



# **Thematic Study on Juvenile Justice**

**With Particular Emphasis on Interrogation Practices on Children  
in Conflict with the Laws**

ASEAN Intergovernmental Commission on Human Rights (AICHR)

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# List of Abbreviation

ACMW	ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACW	ASEAN Committee on Women
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Intergovernmental Commission on Human Rights
AMS	ASEAN Member States
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GC	General Comment
HRC	Human Rights Council
IACHR	Inter-American Commission on Human Rights
ICCPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights
ICRC	International Committee for the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ID card	Identity card
LASCO	Legal Assistance Scheme for Capital Offences
NGOs	Non-Governmental Organisations
NMR	United Nations Standard Minimum Rules for the Treatment of Prisoners or the Nelson Mandela Rules
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OP-CEDAW	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
OP-CRC-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
OP-CRC-IC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
SCOTUS	Supreme Court of the United States
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESC	United Nations Economic and Social Council resolution
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Council
UNTAC	United Nations Transitional Authority in Cambodia
VDPA	Vienna Declaration and Programme of Action

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# Introduction

The rights of the child are defined in the 1989 UN Convention on the Rights of the Child (CRC), the first international agreement comprehensively dealing with protection of children's rights. Since 1995 all ten ASEAN Member States have signed and ratified the CRC. And, the ASEAN's effort to promote and protect human rights of all groups of its people has been reaffirmed with the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 as an overarching human rights body of ASEAN by the ASEAN Charter. In 2012, this regional mechanism was further enhanced by ASEAN leaders endorsing the promulgation of the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD. Reflecting the international framework such as CRC, the rights of children are stipulated in the AHRD as inalienable, integral, and indivisible part of human rights and fundamental freedoms.

The CRC guarantees the promotion and protection of children's rights, including children in conflict with the law (CICL). The term CICL refers to anyone under the age of 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence. Within the jurisdiction of the ten ASEAN Member States (AMS), progress has been made pertaining to the protection of the rights of the child in the administration of juvenile justice in accordance with the CRC. This AICHR's thematic study on juvenile justice focuses on the interrogation practices for CICL. It is aimed to provide a comprehensive regional report on the conduct and good practices of interrogation by officials toward CICL in ASEAN region. It will also contribute to the implementation of article 4.12 of the Terms of Reference of AICHR, in which the AICHR is mandated to prepare studies on thematic issues of human rights in ASEAN. The AICHR has agreed in 2015 to prepare a thematic study on juvenile justice and outlined the topic in its Priority Programmes/Activities. Furthermore, this study shall contribute to the promotion and protection of the rights of the child as one of the vulnerable groups identified in the ASEAN Human Rights Declaration (AHRD).

The development of this collaborative research to support the promotion and protection of ASEAN children's rights started in 2018. It involved a coordination meeting of the regional and national researchers from ten ASEAN Member States to discuss and agree on the structure of the study whose completion were anticipated in 2019, to coincide with the 30th anniversary of the CRC. Whereas emphasis of this study covers a specific area in the administration of juvenile justice with the aims to provide a comprehensive report on the practices and conduct of interrogation by officials toward children in conflict with the law, it also deals with the discussion on the administration of juvenile justice to all children including children with disabilities and CICL caught up in cross-border cases in a country other



than their own. Following the submission of country reports by each national researcher, a regional findings report was compiled by regional research team. The final draft then was further reviewed and approved by AICHR Representatives.

With various methodological challenges that pushes the delayed completion to 2023, this final report of thematic study has collated national regulations and practices pertaining to the administration of juvenile justice in the jurisdiction of all ten AMS and the challenges faced by the AMS in ensuring the compliance to the CRC. The report is divided into two parts: 1) the regional analysis; and 2) ten country reports of each of the AMS.

Guided by the ASEAN Charter and ASEAN Community Vision 2025, AICHR is committed to work in promoting the rule of law and human rights. To respect and uphold these values, it is crucial to ensure access to justice to all, including children, women, persons with disabilities, the vulnerable and marginalised groups. This effort of the AICHR to mainstream human rights across sectoral bodies and communities within ASEAN also aligned with AMS' shared aspirations to spearheading strategies for the decade of action to achieve the 2030 Agenda for Sustainable Development Goals (SDGs), particularly the SDG16 on peace, justice and strong institution.

In recognition of the AICHR representative who led this project, I wish to particularly thank Dr. Seree Nonthasoot, Thailand's representative to the AICHR for 2013-2015 and 2016-2018. And also importantly, I wish to extend my gratitude to both team of researchers who provided the regional analysis and all national researchers appointed by each AICHR representative to produce their respective country report. My gratitude also goes to the Enhanced Regional EU-ASEAN Dialogue Instrument (E-READI) of the European Union for the funding support to facilitate the development of this study.

I am strongly confident that this AICHR's initiative could contribute to the needed regional effort to ensure that all children in ASEAN are protected, notwithstanding the different legal systems in the region, each with different mechanisms in dealing with CICL. To reach that goal, sharing information regarding their understanding and standard of treatment for CICL particularly during interrogation processes by AMS in this study is among the important milestones. I am hopeful that lessons learned, and good practices shared in this thematic study will enhance our understanding of how to align the interrogation practices to the principles enshrined in the CRC.

Prof. Dr. Amara Pongsapich

Representative of Thailand to the AICHR 2019-2021 and 2022-2024

## PART I: Regional Findings

# Chapter 1: International and Regional Standards

## I. The Child in Conflict with Law and the Juvenile Justice System

Beginning the first stages of contact with the justice system – from the time of apprehension, arrest and interrogation – children are put in a particularly vulnerable situation, making it incumbent upon duty bearers to put in place safeguards and accord the child the rights guaranteed by the UNCRC. A child in conflict with the law is exposed to a certain risk of becoming victims of violence the moment they enter the justice system. The CRC Committee, in its interpretation of Article 19 of the UNCRC, has expressed that “all forms” of physical or mental violence includes violence in all its forms against children in order to extract a confession or to extra-judicially punish children for unlawful behaviour, typically applied by police or law enforcement officers, among others.<sup>1</sup>

The 2006 United Nations Study on Violence Against Children has found that certain groups of children are especially vulnerable to violence, including those in conflict with the law and that police or law enforcement officers are one of the perpetrators of violence against children.<sup>2</sup> The study showed how violence against children has been prevalent not only in the home and school settings, but also within the justice system.

Building on this study, a Joint Report of the Office of the High Commissioner on Human Rights, the United Nations Office on Drug and Crimes, and the Special Representative of the Secretary General on Violence against Children was issued in 27 June 2012.<sup>3</sup> The report focused on the situation of violence against children in the juvenile justice system and has identified arrest and apprehension, and police interrogation as among the stages in the juvenile justice system where the child is exposed to risks of violence.

## II. ASEAN and the UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child (UNCRC) was adopted by the UN General Assembly in 20 November 1989. Within six (6) years following its adoption, all ten (10) ASEAN Member States (AMS)

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<sup>1</sup> United Nations (UN) Committee on the Rights of the Child, General Comment No 13, CRC/C/GC 13 (April 18, 2011)

<sup>2</sup> United Nations (UN) General Assembly, Report of the Independent Expert for the United Nations on Violence Against Children, A/61/299 (Aug. 29, 2006)

<sup>3</sup> United Nations (UN) Human Rights Council, Joint Report of the Office of the High Commissioner on Human Rights, the United Nations Office on Drug and Crimes, and the Special Representative of the Secretary General on Violence against Children, A/HRC/21/25 (June 27, 2012)

have become signatories to the UNCRC.<sup>4</sup> As signatories to the UNCRC, the 10 AMS bound themselves to comply with its provisions, and its general guiding principles. Article 4 of the UNCRC mandates states party to take all measures to implement the rights enshrined in the treaty. However, four of the 10 ASEAN Member States registered reservations to the UNCRC.<sup>5</sup> The reservations of the 10 AMS can be summarized as follows:

**Table 1: The ratification and reservations of the Convention on the Rights of the Child in ASEAN**

Country	CRC Ratification	Reservations
Brunei Darussalam	27 Dec 1995	Articles 14, 29.3, 21.b,c,d,e
Cambodia	15 Oct 1992	None
Indonesia	5 Sept 1990	None
Lao PDF	8 May 1991	None
Malaysia	17 Feb 1995	Articles 2, 7, 14, 28.1a, 37
Philippines	21 Aug 1990	None
Singapore	5 Oct 1995	Articles 7,9, 22, 28.1a, 32
Thailand	27 Mar 1992	Article 22
Vietnam	28 Feb 1990	None

A reservation to a key provision of the UNCRC like the right to non-discrimination, a fundamental guiding principle of the UNCRC, may pose challenges to the full realization of a child's right. Of particular significance to this study are the reservations of the AMS that have a huge impact on the rights accorded to a child in conflict with the law. For instance, Malaysia has made reservations and Singapore has made a declaration against Article 37 of the UNCRC, which guarantees the right of the child to fair trial and requires that detention should be a measure of last resort. Specifically, Article 37 of the UNCRC mandates that every child deprived of liberty be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. It guarantees the right to prompt access to legal and other appropriate assistance, and the the right to maintain contact with his or her family through correspondence and visits.

<sup>4</sup> UN Treaty Collection, view the ratification status and dates for the 10 ASEAN member states at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en), last accessed 3 October 2019.

<sup>5</sup> UN Treaty Collection, view the status of declarations and reservations of the 10 ASEAN member states at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en), last accessed 3 October 2019.

### III. Rights of a Child in Conflict with the Law: the UNCRC

#### Guarantees

The rights of a child in conflict with the law are clearly articulated in Articles 37 and 40 of the UNCRC.<sup>6</sup> Article 37 specifically imposes the obligation upon state parties to treat every child alleged as, accused of or recognized as having infringed criminal law in a manner consistent with the promotion of the child's sense of dignity and worth. This means that in all phases of the juvenile justice process, the rights of the child must be safeguarded. The CRC Committee, in its General Comment 24 stressed that safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial.<sup>7</sup> It further encouraged State parties to enact legislation and ensure practices that safeguard children's rights from the moment of contact with the system, including at the stopping, warning or arrest stage, while in custody of police or other law enforcement agencies, during transfers to and from police stations, places of detention and courts, and during questioning, searches and taking of evidentiary samples.<sup>8</sup>

Article 40 (b) (ii) and (iv) of the UNCRC provides for the rights of the CICL to be promptly informed of the charges against her or him, and not to be compelled to give testimony or confess guilt. This finds significance at the initial contact with the child and interrogation process. The CRC Committee has interpreted "promptly" to mean as soon as possible after the first contact of the child with the justice system, and has opined that the right not to be compelled to compulsory self-incrimination is to be interpreted broadly such that it is not limited to physical force.<sup>9</sup> This is in recognition of the higher risk of false confession given the child's age and development, lack of understanding and other factors affecting the child's decision-making. In the context of police interrogation, the UN has drawn attention to the right of every child deprived of liberty to have prompt access to legal assistance as well as the failure of many juvenile justice laws to include a clause that a child shall not be questioned by a police officer or a prosecutor without a parent, guardian or a responsible adult present.<sup>10</sup> To ensure effective participation of the child in the process, therefore, there is an impetus to towards child-friendly language at all stages of the justice system, child-friendly layouts of interviewing spaces, support by appropriate adults and removal of intimidating legal attire.<sup>11</sup>

In so far as the 10 AMS have been complying with its UNCRC obligations in relation to the administration of juvenile justice, a survey of the most recent concluding observations issued by the CRC Committee would show that the finding most common to the 10 AMS pertains to the age of minimum criminal

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<sup>6</sup> Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S 3 (entered into force Sept. 2, 1990).

<sup>7</sup> United Nations (UN) Committee on the Rights of the Child, , General Comment No. 24, CRC/C/GC/24 (Sept. 18, 2019)

<sup>8</sup> Id.

<sup>9</sup> Id at 9.

<sup>10</sup> Human Rights Council, supra note 3 at 7.

<sup>11</sup> Committee on the Rights of the Child, supra note 7.

responsibility, detention as a measure of last resort, and capacity of personnel/officials administering juvenile justice.<sup>12</sup> None of the concluding observations make mention of practices of law enforcement officers and other personnel like social workers during their initial contact with the CICL. While some recommendations are couched in general terms so as to cover the pre-trial stage, these pertain in general to the rights of the CICL to fair trial.

## **IV. The Rights of the Child in Conflict with the Law:**

### **International Legal Standards**

In 2015, the UN General Assembly adopted resolution A/RES.69/194 which laid down the UN Model Strategies on Violence Against Children.<sup>13</sup> Emphasizing that a child who comes in contact with the law either as victims, witnesses or offenders must be treated in a child-sensitive manner and with respect for their rights, dignity and needs, the UN Model Strategies was formulated to help States address the need for an integrated violence prevention and child protection strategy, and offer children the protections to which they are entitled to under international laws. The goal is to improve the effectiveness of the criminal justice system in preventing and responding to all forms of violence against children.<sup>14</sup> It likewise emphasizes the need to prevent children from becoming involved in the criminal justice system, noting that children alleged as, accused of or recognized as having infringed a penal law face a heightened risk of violence.<sup>15</sup>

The strategies provided are classified into three categories: general prevention strategies, strategies to improve the ability of the criminal justice system to respond to crimes of violence against children, and strategies to prevent and respond to violence against children in contact with the juvenile justice system.

The UN Model Strategies note that it is crucial to establish accessible, child-appropriate and safe procedures for children to complain about incidents of violence during their arrest or interrogation or while in police custody.<sup>16</sup> It prescribes States to take specific measures to ensure that alleged incidents of violence against children during their contacts with the police are independently, promptly, and effectively investigated.<sup>17</sup> Relevant to interrogation practices and initial contact with the child in conflict with the law, the UN Model Strategies urged member states to prohibit all forms of violence, torture and other cruel,

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<sup>12</sup> UN Office of the High Commissioner on Human Rights, Treaty bodies search, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=5](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=5) (last accessed 3 October 2019). To get the correct results, please filter by country.

<sup>13</sup> United Nations (UN) General Assembly, UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, A/RES.69/194 (Jan. 26, 2015)

<sup>14</sup> *Id.*

<sup>15</sup> United Nations Office of Drug and Crime, Introducing the UN Model Strategies and Practical Measures on the Eliminations of Violence against Children in the Field of Crime Prevention and Criminal Justice, A New Tool for Policy Makers, Criminal Justice Officials and Practitioners 14 (2015) [hereinafter UNODC, UN Model Strategies].

<sup>16</sup> *Id.* at 15.

<sup>17</sup> *Id.* at 16.

inhuman or degrading treatment or punishment to obtain information or extract a confession, and to ensure prompt access to legal aid during police interrogation. The establishment of child-appropriate and safe procedures for children to complain about incidents of violence during their arrest or interrogation is likewise encouraged.

There are four (4) other UN standards that are directly relevant to juvenile justice administration:

1. The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) issued in 1985<sup>18</sup>;
2. The UN Guidelines and Rules for the Prevention on Juvenile Delinquency (Riyadh Guidelines) issued in 1990<sup>19</sup>;
3. The UN Rules for the Protection of Juveniles Deprived of Liberty (Havana Rules) issued in 1990<sup>20</sup>; and
4. Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) issued in 1997<sup>21</sup>.

The Beijing Rules was adopted by the General Assembly in its resolution 40/33 in 29 November 1985, even before the UN Convention on the Rights of the Child was adopted. It identified the aim of juvenile justice, that is, to promote the well-being being of the CICL, and to ensure that the principle of proportionality is applied in reaction of their offences.<sup>22</sup> Relevant to interrogation practices, Rule 10 provides the minimum standards to be observed upon the initial contact with the child in conflict with the law. Specifically, it requires that parents or guardians of a child who is apprehended be immediately notified of such fact and that any contact between the law enforcement officers and the child in conflict with the law be managed in such a way as to respect the child's legal status, promote his or her well-being and avoid harm to him or her.<sup>23</sup>

The Riyadh Guidelines, meanwhile, provided measures aimed at preventing juvenile delinquency, and is founded on the principle that the successful prevention of juvenile delinquency requires efforts on the part of the entire society. It was adopted by the General Assembly on 12 December 1990.<sup>24</sup> It places emphasis on preventive policies to facilitate the successful integration of all children and young persons,

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<sup>18</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("The Beijing Rules"): resolution/adopted by the General Assembly, A/RES/40/33 (Nov. 29, 1985)

<sup>19</sup> UN General Assembly, *United Nations Guidelines and Rules for the Prevention on Juvenile Delinquency* ("The Riyadh Guidelines"): resolution/adopted by the General Assembly, A/RES/45/112 (Dec. 14, 1990)

<sup>20</sup> UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*: resolution/adopted by the General Assembly ("the Havana Rules"), A/RES/45/113 (April 2, 1991)

<sup>21</sup> UN Economic and Social Council, *Guidelines for Action on Children in the Criminal Justice System*, resolution 1997/30 (July 21, 1997)

<sup>22</sup> UN General Assembly, supra note 18, rule 5.1

<sup>23</sup> Id. rules 10.1 and 10.3

<sup>24</sup> UN General Assembly, supra note 19.

social policy that gives priority to programs for young persons and legislation related to the administration of juvenile justice that promote and protect the rights and well-being of young persons.

In 14 December 1990, the Havana Rules was adopted by the UN General Assembly to establish minimum standards for the protection of juveniles deprived of their liberty and to provide guidance to professionals involved in the management of the juvenile justice system.<sup>25</sup> It emphasized that detention pending trial should be avoided to the extent possible and that all efforts to apply alternative measures should be pursued. In short, the Havana Rules encourages the use of alternatives to detention, and to ensure the protection of rights of the children in conflict with the law who are otherwise detained.

To provide a framework for the implementation of the UNCRC provisions in the context of administration of juvenile justice, the Vienna Guidelines was recommended by the Economic Council in 21 July 1997.<sup>26</sup> It calls on State parties to give regard to human dignity as compatible with the four core principles of the UNCRC. The Vienna Guidelines also specifically calls on States parties to make available a broad range of alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages.<sup>27</sup>

To supplement the Beijing Rules, Riyadh Guidelines, and Tokyo Rules, and give due regard to distinct needs to female offenders, the Bangkok Rules provide for additional rules for the treatment of juvenile female prisoners.<sup>28</sup> Meanwhile, the promotion of the use of non-custodial measures and of alternative sanctions is emphasized by the Tokyo Rules, providing for legal safeguards and guidelines for disposition at the pre-trial, trial and sentencing stages.<sup>29</sup>

## V. Regional Standards and Mechanisms in ASEAN

In 8 August 1967, Indonesia, Malaysia, the Philippines, Singapore and Thailand signed the ASEAN Declaration formalizing the organization of ASEAN.<sup>30</sup> From the initial 5 member states, the organization now has ten members, with Brunei Darussalam, Cambodia, Lao PDR, Myanmar and Vietnam joining.<sup>31</sup> One of the declared purpose of the ASEAN is to strengthen democracy, enhance good governance and

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<sup>25</sup> UN General Assembly, *supra* note 20.

<sup>26</sup> UN Economic and Social Council, *supra* note 21.

<sup>27</sup> *Id.*

<sup>28</sup> UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* ("Bangkok Rules"):note/by the Secretariat, A/C.3/65/L.5 (Oct. 6, 2010)

<sup>29</sup> UN General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures* "the Tokyo Rules", resolution/adopted by the General Assembly, Resolution 45/110 (Dec. 14 1990)

<sup>30</sup> ASEAN Secretariat, History: The Founding of ASEAN, available at <https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/> (last accessed 1 April 2019).

<sup>31</sup> ASEAN was established on 8 August 1967 in Bangkok by the five original member countries: Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Laos and Myanmar on 23 July 1997, and Cambodia on 30 April 1999.



the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN.<sup>32</sup>

In line with their obligations under the CRC, the ASEAN (Association of Southeast Asian Nations) Member States have been working to create policies and programs for children in their localities. Together, ASEAN has strengthened these commitments in several instruments, namely the Declaration on the Commitments for Children in ASEAN (2001), the Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (2010), the Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN (2013), and the Regional Plan of Action on the Elimination of Violence Against Women and Elimination of Violence Against Children (2015).

It was in 1993 when the first regional document dealing directly with children's rights and issues – the Resolution on the ASEAN Plan of Action for Children – was adopted.<sup>33</sup> It was crafted to provide the framework for promoting regional cooperation for the survival, protection and development of the ASEAN child.<sup>34</sup> In 2001, the Declaration on the Commitments for Children in ASEAN was adopted, expressing agreement among the ASEAN Member States to “promote regional cooperation for the survival, development, protection and participation of ASEAN children as an integral part of ASEAN's efforts to improve the lives of peoples in the the region.”<sup>35</sup>

The region finally had its first legally binding instrument recognizing and calling for the protection of human rights in 2008 when the ASEAN Charter<sup>36</sup> came into force, paving the way for the establishment of an ASEAN human rights body.<sup>37</sup> The ASEAN Inter-governmental Commission on Human Rights (AICHR) was inaugurated at the 15<sup>th</sup> ASEAN Summit in Thailand on 23 October 2009.<sup>38</sup> The AICHR is designed to be an integral part of the ASEAN organizational structure and an overarching institution with overall responsibility for the promotion of human rights in ASEAN.<sup>39</sup> The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, on the other hand, was established in April 2010 in Hanoi<sup>40</sup> to promote and protect the human rights of women and children. It is tasked with

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<sup>32</sup> Association of South East Asian Nations (ASEAN), *Charter of the Association of Southeast Asian Nations*, (Nov 20, 2007) [hereinafter ASEAN Charter].

<sup>33</sup> Institute of Human Rights and Peace Studies, Mahidol University and Save the Children, *Child Rights Situation Analysis Within the ASEAN Region 2016*, available at <https://resourcecentre.savethechildren.net/library/child-rights-situation-analysis-within-asean-region> (last accessed Oct 3, 2019)

<sup>34</sup> Association of South East Asian Nations, *1993 Resolution on the ASEAN Plan of Action for Children*, adopted in Manila (Dec. 2, 1993)

<sup>35</sup> Association of South East Asian Nations, *Declaration on the Commitments for Children in ASEAN*, adopted in Singapore (Aug. 2, 2001)

<sup>36</sup> The ASEAN Charter, *supra* note 32.

<sup>37</sup> *Id.*, article 14.

<sup>38</sup> About AICHR, available at <https://asean.org/asean-political-security-community/asean-intergovernmental-commission-on-human-rights-aichr/> (last accessed Oct. 3, 2019)

<sup>39</sup> *Id.*

<sup>40</sup> About ACWC, available at <https://acwc.asean.org/about/> (last accessed Oct 3, 2019)

upholding the rights contained in the UNCRC and the UN Convention on the Elimination of Discrimination against Women, which all ASEAN member states have ratified.<sup>41</sup>

Later, the Hanoi Plan of Action was passed in 2012, explicitly stating that ASEAN should “work towards the full implementation of the UNCRC and the CEDAW and other international instruments concerning women and children”.<sup>42</sup> It was followed shortly thereafter by the Declaration on the Elimination of Violence against Women and Elimination of Violence against Children which was adopted at the 23<sup>rd</sup> ASEAN Summit in 2013.<sup>43</sup> The establishment of a child-centered juvenile justice system that fully safeguards the rights of the child is one of the commitments enshrined in the said Declaration.

In 2015, the ASEAN Regional Plan of Action on Elimination of Violence Against Children was adopted, guided by the fundamental principle that “no violence against children is justifiable”<sup>44</sup> and required a comprehensive approach to address and eliminate violence against children at various stages in a child’s life cycle. The RPA-EVAC specifically includes in its action plan the establishment of a child-sensitive justice system that will protect the rights of children<sup>45</sup> and the strengthening of protective measures for children in conflict with the law through restorative justice approaches.<sup>46</sup>

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<sup>41</sup> Id.

<sup>42</sup> Association of South East Asian Nations, *Hanoi Plan of Action*, ¶ 4.9 (June 19, 2012), available at [https://asean.org/?static\\_post=hanoi-plan-of-action](https://asean.org/?static_post=hanoi-plan-of-action) (last accessed Oct 2, 2019)

<sup>43</sup> Association of South East Asian Nations, *Declaration on the Elimination of Violence against Women and Elimination of Violence against Children*, (Oct. 9, 2013), available at [https://www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW\\_violenceagainstchildren.pdf](https://www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW_violenceagainstchildren.pdf), (last accessed Oct 4, 2019)

<sup>44</sup> ASEAN Regional Plan of Action for the Elimination of Violence against Children, available at [https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document\\_files/asean\\_regional\\_plan\\_of\\_action\\_on\\_elimination\\_of\\_violence\\_against\\_children\\_adopted.pdf](https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/asean_regional_plan_of_action_on_elimination_of_violence_against_children_adopted.pdf) (last accessed Oct 4, 2019)

<sup>45</sup> Id., action 3(b)

<sup>46</sup> Id., action 2(17)

# Chapter 2: Beyond Common Ground: Regional Findings on Juvenile Justice in Southeast Asia

## I. Setting the Stage: Foundations of Juvenile Justice in Southeast Asia

The concept of juvenile justice has been fostered based on the increased attention inherently centered on the rights of a child. Indeed, many countries including the ASEAN Member States have gone through a process requiring reform that places social and legal norms into practice. In the past, as was common in various countries, children were placed onto the same criminal pretenses as adults during the 19<sup>th</sup> century but through the advocacy of organizations and the ushering of several pieces of legislation, they were able to move forward in reforming its system in juvenile justice.<sup>47</sup> This brought in the strengthening of a more modern criminal justice system in the west. Thus, combined with the development of greater economic partnerships through globalization, the international community has also evolved to ensure that emerging economics such as ASEAN Member States follow suit.<sup>48</sup>

The commitment towards children and its relation towards juvenile justice is further underlined through the Convention of the Rights of the Child (CRC) with other soft law or non-binding instruments such as the Beijing Rules, the Riyadh guidelines, the Ha Noi Declaration, and most recently the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice. Meanwhile, across ASEAN, regional frameworks such as the ASEAN Human Rights Declaration, Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Child in ASEAN as well as the ASEAN Convention Against Trafficking in Persons Particularly Women and Child have also been developed as joint forces to implement international instruments among ASEAN Member States. Simply put, these instruments offered a “roadmap to the future” that could otherwise shed a light on the actions that needed to be taken to secure juvenile justice.<sup>49</sup> Reaching towards broader shores of the Asia Pacific where a majority of ASEAN Member States are a part of the Asia-Pacific Council for Juvenile Justice, the notion of juvenile justice involves the underlining of expansive social inclusion that focuses on policies and practices which place the interests of children as a cornerstone of present legal systems.<sup>50</sup> Such initiatives—which has been conducted with the majority of ASEAN Member States—have included the strategy-building in regards to children and

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<sup>47</sup>Larry Siegel and Brandon Welsh C., *Juvenile Delinquency Theory Practice and Law*, vol. 2, 2009.

<sup>48</sup> Shahid M. Shahidullah, ed., *Crime Criminal Justice, and the Evolving Science of Criminology in South Asia: India, Pakistan, and Bangladesh* (London: Palgrave Macmillian, 2017).

<sup>49</sup>Alyssa Wright, *Extended Adolescent Development in International Juvenile Justice: Modernizing the U.N. Standards and Norms with Scientific Progress and Law*, SSRN JOURNAL (2018), <https://www.ssrn.com/abstract=3302404>

<sup>50</sup> <http://restorativejustice.org/rj-library/a-voice-for-the-future-of-juvenile-justice-in-asia-pacific/12470/#sthash.TE4VFJyB.dpbs>.

adolescents in conflict with the law to the vigorous collaboration on prudent social integration of youth.<sup>51</sup> In short, ASEAN Member States have taken a journey towards comprehensive legislation from each member state that has led to collective partnerships, exchanges and progress that has brought Southeast Asia into a model of wide reform for juvenile justice.

However, as this regional report will tell the reader, it is through the shared understanding of elevating the importance of juvenile justice further can room for improvement always be made, learning from the progress as well as unique position of each member state. Thus, this section aims to pinpoint the commonalities, best practices, as well as challenges found across ASEAN and in the process, find the silver lining that can bring forward recommendations which cultivates regional cooperation further among member states.

## **II. Ratification, Implementation and Institutional Framework: A Starting Point**

All ASEAN Member States have ratified the CRC and are bound by the commitment to uphold the right of children including those who are in conflict with the law. This brings three major developments.

First, the ratification of the CRC by all ASEAN Member States demonstrates the common interest of the region to uphold juvenile justice. In fact, CRC is the first convention that was signed and ratified in all of the 10 ASEAN Member States without any resistance since 1995. Since then, regional systems and cross-border collaboration to realize children's right have progressively been initiated and reinforced. Examples can be found in various mutual efforts such as to protect children from trafficking, upholding the rights of children affected by migration and displacement as well as to discuss integrated child protection scheme including juvenile justice, and the Minimal Age of Criminal Responsibility (MACR). This is perpetuated further through the vigorous actions and partnerships with civil society to expand opportunities for children.<sup>52</sup> In addition, it should be attested that based on the commitments of international law, all ASEAN Member States do not have the death penalty for children.

Second, based on their commitments of international law, ASEAN Member States has shown their efforts through the implementation process seen in domestic laws. All ASEAN Member States have—in one way or another—established distinct law or provision on child protection which encompasses the system of juvenile justice.<sup>53</sup> This solidifies the commitment that ASEAN Member States have with protecting

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<sup>51</sup> Ibid.

<sup>52</sup> "Mechanisms within ASEAN and SAARC to Engage with Civil Society on Child Protection". Plan Asia Regional Office, August 2014.

<sup>53</sup> The Children and Young Persons Act Chapter 219 (CYPA), the Law on Juvenile Justice (LJJ) of the Kingdom of Cambodia in 2016; Malaysian Child Act 2001, for Lao PDR: The Law on Juvenile Criminal Procedure, The law on criminal proceeding, The law on Penal Code,

children and have taken efforts to realize such commitments. Furthermore, it should be noted that other non-binding instruments such 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) 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 have been referred in various laws, regulation, policy, statements and/or programs. This signifies the development of standard setting on delinquent child to improve the situation for children in conflict with the law.

Third, ASEAN countries have also developed and strengthened the institutional framework for implementing CRC. For example, Indonesia, Philippines, and Cambodia all has specifically addressed the rights of children through their constitution.<sup>54</sup> Furthermore, the implementation of child protection has been realized through the development of government agencies or core polices that support, monitor or otherwise hold influence within the realm of juvenile justice in the country. For example, Laos PDR has established the National Mechanism on the Promotion and Protection of the Rights and Interests of Children as well formed the National Commission for the Advancement of Women and Mothers-Child whereas Indonesia has even gone to the extent of forming a Ministry for Women Empowerment and Child Protection.

As this regional report will show, all country reports signify that through the region, legislative and institutional improvements are being made to secure the rights of children in conflict with the law. All states within the region have installed or are in the process of installing a distinct legislative framework for juvenile justice. These reports will highlight the best practices as well as the challenges of the right to child in this region.

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The Law on the right and interest of the children, The Law on public prosecutor, The Law on family registration, and Law on Preventing and Combating Violence against Women and Children; Brunei: the Children and Young Persons Act (Cap 219), Singaporean Children and Young Persons Act; In the case of Thailand, The Child Protection Act B.E. 2546 (2003) and its subsequent law, the National Child Protection Act Committee Regulations Regarding the Method of Welfare Protection for Children in Conflict with the Law but is Below the Age of Criminal Responsibility (2008 amended in 2012). Myanmar covers juvenile justice in the Child Law 1993 Chapters VI, IX, X, XII, XV and XVIII which contain provisions relating to children in conflict with the law, including the minimum age of criminal responsibility ( 7 year of age), court procedures for children in conflict with the law, probation and sentencing. Articles 82-84, Penal Code, set out the minimum age of criminal responsibility.

<sup>54</sup> Article 48, The Constitution of the Kingdom of Cambodia, 1993, Section 3 (2), The Constitution of the Republic of Philippines, 1987. Article 28N, Chapter XA, Constitution of the Republic of Indonesia, 1945.

# Chapter 3: Commonalities: Finding Pathways of Similarities

## I. Children in ASEAN

The CRC defines a child as every human being below the age of 18 unless applicable under the law. Apparently, ASEAN's Regional Plan of Action on Elimination of Violence against Children (ASEAN RPA on EVAC) echoes directly from the CRC. Furthermore, in its capacity as a regional organization, ASEAN has determined that there are 213 million youth, with the number projected to rise above 220 million by 2038.<sup>55</sup> However, this statistic determines the category “youth” as being placed between the age margins of 15 to 35 years of age, a stark difference when placed within the realm of juvenile and adult criminal liability. A separate report conducted by UNICEF that caters specifically to the ratification of ASEAN Member States towards the CRC states that as of 2020, there is a demographic shift that shows that the population of those under 19 has experienced a decline compared to the population of those over 19 in ASEAN.<sup>56</sup> Either way, children account as a significant population group around the region, highlighting the important stake that they have in the economies and politics of each ASEAN Member State.

