevant international treaties, guidelines and standards which include but are not limited to the UN Convention of the Rights of the Child (CRC), the UN Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing rules”), the UN Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”), the UN Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules”), the Guidelines for Action on Children in the Criminal Justice System (the “Vienna Guidelines”) and the most recent UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

**“Juvenile Justice”** refers to the area of criminal law applicable to all offences committed by CICL whether discovered or not, reported or not to the police or any other law enforcement agency, brought before a judicial, administrative or other body, sentenced or not.

**“Residential care”** refers to care given to children who stay in an institution/facility rather than in their own home or in a family setting.

**“Restorative justice”** makes the offender responsible for reparation of harm caused by the offence; gives the offender an opportunity to prove his positive capacity and qualities; tackles guilt feelings in a constructive way; and involves others who have a role in conflict resolution including victims, parents, extended family members, schools and peers. It also provides an interesting approach to making

diversion and de-institutionalization fully compatible with 'justice' for children and in accordance with international standards.

## **EXECUTIVE SUMMARY**

### **Objectives and Methodology**

This qualitative research project identifies the International Minimum Standards for handling CICL, potential gaps in Juvenile Justice standards and minimum guarantees upheld in the legislative framework, and the reality of administration of justice to CICL in Vietnam and Cambodia. The research is conceptualized to assist World Vision East Asia in reviewing legislation and practices, and to support and monitor the adherence to child-sensitive procedures and systems of legal assistance for CICL. This report will consider various stages of the justice system, identify international minimum standards and analyze the capacity of key actors to implement laws, policies and procedures.

Information collected through desk research, surveys and key informant interviews identifies gaps and abuses that occur in the administration of justice to CICL in Cambodia and Vietnam, and corresponding conclusions and recommendations are formulated.

### **International Minimum Standards for handling Children in Conflict with the Law**

Children lack maturity, are less culpable and have a greater rehabilitative potential than adults, which justifies a special treatment of CICL. Studies show that a punitive approach and deterrence have limited effect on children since they lack the capacity to understand the consequences of their actions and control their impulses. Moreover, seeing the vulnerability due to their age, detention puts them at risk for violence and sexual abuse and exposes the child to criminal contamination from fellow inmates and stigma, which has long-lasting negative effects on the child's future.

The rights of CICL are guaranteed through The United Nations Convention on the Rights of the Child and other relevant treaties, guidelines and standards. According to International Law, the primary purpose for intervention relating to CICL must be the rehabilitation and reintegration of the child, rather than punishment. Where possible, CICL need to be diverted away from the formal Justice System, alternative sentencing should be implemented, and detention must be a measure of last resort for the shortest appropriate period of time. As a general rule, children should not be subject to deprivation of liberty unless they commit particularly serious crimes involving violence, or persist in committing other particularly serious crimes, and there is no other appropriate response. Special consideration should be given to gender specificities. There is a need to give priority to apply non-custodial measures to girls who have come into conflict with the law and to give special protection to girl prisoners.

Based on the international legal framework, modifications need to be made to the standard justice system to handle CICL: make it child-friendly, ensure the full and effective participation of children, encourage the rehabilitation of CICL, ensure the privacy of the juvenile and avoid stigmatization.

### **Status of Juvenile Justice in Cambodia**

More than 37% of the population in Cambodia is under 18 years old. Increasingly children grow up on the street or in residential care, leading to risky behavior and involvement in crime. In October 2015, 590 minors including 32 girls were imprisoned and this number seems to be on the rise.

Cambodia ratified the CRC in 1992 and its Constitution confirms its commitment to protect the rights of children.

The Juvenile Justice Law has been developed for over a decade and r passed into law on May 30, 2016. It makes a huge step towards a separate Juvenile Justice System with child-friendly procedures respecting the privacy of CIJL and insuring the full participation of minors. However, the provisions in Criminal procedure code, penal code and other relevant laws (the Law on Prisons, the Law on the Press Regime etc.) still apply unless otherwise stipulated in the Juvenile Justice Law.

The Juvenile Justice Law explicitly includes the CRC guiding principles, and detailed provisions to implement diversion and alternative sentencing. It introduces judicial police specialized in minors to handle CIJL, who also have the authority to resolve petty crimes. Even though the Juvenile Justice law does not establish a juvenile court, it does require that investigating judges, prosecutors and trial judges who handle cases involving minors are trained in Juvenile Justice and Children's rights.

This law reform leaves a few remaining gaps, mainly because the basic right for juveniles in detention only seems to apply to juveniles detained in the yet-to-be-established Youth Rehabilitation Center and not to juveniles detained in prison or other detention centers. Also, there is no requirement for specialized juvenile judges at the court of first instance and there are no provisions to provide semi-institutional arrangements to assist juveniles in their transition from detention back to their communities.

The application of this legislation has been hindered by several factors. The police and judicial authorities often have limited understanding of the law and lack clear procedures to implement it. Further, there is a negative perception of the community towards CIJL which prefers a punitive approach.

Where the current legislative framework offers a fair amount of protection for CIJL, the persisting gaps between the legislative framework and the daily reality of administration of justice to CIJL is more worrying. The Cambodian government is reluctant to establish the required independent National Preventive Mechanism to monitor and prevent torture and ill-treatment in places of detention. It is increasingly difficult for NGOs to secure the necessary permits to access prisons to monitor children's rights. A high level of corruption remains prevalent at all levels of the justice system, including police, courts and prison. Violence, abuse and other child right's violations in breach of both International and Cambodian Law persists in all stages including apprehension, interrogation, pre-trial detention, during trial, sentencing, detention and reintegration.

### **Status of Juvenile Justice in Vietnam**

More than 27% of the population in Vietnam is under 18 years old. 'Social Evils' including drug addiction and gambling and insufficient parental supervision are perceived to lead juveniles to commit crimes.

Vietnam was the first country in Asia to ratify the CRC in 1990 and its Constitution confirms its commitment to protect human rights and any form of violation of children's rights is strictly prohibited. The legislative framework involving CIJL is currently divided over various laws and

guidelines which offer prima facie a solid legal protection for CICL. But human rights can be restricted for reasons of national defense, national security, social order and security, social morality and community well-being.

The juvenile Justice system in Vietnam still faces many challenges. The lack of reliable data in the field of Juvenile Justice make an assessment of the status of the Juvenile Justice system very challenging. There are overlaps and inconsistencies between different laws and guidelines and not all of UNICEF's recommendations have been implemented in the recently voted new Penal Code and Criminal Procedure Code. Like in Cambodia, there is a negative perception of the community towards CICL which prefers a punitive approach. The absence of well-functioning independent monitoring mechanism to address violations of children's rights also hinders the implementation of the legislation. Since NGOs don't have access to CICL in reform schools and in detention center, the detention conditions of CICL cannot be fully assessed and conclusions are made based on secondary sources and reports. Insufficient resources are allocated for the implementation of the CRC and, according to the 2012 Concluding observations of the UN Committee on the Rights of the child, the high levels of corruption reduce the available funds further.

Even if the current legislative framework offers a fair amount of protection for CICL, there are remaining gaps. The court should be allowed more flexibility to divert CICL, or in case as a measure of last resort confinement in a reform school or imprisonment cannot be avoided, to set the shortest term as appropriate in each individual case. Laws should be more firm and not allow so easily for exceptions for "national security" or even due to practical conditions. The lack of available data makes it difficult to clearly identify persisting gaps between the legislative framework and the daily reality of administration of justice to CICL. There is a clear need to increase proper coherence and coordination between the different existing national policies and programmes and NGO projects affecting children in order to identify lessons learnt and to replicate some of its most successful activities. Experiences need to be properly documented and policy implications delineated.

## **Case Study**

The case study of juvenile perpetrators of sexual abuse can serve as a reminder of the seriousness of the problem regionally and globally, since research shows that children are increasingly at risk of sexual abuse by peers. At least one third of perpetrators of sexual offences globally is estimated to be under the age of eighteen years old and are sometimes as young as five years old. This illustrates the importance of prevention and services to address sexually harmful behavior of juveniles.

The research however also reveals that in Cambodia consensual sexual relationships between juveniles below or even above fifteen years of age, which is the age of sexual consent, often end in imprisonment or unwanted early marriage. The alleged victim's family may pursue these ends for the purpose of obtaining a financial advantage through the justice system or to protect the honor of their daughter. It is important to raise awareness with the World Vision Cambodia offices so they can better address this problem. Caution should be exercised when referring such cases to the police, because of the lasting impact of imprisonment or early marriage on those young lives. The purpose of setting a minimum age of sexual consent should be to protect children from sexual exploitation and abuse rather than to criminalize factually consensual sexual exploration between two juveniles. These behavioral rather than criminal problems should be addressed through community based education where needed, rather than through the justice system. Interestingly, in Vietnam the age of sexual

majority is as low as thirteen years of age but is increased to sixteen years in case the sexual partner is an adult so this problem will most likely not arise in Vietnam.

## **Conclusion**

CICL has not been a focus area for World Vision so far but World Vision East Asia picked up very well on the regional relevance of the subject of Juvenile Justice, with law reform in the pipeline or passed to law in many countries in the region. By commissioning this research, World Vision East Asia shows a strong interest in getting further involved in advocating for the rights of CICL.

World Vision East Asia's will to strengthen its position to improve Child Protection for CICL in the justice system will need to be translated into tangible actions and further research. Preliminary findings of the research reveal the importance of mapping existing services for CICL, including prevention, diversion and alternative sentencing opportunities, legal aid, reintegration and rehabilitation services (vocational training, therapeutic services and case management) and to include them in an accessible directory. This will enable World Vision to fill a focal coordinating role and to effectively collaborate with specialized NGOs and government authorities to replicate successful programs in other parts of the country or other prisons and to fill potential gaps that prevent the effective implementation of Juvenile Justice laws.

Increased awareness of available services for CICL through advocacy may lead to improved referral and community engagement. This will enable more CICL to have access to available services. Less CICL will fall between the cracks, including those under the age of criminal liability, girls and children with sexually harmful behavior who are often neglected. It is also important that continuous effort is made by the regional and national World Vision offices to build bridges and incentivize the government authorities to take ownership of the Juvenile Justice Laws and their implementation while allowing NGOs to assist in building its capacity in a sustainable way.

## **INTRODUCTION**

UNICEF estimates that worldwide more than one million children are deprived of their liberty, including children involved in criminal activities, street children and illegal child immigrants who are often treated like criminals.

A special treatment of CICL can be justified because children lack maturity and are less culpable than adults. Children differ from adults in their physical and psychological development. Their brain still goes through significant development including moral development. Children have not fully developed the capacity to understand the consequences of their actions and to control their impulses. As a part of growing up, they show impulsive, authority challenging, risk-taking behavior and they are more susceptible to peer-pressure. On the positive side, as children are still under development they have greater rehabilitative potential. They are more likely to be positively influenced by educative and supportive measures and good role models than adults. Besides the high vulnerability of incarcerated juveniles to violence and sexual abuse, detention also exposes the child to criminal contamination from fellow inmates and stigma which has long-lasting negative effects on the child's education and employment prospects. In accordance with International Law, the primary purpose for intervention relating to CICL must be the rehabilitation and reintegration of the child, rather than punishment. With the right approach, addressing the underlying risk factors rather than focusing on punishment, chances are higher that the child will not reoffend and become a productive member of society.

### **Objectives and methodologies of the research**

This qualitative research project is committed to highlight the International Minimum Standards in handling CICL and to identify the gaps in minimum guarantees upheld in the national legislation around Juvenile Justice in Cambodia and Vietnam. There will be a focus on juvenile perpetrators of child sexual abuse in a case study. Gender differences will be investigated and attention will be given to the specific situation of girls in conflict with the law.

The research will utilize a combination of 3 methodologies:

- Desk research will be commissioned first to assess what is already known about the subject in question, consisting of review of the international laws and domestic laws in Cambodia and Vietnam and relevant reports related to Juvenile Justice.
- To understand the range of opinions and challenges towards the issue of CICL, the desk research is supplemented with surveys and interviews with selected NGOs who are active in the field of Juvenile Justice. A list of the organizations that were surveyed, interviewed or otherwise consulted is included in the Schedules.
- Key Informant Interviews with Child Protection leads of the selected WV National Offices will complement desk research and survey findings with qualitative observations and case studies.

The research is conceptualized to assist WV East Asia in reviewing legislation and practices and to support and monitor the adherence to child-sensitive procedures and legal assistance for children in the different areas of juvenile justice (initial contact, pre-trial detention, adjudicatory process, sentencing, detention and reintegration). We will look at International Minimum Standards and the capacity of key actors to implement laws, policies and procedures.

The current status of Juvenile Justice in Cambodia and Vietnam will be mapped. Gaps in the domestic legislation will be illustrated and abuses in the daily administration of justice to children in conflict with the law will be identified. A good legal framework alone does not suffice to protect CICL. The laws protecting CICL need to be supported by civil society, implemented in practice and backed up by the necessary support services to provide a framework of effective protection.

At the time of this research, reform initiatives were on-going to align national legislation with International Minimum Standards in both Cambodia and Vietnam and some passed into law along the way. These new or draft laws will be evaluated based on how the remaining gaps in national legislation are addressed.

Analysis of the research findings will be used to formulate recommendations for the child protection staff at WV National Offices, to enhance their position in addressing violations of the rights of CICL and to respond to child protection cases in which children in conflict with the law are involved.

## **CHAPTER 1: CHILDREN IN CONFLICT WITH THE LAW AND INTERNATIONAL MINIMUM STANDARDS**

The rights of CICT are guaranteed through a set of relevant treaties, guidelines and standards like the UN Convention of the Rights of the Child and the UN Guidelines and Rules related to Juvenile Justice set forth in greater detail in SCHEDULE 1: INTERNATIONAL LEGAL FRAMEWORK CICT.

The United Nations Convention on the Rights of the Child entered into force in 1990 and has been ratified by all the Member States of the UN, except for the United States and Somalia, making the CRC the most widely accepted international convention in the UN system. It provides an integrated approach concerning the rights of the child regardless of race, religion or gender and provides for prevention and response to violence against CICT.

The main rights for CICT are contained in Article 37 and 40 of the CRC (full text included in SCHEDULE 1: INTERNATIONAL LEGAL FRAMEWORK) which include basic Juvenile Justice principles like:

- The prohibition of torture or other cruel, inhuman or degrading treatment or punishment;
- No capital punishment and life imprisonment for children under 18 years old;
- Detention as a measure of last resort for the shortest period of time;
- Children in detention need to be separated from adults, have the right to maintain contact with family, have the right to prompt access to legal assistance and have the right to challenge the legality of the deprivation of liberty in court and a prompt decision on such action;
- Basic procedural rights like the presumption of innocence, the right to be informed promptly of the charges, access to legal assistance, the right to a fair hearing and appeal, not to be compelled to give testimony or confess guilt, free access to an interpreter, respect for the privacy of the child;
- The establishment of laws, procedures, authorities and institutions specifically applicable to CICT, and, in particular:
  - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever appropriate and desirable, measures for dealing with CICT without resorting to judicial proceedings.

As a general rule, the administration of justice for children must be grounded in the four guiding principles of the CRC:

- (1) Non-discrimination (Article 2 CRC)
- (2) The best interest of the child shall be the primary consideration (Article 3.1 CRC)
- (3) The inherent right to life, survival and development (Article 6 CRC)
- (4) The right to be heard (Article 12 CRC)

The minimum age of criminal liability is one of the most controversial issues amongst UN member states. General Comment No. 10 of the Committee on the Rights of the Child states the absolute minimum age for criminal responsibility should be not less than 12 years.

The UN Guidelines and Rules on Juvenile Justice provide important principles for the implementation of the Convention on the Rights of the Child. The Riyadh Guidelines cover measures to prevent juvenile offending. The Beijing Rules emphasize that the detention, arrest and imprisonment of a young person should be used as a measure of last resort, and that alternatives to institutional care

should be provided, such as close supervision, intensive care or placement with a family or in an educational setting or home. The need to make the greatest possible use of alternative sanctions is reinforced by the Tokyo rules.

The Bangkok Rules state that providing for the distinctive needs of women prisoners in order to accomplish substantial gender equality shall not be regarded as discriminatory. It provides for special rules for women prisoners that supplement the Standard Minimum Rules for the Treatment of Prisoners, including special rules for juvenile female prisoners. It calls for gender-specific options for diversionary measures and pretrial and sentencing alternatives in the light of the history of victimization of many women offenders and women's caretaking responsibilities. The gender-based vulnerability of juvenile female offenders needs to be taken into account in decision-making on institutionalization of girls.

Article 14(1) of the International Covenant on Civil and Political Rights states: "The Press and the public may be excluded from all or part of a trial [...] when the interests of the private lives of the parties so requires [...] but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires [...]".

Based on the international legal framework, modifications need to be made to the standard justice system to handle CICL: make it child-friendly, ensure the full and effective participation of children, encourage the rehabilitation of CICL, ensure the privacy of the juvenile and avoid stigmatization.

Over the years, the United Nations has reaffirmed and expanded its mandate to strengthen juvenile justice through the adoption of the World Programme of Action for Youth (United Nations, 1995) which sets juvenile delinquency as one of its priority areas and the work of OHCHR, UNICEF and UNODC. The United Nations Interagency Panel on Juvenile Justice (IPJJ) was established following the United Nations Economic and Social Council (ECOSOC) Resolution 1997/30 which specifically requested the creation of a "coordination panel on technical advice and assistance in juvenile justice" and consists of 13 UN agencies and NGOs. The kind of technical assistance activities carried out by the IPJJ range from providing advice and inputs on draft laws and UN resolutions to answering direct requests for documentation related to specific areas of justice for children. A more proactive approach includes the development of tools and working papers on areas in which assistance is needed or requested. At country level, Panel members individually and collectively support legislative and policy reform, conduct comprehensive assessments of the justice systems, convene dialogue processes aimed at catalyzing policy, support capacity-strengthening of the justice systems, and organize and facilitate juvenile justice training sessions. The "Manual for the measurement of juvenile justice indicators" (2006) of UNODC and UNICEF is a resource for Governments on the collection of 15 indicators (including number of children arrested, in detention, in pre-sentence detention, percentage of children receiving a custodial sentence, percentage of children diverted...) for measuring information about the situation of CICL (see SCHEDULE 2: JUVENILE JUSTICE INDICATORS). In 2013 UNODC published a Model Law on Juvenile Justice with related Commentary, designed to provide legal guidance to States in the process of juvenile justice reform and assist them in drafting juvenile justice legislation.

The ASEAN Regional Plan of Action on Elimination of Violence Against Children covers a period of ten years (2016- 2025) and includes the following action in ACTION 2: "Strengthen protective measures for children in conflict with the law by adopting restorative justice approaches, such as diversion and

other alternatives to judicial proceedings and detention, reintegration strategies and ensuring that deprivation of liberty is only a measure of last resort and for the shortest time possible". ACTION 3 calls for the "Establishment of a child-sensitive justice system that will protect the rights of children in civil, criminal and other proceedings both formal and informal. More specifically: Reduce the recourse to judicial proceedings and deprivation of liberty through diversion and other alternative measures, and in addition, protect children from all forms of violence through development of laws, policies, capacities and quality alternatives". The latter has been indicated as one of the priority areas in the first five years: "Indicator: Number of AMS which implement diversion programmes and/or other alternative measures to judicial proceedings and detention."

## **CHAPTER 2. CHILDREN IN CONFLICT WITH THE LAW IN CAMBODIA**

### **2.1 INTRODUCTION**

The population of Cambodia reached 15.1 million in 2013 out of which almost 5.6 million are under 18 years old (37.1%) according to UNICEF country statistics. Poverty and gaps in Cambodia's social support services increasingly lead parents to abandon traditional values leaving their children to live in the street or grow up in residential care. An estimated 72% of children growing up in the largely unregulated residential care industry in Cambodia have at least one living parent. This trend has resulted in high levels of adolescent risk behaviors including drug abuse, gang violence and crime.

The MoJ developed in 2006 the national child justice data collection and monitoring system but Cambodia still lacks reliable data due to weak mechanisms for data collection and monitoring. A data collection report was finalized in 2011 under the leadership of the MoJ with the support of UNICEF and Every Child Cambodia (the "2011 Data Collection Report") based on qualitative and quantitative data which was collected from secondary sources, such as the MoI Prison Department, MoSAVY Department and selected prisons for the period of 2005-2010. But as discussed further in this report, the data are incomplete and make it difficult to determine to what extent Cambodia adheres to International Minimum Standards. For 2011-2015 even less figures are available.

The Child Protection Unit (CPU) is a joint venture between Cambodian Children's Fund and the Cambodian National Police. It was formed in late 2013 to investigate nation-wide the most severe cases of child abuse, while building the capacity of Cambodian National Police. 95 out of 511 cases investigated between July 2013 and October 2015, involved 100 CICL between 5 and 17 years old representing annually between 15,6% and 22% of offenders of very serious crimes against children. The most common accusation was rape (77) followed by sex with minor (7), attempted rape (6), indecent assault (5), murder (3) and attempted murder (2). The age of 60 suspects was not available in which case they were considered adults, so the share of CICL could be even higher. Since the Child Protection Unit only investigates very serious crimes like rape and murder, it is clear that many more children come into contact with the law for less serious crimes and petty offences.

During 2014, the National Office of World Vision Cambodia received a total of six incident reports about CICL, 5 cases of rape and 1 case of indecent assault. All CICL were male and all child victims were female. By mid-November 2015, already 22 cases involving CICL were reported, including four RC. The reported cases were rape (18), attempted rape (2), homicide (1), emotional abuse (1), physical abuse (1) and traffic accident (1). Two rape cases involved in total four minors under fourteen, as young as five, seven and two children aged eleven years old. Thirteen victims of rape by juvenile offenders were under twelve years old of which seven aged between three and six years old. In the case of the traffic accident, the minor perpetrator, a RC of World Vision, was sent to jail even though, according to the information gathered by WV, the adult male victim, a police officer who eventually passed away, was drunk, was not wearing a helmet and was talking on the phone while driving a motor cycle. World Vision staff contacted a lawyer from the legal aid NGO International Bridges to Justice (IBJ) to assist. Except for the suspected perpetrator of emotional abuse, all CICL were male. Only the homicide victim, the victim of the traffic offence and the victim of physical abuse were male, all other victims (all victims of sexual abuse) were female.

The sudden rise of reported cases involving CICL between 2014 and 2015 is due to the fact that until early 2014 there was no awareness around CICL and incidents involving juvenile offenders were not reported by field staff of World Vision Cambodia, even if these are considered Child Protection Incidents by World Vision definition. This changed thanks to awareness training given to the World Vision field staff on the Child Protection reporting, the type of incidents and how to intervene, where specific attention was paid to identify cases of CICL. From the details shared however, it appears that, except for the traffic accident, responses of World Vision staff are still exclusively focusing on support to the victims and penalization of juvenile perpetrators rather than on protection and rehabilitation of CICL.

## **2.2 THE NATIONAL LEGAL FRAMEWORK IN CAMBODIA FOR CICL BEFORE THE JUVENILE JUSTICE LAW WAS APPROVED**

In 1992 Cambodia ratified several international conventions related to CICL, including the United Nations Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 31 of the Constitution of Cambodia states that the State shall recognize and respect human rights as stipulated in these conventions and Article 48 emphasizes and gives extra protection to the CRC and guarantees that the State shall protect the rights of children. Some reports describing the status of Juvenile Justice in Cambodia state that this means that these conventions are directly applicable by the domestic courts in Cambodia. Other reports state that the international conventions cannot be directly enforced in court but national law must be interpreted in a way that is consistent with both the Constitution and the international conventions.

Before the Juvenile Justice Law passed into law, the legislative framework involving CICL was divided over various Cambodian laws and Guidelines including the Constitution of the Kingdom of Cambodia (1993), the Criminal Code (2009), the Code of Criminal Procedure (2007), the Civil Code (2007), the Law on Prisons (2011), the Law on Press Regime (1995), Prakas No. 62 on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims or Witnesses (2008), Sub-decree No. 162 on the Creation of the National Treatment and Rehabilitation Center for Drug Addicts (2010).

SCHEDULE 2. CURRENT LEGAL FRAMEWORK JUVENILE JUSTICE IN CAMBODIA BEFORE THE JUVENILE JUSTICE LAW WAS APPROVED gives a detailed overview of the existing domestic law in relation to aspects regarding CICL before the Juvenile Justice Law got approved, which already offered prima facie a fairly sound legal protection for the CICL:

### **2.2.1 Criminal Responsibility of Minors**

The age of criminal liability is fourteen years and over.

### **2.2.2 Protection of CICL in the different phases of the Juvenile Justice System**

The law prohibits physical abuse against any individual and criminalizes torture and acts of cruelty. The crime is further aggravated in case it is committed against children.

The Cambodian Law further protects CICL as follows in the different stages of Juvenile Justice:

### **2.2.2.1 Initial Contact (arrest or apprehension)**

The law prohibits police custody for minors under fourteen years old and sets a maximum duration of police custody depending on the age of the minor (above or under 16) and seriousness of the offence (felony or misdemeanor) between 24 and 48 hours.

The judicial police officer shall immediately inform the minor's parents or representative, notify their decision and the reasons to the detainee and inform the detainee about the rights to receive assistance of a lawyer.

### **2.2.2.2 Pre-trial detention**

In principle, the charged minor shall remain at liberty and will only exceptionally be provisionally detained for offences involving a punishment of one year or more when necessary for reasons defined by law, which need to be included in the decision, and only after being given the chance to present his means of defense by his lawyer.

The law also limits the period of provisional detention depending on the age of the minor (above or under 16) and seriousness of the offence (felony or misdemeanor) for a period between two and six months.

Judicial Supervision is offered as an alternative to provisional detention, subjecting a charged person at liberty to one or more obligations.

A minor under 14 years old may not be temporarily detained nor be placed under Judicial Supervision but can be send to his guardians or, in the absence of a guardian, to a Provisional Education and Care Center.

### **2.2.2.3 Adjudicatory process**

Confessions obtained by physical or mental force shall not be admissible as evidence of guilt and the accused shall be considered innocent until the court has judged finally on the case.

A minor shall always be assisted by a lawyer and the court shall appoint a lawyer in case no lawyer has been chosen. The lawyer must be present at the interrogation of the minor by the investigating judge and during the hearings at the court.

Trial hearings shall be conducted in public unless a public hearing will cause a significant danger to the public order or morality. Unless there is permission from the court, the law prohibits the press to publish information, photographs or drawings that may make it possible for the readers to identify and know the name of a child under the age of 18 in any civil or criminal suits.

### **2.2.2.4 Sentencing**

The primary intervention for minors who commit offences according to the law shall be to subject them to supervision, education, protection and assistance and the law

elaborates on the types of measures. This provides the court the option to divert the minor away from the criminal justice system.

A court may impose a criminal penalty on a minor of fourteen years and over if warranted by the circumstances of the offence or the character of the minor.

The capital punishment and life imprisonment is not allowed for minors. Minimum and maximum imprisonment sentences and fines are reduced by half and mitigating circumstances have more weight than in the case of adult offenders.

The law explicitly provides for alternative sentencing like Community Service and the issuance of a reprimand and includes the possibility of a suspended sentence with probation limiting the specific obligations which can be made applicable to minors.

#### **2.2.2.5 Detention (deprivation of liberty)**

In accordance with the law, minors shall be subject to a specific and personalized regime with heavy emphasis on education and vocational training, rehabilitation and reintegration.

Imprisoned minors shall be separated from adults, pre-trial detainees must be separated from convicts and female prisoners must be separated from male prisoners.

Any form of torture or mistreatment of a prisoner shall be prohibited and is punishable by law. Use of means of restraint as a punishment shall be prohibited, with the exception of handcuffs in exceptional circumstances.

Any disciplinary action on prisoners shall be taken at the minimum level necessary and any form of corporal punishment, detention in a dark cell, reduction of diet, collective punishment and the use of a prisoner to punish another prisoner shall be prohibited.

Any prisoner is entitled to file a complaint about abuse committed by fellow prisoners or by prison staff.

#### **2.2.2.6 Education, reintegration and rehabilitation**

One of the objectives of the law is to provide for the education, reformation, rehabilitation of prisoners to reintegrate them back into the society and to prevent recidivism and special attention shall be paid to the particular needs of juveniles. Within six months before release, convicted prisoners shall benefit from a reintegration program.

Automatically rehabilitation by law will be obtained after 5 years expired from the date of serving the sentence if the sentence did not exceed 5 years or was a fine and after 10 years in case the sentence exceeded 5 years.

## **2.3 LAW REFORM AND GAP ANALYSIS**

The new Juvenile Justice Law further improved the Cambodian legislative framework on CICL and aligned it further with International Minimum Standards. The process of developing a Juvenile Justice Law has been ongoing for more than fourteen years and basically stalled in 2010 when the draft got rejected by the Council of Jurists.

In November 2015 the MoSAVY and the Chief of Cambodia National Council for Children established a Monitoring Committee on a Draft Juvenile Justice Law composed of 24 Government representatives, UNICEF and five NGO representatives, including WV Cambodia to foster the approval and implementation of the draft JJ Law.

On November 30, 2015 the MoSAVY had a final meeting to conclude further amendments to the draft and sent it to the Council Ministry for review and to continue the approval procedure on the draft Juvenile Justice Law. On April 22, 2016 the Council of Ministers approved the draft Juvenile Justice Law and it was adopted by the National Assembly without further debate on May 30, 2016.

The Juvenile Justice Law (partly) addresses several of the remaining gaps in the Cambodian legislation, as discussed below:

### **2.3.1 A separate Juvenile Justice System**

Even if there were specific provisions in the Criminal Code and Code of Criminal Procedure handling CICL, a separate Juvenile Justice System, i.e. Laws, procedures, authorities and institutions specifically applicable to CICL, in accordance with Article 40.3 CRC did not exist.

#### **2.3.1.1 A separate Juvenile Justice Law**

The Juvenile Justice Law recognizes that there is a need to make specific modifications to procedures in order to accommodate minors in the Justice System and develop Child-Friendly Procedures i.e. processes and procedures that encourage the full participation of minors via the use of language, attitude appropriate to the level of the minor's understanding and in an environment that provide the minor safety, security, rights and basic needs. Interviewing the minor shall be conducted in private, confidential, child-friendly manner (Article 22 and 35) and during the hearing the court shall use child friendly procedures (Article 48).

The Juvenile Justice Law thus makes a huge step towards a separate Juvenile Justice System. It aims to determine the special procedures, sentencing and detention in dealing with offences committed by minors. However, the provision included in the Criminal Procedure Code, Penal Code and other relevant laws remain applicable unless otherwise stipulated. (Article 2)

#### **2.3.1.2 Social Agents specialized in minors**

The Juvenile Justice Law introduces the Social Agent specially trained in minors and laws applicable to minors appointed or accredited by MoSAVY. These specialized Social Agents have the duty to provide social services to the minor throughout the different stages of the juvenile justice proceedings including meeting with and providing immediate services to the minor, preparing a psycho-social report and providing recommendations on the minor's social

welfare and conditions to the prosecutor and the court, preparing a diversion plan and providing rehabilitation and reintegration services for CICL (Article 11 and 46). The social agent needs to be notified by the Judicial Police in case a minor is brought to the police station, so they can attend the interrogations by the judicial police, prosecutor, investigating judge and trial judge and so they can be consulted and asked to make a report when required.

#### **2.3.1.3 Specialized department within the Cambodian National Police (CNP) responsible for CICL**

There used to be only a specialized unit at the Cambodian National Police to investigate the worst forms of crimes against children in Cambodia. The Juvenile Justice Law introduces a Judicial Police Specialized in minors to handle CICL and the arresting or apprehending officer will refer the minor to the specialized Judicial Police for minors. (Article 12)

Moreover, the Judicial Police get the authority to examine and resolve petty Crimes. The Judicial Police Officer can issue a verbal or written warning, refer the minor to his parents or guardian and when appropriate mediate between the parties to resolve the dispute. (Article 13)

Every police unit shall maintain a separate register for recording minors (Article 20).

#### **2.3.1.4 A separate court system for juvenile offenders**

The Juvenile Justice Law does not establish a separate juvenile court but at least requires that those handling juvenile cases are specially trained on juvenile justice and children's rights.

The prosecution of cases involving minors shall be assigned to representatives of the Prosecution Department who have been specially designated to handle cases of minors, whether or not exclusively. Only representatives of the Prosecution Department who have received specialized training on child rights and juvenile justice may be designated to handle cases of minors. (Article 24)

The investigation of any cases pertaining to the minor shall be the competency of investigating judges specialized in minors. (Article 31)

The trial at appeals court and Supreme Court shall compose of judges who, at least one among them, specialize in juvenile justice. (Article 55) The Juvenile Justice Law does not specify the number of judges at Appeals and Supreme Court.

There is no requirement for specialized trial judges in first instance in the Juvenile Justice Law. (Article 44) At least one out of three judges should be specialized in juvenile justice as is required for judges in the appeals court and Supreme Court.

#### **2.3.1.5 Specialized juvenile detention center**

The Ministry of Interior, General Department of Prisons is responsible for dealing with all prisoners in Cambodia, including juveniles (pre-trial detainees as well as convicted juveniles) and there is no specific unit addressing CICL.

Article 76 of the Juvenile Justice Law mentions the establishment of a Youth Rehabilitation Center under the management of MoSAVY. It is not entirely clear what the function of the center will be, since this will be determined by sub decree. It seems that children will still be detained in adult prisons as well. Detention officers shall receive appropriate training on child psychology, child welfare and international standards on child rights and treatment of juveniles deprived of their liberty (Article 79). The Juvenile Justice law suggests a further separation of minors from other detained minors based on the nature and the circumstance of the offence, the minors' age and character, the minor's mental and physical health. Female minors must be kept under the care of female personnel. (Article 82)

The Juvenile Justice Law also contains provisions on the conditions of detention and requires that the minor receives due care, protection and all necessary personal requirements in accordance with his/her belief, religion, age, sex, and character. The minor is housed in small group dormitories or individual rooms, participates in leisure sport and recreational activities, is provided appropriate and timely mental and physical health services, medical checkups, programs to promote self-development and reintegration after release, education and vocational training. (Article 81)

### **2.3.2 CRC Guiding principles**

The CRC Guiding principles related to CICL were previously not yet explicitly included in Cambodian law.

Article 5 of the Juvenile Justice Law explicitly includes the CRC underpinning principles and child justice principles related to CICL:

- Consider the best interest of minors.
- Ensure the minor's right to life and maximum survival and development.
- No discrimination against minors for any reason.
- All minors shall be accorded humane treatment and dignity.
- All minors shall be given an opportunity to express their views freely, and their views shall be given weight in accordance with their age, physical development, intelligence, and maturity toward their action.
- All procedures shall be conducted in child friendly manner.
- The arrest, detention and imprisonment of a minor shall be a measure of last resort and for the shortest period of time.
- Torture, corporal punishment, or other treatment which is cruel, inhumane, or degrading in all forms on the physical and mental health of a minor shall be prohibited.
- Presumption of innocence until proven guilty.

The Juvenile Justice Law mentions that priority shall be given to handling minors' cases especially minors in pre-trial detention (or in detention in case of appeal case) and the judge shall consider release of the detained minor whilst awaiting trial or during appeal in the best interest of the child. (Article 45 and 62).

### **2.3.3 Age of criminal liability**

The age of criminal liability (14 years old) is in line with the CRC since the Committee on the Rights of the Child recommends that the minimum age for criminal responsibility should be not less than 12 years.

There are sometimes problems to prove the age of the minor because of lack of birth registration. When the minor tends to lie about his age to be able to get a job, this will be used against him in a later stage to prove that he is older than fourteen, sixteen or eighteen, even if he is not.

The Juvenile Justice Law provides for a shift in the burden of proof in favor of the minor because any doubt as to the age of a minor, shall be resolved in the minor's favor. Competent authorities shall seek evidence to determine the age of a minor as soon as possible. (Article 9).

In case of a dispute as to the age of a minor at the time of commission of the offence, the Judicial Police shall immediately forward the case to the Prosecutor. (Article 14). The Prosecutor's role in verifying the age of the minor is included in Article 25.

### **2.3.4 Children without proper parental or guardian care and supervision**

There used to be a big gap for children who don't have parents or guardians or who don't receive proper parental or guardian care and supervision. The law only stated that a minor under fourteen can be sent to his guardians or in the absence of a guardian to a Provisional Education and Care Center. But usually a minor under fourteen is just released and not further cared for, referred or treated even in case of very serious crimes like rape or homicide. Children over fourteen in this situation with an absence of parental supervision usually end up in prison even for minor offences because of lack of other available options.

The Juvenile Justice law introduces the concept of "Minor in need of care and protection" meaning a minor who is in need of care and protection due to the absence of parents or proper parental or guardian care and supervision, who are at risk of being abused or harmed or pose a threat to the safety and security of the public or themselves. In case the minor is in need of care and protection, the minor shall be referred to the Municipal or Provincial Department of Social Affairs to take further action in accordance with the minor's condition and welfare. Once the minor is admitted, and the minor is deemed by the Department of Social Affairs to be a minor in need of care and protection, the Department shall ask the court to suspend or withdraw parental authority or remove guardianship. The department or office of social affairs shall ask the court to decide the guardianship of the minor.

Further clarification is needed about services available for this category of minors to keep them from falling between the cracks of the Juvenile Justice System.

### **2.3.5 Arrest of children**

There are several sections in the Juvenile Justice Law that suggests that violence should be avoided at the apprehension and arrest of CICAL: Handcuffs and shackles shall not be used unless they are absolutely necessary and all other alternative measures have been exhausted (Article 5), the arrest of a minor should avoid any humiliation and indignity (Article 15), the

search of a minor requires the permission from the prosecutor and the search of a female minor can only be done by a female police officer or a suitable adult female. (Article 16)

The Juvenile Justice Law further limits the possibility to arrest minors: A minor aged 14 to below 18 years of age may be arrested by Judicial Police officers only if the minor commits a misdemeanor or felony in flagrante delicto. Moreover, minor aged 14 to below 16 years of age may be arrested in case the minor commits a misdemeanor offence intentionally. (Article 15).