## II. Types of Crimes

ASEAN is renowned for its diversity, with differences prevailing in a country's culture, politics and economy. These factors feature prominently to the socio-economic map of the region and this includes that of criminal offenses. Most common offenses committed by juveniles include theft and drug related crimes, but they also do not preclude other criminal offenses such as homicide, disruption of peace and order as well as sexual offenses. For example, in Thailand the most common criminal offenses for juveniles concern drug related offenses, which would then be followed by property offenses, homicide and assault, weapons and explosives and land traffic act violations.<sup>57</sup>

Various research has deduced that the economic status (or lack thereof) found within communities contribute to juvenile delinquency.<sup>58</sup> This further underlines the socio-economic conditions of most youth in conflict with the law where the majority have been profiled as poor, uneducated and lacking in basic needs. This is made more difficult in light of the current economic situation that has been plagued due to the COVID-19 pandemic.

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<sup>55</sup> ASEAN, First Youth Development Index (1<sup>st</sup> ed. 2017)

<sup>56</sup> 'Children in ASEAN: 30 Years of the Convention on the Rights of the Child' (UNICEF East Asia & Pacific, November 2019).

<sup>57</sup> Statistics of Juvenile Justice Cases in Thailand, [http://stat.dopa.go.th/stat/statnew/upstat\\_age.php](http://stat.dopa.go.th/stat/statnew/upstat_age.php), Kingdom of Thailand

<sup>58</sup> Ernest W. Burgess, The Economic Factor in Juvenile Delinquency, 43 J. Crim., L. Criminology & Police Sci. 29 (1952-1953).

### III. Minimum Age of Criminal Responsibility

ASEAN Member States, through the basis of their own culture, laws and customary practices has a diverse set of ages when it comes to children in conflict to the law. It should be seen as a step to the right direction that all ASEAN Member States have ratified the CRC and have transplanted the convention through their domestic laws and regulations. In retrospect, the dates of the ratification of the CRC for each ASEAN Member States and its deduction of a minimum age of criminal liability can thus be seen in the following table:

**Table 2: The dates of the ratification of the CRC for ASEAN Member States and its deduction of a minimum age of criminal liability**

<b>ASEAN MEMBER STATES</b>	<b>RATIFICATION OF CRC</b>	<b>MINIMUM AGE OF CRIMINAL RESPONSIBILITY</b>	<b>AGE OF BEING SENT TO PRISON</b>
BRUNEI	27 DEC 1995	7	NA
CAMBODIA	15 OCT 1992	18	14
INDONESIA	5 SEPT 1990	12	14
LAO PDR	8 MAY 1991	15	15
MALAYSIA	17 FEB 1995	10	14
MYANMAR	15 AUG 1991	7	7
PHILIPPINE	21 AUG 1990	15	18
SINGAPORE	5 OCT 1995	10	14
THAILAND	12 FEB 1995	10	15
VIETNAM	28 FEB 1990	14	14

What can be generally remarked from the table above is that all countries have modernized and reformed their laws in a comprehensive manner that has thus brought forward a specific age of criminal liability—paving the way of a more progressive form of juvenile justice.

### IV. Interrogation Methods

Interrogation practices or similar components to the nature are not reiterated within the context of international law when it comes to children. Indeed, perhaps one connecting factor between the CRC, the Riyadh Guidelines and the Beijing Rules is to always promote and even push forward the interest and well-being of the child and as such, the concept of interrogation does not shed a favorable light in the advancement of children. This is perpetuated to the fact that research has shown that the interrogation might not be an effective tool for children due to the fact that their level of catching social cues and

understanding of the law and the legal rights vested by them pale in comparison to adults.<sup>59</sup> It must be made prudent though that juvenile justice is a multi-faceted situation which not only includes juvenile criminals but also that of witnesses as well as victims. The arena of international law is much more detailed when it comes to child witnesses and child victims, with the CRC stating the importance of protecting the psychological, physical recovery as well as the social integration to child victims<sup>60</sup> and the Guidelines for Action on Children in the Criminal Justice System reiterating the importance of fair treatment for both child victims and child witnesses.<sup>61</sup>

A majority of ASEAN member states at any rate, has taken the delicate measure to ensure that stakeholders that are in charge in handling proceedings or situations that include children under the realm of the law have the experience and skill necessary. This case is certainly applicable to Vietnam where investigators, prosecutors and judges must have experience beforehand handling cases for persons under the age of 18 depending on profession as well as being trained on the skills concerning criminal cases of persons under 18 years, with the addition of going through training on the psychology and education of persons under the age of 18.<sup>62</sup> Also, a number of ASEAN member states utilize the concept of an interview as compared to naming it as an interrogation. Such interviews also take special attention towards the status of a child. For example, Thailand has enabled the presence of social workers or psychologists during police interviews for cases that punishable for three years or more, based on the request of the accused and within the case of assault.<sup>63</sup> In April 2017, Singapore launched the Appropriate Adult Scheme for Young Suspects (AAYS). Appropriate Adults are activated to provide emotional support to young persons investigated by the Singapore Police Force (SPF) and the Central Narcotics Bureau (CNB). Thus, the interview process conducted to youth in ASEAN is in line with the sensitivities that can impact a child undergoing the complexity of the legal process but to further determine a safe environment, measures of accountability must be put in place at a regional level.

## V. Detention

The Convention of the Rights of the Child has made it clear that the detention of a child is seen as a last resort and to be conducted at the shortest period of time.<sup>64</sup> The detainment of a child in itself must also encompass and uphold their existing rights with humanity and respect for inherent dignity of human person which takes into account the needs of minor. His or her detainment should be separated from

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<sup>59</sup> Alberts, J. (2016). *Interrogation of Juveniles: Are Parents the Best Defenders of Juveniles Right to Remain Silent? New Criminal Law Review: An International and Interdisciplinary Journal*, 19(1), 109–124. doi:10.1525/nclr.2016.19.1.109

<sup>60</sup> Article 39, Convention on the Rights of the Child, 1989, United Nations.

<sup>61</sup> Item 43, Section III, Guidelines for Action on Children in the Criminal Justice System

<sup>62</sup> Article 5, Joint Circular No.06.2018/TTLT-VKSNDTC-TANDTC-BCA-BTP-BLDTBXH, Provisions of the Penal Procedural Code on Procedures Applicable to People under 18 years of age, 21<sup>st</sup> of December 2018.

<sup>63</sup> Section 133, The Criminal Procedure Code Amendment Act (No.20), B.E. 2542, 1999, Kingdom of Thailand.

<sup>64</sup> "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;" Article 37(b), Convention of the Rights of the Child, 1989, United Nations



adult unless it is considered in the child's best interest not do.<sup>65</sup> Hence, access to her/his family as well as to legal and other appropriate assistance should be guaranteed.

Indeed, this has been one of the cornerstones that many ASEAN member states have implemented through their legislative framework. It must be acknowledged that there is common ground among ASEAN member states in the aspect of legal implementation that underlines the importance of establishing a safe space for children within the juvenile justice system. Cambodia has for example, having although allowed their judicial police to detain minors only if there are reasonable grounds that the individual might throw away evidence or otherwise become a danger to the stakeholders surrounding a particular case<sup>66</sup> which through section 35 of the Children and Young Persons Act 1993 disallows the child or young person to associate with an adult (not being a relative) who is charged with an offence other than an offence with which the child or young person is jointly charged.

However, just as the commitment towards the rights of children under the context of juvenile justice is widespread among ASEAN member states, there remains areas for further progress. After all, not all member states of ASEAN have a separate detention facility for children. Cambodia has at present only one youth rehabilitation center in Phnom Penh<sup>67</sup> where prisoners under the age of 28 are transferred there through the Directorate General at the Ministry of Social Affairs, Veterans and Youth.<sup>68</sup> At the same time, there should further measures must then be made to establish separate safe spaces for children as opposed to placing them together with adults.<sup>69</sup> Brunei on the other hand, has no separate detention facility for children and instead utilizes remand homes, approved schools or homes monitored by the government.<sup>70</sup> It should also be noted that Malaysia, Indonesia and Myanmar have special facilities that are dedicated for children who have committed criminal offenses. For Myanmar and Malaysia, these countries have established specific youth centers that seek to educate as well promote life values to children who have received a sentence. Myanmar specifically has 10 youth rehabilitation centers that are under the purview of the Ministry of Social Welfare, Relief and Resettlement<sup>71</sup> whereas Indonesia has youth correctional institutions which—depending on the length sentence—provide minors with a form of education but not all minors are sent to youth correctional institutions and due to overcrowding, many of them end up in the same institution as adults however in the separated unit.<sup>72</sup> This practice is found in the remote places. Hence, the prospect of detainment still needs to be addressed further by ASEAN

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<sup>65</sup> Article 37 point (b), (c), & (d) of the Convention on the Right of Child.

<sup>66</sup> Article 17, apprehension of minor, Law on Juvenile Justice, Ministry of Social Affairs, Veterans and Youth, 2016, Kingdom of Cambodia.

<sup>67</sup> Juvenile Justice and Strategic Operational Plan 2018-2020, Ministry of Justice and Ministry of Social Affairs, Veterans and Youth Rehabilitation, [https://www.unicef.org/cambodia/media/456/file/JJLSOP\\_Eng\\_0.PDF%20.pdf](https://www.unicef.org/cambodia/media/456/file/JJLSOP_Eng_0.PDF%20.pdf)

<sup>68</sup> "First Juvenile Rehabilitation Centre to Open Soon", Khmer Times. May 8, 2020. <https://www.khmertimeskh.com/721320/first-juvenile-rehabilitation-centre-to-open-soon/>

<sup>69</sup> Jenessy Rodriguez, Cambodia's Juvenile Justice System: Overcoming Challenges to Protect the Rights of Cambodian Youth, 38 CHILD. LEGAL RTS. J. 97 (2020).

Available at: <https://lawecommons.luc.edu/clrj/vol38/iss2/20>

<sup>70</sup> Article 63, Part XI, Places of Detention, Chapter 219, Children and Young Persons, S9/2006

<sup>71</sup> A Brighter Future for Burma's Juvenile Offenders, San Yamin Aung, The Irawaddy, May 4 2017.

<sup>72</sup> Inside the oldest children's prison in Indonesia, Kinani Pinta, BBC Indonesia, May 2012.

member states, where justice and basic human rights can be interlaced together in the interests of children in conflict with the law.

## **VI. Availability of Legal Aid**

Legal aid serves as a key factor that enables minors in conflict of the law to seek justice. International law underlines the importance of legal aid through the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems where Principle 10 and 11 of the guidelines stress the special measures needed to provide equity in access to legal aid for children and the primary consideration of legal should be conducted for the best interests of the child. Although there are no current declarations or statements that endorse the provision of legal aid in Southeast Asia, the ASEAN Charter reiterates that ASEAN Member States should adhere to the rule of law, good governance and respect fundamental freedoms, promote and protect human rights as well as promote social justice.<sup>73</sup> In fact, the ASEAN Human Rights Declaration also states that all persons are born free and equal in dignity and rights and that every person is vested with rights and freedoms as well as that everyone is equal before the law. ASEAN countries generally provide legal representation and legal consultation available for certain vulnerable groups. As an example, the Law No. 11 of 2012 concerning the Child Criminal Justice System in Indonesia mandates the right to legal aid and legal assistance and Vietnam has also taken the progressive measure to ensure that legal aid services are free to children and juveniles who are aged 16 to 18 under their Law on Legal Aid in 2017.<sup>74</sup> However, when it comes to legal aid in Brunei, four legal firms are currently helping the Brunei Council on Social Welfare (MKM) but because there is a lack of lawyers who are willing to handle cases pro bono, the MKM legal aid clinic cannot handle criminal cases yet.<sup>75</sup>

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<sup>73</sup> The Thematic Study on Legal, ASEAN Intergovernmental Commission on Human Rights, ASEAN Secretariat, July 2019.

<sup>74</sup> Law on Legal Aid, Vietnam Law and Legal Forum, September 9 2019. <https://vietnamlawmagazine.vn/law-on-legal-aid-6280.html>

<sup>75</sup> Bandial, Ain, Wasil Wardi, "Pro bono work should be mandatory for Law Society Members." The Scoop. July 26, 2019.

# Chapter 4: Best Practices

Through the experiences and approaches that have been brought forward by ASEAN Member States, there are several policies that can serve as a template for the region:

## I. Psychological and Social Support

In general, criminal proceedings take a toll on the mental health as well as emotional well-being of children, often bringing them to depression, anxiety and even suicidal tendencies.<sup>76</sup> Through the CRC, a child's sense of dignity and worth must always be upheld<sup>77</sup> and furthermore, the Beijing Rules have also made it clear that the juvenile justice system must focus on the well-being of the child.<sup>78</sup> In addition, the general comments of the CRC has interpreted the importance of a national coordinating framework must be established where cooperation can be conducted between the government and community on the issue of juvenile justice.<sup>79</sup> This brings the issues of psychological and emotional support into light as it is an influential compartment within the context of child protection. Acknowledging the words of international, several ASEAN Member States have initiated procedures in order to provide emotional or otherwise psychological support. For example, Cambodia has mandated that there be a social agent who will provide psychological support for the child during the entire duration of the criminal proceedings.<sup>80</sup> In the Philippines, a multi-disciplinary team actually leads Bahay Pag-Asa, a youth development center or a youth detention center (pending trial) for lack of a better word. Mandated to be established in every local government by the country's Juvenile Justice and Welfare Act<sup>81</sup>, the multidisciplinary team comprises of a psychologist, a medical doctor, and a guidance counselor who will be vested to assist in an individualized intervention plan for both the child as well as family.<sup>82</sup> Similarly, Singapore has also provided psychologists as well as social workers for minors during the post-sentencing phase and deeply considers the mental health of the offender.<sup>83</sup> These practices can serve as a ground-breaking approach that can be applied in the regional level, proving that psychological support must be accommodated together with legal support. In addition, civil society organizations, non-governmental organization and informal communities have bolstered the importance of upholding human rights through the mentioned formats above.

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<sup>76</sup> Hovey, A., Katrina, Zolkoski, M. Staci, Bullock, M, Lyndal, "Mental Health and Juvenile Justice System: Issues Related to Treatment and Rehabilitation", World Journal of Education, Volume 7, No.3, 2017. <https://files.eric.ed.gov/fulltext/EJ1157674.pdf>

<sup>77</sup> Article 40.1, Convention of the Rights of Child, 20 November, 1989.

<sup>78</sup> Article 5.1, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 29 November 1985.

<sup>79</sup> "The Right of the Child to Freedom from All Forms of Violence", General Comment No. 13 (2011), Committee on the Rights of the Child, Convention of the Rights of the Child, United Nations, 18 April, 2011.

<sup>80</sup> Juvenile Justice and Strategic Operational Plan 2018-2020, Ministry of Justice and Ministry of Social Affairs, Veterans and Youth Rehabilitation, [https://www.unicef.org/cambodia/media/456/file/JJLSOP\\_Eng\\_0.PDF%20.pdf](https://www.unicef.org/cambodia/media/456/file/JJLSOP_Eng_0.PDF%20.pdf)

<sup>81</sup> Chiu Denise, Patricia "Bahay Pag-asa offers some hope to youth offenders", Inquirer, January 28, 2019. <https://newsinfo.inquirer.net/1078232/bahay-pag-asa-offers-some-hope-to-youth-offenders>

<sup>82</sup> Section 2, Juvenile Justice and Welfare Act of 2006, Congress of the Philippines, Republic of the Philippines, July 23, 2012.

<sup>83</sup> Ozawa, Joseph, Juvenile Justice: A Study of National Judiciaries for the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Work Product of the 139th International Training Course, United Nations Asia and Far East Institute.

## II. Diversion

Diversion is a way for children who are in conflict of the law to avoid formal criminal as well as judicial proceedings, where other options are made available to attain justice, usually through non-judicial bodies.<sup>84</sup> Simply put, diversion opens a way to achieve justice through resolutions outside of usual criminal proceedings. This cannot be separated from the concept of restorative justice. Essentially restorative justice seeks to draw a platform that enables those who were victims of a crime and the offenders to find a more rehabilitative measure within a situation.<sup>85</sup> The concept of diversion is established in several countries in ASEAN. Cambodia, for example, social agents are entrusted to prepare and provide diversion plan to the diversion for further examination.<sup>86</sup> In the case of Indonesia, the Supreme Court has circulated a regulation<sup>87</sup> on the guidelines for implementing diversion in the child criminal justice system. Meanwhile in the Philippines has sought to localize the Comprehensive National Juvenile Intervention Program where there is a diversion committee that seeks to develop a program based on the individual characteristics of the child.<sup>88</sup>

## III. Institutional Strength and Implementation

In order for appropriate practices to continue in the field of juvenile justice, it is crucial to have an institution that can monitor the implementation process. Brunei for example utilizes the Department of Community Development which is under the portfolio of the Minister of Youth and Sports. As mentioned, Indonesia utilizes their Ministry of Women Empowerment and Child Protection whereas Myanmar directs policies of juvenile justice and child protection through the Ministry of Social Welfare, Relief and Resettlement. In addition, in order to strengthen plans on juvenile justice, Cambodia has utilized the Ministry of Justice as well as Ministry of Social Affairs, Veterans and Youth. Another example would be Laos PDR which has established the National Commission for the Advancement of Women and Mothers-Children. Hence, utilizing a government apparatus is paramount to steward the policies of juvenile justice and to foster mutual cooperation between counterparts whether it might be in a national, regional or international spectrum.

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<sup>84</sup> "Diversion and Not Detention: A study on diversion and other alternative measures for children in conflict with the law in East Asia and the Pacific", UNICEF East Asia Pacific Office, EARPRO, 2017.

<sup>85</sup> "What is Restorative Justice", Restorative Justice Council, <https://restorativejustice.org.uk/what-restorative-justice>

<sup>86</sup> Chapter IV, Article 11, Law of Juvenile Justice of Cambodia, Kingdom of Cambodia

<sup>87</sup> Supreme Court Regulation, Law No. 4 on 2014, Guidelines for Implementing Diversion in the Child Criminal Justice System, Republic of Indonesia

<sup>88</sup> UNICEF- EARPO (2017). Diversion Not Detention: A Study on Diversion and other Alternative Measures for Children in Conflict with the Law in East Asian and Pacific. Thailand: UNICEF-EARPO/.

## IV. Interrogation Process

A core component that is crucial encompasses the interrogation process of minors undergoing criminal proceedings and it is important to pinpoint experiences from other ASEAN countries to develop a more humane environment for minors. First, soften the language, many ASEAN member states have resorted to use the word interview as opposed to interrogation. Then, a common positive thread that can be seen in interview practices include police officers informing children of their basic right, with the interview being conducted in a private, child friendly setting with the support of the child's family, designated representative or social agent, such is the case for Cambodia<sup>89</sup> and similarly for Thailand but only under the circumstances that the offense might be punishable for more than three years, the minor has requested the presence of a social worker/psychologist or for physical assault cases where the child not more than 18 years old.<sup>90</sup> Laos refers the procedure as an interrogation-interview in which according to their Criminal Procedure Law, the minutes of the interview must then be read to the accused who will later thumb print each page of the interview.<sup>91</sup> In the case of Singapore, documentation is also allowed be it in the form of video recording or in a format deemed appropriate. Furthermore, Singapore launched the Appropriate Adult Scheme for Young Suspects where independent volunteers are appointed, trained and made into Appropriate Adults who would later accompany the suspect during interviews, provide a supportive role and look for distress signs.<sup>92</sup> Interrogation is not a condition that any child should go through, it brings trauma and confusion towards the complex legalities present but if the situation should occur, then ASEAN member states can look at the success of each other to further improve conditions and enhance the quality of juvenile justice in Southeast Asia.

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<sup>89</sup> Article 21 and 22, apprehension of minor, Law on Juvenile Justice, Ministry of Social Affairs, Veterans and Youth, 2016, Kingdom of Cambodia.

<sup>90</sup> Penal Code, Section 133, Kingdom of Thailand.

<sup>91</sup> Article 55, Law No.58 of 28/1/2014 concerning Juvenile Criminal Procedure (No.41), Lao People's Democratic Republic.

<sup>92</sup> Appro

## Chapter 5: Challenges

Although there has been significant progress further elevated by the actions of ASEAN member states to seriously tackle the issue of juvenile justice in Southeast Asia, there are various rooms for improvement that can be progressively implemented through increased mutual understanding. After all, where similarities exist, differences are also present and though not entirely counterproductive, differences that hinder the rights of the child must be reconsidered. These challenges arise in several aspects such as that of:

### I. Minimum Age of Criminal Responsibility

As mentioned earlier, international law, under the aegis of the CRC, does not specify the minimum age of children within the context of criminal culpability, thus leaving the determination of age to state parties. Although Article 1 of the CRC has stated that a child is defined as any human under the age of 18 (unless applicable law states otherwise). In practice, there remains a lack of standardization across the region for the implementation as well as policy concerning the Minimum Age of Criminal Responsibility. Furthermore, international law does not give state parties unaccountable rein towards determining the age of criminal responsibility based on article 40 (3) (a) of the CRC which requires the “establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law”. Rule 4 of The Beijing Rules elaborates this further, making member states consider that the “beginning of that age shall not be fixed at too low an age level, bearing in mind the emotional, mental, and intellectual maturity”.

It should also be noted that although several ASEAN member states have determined the age of criminal liability through their various legal instruments, such laws can also provide exceptions under certain circumstances. For example, Cambodia has the highest age of criminal liability with children being criminal liable for offences if they are at the age of 18<sup>93</sup> but the Cambodian courts are also capable of lowering the age of criminal liability to that of 14 based on the circumstance and offense.<sup>94</sup> Meanwhile Myanmar, which has distinctly placed the notions of juvenile justice under the umbrella of its penal code stipulates that a child above the age 7 is criminally liable<sup>95</sup> with further exception to those above the age of 7 but under age of 12 with the notion they have an “immature understanding”.<sup>96</sup> Other experiences in terms of establishing a minimum age of criminal responsibility includes that of Philippines, which has raised the minimum age from 9 to 15 years of age through the passage of the Juvenile Justice and

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<sup>93</sup> Article 7, Chapter III, Criminal and Civil Liability of Minors, Law on Juvenile Justice, Kingdom of Cambodia.

<sup>94</sup> Article 9. Ibid.

<sup>95</sup> Article 82, Chapter III: General Exceptions, Penal Code of Myanmar, Republic of the Union of Myanmar.

<sup>96</sup> Article 83, ibid.

Welfare Act of 2006.<sup>97</sup> However, it should also be noted that in the special case of the Philippines, through the House of Representatives has approved to lower the minimum age of criminal responsibility to 12 years old, thus regressing an already progressive step in the juvenile justice system.<sup>98</sup> However, the overall engagement and diverse legislative approaches conducted by ASEAN member states should thus be supported and strengthened through the same collaborative spirit in tradition of ASEAN whilst combining optimism in finding innovative ways that empower and protect the rights of children in ASEAN through the implementation of the minimum age of criminal responsibility.

## **II. Lack of Infrastructure**

In addition, the conceptualization of detainment for children in conflict with the law still needs to be developed, with expansive measures needed in respect to making sure that children have a safe space. Although some ASEAN member states have made strides in ensuring that detention centers are a place of education, reform and rehabilitation, it must be acknowledged that a lack of budgetary components from the state, overcrowding and infrastructure hinders progress in the provision of facilities that uphold the rights of a child in custody. This stems from a major issue of a vulnerable system that is prone to missteps and misadministration in the handling of juvenile justice. Cambodia has acknowledged this issue, stating that the fundamental administrative systems such as birth registration is still inadequate and makes it difficult to determine whether a child is subject to criminal responsibility.<sup>99</sup> This circumstance similarly echoes to a case that happened in Indonesia where an individual named Yusman was convicted of the death penalty despite the fact that he had no birth certificate and that his certificate of baptism proved that he was a minor.<sup>100</sup> These situations not only violates a child's right but also jeopardizes their life, forcing them to go through potential psychological and physical trauma. Such issues are common, particularly in poor and rural areas where access and the lack of knowledge regarding birth certificates presents a clear and present danger towards Southeast Asia's juvenile justice system.<sup>101</sup>

## **III. Lack of Information**

Finally, many ASEAN member states a lack of information and procedures that can be implemented in the lowest level of law enforcement or government. Cambodia is lacking in an adequate set of procedures and guidelines to implement their laws in juvenile justice and this includes the handling of diversion and alternative sentencing. Malaysia on the other hand does not have a specific standard operating procedure

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<sup>97</sup> Sec 6, Chapter 2, Juvenile Justice and Welfare Act 2006, Republic of the Philippines.

<sup>98</sup> "Philippines: Lowering criminal age to 12 'will endanger children's lives', Amnesty International, 5 February 2019. <https://www.amnesty.org/en/latest/news/2019/02/philippines-lowering-criminal-age-to-12-will-endanger-childrens-lives/>

<sup>99</sup> Page 12, Juvenile Justice and Strategic Operational Plan, 2018-2020, Ministry of Justice and Social Affairs, Veterans and Youth Rehabilitation, Kingdom of Cambodia

<sup>100</sup> Artonang S., Margaret and Sapiie Afra, Marguerite "Novum, tale of minor on death row", October 31, 2017, The Jakarta Post.

<sup>101</sup> Nathalia, Telly, "Lack of Birth Certificates Exposes Children to Risks of Exploitation", December 15, 2019.

that guides law enforcement officers on the criteria or approach that must be met when it comes to questioning juveniles under Section 112 of Malaysia's Criminal Procedural Code. The same can be said for that of Brunei, which would thus not give juveniles a more sensitive or special treatment under the current legal system that exists.

Much of the challenges that lie within the environment of ASEAN member states in regards to juvenile justice comes under the periphery of a system left vulnerable. This system, whether legal or administrative, makes it difficult for commitments made both ratified in international law or passed through domestic law to be comprehensively implemented in the realm of juvenile justice.

## **IV. Child Protection during a Pandemic**

The COVID-19 pandemic has brought new challenges within the realm of child protection, whether it might be through the economic situation or the execution of legislative measures. Indeed, the pandemic has revealed that there are many creases that actually hinder the rights of a child. For example, the pandemic has raised new levels of danger towards overcrowded prisons due to people being in close contact with another, thus elevating the risk of contracting COVID-19. In addition, challenges lie in the application of child rights during the pandemic and this includes the dangerous risks of visitation in a face-to-face scenario. Indeed, although the COVID-19 pandemic has bolstered the usage and maximization of e-courts as well as other online-based systems, this unprecedented situation shows the difficult nature of balancing between the rights of children within the process of juvenile justice and safety.



## Chapter 6: Recommendations

The common theme that has emerged from the very beginning of this report has centered around the well-being of the child, whether it may be in the context of criminal responsibility, interrogation practices, detention or the availability of legal aid. Indeed, what this regional report will teach readers is the commitment that all ASEAN Member States have in ensuring that international law is realized and that the rights of a child is always prioritized. However, in order for ASEAN and its member states to move forward in protecting Southeast Asia's youth within the juvenile justice better, certain recommendations need to be considered.

### **I. Continued Research**

The country reports in this regional report have taken great strides to provide a current overview of juvenile justice among ASEAN Member States. This is especially true when it comes to the topics of interrogation and detention practices, which can be the foundation of more comprehensive knowledge exchanges between ASEAN Member States. However, further research must be conducted to continuously monitor the revisions, changes and enhancements done by ASEAN Member States to achieve quality juvenile justice that holistically protects the rights of children. In addition, this pandemic has offered a new set of challenges which provides ASEAN Member States a new backdrop in the handling of juvenile justice that needs to be investigated and become the basis of future research.

### **II. Administrative and Bureaucratic Strengthening**

Based on the current experiences of ASEAN Member States, it is clear that their needs to be a widespread review and improvement towards the administrative and bureaucratic system because in order for justice for minors to be fully attained, administrative procedures such as their birth certificates and the status they have within the country play a huge influence. This applies not only in context of upholding the rights of children within the criminal justice system but also for the holistic practice of good governance. In addition, the administrative system should be able to uphold the rights and safety of children throughout criminal proceedings where it is crucial that minors are kept in a safe space that minimizes trauma and enhances their physical and psychological well-being. This can be done, for example, through making sure that the interview or interrogation process is well documented and that there are social agents, psychologists or family so that actions conducted by law enforcers can be held accountable.

### **III. Change through Regional Mechanisms**

Second, ASEAN member states should continue to learn from the experience of each country, although each nation has its own system, it is important to maintain a transfer of knowledge and knowledge exchanges to better improve the quality of existing systems. In conjunction to this, ASEAN member states should continue to utilize the mechanisms and action plans that are already in development such as the Regional Action Plan for Violence Against Children which has sought to develop the ASEAN guideline on non-violent approach nurture, care, and development of children in all settings which includes juvenile centers. Also, alongside consistent cooperation between countries on child rights, member states should also continue to look at the Commission on the Promotion and the Protection of the Rights of Women and Children (CWC) as an avenue for diplomacy, discussion and progress.

### **V. Minimum Age of Criminal Responsibility**

Moreover, when it comes to the minimum age of criminal responsibility, a standard must be developed that encompasses Southeast Asia. As a regional organization, ASEAN can serve as the platform to push through uniform standardization, incrementally achieved through a series of discussions, guidelines and legal exchanges.

### **VI. Final Notes**

To close, challenges that have arisen, whether it may range from interrogation to detention with respect to children in conflict to the law is a symptom of a need for a strong administrative overhaul and reform to place the budgetary and policy needs of juvenile justice as a top priority. In a nutshell, ASEAN countries should not just take pride knowing that they have done what is right for children but also enthusiastic for the future of the ASEAN way, where member states persistently and comprehensively fight for peace, justice and human rights—especially in the interests of the next generation.

## PART II: Country Reports

# BRUNEI DARUSSALAM

## I. Policy and Legislative Framework and Key Data

Brunei Darussalam is a small country located on the northern coast of the island of Borneo in Southeast Asia. Islam is the official religion and Malay is the official language. English is considered as the second most important language as it is widely spoken in the country.

As of 2017, Brunei Darussalam has a population of 421,300. The population was made up 216,400 males (51.4 per cent) and 204,900 females (48.6 per cent) with a gender ratio of 106 males for every 100 females. About 91,700 persons (about 21.8 per cent) were below 15 years of age, 303,700 persons were in the working age group of 15-64 years and 22,600 persons (5.4 per cent) were aged 65 years and over.<sup>1</sup>

### **Legislative Framework**

The Government had taken various measures and will continue to protect vulnerable groups including children in conflict with the laws. Introducing new laws and amending existing laws are some of the measures actively taken by the government in the protection of vulnerable groups. The most important legislative reform taken is the enactment of the Children and Young Persons Act (Cap 219) (CYPA)<sup>2</sup> which resulted in the establishment of the Juvenile Court. This Act aims primarily to ensure the protection of the rights of juvenile offenders consistent with Brunei Darussalam's commitments under the Convention of Rights of the Child. The Act also specifically provides for the care and protection of children and related issues on children.

### **Legal Definition**

Under the laws of Brunei Darussalam there are various legislations that provides for the definition of children which vary according to the requirements of the Acts.

CYPA provides the following definitions:

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<sup>1</sup> Department of Economic and Planning Development's website at [www.depd.gov.bn](http://www.depd.gov.bn) Report of the Mid-year population Estimates 2017.

<sup>2</sup> CYPA commences since 1 March 2010. Refer part III –Juvenile Courts under CYPA.

*Child*<sup>3</sup> as a person who has not attained the age of 14 years.

*Juvenile*<sup>4</sup> as a person who has attained the age of 7 years of age but who has not attained the age of 18 years.

*Young persons*<sup>5</sup> as a person who has attained the age of 14 years of age but who has not attained the age of 18 years.

Section 82 of the Penal Code provides that nothing is an offence which is done by a child under 7 years of age. Section 83 further provides that nothing is an offence which is done by a child above 7 years of age and under 12 years, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Since under the national law, children under 7 years cannot be held responsible for an offence committed, for purpose of this report, the term “juvenile” is used to refer to children in conflict with the laws.