Police custody is mentioned as a measure of last resort and the Judicial Police may keep a minor from 14 to below 18 years of age in its custody if he believes on reasonable grounds that the minor is very likely to abscond, discard evidence, harass or endanger the safety of witnesses or victims, or pose a danger to public safety or the minor's security. However, Judicial Police may only keep a minor from 14 to below 16 years of age in its custody if the minor commits a misdemeanor offence intentionally. (Article 17)

A minor in custody shall be segregated by gender and separated from adults and shall not be subjected to torture, force, threat, intimidation, or any act or treatment which is inhumane or degrading. (Article 23)

#### **2.3.6 Pre-trial detention**

Where under the CCP states that in principle, the charged person shall remain at liberty and only exceptionally, the charged person may be provisionally detained under certain conditions, the Juvenile Justice Law uses even stronger language making pre-trial detention "a measure of last resort" in line with Article 40 of the United Nations Convention on the Rights of the Child and social conditions of the minor need to be considered prior to issuing a pre-trial detention order. (Article 39)

Judicial Supervision is confirmed as an alternative to Pre-Trial detention and adds obligations that can be ordered by the investigating judge on top of the options in Article 223 of the CCP: submission of minor to close supervision of the parents/guardian/support person/family member, a state agency or designated NGO to admit and care for minors. (Article 40)

#### **2.3.7 Access to a lawyer**

The detainee used to have access to a lawyer only after a period of twenty-four hours of police custody. This rule put the CICL at risk for forced confessions and other forms of abuse during those initial twenty-four hours.

The Juvenile Justice Law gives the minor the right to be assisted by a lawyer and to be assigned a lawyer free of charge from the earliest possible time. (Article 6). In accordance with Article 18, the Judicial Police will provide a pro bono lawyer as soon as possible if the minor cannot afford a lawyer and will present a list of lawyers to choose from.

The new law also gives the minor the right to communicate for 30 minutes in private with his designated representative or support person, social agent or lawyer prior to the start of the interview by the Judicial Police (Article 21). Prior to the start of the interview, judicial police shall inform the minor of his basic rights, particularly, the right not to answer. The Interview

shall be conducted in a private, confidential, child-friendly manner and in the presence of the minor's lawyer. The designated representative or support person and social agent are entitled to participate in the interview. The designated representative can be excluded if that is in the best interest of the minor. (Article 22)

The same rights apply for the interview by the prosecutor (Article 26) and by the investigating judge. (Article 35)

In case the lawyer is absent, the investigating judge shall adjourn the interview and inform the lawyer to participate in the interview except in case the minor poses a danger or is likely to discard evidence. (Article 36)

The assistance of a lawyer and assignment of a pro bono lawyer is also confirmed during the trial stage. (Article 50)

Article 6 of the Juvenile Justice Law also explicitly mentions other basic procedural rights of minors in conflict with the law including the right to refuse to answer questions with or without the presence of a lawyer and not to be forced to give a testimony against him/herself.

#### **2.3.8 Privacy of the minor at the trial stage**

A public trial has always been the rule also in case of CICL, which could lead to stigmatization of the CICL and affect his safety and chances of reintegration and rehabilitation.

The Juvenile Justice law stipulates that the cross-examination and the pronouncement of the judgement shall be conducted in closed court and only those with rights, obligations or interest in the case are entitled to participate in the hearing. (Article 47)

Releasing or broadcasting the image and information that could reveal the identification of the minor and affect the minor's rehabilitation shall be prohibited in line with Article 5 of the new law. The right to privacy is also explicitly included in Article 6 of the Juvenile Justice Law.

Under special circumstances, the minor's lawyer, social agent or the Prosecutor may request the Court to place the minor behind a screen or use other alternate means of providing testimony. (Article 48)

#### **2.3.9 Admission of guilt**

Any admission of guilt at trial shall be supported with additional evidence of the offence. (Article 53) This is important because of persistent complaints about forced confessions.

#### **2.3.10 Diversion**

Even if previously certain diversion options were available to judges by subjecting CICL to supervision, education, protection and assistance measures, there were no clear guidelines to implement these measures as an alternative to detention.

The Juvenile Justice Law includes provisions with regard to diversion authority of the prosecutor, investigation judge, trial judge and appeals court (Article 28, 38, 52 and 58). In each of these stages, chapter 10 "Diversion" of the Juvenile Justice Law applies which contains

the definition and purpose of Diversion, as well as detailed provisions on minimum conditions and diversion criteria, diversion measures, formulation of diversion plan, implementation of the diversion plan, adjustment of the diversion plan and the failure of the diversion plan.

The diversion measures include one or more of the following obligations: to attend school or vocational training, spend a specific number of hours with his/her family, serve community service, attend a program to keep the minor from re-offending, stay at a specific place during a specific period or make restitution for the damage caused to the victim.

The minor has to freely and voluntarily admit guilt and apologize to the victim in order to be eligible for diversion (Article 63) but Admission of guilt for the purposes of diversion, is not admissible as evidence in any further criminal proceedings for the same offence (Article 53).

In case the minor successfully implements the diversion plan as attested jointly by the social agent and designated person, depending on the phase where diversion takes place:

- the prosecutor shall file the case without processing (Article 28)
- the investigating judge shall issue a non-suit order (Article 38)
- the court shall decide to acquit the minor. (Article 52)

In case the minor does not comply fully with the obligations agreed to in the diversion plan, the diverting authority may decide to issue a new diversion order or send the case forward for prosecution through formal criminal proceedings, taking into account the views of the minor, the designated representative, the support person and the social agent. (Article 71)

In case of a diversion order, the victim can file a complaint for compensation at the civil court or if diversion takes place at the trial stage, the trial judge can issue a judgement on civil compensation.

#### **2.3.11 Rehabilitation and reintegration of CICL into society and the community**

The Juvenile Justice Law further supports the rehabilitation and reintegration of CICL into society and the community by giving the investigating judge the option to order the concerned education establishment or employer not to suspend the minor's schooling or minor's employment if that minor is not in pre-trial detention. In case of suspension during pre-trial detention followed by an acquittal order, the educational institution or the employer shall employ the minor to work as usual. (Article 37)

#### **2.3.12 Procedure for parole or judicial rehabilitation applicable to minors**

Where no separate procedure for parole applicable to minors existed previously, the Juvenile Justice Law makes the conditional release of the minor possible after two years is served in case of felony, after one year is served in case of misdemeanor or after one month for petty crime (Article 72).

The Juvenile Justice Law also introduces provisions on judicial rehabilitation that are specifically applicable to CICL. The application for rehabilitation may be submitted to the Criminal Chamber of the Court of Appeal after two years is expired since the sentence was served in case of a felony or after one year in case of misdemeanor or petty offences (Article

74). And the Lawful restoration of qualification shall be provided under the following circumstances (article 75):

- Five (5) years period for felony offence
- Two (2) years period for misdemeanor offence
- Six (6) months period for petty offence

### **2.3.13 Conditions of detention**

Even if the Law on Prisons and the Juvenile Justice Law takes some positive steps to protect prisoners' rights in terms of prison infrastructure and services, there are still some remaining gaps related to conditions of detention:

- **Minimum Standards for Prison Infrastructure.** The Law on Prisons and the Juvenile Justice Law remain vague and fail to provide clear minimum standards in areas such as sanitation, cell space and recreation. Instead, the Law on Prisons refers to the Prakas of the Ministry of Interior to specify the minimum standards for prison infrastructure. These have been lacking to this point.
- **Basic rights of children in detention.** The new law makes the basic rights of minors in detention (Article 80) and the rules regarding the personnel working in the center (Article 84) only applicable to children detained in the Youth Rehabilitation Center. The children detained in prison and other detention centers thus remain subject to the Law on Prisons, which is designed for adult prisoners. A differentiated treatment appropriate for minors should be given to all children in detention.
- **Protective mechanisms and processes in the area of prison discipline and prison grievances.** The law also fails to provide sufficient protective mechanisms and processes in areas such as prison discipline and prison grievances. The Juvenile Justice Law confirms the right of access to a confidential and effective complaints mechanism in relation to conditions and treatment in detention and the right to have a fair disciplinary hearing (Article 80) but does not contain further implementation measures and procedures to support these rights effectively. Moreover, these rights only apply to minors detained in the Youth Rehabilitation Center.
- **Use of force in handling children.** Article 49 of the Law on Prisons stipulates that the Prison Chief may use armed force to ensure the security and safety of the prison. In serious cases, the Prison Chief shall report and request the intervention of the joint armed forces of the provincial/municipal department. This provision is expansive and vague. There is a need to strengthen the provisions on the use of force, such that it is only used if and to the extent that it is absolutely necessary in proportion to the threat, with a presumption against all use of force in handling children.
- **Use of solitary confinement as disciplinary sanction for children.** Article 52 on the Law on Prisons states that a prisoner who commits a disciplinary offence against the prison regulations which seriously affects the good order of the prison, shall not be considered for sentence reduction and amnesty for a period of one year. In case of recidivism, he/she must be detained in a separate cell from 14 to 20 days. During disciplinary action by separate detention, the prisoner shall not be authorized to meet with visiting relatives or to participate in activities in the prison. This is a very harsh punishment and there is no exception or different

treatment included in the law for juveniles that takes into account their vulnerability due to their age. The Juvenile Justice Law only grants minors detained in the Youth Rehabilitation Center the right to be free from torture or cruel, inhumane and degrading treatment or physical punishment, or other forms of torture including isolation, restriction or denial of contact with family, reduction of diet and forced labor (Article 80). Based on this provision the use of detention in a separate cell with denial of contact with their family will no longer be permitted as a disciplinary measure in Youth Rehabilitation Centers but minors detained in prison will not have the same level of protection.

- **Collection of goods or money from visitors by prison officials for the privilege of visiting a prisoner.** The law on Prisons does not explicitly forbid the practice of requiring visitors to pay bribes in order to visit their friends and relatives in prison and the practice of requiring prisoners to pay for even the most basic prison amenities, from clean water and electricity to sleeping space. Since this is still very prevalent in practice, it would be good to include provisions to prohibit and penalize these practices in the Law on Prisons. Prison Procedure No. 8 issued by the MoI General Direction of Administration Prisons Department in 2003 forbids in article 4.1 n) the practice of requiring bribes from visitors for the privilege of visiting a prisoner and prison officials found to be conducting this practice will be subject to disciplinary action. But the current legal status is unclear since these were written before the Law on Prisons (2011) and it should be included in primary legislation.

#### **2.3.14 Arrangements to assist juveniles in their transition from detention back to their local community**

Once released, the juveniles are on their own. The Juvenile Justice law does not contain provisions in line with rule 29 (1) of the *Beijing Rules* which establish that efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centers and other such appropriate arrangements that may assist juveniles in their transition from detention back to their local community.

## **2.4 THE PERSISTING GAPS BETWEEN THE LEGAL FRAMEWORK AND DAILY PRACTICE IN THE DIFFERENT PHASES OF THE JUVENILE JUSTICE SYSTEM**

Monitoring Children's rights in Cambodia is challenging and violations remain under-reported. According to the Cambodian Center for Human Rights, human right defenders increasingly face serious threats and are silenced and intimidated by the Cambodian Government. The UN Human Rights Committee expressed its concern about reports of killings and intimidation of human rights defenders in its 2015 concluding observations. The International Center for Not-for-Profit Law concludes that the 2015 law on Associations and NGOs adds burdensome procedures to register NGOs and associations, lacks procedural safeguards and gives the government full discretion to deny the registration of an organization. A draft 'Cybercrime Law' with provisions that would introduce restrictions on freedom of speech on the Internet is currently being considered in Cambodia's parliament.

The Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment was ratified by Cambodia in 2007 but the Cambodian

Authorities still fail to establish the required independent National Preventive Mechanism to monitor and prevent torture and ill-treatment in places of detention. The UN Human Rights Committee noted in its 2015 concluding observations that the establishment of a national human rights institution has been long overdue.

Some of the NGOs interviewed or surveyed report that it has been made increasingly complicated to secure the necessary access permits to prison from the government authorities to monitor children's rights' violations in Cambodian prisons. There is at times resistance from prison authorities to allow the NGO staff the necessary privacy to assess potential participants of their programs. LICADHO mentions in their reports that prison visits by officials and NGOs are often orchestrated. Some prisoners mention that it was the only time they were allowed out of cell time and that they were questioned by cell leaders or authorities after such visits.

The UN Human Rights Committee in its 2015 concluding observations expressed its concern at the alleged corruption within the penitentiary institutions and within the judiciary.

The 2011 Data Collection Report confirms that the mechanisms for juvenile justice data collection and monitoring are not yet properly functioning in Cambodia. The data collected are insufficient to concentrate on the 'core indicators' highlighted in the 'Manual for the Measurement of Juvenile Justice Indicators' as being most important and only some of the quantitative indicators have been addressed in the report depending on availability of the necessary data and not based on importance. The lack of data also makes it difficult to monitor whether the law is respected, for example where dates of trials are not provided, it is not possible to determine whether the maximum period of pre-trial detention is exceeded or whether juvenile cases are dealt with expeditiously. The Manual of Indicators therefore correctly states that the failure to collect and record key data regarding juvenile justice adequately contributes to a failure to ensure the protection of CICL.

The Cambodian Center for Human Rights (CCHR) conducted a criminal trial monitoring project between August 2009 and June 2012 at Phnom Penh, Kandal, Banteay Meanchey and Ratanakiri Courts of First Instances which produced data on a total of 219 cases involving juveniles, out of a total of 2,558 trials monitored. Fair trial rights were also monitored by CCHR at the Court of Appeal between 1 March 2013 and 31 January 2014. Out of the 270 individual defendants involved in appeal cases monitored, eight were juveniles at the time of the offense, six of them were between 16 and 17 at the time of the offense and one was under 14 years old. As discussed in more detail below, a very high percentage of juveniles tried are being put in pre-trial detention and nearly all juveniles found guilty received a prison sentence.

A baseline study conducted by LAC in 2011 on the situation of CICL ('2011 LAC Baseline Study') sought to investigate gaps in the justice system in Cambodia in order to provide recommendations to a project called 'Improved protection for CICL' funded by the EU and Save the Children Norway. Semi-structured interviews were conducted with judicial police, judges/prosecutors, prison officers and a random sample of 93 juveniles imprisoned in four prisons. As further discussed, the study revealed that violence against children persisted at all stages of the justice system.

#### **2.4.1 Initial Contact (arrest or apprehension)**

GAP: Torture and ill-treatment of detainees by law enforcement personnel persists, especially in the context of police custody and for the purpose of obtaining confessions. There is a

shortage of lawyers, particularly in remote provinces, which impairs early access to legal aid and contributes to violation of the rights of CICL.

According to the legal aid NGO International Bridges to Justice (IBJ), there is a shortage of lawyers in the provinces, which impairs early access to legal aid and subsequently the guarantee that the rights of CICL will be respected. The law provides that suspects have access to a lawyer only 24 hours after arrest. According to IBJ, no systematic information is given to the suspect that he/she has the right to a lawyer and law enforcers do not systematically notify the CICL of the reasons of the arrest. According IBJ, it is currently not clearly stated in the law that the presence of a lawyer is required during the interrogation of a juvenile.

The UN Human Rights Committee noted in its 2015 concluding observations that it is concerned about reports of torture and ill-treatment of detainees by law enforcement personnel, especially in the context of police custody and for the purpose of obtaining confessions. The Committee is concerned that, under the Code of Criminal Procedure, those who are arrested have access to a lawyer only after 24 hours in police custody. It also expresses concern over the shortage of lawyers, particularly in remote provinces, and the limited access to legal aid by persons charged with a criminal offence. The Committee notes that lack of access to counsel in these regards can substantially contribute to the torture and ill-treatment of those in custody.

Authorities do not allow NGOs to regularly monitor places of police detention. 90 % of all abuse reported to LICADHO since 2008 was taking place during police custody, often in order to extract confessions.

According to the 2011 LAC baseline study, Children reported that they were handcuffed (63.4%), beaten (49.5%), and forced to admit the crimes (12.9%) and 74.2% of them were not given a reason for their arrest. The investigating interview was conducted without lawyer (74%), 67.7% were not informed about the legal process, and 59.1% were not informed about their rights.

The three-year evaluation report of This Life Cambodia revealed that several boys reported being forced to make statements for the police report that were not true, arrested for crimes that were more serious than the crimes they had committed or where they were not involved in the crime at all.

The ICRC noted in their 2015 activity report that they engaged in dialogue with judicial and law enforcement authorities with regard to the treatment of suspects during the arrest and detention process.

#### **2.4.2 *Pre-trial detention***

GAP: A high percentage of the total number of juveniles in detention are pre-trial detainees. This is not in line with international law with regards to the use of pre-trial detention which states that the imprisonment of juveniles, particularly un-convicted juveniles, should be a measure of absolute last resort. There is evidence that in some cases the duration of pre-trial detention exceeds that of the highest allowed detention period in accordance with the CCP.

Juvenile pre-trial detainees are often not separated from adults and don't have access to education or vocational training.

The 2011 Data Collection Report indicates that the share of pre-trial detainees drastically went down from 85% in 2005 and 76% in both 2006 and 2007 to 29,5% in 2010 but this is also partly due to the increase in the total number of juveniles detained. No data were available on the number of juveniles detained pre-trial between 2011 and 2014. The data provided by the Department of Prisons for October 2015 statistics indicate that 67% of the total amount of juveniles in detention are pre-trial detainees so there is again a rise in pre-trial detention in recent years.

The 2011 Data Collection Report also mentions that a number of juveniles are being held in detention prior to a comprehensive consideration of the charges being made and subsequently released due to insufficient information for the prosecution to pursue the charge. This indicates that the necessity is not sufficiently considered before ordering pre-trial detention and it is certainly not ordered as a "measure of last resort". The data gathered also revealed a substantial amount of cases of excessive pre-trial detention. For example, in Kampong Cham prison half of those detained in 2010 had been detained in excess of the stipulated time frames for pre-trial detention.

According to CCHR's data gained from the trial monitoring project, 87% of juveniles tried are being put in pre-trial detention. When asked for the reason for imposing pre-trial detention, it appeared that the cited reasons were not in line with the criteria set forth in Article 205 CCP (Article 205 CCP states that provisional detention may be ordered when it is necessary to: 1. stop the offense or prevent the offense from happening again; 2. prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices; 3. preserve evidence or exhibits; 4. guarantee the presence of the charged person during the proceedings against him; 5. protect the security of the charged person; 6. preserve public order from any trouble caused by the offence). In fact, in the most recent monitored periods the prevalence of pre-trial detention for juveniles has even exceeded that for adults. In some cases monitored, the pre-trial detention period exceeds that of the highest allowed detention period in accordance with Article 213 CCP and juvenile defendants were not separated from adults.

These high levels are confirmed by legal aid NGO International Bridges to Justice who reports 75% of their CICL clients were kept in pre-trial detention for both 2014 and 2015. It is worth noting that amongst the CICL who were not detained in pre-trial detention, three of them had escaped. IBJ further noted that due to lack of lawyers, delays occur in the procedure and juveniles are kept in pre-trial detention awaiting an available lawyer to represent their case. IBJ confirmed that juveniles were often not separated from adults while in pre-trial detention and juveniles would not have access to education or vocational training.

The 2011 LAC Baseline Study revealed that 41% of the convicted children reported that they had been temporarily detained for more than six months before they were convicted and at least 16% reported that they were below 14 years old at the time they were placed in temporary detention. 47,5% of the Prison officers also reported that there were children placed in temporary detention over the limited period of time.

### 2.4.3 **Adjudicatory process**

GAP: Legal representation of minors is not always effective because of a shortage of specialized pro bono lawyers. The court procedure is not child-friendly: the minor's privacy is not adequately protected and inadequate language is being used forcing minors to answer or confess.

The 2007 Criminal Procedure Code mandates legal representation for any child accused. However, due to the absence of an effective comprehensive legal aid system in Cambodia, NGOs often need to offer this much needed legal representation and there is a shortage of pro bono lawyers working on children's rights.

The 2011 LAC study reports that almost 8% of juveniles were prosecuted without the presence of lawyers and 15.5% of them had never met with their lawyers outside the court. 44% reported that judges and prosecutors used inappropriate language, shouted at them or forced them to answer or confess.

CCHR's trial monitoring data shows that the administration of juvenile justice in Cambodia fails to provide the privacy required under international law. In only three of the 219 cases monitored were measures taken to protect the privacy of the juveniles and the video conference system installed at the Court of Appeals since January 2013 was never used successfully.

### 2.4.4 **Sentencing**

GAP: Children who are convicted of a crime in Cambodia are almost exclusively sentenced to prison. Alternative sentencing is hardly ever applied by judges in Cambodian courts despite provisions in international and national legislation promoting non-custodial options with prison sentences kept as a measure of last resort. No special gender-related considerations are made at trial and sentencing of juveniles.

The 2011 Data Collection Report indicates that only limited data is available on duration of sentences. Where available, there are big discrepancies in the sentences given. The report also looks at the indicator relating to the percentage of sentenced children who receive a custodial sentence. According to the Manual of Indicators the 'last resort' principle in sentencing means that deprivation of liberty should not be imposed unless in the opinion of the judge the objective of the measure, ensuring the child's welfare, could not be achieved in a non-custodial setting. The data suggesting very long sentences for as long as 15 years, show that children are being placed for very long periods of time in environments which have been proven to be detrimental to their psychological and physical well-being. It is questionable whether the duration of these sentences are in line with the provisions on reduced sentences of the 2009 Penal Code. The *Beijing Rules* outline that "deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no appropriate response." The fact that the (incomplete) data collected show custodial sentencing for non-violent or non-persistent offences (e.g., theft), strongly suggests the violation of the 'last resort' principle and thus is a breach of the International Minimum Standards.

In the cases monitored by CCHR, nearly all juveniles found guilty received a custodial sentence. CCHR only has information about one case during its monitoring activities where the judge gave some consideration to imposing a non-custodial sentence to a juvenile defendant. In that case, even though the judge sentenced the juvenile to three years and six months in prison, the judge gave three years probation. As such the juvenile would only serve six months instead of three years and a half in jail.

As for the cases monitored by CCHR at the Court of Appeals, in five cases (four in cases of felony charges and one misdemeanor charge) out of eight cases involving juveniles, judges imposed custodial sentences. In only two cases (one case of felony charge and one misdemeanor) were the defendants acquitted and in one felony case the defendant had his sentence shortened and suspended. CCHR notes in its report that “these figures are of serious concern and at great odds with both international and domestic law, which stipulate that custody in the case of juvenile offenders must only ever be used as a last resort. It is worrying that the Court is not making use of the alternative sentencing options identified in Article 40 of the Penal Code, such as committing the minor to a social service agency or to a qualified private organization or a specialized hospital or institution.”

Out of the 152 handled by the lawyers of International Bridges to Justice in 2013, 100 cases were closed to date (66%). 87 were sentenced to imprisonment, including 32 with a reduced sentence and 19 with a (partly) suspended sentence. 12 had their case dismissed or were acquitted. For 2014, 65 cases out of 142 were closed to date (43%). 60 CIJL were sentenced to prison, including 34 reduced sentences and 8 (partly) suspended sentences. Only three cases were acquitted or dismissed. For two closed cases the outcome was unclear from the data available. Amongst the cases handled in 2015 28% (27) were closed, 24 were sentenced to prison (including 14 reduced sentences and 1 suspended sentence). Only three cases were acquitted or dismissed.

The three-year evaluation report of This Life Cambodia states that the juveniles participating in their Vocational Training Project received prison sentences of up to ten years and many have been sentenced to long prison sentences of up to three years for petty crimes including minor theft and buying drugs.

According to a report from the Cambodia Community Justice Assistance Partnership Program (CCJAP), the almost exclusive option for prison sentence is due to a limited understanding by judicial authorities of the law as well as restricted practical opportunities to implement diversion and alternative punishment under the current laws like bail, conditional release, suspended sentence and community service. This was confirmed by interviews conducted with court officials in 2012 who stress the absence of sufficient centers to offer shelter and rehabilitation services to CIJL. The court officials also mentioned that there was pressure from the society not to return the child offender to the communities and they feared that children who received an alternative sentence would be harmed by people who would take matters into their own hands. This clearly shows the need to educate the public on the advantages of non-custodial sentences. They were also pessimistic about the effectiveness of sending the young offenders back to the community to be supervised and educated by their parents since often the criminal behavior is due to a general lack of parental supervision.

According to the 2015 report of LICADHO, out of 18 girls in detention mid-September 2014, only one was fully convicted and most were accused of minor offences. This finding suggests that no special consideration is given to the specific vulnerability of girls or, as is the case for boys, no assessment is made of the nature of their crimes or personal situation before deciding to send them to prison. This is not in line with the Bangkok Rules.

#### ***2.4.5 Detention (deprivation of liberty)***

GAP: Prison conditions remain poor. Minors are not always separated from adults, untried and convicted prisoners are not separated and there is insufficient separation based on security ranking. Girls are often neglected.

There are currently 28 prisons in Cambodia but none are exclusively catering for juveniles. Data released by the Interior Ministry's General Department of Prisons show that Cambodia's already overcrowded prison population leapt by nearly 20 per cent in the first 10 months of 2015, from 14,780 prisoners in December 2014 to 17,522 prisoners in October 2015, creating inhumane substandard conditions and raising serious health concerns. The reason for this increase is due to increased drug arrests and a lethargic justice system according to a spokesperson of the General Department of Prisons. In September 2014, the prison occupancy rate was already pegged at 179 per cent of capacity according to a report of LICADHO issued in January 2015.

The UN Human Rights Committee noted in its 2015 concluding observations that overcrowding, inadequate health-care services, including lack of prison facilities for inmates with mental health problems, and inmates' reduced daily access to outdoor exercise remain a problem in the prison system. It is also concerned at the alleged practices of corruption within the penitentiary institutions and about the failure to ensure that minors are detained separately from adults.

The Cambodian League for the Promotion and Defence of Human Rights (LICADHO) issues frequent reports on the conditions of detention in the 18 prisons monitored. These reports confirm that many detainees continue to be subject to physical and psychological abuse and that perpetrators of such abuse are rarely brought to justice and go unpunished. LICADHO also reports on the persisting corruption in prisons where rights continue to come at a price and those without money are in the worst situation.

Despite its confirmation that Cambodia's prisons are over-crowded, seriously under-resourced, subject to corruption and lacking any independent monitoring system, the OHCHR considers its Prison Reform and Support Programme that is on-going since 2008, to be among its biggest successes resulting in a more humane treatment of prisoners. Besides material assistance to better the living conditions by improving access to water and daylight and enriched meals, the close working relationship with the General Department of Prisons also opened opportunities for engagement in prison management and the OHCHR set up a training programme on Rights Based Approach to prison management.

The ICRC noted in their 2015 activity report that they conducted 73 detention visits to 15 prisons housing over 10,500 detainees. They provided technical assistance to the General

Department of Prisons and the Ministry of Health to improve the prison health services. ICRC-supported field missions and staff training strengthened the capacity of the GDP to address prison infrastructure issues.

The numbers of Juveniles in detention in Cambodian prisons provided by the General Department of Prisons indicate that where the numbers were steadily decreasing between 2009 and 2014, there is a sudden rise during the first ten months of 2015.

In October 2015, 590 minors (32 female) were held in Cambodian prisons:

- 285 (20 female) still under investigation
- 109 (1 female) investigation closed, awaiting trial
- 158 (8 female) sentenced, but have yet to receive a final judgment paper (some may be on appeal)
- 38 (3 female) sentenced, have final judgment paper (judicial process is completely finished)

The figures show that, even if female child detainees are still a small minority (32 or 5,4% of the total minor detainees), the percentage of girls more than tripled since 2010 (1,7%). According to a report issued by LICADHO in 2015, this small group of girls is often neglected. They are not separated from adults and no special attention is given to their particular physical and mental health requirements and specific hygiene or sanitary needs. This is not in line with the Bangkok Rules which require to meet women's specific needs in terms of hygiene (Rule 5) and health care (Rule 6).

The 2011 LAC Baseline Study reports that almost 41% of children were placed in the cell mixed with adults. The interviewed juveniles mentioned that they had to share a cell with up to 25 other inmates in unhealthy and inadequate conditions lacking sufficient food, clean water and light. 65.6% said the release was not done on the due date.

The 2011 Data Collection Report indicated that in a lot of prisons juveniles are not separated from adults. In some prisons adults and juveniles share the same general areas of the prison but have separate cells to sleep, in others there was not even a separation at night. Female juveniles are always kept with female adults due to a lack of space in the prisons and because of a limited numbers of female juveniles.

Further research is needed to determine the current level of separation but several surveyed and interviewed NGOs including the NGOs IBJ and LICADHO report that convicted children are still often not separated from adults. There were no data available on separation of untried and convicted prisoners in line with Article 26 of the Law on Prisons and it seems unlikely that such separation exists in reality. According to a 2015 report of LICADHO it is even rare for inmates to be separated in accordance with their security ranking and petty criminals are held in the same cell with murderers and rapists.

Where according to the 2011 Data Collection Report the placement of female juveniles with adult females may provide the juveniles with support that they otherwise would not receive, it is clear that generally mixing of adults and children is not in the best interest of the children.

The 2011 Data Collection Report also indicate that a few children under 14 were detained in Cambodian prisons as recent as in 2010, in breach of the 2007 Criminal Procedure Code.

There are many articles in the media where Prison chiefs or prison staff are accused of abuses and corruption including:

- Sexual abuse of inmates;
- Paying inmates for sexual favors;
- Using prison land to build a house;
- Using free prison labor including farming for personal gain;
- Using prisoners as cleaners;
- Making release after sentence is served contingent on bribe;
- Asking for money from visitors to process the visit application and visit their loved ones;
- Charging prisoners to swap cells;
- Pocketing prisoner's government meal allowances;
- Pocketing salary of "ghost workers";
- Requiring detainees to pay extra fees for living comfortably including payments for use of mobile phones, fans, television or simply for staying at a less overcrowded cell of 5-6 inmates where poor inmates would be squeezed together in a cell with 30-40 inmates;
- Charging prisoners for commodities like electricity and water.

The work of NGOs does make a difference to improve the conditions of children in prison. This Life Cambodia raised the example that with consistent advocacy for family visitation from the NGOs working in Siem Reap and Banteay Meanchey Prisons, both prison administrations made official public announcements in 2015 that visitation is fee-free, but there is still a long way to go.

Apart from prison, children are also being detained in youth drug centers and youth rehabilitation centers as contained in several Prakas of MoSAVY. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty defines a child deprived of liberty as a child in any form of detention or imprisonment, in a public or private custodial setting, from which the said person is not permitted to leave at will, by order of any judicial, administrative or other public authorities.

The UN Human Rights Committee noted in its 2015 concluding observations that it is concerned about reports of arbitrary arrest and detention of homeless people, beggars, people who use drugs, children in street situations and sex workers in "social affairs", youth rehabilitation and drug rehabilitation centers. It is particularly concerned about allegations of torture, ill-treatment and other abuses committed by staff working at these institutions.

The UN Children's Rights Committee urged the Government in 2011 to release all children detained in such centers and to investigate all allegations of torture and ill-treatment of children in those centers. Human Rights Watch reports that authorities routinely detain 'undesirable people' like alleged drug users, homeless people, 'street' children, sex workers, and people perceived to have disabilities in eight detention centers around the country without any due process. According to Government statistics 2,200 people, including at least 10% children between 10 and 17, were confined in these centers during 2012 mostly between three and six months but sometimes up to eighteen months without due process. Abuse,

torture and other ill-treatment are common as part of the program and as punishment. None of the 33 individuals interviewed by Human Rights Watch who had been detained between mid-2011 and mid-2013 ever had access to a lawyer or was brought to court. They reported to have been beaten, sexually abused and forced to work.

According a recent newspaper article former detainees and human rights groups complain of sadistic conditions at the public centers. They say they have no rehabilitation value and are designed only to sweep 'undesirable' people under the rug or wheedle hundreds of dollars out from their parents.

#### **2.4.6 Reintegration, rehabilitation and after-care services**

GAP: Only a few prisons currently offer educational opportunities for incarcerated juveniles and girls are often neglected since the training opportunities are male-oriented. To adhere to national and international minimum standards, all juveniles in detention should benefit from rehabilitation and reintegration services.

According to the Annual Reports of the MoSAVYR Department, the MoSAVYR Department has been providing rehabilitation services (including monitoring by social workers, counseling, non-formal education, and life skills vocational training sessions) between 2006 and 2010 to between 69% and 96% juveniles detained in four prisons only, namely CC2, Kandal, Battambang and Siem Reap prisons. Since 2006 the MoSAVYR Department has also been providing reintegration, follow up, and after-care services to juveniles released from these four prisons. According to the Annual Reports of the MoSAVYR Department, 69% of the children released from the four prisons received these services in 2006. The percentage increased considerably to 96% in 2007 then there was a gradual decrease to 94% in 2008, 83% in 2009 and 74% in 2010.

According to LICADHO training opportunities seem to be male-oriented and in some prisons girls have no training opportunities at all. This is not in line with the Bangkok Rules which require Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners (Rule 37).

According to the Final Evaluation Report of the project on 'Improved Protection for CICL', there is a lack of centers, which operate especially for CICL, i.e. rehabilitation centers, to where CICL can be referred.

No official figures are available for the level of services provided for 2011 until 2015 but surveyed and interviewed NGOs suggest that the government fails to offer effective educational opportunities to juveniles in detention and NGO's like This Life Cambodia and M'Lop Tapang fill up some gaps but typically have limited coverage. It is interesting to note though that This Life Cambodia, who implemented an alternative model for support of juveniles in prisons in Siem Reap and Banteay Meanchey, will implement the vocational training component of their program "This Life Beyond Bars" in Phnom Penh's correctional center<sup>2</sup> in collaboration with the General Department of Prisons and ICRC.

## **2.5 CASE STUDY: JUVENILE OFFENDER OF CHILD SEXUAL ABUSE**

### **2.5.1 Prevalence of sexual abuse by juvenile perpetrators**

UNICEF estimates that worldwide 150 million girls and 73 million boys have experienced sexual violence involving physical contact. Research in developed countries reveals that at least a third of perpetrators of sexual offences is under the age of eighteen years old, illustrating the seriousness of this problem globally.

The 2012 UNICEF report on Child Maltreatment states that in Cambodia 51.2% of girls compared with 1.9% of boys reported having been forced to have sexual intercourse. There are no official data available on sexual violence by juvenile perpetrators for the whole of Cambodia but according to figures from LICADHO, the CPU and IBJ, increasingly these acts of sexual violence including (attempted) rape and indecent assault are committed by juvenile offenders, sometimes as young as 5 years old. This is confirmed by the 2012 UNICEF study which has found that children are increasingly at risk of abuse by peers and 'friends'. A 2013 United Nations multi-country study on men and violence in Asia and the Pacific reveals that in Cambodia among the 22% of men who admitted to committing rape at least once, 52% committed their first offence as a teenager (under 20 years old) and almost sixteen percent was under 15 years old. The organization First Step Cambodia indicates in their Annual Report that this illustrates the importance of prevention and services for children with Sexually Harmful Behavior (SHB), the clinical term for when children harm or abuse other children sexually.

Out of 61 cases of rape and murder investigated by the Child Protection Unit at the Cambodian Police in 2013, 9 cases involved CICL where in total 10 children between 10 and 17 years old were accused of rape (9) or indecent assault (1). In 2014, 46 out of 221 cases involved 49 CICL between 5 and 17 years old of which 47 children were accused of crimes involving sexual violence including rape (36), attempted rape (3), indecent assault (4) and sex with minor (4). 229 cases were investigated by the CPU during the first 10 months of 2015 out of which 40 cases involved 41 CICL between 12 and 17 with 38 children being accused of sexual violence including rape (32), attempted rape (3) and sex with minor (3).

The figures released by the legal aid NGO IBJ show that in 2013, 26 CICL were charged with Sexual Abuse (namely 17% of the cases of CICL received by IBJ lawyers that year). In 2014, 17 CICL were charged with Sexual Abuse (namely 12% of the cases of CICL received by IBJ lawyers that year). From January to September 2015, 23 CICL were charged with Sexual Abuse (namely 17.7% of the cases of CICL received by IBJ lawyers that year).

Between the beginning of 2012 and the end of 2014 LICADHO investigated 762 cases of rape or attempted rape, 94 minor perpetrators representing annually between 10 and 14% of the total number of perpetrators and the number was going up from 27 CICL accused of rape in both 2012 and 2013 to 40 CICL in 2014.

Among the 66 boys that participated in the Vocational Training Project of This Life Cambodia, 20 (30%) were imprisoned for rape crimes.

### **2.5.2 Reasons, issues and outcome of cases of sexual abuse by juvenile perpetrators**

According to the NGO First Step Cambodia which works with children with sexually harmful behavior (SHB) between 5 and 15, there are various potential causes or risk factors according to age, level of development and other parameters including but not limited to widespread availability of hard core and often violent pornography often viewed by very young children, domestic violence, neglect, lack of care and supervision, witnessing others having sexual relations, lack of understanding and knowledge of healthy sexual development and relationships of both parents and children.

In his 2008 report, Alastair Hilton warns about the dangers of adopting the abused to abuser hypothesis as universal truth without proper research. This, he warns, could lead to demonization and further isolation of victims of sexual abuse. He is currently in the early stages of further research on Sexual Harmful Behavior and the existence or absence of a link between sexual abuse of minors and juvenile perpetrators of sexual abuse.

When surveyed on the subject, Alastair Hilton also stresses the complexity of the situation since it is often not easy to disentangle who is active or passive in some situations and the terminology 'perpetrator' is not always helpful. Children as young as six can be perpetrators as well as victims and it is important that they are helped through assessment and counseling to overcome these problems. He confirms that often responses to SHB are not adequate. There is a lack of effective recording and monitoring of cases of SHB by minors. Children under 14 are being neglected and the police doesn't do anything as the law tells them this is not an issue. Settling without involving the authorities (paying compensation) is still prevalent. There is a lack of understanding of the harm SHB can cause, dismissing as 'not a problem'. At the same time there is a lot of denial, shame, stigma and fear of the consequences of reporting SHB so the problem is often covered up or ignored.