### **Safeguarding the welfare of children**

The Department of Community Development under Ministry of Culture, Youth and Sports, is the primary government agency in Brunei Darussalam which deals with safeguarding and promoting the welfare of children in the country. The Department continues to provide a number of services and amenities including, counselling, welfare allowance, intervention and programmes on probation and community services for children in conflict with the law. The Family, Women, Children Counselling Division under the Department plays an important role in the protection of the welfare of children. The mission of this Division is to promote a resilient and responsible individual, family and community deriving its mandate to protect children from the CYPA. This Division provides various other services and is responsible for a number of matters including handling applications for admission to the Welfare Home for rehabilitation and protection. The Division’s actions are based on referrals from the helpline “141”, social media, referral from government and non-government agencies, ministers as well as from members of society.

Based on interview conducted with officers from the Royal Brunei Police Forces, to date there are no cases of trafficking of juvenile and no cases of children offenders under 7 years reported. There

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<sup>3</sup> Section 2 CYPA

<sup>4</sup> Section 2 (1) CYPA

<sup>5</sup> Section 2(1) CYPA

was no recent data on juveniles offenders from the Police. The recent statistic<sup>6</sup> provided that in year 2018, there were 14 juvenile arrest cases referred to Attorney General's Chambers (AGC). All were male offenders. Out of this numbers, the oldest juvenile offender was 17 years old while the youngest offender was 13. There was no reference to AGC in 2018 of cases of children under 12 years committed an offence.

## **Laws relating to children in conflict with the law**

The term “children in conflict with the law” refers to anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence.<sup>7</sup>

Under the law, the definition of youthful offenders includes any child convicted of an offence punishable by fine or imprisonment who in the opinion of the Court before whom such child is convicted and in absence of legal proof to the contrary is above the age of 7 and under 18 years of age at the time of conviction before which such child is convicted.<sup>8</sup> The CYPA deals with the treatment of juvenile offenders when they are held in police custody until they are disposed of, either released or placed at specific rehabilitation institutions.

## **Laws on prosecutors and judges: Children and Young Person Act (Cap 219)(CYPA)**

### *(a) Judges: Juvenile Magistrate*

The Juvenile Court was established in March 2010 following the commencement of CYPA. The court is presided over by a magistrate. There are explicit provisions for the court in dealing with offenders to ensure they are treated appropriately and consistent with their best interest.

Part III of CYPA deals with the Juvenile Courts. It provides for the constitution of Juvenile Court, jurisdiction, places of sitting and persons who may be present. It also provides for general consideration. Part IX of CYPA addresses Procedures to be followed in Juvenile Courts. It provides for the separation of children from adult offenders, bail of juveniles, attendance of guardians,

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<sup>6</sup> Criminal Justice Division, Attorney General Chambers, Brunei. The offences ranging from theft, rape, voluntary causing hurt, lurking house-trespass/ house-breaking to commit offence punishable with imprisonment, mischief, rioting, armed with deadly weapon, punishment of abetment where no express provision is made for punishment, theft in protected place/place of worship, theft in dwelling house etc, possession and consumption of controlled drug, users of motor vehicles to be insured against third party and offence of unexcitable/prohibited goods.

<sup>7</sup> Children in conflict with the law, UNICEF. Information sheet May 2006.

<sup>8</sup> Section 2 of CPC

restrictions on punishment for juveniles, punishment of grave crimes, power to order guardian to pay fines etc, power of other courts to remit to juvenile court, prohibition use of words of conviction and sentence, procedure in Juvenile Court, presumption to age, power of courts on proof of offence, family conference on juvenile guilty of offence, additional orders, maximum age limit for detention and appeals. In the event of uncertainties as to the procedures when dealing with juveniles, the Criminal Procedure Code (Chapter 7) will be referred to as the code is of general application on criminal matters in Brunei.

### *(b) Prosecutors*

The Attorney General has absolute discretion to institute, conduct or discontinue criminal prosecutions.<sup>9</sup> The general direction and control over criminal prosecutions and proceedings is under the responsibility of the Attorney General who is also the Public Prosecutor. Deputy Public Prosecutors (DPP) have prosecutorial powers and discretion as are delegated to them by the Public Prosecutor.<sup>10</sup> Once the investigation commences, the DPP will have discretion to revert the juvenile to formal trial. Under the CYPA, where offences are triable by the High Court, the Deputy Public Prosecutor can apply for the matter to be tried by the Juvenile Court and the legal representative agrees for the offence to be tried by the Juvenile Court. This applied for situations when a young person who is under 18 years but above 14 is charged with any offence triable by the High Court.

## **II. Interrogation and Interview of Children in Conflict with the Law**

### **A. Law Enforcement Officers**

The interrogation practices are all about handling the juvenile offenders in a way that allow the interviewers to determine what caused the juveniles to offend. As had been reported, when questioning the juvenile offenders, the police use the term “interview” as opposed to “interrogation”. CYPA provides protection to children in conflict with the law while they are under police custody.<sup>11</sup>

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<sup>9</sup> Article 81(3) of Brunei Constitution

<sup>10</sup> Section 374 Criminal Procedure Code

<sup>11</sup> CYPA provides protection to children in conflict with the law while they are under police custody.

The Act prohibits the children from being associated with adult offenders.<sup>12</sup> The Act further guarantees protection of their identity in any court proceedings.<sup>13</sup>

### **Police<sup>14</sup>:**

Part V of the CPC covers *“Information to the Police and their Powers to Investigate. Generally,”* which are also applicable if the suspect is a juvenile. Preliminary investigation of juvenile suspects by uniformed officers is to be conducted in the same manner as adult suspects. A police officer must have the right to question a juvenile to determine whether an offence had been committed. All the information provided by the juvenile suspects when interviewed relating to their cases being investigated are recorded by the police. The interviewer must make a written report of the juvenile statement. Their statements can be evidence during proceedings.<sup>15</sup>

There is no lock-up or detention room at police station for juvenile offender. For purpose of interviewing the juvenile, the police uses either a holding room, interview room or the room of the Investigating Officer. Attempts will be made to contact the parents of the juvenile immediately after the arrest. The police reported that there are sometimes a challenge on information provided by the juveniles regarding their parents. Unless detention is necessary to complete the investigation, the juveniles must be released.

It is reported that police officers undergo trainings on the Criminal Procedure Code and investigation skills. Currently, the Women and Children Abuse Unit under the Royal Brunei Police force, deals with women and children abuse matters. Although this Unit prioritises children and young person victims, they work closely with other units dealing with juvenile offenders. As a practice, the youthful offender will be released on police bail with terms and conditions. This is similar with police summons to secure their attendance. The police will normally give them a stern warning for them not to be in contact with victim during the investigation period. The warning is usually made in the presence of their guardians or parents. If the juveniles, having been required to attend the police station, but has failed to do so at a certain time required, the police can apply for warrant of arrest against them.

Although there is no standard of procedures (SOP) for the juvenile in conflict with the law, it is the practice of the police to be mindful of the time and duration of juvenile's interview. The study

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<sup>12</sup> The Act prohibits the children from being associated with adult offenders.

<sup>13</sup> The Act also guarantees protection of their identity with any court proceedings.

<sup>14</sup> Interview with representative from Royal Brunei Police force (RBPF) held on 22 and 30 January and 2 February 2019.

<sup>15</sup> Section 117 of CPC (Cap 7)



indicated that there is no specific training or course conducted in relation to interview of juveniles. It was reported that there is no difference in terms of treatment during the interviews between girls; children with disabilities; or stateless or non-national children and national juveniles.

## **B. Department of Community Development<sup>16</sup>**

In a situation where the juveniles are not released on bail, they are placed at remand homes which are administered by Department of Community Development for supervision. The mandate on remand homes is as provided under section 61 of the CYPA. Section 61(2) provides that any person below the age of 18 who has been arrested and is not released on bail, the police officer shall cause him to be remanded in a remand home until he can be brought before a court. The Department of Community Development will be in charge of the juvenile once the order has been made by the court for him to be remanded. The Rehabilitation, Protection and Probation Section of Department of Community Development responsible for general rehabilitation and protection of juveniles who are victims of offences as well offenders.<sup>17</sup> The CYPA (Remand Home) Regulations 2010 sets out regulations pertaining to remand homes. The superintendent is in charge of the remand home and has responsibilities in the management of the remand home and for the reception and custody of the person remanded. The superintendent also keeps records of matters under his management such as of admission to and discharges from the home, a daily register of the presence or absence of juveniles remanded and a log book in which shall be entered every event of importance connected with the management of the home. The superintendent also has duties to report death, injury or admission to hospital or remanded juveniles.

## **C. Legal Aid<sup>18</sup>**

State Legal aid is only available to defendants, irrespective of their age, accused of offences which carry the death penalty.

On Legal Aid provided by Non-Government Agencies in Brunei, the Law Society of Brunei Darussalam and The Brunei Council on Social Welfare (better known as MKM)<sup>19</sup> are the only two non-Government Organisations providing Legal Aid in Brunei. The Law Society conducts monthly

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<sup>16</sup> Interviewed the officers from Department of Community Development, MCYS on 12 February 2019.

<sup>17</sup> There are welfare homes complex established in 1982, administered by this section which comprised of Remand Homes, Approved Homes, Approved Schools, place of detention and place of safety.

<sup>18</sup> Detailed information on legal aids by NGO was provided by Datin Paduka Hj Intan binti Hj Kassim on 1 February 2019. Datin was a former president of MKM and recently retired in 2018. She was replaced by Yusof Halim, from Yusof Halim & Partners, Brunei.

<sup>19</sup> *Majlis Kesejahteraan Masyarakat*

legal aid clinic which provides legal advice only but do not represent the person at the litigation stage.

MKM's launched its Legal Clinic on 13 March 2013. It operates every Wednesday evening from 7p.m to 9p.m. When it was launched it was aimed specifically to provide pro bono legal services to the needy. As the years passed, MKM found that the people who attended the Legal Clinic came with other social and financial problems as well. MKM decided to expand the scope of the clinic to those problem and rename the Clinic "Legal and advisory services clinic".<sup>20</sup>

It was noted that the Clinic did not only provide advice but went as far as providing litigation services to those who needed the assistance. Services were provided on pro bono basis and administrative cost subsidised by MKM. One of the law firms associated with the Legal Clinic sometimes even borne the administrative cost.

It was further reported that the income ceiling for eligibility is \$400 per family member i.e., if total earning of the family is \$1000 and there are 4 family members, the applicant is eligible \$1000 divided by 4 = \$250). There are 4 legal firms associated with MKM Legal Clinic: Yusof Halim & Partners, Tetuan Ibrahim Al Haj, Al Wadi and Tetuan Ahmad Zakaria (joining in 2018). Each lawyer in the above firms take rotation in handling the legal cases assigned by MKM. The clinic doesn't provide advice on criminal matters. This is due to the small number of firms and lawyers volunteering in the scheme. It was informed that, MKM have not come across any request by children for legal services. However, it should be noted that MKM's legal aid scheme doesn't cover criminal matters.

### **III. Detention During Interrogation/Pretrial**

With regards to institutional setting, there is no detention place or lock up at police station for children during investigation whilst awaiting trial. As mentioned, the police uses a holding room, interview room or investigation officer's room. They are separated from adult offenders once they are brought to police station. This is a requirement under CYP.A.12121 In serious cases, the juvenile will be placed at remand homes monitored by Ministry of Culture, Youth and Sports, after they are brought to court. When they are committed for trial, they may be continued to be placed at the aforementioned remand home.

To date there is no incident of children under 7 years suspected of committing offences reported to

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<sup>20</sup> i.e. *Klinik Khidmat Nasihat dan Guaman*.

<sup>21</sup> Section 40 of the CYP.A

police. In instances where children may be misbehaving, the parents or the guardians will be warned of the legal implication of their actions. This practice is consistent with the country's Penal Code which provides that no one can be held criminally responsible for an offence committed while under the age of 7.<sup>22</sup> Children older than 7 but younger than 12 can only be held criminally liable where they have sufficient maturity of understanding to judge the nature and consequences of their actions at the time of the offence.<sup>23</sup>

Mentally ill person: Chapter XXXI of CPC covers special proceedings for person with unsound mind. The Chapter applies both to adults and juveniles of unsound mind. If any person is found to be mentally ill, the police officer will seek instruction from the DPP whereby they usually advise to refer him to the Mental Health Unit under Ministry of Health. The psychiatrist at the Unit will assess him and they will prepare a report to the police who will then refer the matter to DPP. The DPP will apply to the court for the person to be remanded at Mental Health Unit. The police will supervise him at this unit. The first remand period is for a maximum of two weeks.

## **A. Residential Detention**

Remand homes<sup>24</sup> accommodate juveniles who are not released on bail. Remand homes is one of the welfare homes *gazetted* by notification. The arrested juvenile who is not released on bail, must be placed at temporary remand home while waiting for a court hearing. The period of placement is based on the court order. In practice the remand period is between one or three weeks. The magistrate must not release the juvenile on bail if: a) the charge is triable only by High Court b) the interest of the juveniles to remove him from association with undesirable person or c) the magistrate has reason to believe that the release would defeat the ends of justice.<sup>25</sup> There are separate facilities for female and male juveniles at remand homes. The Department informed that they provide care services and programmes for the residents of the welfare Homes. The care services comprised of accommodation, meals, clothing, basic daily necessities, medical examination, programs and activities, counseling (individual, family and group) and psychological assessment. The programmes consist of Religious Studies and Spiritual guidance especially available those who are muslims only, academic<sup>26</sup>, vocational<sup>27</sup>, discipline<sup>28</sup>, smart and strategic partnership<sup>29</sup> and internship.<sup>30</sup>

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<sup>22</sup> Section 82 of Penal Code Cap 22

<sup>23</sup> Section 83 of Penal Code Cap 22

<sup>24</sup> Section 61 of CYPA

<sup>25</sup> Section 41 of CYPA

<sup>26</sup> Core education and religious education

<sup>27</sup> Classes on ICT, Cooking, handicraft, weaving, sewing, songkok and wood work and carpentry.

<sup>28</sup> Marching and physical exercise

<sup>29</sup> Counseling, religious activities, family activities, community service, sports and recreation and leadership, entrepreneurship, awareness and skills

<sup>30</sup> Working attachment for residents with relevant stakeholders

The CYPA (Remand Home) Regulations 2010 sets out details pertaining to remand homes. The Regulations provides for the following:

- a) *Responsibilities of superintendent. Superintendent is in charge of a remand home*
- b) *Records kept*
- c) *Duties of superintendent to report death, injury or admission to hospital of remanded juveniles*
- d) *Personal effects of remanded person.*
- e) *Medical examination*
- f) *Provision of bed, clothing and other articles*
- g) *Food*
- h) *Instruction and facilities for religious observance*
- i) *Continuing education*
- j) *Daily chores*
- k) *Recreation*
- l) *Writing and receipt of letters*
- m) *Visits*
- n) *Serious illness*
- o) *Remanded persons to obey lawful orders*
- p) *Fair discipline*
- q) *Superintendent's orders*
- r) *Punishment for indiscipline*
- s) *Corporal punishment: it must be inflicted with a light rattan*
- t) *Prohibition of unauthorized forms of corporal punishment: any other form corporal punishment is prohibited which includes striking, cuffing, shaking or punching a resident or subjecting him to any other form of physical violence.*

Despite the regulation on corporal punishment which is inflicted with a light rattan, it was reported that corporal punishment has never been applied at the remand homes.<sup>31</sup>

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<sup>31</sup> As informed by officers from Department of Community Development.

The CYPA (Boards of Visitors) Regulations 2010 are the governing regulations of the Boards of Visitors including their functions. The Boards of Visitors which consists of chairman, vice-chairman and other appointed members will normally make a monthly visit of the remand homes (and other welfare homes) to examine the conditions of the homes. Welfare homes including the remand homes have their own respective boards of visitors. The Board may also advise on activities for remand homes according to the juveniles' age and development. They may recommend and assist the Director of Community Development in: a) the placing of the children with suitable foster-families or b) obtaining suitable training or employment for the children. The Board members must avail themselves where necessary of any assistance that can be obtained whether from public organisations or private individuals.

## **B. Prison**

Rule 6 of Prison Rule under Prison Act (Cap 51) provides for young person regarding accommodation. Prisoners appearing to the Officer-in-Charge to be

under 18 years of age, whether male or female, shall be kept apart from adults and confined in separate buildings.<sup>32</sup> Under section 61 of CYPA, although it is a requirement to have juvenile remanded in remand home, however, if it is impractical to do so and the juvenile is of so unruly a character, the court may order for him to be remanded at prison.

# **IV. Reform Initiatives**

## **Legal Reform**

The introduction of CYPA in 2010 provides wider protection to children regardless whether they are victims or are in conflict with the law. The Act acts as a platform which allows for future and any possible development on scope of legislative framework on children. The MCYS as the custodian of the Act has the challenging role of handling the welfare of the children. Review of other existing governing laws such as the Penal Code and Criminal Procedure Code are undertaken, often involving all relevant stakeholders, when necessary, to ensure that the welfare of children and young persons are continuously safeguarded.

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<sup>32</sup> Rule 6(2) of Prison Rule.

## V. Conclusion

The CYPA as legislative frameworks have laid down procedures for dealing with juvenile offenders and provided for the setup of various institutions for reintegration back of juvenile offenders into the society. Starting from when the juveniles are held in police custody, the national law ensures that they are not to be associated with the adult offenders. This ensures the non-labelling of juveniles as criminals.

Despite the lack of specialised unit on juvenile offenders, as a matter of practice the police takes a different approach when dealing with the juveniles such as juveniles are not handcuffed unless necessary. The police use supporting techniques when interviewing juveniles in accordance to their age and circumstances. In short, the police will conduct interview in juvenile friendly approach appropriate to the juvenile developmental level.<sup>33</sup>

The lack of a specific room for interviews generally allows the juveniles offenders to speak openly and comfortably with the police.<sup>34</sup> The juveniles are accompanied by the parents or guardians when they are at the police station. This requirement of parental or guardian presence is a very important safeguard to protect the rights of juveniles. However most importantly, the police will release the juvenile rather than holding them in police station unless his presence is necessary to complete the investigation.

In conclusion, the laws and criminal justice system in Brunei safeguards the rights of the juvenile offenders. With the establishment of a specialized juvenile court system in Brunei, with separate court proceedings for juveniles, and which is presided over by the magistrates, the rights of the juvenile in conflict with the laws are safeguarded by the laws. The institutions provided for under the law which consist of remand homes, places of detention, approved schools and approved homes<sup>35</sup> reflects the policies of the Brunei Government which is aimed to ensure that children are better protected and cared for when they come into contact with justice system. This legislative policy of the country does not only facilitate the reintegration of juveniles but also aims at preventing recidivism.

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<sup>33</sup> Based on interviews with Royal Brunei Police officers.

<sup>34</sup> Based on interviews with Royal Brunei Police officers.

<sup>35</sup> Section 10 of CYPA

# CAMBODIA

## I. Country Background

As a sovereign state located in the southern region of the Indochina Peninsula in Southeast Asia, Cambodia, which is officially known as the Kingdom of Cambodia, has the total land area of 181,035 square kilometres. The country is bordered by Lao PDR to the northeast, Thailand to the northwest, Vietnam to the east and southeast, and has a 443-kilometre coastline along the Gulf of Thailand to the southwest.<sup>36</sup>

Based on a report by the National Institute of Statistics (NIS) of the Ministry of Planning of Cambodia in 2017, the country is currently the 71<sup>st</sup> most populous country in the world with an estimated population of 16.25 million, increasing from the official 2008 census population of 13.38 million. The demographic population structure in Cambodia showed an approximation of 65.2% of the total population is below 30 years old, 31.5% of those were in between the 15 to 29 age group.<sup>37</sup> The whole population is composed of nearly 20 ethnicities living in various provinces across the country with more than 95% of Cambodia's population is of Khmer origin, speaking Khmer language. Other ethnic groups being Chams (1.2%), Vietnamese (0.1%) and Chinese (0.1%), where the rest are indigenous minority, known collectively as “Montagnards” or “Khmer Loeu”, the term meaning “Highland Khmer” living in 15 provinces located in mountainous and coastal areas.<sup>38</sup>

Cambodia is divided into 24 provinces and one municipality. Phnom Penh is the country's capital and the largest city, which serves as the hub of the political, economic and cultural centre of Cambodia, with a projected population of 1.4 million, or 2.2 million in the metropolitan area.<sup>39</sup> As reported on the major achievements of the Royal Government of Cambodia in 2012-2016, Cambodia's per capita income was \$4,022 in PPP and \$1,309 in nominal per capita, making the country graduated from the status of being one of the Least Developed Countries (LDC) to being a Lower Middle Income (LMI) country.<sup>40</sup> On top of that, as cited in the country's assessment report,

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<sup>36</sup> Ministry of Environment (MoE). (2009). *Cambodia environment outlook*. Phnom Penh, Cambodia: MoE.

<sup>37</sup> National Institute of Statistics (NIS) of the Ministry of Planning. (2017). *The annual report on national census projection*. Phnom Penh, Cambodia: NIS.

<sup>38</sup> The UN Committee on the Elimination of Racial Discrimination. (2010). *The rights of indigenous peoples in Cambodia*. New York, USA: UN.

<sup>39</sup> National Institute of Statistics (NIS) of the Ministry of Planning. (2017). *The annual report on national census projection*. Phnom Penh, Cambodia: NIS.

<sup>40</sup> The Royal Government of Cambodia. (2017). *Summary report on the major achievement of the Royal Government of Cambodia in 2012-2016*. Phnom Penh, Cambodia: RGC.

entitled “Where Have All the Poor Gone? Cambodia Poverty Assessment 2013”, the World Bank concluded that over the decade from 2001 to 2010, the annual average GDP growth of Cambodia was 7.7%, making a tremendous economic growth which ranked amid the best in the world and as one of the world's top ten countries with the highest annual average GDP growth.<sup>41</sup>

According to socio-economic surveys conducted by the Ministry of Rural Development in 2016, over 96% of the population practices Theravada Buddhism, the official religion in Cambodia, according to the 1993 Constitution of the Kingdom of Cambodia, with an estimated 4,400 monastery temples across the country. Other practiced religions are Islam (2%), the majority of Malay and Chams minorities, Christianity (0.4%), folk religion (0.6%), and non-religious (0.2%).<sup>42</sup>

## II. Policy and Legislative Framework and Key Data

The Constitution of the Kingdom of Cambodia explicitly guarantees that Cambodia shall protect the rights of children.<sup>43</sup> Cambodia has ratified a number of human rights-related international covenants and conventions, such as the United Nations Convention on the Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>44</sup>, in order to ensure that justice of youth in the country – in accordance with international norms and practices around the world – should be implemented to serve the best interests of the children, and to provide justice system policies and processes in supporting young people and their effective reintegration into society.<sup>45</sup>

### A. Children Population

As reported in the 2017 Revision of World Population Prospects by the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, Cambodian age structure is projected as the followings: 32.2%, 64.1% and 3.8% of that population under 15, population between 15 and 64 years old and population over 65, respectively<sup>46</sup>. The same source

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<sup>41</sup> World Bank (WB). (2013). *Where have all the poor gone? Cambodia poverty assessment report*. Washington, D.C., USA: WB.

<sup>42</sup> Ministry of Rural Development. (2016). *The annual report of the Ministry of Rural Development*. Phnom Penh, Cambodia: MoRD.

<sup>43</sup> The Kingdom of Cambodia. (1993). *The Constitution of Cambodia*. Phnom Penh, Cambodia: Constitutional Council of Cambodia.

<sup>44</sup> MoSAVY and MoJ. (2018). *Juvenile justice law strategic and operational plan (JJLSOP) 2018-2020*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Justice.

<sup>45</sup> Dunkel, F. and Pruin, I. (2015). *Young adult offenders in juvenile and criminal justice systems in Southeast Asia*. London, U.K.: Routledge.

<sup>46</sup> Department of Economic and Social Affairs of the United Nations Secretariat (UN DESA). (2017). *Revision of world population prospects*. New York: Population Division of the Department of the UN DESA.



also estimated that among the total population of about 16 million plus, Cambodia has more than 5 million young people under 15 years old (about 2,662,657 being males and 2,641,396 being females) with 1,108 live births average per day, equivalent to about 46 births per hour. The following table details some simplified figures of the Cambodian population distribution comparing to the world population.

**Table 3: Cambodian population distribution comparing to world population**

Year	Population	Yearly % Change	Density (People/K m <sup>2</sup> )	Country's Share of World Population	World Population	Cambodia Global Rank
2019	16,482,646	1.46 %	93	0.21 %	7,714,576,923	72
2018	16,245,729	1.50 %	92	0.21 %	7,632,819,325	72
2017	16,005,373	1.54 %	91	0.21 %	7,550,262,101	71
2016	15,762,370	1.58 %	89	0.21 %	7,466,964,280	71
2015	15,517,635	1.64 %	88	0.21 %	7,383,008,820	71

Source: United Nations Department of Economic and Social Affairs: Population Division

## **B. Legal Definition of Children and Age of Criminal Responsibility**

According to the Law on Juvenile Justice (LJJ) of the Kingdom of Cambodia in 2016, some terms have been given definitions in the law applied to any minors in Cambodia aiming to establish norms and procedures, which shall be complied with and strictly applied, to deal with minors who committed criminal offences as follows:

**“Juvenile justice”** refers to the protection of the rights of minor via mechanisms, norms, procedures and sentencing which shall be complied with and strictly applied in the case of minor;

**“Competent authority”** refers to any individual or institution legitimately implement their mandate concerning with the minor’s case;

**“Minor”** refers to any person whose age is less than 18 (eighteen) years old when having committed an offense;

**“Minor in need of care and protection”** refers to a minor who is in need of care and

protection due to the absence of designated representative or of proper or guardian care and supervision, and is at risk or being abused or harmed or poses a threat to the safety and security of the public or themselves;

**“Designated representative”** refers to those who have parental authority, guardian and general guardian on a minor;

**“Support person”** means a natural person or legal entity chosen by the minor, or by competent authority and agreed by the minor, to support him/her during proceedings under this law;

**“Child-friendly procedure”** refers to a process or procedure that encourages full participation of minors via the use of language, attitude appropriate to the level of minors can understand and in the environment that provides minors’ safety, security, rights and basic needs;

**“Social welfare assessment report”** refers to the report on the general conditions of the minor and includes a comprehensive assessments and recommendations by social agents;

**“Social agent”** refers to any officer of the ministry, office in charge of social affair at city, provincial and district level or other individual who has completed training in minor and law concerning to minor and appointed or accredited by ministry in charge of social affairs; and

**“Rehabilitation centre”** refers to the centre which under the supervision of ministry in charge of social affairs and which aims to provide protection, care, education, rehabilitation and reintegration services to minors.

In addition to this, as stipulated in Chapter III on Criminal and Civil Liability of Minor of the Law on the Juvenile Justice, there are two specific articles, particularly Article 7 and Article 9 that had been formulated to safeguard the rights and best interests of minors, regarding the age of criminal responsibility as quoted below:

**Article 7.- Criminal Liability of Minor:** The age of criminal liability is more than 18 years old. However, the court may announce that a minor from the age of 14 up have criminal liability if the circumstance of the offence or personality required unless otherwise written in other special law.

**Article 9.- Age Determination:** Age of minor's criminal liability is determined at the time at which the alleged offence was committed. The proof of age of a minor shall be furnished by a birth certificate or a document certifying birth. In the absence of such documents or in case the authenticity of such documents is in question; the proof of age shall be furnished by other reliable means which are accepted by the court. Competent authorities shall seek evidence to determine the age of a minor as soon as possible. Any doubt as to the age of a minor, shall be resolved in the minor's favour <sup>47</sup>.

### C. Incidents of Children in Conflict with the Law and Types of Offence

In 2013 a total number of 342 juveniles, including 15 girls, were held in prison. Out of this number, 188 were pre-trial detainees and 154 were convicted juveniles. In 2014 (as of September) a total of 318 juveniles were detained in different prisons, including 16 girls, 197 of whom were pre-trial detainees and 121 were convicted juveniles. This number increased from 318 in 2014, to 907 as of January 2017 and it continued to increase to 1,505 as of April 2018<sup>48</sup>, as shown in the table below:

**Table 4: Number of juveniles detained in Cambodian prison**

Year	Number of Juveniles Detained in Cambodian Prisons
2018	1,505
2017	907
2016	N/A
2015	N/A
2014	318
2013	342
Source: Ministry of Social Affairs, Veterans and Youth Rehabilitation, Cambodia	

On a related note, a prison record on juveniles in conflict with the law listed some common types of offences committed by minors, such as rape, theft or larceny, vandalism alcohol offenses, possession of drug (abuse or trafficking), assault, traffic violations, burglary, harassment and so on.<sup>49</sup>

### D. Laws Related to Children in Conflict with the Law

Based on the Juvenile Justice Law Strategic and Operation Plan (JJSOP) 2018-2020, the term

<sup>47</sup> MoSAVY. (2016). *Law on juvenile justice*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation.

<sup>48</sup> MoSAVY and MoJ. (2018). *Juvenile justice law strategic and operational plan (JJSOP) 2018-2020*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Justice.

<sup>49</sup> Christoph G., Oeung B., & Daniel R. (2010). *Legal aid services in Cambodia: Report on a survey among juveniles in conflict with the law in Cambodia*. Phnom Penh: Cambodian Human Rights Action Committee.

“**Children in Conflict with the Law (CICL)**” refers to children and young people below the age of 18 alleged as, accused of or recognised as having infringed the penal law, and has the same meaning as “**juvenile delinquents**” and “**juvenile offenders**” for the purpose of this report <sup>50</sup>.

In Cambodia, the legislation is categorised into 4 types, including the Constitution, international laws recognised by Cambodia, domestic laws and subsidiary legislation. Laws existing in Cambodia are detailed in order of their hierarchy. First, the **Constitution** is the Supreme Law of Cambodia; second, the **International Laws** are in the form of treaties or conventions which are recognised by Cambodia; third, **Laws (Royal Kret)** are adopted by the National Assembly and the Senate and are promulgated by the King; fourth, **Sub-decrees (Anukret)** are adopted by the Prime Minister; fifth, **Regulations (Prakas)** are adopted by relevant minister; sixth, **Circulars or Ministerial implementing measures (Sarachors)** are more specific guidelines to explain or clarify certain legal or regulatory measures or to provide instructions; seventh, **Decision (Sechkdei Samrech)**, signed by the Prime Minister, a minister or a governor within the framework of his/her own regulatory powers <sup>51</sup>. Below is the list of some existing laws pertaining to children in conflict with the law in the Kingdom of Cambodia <sup>52</sup> that include, but are by no means limited to:

**Table 5: List of existing laws pertaining to children in conflict with the law in Cambodia**

No.	Name of the Law	Date of Entry into Force
1	Constitution of the Kingdom of Cambodia	24 September 1993
2	Law on Press Regime	1995
3	The Ministry of Justice Instruction on the Implementation of International and National Laws related to Juvenile Justice	2005
4	Policy on Alternative Care for Children	2006
5	Criminal Procedure Code TS/RKM/807/024	10 August 2007
6	Civil Code TS/RKM/1207/030	08 December 2007
7	Constitutional Council Decision regarding the Law on Aggravating Circumstances for Felonies and the Convention on the Rights of the Child 092/003/2007	2007
8	Prakas No. 62 on the Use of Court Screen and Courtroom TV-Linked Testimony form Child/Vulnerable Victims or Witnesses	2008
9	Law on Suppression of Human Trafficking and Sexual Exploitation	2008
10	The Penal Code TS/RKM/022	30 November 2009
11	Inter-Country Adoption Law	2009
12	Sub-decree No.162 on the Creation of the National Treatment and Rehabilitation Center for Drug Addicts	2010
13	Law on Prisons NS/RKM/1211/021	21 December 2011
14	Law on Juvenile Justice	2017

Source: Teeuwen, A. (2006). *A measure of last resort?: The current status of juvenile justice in Cambodia*. Sweden: Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

<sup>50</sup> MoSAVY and MoJ. (2018). *Juvenile justice law strategic and operational plan (JJLSOP) 2018-2020*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Justice.

<sup>51</sup> Cambodian Office of the High Commissioner for Human Rights. (2005). *A selection of laws currently in force in the Kingdom of Cambodia*. Phnom Penh: Cambodian Office of the High Commissioner for Human Rights.

<sup>52</sup> Teeuwen, A. (2006). *A measure of last resort?: The current status of juvenile justice in Cambodia*. Sweden: Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

### **III. Interrogation and Interview of Children in Conflict with the Law**

#### **A. Law Enforcement Officers**

As enshrined in Articles 22 and 26 of the 2016 Law on Juvenile Justice, prior to the interview, judicial police officer shall inform the minor the basic rights, stipulated in Article 6 (the procedural right of minor) of this law, particularly the right not to answer when there is a present or absence of a lawyer in a language and manner that is appropriate to minor's cognitive development before conduct the interview. In case the minor cannot afford a lawyer, the prosecutor shall arrange a pro-bono lawyer for the minor.