Another problem seems to be that for some of the rape cases that do get reported, it is not always clear whether the sexual relationship was consensual. According to Article 239 CC the age for sexual majority in Cambodia is fifteen years of age which is just below the international average of 16 years. Sexual intercourse with a child below the minimum age of consent is penalized. According to the 2015 UNICEF study on Violence Against Children in ASEAN member states, it is considered best practice to include an exemption from prosecution in the law for factual consensual sexual relations between two young people who are close in age. However, this is not the case for Cambodia. According Articles 42-44 of the Law on the Suppression of Human Trafficking and Sexual Exploitation, having sex with a person under 15 years old is a criminal offence but article 44 exempts from punishment anyone who is under 15 years old. This means that 15-17-year-olds are potentially criminally liable for having consensual sex with someone under 15 years old. This is unfortunate since the purpose of legal provisions setting a minimum age of sexual consent should be to protect children from sexual exploitation and abuse, rather than to criminalize factually consensual sexual exploration between two young people in the context of a child's sexual development.

Both the CPU and IBJ mentioned that they received several cases where juveniles were accused of rape by the family of the alleged victim who appeared to be the accused's

girlfriend, with no solid evidence for the sole purpose of obtaining a financial advantage through the justice system. According to LICADHO, sometimes filing a complaint is a way for the parents to protect the honor of their daughter and to put pressure on the boy to marry their daughter. That is because, without her virginity she loses her value and her chances to get married, especially in the case of consensual sex. The police may go along with this strategy since it allows them to extort money from the boy's family and they may support the view that the girl in this position is a victim who deserves their help. An unwanted early marriage may be an even more likely outcome than a prison sentence.

For 4 out of 10 of the juvenile offenders of sexual abuse cases investigated by the CPU in 2013 the charges were dropped since the offenders were decided to be under the age of criminal responsibility. For cases with juvenile offenders above the age of 14, the outcome is very different case-by-case with prison sentences of 6 months for indecent assault and between 2 years and 6 months and 5 years for rape with or without compensation for the victim. For one case the outcome was unclear and for one case only a \$1000 USD compensation was mentioned. For 2014, out of the closed cases 11 offenders were (decided to be) under age (even if the report mentions sometimes an age of the offender above 14). The offenders charged with 'sex with minor' received relatively short prison sentences of 6 months to 1 year. It is unclear how the judge arrived at the sentencing decision and it is to be clarified whether this is a case of 'statutory rape' where the 'victim' is under the age of 15 of sexual majority with factual consent. For rape the length of prison sentences again differs a lot going from 1 year up to 7 years. In one case the outcome mentions that the accused (16 at the time of the offence) and the victim (13) will marry soon. Only a few of the cases investigated in 2015 were closed and a prison sentence of 5 years was pronounced in 2 rape cases and in 1 case a compensation was paid. The CPU Director of Operations James McCabe clarified that in the cases where the recorded age in the report is 14 or above but when later decided as 'under age', the identity papers later proved at trial that the age of the accused juvenile was below 14. He also clarified that for 2 out of 3 cases settled with compensation, it was discovered that the teenagers engaged in consensual sex and the parents pressed charges and in the other case of settlement with compensation, there was insufficient evidence to continue prosecution. Because of the problem of mothers claiming rape when a teenage girl has consensual sex with her boyfriend, the CPU will be dropping the age of investigation for rape to victims of 13 and under in 2016.

There was no information available specifically on the outcome of the sexual abuse cases handled by IBJ, other than acquittals where the 'victim' appears to be the girlfriend of the 'accused' and the family of the girlfriend pressed charges without solid evidence for the purpose of obtaining a financial advantage through the justice system. The information available on the outcome of all cases involving juveniles indicates that when a conviction follows, a prison sentence is the rule.

Out of all rape cases monitored by LICADHO for the period 2012-2014 there were 46 closed cases involving a perpetrator under 18. Using the categories from LICADHO's 2015 report on the treatment of rape in Cambodia's justice system, 20 of those were closed with a reasonable outcome. Amongst those 20 cases, 6 involved perpetrators who were under 14. In accordance with the Criminal Code, none of them were prosecuted. In all of these cases civil compensation was paid to the victim and this was mostly negotiated by the police. The other

14 cases involved perpetrators who were between 14 and 17. In 8 of these cases the perpetrators received the correct sentence of between 7 and 15 years for rape of a minor and a 50% discount was applied because of their age. In the remaining cases, the perpetrators were sentenced to what appears to be a legally correct sentence but there was no information about how the judge arrived at the sentencing decision. 9 cases ended before trial including 6 that ended with civil compensation after which the victim dropped the complaint, in 2 cases the perpetrator ran away and the victim dropped the complaint and in one case the victim married the perpetrator. 17 cases ended with a flawed prosecution: In 15 cases the charge was changed at some stage from rape to indecent assault, in 1 case the prosecutor dropped the case and in 1 case there was a conviction for rape followed by a partially suspended sentence for no justified reason according to LICADHO.

### **2.5.3 Conclusion**

Offenders of sexual abuse under the age of criminal responsibility often go unreported and are neglected in the sense that they do not receive the much-needed services to prevent further harmful and abusive behavior. The NGO First Step Cambodia provides services to children between 5 and 15 with sexually harmful behavior but there is no state-mandated intervention and any services provided depend on the voluntary consent of the juveniles and their parents.

When offenders aged 14 and over are reported to the authorities, the most likely outcome is a prison sentence unless there is not enough evidence to convict. A prison sentence is not always the solution especially if there are no therapeutic services offered to juvenile offenders to prevent them from re-offending.

## **2.6 CONCLUSIONS AND RECOMMENDATION**

Even if the current law provides for a differentiated treatment of juveniles in the Justice System, the application of this legislation is hindered by several factors, including:

1. The limited understanding by the police and judicial authorities of the law;
2. The lack of adequate procedures and guidelines to implement the law, including diversion and alternative sentencing. This will be at least partly addressed by the new Juvenile Justice Law, since it includes some much-needed procedures and guidelines for the prosecutor, the investigation judge, the trial judge in first instance and appeals court to divert the juvenile. Detailed provisions on minimum conditions and diversion criteria, diversion measures, formulation of diversion plan, implementation of the diversion plan, adjustment of the diversion plan and the failure of the diversion plan are included in the Juvenile Justice Law.
3. The restricted practical opportunities and lack of social and judicial resources and structures to support the court in implementing the law.
4. The lack of support from the public and the negative perception of the community towards CIJL, as well as the preference for a punitive approach per local customs, traditions and culture.

5. The absence of well-functioning monitoring and complaints mechanisms to adequately address violations of children’s rights.

Each of these factors needs to be addressed. A collaborative approach and coordination should be used to determine how NGOs can work in partnership with donors, the Government and civil society to close the gaps in the juvenile justice system and to facilitate the implementation of the Juvenile Justice law.

The findings of this research lead to the following recommendation:

- Implement the law involving CICL. New concepts for Cambodia like diversion, restorative justice and alternative sentencing in particular require recurring training of law enforcement officers and the judiciary. Ideally this would be part of the regular training offered by the government with refreshment sessions.

The Juvenile Justice Law requires that the judicial police, the prosecutor and judges handling CICL receive specialized training on child rights and juvenile justice.

More information is needed about the three circulars issued in 2014 by the MoJ in cooperation with CCJAP which issued guidelines to the courts to promote Judicial Supervision, Suspended Sentence with Probation and Community Service. These tactics should be further promoted. The inter-agency Alternative Sentencing Technical Working Group conducted workshops in March 2014 for court officials and law enforcement officers to explain and implement the guidelines on alternative sentencing. According to a DFAT representative who was interviewed, the circulars and workshops have not shown to be effective so far.

NGOs play an important role in filling the gaps and providing recurring training and specialized workshops where needed.

- The restricted practical opportunities and lack of social and judicial resources and structures to implement the law will be difficult to tackle without a sufficient budget.

There is a clear need for the provision of adequate resources to make judicial/court supervision an effective alternative for pre-trial detention. Adequate supervision of CICL is also required to effectively divert the minor and apply supervisory, educational, protective and assistance measures. Alternative sentencing options like community service as an alternative to prison sentences are currently not implemented.

The Juvenile Justice Law introduced social agents specialized in minors but the procedure of appointment and accreditation of social agents shall be governed by Prakas of MoSAVY. The budget is uncertain, and thus it cannot ensure that sufficient social agents will be available.

NGOs can fill some gaps and the Juvenile Justice Law even explicitly makes the “submission of minor to close supervision and care of [...] any designated NGO center to admit and care for minors” available as an alternative to pre-trial detention. The JIL also stipulates that the competent authority to supervise the minor’s compliance with the diversion plan can be NGO staff. These provisions give NGOs a clear mandate to step in where needed to make up for

insufficient government resources. Programs should be developed and donors should be approached for sufficient funds to make this happen.

- NGOs can also play an important role in raising awareness with the public that CICL are in need of special care and protection because of their vulnerability and differences in physical and psychological development. NGOs should work to change this negative perception and gain support for an alternative treatment of CICL.
- The absence of a well-functioning monitoring and complaints mechanism to address violations is probably the weakest spot in the system. The failure to establish an independent National Preventive Mechanism to monitor and prevent torture and ill-treatment in places of detention and the lack of protection for victims of abuse contributes to those abuses going largely unreported and thus unsanctioned. Advocacy for further law reform is required to establish an independent body to monitor children's rights and introduce a confidential and child-friendly complaints mechanism for children in detention.
- The research has also shown that there is an apparent need to map all services currently provided by the authorities and different NGOs related to Juvenile Justice and to include them in an accessible directory. This way overlaps and gaps can be identified. Some of the mapped projects that have proven successful could be replicated as a best practice model in other parts of the country. This could be based on a thorough learning and evaluation described in a comprehensive program manual. This would provide necessary preparation without spending much needed resources on a lengthy design phase. Another advantage of such a directory is increased awareness of NGOs and the public of existing programs in the field of Juvenile Justice. This leads to improved referral to specialized NGOs, so they can focus where help is needed and not waste resources providing services that are not within their core activity. Less CICL will fall between the cracks, including those under the age of criminal liability, girls and children with sexually harmful behavior who are often neglected.

This report does not have the ambition to describe all organizations active in the area of Juvenile Justice in Cambodia but rather gives a preliminary mapping of earlier pilots and programmes of NGOs and certain services in the field of Juvenile Justice. This should stimulate ideas of collaborations and knowledge-sharing (SCHEDULE 5. INITIAL MAPPING OF SERVICES FOR CICL IN CAMBODIA). Further research is needed to create an up-to-date and comprehensive directory of organizations and services offered and to reflect on the best way to share this knowledge with other NGOs and the public.

- Seeing the importance of the problem of sexual abuse by juvenile perpetrators, the government should consider investing in services for juveniles with sexual harmful behavior as part of a diversion scheme for minor first time offences or for juveniles in detention where there is no appropriate non-custodial measure available. The NGO First Step Cambodia with its extensive experience in sexually harmful behavior would be a good partner to roll this out.
- Another important finding of the report is that girls in detention (as a minority) are often neglected. Vocational training opportunities tend to be male-oriented and no special attention is given to girls' physical or psychological needs when considering sentencing or for protective measures while in detention. This needs to be addressed urgently to avoid

incarceration of girls where possible, cater to their needs in terms of medical care and hygiene, to offer adapted training options and thus to increase their rehabilitative potential.

Besides consistent advocacy of the rights of CICL and the general recommendations above, specific recommendations for WV Cambodia are formulated as follows:

- While the WV Cambodia incident reporting logbook shows an increase in reporting of CICL cases by field staff, responses are still almost exclusively focusing on support to the victims and penalization of juvenile perpetrators rather than on protection and rehabilitation of CICL. Even in the case where three RC presumably under the age of criminal liability were accused of rape, support was given to the victim only. There was no follow-up on the outcome or services for the very young CICL to address their behavior and prevent them from re-offending. This finding reinforces the idea that there is a need for WV to raise awareness with their Staff that CICL are also children in need of special care and protection. Specific training on CICL issues can further enhance the position of child protection staff at the World Vision Cambodia National Office in order to effectively protect CICL and address violations of their rights and refer them to specialized NGOs where appropriate for treatment and rehabilitation.
- Where rape within a relationship between juveniles is certainly possible and should not be minimized, attention needs to be given to the true circumstances of each case. The research reveals that in Cambodia factual consensual sexual relationships between juveniles may end in imprisonment or unwanted early marriage after complaints of the alleged victim's family for the purpose of obtaining a financial advantage through the justice system or to protect the honor of their daughter. It is important to raise awareness with the World Vision Cambodia field staff about these cases so they can better address this problem and to exercise caution when referring such cases to the police, because of the lasting impact of imprisonment or early marriage on those young lives.
- World Vision together with UNICEF and the other four NGOs (Plan International, Child Fund, Save the Children and LAC) who were part of the Monitoring Committee on a Draft Juvenile Justice Law, will have to assume their responsibility and pick up their mandate to foster the implementation of the Juvenile Justice Law. UNICEF announced that one of the targets for child protection in the Royal Government of Cambodia and UNICEF Cambodia new Country Programme Action Plan covering the period from 2016 to 2018 is to reduce the number of children in jail by 50 per cent through a range of activities. This will include supporting the design and implementation of programmes to divert children away from the formal justice system, strengthening the capacity of the broader justice sector to apply child friendly procedures and the piloting of a new partnership with the Cambodian National Police. This partnership will see the establishment of a child protection programme in communes and all commune police trained in child protection and handpicked commune police appointed as child protection officers. World Vision could have a look at their programmes and see how they could collaborate with UNICEF to support these targets and programmes and the implementation of the Juvenile Justice Law in general.

## **CHAPTER 3. CHILDREN IN CONFLICT WITH THE LAW IN VIETNAM**

### **3.1 INTRODUCTION**

The population of Vietnam reached 91.7 million in 2013 out of which almost 25.1 million are under 18 years old (27.4 %) according to UNICEF country statistics.

A report on the situation analysis of Juvenile Justice in Vietnam and evaluation of the contemporary juvenile justice system (2005 Situation Analysis Juvenile Justice) under the leadership of the Ministry of Justice with the support of UNICEF and consultants from other related agencies established some baseline information. But the absence of reliable national statistics makes it difficult to identify nationwide trends in offending.

According to the National Programme on Child protection for the period 2011-2015, the number of CICL have increased from 11,376 CICL in 2001 to 21,545 CICL in 2008 (although the table included mentions 15,530 CICL for 2009 which seems inconsistent). It also states that the nature of crime has become more complicated as the special serious crimes such as murders have increased. The report notes difficulties for CICL to re-integrate after completion of sentences or education in reformatory school.

A lot of conflicting information is published where juvenile delinquency is described as a growing problem with increasing numbers of CICL and increasing severity but at the same time the figures provided show a decrease of cases and CICL. The Police General Office mentions 35,744 cases involving 59,562 juveniles for the period between 2010-2014, showing a decrease by 20.6 % in comparison to the period of 2005-2009. According to the Statistics by the Supreme People's Court, the number of juvenile offenders adjudicated each year fluctuates between 4.000 to 5.000 juveniles.

When surveyed on the subject, UNICEF confirms the lack of data and poor quality of data but states that available data suggest that the number of CICL have been decreasing since 2010.

An updated Situation Analysis will be published in 2016 but awaiting approval from the Ministry of Justice these data remain confidential. The MOLISA Children's Indicators 2011-2012 and 2012-2013 in SCHEDULE 8: FIGURES CICL IN VIETNAM are the most updated official figures. The figures indeed show a decrease of CICL from 15,530 in 2009 to 11,675 CICL in 2012. Figures provided by the Vietnam Association for the Protection of Children's Rights (VAPCR) suggests a further decline of the number of CICL to 9,156 CICL (including 279 girls) for 2014 and 4,886 offenders for the first six months of 2015 (including 165 girls).

'Social Evils' including prostitution, alcohol and drug abuse, pornography, gambling and computer gaming are perceived to be (one of) the reason(s) for juvenile delinquency. The establishment of the Department of Social Evil Prevention within the Ministry of Labor, Invalids and Social Affairs demonstrates the importance of the problem. According to a 2014 statement of the director of

the Ministry's Student Affairs Department, students want money to pay off gambling debts and buy drugs which lead them to commit crimes.

When questioned on the reasons for the high number of CICL, the Vietnamese Law Association (VLA) mentions broken families and breakdown of family values, insufficient parental supervision, domestic violence, absence of role models, morality collapse, social evils, rapid economic development and an inconsistent legal system with considerable gaps.

World Vision Vietnam initiated a partnership with the legal department of the Ministry of Labor Invalid and Social Affairs (MOLISA) in 2009 to develop a handbook on Legal and Psychological Support for Juvenile Delinquents based on their concerns about unfriendly prosecution practices affecting CICL. The handbook provides training on psychological and legal insights to concerned officers, social workers and family members of CICL to enable them to use a rights-based approach when handling issues involving CICL. It also informs CICL about their rights and provides them the knowledge, skills and self-confidence needed during the justice process. Unfortunately, the handbook is not available in English.

World Vision Vietnam participates in the child protection steering committee meetings and the NGO Child Rights Working Group that also discuss subjects involving CICL.

The National Office of World Vision Vietnam received in 2015 one incident report about CICL, concerning a case of theft. In 2014 one case of sexual abuse and one case of a motorcycle accident causing the victim's death was reported. All CICL were male. Reporting was limited to RC only for CICL.

### **3.2 THE NATIONAL LEGAL FRAMEWORK IN VIETNAM FOR CICL BEFORE THE CHILDREN LAW WAS APPROVED**

Vietnam was the first country in Asia to ratify the United Nations Convention on the Rights of the Child (CRC) in 1990 and ratified early 2015 the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Some reports describing the status of Juvenile Justice in Vietnam state that these conventions cannot be directly enforced in Vietnam unless incorporated or codified into national law. But article 6 of the Law on the signing and Implementation of International Treaties (2005) state that in case national law contains different provisions than international conventions on the same subject, the latter shall prevail.

Major efforts have been made to improve the national legal framework to comply with the provisions and principles of the CRC in the recently modified Penal Code, Criminal Procedure Code and the Children Law (2016).

The Constitution of the Socialist Republic of Vietnam protects human rights but these can be restricted when prescribed by law in imperative circumstances for the reasons of national defense, national security, social order and security, social morality and community well-being (article 14).

There currently is no stand-alone separate Juvenile Justice Law in Vietnam that comprehensively covers all stages in the justice system. The new Penal Code “PC” (2015) and the new Criminal Procedure Code “CPC” (2015) which were recently passed in November 2015, do contain separate chapters applicable to persons under 18 years old but the general parts of both codes continue to apply as far as these provisions do not contradict the chapters applicable to persons under 18 years old. The recently adopted Children Law (2016) replaced the Law on Child Protection, Care and Education (2004) and was expected to make the law applicable to children under 18 years old but sadly the version adopted by the National Assembly again defines a child as a human being below the age of 16.

Other legislation involving CICL is divided over various Vietnamese laws including the Constitution of the Socialist Republic of Vietnam (2013) and the Law on Handling of Administrative Violations (2012). The imprisonment policy for juvenile prisoners is stipulated in the Government’s Decree No. 60/1999/NĐ-CP in 1999 on regulations of jails as amended by Government’s Decree No. 60/2001/NĐ-CP in 2001 and the Law No. 94/2015/QH13 on the execution of temporary detention and custody which was recently passed by the National Assembly on 25 of November 2015 (effective as of July 1, 2016).

SCHEDULE 9. LEGAL FRAMEWORK JUVENILE JUSTICE IN VIETNAM BEFORE THE CHILDREN LAW WAS APPROVED gives a detailed overview of the existing domestic law in relation to aspects regarding CICL before the Children Law was approved, offering prima facie a solid legal protection for the CICL:

### **3.2.1 Criminal Responsibility of Minors**

The age of criminal responsibility in Vietnam is 14 years and over. Children between the full age of 12 and under 14 years of age who commit very serious intentional crime prescribed in the Penal Code will not be criminally sanctioned but will be subject to administrative sanctions.

The new Penal Code makes a distinction between juveniles from full 16 years old which shall be liable for all offences they commit except otherwise provided and juveniles between full 14 years and under 16 years who are subject to penal liability for certain very serious crimes but the list includes also theft, possession of drugs, computer crimes, illegal racing so it seems that children from full 14 years old will normally be subject to penal liability for most offences.

In the determination of the age of the child, the last possible date will be considered if only the month, the quarter or the year can be identified. Forensic examination will be required where the year of birth cannot be identified.

### **3.2.2 Protection of CICL in the different phases of the Juvenile Justice System**

The law prohibits torture, maltreatment, abuse and other forms of violating children’s rights as well as corporal punishment or measures that offend or lower the honor of dignity of juvenile offenders.

Individuals, agencies and organizations have the right to file complaints and individuals have the right to file denunciations against illegal acts in criminal procedure of agencies, persons having jurisdiction to conduct the procedure or any person of such agencies.

The Vietnamese Law further protects CICL as follows in the different stages of Juvenile Justice:

#### **3.2.2.1 Initial Contact (arrest or apprehension)**

A Juvenile will only be arrested in exceptional circumstances in accordance with the law as discussed below.

The representative of a person under 18 years old shall be entitled to be present at the interrogation of the juvenile and to actively participate in the investigation phase including to provide evidence, raise a request or file a complaint.

Advance notice is required of the time and venue for the interrogation, which will only be conducted in the presence of the defence counsel or representative. Interrogation will be limited to 2 sessions per day with each session lasting for maximum 2 hours unless exceptional circumstances prescribed by law.

#### **3.2.2.2 Custody and Pre-trial detention**

In case of administrative violations, children 12 years and above can be held in temporary custody in case of necessity to promptly prevent or stop acts of disturbing public order and inflicting injury on others for a period of maximum 12 hours. In case of necessity this period can be prolonged to 24 hours in total or 48 hours for violations of border regulations or administrative violations in remote mountainous areas or islands. Minors have to be held separately from adults and women and men need to be separated. The parents or guardians need to be promptly notified in case a minor is held in temporary custody during night time or for over 6 hours.

Under the criminal justice system, a person under 18 years old will in principle be handed over to his representative for supervision. Temporary detention or custody will only be ordered in case of utmost necessity where supervision and other preventive measures are deemed ineffective. It can be used only for certain offences depending on the age of the juvenile and should there be certain grounds which require pre-trial detention. The duration of the temporary detention or custody will be maximum two third of the duration prescribed for adults, which can be extended several times up to a total of 12 months (or around 8 months for juveniles) for the most serious offences. But additional custody is also possible during investigation resumption and re-investigation so it seems that these time limits are not firm. As soon as there is no reason to keep the juvenile in custody or temporary detention, the measure needs to be replaced with another preventive measure. The representative of the juvenile must be informed within 24 hours of temporarily detaining the juvenile.

#### **3.2.2.3 Adjudicatory process**

Criminal procedures to be applied to persons under 18 years old shall be child friendly: the process will be conducted in a manner that is suitable for the age and level of

development of the juvenile and the court room shall be set up in a child-friendly manner.

The minor's representative, the teachers or representatives of the school, the Youth Union or other organizations where he studies, works or lives are entitled and obliged to participate in the criminal, including to provide evidence, provide an opinion or to file a complaint regarding the behaviour of those competent to conduct criminal procedures or the court decisions.

The accused juvenile shall be entitled to self-defense or to have a defense counsel. In cases where the accused juvenile or his representative have not selected a defense counsel, the investigative agency, the procuracy or the court shall appoint a defense counsel. According a 2003 Government Decree, CICAL can seek free legal counseling from legal counseling centers which belong to socio-political, social-professional organizations.

The Law established a specialized Family and Juvenile Court which was launched in Ho Chi Minh City on April 4, 2016. Following the national launch in Ho Chi Minh City, it is expected that the Family and Juvenile Court will be rolled out across all the Provinces and districts of Vietnam. The Family and Juvenile Court is multi-jurisdictional, covering children's matters in the civil, administrative and criminal law.

Persons conducting the investigation, prosecution and hearings must be trained or experienced in cases involving minors and have the necessary understanding of child psychology and educational science. The trial panel shall be composed of a teacher or an official of the Youth Union or a person experienced or versed in the mentality of children.

The court may order a trial closed to the public in cases where special protection is required for a juvenile defendant.

#### **3.2.2.4 Sentencing**

In accordance with the law, the organization of education of juvenile offenders shall be effected mainly at communities or reformatories.

The administrative justice system is applicable to juveniles from full 12 years until under 18 years old, with the following measures depending on the seriousness of the offence and the age of the CICAL:

- Application of sanctions or remedial measures:
  1. Sanctions applicable to minors including caution, fine (for minors above 16 only not exceeding 50% of fine applicable to adults) or confiscation.
  2. Remedial measures applicable to minors including forcible restoration of the original state, forcible application of measures to remedy environmental pollution or spreading of epidemics or diseases, forcible destruction of harmful goods and articles, and cultural products with harmful contents and forcible refund of illicit profits.
- Application of administrative handling measures:

1. Non-custodial education in communes, wards or township for a period between 3 and 6 months, to be decided by the chairpersons of the commune-level People's committees; or
  2. Placement in a reform school for a period between 6 and 24 months, to be decided by the district-level people's courts.
- Measures in substitution for administrative measures (diversion) for CICL who have voluntarily reported their violations and shown their sincere repentance for their violations:
    1. Admonition for administrative violations subject to the sanction of caution;
    2. Management at home between 3 and 6 months for minors who are between full 14 and under 18 years old and commit for twice or more in 6 months an act of thievery, swindling, gambling or public order disturbance which is not serious enough for penal liability examination.

Under the criminal justice system, first-time offenders committing less serious crimes may be subject to penalties lighter than imprisonment, and may be assigned to their families, relevant agencies and organizations for supervision and education. Criminal prosecution of CICL shall only be applied in case of necessity and must be based on their antecedents, the danger of their offences to the society, and requirements of crime prevention

The law provides for some general case of exemption of penal liability and some additional cases where juvenile offenders can be exempt from penal liabilities in case of many extenuating circumstances where the juvenile offender voluntarily addresses most of the consequences for certain crimes depending on their age or for accomplices with insignificant roles in the crime. This is a form of diversion in which case education and monitoring measures will be applied instead.

Exemption of penal liabilities (diversion) and application of the following educational and monitoring measures can be decided by the investigative agency, prosecutor or court if the juvenile offender or his lawful representative agree with such application:

- A reprimand will be used for first time offenders of a less serious crime or an accomplice who had an insignificant role in the offence. The juvenile will be subject to the obligation to observe the law, be present at the competent agency when requested and participate in educational and/or vocational training programs as appropriate.
- Community based reconciliation for certain offences depending on the age of the juvenile in case the victim or his lawful representative voluntarily reconciles and requests that the offender be exempt from Penal Liability. Besides the obligations applicable for a reprimand, there will be an additional obligation for the juvenile offender to apologize to the victim and compensate for the damage caused.
- Education at commune, ward and town for a period between 1 and 2 years for certain offences depending on the age of the juvenile. Besides the obligations applicable for a reprimand, the juvenile offender also will have to abide all

obligations of studying and working, be subject to supervision and education of the family and authorities of communes, wards and towns and refrain from leaving his place of residence without permission.

The court may apply as a judicial measure education in reformatory school for a period of 1 to 2 years to an offender under 18 years old, if it deems such measure as necessary due to the gravity of the criminal act committed, the personal background and/or the living environment of such offender, which necessitate sending such offender to a well-disciplined educational institution. The measure can be ended by the court at the request of the reformatory school, when at least half of the required duration is completed and the juvenile made much progress. Juveniles against whom a judicial measure of education in reformatory school is applied shall have no criminal record.

The Penal Code states that capital punishment and life imprisonment shall not be applied to offenders under 18 years old. The penalties applicable to CICL under the criminal justice system are:

1. Warning.
2. Fine for offenders from full 16 to under 18 years old who have an income or private property and shall not exceed half of the fine specified for adults.
3. Non-custodial reform for offenders from full 16 to under 18 years old who commit a less serious crime or a serious crime, or commits a very serious crime unintentionally; or to offenders from full 14 to under 16 years old who commit a very serious crime intentionally. The duration of non-custodial reform for an offender under 18 shall not exceed half of the duration specified for adults.
4. Termed imprisonment. In applying a termed imprisonment sentence to CICL, the court shall grant a sentence which is lighter than for adults: In case of an offence subject to capital punishment or life imprisonment, the maximum penalty to be applied to offenders from full 16 to under 18 years old at the time of commission shall not exceed 18 years of imprisonment and the maximum penalty to be applied to offenders from full 14 to under 16 years old at the time of commission shall not exceed 12 years of imprisonment. In case of termed imprisonment, the maximum penalty to be applied to offenders from full 16 to under 18 years old at the time of commission shall not exceed three quarters of the prison term for adults and the maximum penalty to be applied to offenders from full 14 to under 16 years old at the time of commission shall not exceed half of the prison term for adults. It is interesting to note that minimum sentence is not reduced for juveniles.

The maximum sentences applicable to juveniles are high and UNICEF recommends to lower the maximum period of termed imprisonment for children who commit crimes that would otherwise be subject to life imprisonment or capital punishment to 10 years for children from full 16 to under 18 years and 5 years for children from full 14 to under 16 years.

UNICEF also recommends to include a periodical review of the placement of a child in reform school or termed imprisonment, ideally every 6 months, to determine whether the child made enough progress to be released.

Special rules for juveniles under 18 years old apply also for determination of penalty in case of preparation for commission of crime or incomplete commission of crime, augmentation of penalty in case of multiple offenses, augmentation of penalties in case of multiple offenses and reduction of declared penalties.

The following options also apply to juveniles since these do not contradict the chapter applicable to offenders under 18 years old:

- Reduced sentence or penalty exemption based on extenuating circumstances;
- Reduction of penalty term in special circumstances; and
- Suspended sentence when rendering a sentence of imprisonment for not more than 3 years based on the antecedents of the offender and extenuating circumstances.

### **3.2.2.5 Detention (deprivation of liberty)**

The law stipulates that juvenile prisoners shall be kept separately from adults, subject to a separate detention regime with access to vocational training or general education. The regulations on family visits, sending and receiving letters and gifts are more liberal compared to the regime of adult prisoners.

The new law on temporary detention and custody that enters into effect in July 2016 also contains special rules for detainees under 18 years old including separate detention from adults and meal allowance with additional protein during temporary detention and custody. It provides for visitation rights with double the amount of visits from family or defense counsel compared to adults. Children in detention will become subject to the general regime for adults as soon as they turn 18.

The law prohibits illegal detention, torture, coercion, use of corporal punishments, and all forms of cruel, inhuman, degrading treatment, penalty or any other form of violating the legal rights and legitimate interests of persons in temporary detention or custody. The application of the detention measure must be based on the seriousness of the offence, the age group, gender health condition and must guarantee gender equality and the rights of women and children temporarily detained or in custody. A further classification and separation will take place including based on age, gender, medical or mental condition and the seriousness of the offence.

CICL who violate the internal regulations can be isolated in a disciplinary cell between 1 and 2 days which can be extended for 2 days for minors in temporary detention. Minors remanded in custody can be isolated in a disciplinary cell for between 3 and 7 days which can be extended for 10 more days. Shackling of one leg, applied to persons in the isolation cell who are aggressive, suicidal or cause damage to themselves or others, will not be applied to persons under 18 years old. During the isolation period, visits, receiving and sending of letters or gifts will be restricted.

The law also specifies the regime for meals, receipt of gifts or mail, the regime for personal hygiene and health care while in temporary detention or custody. The minimum sleeping space is 2 square meter per person.

It contains a fairly detailed complaints mechanism for the supervision of compliance with the law as well as for the settlement of complaints or denunciations about the management and implementation of temporary detention and custody. The jurisdiction for settlement lies with the Chief Prosecutor which is an instance outside of prison.

Conditional early release for CICL who are serving an imprisonment term (but excluding certain crimes) is possible under the following cumulative conditions:

- First-time offender
- Good progress and/or good rehabilitation effort;
- Completion of at least one-third of the imprisonment term; and
- Definite place of residence.

The court will decide on a conditional early release subject to certain obligations and the probation period will be equal to the remaining imprisonment term.

### **3.2.2.6 Education, reintegration and rehabilitation**

A convicted juvenile will not have a criminal record when under 16 years old or when under 18 years old and sentenced for a less serious crime, a serious crime, or a very serious crime committed unintentionally or when subjected to a judicial measure of education in reformatory school.

The criminal record of juveniles between full 16 and under 18 will automatically be cleared if no criminal act is committed within 3 years following the fulfillment of the principal penalty. For adult convicts, the time limit for expungement of criminal record is one, two, three or five years depending on the sentence received so this special rule for juveniles is not always beneficial.

Before CICL complete the detention sentence, the Management board of the jail shall coordinate with administrative and social organizations in the children's commune or ward or city to help them reintegrate into the community to have a normal life and to help them redress their wrong doings.

Juvenile offenders who have been handled through administrative or penal measures, separated from their communities for a certain duration, when returning to their families, shall be given conditions and assisted by the commune-level People's Committees in coordination with concerned agencies and organizations to continue their schooling, to learn and seek jobs. In cases where children have completed their education or completely served their penalties but still have no one to rely on, the provincial-level People's Committees shall send them to establishments supporting disadvantaged children and create conditions for them to learn and seek jobs. This law currently applies to children under 16 years old. In implementation of this law, a 2005 Government's decree outlines the support to CICL who have completed their judicial measures or punishment and the possible transfer to child support establishments in case they cannot reintegrate (yet) into their families. It also includes measures to promote and encourage agencies, organizations and enterprises

to finance and employ CICL who finished their education or punishment for work and study.

### **3.3 LAW REFORM AND GAP ANALYSIS**

The Law on Child Protection, Care and Education (2004) recently got replaced by the Children Law (2016) which was adopted on April 5, 2016 and which will enter into force on July 1, 2017. Disappointingly, this law only applies for children under 16 years old which is clearly a lost chance to further close the gap with the CRC.

#### **3.3.1 A separate Juvenile Justice System**

Efforts were made to introduce a separate Juvenile Justice System i.e. Laws, procedures, authorities and institution specifically applicable to CICL, in accordance with Article 40.3 CRC:

##### **3.3.1.1 A separate Juvenile Justice Law**

There is no stand-alone Juvenile Justice Law in Vietnam. The Penal Code and Criminal Procedure Code do contain detailed chapters which specifically apply to CICL but the general provisions of the codes continue to apply to the extent they don't contradict the provisions in the chapter applicable to CICL.

##### **3.3.1.2 Social Agents specialized in minors**

The Children Law includes in article 10 CICL under the wording "children committed illegal acts" in the definition of "Disadvantaged Children". Individuals in charge of child protection affairs at communal level are responsible to assist children who committed illegal acts in the course of proceeding, taking of actions against administrative violations, rehabilitation/recovery and social inclusion.

##### **3.3.1.3 Specialized department within the Vietnam People's Police responsible for CICL**

The current law does not mention a specialized department within the Vietnam People's Police to handle CICL.

##### **3.3.1.4 A separate court system for juvenile offenders**

The Law established a specialized Family and Juvenile Court which is currently being rolled out following the national launch in Ho Chi Minh City.

In accordance with the existing law, persons conducting investigation, prosecution and hearing must be trained or experienced in cases involving minors and have the necessary understanding of child psychology and educational science. The trial panel shall be composed of a teacher or an official of the Youth Union or a person experienced or versed in the mentality of children. The process shall be conducted in a manner that is suitable with the age and level of development of the juvenile and the court room shall be set up in a child friendly manner.

The Children Law stipulates in article 70 that children (under 16 years old) need to be protected in the course of proceedings, including: children must be respected and treated fair and equal in conformity with their age and maturity level; cases involving children shall be handled promptly to minimize mental and physical harm to children; parents, guardians or other legal representatives have the right to assist in the proceedings to protect the child's rights and interests; presiding officers and those individuals competent to take actions against children, lawyers and legal assistants must have the necessary knowledge of child psychology and educational science; children's rights to defense and legal assistance need to be ensured; protection of the children's privacy and limit the child's appearance in public during the proceedings.

#### **3.3.1.5 Specialized juvenile detention center**

Children are detained either in Reform schools which are specialized for juveniles or in adult prisons where juvenile prisoners shall be kept separately from adults and subjected to a separate detention regime.

#### **3.3.2 CRC Guiding principles**

The legislative framework in Vietnam explicitly includes most of the CRC underpinning principles and child justice principles related to CICL in article 91 PC, article 414 CPC and article 134 of the Law on Handling Administrative Violations: CICL are entitled to child friendly proceedings in the best interest of CICL and have the right to privacy, participation rights, right for the minor to provide their opinion, right to defense and legal assistance and timely resolution of the case. Prosecution of CICL will only be done in case of necessity and penalties will only be applied in case exemption of penal liability and educational measures are deemed insufficient. Capital punishment or life imprisonment will not be applied to offenders under 18 years old and termed imprisonment will be for the shortest appropriate time.

It is interesting to note that the new Penal Code only adapted the maximum prison penalty applicable to juveniles but not the minimum prison penalty. Therefore, it can be argued whether the current law complies with the CRC principle that detention a measure of last resort for the shortest period of time. According to UNICEF, it is recommended that the minimum term of imprisonment does not apply in a child's case to allow the court the flexibility to set the term as the minimum necessary in the individual case.

The Children Law (2016) confirms in article 5 the rules for ensuring the exercise of the children's rights and responsibilities: facilitate children in exercising their rights and responsibilities in an adequate manner, not to discriminate against children, ensure the best interest of the child while making decisions relating children, respect for the opinion and expectations of the child and consider the ideas of children while establishing laws and policies affecting children. Article 21 includes the right to privacy. Chapter V includes a whole chapter on children's participation in issues involving children. Article 74 confirms the right of the child to expression of opinions and expectations.

### **3.3.3 Age of criminal liability**

Even if the age of criminal liability is set at 14 years old, children of 12 years and above can still receive administrative sanctions including placement in a reform school and criminal liability depends on the type of offence for children of 14 years old and under 16 years old.

The CRC Committee has noted its dissatisfaction with 'split' ages of criminal responsibility, which involve levels of capacity: one for more serious offences and another for less serious offences. These practices are considered inappropriate because they increase the risk of discrimination or improper use of discretion, lead to younger children being brought into the juvenile justice system, cause confusion in practice and can disguise a true minimum age of criminal responsibility. Consideration should be given to eliminating split ages and discernment, and to establishing one, clear age of criminal responsibility.

In determining the age of the juvenile, doubt will work against juvenile and the latest possible date will be taken into account. This is not in line with the recommendation of UNICEF stating that where there is doubt as to the age of a child, the child should be treated according to the age she/he claims to be, until the age can be determined.