Moreover, the interview of the minor shall be conducted in a private, confidential, child-friendly manner and in the present of minor's lawyer, social agent, and designated representative or support person. On a separate note, although designated representative or support person and duly authorized social agent who could provide support to the minor are entitled to participate in the interview, the Law Enforcement Officers (the prosecutors), with the consultation and consent from the lawyer or social agent and the minor, may not allow the minor's designated representative to attend the interview if their presence is contrary to the minor's best interest.

In addition, the reasons for any absence of the designated representative, support person, lawyer or social agent in the interview, judicial police officer shall note the reason of absence in the record and include in the minor's case file.<sup>53</sup>

#### **B. Social Work Officers**

As stipulated in Chapter IV, Article 11 in the 2016 Law on Juvenile Justice of Cambodia regarding social services support, the state has duties to the fulfillment of the procedure of appointment, accreditation, and supervision of social agents with regard to the cases of children in conflict with the law on both victims and alleged offenders. In Cambodia, the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY) is the competent of ministry in charge of such social affairs in collaboration with other relevant ministries including the Ministry of the Interior (Mol) and

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<sup>53</sup> MoSAVY. (2016). *Law on juvenile justice*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation.

the Ministry of Justice (MoJ).

According to the law in the Kingdom of Cambodia and governed by Prakas of the ministry in charge of social affairs, competence social agents assigned to deal with any related minor cases have duties as follows:

- To meet with minors at all stages of procedure particularly at the earliest judicial police procedure and in prison to make an initial assessment; and to provide immediate services to minors;
- To seek information on minor's family situation, character, educational history; education level, conditions in which the minor has lived, developed and other relevant information with respect to the minor's cognitive, emotional, psychological and social development for preparing, reporting and making recommendations on the minor's social welfare and conditions to the judge, prosecutor and the court;
- To offer psycho-social support to minors throughout all stages of proceeding;
- To prepare and provide diversion plan to diversion authority to exam and decide;
- To provide rehabilitation and reintegration services for minors; and
- To do other duties as set out by Prakas of the ministry in charge of social affairs.<sup>54</sup>

### **C. Legal Aid for Children in Conflict with the Law**

Legal aid is provided through free legal representation and free legal consultation for children across the county. Furthermore, minor detainees will be also informed and provided consultations about their legal rights and the important provisions of the Criminal Procedure so that these will help to guarantee for promoting the best interests of rights of the child who comes into contact with the law through deviating them from the formal justice system, such as Provisions in Criminal Procedure Code, Penal Code and other relevant laws in order to protect the interests of society and community.<sup>55</sup>

In collaboration with the Royal Government of Cambodia, some international non-governmental

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<sup>54</sup> MoSAVY and MoJ. (2018). *Juvenile justice law strategic and operational plan (JJLSOP) 2018-2020*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Justice.

<sup>55</sup> Aekje T., Chiva T., & Neth T. (2006). *Securing children's rights in Cambodia: A comparative research on juvenile justice*. Phnom Penh: Legal Aid of Cambodia.

organisations (INGOs), non-governmental organisations (NGOs) and civil society organisations (CSOs), including UNICEF-Cambodia, Plan International (PI), International Handicap (IH), World Vision (WV), Legal Aid of Cambodia (LAC), Children's Rights International (CRI), Every Child Cambodia (ECC), Save the Children (SC), Community Legal Education Centre (CLEC), NGO Coalition for Child Rights (NGOCRC), End Child Prostitution, Abuse and Trafficking in Cambodia (ECPAT), Legal Support for Children and Women (LSCW)<sup>56</sup>, just to name a few, have been closely involving and cooperating with MoSAVY, Mol and MoJ of Cambodia in offering legal assistance for children in conflict with the law to assure for minors that they are: (1) interviewed by the police in the presence of a parent or guardian or lawyer; (2) not subject to physical or emotional abuse either by police or while detained at prison; (3) not subject to excessive pre-trial detention, (4) able to receive a fair trial; (4) able to apply for diversion or a non-custodial sentence; (5) offered life-skills training and material support while in prison; (6) able to be integrated back into society upon release from prison; and (7) received support regarding their rehabilitation and reintegration into society and the community.<sup>57</sup>

Furthermore, there are some existing programmes provided by local CSOs that have been serving as assistance to offer legal aid for Cambodian children in conflict with the law. Such programmes include, but are not limit to:

- **Training Sessions in Form of Capacity Building:** providing peer-to-peer education to children and their representatives to ensure that children can understand their rights properly and are able to share the newly gained information to other children;
- **Public Awareness Raising:** sharing information related to basic concepts of Criminal Code, Criminal Procedure Code, the rights of the child and so on through educational materials, like posters, leaflets, video clips, educational television shows, booklets, and flyers;
- **Outreach Programme:** consisting of radio talk show programmes in collaboration with local radio to broadcast existing and arising problems regarding children in conflict with the laws; and
- **Advocacy Activities:** a live discussion about rising problems regarding children issues and topics appearing on any media outlets pertaining to the Criminal Code, the Criminal Procedure and other relevant legal instruments.<sup>58</sup>

<sup>56</sup> Travers, E. (2011). *Upholding children's rights in the judicial system: An NGO's experience of working for juvenile justice in Cambodia*. Phnom Penh: Legal Aid Cambodia.

<sup>57</sup> Stan V. S., (2018). *New protection status of juvenile victims with the passage of the new criminal legislation in Cambodia*. Singapore: Asian Journal of Comparative Law.

<sup>58</sup> Tina V. (2017). *The status of children in conflict with the law in Cambodia and Vietnam*. Uxbridge, United Kingdom: World Vision International.

## IV. Detention During Interrogation/Pre-trial Detention

There is “irrefutable” evidence that custody and detention of young people can be “profoundly dehumanising”, a breach of international human rights, and can lead to a failure to address developmental needs and block life chances.<sup>59</sup> In Cambodia, the minimum age at which a sentence of imprisonment is allowed to be imposed on a child is 14 years of age while the life imprisonment for children is not allowed according to the law<sup>60</sup>. Detention in custody before or after conviction should be a last resort for juveniles. This principle is reflected in international best practice and international law and is wisely consistent with Article 5 of the 2016 Law on Juvenile Justice (LJJ), which states that juvenile detention should be a last resort and for the shortest period.<sup>61</sup>

Additionally, Article 15 of the LJJ stated that “A minor aged 14 to below 18 years of age may be arrested by judicial police officers only if the minor commits a misdemeanour or felony in flagrante delicto. However, minor aged 14 to below 16 years of age may be arrested in case the minor commits a misdemeanour offence intentionally.” Required by law, if arrested a minor, a judicial police officers shall immediately report to prosecutor and shall avoid any humiliation and indignity of minor.<sup>62</sup>

On top of that, Article 17 of the LJJ indicated that in case of apprehension of minor, judicial police may keep a minor from 14 to below 18 years of age in its custody if he/she believed on reasonable grounds that the minor is very likely to abscond, discard evidence, endanger the safety of witnesses or victims, or pose a danger to public safety or in protection of minor’s security.

On the other hand, judicial police may only keep a minor from 14 to below 16 years of age in its custody only if the minor has intent to commit a misdemeanour offence. Apprehension of minor shall be reported immediately to the prosecutor.<sup>63</sup>

Likewise, on the matter of pre-trial detention, Article 39 of the LJJ stipulated that it is a measure of last resort with respect to the provision on the conditions and reasons of pre-trial detention in criminal procedure code. In case minors found to be less than 14 years of age, he/she shall not

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<sup>59</sup> BAAF. (2015). *Alternatives to Custody: Daphne III funding programme of the European Union*. London: British Association for Adoption and Fostering.

<sup>60</sup> Cambodian Penal Code, Article 160 on Principal Penalties Applicable to Minors over the Age of Fourteen.

<sup>61</sup> MoSAVY. (2016). *Law on juvenile justice*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation.

<sup>62</sup> Mol. (2014). *Report on Work Achieved in 2013 and Plans for 2014*. Phnom Penh: General Department of Prison, Ministry of Interior.

<sup>63</sup> Cunneen, C. & White, R. (2016). *Juvenile justice: Youth and crime in Asia*. London: Oxford University Press.



be placed in a pre-trial detention and the investigating judge shall issue the non-suit order and order the minor's immediate release and refer the minors back to the custody of their designated representative.<sup>64</sup>

**Table 6: Comparing pre-trial detention in criminal procedure code in Cambodia**

Type of Offences	Age	Custody Period	Pre-Trial Detention Period
Felony	14<16	36 hours	4 months
	16<18	48 hours	6 months
Misdemeanour	14<16	24 hours	2 months
	16<18	36 hours	4 months

Source: Cambodian Criminal Procedure Code, Article 96 on Custody; Articles 213 and 214 on Detention.

Moreover, if the minor is deemed to be a minor in need of care and protection, the investigating department or office shall refer to the minor to municipal, district department in charge of social affairs to further proceed in accordance with condition and welfare of the minor.

## V. Treatment of Convicted Minors (Residential Detention for Juveniles)

It is reported that there are totally 28 prisons in Cambodia, among which there are neither specific prisons exclusively designed nor specialised in juveniles.<sup>65</sup> For instance, Prey Sar Correctional Center 2 (CC2) Prison in Phnom Penh is not exclusively specified as juvenile prison. Despite, it detains the largest population of incarcerated juveniles in the country. Regardless, this residential detention holds women and children in a separate section of the compound. Additionally, some certain prisons in Cambodia segregate children and adults and putting them in separate cells sections, while some other prisons are less likely to separate inmates or none at all.<sup>66</sup>

<sup>64</sup> Cambodian Criminal Procedure Code, article 96 on Custody; article 213 and 214 on Detention.

<sup>65</sup> Teeuwen, A. (2006). A measure of last resort?: The current status of juvenile justice in Cambodia. Sweden: Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

<sup>66</sup> UNICEF-Cambodia. (2016). *Toolkit on diversion and alternatives to detention for juvenile in Cambodia*. Phnom Penh: UNICEF.

## **VI. Measures Dealing with Detention of Minor**

Article 79 of the LJJ states that “The purpose of detention of minors is to provide rehabilitation, including training, treatment, care, protection, education and vocational training, with a view to assisting them to become a good citizen and productive member of society”. These objectives are to be buttressed via the provision of appropriate services (Article 81), separate and particularised treatment of children away from adults (Article 82), nuanced security classifications (Article 83) and in facilities which shall be regularly inspected (Article 85).

While detained in a youth rehabilitation centre (YRC), Article 81 states that children have the rights to participate in educational programmes and vocational trainings and other programmes that will assist them to develop their potential to be a good member of society and to assist their integration back into society upon the release.

The focus on rehabilitation rather than punishment is also a central focus of the references in the Cambodian LJJ to the personnel working in the YRCs. For instance, Article 84 states that all agents who work with children in a YRC, including officers at YRC, social agents, education and vocational training experts, counsellors and life-skill experts, and psychologists or psychiatrists shall have a proper training on child psychology, child welfare, and international instrument on child rights and treatment of juveniles deprived of their liberty.

## **VII. Other Measures: Crime Prevention, Community Justice and Community Policing**

### **A. Crime Prevention**

The introduction to the United Nations Guidelines for the Prevention of Crime indicates that “There is clear evidence that well-planned crime prevention strategies not only prevent crime and victimisation, but also promote community safety and contribute to sustainable development of countries. Effective, responsible crime prevention enhances the quality of life of all citizens. It has long-term benefits in terms of reducing the costs associated with the formal criminal justice system, as well as other social costs that result from crime.”.<sup>67</sup>

Therefore, this particular tool has been introduced and carried-out across the country in order to help reduce or even prevent the crime being committed from the very first place. On an operational

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<sup>67</sup> Dennison S, Stewart A & Hurren E. (2006). *Police cautioning in Queensland: The impact on juvenile offending pathways*. Canberra: Australian Institute of Criminology.

level, crime prevention strategies can be considered on three levels. Firstly, the Primary Crime Prevention strategies are directed at stopping crime before it happens. It targets and identifies social factors that could cause an individual's likelihood of committing a crime. Poverty, unemployment, low educational achievement and health related issues are such examples that this tool would focus on addressing. Secondly, the Secondary Crime Prevention strategies target those considered to be at high risk of embarking on a criminal related career paths. This includes early intervention strategies, like youth programmes, and additional services in high-risk neighbourhood (neighbourhood dispute centres) and so on. Lastly, the Tertiary Crime Prevention Strategies center around intervention with known offenders in an attempt to prevent recidivism of young offenders. Youth conferencing, custodial-based rehabilitation, community-based reintegration measures and deterrence through sanctions are the cases in points of this strategy.<sup>68</sup>

## **A. Community Justice**

The LJJ of Cambodia in 2016 contemplates that justice can also be served in the community level, the so-called “Community Justice”. On a separate note, yet is co-related to the aforementioned Crime Prevention Strategies, the personnel working within the juvenile justice system are trained and tasked with responsibility for the fulfillment of community justice so that the recidivism of young offenders would be prevented. As reflecting in this LJJ, the Community Justice’s keys aspects consisting of three components, the police cautioning scheme, the diversion scheme, and reintegration measure.<sup>69</sup>

Police cautioning scheme is an effective crime prevention strategy that authorise the police to responses appropriately to the circumstances while it enables society to express its dissatisfaction with unlawful behaviour without invoking incarceration. The adoption of this alternative measure is in line with international law that could direct a child away from criminal prosecution rather than dragging a child into a formal prosecution in the court and could avoid the likelihood of minors being traumatised by the experience of detention. Such caution principle is also reflected in the UNCRC, Article 40.4 [*A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*] and Beijing Rule, Article 5.1 [*The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of*

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<sup>68</sup> Vanrath, L. (2012). *The basics of substantial Cambodian criminal law*. Phnom Penh: Royal University of Law and Economics.

<sup>69</sup> MoSAVY. (2016). *Law on juvenile justice*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation.

*both the offenders and the offence.*] in which it contributes to alleviate the costs of financial and emotional to the community, lower the re-offending rates, and reduces the resources required for court administration and prisons.<sup>70</sup> The police cautioning scheme includes: (1) oral and written guidance and warnings, (2) attendance with the family at an interview with the police, (3) referral to the services and programmes and (4) a final caution stage of no further cautions.<sup>71</sup>

Being similar to cautioning, diversion is a very effective primary crime prevention mechanism to support children from re-offending, aiming to minimise the harmful effects of formal criminal prosecution and conviction, instead of favouring less intrusive intervention measures that are appropriate for the offenders; therefore, by avoiding the detention, it helps in a way that not only minimising the possibility that young children in conflict with the law will continue to offend in their adulthood, but also saving the costs of repeating offences for the community justice system and the minors themselves. As stated in the 2016 report entitled “Addressing Juvenile Justice Priorities in the Asia-Pacific Region”, the key objectives of diversionary or alternatives measures including: (1) favouring reconciliation between perpetrator and victim, (2) avoiding state deprivation of children’s liberty, (3) encouraging community participation and (4) fostering a sense of responsibility in children. The examples of such diversion could be seen in the restorative justice practices such as victim-led mediation, community and family group conferencing, restoration of damage agreements, and serving times in community service. This report also noted that while diversion can theoretically apply to any offence or offender, it is practically not applicable to serious crime cases or persistent offenders.<sup>72</sup>

To the reintegration measure, as it is incorporated into the LJJ of Cambodia, this particular mechanism may mostly be referred to the important role of youth rehabilitation centres across the country. In this stage, such tool is being implemented with the focus on rehabilitation rather than punishment in order to guarantee that minors come in conflict with the law, upon their paroles, will be equipped with skills and attitudes necessary for them becoming good citizens of the country without offending behaviour for the society. Additionally, this particular law provides every indication that the programmes being offered in the YRCs are to be designed in such a way as the goals of rehabilitation are feasible and achievable.

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<sup>70</sup> The UN Convention on the Rights of the Child (UNCHC), Article 40.4 and the Beijing Rule, Article 5.1.

<sup>71</sup> MoSAVY. (2016). *Law on juvenile justice*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation.

<sup>72</sup> Cédric F. & Giulia M. (2016). *Addressing juvenile justice priorities in the Asia-Pacific region*. Thailand: International Juvenile Justice Observatory (IJJO).

## B. Community Policing

Another alternate measure that has been set to address any related cases involving minors in conflict with the law is “Community Policing”. This term denotes a variety of policing approaches that aim to engage proactively and productively with juveniles so as to develop a culture of trust and the advancement of pro-social behaviour with the establishment of a participatory model of police-citizen interaction.<sup>73</sup> For instance, the provision of sharing information of criminal law, safety matters, basic rights of minors, investigating procedures and the like of that considered as activities conducted for the benefit of the juvenile populace; those can be cited as community policing. In practice, this approach does not eliminate or replace traditional models of policing; instead, community policing complements traditional responses while it requires officers to engage with person of interest and stakeholders and work together to mediate conflict and prevent crime. While the successful of this approach relies on cooperation and communication between police and the community; in return, it contributes to strengthen the public’s trust in the police service and leading the way toward the development of long-term solutions for community problems simultaneously.<sup>74</sup>

## VIII. Legal Reform Initiatives

The Royal Government of Cambodia (RGC)’s initiative in passing the LJJ to implement the resolutions contained in the United Nations Convention on the Rights of the Child (UNCRC) and other international standards and guidelines has been highly significant for the children and young people of Cambodia as this law demonstrates a commitment to the UNCRC and is truly comprehensive enough to support the development of a single, all-inclusive juvenile justice system for Cambodia.

Overall, as listed in the JJLSOP 2018, the common challenges that need to be addressed when involving with the cases of minors in conflict with the law include, but are not limited to (1) an inadequate system of birth registration, (2) resourcing and the cost of implementation, (3) the lack of civil accommodation and services for children in conflict with the law in their diversion period and after detention, (4) the availability and funding of lawyers, (5) lack of social agents and experts, and (6) the lack of YRCs to house the detained population.<sup>75</sup>

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<sup>73</sup> Egger, S. (2005). *An assessment of the situation of children in conflict with the law in the Kingdom of Cambodia*. University of Sydney: The Research Institute for Asia and the Pacific.

<sup>74</sup> UNICEF-Cambodia. (2016). *Toolkit on diversion and alternatives to detention for juvenile in Cambodia*. Phnom Penh: UNICEF.

<sup>75</sup> MoSAVY and MoJ. (2018). *Juvenile justice law strategic and operational plan (JJLSOP) 2018-2020*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Justice.

With this in mind, the JJLSOP 2018-2020 was initiated to help the development of a solid and sustainable modern juvenile justice system in a sense that it focuses on diversion and restorative justice as the main course of action rather than punishment. With the implementation of this modern juvenile justice strategic plan, it is believed to provide opportunity for children to correct themselves and to become good members of the society in the future and will help address the aforementioned challenges along the way.

The JJLSOP 2018-2020 is intended to provide a practical plan for the important process of implementation and ongoing operations to improve the lives of children in conflict with the law. This is a national plan that involves civil society, government and NGOs. The primary stakeholders with responsibilities include relevant ministries such as MoSAVY, MoJ, MoI, Ministry of Education, Youth and Sport (MoEYS), Ministry of Health (MoH) and Ministry of Women's Affairs (MoWA). Other primary stakeholders are national and sub-national local administrations, faith-based organisations, educational and training institutions, Bar Association of the Kingdom of Cambodia, INGOs and NGOs service providers and development partners, including UNICEF-Cambodia, Plan International, Children's Rights International (CRI), and Legal Aid of Cambodia (LAC).

The JJLSOP is a three-year-operational action plans consists of two overarching objectives: (1) to build a solid and sustainable foundation for a modern juvenile justice system that can continually develop and improve in the future and (2) to have an effective and positive impact on existing and future children in conflict with the law and to reduce the number of children in detention. Its areas of strategic priorities for implementation are:

**“A child rights approach”**: to implement a child rights approach and build a system in which the child is the central user and can actively participate;

**“Efficient and sustainable development”**: to address fundamental challenges to implement and to maintain momentum and maximize the use of resources to build capacity, consistency and expertise;

**“Single-system approach”**: to balance a central system approach that facilitates effective coordination and local solutions with each individual institution's accountability, responsibility and expertise;

**“Rehabilitation and re-integration”**: to address underlying causes of offending and connect children in conflict with the law with civil society and the existing child and family welfare sectors; and

**“Continuous improvement and accountability”**: to monitor and evaluate implementation to ensure progress towards the achievement of goals and accountability for meeting LJJ obligations.

## IX. Conclusion

Children are future resources of the country. Therefore, protecting the rights and best interests of children and young people is one of the main obligations of the state.<sup>76</sup> With this acknowledgement, the Royal Government of Cambodia has developed legal provisions and mechanisms to defend and preserve the rights of children in conflict with the law. One of the best examples is the long-awaited Law on Juvenile Justice (LJJ) which was adopted by the National Assembly on 30 May 2016, signed by Royal Proclamation on 14 July 2016, and came into effect on 20 February 2017.<sup>77</sup> This is a milestone in stepping towards to the protection of children in contact with, or in conflict with the law, and is a separate juvenile justice system that guarantees the respect of their rights.

The LJJ signals the way for the establishment of a juvenile justice system based on best practice that accords with Cambodia's international human rights obligations. As the main principal objective of the United Nations Convention on the Rights of the Child, which Cambodia has ratified, is to safeguard justice of the youth to be implemented in “the best interests of the child”, and to ensure that justice system policies and processes support young people and their effective reintegration into society.<sup>78</sup>

Even if this current law provides a differentiated treatment of juveniles in Cambodia's justice system, the application of this legislation is still obstructed 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, (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 children in conflict with the law, as well as the preference for a punitive approach per local customs, traditions and culture, and (5) the absence of well-functioning monitoring and complaints mechanisms to adequately address violations of children's

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<sup>76</sup> The UN Convention on the Rights of the Child (UNCHC).

<sup>77</sup> MoSAVY and MoJ. (2018). *Juvenile justice law strategic and operational plan (JJLSOP) 2018-2020*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Justice.

<sup>78</sup> Stan V. S., (2018). *New protection status of juvenile victims with the passage of the new criminal legislation in Cambodia*. Singapore: Asian Journal of Comparative Law.

rights.<sup>79</sup>

For these reasons, a newly well-thought-out national strategic and operational plan has been formulated to provide as policy guidelines with clear guidance to concerned ministries and institutions in Cambodia for ensuring the effectiveness and efficiency in executing of this new legislation and carrying out their respective duties for the best interests of all children within the judicial system of the country. This new law requires significant changes to be made with regard to how the child protection and justice sectors respond to child offending. Also, this law mandates key government ministries develop new Prakas and standard operating procedures on a complex range of issues including age determination, arrest, prosecution, court hearings, diversion and detention. Therefore, once this JJLSOP is being fully and systematically implemented, all stakeholders identified in this operational plan above will be more prepared to fulfil their individual duties and collaborate with development partners for efficient implementation. It is believed with certainty that this strategic and operational plan is a key foundation that sets out activities and a specific timeframe for concerned institutions to fulfil and monitor their respective activities in accordance with child protection programmes in Cambodia.<sup>80</sup>

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<sup>79</sup> MoI. (2014). *Report on Work Achieved in 2013 and Plans for 2014*. Phnom Penh: General Department of Prison, Ministry of Interior.

<sup>80</sup> MoSAVY and MoJ. (2018). *Juvenile justice law strategic and operational plan (JJLSOP) 2018-2020*. Phnom Penh: Ministry of Social Affairs, Veterans and Youth Rehabilitation and Ministry of Justice.



# INDONESIA

## I. Definition of Child in Conflict with the Law

The terminology of a Child in the rule of law in Indonesia has developed significantly. The article 1 number 2 Law No. 4 of 1979 on Child Welfare states that a Child is any person who has not attained the age of 21 (twenty-one) years old or unmarried.

According to Law No. 35 of 2014 on the Amending Law of No. 23 of 2002 on Child Protection, a Child is someone who has not attained the age of 18 (eighteen) years old, including Child inside the mother's womb. Meanwhile according to *Convention on the Rights of the Child* which has been ratified by Indonesian Government by the Presidential Decree of RI No. 36 of 1990, a Child means every human being below the age of 18 (eighteen) years unless under the law applicable to the Child, majority is attained earlier.

Terminology of Child in conflict with the law means any Child whose action is against the legal provision which is applied and legal in Indonesia. Generally, a Child who has legal problem is defined as any Child who is suspected, accused and found guilty of violating the legal provisions<sup>81</sup> or any Child who is suspected or accused of committing an offence.<sup>82</sup>

Child in conflict with the law as meant by the Law No.11 of 2012 on Child Criminal Justice System consisting of three kinds, *first*, a Child in conflict with the law, hereinafter referred to Child, means a Child who have been 12 (twelve) years of age who are suspected to commit criminal offence (Article 1 Number 3). *Second*, a Child who is the victim of criminal offence, hereinafter referred to as Child of victim, are a Child below 18 (eighteen) years of age who suffers from physical, mental, and/or economic loss caused by the criminal offence (Article 1 Number 4). *Third*, a Child who becomes a witness, hereinafter referred to as Child of witness, is a Child below 18 (eighteen) years of age who can give information to the interests of the investigation, prosecution, and examination in the court hearing of a criminal matter that is heard, seen, and/or his/hers alone (Article 1 Number 5).<sup>83</sup>

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<sup>81</sup> Mohammad Farid, *Hak Anak yang Berkonflik dengan Hukum Sesuai dengan Standar Internasional*, in Fachuddin Muchtar's, *Situasi Anak Yang Berkonflik Dengan Hukum di Daerah Istimewa Yogyakarta dan Semarang*, Samin and Yayasan SETARA, Yogyakarta, 2006, pg 130

<sup>82</sup> See the UN Minimum Standards Regulations on Judicial Administration for Children (Beijing Rules), in section 2 concerning the Scope of Regulations and definitions

<sup>83</sup> R. Wiyono, *Sistem Peradilan Pidana Anak di Indonesia*, Sinar Grafika, Jakarta, 2016, pg 14-15

## II. Statistic of Child in Conflict with the Law

Children in conflict with the law are quite in great number in Indonesia. Throughout 2000, according to the records of police crime statistics, more than 11.344 Children were suspected as criminal offender. In January till May 2002, there were 4.325 Child custody in jail and prison in the entire of Indonesia. Most of Children (84.2%) were in jail and prison for the adult and the youth.<sup>84</sup>

The statistics of Indonesian Children Protection Commission of Indonesia (KPAI) stated that the cases of Children in conflict with the law in 2011 were 695 (six hundreds and ninety five) cases, in 2012 there were 1.423 (one thousands four hundred and twenty three) cases, in 2013 there were 1.428 (one thousands four hundred and twenty eight) cases, in 2014 there were 2.208 (two thousands two hundred and eight) cases, in 2015 there were 1.221 (one thousands two hundred and twenty one) cases, and in 2016 there were 733(seven hundred and thirty three) cases. The following table is the Children cases that one of which is related to Children in conflict with the law in Indonesia.<sup>85</sup>

**Table 7: Children in conflict with the law in Indonesia**

No.	Field	2011	2012	2013	2014	2015	2016
1	Social and in Emergency Situation	92	79	246	191	174	148
2	Family and Alternative Childcare	416	633	931	921	822	571
3	Religion and Culture	83	204	214	106	180	171
4	Civil Rights and Participation	37	42	79	76	110	65
5	Health and Drugs	221	261	438	360	374	227
6	Education	276	522	371	461	538	267
7	Pornography and Cyber Crime	188	175	247	322	463	314
8	Children in conflict with the law	695	1.413	1.428	2.208	1.221	733
9	Trafficking and Exploitation	160	173	184	263	345	181

Source: <http://bankdata.kpai.go.id/tabulasi-data/data-kasus-per-tahun/data-kasus-berdasarkan-klaster-perindungan-anak-2011-2016>

Statistic of Children in conflict with the law released by KPAI delineated how fairly big in number is the case happened to Children in Indonesia. That big number is in accordance with the findings of problematic cases of Children in education world, the problem of family and Childcare, problem

<sup>84</sup> Yayasan Pemantau Hak Anak, *Praktek-Praktek Penanganan Anak Berkonflik dengan Hukum dalam Kerangka Sistem Peradilan Pidana Anak (Juvenile Justice System) Di Indonesia : Perspektif Hak Sipil dan Hak Politik*, pg 1

<sup>85</sup> Accessible in <http://bankdata.kpai.go.id/tabulasi-data/data-kasus-per-tahun/data-kasus-berdasarkan-klaster-perindungan-anak-2011-2016>. Accessed on 18th January 2019

of health and drugs, problem of pornography and cybercrime, as well as trafficking and exploitation that happened to Children. In this case, it can be seen that Children in conflict with the law is the consequence of a lot of environment factors that have not generally been friendly to Children.

In the legal instrument of national and international human rights, the position of Children in contact with the law is placed as vulnerable groups that have to be treated specially, have rights which are categorized as special protection, and the government has the responsibility to guarantee the right fulfillment which is special.<sup>86</sup>

In the Law No. 35 of 2014 on the Amending Law No. 23 of 2002 on Child Protection stated that every Child has a right to protection, which includes every activity that protects Children and their rights to live, grow, develop and participate optimally according to human dignity, including to get protection from violence and non-discrimination.

This law also regulates special protection, namely a protection which is accepted by Children in emergency situation and condition to get the feeling of security toward threat that harm the physical and soul in their development. One of Children special protection is applied when they are in contact with the law. Children in contact with the law should get legal treatment that is different from the adult.

### **III. Regulation Related to Child in Conflict with the Law**

#### **A. Constitutional Guarantee**

In the Constitution of 1945, as stated in the Article 28B, it said, *“Every Child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.”* The guaranteed rights in the article are very specifically related to Child rights with dimensions of civil and political rights. In other articles, it is also mentioned other rights that are general and inherent to each human.

The constitution of 1945 also regulates other specific rights with dimensions of economics, social

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<sup>86</sup> In international instruments, vulnerable groups include *refugees, internally displaced persons (IDPS), national minorities, migrants, indigenous peoples, children; and women*. Whereas in Law No. 39 of 1999 concerning Indonesian Human Rights, in its explanation, it is stated that vulnerable groups include the elderly, Children, the poor, pregnant women and the difabel.

and cultural rights. The article 34 says, “*Impoverished persons and abandoned Children shall be taken care of by the State.*” The important meaning of this article is that the State has more obligation of affirmative actions to pay attention the rights inherent to Children.

## **B. International Law Guarantee**

International world has *Convention on the Rights of the Child*, wherein the regulation has been adopted through the Resolution of General Assembly of the United Nations No. 44/25 dated 20<sup>th</sup> November 1989 and started to be officially applied on 2<sup>nd</sup> September 1990. The convention consists at least 4 (four) important rights:<sup>87</sup>

1. Survival rights, which are the rights of a Child to preserve and sustain the rights of life and the right to the highest standard of health and medical care attainable
2. Protection rights, which are the rights of a Child to protection from discrimination, protection from Children exploitation, violence and abandoned to Children who do not have families for refugee Children
3. Development rights, which are the rights of a Child to any form of education (formal and non-formal) and rights to reach decent standard of living for the development of physical, mental, spiritual, moral, and social
4. Participation rights, which are the rights of a Child to express her/his views in all matters affecting that Child

Due to the importance of the *Convention on the Rights of a Child*, Indonesian government has ratified on 25<sup>th</sup> August 1990 by the Presidential Decree (Kepres) No. 36 of 1990 on the Ratification of *Convention on the Rights of the Child*. Through the ratification of the convention, the protection of Children in Indonesia has found the moment. After ratification, national regulation began to appear, such as the discussion and the ratification of the Law No. 3 of 1997 on the Child Court that is in normative way amended to Law No. 11 of 2012 on Child justice system, and the Law No. 23 of 2002 on the Child Protection amended to the Law No. 35 of 2014.

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<sup>87</sup> Anggara, et al, *Studi Implementasi Penanganan Anak di Pengadilan Berdasarkan UU SPPA*, ICJR, 2016, pg 13

### **C. National Law Guarantee**

Protection to Child conflict with the law is complete in Indonesia, the norms of the law are:

1. Constitution of 1945
2. Presidential Decree No. 36 of 1990 on the Ratification of *Convention on the Rights of the Child*
3. Law No. 39 of 1999 on Human Rights
4. Law No. 23 of 2002 on Child Protection
5. Law No. 35 of 2014 on Amending Law No. 23 of 2002 on Child Protection
6. Law No. 11 of 2012 on Child Justice System
7. Regulation of Supreme Court No. 2 of 2012 on Adjustment of Mild Criminal Offence
8. Regulation of Supreme Court No. 4 of 2014 on Guidelines for Implementing Diversion in the Child Criminal Justice System
9. Supreme Court Circular No. 4 of 2010 on Placement of Abuse, Abuse Victims, and Narcotics Addicts to Medical Rehabilitation and Social Rehabilitation
10. Supreme Court Circular No. 3 of 2011 on Placement of Narcotics Abuse Victims within the Institute for Medical Rehabilitation and Social Rehabilitation
11. Decision of the Constitutional Court No. 1/PUU-VIII/2010 on Testing No. 3 of 1997 on Child Court
12. Joint Decree of Chairpersons of the Supreme Court, Attorney General, Head of Police, Minister of Law and Human Rights, Minister of Social Affairs, Minister of State for Women's Empowerment and Child Protection on the Handling of Child in Conflict with the Law

## **IV. Investigation of Child in Conflict with the Law**

Children in conflict with the law will definitely go through the process of solving legal cases that are coherent, starting from law enforcement institutions including the Police, Prosecutors' Office, and Courts. Other institutions that are generally involved in advocating for cases of Children in conflict with the law are social institutions and legal aid agencies.

## **A. Institution of Police, Prosecutor and Court**

In examination of a Child in conflict with the law, the legal norms refer to Law No. 11 of 2012 concerning the Child Justice System. In article 2 of this Law it is stated that the Child justice system is carried out on the basis of (a) protection; (b) justice (c) non-discrimination; (d) the best interests of the Child; (e) appreciation of Children's opinions; (f) the survival and growth of Children; (g) guiding and mentoring Children; (h) proportional; (i) deprivation of liberty and destruction as a last resort; (j) retaliation avoidance.

In Article 3 it is stated that every Child in the criminal justice process has the right, (a) to be treated humanely by taking into account his/her needs according to their age; (b) separated from adults; (c) obtain legal aid and other assistance effectively; (d) conduct recreational activities; (e) free from torture, punishment or cruel, inhuman and degrading dignity; (f) not sentenced to death or life sentence; (g) not arrested, detained or imprisoned, except as the last resort and in the shortest time; (h) obtain justice before the court of the Child that is objective, impartial, and in closed and public hearings; (i) identity not published; (j) obtain assistance from parents / guardians and people trusted by the Child (k) to obtain social advocacy; (l) obtain personal life; (m) obtain accessibility, especially disabled Children (n) obtain education (o) obtain health services; (p) obtain other rights in accordance with the provisions of the legislation.

Once the importance of fulfilling Children's rights in the judicial process, the Child justice system must prioritize a restorative justice approach and in resolving cases both at the level of investigation, prosecution and case examinations in court, diversion efforts can be carried out whose purpose is (a) achieving peace between victims and Children; (b) resolve Child cases outside the court process; (c) avoid Child from deprivation of liberty; (d) encourage the community to participate; (e) instilling a sense of responsibility to Children.

The diversion process is carried out through a deliberation mechanism involving Children whose parents / guardians, victims and / or parents / guardians, victims and / or parents / guardians, community advisors, and professional social workers. During the diversion process, several things must be considered, (a) the interests of the victim; (b) Child welfare and responsibility; (c) avoidance of negative stigma; (d) retaliation avoidance; (e) community harmony, (f) compliance, decency and public order.

Special rights and protection that apply to Child in conflict with the law, then there are requirements

that must be fulfilled by investigators, public prosecutors and judges. The investigators of Child in conflict with the law are required to (a) have experience as investigators; (b) have interest, attention, dedication, and understanding Children's problems, and; (c) have attended technical training on Child justice.

In carrying out the task of investigation, the Child investigators are obliged to ask for consideration or advice from the Community Advisors after the crime has been reported. Investigators can also ask for consideration of education experts, psychologists, psychiatrists, religious leaders, professional social workers, other social welfare workers, or other experts who understand enough about Children.

The requirements of the Public Prosecutor include (a) having experience as a general prosecutor; (b) having interest, attention, dedication, and understanding Child's problems; and (c) having attended technical training on Child justice. A Public Prosecutor who will handle a Child in reality will be determined based on the decision of the Attorney General or other Officer appointed by the Attorney General.

Whereas the requirements of the Child Court Judge include (a) having experience as a judge in the general court environment; (b) having interest, attention, dedication, and understanding Child's problems; (c) having attended technical training on Child justice. A judge who will adjudicate a Child in conflict with the law will be determined based on the Decree of the Chief of the Supreme Court or another official appointed by the Chief of the Supreme Court.

In judicial process, Investigators, Public Prosecutors and Judges are all obliged to seek a diversion process between Child who is in contact with the law and the victims. At the stage of investigation, the Investigators must seek diversion no later than 7 (seven) days after the investigation begins, and the diversion process is carried out no later than 30 (thirty) days after the commencement of diversion. When the diversion process is successful in reaching an agreement, the Investigators submit the diversion official report along with the diversion agreement to the Head of the District Court to make a determination. If it fails, the Investigators continue the investigation and delegate the case to the Public Prosecutor by attaching the diversion official report and the social research report.

The attempts to diversion are also required to be carried out by the Public Prosecutor, which is no later than 7 (seven) days after receiving the file from the Investigator. The diversion process is

carried out no later than 30 (thirty) days, and if the diversion is successful or failed, the Public Prosecutor will make the official report of the diversion along with the agreement to the Chair of the District Court.

The last diversion attempt was carried out by the Judge. The attempt for diversion no later than 7 (seven) days after being determined by the Chairperson of the District Court as a judge, and the diversion process for a maximum of 30 (thirty) days. The diversion process can be carried out in the court mediation room. In the event that the diversion process is successful in reaching an agreement, the judge will deliver the official report along with a diversion agreement to the Chairperson of the District Court to make a determination. But if the diversion has not been successful, then the case of the Child in conflict with the law is continued to the trial stage.

## **B. Social Institution**

In Law No. 11 of 2012 on the Children Justice System, the social institutions included as part of resolving cases of Children in conflict with the law are Professional Social Workers and Social Welfare Personnel. In Article 66 it is stated that the conditions for being assigned as social workers include, (a) having the lowest as bachelor degree (S-1) or bachelor degree (D-4) in the field of social work or social welfare; (b) having experience for a minimum of 2 (two) years in the field of social work practices and the implementation of social welfare; (c) having special expertise or skills in the field of social work and request to foster, guide and assist Children for the survival, physical, mental, social, and Child protection, and (d) passing the Professional Social Workers certification competency test by the organization of profession in the field of social welfare.

Article 67 states that the requirements for being appointed as a Social Welfare Worker include (a) the lowest diploma of a secondary school for social work or social welfare or a non-social worker or social welfare scholar; (b) having the training in the field of social work; (c) at least 3 (three) years of work experience in the field of social work practices and the implementation of social welfare; and (d) having special expertise or skills in the field of social work and interest in fostering, guiding, and assisting the Children for the survival, physical, mental, social, and Child protection.

The duties and responsibilities of Social Worker and Social Welfare Personnel include: (a) Guiding, helping, protecting, and assisting Child by conducting social consultations and restoring Child's confidence; (b) Providing social assistance and advocacy; (c) Being Child's friends by listening to the opinions of the Child and creating conducive atmosphere; (d) Helping the recovery



process and changing behavior of the Child; (e) Making and submitting reports to Community Advisor regarding the results of guidance, assistance for Child who are based on court decisions sentenced to criminal or offence; (f) Giving consideration to law enforcement officials to handle the social rehabilitation of the Child; (g) Accompanying the handing over of Child to parents, government institutions, or community institutions; and (h) Approaching the community to be willing to accept the Child again in their social environment.

Related to the existence of social workers, a Joint Decree of the Chairperson of Supreme Court, Attorney General, National Police Head, Minister of Law and Human Rights, Minister of Social Affairs, and Minister of Women Empowerment and Child Protection concerning The Handling of Child in Conflict with the Law of 2009. In Article 10 paragraph (1) it is stated that the implementation of the duties and authorities of the Ministry of Social Affairs of the Republic of Indonesia in handling Child in conflict with law includes: (a) Preparing social workers in the service of social problems of Children in conflict with the law that have an interest, ability, attention and dedication with certification in the field of a Child at the central to regional level; (b) Facilitating the provision of the Marsudi Putra Social Institution, the Children's Social Protection Home and the Trauma Center for Children in conflict with the law; (c) Encouraging and strengthening the role of families, communities and social organizations or non-governmental organizations to care for Children in conflict with the law; (d) Developing guidelines, standard operating procedures for the protection and social rehabilitation of Children in conflict with the law; (e) Establishing a working group on the handling of Children in conflict with the law; and (f) Carrying out internal socialization.

### **C. Legal Aid**

Legal aid for Child in conflict with the law is fundamental. Therefore, Law No. 11 of 2012 on the Child Justice System confirms guarantees about legal aid rights. In Article 3 letter c it is stated that every Child in the criminal justice process has the right to obtain legal aid and other assistance effectively.

In the process of handling Children in conflict with the law, here are some rights that must be considered by the parties involved in the judicial process, including by lawyers or legal aid providers for Children in conflict with the law:

- a. Advocates or legal aid providers have to pay attention to the best interests of the Child and maintain a family atmosphere.
- b. The identity of the Child, the Child of victims, and / or the Child of witnesses must be

kept confidential in the news in print or electronic media.

- c. Investigators, Public Prosecutors, Judges, Community Guidance, Advocates or legal aid providers and other officers in examining Children's cases, Child of victims, and / or Child of witness do not wear toga or official attributes.
- d. In each level of examination, a Child must be given legal aid and accompanied by Community Advisor or other assistance.
- e. Officials who make arrests or detention must notify the Child and parents / guardians about the right to obtain legal aid. If the officials do not carry it out, the arrest or detention of the Child is declared null and void.
- f. Regarding the court's decision regarding the case of a Child who has obtained permanent legal force, a Child, parent / Guardian, and / or Advocate or other legal aid provider can be requested for a review of the Chief person of Supreme Court.
- g. In the trial of a Child, the Judge must order parents / Guardians or assistants, Advocates or other legal aid providers, and Community Advisor to assist the Child.
- h. In the case of a parent / guardian and / or companion not present, the trial will continue with the assistance of an advocate or other legal aid provider and / or Community Advisor.
- i. After the Judge opens the trial and declares the trial closed to the public, the Child is called in along with the parent / Guardian, Advocate or other legal aid provider, and Community Advisor.
- j. At the time of examination of Child of Victim and / or Child of Witness, parents / guardians, advocates or other legal aid providers, and community advisors are still present.
- k. In the case that the Child of Victim and / or Child of Witness cannot attend to provide information in front of the court trial, the Judge may order the Child of Victim and / or Child of Witness to be heard by electronic recording conducted by the Community Advisor in the local legal area in the presence of Investigators or Prosecutors General and Advocates or other legal aid providers.
- l. Courts must provide excerpts of decisions on the day the verdict is pronounced to the Child or Advocate or other legal aid provider, Community Advisor, and Public Prosecutor.

Explanation that refers to several articles in Law No. 11 of 2012 concerning the Child Justice

System shows that Children who are in conflict with the law must receive legal aid and assistance during the process of completing their case. Advocate teams or legal aid providers must be involved continuously during the case settlement process and provide the best solution for the future of Children in conflict with the law.

## **V. Detention of Child in Conflict with the Law**

The detention of Children in conflict with the law is also carried out in special ways that are different from the model of detention of adults. In the context of detention, basically detention is carried out for the purpose of examination, but the detention of Children must pay attention to the interests of the Child concerning the growth and development of the Child.

In Law No. 11 of 2012 concerning the Child Justice System stated that detention of Children can only be carried out with a number of conditions, namely (a) Children aged 14 (fourteen) years or more; and (b) suspected of committing a criminal offense with the threat of imprisonment of 7 (seven) years or more. However, this requirement is very strict. *First*, an age limit and the threat of a criminal offense is related to whether or not detention is possible. Second, detention of Children should not be carried out in the event that the Child receives a guarantee from the parent / guardian and / or institution that the Child will not flee, will not eliminate or damage the evidence, and / or does not repeat the crime. This provision shows that the best interests of Children are considered in such a way.

Even if the Child is detained, during the process of detention, physical, spiritual needs, Children's social needs to interact with a Child-friendly environment must be fulfilled. Physical Children who are in contact with the law must not experience fatigue or get violence, the mentality of Children also should not be shaken because the cases that they are going through, and the most important place of detention must be appropriate and friendly to the world of Children.

The detention of a Child for the sake of investigation is carried out no later than 7 (seven) days and may be extended at the request of the investigator for a maximum of 8 (eight) days. If you have exceeded 8 (eight) days, then the Child must be released by law. Detention at this stage is carried out at the Temporary Child Placement Institution (LPAS) managed by the Ministry of Law and Human Rights, and if there is no LPAS, detention is carried out at the Social Welfare Organizing Agency (LPKS) managed by the Ministry of Social Affairs of the Republic of Indonesia.

Detention for the sake of prosecution, the Public Prosecutor can do a maximum of 5 (five) days, and at the request of the Public Prosecutor can be extended by the District Court Judge no later than 5 (five) days. In the event that the period has expired, the Child must be released by law.

Whereas detention is carried out in the interest of the examination in the District Court, the judge can hold detention for a maximum of 10 (ten) days, and at the request of the judge, the detention can be extended by the Chairperson of the District Court no later than 15 (fifteen) days. In the event that the time period has expired and the judge has not given a decision, the Child must be released by law.

Whereas detention is at the stage of the appeal court, the Appellate Judge may hold detention for a maximum of 10 (ten) days. If it is not enough, at the request of the Appellate Judge it can be extended by the Chairperson of the High Court no later than 15 (fifteen) days. If the time has expired and the Appellate Judge has not given a verdict, the Child must be released by law.

In the case of detention, it must be carried out for the purpose of examination at the cassation level, the Cassation Judge may hold detention for a maximum of 15 (fifteen) days. If not enough, at the request of the Judge the Cassation can be extended by the Chairperson of the Supreme Court no later than 20 (twenty) days. If the time has expired, and the Cassation Judge has not given a verdict, the Child must be released by law.

Regarding detention, the official making an arrest or detention must notify the Child and parents / guardian about the right to obtain legal assistance. If the official does not notify the rights, the arrest or detention of the Child is declared null and void.

## **VI. Supervision to Child in Conflict with the Law**

In the justice system of Child in conflict with the law, one of the elements that cannot be eliminated is supervision or monitoring so that the whole judicial process can really pay attention to the protection, respect and fulfillment of the rights of Child in conflict with the law.

In Law No. 11 of 2012 concerning the Child Justice System, an important actor who is given the task of supervising is a Community Advisor, namely a law enforcement functional official who conducts social research, mentoring, supervision, and mentoring Children in the judicial process.

While the Agency is the Correctional Center (Bapas), which is a correctional technical implementation unit that carries out the tasks and functions of community research, guidance, supervision and assistance.

In general, Community Counselors and Correctional Centers (Bapas) will work in the context of coaching, mentoring, supervising Children, and / or assisting Children in conflict with the law during the criminal process or actions, and after serving criminal penalties or sanctions for the offence.

One of the supervisory activities that Community Advisor must do is the diversion process that is carried out many times during the judicial process. During the diversion process until the agreement between the parties arises, community coaching is obliged to provide assistance, guidance and supervision of Children in conflict with the law. In the event that diversion is not carried out within the stipulated time, the Community Advisor must immediately report to the responsible official according to his level, both at the level of investigation, prosecution and or trial.

How important the position of Correctional Officer in the Child justice system, that the condition of a person can be appointed as a social advisor is quite heavy, namely, (a) The lowest diploma of Associate Degree (D-3) in the social sciences or equivalent or experienced working as a Community Advisor for graduates: (1) vocational secondary schools in the field of social work have at least 1 (one) year experience; or (2) high school and experience in the field of social work for a minimum of 3 (three) years. (b) Physical and spiritual health; (c) the lowest rank / class of room Young Regulator Level I / II / b; (d) having interest, attention, and dedication in the field of service and correctional guidance and Child protection; and (e) having participated in technical training for Community Advisor and have certificates.

Community Advisor on duty include: (a) Making community research reports for the purposes of Diversion, providing assistance, guidance, and supervision of Child during the Diversion process and implementing agreements, including reporting to the court if Diversion is not implemented; (b) Making a social research report for the purposes of investigation, prosecution and trial in a Child's case, both inside and outside the court, including in LPAS and LPKA; (c) Determining Child care programs in LPAS and fostering Child in LPKA together with other correctional officers; (d) Providing assistance, guidance and supervision of Child that based on court decisions are sentenced to criminal or subject to action; and (e) Providing assistance, guidance and supervision of Child who receive assimilation, parole, free leave and conditional leave.

## VII. Conclusion and Recommendation

From the above explanation several things can be concluded:

1. In general, cases of Child in conflict with the law are quite large in Indonesia. From year to year, cases always occur. The Indonesian Children Protection Commission (KPAI) statistic states that cases of Children in conflict with the law in 2011 occurred 695 cases, in 2012 there were 1,423 cases, in 2013 there were 1,428 cases, in 2014 there were 2,208 cases, in 2015 there were 1,221 cases, and 2016 there were 733 cases.
2. The Government of Indonesia has sufficiently complete legal rules that substantially guarantee special protection for Child in conflict with the judicial process. Specific legal norms guarantee the rights in the judicial process are Law No. 23 of 2002 concerning Child Protection, Law No. 35 of 2014 concerning Amending Law No. 23 of 2002 on Child Protection, as well as Law No. 11 of 2012 on the Child Justice System.
3. Institutions involved in resolving Child in conflict with the law including judicial institutions, namely the Police, Attorney General, the Supreme Court. *Second*, social institutions namely Professional Social Workers and Social Welfare Personnel under the Ministry of Social Affairs of the Republic of Indonesia. *Third*, correctional institutions and legal aid under the Ministry of Law and Human Rights of Republic of Indonesia. In general, the three state institutions have been bound by the responsibility to protect, respect and fulfill the rights of Children in conflict with the law.

While the recommendations of researchers include:

1. Cases of Children in conflict with the law occur a lot and proceed in the judicial mechanism in Indonesia. This portrait shows that the social environment in Indonesia is still not good enough in creating good and right Children's behavior. Environment that is negative and full of violence directly and indirectly encourages the birth of Children who behave negatively and violate the law. In this case, the Indonesian government should work harder to create a program that creates a positive and friendly social environment for the world of Children.
2. The Child justice system is part of resolving cases of Children in conflict with the law. Legal norms related to Children have regulated affirmations and protection specifically for Children. This is a good progress in building the justice system. However, the emergence of Child cases that are still high in Indonesia requires that judicial actors be involved in thinking that Children who are fond of violence will not get more and Children who have

been in conflict with the law can return to society with better behavior. Collaboration of institutions working in the legal and non-legal sectors must always be built to reduce Children of criminals.

The Child justice system in Indonesia is still not well connected with the barriers of difabel Children in conflict with the law. Difabel Children in conflict with the law are more vulnerable than Children in general, so it requires affirmations in the form of policies that are in accordance with the rights of difabel Children. In this case, a program is needed to review the judicial policies which so far still tend to be discriminatory to difabel persons who are in conflict with the law.

# LAO PEOPLE'S DEMOCRATIC REPUBLIC

## I. General Information about the country

### A. Country and population

The Lao People's Democratic Republic (Lao PDR) is located in Southeast Asia, with an area of 236,800 km<sup>2</sup>. It shares borders with the People's Republic of China in the North, the Kingdom of Cambodia in the South, the Socialist Republic of Viet Nam in the East, the Kingdom of Thailand in the West and the Republic of the Union of Myanmar in the north- west. Lao is a landlocked country; most of its terrain is mountainous and covered with forested. The Mekong River forms a large part of the western boundary with Thailand and forms a shorter boundary with Myanmar.

On 2<sup>nd</sup> December 1975 after a long struggle full of hardships and sacrifices, the Lao people finally has gained victory and national independence. In establishing the Lao People's Democratic Republic based on the right to self-determination, the Lao people have become the master of their country, which is an independent and sovereign State, and a fully-fledged member of the international community.

The most recent population and housing census was conducted in 2015. The population of the Lao People's Democratic Republic has increased from 5.62 million in 2005 and to 6.49 million in 2015. Of this population, 3.24 million are female and 3.25 million are male.

The administrative system of the Lao People's Democratic Republic consists of 17 provinces and one Capital City of Vientiane. There are 148 districts and 8507 villages in the country. The state administration system in the country was divided to four levels: the State, province/Capital City, district and village.

### B. Economy

Laos is among the least developed and poorest countries in Asia, but significant economic growth in the past decade has benefited the country, the country has been maintaining GDP growth above 6.5 percent since 2005, in 2018 Lao PDR has attained US\$ 2,460 a per capita gross



national income (GNI) which increases from US\$ 1,228 in 2015. According to the World Bank, the percentage of those living on less than \$1.90 per day fell from 52.4 percent in 1997 to 22.7 percent in 2012. As of 2013, 80 percent of the population lived on less than \$2.50 per day. According to the United Nations Development Programme (UNDP) Human Development Report in 2015, the Lao People's Democratic Republic ranked 141 of 188 countries and territories in terms of economic development. Strong economic growth has allowed it to move up the World Bank's classification from low-income economy to "lower middle-income".

### **C. Judiciary and criminal justice system**

The Lao People's Democratic Republic is a unitary State. Under the Constitution, the country is a people's democratic State. The right of the multi-ethnic people to be master of the country is exercised and guaranteed through the functioning of the political system.

The National Assembly is the representative of the rights and interests of the multi-ethnic Lao people. It is the highest organ of State power as well as the legislative body that adopts the Constitution, laws, makes decisions on national fundamental issues, oversees the acts and performances of the executive organs, the people's courts and the people's prosecutors and ratifies treaties.

The people's courts constitute the judicial branch of the State, consisting of the People's Supreme Court; regional people's courts; provincial people's courts, zonal people's courts and the military court. The People's Supreme Court in the capacity of the State adjudicative organ administers the people's courts at all levels and examines their verdicts.

The people's prosecutors which consist of the Supreme People's Prosecutor, regional people's prosecutors; provincial people's prosecutors, zonal people's prosecutors and the military prosecutor. The Office of the People's Prosecutor is a State body that has the right to monitor the correct and uniform implementation of laws and regulations by all ministries, ministry-equivalent organisations, and organisations attached to the Government, the Lao Front for National Construction, mass organisations, social organisations, local administrations, enterprises, civil servants and citizens. The Office of the People's Prosecutor also exercises the right of public prosecution.

The Law on Law Making 2015, which sets out the hierarchy of legal instruments and official

documents in Lao PDR as follows:

1. The Constitution.
2. Laws passed by the National Assembly.
3. Resolutions of the National Assembly.
4. Resolutions and Recommendations of the Standing Committee of the National Assembly.
5. Presidential Ordinances and Decrees.
6. Resolutions and Decrees of the Government.
7. Decrees, Decisions, Orders and Recommendations of the Prime Minister.
8. Decisions, Orders, Instructions and Notifications of Ministers, Chairmen of Ministry-equivalent Organizations, Heads of the Organizations attached to the Government, the President of People's Supreme Court, Supreme People's Prosecutor, Provincial Governors, Capital City Mayor, Permanent Secretaries, Directors-General, District Chiefs and Municipality Mayors.
9. Village regulations.

## **II. Policy and Legislative Framework (including special laws on anti-terrorism, armed conflicts, emergency situations, marshal laws and other measures pertaining to children) and Key Data**

The Lao PDR has paid attention and attached importance to protect the legitimate rights and legitimate interests of the people as well as the child development, The Lao Constitution, Article 42 stipulated that "The right of Lao citizens by their lives, bodies, dignities and shelters are inviolable. Lao citizens cannot be arrested or searched without warrant order from the Public Prosecutor or the People's Courts, unless otherwise enforced by the laws". For the promotion and protection of the rights and interests of children, Lao PDR has established the National Mechanism on the Promotion and Protection of the Rights and Interests of Children, and also adopted number of laws and policies which are directly related to the respective issue.

In policy frameworks, the Lao PDR have been adopting a number of the National Plan of Action

to protect and promote right and interest of the child, particularly, The National Plan of Action on Prevention and Elimination of Violence against Women and Children 2014-2020, National Plan of Action on Mothers and Children 2016-2020, the National Plan of Action on Elimination of Child Labour 2014-2020 and the 3<sup>rd</sup> 5-year Plan of Action on Gender Equality 2016-2020.

The Lao PDR established the National Commission for the Advancement of Women and Mothers-Children (NCAWMC), which has the role to disseminate treaties and laws relating to the rights and interests of women, including CRC, CEDAW, OPAC, OPSC, the Laws related to the protection right and interest of children and Combating and Preventing Violence against Women and Children.

The Lao People's Democratic Republic (Lao PDR) has ratified the Convention on the Rights of the Child (CRC) in 1991, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2002 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2002.

#### **A. Number of Children Population under 18 (Disaggregated by sex and age), Legal Definition of Children & Age of Criminal Responsibility.**

The number of youth population in Lao PDR is likely in the trend of increasing as the recent population and housing census conducted in 2015 showed that the number of the children aged 0-18 year were only 1,383,595 people, however this number has been increasing to 1,389,655 people in 2016, and 1, 394,932 in 2017 and 1,399,440 people in 2018.

**Table 8: Lao PDR population aged between 0 – 18**

Population Projection aged 0-18			
	Total	Male	Female
2015	2,797,726	1,414,131	1,383,595
2016	2,812,270	1,422,615	1,389,655
2017	2,825,037	1,430,105	1,394,932
2018	2,836,097	1,436,657	1,399,440

Source: Government of Lao PDR's demographic data

- The Lao PDR has defined the term on “children” in a numbers of laws, particularly, the Law on the right and interest of the children, article 4 which stipulates that:

1. **A child** is any person below 18 years of age;
2. **Children in need of special protection** means those who are half-orphaned, orphaned, abandoned, neglected or without parental care; children who are victims of physical abuse, sexual abuse, prostitution, human trafficking; children who work in hazardous conditions seriously affecting their life or health; exploited and displaced children; drug-addicted children; children affected by HIV/AIDS; and children adversely affected by legal proceedings;
3. **Disabled children** mean children who are not whole in body, mind or spirit so as to cause suffering and affect their growth. Such disability may exist at the time of birth or after the birth of the child;
4. **Neglected children** means children whose parents or guardians do not provide care, education, encouragement, and conditions necessary for development of the children, such as health, sufficient and hygienic, safe shelter, education, and moral development, base on economic condition of the family;
5. **Abandon children** means children whose parent or guardian do not provide guardianship, care and upbringings;
6. **Half- orphaned child** means child whose father or mother is deceased;
7. **Orphaned child** means child whose parent are both deceased;
8. **Physically-abused children** means children who have been beaten or tortured by their parents, guardians or other persons;
9. **Sexually-abused children** means children who have been raped, or are victims of sexual relationships or obscenity;
10. **Children affected by HIV/AIDS** means children who are infected with HIV/AIDS, children who have been half-orphaned or orphaned due to HIV/AIDS, or children living with an HIV/AIDS positive family member;
11. **Disadvantaged children** means children who lack the conditions necessary to support or facilitate the development of their knowledge and abilities;
12. **Child offenders** means children who are subject to criminal proceedings: as suspects, defendants or convicted persons;
13. **Child torture** means any act or omission that physically or morally harms the child,

sexual abuse against a child, or incitement of a child to commit a crime or to do something that physically or morally harms the child;

14. **Child protection** means the activities performed by individuals or organizations ensure that children live, grow up, have access to development of good attitudes, knowledge and abilities, receive protection of rights and interests, and are able to efficiently participate in social activities;

15. **Assistance to children** means activities performed by individuals or organisations to help children who are in danger, to respond to the needs of children, to reintegrate children into their families and enable them to adapt to society;

The law on juvenile criminal procedure and the law on Preventing and Combating Violence against Women and Children have also defined the term on “Children” as **“A child is any person below 18 years of age”** in Article 3 and 4 respectively.

- Under the penal code, the minimum age of criminal responsibility for the child in the Lao PDR is 15 years old as it is specified in article 84 which stipulates that “child offence is a offender who is children under 18 and not less than 15 years of age which committed an act or dangerous offences to the society when the penalty provide more than 3 years maximum in jail or less than three years but the there is no confession from child offender or one conflict party not be able settle through mediation and in case of recidivism”. In addition, the law on juvenile criminal procedure, article 39 also stipulates that “Child offence to be resolution through legal proceeding is the offender who is children under 18 and not less than 15 years of age which committed an act or dangerous offences to the society when the penalty provide more than 3 years maximum in jail, for the case of recidivism or organizational crimes”.

**B. Incidents of Children in Conflict with the Law and Types of Offence (the two tables a & b should be aligned, ie if the law puts a specific age of criminal responsibility as above 10, there should be disaggregation of population under the age of 10 and above 10 and correspondingly the incidents of those in conflict with the law of the two groups).**

The statistics of the People’s Preme Court of the Lao PDR stated that the cases of Children in conflict with the law in 2015 were 200 (two hundreds) cases, in which 88 cases were related on

drug, 45 cases related robbery, and 10 cases related traffic violation; in 2016 (January-September) were 258 (two hundred fifty eight) cases, in which 97 cases were related on drug, 74 cases related robbery, and 19 cases related traffic violation; in 2016 (October - December) were 102 (one hundred and two) cases, in which 27 cases were related on drug, 7 cases related robbery, and 6 cases related traffic violation; in 2017 were 253 (two hundred fifty three) cases, in which 94 cases were related on drug, 75 cases related robbery, and 18 cases related traffic violation.

**Table 9: Lao PDR statistic of children in conflict with the law from 2015-2017**

Year	Bring forward	New entry	Total	Settled	Unsettled	Type of cases
2015	26	174	200	175	25	Drug 88 cases, robbery 45 cases, traffic violation 10 cases
2016 (January-September)	25	233	258	207	51	Drug 97 cases, robbery 74 cases, traffic 19 violation cases
2016 (October - December)	51	51	102	67	35	Drug 27 cases, robbery 7 cases, traffic violation 6 cases.
2017	35	218	253	223	30	Drug 94 cases, robbery 75 cases, traffic violation 18 cases.
Total	26	676	702	672	30	

Source: Government of Lao PDR's Data

### **C. Laws related to children in conflict with the law (including those on children whose age is below the criminal responsibility, but who are in conflict with the law)**

The Lao PDR has been adopting number for laws to promote and protect the rights and interest of the children who is in conflict with the Law:

- The Law on Juvenile Criminal Procedure. This law is protected children from physical harm, torture, threat, and violation of dignity in every stage of the proceedings.
- The law on criminal proceeding, this law is protect the children who is under 18 and not

less than 15 years of age which committed minor and not too dangerous offence to the society when the penalty provide 3 years maximum in jail prescribed by the Penal Law will not be transferred to the court for proceeding.

- The law on Penal Code, which defines about the minimum age of criminal responsibility of the child, principle on settlement the child case, punishment, implication of penalty to the child offence.
- The Law on the right and interest of the children, which defines about the ultimate benefit for the child, child not being discriminated, the responsibility of the child, the participation of the child and the responsibility of state, society and family to protect the child.
- The Law on public prosecutor, which defines about the role and mandate of prosecutors in implementing and monitoring the law on child criminal procedure.
- The Law on family registration, which defines about the duty and obligations of parent and guardian on protection the right and interest of the children “parent shall act on behalf their children in any case that their children is became a plaintiff”.
- The Law on Preventing and Combating Violence against Women and Children, which explicitly protect physical, psychological, sexual and property and economic; prohibits all forms of violence against women and children by a member of the family and by other people.
- The Education Law which prohibits teachers from beating, scolding and being cruel to student.

In addition, Lao PDR has also established the Village Child Mediation Units to play the role on assisting children in conflict of law while the civil or criminal acts involving children where the maximum punishment would be no more than three years.

#### **D. Laws pertaining to public prosecutors & judges on children in conflict with the law**

The resolution on juvenile cases in the Lao PDR shall be conducted in two forms (Administrative resolution on juvenile case and judicial resolution on juvenile case):

- Administrative resolution on juvenile case is the resolution by Village Child Mediation Unit, district and municipality justice office, the Child Investigation-interrogation Unit, and Child Prosecutor Unit. This resolution is for the case of children above fifteen years old commit

a minor offence and major offence, not caused a serious infraction or act that defined punishment below three years of imprisonment by law and caused the damages less than 500,000 Kip or approximately us\$ 60.

- Resolution of juvenile case through judicial process is the proceeding of investigation-interrogation by the Child Investigation-interrogation Unit, the Child Prosecutor unit and adjudication of court. This resolution is for the case of children above fifteen years old, committed serious offence with defined punishment above three years of imprisonment by law, and for the case of recidivism or organizational crimes.