### **3.3.4 Arrest of children and temporary detention**

There are no specific provisions under Vietnamese law about the uses of force during the arrest of CICL.

There are general provisions that prohibit torture, maltreatment, abuse and other forms of violating children's rights as well as corporal punishment or measures that offend or lower the honor of dignity of juvenile offenders.

Article 24 PC (2015) states that using force and causing injury to an offender is only a crime in case the use of force is obviously beyond what is required to arrest the offender.

Article 31.5 of the Constitution contains the right to compensation for material and psychological damages for any person who was arrested or held in custody in violation with the law.

The Children Law contains in article 30 the right of CICL to be protected in the course of the proceedings. They are entitled to defend themselves or be defended and have their lawful rights and interests protected. They are entitled to legal aid, to state their opinions and be protected from illegal deprivation of the right to freedom. In addition, they are protected from torture, extortion of deposition, corporal punishment, defamation of the honor and dignity, physical violations, psychological pressure and other violations.

Temporary detention or custody will only be ordered in case of utmost necessity where supervision and other preventive measures are deemed ineffective and is limited depending on the age of the child and the seriousness of the offence.

### **3.3.5 Access to a lawyer**

The law shall ensure the right to defense and the right to legal assistance of those under 18 years old (article 414 CPC). The extraction of testimony or interrogation of an accused person kept in case of emergency, arrested or detained shall only be conducted in the presence of his defense counsel or

representative (article 421 CPC). The word “or” seems to imply that the assistance of a lawyer is not mandatory in case the representative of the juvenile is present. In case where the accused person under 18 years old does not have a defense counsel, or where his representative does not select a defense counsel, the investigative agency, the procuracy or the court shall appoint a defense counsel (article 422 CPC). As worded, article 422 CPC is unclear whether the defense counsel should be a professional certified lawyer since this article seems to include the option for the juvenile to self-defense or for his representative to act as defense counsel.

The Children Law also states that all children have the right to legal aid (article 30). CICAL shall have the right to request for defense lawyers and to receive legal support in accordance with the provisions of the law on legal assistance (article 69.10). Participation of lawyers, persons assigned to work for child protection or guardians in the statement taking of children is mandated (article 69.3). As indicated above, the word “or” makes it unclear whether one or all of these categories need to be present at the interrogation.

### **3.3.6 Privacy of the minor at the trial stage**

The new CPC states that court may order a trial closed to the public in cases where special protection is required for a juvenile defendant (article 423 CPC).

An earlier version of the Draft Child Law was stricter and required that all trials involving children shall be closed to the public. The Children Law (2016) is rather vague and states that children’s privacy shall be ensured and necessary measures shall be applied for limiting the children’s appearance in the public during the proceeding.

### **3.3.7 Diversion and non-custodial sentences**

The Law on Handling Administrative Violations (2012) introduced diversion by including measures in substitution for administrative handling (admonition and family based supervision).

As discussed above, the measures that can be applied to minors under the administrative system are mainly non-custodial sentences with the exception of consignment to a reform school.

Diversion is also included under the criminal system by the new Penal Code (2015) which includes sections on exemption of criminal liability for certain types of offences in which case educational and monitoring measures (reprimand, community based reconciliation or community based education) will be applied.

The new Penal Code (2015) also provides different types of alternative non-custodial sentences (warning, fine and non-custodial reform), but there are limits on when they can be used depending on the child’s age and the category of the offence and the court can only suspend the sentence in cases where the period of termed imprisonment is less than three years. This restricts the flexibility of the courts to decide on the most appropriate measure for each individual child.

Article 70.9 of the Children Law stipulates that priority should be given to prevention and application of community-based education and rehabilitation measures as an alternative to administrative penalties for children violating the law. Coercive actions and limitation of freedom are only taken when other prevention and education measures are not appropriate.

### **3.3.8 Rehabilitation and reintegration of CICL into society and the community**

Article 44 of the Children Law guarantees equal access to education for all children Article 50.2 dd) provides for education and advice for parents, caregivers and other family members of disadvantaged children on duties and skills of protecting, taking care of and practicing inclusive education to this group of children.

The Children Law contains in article 71.1 protective measures for CICL completing a prison sentence or a placement in a reform school to correct the factors behind the illegal acts and avoid recidivism including family reunion, surrogate care for children who are unable to live with their parents and assistance for families to supervise, manage and educate kids. Individuals in charge of child protection are responsible to participate in the establishment and implementation of support and intervention plans and assist CICL with rehabilitation/recovery and social inclusion services.

Detention facilities and reform schools must coordinate with people's committees of communes where children reside to implement the following measures for the purpose of preparing and enhancing the social inclusion of children violating the law (article 73.1):

- a) Maintain the contact between children and their family;
- b) Organize educational classes, vocational training classes and skill training classes for children;
- c) Consider and evaluate the compliance with the children's compulsory study and training at detention facilities and reform schools, and request competent authorities to reduce the period of serving the sentence or terminate the compulsory education at reform schools as regulated by the law.

The detention facility or the reform school where the child is serving his sentence or the compulsory education must, within 2 months before the child completes his sentence or 1 month before the child finishes the compulsory education at the reform school, inform and provide relevant information to the people's committee of commune where the child will return to live to prepare the receipt and support for the social inclusion of that child (article 73.2).

### **3.3.9 Examination of violations of children's rights**

The Draft Child Law introduced in an earlier version an external independent mechanism, with competencies to be defined by law, to monitor the implementation of children's rights by relevant agencies, organizations and individuals, taking into account children's views, receiving and handling specific situations of rights violations, reviewing draft laws and policies, and making recommendations for improvement across sectors for the realization of children's rights.

Unfortunately, in the final version of the Children Law (2016), this section was deleted and each Ministry has now the duty to examine, inspect and handle the violations and settle the complaints and denunciations about violations of child's rights in the assigned area, which cannot be considered good practice.

### **3.3.10 Conditions of detention**

As discussed above, juvenile prisoners are subject to a separate detention regime with access to vocational training or general education with more liberal rules on family visits, sending and receiving letters and gifts. But since the secondary legislation containing the imprisonment policy for juvenile prisoners is not available in the English language, it was not possible at this point to evaluate this legislation and analyze compliance with international standards.

The new law on temporary detention and custody which will enter into effect in July 2016 discussed above, takes some positive steps to protect the rights of CICL during temporary detention and custody. But it remains vague and fails to provide clear minimum standards. For example, it makes the availability of education or medical treatment dependent of the scale of the center, there can be exceptions on separation of CICL from adults by law when not possible due to practical conditions and it does not include minimum conditions on recreation and out of cell time. The use of detention in a separate cell with denial of contact with their family for up to 17 days to discipline CICL is a very traumatizing punishment which does not take into account the vulnerability of children due to their age.

The rule that CICL will become subject to the general prison regime for adults as soon as they turn 18, especially the fact that they are only entitled to half the number of visits from family, is not beneficial for the reintegration of the young person after release.

## **3.4 THE PERSISTING GAPS BETWEEN THE LEGAL FRAMEWORK AND DAILY PRACTICE IN THE DIFFERENT PHASES OF THE JUVENILE JUSTICE SYSTEM**

According to the 2013 report on the universal periodic review of Vietnam jointly submitted by the United Nations Human Rights Council and the International Federation for Human Rights, Vietnam launched in recent years one of the most intensive crackdowns on the freedom of expression, religion and assembly where between May 2009 and June 2013 at least 160 human rights defenders and peaceful activists were condemned to a total of 1,052 years in prison and many others are said to await trial. The UN High Commissioner for Human Rights, Navi Pillay, noted that “the harsh prison terms handed down to the bloggers exemplify the severe restrictions on freedom of expression in Vietnam”.

The Government seems to be more open to children’s rights compared to human rights in general, and made a lot of efforts to bring the domestic legislation in line with the CRC. The Government of Vietnam formulated and implemented three national programmes of action for children (NPAC), including the current NPAC 2012-2020, adopted the National Programme on Child protection (NPCP) for the period 2011-2015 and recently launched a new National Programme on Child protection (NPCP) for the period 2016-2020, the National program on child participation promotion period 2016-2020 and the National Target Programme on Crime Prevention for 2012-2015 including crimes committed by children.

Part of the key achievements of the National Programme on Child protection for 2001-2010 for CICL noted are: 100% of CICL received free legal support when needed, institutional care for CICL

(Reformatory School) and development of new models in transferring institutional care to community-based care, and piloting a model of re-integration for CICL.

The National Programme on Child protection period 2011-2015 contained the following projects:

- A Project of Development of child protection services system: organization of child protection activities at local level including provincial social work service centers, district counseling centers, counseling rooms in community, school and hospital; organization of child protection service delivery and referrals, provide counseling and psychological and physical therapy for children in special circumstances; support children in special circumstances accessing to the services of education, health care and other social welfares if necessary.
- A Project of Development and Replication of Models of Care and Support for children in special circumstances, including a Model of Prevention and Support for Juveniles in conflict with laws which contains many good initiatives: Organize psychological therapy and recovery for CICL; support juveniles with psychological therapy and recovery; establish clubs for CICL; provide support services; establish network of collaborators to support CICL in community through education and re-integration; organize training courses on re-integration and self-protection skills; organize vocational training; support vocationally trained juveniles with job placement through accessing to bank loans and income generation programs; support employers admitting labor aging children; develop training manuals (including the training on children psychology, law education on children's rights in judicial and administration systems, communication skills, psychological counseling, law education for parents, methods of communications, prevention of discrimination against CICL, support for CICL) and conduct training for 5 groups of targets in pilot locations for senior staff (including leaders of party, local authorities, police, DOLISA, Justice officers, members of Youth Union and Women Union), parents and CICL. Organize study tour and research; monitoring and evaluation; workshops for experience exchange and replication of models.
- a Project of Enhancement of State Management on Child care and protection, including a sub-project of Improvement of Justice System for Minors including CICL. Investigate necessary law reform in the area of juvenile justice and study the amendment of relevant law articles relating to diversion and restorative justice for CICL, increase awareness and enhance capacity of law enforcement officers and officers working with CICL including training on child friendly prosecution for police, prosecutors and court officers. Organize training for social support workers on prevention of juvenile delinquency, reintegration for CICL. Pilot model of diversion for CICL and juvenile specialized courts. Replicate model of child friendly investigation.

The National Programme on Child protection period 2016-2020 contains

- A project of carrying out communication for raising awareness on child protection for community, children and concerned stakeholders
- A project of strengthening the structure and human resources and competencies of child protection officers and collaborators to implement child protection and care;
- A Project of development of child protection services;
- A Project of development of a Monitoring & Evaluation system on child protection;

- A Project of enhancing institutional capacity for child protection during the criminal and administrative proceedings.

The NPCP mentions explicitly MOLISA's cooperation with UNICEF, ILO, EU, Plan International, Save the Children, World Vision and Child Fund to develop certain models.

The Committee on the Rights of the Child is concerned about the absence of proper coherence and coordination between the different existing national policies and programmes affecting children, leading to a weakening of the impact of some policies and overlapping mandates in some sectors.

The Committee on the Rights of the Child repeated in its 2012 concluding observations its previous concern about the lack of an independent monitoring body for the promotion and protection of children's rights as outlined in the Committee's general comment No. 2 (2002) on the role of independent human rights institutions. The Committee further encourages the State party to promptly establish a well-financed and adequately staffed independent human rights institution, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), to ensure comprehensive and systematic monitoring of human rights, including children's rights. It is also still concerned about the level of financial resources allocated for the implementation of the Convention and at the high levels of corruption which reduce the funds available for the implementation of children's rights. The Committee remains concerned at the absence of a central system of data collection covering all areas of the Convention and about the limited data available on the enjoyment of children's rights. The Committee remains concerned at the limited scope civil society is granted to monitor the fulfilment of children's rights in the State party and the lack of effective coordination and cooperation between civil society and governmental offices with respect to the fulfilment of child rights.

On the positive side, the strong mass organizations like the Women's Union, Youth Union and Vietnam Fatherland Front, even if government controlled, provide informal systems of social control at national, provincial, district and commune level. These organizations provide an excellent mechanism to impact and support its members effectively in preventing youth delinquency and offer controlled community based rehabilitation for CICL. This feeds well into the strong traditions of informal service responses to the child protection needs of children by extended family, neighbors and the community in Vietnam.

When interviewed, the representative of the Women's Union explained an elaborate system of prevention of juvenile delinquency and drug abuse, case management for CICL, education for parents and clubs for children who are left with extended family due to economical migration of their parents. The Women's Union set up a joint program with the police to combat social evils and educate children not to violate the law. Children at risk who are showing bad behavior are followed-up by volunteers with a review meeting after one year. A pilot project, followed by reform school in four provinces, invited children from reform schools to exchange with normal school children and their parents. The story of these children from reform schools was a powerful way to make parents realize they should take better care of their children and for children to keep away from crime. The Women's Union is also sometimes assigned by the police to supervise CICL who are sent back to the community for community based education as a collaboration between the family, the school and community presided by the Women's Union.

The assessment of persisting gaps in the daily administration of justice to children is hindered by:

- The lack of reliable data in the field of Juvenile Justice;
- The absence of independent monitoring of trials involving CICL; and
- The absence of NGO's who work with CICL inside of reform schools or prisons; and
- The absence of independent inspections in Reform School or prisons where CICL are detained.

The assessment is therefore mainly done based on the following reports:

- The 2008 (combined) 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 ("2008 Third and Fourth CRC Country Report").
- 2011 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, published by 11 NGO's including World Vision ("2011 Complementary NGO Report").
- 2012 Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Viet Nam, published by Committee on the Rights of the Child ("2012 CRC report").
- The Vietnam Country Report on Human Rights Practices for 2011, published by the United States Department of State, Bureau of Democracy, Human Rights and Labor ("2011 USA Human Rights Practices report").
- 2013 report on the universal periodic review of Vietnam jointly submitted by the United Nations Human Rights Council and the International Federation for Human Rights ("2013 joint UNHRC and IFHR report").

Not all of these reports however are specific to CICL. Hopefully the updated Situation Analysis Juvenile Justice which is expected to be published in 2016 will shed more light on the current status of CICL.

#### **3.4.1 Initial contact (arrest or apprehension)**

GAP: Police mistreatment of suspects persists including to compel detainees to confess.

The Vietnam Law Association mentioned when interviewed that a joint circular was issued by the Police, the Ministry of Justice, MOLISA and the Supreme court in 2011 to guide the investigation, prosecution and judgment of cases involving CICL and make the procedure more child-friendly.

According to the 2008 Third and Fourth CRC Country Report, Vietnam has focused on improving awareness and the capacity of people working with CICL through developing documents and organizing training on child friendly investigations for key officers of the investigation police forces nationwide. The training program on child friendly investigation is incorporated into the curriculum of the Police Academy. Child friendly investigation skills have been gradually and effectively applied according to the report and training documents on juvenile justice and counseling for officers in reform schools and lawyers have been developed.

The 2011 Complementary NGO report complementing the above mentioned state report warns that greater evidence of the achieved impact on CICL is desirable.

The 2011 USA Human Rights Practices report mentions 19 deaths of persons in custody during the year, continued police mistreatment of suspects during arrest and detention, including the use of lethal force, and investigators sometimes using physical abuse, isolation, excessively lengthy interrogation sessions, and sleep deprivation to compel detainees to confess. It reports persisting corruption at all levels in the judicial system. According to the report, the government inconsistently took steps to prosecute and punish officials who committed abuses or engages in corruption who sometimes acted with impunity. The specific situation of CICL was not covered in the report.

### **3.4.2 Pre-trial detention**

GAP: Independent reports mention excessive pre-trial detention beyond legal limits.

The 2011 USA Human Rights Practices report and the 2013 joint UNHRC and IFHR report both mention cases of excessive pre-trial detention where at times investigations lasted indefinitely. But no specific information is provided on pre-trial detention of CICL.

The lack of data on the use of pre-trial detention for juveniles makes it impossible to assess the compliance with international law with regards to the use of pre-trial detention which states that the imprisonment of juveniles, particularly un-convicted juveniles, should be a measure of absolute last resort.

### **3.4.3 Adjudicatory process**

GAP: Several reports mention a denial of fair trial due to lack of independence of the courts and a shortage of trained lawyers. The privacy of CICL is not sufficiently protected.

The 2013 joint UNHRC and IFHR report states that the courts in Vietnam are not independent, trials are routinely unfair and defense counsels are sometimes not able to defend their client due to intimidation, the risk of expulsion of the bar or even imprisonment.

According to the 2008 Third and Fourth CRC Country Report, Vietnam has paid special attention to providing legal assistance to CICL.

The 2011 Complementary NGO Report complementing the above mentioned state report warns that it is difficult to assess the implementation of the 2007 Legal Aid Law and that it appears that many children are not yet receiving appropriate and timely legal aid support. It also stresses the need to respect the privacy and confidentiality of CICL and the responsibility of the media not to publish information that might lead to identification of CICL. It recommends to eliminate public hearings when children are involved.

The 2011 USA Human Rights Practices report mentions a scarcity of trained lawyers and insufficient protection of defendant rights but confirms that juveniles are assigned lawyers for their defense.

UNICEF noted some key improvement to the administrative handling of children including a new procedure for placement of juveniles in reform schools. The decision to impose this measure must be made by the district-level People's Court rather than administrative bodies as was the case under the old procedure. It provides additional legal safeguards including the right for the minor to participate and express his view in the proceedings, the right to assignment of a legal counsel and an interpreter and the right to have the placement order reviewed by a higher court.

#### **3.4.4 Sentencing**

GAP: Lack of complete and reliable data makes it hard to assess the measures applied for CICL into detail. While the majority of CICL are handled under the administrative justice system, those convicted under the criminal justice system seem to be mainly sentenced to prison. The lack of implementation of restorative justice measures is an obstacle to the best interests of children.

According to the 2008 Third and Fourth CRC Country Report, Vietnam has increasingly paid due attention to diversion forms. The country has been developing various forms of educating CICL in community where organizations, schools and families are all involved in educating the children in conflict with the laws through warnings, criticism and transferring them to the Youth Union, the Women's Unions, and to their families and schools for education and management in the community.

UNICEF has been supporting MOLISA to implement a pilot model on Community-based Support to CICL in Ho Chi Minh City and Dong Thap province including strengthening services for diversion, non-custodial measures and community re-integration and community support for this approach.

The MOLISA Children's Indicators 2012-2013 suggest that in 2012 41% of the 11,675 CICL were prosecuted in court while 59% were administratively punished. 15,6% received a measure of family based education, 7,9% received a measure of community based education, 7,3% were sent to a reform school and 8% received another education and management measure. Unfortunately, the report does not indicate what the outcome was for the remaining 61,2%.

The representative of the VAPCR indicated that since the court is responsible to decide on sending CICL to reform schools, the number drastically went down. The figures provided by the VAPCR mention that 154 juvenile offenders were sent to reform schools in 2014 (out of 9,156 CICL) and 55 during the first six months of 2015 (out of 4,886 CICL).

A 2013 report of UNICEF states that of 13,934 juveniles convicted between 2007 and 2009, 11,475 were sentenced to imprisonment (82 percent). This high percentage could be due to the fact that the courts have limited opportunities to apply alternative non-custodial sentences or suspended sentences in accordance with the law.