In term of considering of the juvenile cases, the prosecutor has an important role to follow up as defined in Article 71 of the Law on juvenile criminal Procedures, Article 66 of the Law on promotion and protection on the rights and interests of children, Article 52 of the Law on preventing and combating violence against women and children, and Article 49 of the Law on criminal procedures.

To consider the juvenile case, the Lao PDR has established the Child Court in the provinces, capital city in which this courts is under direct supervision of the People's Supreme Court and it has jurisdiction to consider juvenile case in the first instance. However in case the Child Court has yet been established in some province, the Child Court Chamber of the People's that province will handle the juvenile case.

In proceeding the child case the Child court must conduct and apply the specific rule as describe by the law on juvenile criminal procedure as follows:

- Article 83: there must be specific courtroom and dressing of the judges shall be polite by not wearing court's uniform; allowing the child offender to give opinion but the court shall be considered it base on the balance of ages and ability of the children in identifying whether right or wrong; enabling them to receive legal assistance from lawyers, protectors, parents or guardian.
- Article 87: in considering the criminal matter of the juvenile case, the judge shall refer to the order of petition made by the head of People's Prosecutor based on the information, evidences and laws. In considering the testimony of the children, court shall use its discretion to consider whether the children understand and know the right or wrong about their testimony, in addition, court shall discover of the ground for reducing the criminal responsibility or other ground as defined by laws;
- Article 88: the duration for considering criminal matters of the juvenile case shall be



conducted within fifteen days from the date of receiving the case file, in case that the juvenile case is directly filed to the court, the Child Court shall consider the case within forty eight hours

- Article 89: in imposing the punishment to children, the Court shall base on the characteristic and the level of dangerous committed by children to the society, Child's characteristic, impacts, environments, leading/attractive factors and the cause for reducing or other causes that important to the case. The deprivation of liberty of child offenders should be used as last resort. It is prohibited to impose dead penalty and life imprisonment on the child offenders. In case of necessity where a penalty of imprisonment is required, the court may impose a half-term of the penalty on the offending children or lesser than the law defined. For the child's offense with dead penalty, court shall reduce the penalty to the imprisonment of twenty years or reduce the life imprisonment penalty to ten years imprisonment together with imposing fine as defined in criminal law

### **III. Interrogation and Interview of Children in Conflict with the Law (Definition of interrogation—not looking at the whole investigation process, Procedures of interrogation, Good Practices & Challenges) (Involvement of parents/guardians)**

The Lao PDR is using term “Interrogation-interview” instead of term “investigation”. Normally the process of investigation/interview will be started from the police after offender was arrested or surrendered. But the authorize body who handled the child case must be the Child Investigation-Interrogation Unit or the Child Prosecutor Unit which this mentioned bodies have to work in collaboration with social workers, psychologist or the network for protection and assistance to children or the representative from other relevant organization. For the opening of the Interrogation-interview, the Child Investigation-Interrogation Unit or the Child Prosecutor Unit shall accept and consider the petition or notification at least three days from the receiving date. In the event of difficult case, the consideration shall be conducted within the period of no more than five days and it shall be inform to the head of the investigation-interrogation unit, head of the People's Prosecutor for their recommendation on either:

1. Issuing an order for opening Interrogation-interview;
2. Issuing and order for not open the Interrogation-interview;

3. Referring the petition or notification to the authorized organization that has the rights for the consideration.
- In Interrogation-interview of children, minutes must be recorded and shall contain following contents (Article 55 of the law on juvenile criminal procedure):
    1. Date, month, year, place, commencing and ending time of the investigation- interrogation on interview;
    2. Name and family name, position, duty, duty station of the officer who conduct questioning or interviewing and minutes taker; in the event there are many officers participate in questioning or interviewing, the name and family name, position, duty, duty station of each person shall be recorded;
    3. Name and family name, age, nationality, occupation, addresses of each participant in the testimony. For the children who are suspected, accused or defendant, the detail biography of children should be recorded;
    4. The accusations;
    5. The contents of the investigation/interrogation or interview of children.

After the completion of recorded the minutes, the accuse person who was questioned will be asked to read the minutes by him/herself or lawyer or protector to read for him/her; then ask for his/her opinions before he/she sign and/or thumb sealed. If there is any deleting or amendment to the minutes, certified signature should be made, and the testifying person shall stamp thumb seal in front of the deleted or amended line. If the minutes are longer than one page, the testifying person or lawyer or protector shall initial and/or placing thumb seal in each page. In the case the testifying person is not consent to sign and/or placing thumb seal, remark should be made at the end of the minutes with certified signature. The minutes of the testimony shall be made in three original copies, one giving to the testifying person, one put in the case's file and last giving to the relevant authority for keeping.

In conducting the "Interrogation-interview" will be carry out as follows:

### **1. Interrogation**

The interrogation of suspected, accused or defendant children must be conducted with the presence of the parents, guardian or other protector of children in every time. In carry out such interrogation of children, the officials shall use simple language, friendly manner in order to avoid making children fear, avoid using pressure questions, leading or closing questions and no violence,

forcing, threatening, beating, torturing or any other unlawful measures. Each Interrogation should have break and should not exceed ninety minutes. If the questioned child is a female, shall use female Interrogator or have female participant presence. In the event of many children jointly committing the offense, questioning shall be conducted separately for each person, if the testimonies are not consistent, questioning these children in person (Article 51). In addition, the Interrogation-interview of children shall be conducted in an appropriate location or in special facility without any disturbance and have the child friendly environment (Article 49), and during the investigation-interrogation and interview of children, the concerned officials shall dress politely, not wear the uniform and no weapon except for the Interrogation-interview in the case of on the spot or urgent case but the officials shall conceal the weapon to avoid using or holding it as threatening manner (Article 50).

## **2. Interview**

In the interview of the child victims and child witnesses, the interviewer should perform as following:

1. Allowing parents, guardian, protector or relevant organization to participate and presence;
2. Using soft and friendly method with children;
3. Using simple words and suitable to the age and ability of children in identifying right- wrong;
4. Conducting in a suitable place.

In testifying or interviewing children with disability, especially deaf, blind, mute, autism, mental disorder that are not able to realize their rights, the parents, guardians, teacher, expert or experienced person, lawyer or other protector must be presence and conduct in an appropriate place (Article 53). In taking investigation-interrogation or interview children who does not have guardian participate in such investigation, interrogation or interview such as neglected child, child who cannot contact with parents or guardian or the child whose parents or guardian are far away and cannot participate or deny to participate; the relevant officers should contact close relatives or propose to relevant organization for appointing guardian or invite the representative from Child Protection and Assistance network to participate (Article 54).

**A. Law Enforcement Officers (Police/Immigration Officers) [Institutional Setting (Special unit), Age determination, Treatment of Girl Children/children with disabilities/stateless, non-national children, Interrogation Manuals, Training of Police]**

In conducting with the case of children in conflict of the law, the Lao PDR has established the investigation/interrogation as the law enforcement unit which base and directly supervision of the ministry of public security and the investigation officers who work in aforementioned unit must have specialized experiences and well trained for handling the child case.

Lao PDR attaches important to enhance capacity building and awareness-raising for the Law enforcement officers who work directly with the case on children in conflict with the law, Lao PDR has conducted training and curricular revision on child friendly procedures, juvenile justice standards and child rights, the Ministry of Justice also held some ad hoc training for officials in child rights, and a training needs assessment was conducted in 2015.

**B. Social Work Officers (Psychologists, Probation officers) [Mandate, Coordination, Work Manuals, Training]**

Article 9 of the law on the protection of the rights and interests of children states the responsibility of society to contribute to the physical and mental building and development of children, especially to participate in building facilities for treatment and education, [to contribute] in the activities of sports, arts, and literature, and [to contribute] in the protection of children from various social shortcomings.

In addition, Article 22 of the law on juvenile criminal procedure stated that “The social worker or psychologist can participate in all stages of the juvenile proceeding to apply the rights and duties in:

1. Providing assistance in seeking shelter for the child;
2. Finding the parent or guardian of children;
3. Searching for the cause and environment of the child;
4. Psychological recovering and assisting in reintegrating children back to the family and society;

5. Following up and monitor children base on the court decision or measures that the child Village Child Mediation Unit or district justice office, municipality, Child Investigation-interrogation Unit and Child Prosecution Unit have placed;
6. providing counselling follow up, provide physically and mentally rehabilitation and recovery for children;
7. Participating in the interrogating, interviewing and mediating of the child;
8. Implementing other rights and duties as described by the laws and regulations and as assigned.

Article 23 of the same law also states that: The Lao national front for Construction, mass organizations or relevant social organizations can appoint their representatives to participate in process for resolving of child's cases in the event that it relates to the organization or to serve as protector of the child.

Article 24 of the same law also states that: Teachers, professor, employers or child labour user have the rights to participate in the juvenile proceeding as witnesses, protector or civil liable person, cooperating with the relevant authorities in providing information on the children that are suspected, accused, defendant or as victim, in addition they also have obligation in educating and surveillance the children so that children become good citizens.

**C. Legal Aid for Children in Conflict with the Law [General framework, Compulsory/voluntary, nationality requirement, special measures for vulnerable groups (gild children, children with disabilities, non-nationals)]**

According to the law on criminal and the law on juvenile criminal procedure the Government will provide legal aid for Children in Conflict with the Law in the case of the accused or the defendant happens to be a juvenile under the age of 18, or is blind, deaf, mute or mentally ill or those who stand accused of a crime punishable by death, it is mandatory to have a lawyer or other protectors presence with them throughout the legal proceedings. In case that they cannot afford a lawyer, the State shall bear the costs. As per regular cases, it is up to the accused to have and choose a defense lawyer or not to have a lawyer.

To assist Children in Conflict with the Law to have legal counseling, the Government has issued the Decree on Legal Aid and Decree on Legal Aid Fund for the disadvantaged people in 2017 for

providing free legal counselling; especially those who cannot afford to hire a lawyer. At present, there are 15 Legal Aid Offices across the country, out of which 12 are located in the Provincial Justice Departments, 3 in District Justice Offices, which has increased access to justice for the people.

#### **IV. Detention during Interrogation/Pretrial (Deprivation of Children's Liberty) [Legal Framework, Institutional setting, Practices, Treatment of children (eg education, training, other services), Separation from adult offenders]**

According to the Law on Juvenile Criminal Procedure, detention of child for interrogation/ interview cannot exceed twenty-four hours. Once arrested, remand cannot exceed one month, unless there is a need to continue the investigation/interrogation in which case the duration of the remand can be extended each time for one month, for a maximum of four months for a major offense and eight months for a capital crime. In all cases, girls must be detained separately from boys and children must be detained separately from adults.

In case of temporary Custody: The duration for temporary custody children should not be longer than one month from the date of custody. In the case of necessity to continue the investigation, the public prosecutors, children court or committee of judges for children court might issue request to extend the time of the custody for 1 month in each request, but maximum not longer than 4 months totally for minor offense, and 8 months for major offense.

##### **A. Residential Detention (Remand homes, Youth homes, Prisons, Police stations).**

In Lao PDR, the children in conflict with the law after convicted they will not sent to the jail, but instead they will be sent to child correction center which was build in central, and provincial throughout the country, this correction centre is under supervision directly by the ministry of public security.

**B. Other measures (eg electronic monitoring, Community-based measures, CSO coordination).**

The Law on Preventing and Combating Violence against Women and Children, Article 24 stipulates that “all organizations in the society are bearing responsibility to prevent any violence against women and children, contributing to the promotion and protection the right of women and children by instill, create or amend policy, law and regulation as well as participating in preventing and combating violent against women and children. In addition, the organizations should coordinate and implementation the law and regulation on children more efficiently and effectively.

**V. Reform Initiatives (Legal Reform, CRC Concluding Observations, UPR Recommendations/Voluntary Pledges]**

The Lao PDR attaches attention and importance to the protection of the rights and interests of the child as well as their development by adopted policies, legal measures and national mechanisms to protect and promote the rights of the child. Other than the Law on Protection of the Rights and Interests of Children adopted in 2007, the National Assembly has adopted many laws in relation to the rights of the child, for instance, the law on juvenile criminal procedure 2013, the Law on Combating Violence against Women and Children in 2014, the penal law 2017, the amendment Law on criminal procedure 2017 and the Decree on Legal Aid 2018 and just very recently ( December 2019) the law on gender equality is just adopted by the National Assembly.

The Lao Government has seriously taken up the responsibility to the implementation the Universal Periodic Review recommendations related to the child and the Concluding Observation under Convention on the Rights of the Child “CRC”, the Optional Protocols on Children and Arm Conflict “OPAC” and the Optional Protocols on Sale of Children “OPSC” which Lao PDR has accepted. Particularity, the recommendations from the 2<sup>nd</sup> cycle UPR review and the Concluding Observation received during the review of the combined periodic reports third to sixth under CRC of the Lao in 2018. To ensure effective implementation of such recommendations the government has formulated an Action Plan with designated responsible agencies and activities to implement the recommendations.

# MALAYSIA

## I. Introduction

### A. Legislative and Policy Framework on Juvenile Justice System in Malaysia

In Malaysia, the criminal proceedings governing the juvenile justice system is provided in Part X of the Child Act 2001 (Act 611) (hereinafter referred to as the 2001 Act). The 2001 Act had undergone substantive changes recently where some new concepts have been introduced and some legal provisions have been amended to afford better protection to children, in line with the Convention on the Rights of the Child 1989.<sup>88</sup> In the juvenile justice system, new provision has been incorporated to detail the procedures governing arrest for child offenders.<sup>89</sup> Additionally, improvements have been made to ensure the privacy of the children in conflict with the laws is better protected by imposing higher restrictions on media reporting and publications.<sup>90</sup> The power of the Court for Children to impose whipping on child offenders has now been removed but a new provision has been incorporated to give the power to the Court to impose a community service order on child offenders as one of the sentencing powers of the Court.<sup>91</sup> Part X of the 2001 Act enumerates the following chapters: (a) Chapter 1 details the procedures governing charge and bail of child offenders; (b) Chapter 2 outlines the procedures in the Court for Children; (c) Chapter 3 enumerates the powers vested in the Court for Children in carrying out its function at the conclusion of the trial; and (d) Chapter 4 discusses the circumstances surrounding the issuance of probation orders. In order to secure the protection of child offenders, the special procedures embodied in the 2001 Act governing the juvenile justice system in Malaysia relating to arrest, detention and trial takes precedence over any written laws.<sup>92</sup>

In the absence of any specific provisions in the 2001 Act, the provisions in the Criminal Procedure Code (Act 593) (hereinafter referred to as the CPC) are applicable to child offenders who come into contact with the juvenile justice system as determined by the Courts for Children.<sup>93</sup> Section 3

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<sup>88</sup> The amendments and improvements which have been made were incorporated via Child Act (Amendment) 2015 [Act A1511] which came into operation on 1 January 2017.

<sup>89</sup> Reference can be made to Section 83A of the 2001 Act.

<sup>90</sup> Section 15 of the 2001 Act.

<sup>91</sup> Previously, the Court has the power to impose whipping as one of the sentencing orders under Section 91 (g) of the 2001 Act but whipping has now been abolished. The Court can now impose a community service order under Section 91 (da) of the 2001 Act on a child offender.

<sup>92</sup> Ministry of Women, Family and Community Development (MWFC) and UNICEF "The Malaysian Juvenile Justice System: A Study of Mechanisms for Handling Children in Conflict with the Law" (Kuala Lumpur: Ministry of Women, Family and Community Development (MWFC) and UNICEF, 2013), 20-21.

<sup>93</sup> Section 11 (6) of the Child Act.



of the CPC provides that all the offences under the Penal Code and any other laws shall be inquired into and tried in accordance with the laws in the CPC save for any written laws that are for the time being in force and provide regulations for the manner or place of inquiring into or trying such offences. Accordingly, although Part X of the 2001 Act governs the laws pertaining to criminal procedures in the Court for Children, reliance on the CPC can be made in the absence of any specific provisions relating to offences tried under the Penal Code.<sup>94</sup>

## **B. Objectives**

With reference to the adopted concept note of the AICHR Thematic Study on Juvenile Justice (2018), this country-specific study on interrogation practises on children in conflict with the laws in Malaysia seeks to achieve the following objectives:

- (i) to examine the legal framework governing interrogation practises;
- (ii) to identify good practices and challenges governing the interrogation practises and in the pre-trial process; and
- (iii) to propose a set of recommendations for the consideration of the respective ASEAN Member States (ASM) as well as the AICHR in improving the interrogation practises in Malaysia.

## **C. Methodology**

This research study has adopted a qualitative study in order to explore in greater depths the interrogation practices in Malaysia. In conducting the qualitative study, two phases of research were conducted. In the *first phase*, literature reviews have been undertaken to examine the legal framework governing interrogation practises by referring to academic publications, and reports related to interrogation practices. This phase also involved reviews of relevant international laws, national laws, policies and standard operating procedures as well as parliamentary debates. The *second phase* of the research involves conducting semi-structured interviews sessions with relevant officers from the following agencies in order to gather detailed insights in relation to the interrogation practises on children in conflict with the laws in Malaysia: (a) The Royal Malaysian Police, (b) Department of Social Welfare, Malaysia (c) Attorney General Chambers of Malaysia,

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<sup>94</sup> PP v Ayar & Ors [2010] 49 CLJ 1006. In this case, the High Court held that if a particular statute is silent in relation to regulation governing investigation or trial, the procedure as specified in the CPC will be applicable. See also James Nayagam, "Strengths and Weaknesses of the Protection Mechanism and Support System or Reintegration of Children in Conflict with the Law" in *Human Rights and the Administration of Juvenile Justice*, (Kuala Lumpur: Human Rights Commission of Malaysia, 2009), 51. See also MWFC and UNICEF Report, 21.

(c) Department of Prison, Malaysia; and (d) Child Rights Committee, Malaysian Bar Council.

## **D. Operational Definition**

Even though this study refers to the term “interrogation practises” on children in conflict with the laws, the term “questioning” and “recording of any statement” are employed throughout this paper, as provided in the domestic laws in order to demonstrate how interrogation is carried out by the enforcement officers in Malaysia, in the pre-trial process.<sup>95</sup>

## **E. Limitations**

The official commencement of this study began following the conclusion of the first National Researchers’ Meeting organised by the Representative of Thailand to AICHR in Bangkok, Thailand on 16th December 2018. Time limitation is a key challenge in completing this study particularly in obtaining relevant data and statistics from the relevant agencies as some time is required to gather the data requested. In addition, time constraint limits the opportunities to conduct more semis structured interviews with officials working in the juvenile system to gather more input with regards to the interrogation practices. Moreover, the time factor coupled with reporting requirements limited the potential of this study to identify more good practices and challenges from the front liners officers. Despite the above limitations, some data and statistics were gathered, five (5) semi-structured interviews were conducted and secondary sources were derived from literature reviews that have been undertaken in order to meet the research objectives above.

# **II. The Laws Governing the Interrogation and Interview of Children in Conflict with the Law in Malaysia**

## **A. Legal Definition of Children**

In Malaysia, a *child* is defined as a person who is below the age of eighteen (18) years old.<sup>96</sup>

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<sup>95</sup> The term “questioning or recording of any statement” can be found in both Section 28A (2) of the CPC and Section 83A (2) of the 2001 Act.

<sup>96</sup> Section 2 (a) of the Child Act. This definition of a child is also in line with the definition of a child as stipulated in National Child Protection Policy, 2009 <[http://www.jkm.gov.my/content.php?pagename=dasar\\_perlindungan\\_kanak-kanak\\_negara&lang=en](http://www.jkm.gov.my/content.php?pagename=dasar_perlindungan_kanak-kanak_negara&lang=en)> (accessed 7 September, 2015). See also National Child Policy, 2009 <[http://www.jkm.gov.my/content.php?pagename=dasar\\_kanak-kanak\\_negara&lang=en](http://www.jkm.gov.my/content.php?pagename=dasar_kanak-kanak_negara&lang=en)> (accessed 7 September, 2015), both issued by the Ministry of Women, Family and Community Development.

Section 2 (b) of the Child Act provides that in relation to criminal proceedings, a child is a person who has attained the age of criminal responsibility according to Section 82 of the Penal Code. The discussion on age of criminal responsibility is discussed in heading 1.2 below.

### ***Number of Children Population under 18 (Disaggregated by sex and age)***

Table 10 below demonstrates the numbers of children population in Malaysia according to age and number at the end of 2018. The table depicts that at the end of 2018, the numbers of male children in Malaysia are higher than the number of female children under both age categories, which range from 1 to 9 years old and 10 to 18 years old.<sup>97</sup>

**Table 10: Population of Children in Malaysia**

<b>Population of Children in Malaysia, 2018e</b>			
Categories of Age	Total	Male	Female
1-9 years old	4,642.6	2,398.6	2,244.0
10-18 years old	4,828.9	2,489.3	2,339.6

Source: Department of Statistic of Malaysia

## **B. Age of Criminal Responsibility**

In Malaysia, the definition of children in conflict with the laws are provided in the Penal Code. Section 82 of the Penal Code provides that for the purpose of criminal proceedings, a child can be criminally responsible at ten (10) years of age when an offence is committed.<sup>98</sup> Section 83 of the Penal Code further provides that a child who is above ten (10) years old but below the age of twelve (12) will not be criminally responsible if at the time of committing the offence, he has not attained sufficient maturity of understanding to judge the nature and consequences of his or her conduct.<sup>99</sup> It is to be noted that Section 2 of the Criminal Procedure Code distinguished a child offender who committed criminal acts from a youthful offender whose age is above eighteen (18) years old but below twenty-one (21) years old.

However these policies are currently under reviewed by the Ministry of Women, Family and Community Development.

<sup>97</sup> Statistics are obtained from the Department of Statistic of Malaysia on 24th February 2019.

<sup>98</sup> Penal Code (Act 574).

<sup>99</sup> Ministry of Women, Family and Community Development, *Malaysia Implementation of the Convention on the Rights of the Child: First Country Report*, (Kuala Lumpur: Ministry of Women, Family and Community Development, 2007), 138.

Both Sections 82 and 83 of the Penal Code can be invoked by child offenders as a defence, on the balance of probabilities, against any charge of criminal offences pressed against them.<sup>100</sup> Both sections can operate as a defence in favour of child offenders who committed an offence under the Penal Code, on the premise that they are under a certain age and are insufficiently developed to understand fully the consequences and the physical nature of their criminal behaviour.<sup>101</sup>

The High Court in the case of *PP v William Ayau*, recognised that an accused who was nineteen (19) years old at the time he committed an offence of statutory rape, was no longer a child within the definition prescribed by the Child Act.<sup>102</sup> It is to be noted that after the passing of the Child Act, the terms *juvenile* and *young offender* are no longer used with reference to child offenders since negative connotations are attached to these terms.<sup>103</sup> The definition of a child highlighted in the Child Act above is in line with Article 1 of the CRC and Article 11 (a) of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (hereinafter referred to as Havana Rules).<sup>104</sup>

### ***Types of Crimes Committed by Children in Conflict with the Laws***

Table 11 below demonstrates the relationships between the types of crimes and gender committed by children in conflict with the laws recorded for the year 2018.<sup>105</sup> The table below demonstrates that most male child offenders committed drugs related offences (1744) followed by property related offences (1325) and persons related offences (684).

<sup>100</sup> Stanley Yeo, Neil Morgan and Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*, (Singapore: Lexis Nexis, 2007), 671.

<sup>101</sup> Stanley et al., 670. However, Stanley et al., affirms that a child who wishes to rely on Section 83 of the Penal Code only has to prove that he or she is unable to judge the nature and consequences of his or her action. To illustrate the operation of Section 83 of the Penal Code, reference was made to judgment made by Jackson J in the case of *Empress v Lukhini Agradanini (1874) 22 WR (Cr) 27 at 28* where His Lordship opined "... the natural consequences which flow from a voluntarily act, such as for instance as that, when fire is applied to an inflammable substance, it will burn, or that a heavy blow with an axe or sword will cause death or grievous hurt." Therefore, Stanley et al. is of the opinion that Section 83 only requires a child to prove that he or she is *unable to judge the nature and consequences of his or her action* but does not require a child to prove that he or she *lacked the* sufficient maturity to know that it was wrong for him or her to ignite an inflammable substance or to strike a person with an axe (p. 672). Stanley et al., is also of the opinion that Section 83 of the Penal Code should remain unchanged and the law should give the opportunity to a child to raise the presumption of *doli incapax* as a defence (p. 674). However, for a contrary view, reference can be made to Anita Abdul Rahim, Chua Ming Zuan "Andaian Doli Incapax: Kerelevanan Dan Pengaplikasian Terma "Cukup Akal Menimbulkan" Seksyen 83 Kanun Keseksaan Dalam Undang-Undang Jenayah," *Malayan Law Journal*, no. 6, vol 1 MLJ [2009].

<sup>102</sup> [2005] 4 MLJ 328, 335.

<sup>103</sup> Nayagam, 51. Section 2 of the CPC distinguished the term "youthful offender" to mean a person convicted of an offence punishable by fine or imprisonment who is of or above the age of eighteen (18) and below the age of twenty one (21).

<sup>104</sup> United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (adopted by the United Nations General Assembly on 14 December 1990) Resolution A/RES/45/113 <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/565/02/IMG/NR056502.pdf?OpenElement>> (accessed 25 August, 2015). This definition is also in line with the definition provided in Committee on the CRC General Comment No. 14 (2013) On "The Right Of The Child To Have His Or Her Best Interests Taken As A Primary Consideration" (Art. 3, Para. 1), para 21, <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14\\_&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14_&Lang=en)> (accessed 28 August, 2015).

<sup>105</sup> Statistics are obtained from the Department of Social Welfare, Putrajaya on 8th April 2019.

**Table 11: Types of Offences and Gender of Children in Conflict with the Laws in Malaysia**

Types of Offences	Gender		
	Male	Female	Total
Drugs related Offences	1636	108	1744
Properly related offences	1325	78	1403
Persons related offences	684	8	692
Traffic related offences	585	13	598
Offences under Minor Offences Act	95	2	97
Gambling	62	7	69
Weapons/Firearms	35	0	35
Escaped from Approved Schools	7	0	7
Infringement of Supervision Terms	4	1	5
Others	571	73	644
Total	5004	290	5294

Source: Department of Social Welfare, Putrajaya, Malaysia

### ***Number of Children Population Detained in the Institutions***

Table 12 below demonstrates the number of child offenders who were detained in institutions in Malaysia and the statistics show that they were higher numbers of child offenders detained in institutions run under the Department of Social Welfare (1250) compared to those who were detained in institutions under the Prison Department of Malaysia (441).<sup>106</sup>

**Table 12: Population of Children Serving Sentences in Institutions in Malaysia**

Institutions	Numbers of child offenders	Total (n)
1. Department of Social Welfare (as at 4th April 2019)		
Approved Schools	870	
Probation Hostels	380	1250
2. Prison Department of Malaysia (as at 3rd January 2018)		
Prison	62	
Henry Gurney School	379	441
		1,691
Source: Department of Social Welfare, Putrajaya, Malaysia		

<sup>106</sup> Statistics are obtained from the Department of Social Welfare, Putrajaya on 8th April 2019. The statistics in the Approved Schools and Probation Hostels include both children who are detained pending trial and who were serving sentences. Statistics are also obtained from the Prison Department of Malaysia on the 8<sup>th</sup> January 2018 and demonstrate the numbers of children who were serving sentence in the prisons all across Malaysia.

## **C. Interrogation of Children in Conflict With the Laws by Enforcement Officers**

### ***Introduction***

Interrogation of child offenders is one of the investigation powers that can be exercised by the police officers in the criminal justice system and it can take place in a few stages. In Malaysia, the term ‘interrogation’ is not found in the Criminal Procedure Code (hereinafter referred to as the CPC) which governs the criminal proceedings in Malaysia.<sup>107</sup> Instead, under both Section 28A (2) of the CPC and Section 83A (2) of the 2001 Act, the term “questioning” and “recording of any statement” are employed to demonstrate how investigation is carried out by the enforcement officers in the pre-trial process. The term “questioning” is regarded as a preliminary, informal interview session conducted by the enforcement officers usually carried out before the formal recording of statement is undertaken by the enforcement officers. On the other hand, the term “recording of any statement” refers to a formal procedure of questioning undertaken by the enforcement officers under Section 112 of the CPC.<sup>108</sup> Both these sections are applicable to child offenders whose age is ten (10) years and above since they are the ones who can incur criminal responsibility as highlighted in Section 2.2 highlighted earlier.

A police (not below the rank of Sergeant or any officer in charge of a police station) can exercise its power to conduct investigation in seizable cases by virtue of Section 109 (1) of the CPC, without the order from the Public Prosecutor. On the other hand, a police officer (not below the rank of Sergeant or any officer in charge of a police station) who wishes to conduct a non-seizable case, may first have to obtain an order from the Public Prosecutor.<sup>109</sup>

Section 28 (3) of the CPC provides that following an arrest, an accused person shall be brought to the Magistrate within twenty-four (24) hours. Before the expiry of the 24 hours, if the police wishes to conduct investigation on the child offender, the police may take down statement or conduct questioning session with the child offender under Section 112 of the CPC.

However, the police officers are obliged to ensure that the child offenders are informed of their rights as an arrested person by virtue of Section 28 A of the CPC especially before any form of questioning or recording of any statement from the child offender is taking place. Section 28A is

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<sup>107</sup> Section 3 of the Criminal Procedure Code.

<sup>108</sup> Feedback provided by an officer from the Royal Malaysian Police on the 11 April 2019.

<sup>109</sup> Section 108 (1) CPC.

incorporated in the CPC in order to ensure that the rights of arrested persons are safeguarded upon arrest. Section 28 A (2) of the CPC elucidates the following measures that need to be complied by the police officers. Firstly, the police officers shall, before conducting any form of questioning or recording of any statement on the arrested persons, inform the person that he has the following rights:

(a) may communicate or attempt to communicate with a relative or friend to inform about his whereabouts; and

(b) may communicate or attempt to communicate and consult with his own preferred lawyer.

Secondly, when an arrested person requested to have access to the above rights, the police shall give a reasonable time to the accused person to have a consultation with the lawyer of his choice.<sup>110</sup> Thirdly, unless and until this session has taken place, the police officers have to defer any form of questioning or recording of any statement from the arrested persons.<sup>111</sup>

Section 28A CPC which enumerates more detailed provisions on arrested persons indeed *strengthens* the legal framework provided in Article 5 (3) of the Federal Constitution in Malaysia which provides that a person who is arrested shall be informed of his grounds of his arrest as soon as maybe and shall be allowed to consult and be defended by a legal practitioner of his own choice.

However, it must be stated that although Section 28A CPC spells out the rights of an arrested persons which must be complied with, the police officers may exercise their powers to proceed with questioning or recording of any statement from the arrested persons in the absence of the accused persons exercising their rights above. For instance, if the circumstances below exist, the police officers will be exempted from their obligation to allow the arrested persons to exercise their rights. First, if the police officers reasonably believe that compliance with the above provisions are followed, this will contribute in (a) an accomplice of the person arrested taking steps to avoid apprehension; or (b) the questioning or recording of any statement is so urgent and should not be delayed when the police officers take into account the safety of other persons.<sup>112</sup> Despite these powers given to the police officers, they must first obtain authorization from a police officer not below the rank of Deputy Superintendent of Police, before waiving the rights of the arrested

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<sup>110</sup> Section 28A (6) CPC.

<sup>111</sup> Section 28A (6) CPC.

<sup>112</sup> Section 28A (8) of the CPC.

person in Section 28 A (2) of the CPC.<sup>113</sup> Subsequently, grounds of belief must be recorded to afford justifications for police officers to proceed immediately with questioning or recording of any statement from the accused persons without vesting the rights to them to communicate with a relative, friend or a lawyer, following an arrest. *However, it must be noted that the police officers' rights to invoke the exceptions under Section 28A (8) CPC above are also applicable to child offenders.*

While the provisions in the CPC are applicable to both adult and child offenders, new provisions in the 2001 Act have spelled out the *specific rights* of child offender following an arrest, through the latest amendments in order to afford better protection to child offenders. The newly incorporated Section 83 A (2) of the 2001 Act encapsulates that *before* conducting any form of questioning or recording of any statement on a child offender, the police officer must inform the child that he or she has the rights to communicate with the parent, guardian or relative of the child as well as the probation officer in order to let them know:

- (a) the child's whereabouts;
- (b) the grounds of arrest of the child; and
- (c) the right to consult a legal practitioner.