The Ministry of Public Security did not publish the official number of prisoners and detainees in Vietnam. The NGO International Center for Prison Studies reported 130,180 prisoners as of mid-2012, including pretrial detainees; 12.6 % were women. The report of the Raoul

Wallenberg Institute mentions a total number of 1,475 CICL in prison for 2007 and 1,073 CICL in prison for 2009. This seems to be very sensitive information and no official data were available on the number of juveniles in prison or the number of CICL convicted to prison sentences for recent years.

More research is needed to explain the huge difference between juveniles convicted to prison sentences and the number of CICL in prison. Some convicted juveniles may have been granted special parole or general amnesty, have recorded great achievements or are seriously ill and are no longer dangerous to society, in which case they shall be considered for exemption from penalty execution. But it could also mean that not all prison sentences are executed.

### **3.4.5 Detention (deprivation of liberty)**

GAP: The absence of independent inspections in reform school or prisons where CICL are detained, make it impossible to fully assess the condition of CICL in detention. There are still reports of ill-treatment of CICL in detention. The imposition of solitary confinement punishment is legal under existing law which is not in line with the international minimum standards. Organizations that were interviewed claim that CICL in reform schools only receive limited education and are required to work. There are severe drug addiction and HIV issues reported in reform schools.

The 2005 Situation Analysis Juvenile Justice report mentions problems with drug addiction and HIV infection of reform school students. 36% of the students in reform school No. 1 were referred for drug related offences and 10% of the students in reform school No. 4 were HIV positive.

The VAPCR mentions security issues in reform schools which are currently still under police management. Very young children between 12 and under 14 who commit very serious crimes like homicide and rape are kept alongside older children who commit minor offenses. The small minority of girls is not separated from boys during the day.

The 2011 Final Review and developmental Assessment Report of the Plan International Juvenile Crime Prevention and Re-integration project states that the fact that there were relatively few girls in reform schools has meant that most of them had greater access than boys to the programmes offered like vocational training. Even if reform school police-teachers agreed they could use more training on the specific needs of girls, they noted that there were enough female staff members to relate to the needs expressed by the girls.

Previously some organizations were working inside the reform schools like Plan International and Maryknoll but at the time of this research, we were unable to find any NGOs still active in reform schools. The Plan International representative mentioned that at least until 2010, solitary confinement was still used to discipline children and nobody would be allowed to enter that area to inspect the conditions of the isolation cells. The help line was available for children in reform schools but staff of the reform school would listen in. There were reports of forced labor and insufficient education.

The Plan International Juvenile Crime Prevention and Re-integration project included some activities to improve the living and health conditions in the four national reform schools including health care services, equipment, supplies, training, a health room, a counselling room and some physical improvements to ensure water and food safety and materials to build platforms on which children could sleep. The phone lines that were supplied by the project to provide access to a child help line, was not extensively used. In a later part of the project it was used to help some children maintain contact with their families. The 2011 Final Review Report mentions that the reform schools are functioning with limited financial resources and improvements will continue to be necessary. Unfortunately, the project was discontinued in December 2010.

The Committee on the rights of the child expressed in its 2012 Concluding Observations deep concern that many children have reportedly been and still are subjected to ill-treatment or torture while being administratively detained in drug detention centers, including through the imposition of solitary confinement punishment. The Committee is highly concerned about lack of inspections in drug detention centers and reports about child detainees in these centers not being separated from adults.

The 2011 USA Human Rights Practices report mentions that prison conditions in Vietnam are austere but not life-threatening. At the same time, it mentions deaths caused by serious health conditions exacerbated by poor and delayed medical care, poor sanitation and malnutrition. Some prisoners' family members alleged death resulting from lethal force by authorities. They claimed that prisoners received extra food or other preferential treatment by paying bribes to prison officials. Overcrowding, insufficient diet and unclean food, lack of access to potable water, and poor sanitation remained problematic. Men and women as well as adults and juveniles were said to be held separately, with some reported exceptions in local detention centers where space was often limited. Prisoners generally were required to work but received no wages. Authorities placed prisoners in solitary confinement for standard periods of three months. There is currently no independent monitoring of prison conditions. The ICRC neither requested nor carried out prison visits during the year. Discussions with authorities continued on an ICRC offer of services and expertise in assessing prison detention and treatment conditions.

The 2013 joint UNHRC and IFHR report states that Vietnam rejected proposals to improve detention conditions in its prisons and camps at its Universal Periodic Review. It has not implemented recommendations to this effect made by the UN Working Group on Arbitrary Detention after their visit to Vietnam in 1994. Prisoners released between 2009-2013 report that prisons are overcrowded and insalubrious. Food rations are grossly insufficient, and prisoners have to rely on support from their families to buy food and other basic necessities in prison canteens where police-set prices are exorbitant. Forced labour is obligatory, and those who are too weak or ill to complete production quotas are punished by shackling or solitary confinement in cramped cells with no light or ventilation. Medical care is available only to those who can pay, and many prisoners are gravely ill from beatings, exhaustion and lack of medical care. Prisoners are frequently sanctioned with detention in cramped solitary confinement cells which have no light or ventilation. They are shackled night and day. Prison regulations allow inmates to file complaints, but they are never addressed.

Such inhumane treatment violates Vietnam's Regulations on Detention Conditions regulated by Government Decree 113/2008 and Article 10 of the ICCPR.

### **3.4.6 Reintegration, rehabilitation and after-care services**

GAP: Educational opportunities, rehabilitation and reintegration services for CICL are still limited.

The 2005 Situation Analysis Juvenile Justice report mentions that half of the students at Reform School No. 1 reported not to have received education despite the fact that it is legally required.

The 2008 Third and Fourth CRC Country Report states that some reform schools have evaluated and piloted counseling and psychological treatment for their students. General education and vocational training have been organized in reform schools depending on capacity, including training on computers, mechanics and sewing. But the report also admits that general education and vocational training in reform schools have faced various difficulties due to insufficient facilities, the lack of qualified teachers and short education curriculums. Some reform schools have failed to organize consistent exams. Students have mainly been provided with vocational training on jobs which are simple or of low demand, only involving basic skills and the reform schools have not been able to produce high-skilled workers.

The Plan International Juvenile Crime Prevention and Re-integration project included some activities that contribute to the rehabilitation and reintegration of juvenile offenders: the delivery of various forms of training to police-teachers, the provision of psychological support and some limited counselling to school residents, enhanced vocational training and life-skills training for residents, enhanced communication with families, new connections with community leaders and district officials, and the exploration of the possibility of an early release for some residents. Since the project finished in December 2010, it is not sure how sustainable the effect of these activities will be.

The 2008 Third and Fourth CRC Country Report also states that the regulations regarding the administration of children after they finish the imprisonment sentence or their time in the reform school are inadequate and not systematic, resulting in inadequate after-care and support for some CICL. It leaves them confused, leading in some cases to recidivism. There is a lack of professional officers at all levels. The number of social workers in the community is in shortage and these workers are not provided with updated social work and early intervention skills.

Since 2008 there have been many initiatives to strengthen the child protection system. In 2010 the National Project on Social Work Profession Development for the period 2011-2020 was approved. A network of 60.000 skilled social workers is being built by 2020 and 22 social work centers have been established across the country to provide social work including to CICL. With the support of UNICEF, a Community-Based Child Protection System Model is being piloted in 32 provinces since 2011. CICL and their families have been supported with improved services for recovery and rehabilitation.

The VAPCR mentions that the academic training in reform schools is insufficient and children lag behind, which creates problems for reintegration. Interviewed NGOs also mention that there are still insufficient social workers at the different levels of the child protection network and the mass organizations and volunteers are required to help with the supervision of CICL and children at risk.

The Final Review Report of the Plan International Juvenile Crime Prevention and Re-integration project concludes that there is still insufficient attention for re-entry planning and after-care services for children and youth released from various institutions. It states that the weeks preceding and following the release of a young are crucial and will often determine whether the reintegration will be successful. The Project included community-based reintegration activities including training of volunteers, direct assistance to children released from reform schools, workshops with these children's parents, job placement, assistance to start up a business and individualized legal assistance. These activities were not offered at a large scale yet but proved their effect both in supporting successful reintegration and the ability to promote collaboration between agencies and volunteers to facilitate the reintegration of young offenders. But more attention is needed for an individual re-entry/release plan for each juvenile to plan for their release. The absence of half-way houses or group homes to temporarily receive the large number of children who have nowhere to go remained an issue. Unfortunately, the project finished in December 2010 and in the evaluation is mentioned that the progress achieved was probably not sustainable without further external assistance.

### **3.5 CASE STUDY JUVENILE OFFENDER OF CHILD SEXUAL ABUSE**

The 2005 Situation Analysis Juvenile Justice report indicates that between 2000 and 2003, 871 juveniles were charged with rape. Cases in which juveniles rape other children have increased: 193 cases in 2000, 243 cases in 2001 and 243 cases in 2002.

The MOLISA Children's Indicators 2012-2013 indicate that for 2012, 95 % of the perpetrators of child abuse were male, 6% under 16 years old and 19% between 16 and 18 years old.

These figures show that (like in Cambodia and globally), children in Vietnam are at risk of sexual abuse by peers.

Vietnam provides a good example of a law that sets a higher age of consent for sexual acts between children and adults (16) compared to sexual acts between children (13).

Article 142 of the Penal Code criminalizes having sexual intercourse with children under 13 years old. Article 145 criminalizes having sexual intercourse with children aged from full 13 to under 16 years old for persons of 18 years old and above.

These provision protects children from sexual violence and exploitation by criminalizing sexual intercourse between adults and children under 16 years, while ensuring that young people engaging in consensual sexual intercourse with other young people cannot be prosecuted.

This is in line with the recommendation contained in the 2015 UNICEF study on Violence Against Children in ASEAN member states, which states that it is considered best practice to include an exemption from prosecution in the law for factual consensual sexual relations between two young people who are close in age.

There was no information available about sentences for CICL convicted for abuse or on therapeutic services offered to children with sexual harmful behavior to prevent them from re-offending.

### **3.6 CONCLUSIONS AND RECOMMENDATIONS**

The law provides for a differentiated treatment of juveniles in the Criminal and Administrative Justice System in Vietnam. With the Children Law, which replaced the Law on Child Protection, Care and Education (2004), the Vietnamese Government continued to make efforts to bring the Vietnamese legislation further in line with International Minimum standards. It is a disappointment however that this law continues to apply to children under 16 years only and that the definition of a child in the CRC was not adopted.

There are remaining challenges in the field of juvenile justice that need to be addressed, including:

1. The lack of an accessible central system for data collection and poor quality of data in the field of Juvenile Justice make it impossible to assess the current status of compliance with national legislation and International Minimum Standards;
2. There is a gap between knowing the law and comprehending the practical implications of these laws for the professionals implementing the legislation in both the administrative and criminal system as indicated by the 2011 Complementary NGO Report;
3. The 2011 Complementary NGO Report also mentions barriers to law implementation caused by the overlap and inconsistencies between laws and sub-laws and the frequently delayed and inadequate decrees and guidelines (e.g. guidelines on the application of diversion and administrative measures). Gaps need to be identified and further law review is needed to bring the Vietnamese legislation further in line with International Minimum Standards;
4. The lack of an independent monitoring body for the promotion and protection of children's rights mentioned in the 2012 concluding observations of the Committee on the Rights of the Child and the absence of organizations that have access to and monitor the conditions of children in reform schools and in detention centers is concerning;
5. The negative perception against CICL sometimes leads to over-reliance on reform schools and imprisonment as a response to minor infractions as is still the case according to the 2011 Final Review and Developmental Assessment of the Juvenile Crime Prevention and Reintegration Project;
6. There is a clear need to strengthen the coherence and coordination of plans, programmes and policies (including the three national programmes of action for children, the National Programme

on Child protection and the National Target Programme on Crime Prevention) to support the implementation of the CRC;

7. As mentioned, the Committee on the Rights of the Child is also still concerned about the level of financial resources allocated for the implementation of the Convention and at the high levels of corruption which reduce the funds available for the implementation of children's rights.

Each of these factors need to be addressed. A collaborative approach and coordination should be used to determine how NGOs can work in partnership with donors, the Government and civil society to close the gaps and provide for an effective framework of protection for CICL.

The findings of this research lead to the following recommendations:

- There is a need to establish an accessible central system for data collection in the field of Juvenile Justice in order to make an assessment of the status of compliance of Vietnam with International Minimum Standards.

The updated Situation Analysis, that is planned to be published by UNICEF in 2016 once data are approved by the Ministry of Justice, will shed some light on the current status. The Vietnamese Government currently doesn't make sensitive data like numbers of CICL in reform schools and in detention centers publicly available.

- Updated recurring training of law enforcement officers and the judiciary but also other actors in the administrative and criminal Juvenile Justice system is crucial for the implementation of the new legislation, in particular on concepts like child friendly investigation, exemption of penal liabilities (diversion) and application of educational and monitoring measures.

This has been recognized by efforts to incorporate training on child friendly investigation into the curriculum of the Police Academy. The National Programme on Child Protection period 2011-2015 includes training courses on re-integration and self-protection skills and the development of training manuals including the training on children psychology, law education on children's rights in judicial and administration systems, communication skills, psychological counseling, law education for parents, methods of communications, prevention of discrimination against CICL, support for CICL. Training is conducted for 5 groups of targets in pilot locations for senior staff (including leaders of party, local authorities, police, DOLISA, Justice officers, members of Youth Union and Women Union), parents and CICL.

- With the recent approval of new laws including the new Penal Code, Criminal Procedure Code, the Children Law and the law on the execution of temporary detention and custody, it will be important to review and harmonize existing laws and draft laws, in order to avoid overlap and inconsistencies.

According to the 2005 Situation Analysis Juvenile Justice Report, there were some inconsistencies in the application of the measure of placement of a child in a reform school under the administrative versus under the criminal system where students were sentenced

more severely by People's Committee who dealt with administrative violations than by courts who deal with criminal offences. Some members of the Committee saw CACL as bad elements and simply wanted to remove them from the community. This issue was solved through legislative reform and the decision to impose placement in reform schools now needs to be made by the district-level People's Court also under the administrative system.

Further law review is needed to close the gaps that were identified in the current legislation:

- o The definition of "Child" should include all children under 18 (and not 16) years old;
  - o Where there is doubt about the age of a child, the child should be treated according to the age she/he claims to be, until the age can be determined as recommended also by UNICEF;
  - o UNICEF recommends to include in the law a periodical review of the placement of a child in reform school or in termed imprisonment, ideally every 6 months, to determine whether the child made enough progress to be released;
  - o Lower the maximum sentences of termed imprisonment applicable to CACL (currently 12 years for juveniles aged 14 until under 16 and 18 years for juveniles aged 16 to under 18 years old) as recommended also by UNICEF;
  - o Lower the minimum sentences applicable to CACL since currently only the maximum sentences were adapted for CACL. UNICEF even recommends that the minimum sentence for imprisonment would not apply to CACL to allow the court the flexibility to set the term to the shortest time as appropriate in each individual case;
  - o Prohibition of solitary confinement with denial of contact with family as a disciplinary measure for CACL;
  - o In general, the laws should be more firm and not allow so easily for exceptions for "national security" or even due to practical conditions.
- The absence of an independent monitoring body for the protection of children's rights is a very weak spot in the system. As previously mentioned, the attempt to include an independent mechanism to monitor the implementation of children's rights in the Children Law was unsuccessful. Other than in Cambodia, there are no international organizations like ICRC or OHCHR or local human rights organizations like LICADHO that regularly monitor prison conditions or conditions of detention in reform schools in Vietnam.

This total lack of monitoring and checks and balances can contribute to abuses to go largely unreported and thus unsanctioned. Advocacy for law reform is required to establish an independent body to monitor children's rights and pressure should be exercised by international organizations like the ICRC to be allowed to carry out prison visits and periodically monitor detention conditions in Vietnam.

- The change of the negative perception against CACL is hard work. It requires a lot of awareness raising with the public that CACL are entitled to a differentiated treatment. There is a need to step away from the punitive approach embedded in the traditions of Vietnam which is counter-productive for the rehabilitation of CACL based on sound research.

The 2011 Final Review and developmental Assessment Report of the Plan International Juvenile Crime Prevention and Re-integration project demonstrates that incarceration has several collateral effects upon many offenders: delay in formal education, loss of livelihood,

personal belongings and accommodation, disruption of personal relationships and damaged social and family networks and possibly mental health difficulties. It is not surprising that re-integration of CICTL faces many challenges. Hence the need to promote diversion and alternative sentencing, minimize stay in detention by promoting early release where possible and facilitate re-integration of CICTL by considering progressive re-entry.

The report also noted that it would be a great pity if the considerable progress achieved by the project in mobilizing community support for young offenders at the time of their release from a reform school (or other form of detention) were not reinforced.

- The research has shown that not many NGOs are still active in the field of Juvenile Justice and none were found to be currently working with CICTL in detention. UNICEF's 5-year Child Protection Programme (2012-2016) has a component that focuses on the establishment of a Child-Friendly Justice System, to protect and support children in contact with the justice system, including CICTL, child victims and witnesses. It includes a pilot diversion model.

The Plan International Juvenile Crime Prevention and Re-integration project was discontinued in December 2010. The 2011 Final Review and developmental Assessment Report noted that there is an immediate need to identify and document the lessons learnt from the project and to replicated some of its most successful activities in other communities, particularly as it relates to social reintegration of CICTL. The project has also successfully facilitated the early release of about two dozen young offenders based on their good behaviour, the progress they had achieved during their stay in the reform schools, and their ability to secure employment upon release.

The same goes for the pilots and experience gained from the three national programmes of action for children, the National Programme on Child protection and the National Target Programme on Crime Prevention. The experiences need to be properly documented and its policy implications delineated.

- Seen the importance of the problem of sexual abuse by juvenile perpetrators, the government should consider investing in support services for juveniles with sexual harmful behavior as part of a diversion scheme for minor first time offences or for juveniles in detention where there is no appropriate non-custodial measure available.

Besides consistent advocacy of the rights of CICTL and the general recommendations above, specific recommendations for WV Vietnam are formulated as follows:

- The limited reporting on CICTL cases by the field offices in Vietnam suggests the need to continue awareness training for the World Vision field staff on the Child Protection reporting, the type of incidents and how to intervene, where specific attention needs to be given to identify cases of CICTL. Recurring specific training on CICTL issues can further enhance the position of child protection staff at the World Vision Vietnam National Office in order to effectively protect CICTL and address violations of their rights.
- The handbook on Legal and Psychological Support for Juvenile Delinquents developed by World Vision Vietnam in partnership with MOLISA will need to be updated where needed

based on the new legislation since 2009, including the 2016 Children law and the 2015 PC and CPC. It is recommended to have this handbook translated into English to be able to assess compliance with International Minimum Standards and increase policy impact. The plan of WV Vietnam to share the material with MOLISA for possible revision and update to support the implementation of the 2016-2020 National Programme on Child Protection can only be applauded.

- The NGO Child Rights Working Group (CRWG) was established in June 2006 as a NGO initiative to strengthen the Government's efforts in advancing children's rights, consolidate and strengthen and avoid repetition of NGO efforts. As a member of the CRWG, World Vision will have to continue to assume their responsibility in advocating and advancing children's rights.