Additionally, the 2001 Act also provides that following the arrest of the child offender and in order to uphold the welfare of the child, the police officers may allow the probation officer and the parent or a guardian of a child to be present at the place where the child offender is detained.<sup>114</sup>

Even though the provisions above are almost identical with Section 28 A (2) of the CPC highlighted above, Section 83 A (2) of the 2001 Act is an important addition to the laws governing child offenders because these provisions are meant *specifically for child offenders* who are in conflict with the laws. On the contrary, all the provisions in the CPC outlines the general framework that are applicable to both adult and child offenders. However, on closer scrutiny, Section 83 A (4) of the 2001 Act provides that despite the provisions in the 2001 Act, police officers are still empowered to deal with a child arrested in accordance with the provisions in the CPC. *Hence, even though the police officers is under an obligation to invoke Section 83A (2) of the 2001 Act, the provisions in the CPC can still be enforceable by virtue of Section 83 A (4) of the 2001 Act.*

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<sup>113</sup> Section 28A (9) of the CPC.

<sup>114</sup> Section 83A (3) of the CPC.



## ***Procedures of Taking down Statement under Section 112 of the Criminal Procedure Code***

As highlighted earlier, Section 28 (3) of the CPC provides that following an arrest, an accused person shall be brought to the Magistrate within twenty-four (24) hours. Before the expiry of the 24 hours, if the police officer wishes to conduct investigation on the child offender, the police may take down statement or conduct questioning session with the child offender under Section 112 of the CPC. However, if the police officers are of the opinion that investigation cannot be completed within 24 hours, they may apply to the Court to detain the child offenders further under Section 117 of the CPC in order to complete the investigation. During this period of extended detention, the police may also invoke the procedures in Section 112 of the CPC in order to conduct questioning on the child offenders.

Section 112 CPC empowers the police officers to interview and record a statement from witnesses who are acquainted with the facts and circumstances of the case.<sup>115</sup> The purpose of recording statement of child offenders under Section 112 CPC is to facilitate the police officers in their investigation and this statement forms part of the evidence that the Prosecution can adduce during the trial.<sup>116</sup>

The recording of the statement under Section 112 CPC is a requirement of the law which the police needs to undertake in the course of investigation.<sup>117</sup> Hence, the statement taken under Section 112 of the CPC is regarded as absolute privilege.<sup>118</sup> The following procedures governing the recording of statement are outlined from Section 112 (1) to Section 112 (5) of the CPC:

(1) Firstly, the police officers undertaking police investigation are empowered under Section 112 CPC to examine orally any person supposed to be acquainted with the facts and circumstances of the case and reduce the statement into writing.<sup>119</sup> The term “any person” can include any person, including witnesses and persons accused of committing the criminal offence.<sup>120</sup> However, the term acquainted with the facts and circumstances of the case refers to an accused person whom the police enforcement believes to have committed the crime and hence must be familiar with the facts of the case.<sup>121</sup>

(2) Secondly, the person who statement is taken shall be bound to answer all questions advanced

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<sup>115</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 216, Sweet & Maxwell, 174.

<sup>116</sup> Mohamed Yusof bin Haji Ahmad v PP (1983) 2 MLJ 167.

<sup>117</sup> Husdi v PP (1979) 304, 306.

<sup>118</sup> Lee Yoke Yam v Chin Keat Seng (2013) 1 MLJ 145, FC, Kalung Makmur Sdn Bhd v Lo Yen Nyuk [2018] 1 CLJ 459, COA.

<sup>119</sup> Section 112 (1) CPC.

<sup>120</sup> Velu Vishwanathan v State (1971) CR LJ 725, Shyamo v Emperor AIR 1932 Mad 391, Pakala Narayan Swami v The King Emperor (1939) 40 Cr LJ 364.

<sup>121</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 216, Sweet & Maxwell, 174. See also Sandra Margaret Birch v Public Prosecutor [1978] MLJ 72 at 73.

by the police officers. However, the person may *refuse* to answer any questions if he or she thinks that providing answers would have the tendency to expose him or her to a criminal charge or penalty or forfeiture.<sup>122</sup> Hence, a witness can be excused from answering any question advanced to him by the enforcement officers if responding to the questions tends to expose the person to a criminal charge, penalty or forfeiture.<sup>123</sup>

(3) Thirdly, the person who has chosen to make a statement shall be legally bound to make statements, either wholly or partly, in respond to the questions advanced by the police officers.<sup>124</sup> It must be noted that whenever a person makes a false statement, he or she could be subjected to criminal liability such as perjury, under Section 193 and 203 of the Penal Code.<sup>125</sup>

(4) Fourthly, before a person making the statement, the police officers are under the obligation to inform the person of their rights under section (2) and (3) highlighted above.<sup>126</sup> This provision obligates the enforcement officers to *warn* the witnesses that they may refuse to respond to the questions advanced to him if providing answers would have the tendency to expose him or her to a criminal charge or penalty or forfeiture.<sup>127</sup> Hence this particular provision obliges the police officers to inform the witness the following provisions of the laws; (a) the witness is bound to answer all questions put to him; (2) the witness must state the truth; and (3) the witnesses may refuse to respond to the questions advanced to him if providing answers would have the tendency to expose him or her to a criminal charge or penalty or forfeiture. Therefore, the police officers may only record statement under Section 112 CPC *after* warning and notice have been given to the witness.<sup>128</sup>

(5) Finally, in taking down the statement, the police officers must ensure that the following requirements are met:<sup>129</sup>

(i) the statement made, whenever possible, shall be taken down in writing;

(ii) the statement given must be read back to the person examined and opportunities must be given for the person making the statement to make any corrections if he or she wishes to do so;<sup>130</sup> and

(iii) the statement made by the person shall be signed or affixed with the thumb impressions of the maker. All statements recorded under Section 112 CPC must be authenticated

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<sup>122</sup> Section 112 (2) CPC.

<sup>123</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 216, Sweet & Maxwell, 176.

<sup>124</sup> Section 112 (3) CPC.

<sup>125</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 216, Sweet & Maxwell, 174. See also cases cited in Lexis Nexis Guide to Litigation: Criminal Procedure Code, Lexis Nexis, 2015, 165.

<sup>126</sup> Section 112 (4) CPC.

<sup>127</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 216, Sweet & Maxwell, 174. See also Ng Song Hei v PP [2008] 10 CLJ 342.

<sup>128</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 2016, Sweet & Maxwell, 177.

<sup>129</sup> Section 112 (5) CPC.

<sup>130</sup> Tan Choon Huat v PP [1991] 3 MLJ 230.

by a signature or a thumb print. However, there may be circumstances where in the absence of signature or thumb print affixed, the Courts may still accept the statements, when there is a reasonable explanation for the failure (for instance, where the accused has injured his fingers or arm). However, if there are no reasonable justifications put forward, the statement will be inadmissible.<sup>131</sup>

It must be noted that the phrase “shall whenever possible be taken down in writing” found under Section 112 (5) of the CPC has been judicially interpreted as “whenever reasonably possible”.<sup>132</sup> The phrase “shall reduce into writing any statement made by the person so examined” found in Section 112 (1) and the phrase “shall whenever possible be taken down in writing” found under Section 112 (5) of the CPC requires for the statement to be reduced into writing. Additionally, the phrase “shall, whenever possible” only relates to the requirement of having thumb print or signature to authenticate the statement.<sup>133</sup>

### ***Method of Recording Statement***

In undertaking statement under Section 112 of the CPC, the examination or interrogation takes the form of questions and answers but the recorded statement does not need to take similar form.<sup>134</sup> Hence, the recorded statement need not be in the form of questions and answers.<sup>135</sup>

The preceding paragraphs highlighted the manner in which a statement under Section 112 CPC is taken. While police officers acknowledged that not all child offenders may understand the implication of giving statement under Section 112 of the CPC, it is the *responsibility* of the police officers to explain the significance of this section to the child offenders in a simple manner. For instance, child offenders who are below twelve (12) years old may not easily understand the significance of providing the statement compared to child offenders whose age are between sixteen (16) to eighteen (18) years old. It is submitted that during investigations, not only child offenders will benefit from clear explanation by the police officers, the police officers will also demonstrate that they have discharged their obligations should they are called to the Court to provide statement as a witness.<sup>136</sup>

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<sup>131</sup> Abdul Ghani bin Jusoh & Anor v PP (1981) 1 MLJ 25.

<sup>132</sup> Public Prosecutor v Veeran Kutty & Anor [1990] 3 MLJ 498.

<sup>133</sup> Abdul Ghani bin Jusoh & Anor v PP [1981] 1 MLJ 25.

<sup>134</sup> Subramaniam v PP [1956] MLJ 58.

<sup>135</sup> PP v Abdullah bin Ambik [1984] 1 CLJ 189.

<sup>136</sup> Feedback provided by an officer from the Royal Malaysian Police on the 11 April 2019.

## ***Good Practices and Challenges Experienced by the Enforcement Officers during the Interrogation Practices***

### ***Examples of Good Practices***

As highlighted in the preceding paragraphs, the enforcement officers have the power to conduct questioning and recording of statement during the pre-trial process. The following are examples good practices and challenges facing the enforcement officers when questioning and recording of statement under Section 112 CPC:<sup>137</sup>

- A) identifying and finding a translator if enforcement officers are of the opinion that the child offenders would not comprehend the language that the officers are using. If a translator cannot be found, this will prolong investigation because a police officers cannot proceed with taking down of the statement without a translator.
- b) translators who speak the mother tongue of the child offenders will usually be engaged among the police officers. Similarly, translators for children with disabilities (such as deaf and mute) will also engaged *before* the recording of statement takes place.
- c) police officers will try and engage translators from the relevant Embassies when dealing with refugee children such as the Rohingya refugees.
- d) using simple languages/examples/analogies to explain to the child offenders about the importance of stating the truth under Section 112 CPC.
- e) providing a woman police officer to a girl child offender during questioning and recording of statement under Section 112 CPC.
- f) new standard operating procedure governing offenders is developed to help police officers dealing with criminal offenders with autism.<sup>138</sup>

### ***Examples of Challenges***

- a) there is no specific standard operating procedures/guidelines/code of practise for enforcement officers governing the conduct questioning and recording of any statement under Section 112 of the CPC from the child offenders (including children with disabilities and children in conflict with

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<sup>137</sup> Feedback provided by an officer from the Royal Malaysian Police on the 11 April 2019.

<sup>138</sup> A few local newspapers have reported on the establishment of the standard operating procedure governing criminal offenders with autism: See (1) Berita Harian, 25th March 2019 <https://www.bharian.com.my/berita/nasional/2019/03/545263/sop-khas-kendali-tahanan-autisme>, (2) Free Malaysia Today, 26th March 2019 <https://www.freemalaysiatoday.com/category/bahasa/2019/03/26/kes-babit-individu-autisme-perlu-patuhi-sop-kata-kpn/>, and (3) Utusan Malaysia, 25th March 2019 <http://www.utusan.com.my/berita/nasional/sop-baharu-berkaitan-tahanan-autisme-1.869756>

the laws in cross border cases).

b) questioning and recording of any statement under Section 112 of the CPC from the child offenders are not conducted by specially trained enforcement officers who have the experience, knowledge and skills to deal with child offenders.

c) there are inadequate numbers of enforcement officers with appropriate skills to deal with the child offenders when conducting questioning and recording of any statement under Section 112 of the CPC.

d) dealing with children who are mischievous and reluctant to provide cooperation to the enforcement officers.

e) enforcement officers unable to contact the Probation Officers as soon as may be following an arrest of the child offender.

#### **D. Roles of the Social Welfare Officers in the Juvenile Justice System in Malaysia Children in Conflict with the Laws by the Social Welfare Officers**

##### ***Roles Social Welfare Officers***

Probation Officers are appointed by virtue of Section 10 of the 2001 Act by a Minister and by notification in the Gazette in order to discharge his duties when dealing with child offenders who committed crime. As Probation Officers, they will try and uphold the *principle of non- discrimination* since all children will be treated alike because the 2001 Act does not distinguish between children of Malaysian or non-Malaysian nationality.<sup>139</sup> In relation to the child offenders, the role of the Probation Officers are to prepare and submit the Probation Report to the Court for Children for the Court to consider the report before deciding on orders that can be imposed under Section 91 of the 2001 Act.<sup>140</sup>

It is highlighted earlier that the newly incorporated Section 83 A (2) of the 2001 Act provides that *before* conducting any form of questioning or recording of any statement on a child offender, the police officer must inform him or her that he has the rights to communicate with the parent or guardian or relative of the child as well as the *Probation Officer* in order to let them know:

(a) the child's whereabouts;

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<sup>139</sup> Feedback provided by a Probation Officer from the Department of Social Welfare on the 26 April 2019.

<sup>140</sup> Section 90 (12) of the 2001 Act.

- (b) the grounds of arrest of the child; and
- (c) the right to consult with his own legal representative.

Further, the 2001 Act also provides that following the arrest of the child offender and in order to ensure *the welfare of the child*, the police officers may *allow* the *probation officer* and the *parent or a guardian of a child* to be present at the place where the child offender is detained.<sup>141</sup> Following the arrest of the child and if the child is charged for committing a criminal offence, the 2001 Act also obligates the police officer to facilitate the Probation Officer in preparing a Probation Report by delivering to the Probation Officer a copy of the charge and other information which is necessary, relevant to the case.<sup>142</sup>

When dealing with child offenders, Probation Officers are governed by *internal guidelines* provided by the Department of Social Welfare and the guideline upholds the *principle of non- discrimination* as highlighted in the CRC 1989 because Probation Officers do not distinguish treatment given to child offenders who are of Malaysian nationality and non-Malaysian.<sup>143</sup> In undertaking duties to prepare the Probation Report, the Probation Officers will discharge the following duties at the pre-trial process:<sup>144</sup>

- a) ensuring that the enforcement officers have notified the parents of the child offenders;
- b) interviewing the child offenders in order to determine the facts of the case;
- c) interviewing the parents or guardian of the child offenders; and
- d) to request for reports from schools or other relevant parties.

In addition to the above, the role of the Probation Officers are also to provide relevant advice to the child offenders, when necessary.<sup>145</sup>

### ***Good Practices and Challenges Experienced by the Social Welfare Officers in the Pre-Trial Process***

By virtue of the CPC and the 2001 Act, the enforcement officers are vested with the powers to

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<sup>141</sup> Section 83 (A) (3) of the 2001 Act.

<sup>142</sup> Section 87 (b) of the 2001 Act.

<sup>143</sup> Feedback provided by a Probation Officer from the Department of Social Welfare on the 26 April 2019. This standard operating procedure is known as Handling Children Who Are Involved in Crime (PK. JKM Utama 05 2008). However, the researcher was informed that the guideline is currently in the process of being reviewed.

<sup>144</sup> Ibid.

<sup>145</sup> Feedback provided by a Probation Officer from the Department of Social Welfare on the 26 April 2019.

conduct any form of questioning or recording of any statement with child offenders. On the other hand, one of the most important roles of Probation Officers are to prepare the Probation Report. Below are some examples of good practices and challenges facing the Probation Officers in discharging their duties:

### ***Examples of Good Practices***

- a) Probation Officers are guided by internal standard operating procedure when dealing with child offenders based on the principle of non-discrimination because the 2001 Act does not distinguish between children of Malaysian or non-Malaysian nationality (including children with disabilities and children in conflict with the laws in cross border cases).<sup>146</sup>
- b) website displaying numbers of Probation Officers working in a particular district are easily accessible for the enforcement officers to contact them, following the arrest of the child offenders.
- c) Probation Officers will contact the parents of the child offenders at the soonest to notify about the whereabouts of their children once the case involving child offenders is referred to them.

### ***Examples of Challenges***

- a) some Probation Officers are notified and contacted at a later stage by enforcement officers following an arrest of the child offender.
- b) some Probation Officers lack knowledge and experience in dealing with cases involving child offenders and in preparing a comprehensive Probation Report.
- c) inadequate training received by the Probation Officers to prepare them when dealing with child offenders.
- d) difficulties in obtaining reports from schools.

## **E. Handling of Children Below Ten (10) by the Enforcement Officers and Probation Officers**

It is highlighted in Section 2.2 earlier that a child can only incur criminal responsibility if the child's age is above ten (10) years old. However, recently, the police officers have received information involving children below ten (10) years old who had committed crime, particularly in relation to sexual offences cases. When such cases are referred to the police officers, the police will open a file concerning the case due to public interest but the matter will not be investigated. Even when the case is referred to the Deputy Public Prosecutor, the case will eventually be classified as No

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<sup>146</sup> This standard operating procedure is known as Handling Children Who Are Involved in Crime (PK. JKM Utama 05 2008). However, the researcher was informed that the guideline is now in the process of being reviewed.

Further Action (NFA).<sup>147</sup> Due to the existing laws which specified the age of criminal responsibility for children, cases involving children below ten (10) years of age have not been referred to the Probation Officers for them to undertake further action.<sup>148</sup>

### **III. Deprivation of Liberty for Children in Conflict with the Laws**

#### **A. Introduction under Section 117 CPC**

A child offender can be detained further by virtue of Section 117 CPC if the police officers wish to investigate the case further and if the investigation cannot be completed within twenty-four (24) hours.<sup>149</sup> Hence detaining an accused person longer than twenty four (24) hours must be for the purposes of completing investigation and not to commence an investigation.<sup>150</sup> Subsequently, the police officers need to bring the offender before a Magistrate in order to obtain an order from the Magistrate to enable the police officers to continue with their investigation. This order is also termed as a 'remand order'.<sup>151</sup> Child offenders can also be subjected to further detention if the police officers need to undertake further investigations concerning the child's case. However, if the police officers can complete police investigations by drawing information from the recorded statement from child offenders, detaining child offenders further under Section 117 CPC will not be resorted to.<sup>152</sup>

#### **B. Legal Framework governing detention under Section 117 CPC**

Before a Magistrate grants a remand order, the following procedures need to be taken into account:

a) the accused person must be brought before a Magistrate Court within 24 hours from the time he is arrested.

b) the police officers making an application for a remand order to detain an accused person longer than twenty four (24) hours, must furnish well-grounded reasons to the Magistrate. In deciding

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<sup>147</sup> Feedback provided by an officer from the Royal Malaysian Police on the 11 April 2019.

<sup>148</sup> Feedback provided by a Probation Officer from the Department of Social Welfare on the 26 April 2019.

<sup>149</sup> Refer to Section 28 (3) CPC. See also the following cases: Mohamed Yusof bin Haji Ahmad v PP (1983) 2 MLJ 167, Maja Anak Kus v Public Prosecutor [1985] 1 MLJ 311

<sup>150</sup> Dasthigeer Mohd Ismail v Kerajaan Malaysia & Anor (1999) 6 CLJ 317

<sup>151</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 2016, Sweet & Maxwell, 177

<sup>152</sup> Feedback provided by an officer from the Royal Malaysian Police on the 11 April 2019.



whether to grant an order, the Magistrate needs to act cautiously and with circumspection, such as scrutinising the materials before him and provide justifications for granting the remand order.<sup>153</sup> The Magistrate can avail himself to consider the nature of the information/accusation as well as the copy of entries of the investigation diary.<sup>154</sup>

c) mandatory submission of the investigation diary to the Magistrate. Failure to submit the investigation diary will be fatal to the application since the Magistrate will be deprived from making informed decision.<sup>155</sup>

### ***Legal Representation in Section 117 CPC***

It must be noted that through the amendment made in the CPC, an accused person now is statutorily entitled to be represented by a legal practitioner during the remand application. Previously, the Courts have affirmed the right of the accused person to be legally presented through decisions made in case law.<sup>69</sup> Hence, a child offender is also vested with the same right to be legally represented during the remand application.<sup>156</sup>

In the case of *Saul Hamid v Public Prosecutor* [1987] 2 MLJ 736, it was decided by the Court that a person has the right to be legally represented by a legal practitioner during the remand proceedings unless doing so would cause undue interference with police investigation process. The Court further stated that the police must provide sufficient evidence to support their objections.

### ***Length of Detention under Section 117 CPC***

If a child offender is detained under Section 117 CPC to enable the police officers to conduct their investigation, the length of detention imposed on the child offender depends on the *maximum punishment* prescribed in the particular section.

Section 117 (2) of the CPC is a new provision in the CPC that provides “The Magistrate *may*...authorize the detention of the accused in custody. The word “may” provided in this section vests the Magistrate with the *discretionary power* to detain or to refuse the detention of the accused person. If the Magistrate decides to release the accused persons, the police officers will

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<sup>153</sup> PP v Rajisegar Munusamy [2006] 1 CLJ 217, CA

<sup>154</sup> Re v Mohamad Ezam Mohd Nor [2002] 5 CLJ 156, HC

<sup>155</sup> PP v Audrey Keong Mei Cheng [1997] 3 MLJ 447, CA

<sup>156</sup> Section 117 (5) CPC

have to comply and subsequently released the accused persons.<sup>157</sup>

Hence, Section 117 (2) CPC helps to facilitate the Magistrate in determining the length of days that an accused person should be detained when the remand order is granted. The length of period of detention is prescribed by the CPC and is subjected to the *maximum punishment* for offences being investigated.<sup>158</sup> Hence, it can be noted that the laws have now imposed *limitations* on the Magistrate to detain the accused persons based on the *maximum punishment* for offences being investigated. This current position of the law is indeed a *departure* from the old laws where in the past, accused persons were remanded using a straight jacket approach where for the purposes of investigation, the maximum fifteen (15) days was applied to detain the accused persons.<sup>159</sup>

### **Remand Order under Section 117 CPC and its Application to Children in Conflict with the Laws**

In the case of Public Prosecutor v N (A Child), the Court of Appeal recognised that the operation of Section 117 of the CPC is also applicable to a child offender, where a child offender can be detained longer than twenty four (24) hours.<sup>160</sup>

In the above case, the Court of Appeal emphasised that the 2001 Act does *not* contain any provisions to detain a child for the purpose of investigation, and Sections 84 and 86 of the 2001 Act were *not* designed with intent to detain a child offender for the purpose of investigation. Hence, the laws governing remand order under Section 117 of the CPC need to be distinguished from the provisions governing the detention of child offenders in the 2001 Act.<sup>161</sup> The Court of Appeal

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<sup>157</sup> Srimurugan Alagan: the Criminal Procedure Code: A Commentary 2016, Sweet & Maxwell, 184

<sup>158</sup> Section 117 (2) (a) reads: If the offence committed by the accused persons and investigated by the police officers is punishable with imprisonment of less than fourteen (14) years, the accused must only be detained for four (4) days for the first (1) application, followed by three (3) days for the second (2) application. Additionally, Section 117 (2) (b) provides: If the offence committed by the accused persons and investigated by the police officers is punishable with death or imprisonment of fourteen (14) years or more, the accused must only be detained for seven (7) days for the first (1) application, followed by seven (7) days for the second (2) application.

<sup>159</sup> Baljit Singh Sidhu: Criminal Litigation Process 2015, Sweet & Maxwell, 183

<sup>160</sup> [2004] 2 MLJ 304

<sup>161</sup> At present, the provisions regulating the pre-trial detention of child offenders are governed by Section 84 of the 2001 Act and it is complemented by Section 86 of the 2001 Act. Section 84 (1) of the 2001 Act provides that if a child offender is arrested with or without warrant, a police officer must bring the child offender to the Court For Children (hereinafter referred to as the CFC) within twenty-four (24) hours, following the arrest.<sup>74</sup> Additionally, Section 84 (2) of the 2001 Act states that, in the event child offenders are *not* brought to the CFC within the above stipulated time period, the child offenders will be brought to a Magistrate who can make an order for them to be detained in a place of detention *until* they can be brought to the CFC. Moreover, Section 84 (3) of the 2001 Act emphasises that the CFC shall refuse to release child offenders on bond and may order for them to be detained in one of the following situations: (a) the child offenders are charged with murder or other grave crime; (b) it is necessary in the best interests of the child offenders to remove them from association with any undesirable person; or (c) the CFC has reason to believe that the release of the child offenders would defeat the ends of justice. In essence, when Sections 84 (1), (2) and (3) of the 2001 Act are read together, it provides that when child offenders are arrested, they must be brought to the CFC within twenty-four (24) hours (unless the qualification in Section 84 (2) of the 2001 Act as discussed above applies) and they were to be released on bond, pending the "hearing of a charge", except if the CFC refused to release them when circumstances under Section 84 (3) (a), (b) and (c) of the Child Act arise. It subsequently follows that if child offenders are detained under Section 84 (3) (a), (b) and (c), Section 86(1) of the 2001 Act vested the powers in the CFC to detain

in this case was in agreement with the arguments made by the Deputy Public Prosecutor and enunciated that the word “detention” provided in Section 83 (1) of the 2001 Act should *not* be interpreted as detention for the purpose of investigation, because the word detention in this section denotes the *detention of child offenders pending trial or punitive detention after trial*. Moreover, the appellate court explained that Parliament would have made its intention very clear if the legislative body wants to vest the powers in the CFC to detain child offenders longer than twenty-four (24) hours in Section 83 (1) of the Child Act, but it did not do so.

### ***Places of Detention of Child Offenders Pending Trial***

#### ***Institutional Settings***

Section 91 of the 2001 Act empowers the Court for Children (CFC) to make sentencing orders at the end of the hearing involving child offenders, once it is established that an offence has been proved (*PP v Velory Libong* [2005] 4 CLJ 797 at 800). There are various orders that the CFC can impose on child offenders once satisfied that an *offence has been proved*. Among the orders that the CFC can impose are to place the child offender in an Approved School or the Henry Gurney School.<sup>162</sup>

#### ***Department of Prisons Malaysia***

A child may be sent to the Henry Gurney School to serve his or her sentence if a child’s age is fourteen years or more and may have committed a serious offence. Section 91 (f) of the 2001 Act vested the powers in the CFC to send the child offenders to the Henry Gurney School, run by the Prison Department of Malaysia to serve their sentence.

However, during the *pre-trial process and pending trial*, child offenders can also be detained in institutions such as the Correctional Centre run by the Prison Department of Malaysia if the child is above fourteen (14) years of age.<sup>163</sup> For children who are detained in the Correctional Centre pending trial, they are regulated by the Prison Act 1995 and the rules enshrined in the Prisons

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the child offenders in a designated place of detention provided in the 2001 Act until they are brought to the Court which have jurisdiction to deal with the case. The Court of Appeal in the case of *PP v N (A Child)* [2004] 2 MLJ 302 recognised the relationship between Sections 86 (1) and 84 of the 2001 Act and affirmed that Section 86(1) of the 2001 Act complements the operation of Section 84 of the 2001 Act.

<sup>162</sup> Section 91 (f) of the 2001 Act.

<sup>163</sup> Section 75 (2) of the 2001 Act. This is also affirmed by an opinion shared by an officer from the Attorney General Chambers on the 26th March 2019.

Regulations 2000.

For examples, the following are the facilities that are provided for children who are placed in the Correctional Centre, pending trial:<sup>164</sup>

- a) they are separated from children who are already serving sentences in the prison;<sup>165</sup>
- b) they are also entitled to food and other necessities;<sup>166</sup>
- c) they are entitled to clothing and bedding;<sup>167</sup> and
- d) they are given the opportunities to have access to education and recreational activities.<sup>168</sup>

The child offenders who are placed in the prison while pending trial are also allowed to meet legal practitioners who visit them at the Correctional Centre.<sup>169</sup> Facilities are also provided to ensure that child offenders are able to meet the legal practitioners in a safe vicinity, without any form of interference.<sup>170</sup>

In addition to the above, the psychology officer in the Correctional Centre has the duty to ensure that the psychological well-being of the child offenders pending trial are looked into by conducting a test known as *Know Yourself Know Others (KYKO)* to examine the state of psychological well-being of child offenders in the institution. Through this test, the officer will be able to identify and help to address any problems facing the child offenders.<sup>171</sup> Up to date, the Correctional Centre had not received any children with disabilities placed in the institution pending trial, but adequate facilities would be given to them by the institution when such cases are received. Additionally, after undergoing transitory classes and assessment, child offenders who are assessed as slow learners will be placed in 3M classes to help them with the basic skills such as reading, writing and calculating.<sup>172</sup>

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<sup>164</sup> Feedback provided by an officer from the Department of Prison Malaysia on the 07 April 2019.

<sup>165</sup> This is in line with Regulation 165 of the Prison Regulation 2000. Children who are placed in the institutions pending trial are separated from those who are serving sentences except when they are attending classes in schools. The children are placed in dormitories where each dormitory can place around 15 child offenders.

<sup>166</sup> This is also in line with Regulation 101 (2) of the Prison Regulation 2000. According to the officer from the Department of Prison of Malaysia who was interviewed on the 07 April 2019, child offenders will be given between 40m-45 minutes to meet the lawyers who come to visit them.

<sup>167</sup> This is keeping in line with Regulation 168 of the Prison Regulation 2000. The children is given blanket to sleep with at night.

<sup>168</sup> An opinion shared by an officer from the Department of Prison of Malaysia on the 07 April 2019. Children who are placed in the institutions are given the opportunities to participate in academic classes as well as motivational and religious classes. In addition, the children are also given the opportunities to watch the television during the weekends and the public holidays. However, they can take part in both outdoor sport activities (such as playing football and the traditional game of takraw) as well as indoor activities (playing carrom).

<sup>169</sup> This practise is keeping in line with Regulation 101(1) of the Prison Regulation 2000.

<sup>170</sup> This is also in line with Regulation 101 (2) of the Prison Regulation 2000. According to the officer from the Department of Prison of Malaysia who was interviewed on the 07 April 2019, child offenders will be given between 40m-45 minutes to meet the lawyers who come to visit them.

<sup>171</sup> Feedback provided by an officer from the Department of Prison Malaysia on the 07 April 2019.

<sup>172</sup> Feedback provided by an officer from the Department of Social Welfare on the 25 April 2019.

## **Department of Social Welfare**

By virtue of Section 91 (f) of the 2001 Act, a child is sent to an Approved School to serve his or her sentence, run under the Department of Social Welfare if a child committed a criminal offence other than grave crimes and the offences committed are not serious in nature.

However, during the *pre-trial process and pending trial*, child offenders can also be detained in institutions such as the Probation Hostels and the Approved Schools run by the Social Welfare Department.<sup>173</sup> Child offenders who are detained in the Probation Hostels and Approved Schools pending trial are regulated by the rules in the Child (Probation Hostels) Regulations 2017 and Child (Approved Schools) Regulations 2017 respectively. These *new laws* are in place in order to provide better protection to the child offenders who are both placed in institutions pending trial and for serving sentences. Child offenders who are placed in either Probation Hostels or Approved Schools pending trial will be separated from child offenders who are serving sentences in these institutions.<sup>174</sup> Additionally, these institutions uphold the *principle of non-discrimination* as highlighted in the CRC 1989 because the officers do not distinguish treatment given to child offenders who are of Malaysian nationality and non-Malaysian.<sup>175</sup> The following are the facilities that are provided to the child offenders in the institutions, pending trial:

- a) they are given the opportunity to practise their religion freely;<sup>176</sup>
- b) they are also entitled to food in accordance to the dietary scale and appropriate to the age and health of the child offender;<sup>177</sup>
- c) they are entitled to clothing, bedding and washing facilities;<sup>178</sup> and
- d) they are also given the opportunities to have access to educational books and recreational activities.<sup>179</sup>

Child offenders who are placed in Probation Hostels or the Approved Schools have also access

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<sup>173</sup> Feedback provided by an officer from the Department of Social Welfare on the 25 April 2019.

<sup>174</sup> Feedback provided by an officer from the Department of Social Welfare on the 25 April 2019.

<sup>175</sup> Feedback provided by a Probation Officer from the Department of Social Welfare on the 26 April 2019. This standard operating procedure is known as Handling Children Who Are Involved in Crime (PK. JKM Utama 05 2008). However, the researcher was informed that the guideline is currently in the process of being reviewed.

<sup>176</sup> See Regulation 23 of the Child (Probation Hostels) 2017 and Regulation 33 of the Child (Approved Schools) 2017 respectively.

<sup>177</sup> See Regulation 22 (10) and (2) of the Child (Probation Hostels) 2017 and Regulation 32 (1) and (2) of the Child (Approved Schools) 2017 respectively.

<sup>178</sup> Regulation 21 of the Child (Probation Hostels) 2017 and Regulation 31 of the Child (Approved Schools) 2017 respectively.

<sup>179</sup> Although the right to have access to education and skills are available for child offenders who are serving sentences as provided in Regulation 10 of the Child (Probation Hostels) 2017 and Regulation 20 of the Child (Approved Schools) 2017 respectively, child offenders who are placed in the institutions pending trial only have access to reading materials and educational books to undertake their own revision. They do not go to daily schools or attend vocational classes due to safety and supervision reasons. However, by virtue of Regulation 12 of the Child (Probation Hostels) 2017 and Regulation 22 of the Child (Approved Schools) 2017 respectively, they are permitted to take part in daily recreational activities.

to counselling sessions in order to provide them with moral and emotional support.<sup>180</sup> Cases concerning children with disabilities who committed crime occurred very rarely and in the event they occur, these children will not usually be placed in the Probation Hostels or the Approved Schools. Instead, the police will usually release them on police bail to enable them to stay with their family members. Hence, in cases concerning children with disabilities, Probation Officers will contact the child's family members at the soonest to assist the family in bailing out the child offender and to bring the child offender to undertake medical examination. Additionally, female child offenders are placed in different institutions, separated from the male child offenders.<sup>181</sup>

## **IV. Conclusion**

The discussion in the preceding paragraphs highlights the interrogation practises which are conducted by the enforcement officers on child offenders during the pre-trial process. The research reveals that while the existing legal framework enumerates the laws governing interrogation practices, there are no specific procedures which can facilitate the enforcement officers when conducting interrogation with child offenders. The lacuna found in the laws contribute to the non-uniformity in the implementation of the interrogation practises on child offenders by enforcement officers. Further, varying degrees of knowledge, experience and skills are demonstrated by the enforcement officers when conducting the interrogation practises on child offenders. Even though some examples of best practices are cited above, it is questionable whether the child offenders are afforded adequate legal protection during the interrogation practices by the enforcement officers. In light of the discussion above, it is of vital importance for improvements to be made to the existing legal framework in ensuring that the best interest of the child offenders is taken into account during the interrogation process in order to minimise the adverse effects of coming into contact with the formal justice system on child offenders.

## **V. Recommendation**

There are many reform initiatives that can be undertaken in order to address the issues concerning children in conflict with the laws particularly at the interrogation stage of the criminal investigation. The recommendations proposed are as follows:

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<sup>180</sup> See Regulation 10 (4) (c) of the Child (Probation Hostels) 2017 and Regulation 20 (5) (c) of the Child (Approved Schools) 2017 respectively.

<sup>181</sup> Feedback provided by an officer from the Department of Social Welfare on the 25 April 2019.

## **A. Recommendations from International Bodies**

As part of the international community, Malaysia has submitted its report to a few human right bodies as part of its obligations, in ensuring that Malaysia complies with the international human rights standards, particularly concerning children in conflict with the laws. While there are no specific recommendations given concerning interrogation practises in Malaysia, the following paragraphs highlighted the general recommendations given by the international human rights bodies:

### ***The Human Rights Council***

In relation to ending violence against children, Malaysia has received general recommendations from the Human Rights Council in its Fortieth Session several countries which proposed the following measures;<sup>182</sup> (a) to **continue the enactment of legislation to protect children from all forms of ill-treatment and violence (Bahrain); (b) to continue efforts to improve the protection of children from abuse (Sudan); and (c) to continue efforts to combat violence against children (Maldives).**

### ***The Committee on the Rights of the Child***

In addition, in relation to the report Malaysia had submitted to the Committee on The Rights of The Child (hereinafter referred to as the Committee) during its Forty-Fourth Session, the Committee had proposed the following general recommendations:<sup>183</sup>

(a) Taking into account the General Discussion on Violence against Children within the Family and in schools held on 28 September 2001 (CRC/C/111, paras. 701-745), the Committee urges the State party to develop, as part of the National Plan of Action for Children, a comprehensive national strategy to prevent and respond to domestic violence, ill-treatment of children and child abuse, and further adopt adequate measures and policies to contribute to changing attitudes and cultural practices;

(b) With reference to the United Nations Study on violence against children, the Committee recommends the State party to undertake the following necessary measures:

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<sup>182</sup> A/HRC/40/11 Human Rights Council Fortieth Session (25 February–22 March 2019) Agenda item 6 Universal Periodic Review: Report of the Working Group on the Universal Periodic Review\* Malaysia.

<sup>183</sup> CRC/C/MYS/CO/1 Committee on The Rights of The Child Forty-Fourth Session: Consideration of Reports Submitted by States Parties under Article 44 of the Convention Concluding Observations: Malaysia 25 June 2007.

(i) to implement the overarching and setting-specific recommendations contained in the report of the independent expert for the United Nations study on Violence against Children (A/61/299) taking into account the outcome and recommendations of the Regional Consultations for East Asia and the Pacific (held in Thailand from 14 to 16 June 2005);

(ii) to use the recommendations made by the Regional Consultations as a tool for action in partnership with civil society and in particular with the involvement of children to ensure that every child is protected from all forms of physical, sexual and mental violence and to gain support for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse; and

(iii) to consider seeking technical cooperation from UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO).

### ***Mid Term Review of Priority Areas under the ASEAN Regional Plan of Action on the Elimination of Violence against Children (2016-2025)***

The Mid Term Review of Priority Areas under the ASEAN Regional Plan of Action on the Elimination of Violence Against Children (2016-2025) Report called upon Member States in ASEAN to ensure that the deprivation of liberty of children in conflict with the laws must only be resorted to as a measure of last resort, in line with the CRC 1989. Member States, including Malaysia are also advised to put in place diversionary measures, by developing legislative and policy framework to ensure that child offenders are not subjected to the adverse effects of coming into contact with the formal justice system.<sup>184</sup> In respond to various recommendations made by the international bodies, Malaysia is currently preparing to implement its first pilot study on diversion in order to prevent children in conflict with the laws from coming into contact with the formal juvenile justice system in Malaysia.<sup>185</sup>

## **B. Recommendations for Malaysia on Interrogation Practices in Children in Conflict with the Laws in Malaysia**

Drawing from the research that has been undertaken from both the primary and secondary sources of law, the following are the set of recommendations proposed for the purpose of improving the interrogation practises on children in conflict in the laws in Malaysia:

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<sup>184</sup> ASEAN Secretariat, *Ending violence against children in ASEAN Member States: Midterm review of priority areas under the ASEAN Regional Plan of Action on the Elimination of Violence against Children 2016-2025*, ASEAN, 2019.

<sup>185</sup> <https://www.nst.com.my/news/nation/2018/11/429285/diversion-project-rehabilitate-juvenile-offenders>



1. To develop a specific standard operating procedures/guidelines/code of practise for enforcement officers governing the conduct of questioning and recording of any statement under Section 112 of the CPC from the child offenders.

2. To develop a specific standard operating procedures/guidelines/code of practise in child friendly language in every police station in order to create awareness among the child offenders about their rights during questioning and recording of any statement.

3. To showcase the above specific standard operating procedures/guidelines in every police station in order to create awareness among parents, family members, Social Welfare Officers and members of the public with regards to the manner in which questioning and recording of any statement with child offenders should be conducted by the enforcement officers.

4. To strengthen the skills among all on ground enforcement officers on how to conduct questioning and recording of any statement from the child offenders. Only enforcement officers with special skills and experience is allowed to conduct questioning and recording of any statement from the child offenders.

5. To develop a specific standard operating procedure regulating the cooperation between the enforcement officers and the Social Welfare Officers in order to expedite the handling of cases involving child offenders.

6. To strengthen the cooperation between the enforcement officers and the Social Welfare Officers by ensuring that every police station in the district has a database of contact numbers of the Social Welfare Officers on duty who can deal with the child offenders.

7. To strengthen the cooperation between the enforcement officers and Social Welfare Officers working together in every district by displaying contact numbers of the officers on the websites of respective organisations, to facilitate access.

8. To amend Section 28 (A) CPC and to incorporate a clause that the exceptions under Section 28 (A) (8) of the CPC will not be applicable to child offenders.

9. To incorporate a new provision under Section 28 (A) (2) of the CPC by allowing the presence of the Social Welfare Officer to meet the child offender *before* questioning or recording of statement takes place.

10. To incorporate subjects encompassing the CRC 1989, international guidelines for juvenile justice system and Child Act (Amendment) 2016 in training modules for all new enforcement officers recruited under the Royal Malaysian Police to give effect to the implementation of the laws.

11. To incorporate subjects encompassing the CRC 1989, international guidelines for

juvenile justice system and Child Act (Amendment) 2016 in training modules for all officers in the institutions, emphasizing on the rights of the child offenders during remand when they are placed in the detention centres under both the Prison Department of Malaysia and the Social Welfare Department.

12. To incorporate subjects encompassing the CRC 1989, international guidelines for juvenile justice system and Child Act (Amendment) 2016 in training modules for all Judges and Deputy Public Prosecutors, handling criminal cases concerning child offenders..

# MYANMAR

## I. Introduction

The Government of Myanmar conducted its most recent census in March/April 2014. The results of the 2014 Myanmar Census show that the total population of Myanmar is 51,419,420. The largest age group is what the census called the economically productive (15 – 64 years) that made 65.6% of Myanmar population, followed by children (0 – 14 years) with 28.6% and elderly population (65+ years) with 5.8% (Ministry of Immigration & Population demographic/sources/census/2010\_phc/Myanmar/MMR-2015-05.pdf, accessed on February 14<sup>th</sup> 2016).

The Union of Myanmar acceded to the Convention on the Rights of the Child (CRC) on 16, July 1991. On 15 August 1991, Myanmar became a State Party to the CRC. In line with the CRC, “the Child Law” was enacted on 14, July 1993 and followed by a promulgation of rules of procedure on 21 December 2001.

The National Committee on the Rights of the Child and its Working Committee were formed in line with the Child Law in 1993 for effective implementation of provisions of the Child Law. State, division, district and township level committees were also established for the same purpose. The National Committee on the Rights of the Child provides guidance to government agencies on the implementing of the law, coordinates the activities of government agencies, social workers and NGOs, and cooperates with United Nations agencies, international organisations, collects data and information from relevant government departments and periodically reports to the Government on the work of the Committee. etc.

The Department of Social Welfare (DSW) has the mandate for child protection according to the Child Law. National Committee on the Rights of the Child was reorganized with 26 members including Vice Chairman of Myanmar National Human Rights Commission Secretary of Women and child Rights Committee, Amyotha Hluttaw and two Chairmen of NGOs in 9<sup>th</sup> February 2017 as per Order No (13/2017) of President Office. Furthermore the members of National Committee on the Rights of the Child were reorganized again by adding five new members including 4 experts and a director general of the Department of Protection of the Rights of Ethnic, Ministry of Ethnic Affairs by the Cabinet Notification No.66.2017.

Under the supervision of National Committee on the Rights of the Child, (15) States and Regions, (74) districts and (318) townships level committee on the rights of the child were established for implementation on child rights.

Although the existing Myanmar Child Law (1993) defines a child as a person who has not attained the age of 16 years and a youth as a person who has attained the age of 16 years but has not attained the age of 18 years, the new child right bill has proposed to increase the age to 18 years in order to be in line with the provision in UNCRC.

The Section 28 (A & B) of Myanmar Child Law (1993) defines exemption from Penal Action as nothing is an offence which is done by a child under 7 years of age and nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. But in the new child rights bill, the age for exemption from penal action is increased to the age of 10 years.

Except the family income generation activities, the Section 13(A) of Shop and Establish Law (2016) defines the minimum working age as 14, in order to provide the legal protection of working children.

Section 375 of penal code, in rape case the term “whether the girl is allowed or not who is under 14 years” has been changed to “less than 16 years”. Moreover, apart from this section 375 “the man who sexual intercourse with his wife under 13 years age” has been changed to “under 15 years age”.

Myanmar currently does not have specific provisions addressing domestic violence against women law and violence against children law.

According to Myanmar customary law: There is no defined age limit for boys and girls to enter into marriage but need to meet required conditions, Girls between 14 and 20 years need to consent from parents and above 20 years without consent of parents to enter into marriage. Although there are different ages for marriage, under the Penal Code it is not allowed to marry under 15 years old with or without consent of parents.

Myanmar has a provision in the Penal or Criminal Code (Section 366) that criminalizes forced marriage of a woman in the specific circumstance that is affected through kidnapping and abduction, with a penalty of up to 10 years imprisonment and a fine (Myanmar Penal Code section 366).

In Myanmar, child pornography falls within the definition of ‘obscene articles’ (Section 292, Penal Code). The Myanmar Child Law (1993), section 66 (f) states that: *“Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend to 2 years or with fine which may extend to kyats 10,000 or with both - using the child in pornographic cinema, video, television or photography”*.

Myanmar in accordance with international obligations enacted the Anti-Trafficking in Persons Law 2005. Penalties for child trafficking offences in Myanmar contained Section 24 and punishable by 10 years – life imprisonment. Anti-Trafficking in Persons Law 2005 is comprehensive and include all acts contributing to child trafficking as set out in international law, namely recruitment, transportation, transfer, harbouring and receipt.

Myanmar is one of member States that does not have separate legal instrument specifically covering children in conflict with the law. However, Myanmar covers juvenile justice in the Child Law 1993 Chapters VI, IX, X, XII, XV and XVIII which contain provisions relating to children in conflict with the law, including the minimum age of criminal responsibility ( 7 year of age), court procedures for children in conflict with the law, probation and sentencing. Articles 82-84, Penal Code, set out the minimum age of criminal responsibility.

## **II. EVAC Prevention Measures**

Under the supervision of National Committee on the Rights of the Child, Child Rights Committees meetings of state and region, district and township levels are being organized by the state and regional social welfare offices. Sensitization programs for government employees and community members are being organized and probation officer reports for juvenile justice are submitted upon the respective court's instruction. During 2011 to 2018, 1134 times of State/ Region, District, Township CRC Committee meetings, 472 times of child Protection trainings and 460 times of Child Protection Workshops were held in all States and Regions where Myanmar has 7 States, 7 regions including 3 sub- administrative zones and one Naypyitaw Capital zone.

UNICEF supported the Department of Social Welfare (DSW) to strengthen and expand the child protection case management system from 37 Townships in 2016 to 46 townships in 2017, with more than 100 DSW and NGO social work case managers trained and deployed to the field. This case management system was set up in 2015 as a flag-ship of the National Social Protection Strategy of Myanmar. The Standard Operating Procedures (SOPs) of the national case management system are currently being revised to broaden the scope of its service provision for children and women. (MTR National Consultation – Myanmar, 5 April 2019).

In recent years, there have been some initiatives on **de-institutionalization** in Myanmar including the 'Prevention of Family Separation' awareness raising project – an inter-agency initiative led by the Department of Social Welfare and UNICEF, with support from the Core Committee which includes the Department of Social Welfare, Terres des Hommes Lausanne, The Code, Myanmar Motion Picture Organisation, Ratana Metta, Myanmar Professional Social Workers Association, and Myanmar Tourism Federation.

There have also been efforts to improve quality of care in residential care, such as the development in 2007 of the '**Minimum Standards of Care and Protection of Children in Residential Care**' by the Department of Social Welfare with UNICEF and partners, which was completed in 2009. Though approved by Department of Social Welfare, the standards have reportedly not yet been issued as a directive or disseminated widely. The Minimum Standards cover different areas important to provide the best possible care to children in residential care facilities (Myanmar Department of Social Welfare and UNICEF Myanmar (2011) - 'The Situation of Children in Residential Care Facilities in Myanmar, Residential Care Survey Report, 2016.).

**On alternative care for children**, the first National Foster Care Guidelines were developed and finalized and are awaiting final endorsement. The foster care model will be in full operation with 9 potential foster care parents trained in Yangon and Mandalay region and placement of children to start in January 2018. (UNICEF Myanmar – Delivering Results for Children (2017) - Programme of Cooperation between the Government of Union of Myanmar and UNICEF myanmar/Delivering\_results\_for\_children\_2017).

Foster Care Guidelines have also been developed by DSW and being piloted in 4 townships. In addition, alternative care with focus on regulated foster care is also being implemented. (MTR National Consultation – Myanmar, 5 April 2019).

In respect of a new born child in the State, the parents or guardian shall have his birth registered at the Ward/ Village Administrative offices and get the document for the birth in 7 days. These offices compile the list of registration and submit to the township offices by the Ministry of Labour Immigration and Population for each month. The parent or guardian of a new born baby shall apply the registration at the respective township office of the Ministry of Labour, Immigration and Population and this office has to fill in the household list through scrutiny.

If whoever residing in Myanmar is entitled under the existing Myanmar Citizenship Law(1982), citizenship is granted and citizenship Scrutiny Card is issued. Although citizenship is granted if he or she is entitled under the provisions of Myanmar Citizenship Law, the citizenship scrutiny card is issued according to the Section 9 of that law, only when his or her parent or guardian apply for issuing it at the Township offices of the Ministry of Labour, Immigration and Population after attaining the age of ten years.

In order to accelerate the process of issuing the National Verification Card for those who to be scrutinized for their citizenship in Rakhine State, the Steering Committee for issuing National Verification Card was formed under the chairmanship of the Ministry of Labour, Immigration and Population on 8.2.2017 by the notification on 21/2017.

Myanmar's civil registration system and the Child Law is vague about who is responsible for notifying the birth of a child and on **birth registration**. There is need to review the whole civil registration system (births, deaths, marriage, etc.) to ensure that it is in compliance with the UN-CRC and international standards. There have been some efforts to simplify the system of births and deaths by the Ministry of Planning and Finance, with support from UNICEF and in collaboration with the Ministry of Health and Sports and a new "Manual for the Birth and Death Registration System" has been prepared. ( UNICEF Myanmar – Delivering Results for Children (2017).

A national **Positive Discipline Taskforce** has also been formed in May 2018 to develop and adapt positive discipline approaches and methods for Myanmar. Save the Children and DSW have promoted positive discipline community awareness trainings for caregivers, including monastic institutions in Pakuku, Magwe, Kayah and in emergency areas, including Rakhine State and Northern Shan State. Word Vision Myanmar and Save the Children together with DSW are also developing a Positive Discipline Manual. (MTR National Consultation – Myanmar, 5 April 2019).

As the number of child rape cases has been increasing, the coordination meeting headed by Union Minister for Social Welfare, Relief and Resettlement, was organized on 28.10.2017 and meetings headed by Permanent Secretary were organized on 29.10.2016 and 30.10.2016 with the objectives of prevention and rapid response. These meetings were attended by government ministries, international organizations and civil societies. Action Plan for prevention of child rape cases was formulated, awareness sessions were conducted, pamphlets were distributed and billboards were displayed in state and regions. Since 2017 to April 2019, 427 billboards were displayed. Cash assistances are being provided to the victims of child rape cases. For a period from 2017 to 2019, total amount of 107,558,000MMK was provided to 601 victims.

In helping people with social problems using social work methods the Department of Social Welfare opened a 24-hour help line (a telephone service) starting from 30.11.2016 with the objectives of disseminating social services information and helping people with social work methods through direct contact. Up to April 2019, 1104 requests were helped or referred.

The Myanmar Maternal and Child Welfare Association has conducted **awareness raising for teachers** on child care and development. Teachers disseminate information and knowledge back to the parents. The Association has also formed mobile teams to raise awareness on the impact of violence against children – including domestic violence – and held monthly educational talks organized with children and adolescents. Currently, this programme is being implemented in 8 townships in Nay Pyi Taw. The future plan is to form such mobile teams in every State and Region in order to ensure to reach every village.

The Ministry of Hotels and Tourism and Myanmar Responsible Tourism Institute in collaboration with UNICEF conduct awareness raising on **child safe tourism** with focus on prevention of orphanage and child sex tourism in 6 tourist hotspots. The target audience for this programme include key stakeholders from travel and tourism sectors – viz, hotel staff, tour guides (both national and regional), transport sector, etc. Child Protection Guidelines have also been developed in 15 selected hotels in Yangon and Mandalay.

Save the Children has been played an important role in supporting the shift towards Government systems that promote and protect children at all levels across Myanmar, expanding effective work on child demobilization and child trafficking and further strengthen case management, building a cadre of workers within the Government's Department of Social Welfare, etc. Save the Children has been leading the promotion of a systems approach to child protection, working with the DSW on the development of case management workers at township level across the country



– in effect building a cadre of social workers for Myanmar. The funds for all case management work were provided by UNICEF. Save the Children work more directly with DSW in townships where there is no NGO presence. In 2017 efforts capitalized on emerging inter-connections between Child Protection (case management), child poverty (maternal and child cash transfers) and health/nutrition (outcomes for children). In relation to corporal punishment in 2017 Save the Children supported the training of 587 religious leaders including Buddhist monks and nuns, Christian priests and Islam religious leaders as well as 428 monastic schools teachers, 1500 parents on the elimination of corporal punishment and the use of positive discipline (Save the Children, Bangkok).

World Vision and DSW have formed community groups (Child Protection Advocacy Groups) – including children’s groups – to strengthen community-based child protection systems. This is being implemented in 33 townships in 12 States and Regions, in targeted Area Development Programme areas only (MTR National Consultation – Myanmar, 5 April 2019.).

### **III. EVAC Protection Services**

**Children Protection Programme for Child Victim and Child Witness in the Trial:** Supreme Court is cooperating with the UNICEF to protect the child victim and child witness by introducing the video trial in Court. In 2016-2017, Myitkyina District Court, Mawlamying District Court and NyaungOo District Court, and in 2017-2018, four District Courts from Yangon Region and Dhakhina District Court from Mandalay Region are programmed to introduce the video trial with aid of UNICEF, when the trials are held before the Court as underage rape cases and trafficking in person are sued in District Courts.

**Detention and Punishment:** In order to avoid child’s fear on the court and mental trauma in questioning the child witnesses, the Union Supreme Court has planned to consult with international experts on court’s physical arrangement and the way of questioning and order the guidelines to all judges. Section 45 of the existing Myanmar Child Law (1993) mentions that notwithstanding anything contained in any existing law, a death sentence, transportation for life or a sentence of whipping shall not be passed on any child. In Section 46 as well, it is mentioned that a child shall not be ordinarily be sentenced to imprisonment. Only if the Juvenile Court is satisfied that the child has committed an offence which is punishable with death or transportation for life under any existing law and that the child is of so unruly or depraved a character or

absolutely uncontrollable, he shall be sentenced to imprisonment. Such sentence of imprisonment shall not exceed a term of 7 years.

In Section 62(c & d) of the existing Myanmar Child Law (1993), the provisions are mentioned that the probation officer has to report to the relevant social welfare officer, if it is found that a child is in need of protection and care under this law and inform the relevant officer or the juvenile Court, if it is found that there is likelihood of danger befalling any child or that a child is in danger.

It is provided in section 361 of the Penal Code and section 28 of the Law amending the Penal Code that whoever takes or entices any minor under fourteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Regarding child abuse, doing any forms of punishment including canning to children is regarded as an offence and penalties are mentioned in the new child rights bill.

## **Drug Abuse**

Section 22 of the Narcotic Drugs and Psychotropic Substances Law (1993) states that if any of the provided in sections 16 to 21 have been committed making use of children less than 16 years, the offender shall be liable to the maximum punishment provided for such offence. Punishments related to the cultivation, production, distribution and sale by using children under Section 22 are protection the children from drug abuse. Awareness programmes, community discussions, curriculum development and exhibitions have been conducting through cooperation among Central Body for the Prevention of the Danger of Narcotic Drugs and Psychotropic Substances, Ministry of Information, Ministry of Education and Myanmar Police Force in order to protect children from drug use.

Myanmar government implemented 15 years plan (1999-2014) to eliminate opium poppy cultivation. This Plan has now been extended a further five years (2014-2019). 3 year Rehabilitation drug elimination plan has been implemented for ex-drug addicts from 2017-2018 to 2019-2020. In the plan, there are many activities such as upgrading of Rehabilitation ex-drug addicts, community based Rehabilitation and day care services.

Since 1988, seized narcotic drugs are destroyed and burnt in Myanmar every year. The total value of the narcotic drugs destroyed and burnt from 1988 to 2017 was worth over 19008.259925 million US dollars.

Honouring International Day against Drug Abuse and Illicit Trafficking fall on 26.6.16, from 26th May to 26th June, public awareness campaigns on drug abuse were organized by the rehabilitation centre for ex-drug addicts of department of social welfare, voluntary drug control associations, and local authorities for basic education level students, six time in Yangon Region, four time in Mandalay Region, three time in Kachin State, two time in Shan (North), 19 time in Shan (East), seven time in Shan (South) one time in Bago (West) and one time in Nay Pyi Taw. In total, there are 8781 community members educated. Moreover, Drug Enforcement Division provided (15502) public awareness raising and educational talk's about the danger of narcotic drugs to (1683219) persons.

### **Protection from Abuse and Neglect**

Ministry of Education is raising awareness on avoiding corporal punishment in schools. The provisions for protecting children from neglect and abuse are included in the child rights bill.

In line with Declaration for Elimination of Abuse to Women and children, the coordination meeting with civil society organizations was held on 19<sup>th</sup> December 2016. Eight regional plans for Elimination of Abuse will be implemented.

Regarding the protection of children from abandon, section 317 of the Penal Code prescribes that, whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

### **Protection from Sexual exploitation and sexual abuse of children**

Regarding sexual exploitation and sexual abuse related to children, the Anti-Trafficking in Persons Law (2005) states as follows:

Section-24: Whoever is guilty of trafficking in persons especially women, children and youth shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of imprisonment for life and may also be liable to a fine.

The protection of children from sexual abuse is included as a chapter in the child rights bill and punishment for sexual abuse to children is proposed as 20 years imprisonment.

Anti-Trafficking in Persons Division, Myanmar Police Force, was structured as a head office, (3) sub division offices, 18 platoon offices, and 11 quarter offices to perform anti trafficking measures. In addition, there are 3 child protection squads to implement especially of sexual exploitation and sexual abuse of children. Child protection tasks are carried out in line with the Child Law (1993).

Relating to tourism, the police officers have been provided technical training to protect the children from sexual abuse and assigned them in State and Region respectively to protect not only tourists but also monitor the suspected offenders. Actions are taken to those people who are in the black-list with sexual related matters. As the number of child rape cases has been increasing in 2016, the coordination meeting headed by Union Minister for Social Welfare, Relief and Resettlement, was organized on 28.10.2017 and meetings headed by Permanent Secretary were organized on 29.10.2016 and 30.10.2016 with the objectives of prevention and rapid response. These meetings were attended by government ministries, international organizations, and civil societies. Action plan for prevention of child rape cases was formulated, awareness sessions were conducted, pamphlets were distributed, and billboards were displayed in states and regions. Since 2017, 322 billboards were displayed. Cash assistances are being provided to the victims of child rape cases. For a period from 9.2.2017 to 12.7.2017, total amount of 1,950,000 MMK was provided to 21 victims.

In helping people with social problems using social work methods, the Department of Social Welfare opened a 24-hour help line (a telephone service) starting from 30.11.2016 with the objectives of disseminating social services information and helping people with social work methods through direct contact. Up to July 2017, 161 requests were helped or referred.

## **Sale, Trafficking and Abduction of Children**

The ASEAN Convention against Trafficking in Persons, Especially Women and Children which has been signed by 10 ASEAN member states on 21.11.2015 was ratified on 6.1.2017.

A process between Myanmar and India to sign a MoU on prevention of Human Trafficking, Rescue and Rehabilitation of victims, repatriation and reintegration of victims is going on.

According to section 5 (a) of Myanmar Anti Trafficking in Persons Law, the Central Body for Suppression of Trafficking in Persons was formed on 11st February, 2006. After new government taking office, Central Body was reformed with the permit of official order No. (18/2011), dated 27th May, 2011 by the Republic of the Union of Myanmar. Likewise, Anti Trafficking Task Force at State/Regional, District and Township level were also formed on 13rd October, 2011. And members of Central Body are Director General of Union Supreme Court with official order No. 26/2012, dated 16th March, 2012 by the Republic of the Union of Myanmar, president of Myanmar Women Affairs Federation with order No. 42/2013, dated 30th May, 2012, and deputy Minister of Ministry of Defence with order No. 160/2014, dated 29th December, 2014.

To effectively eliminate internal and cross- border Trafficking in Persons and to cooperate in protecting against human trafficking with all aspects, Myanmar Five-Year National Plan of Action to Combat Trafficking in Persons (2007-2011) and Myanmar Second Five-Year National Plan of Action to Combat Trafficking in Persons (2012-2016) were formulated led by Anti-Trafficking Unit- ATU and were being implemented by laying down two strategies, three tactics and five areas.

Actions on Anti-Trafficking in Persons were accelerated by upgrading the Anti-Trafficking Unit- ATU which was formed in 2004 to the Division of Anti-Trafficking in Persons on 24<sup>th</sup> Jan 2013. At the ASEAN Summit held in Malaysia on 20<sup>th</sup> November 2015, the President of the Myanmar signed the ASEAN Convention of against Trafficking in Persons, Especially Women and Children and Myanmar became a signatory.

To promote the understanding of police officers on sale, trafficking and abduction of children and their practical skills, the chances for attending trainings and workshops were provided to them. In addition to that, child protection activities are being carried out applying the international experiences gained from international trainings and workshops.

The Department of Social Welfare is implementing the repatriation, reintegration, and rehabilitation activities for trafficked victims in cooperation with Myanmar Police Force, Myanmar Women Affairs Federation, UNIAP, UNICEF, International Organization for Migration, World Vision and Save the Children. During a period from January 2011 to March 2016, the Department of Social Welfare received 280 trafficked children from China, Thailand, Indonesia and other countries.

After that, the victims are reintegrated into their parents or guardians by the respective Regions/States Officers of DSW in collaboration with UNICEF, IOM, Save the Children and World Vision. In doing so, social workers in State/ Region are responsible for trafficked victims especially women and children who has not attained 18 years in returning and reintegrating into their society. The Department of Social Welfare is taking care of victims who cannot reintegrate into their parents and guardians in its institutions and also providing the programmes such as vocational training, formal education and employment opportunities based on their needs. There were (11) trafficked children who were being taken care at institutions under the Department of Social Welfare.

From January 2011 to March 2016, follow-up care services were provided to 63 trafficked children, and reintegration supports were provided to 9 victims with education needs, 2 victims in need of health care and 22 victims in need of economic supports.

National Guidelines on Return/ Repatriation & Reintegration of Trafficked Victims was also launched by the Department of Social Welfare under the Ministry of Social Welfare, Relief and Resettlement in September, 2012.

In order to provide the needy information, psycho-social support, seek for the job opportunities for victims and make the connections between the victims and victims' support agencies, Department of Social Welfare has established the Information Center for trafficked victims at the Social Welfare Training School, Yangon in May, 2014 in collaboration with JICA (Myanmar), and provided assistances to (14) trafficked children and other (15) children with other social needs from May, 2014 to March, 2016. Regarding the number of victims and types of supports, there were (3) persons for education, (2) persons for Birth Registration, (4) persons for vocational education and (1) person for National Registration Card. Manual Book on TIP was launched on 3rd November, 2015 for service providers and personnel concerned in related organizations who involved in victims' protection process.

As a result of bilateral cooperation between Myanmar and Thailand from 2008 to March 2016, 18 meetings on repatriation, reunification, and reintegration of trafficked victims, 4 meetings on the standard operating procedures, 3 validation meetings on 10 annexes of standard operating procedures were organized. Moreover, Myanmar case workers made 25 visits to shelters for Victims in Thailand. Through these joint efforts between Myanmar and Thailand, repatriation works became faster.

In order to develop the clear responsibilities and procedures between Myanmar and Thailand, Main Document of Bilateral Standard Operating Procedures on Management of Cases the Repatriation and Reintegration of victims of trafficking has been drawn up and signed on 15th March, 2013. Myanmar and Thailand finalized the ten annexes of SOP on 20th February, 2016. Myanmar and Thailand already developed victim interview case form on 16th May, 2013 with a purpose of using in Mekong Region.

## **Working Children**

Factories and General Labour Law Inspection Department is taking actions to fully achieve the rights of workers in factory, shop and establishment provided by existing laws, regulations and rule and taking measures to protect working children and youths.

Factories Act, 1951, was amended in accordance with international standards and current situations and the Shop and Establishment Law 2016, and the Wages Law 2016 were enacted.

The provision **“No child who has not completed his thirteen year shall be required or allowed to work in any factory”** contained in section 75 of the Factories Act 1951 has been amended as **“No child who has not completed his fourteen year shall be required or allowed to work in any factory”**. **“Any person who is under 14 years of age shall not be employed or allowed to employ at any shop or establishment”** is provided in Sub-section (a) of section 13 of Shops and Establishments Law, 2016 and minimum age to work is enacted as 14 years of age.

Sub-section (2) of section 24, section 29, sub-section (1) of section 36, sub-section (b) of section 52, section 75, section 75-a, section 76, sub-section (1), sub-section (2) and sub-section(3) of section 78, sub-section (1), sub-section (2) and sub-section(4) of section 79, sub-section (1), sub-section (2), sub-section (3) and sub-section(4) of section 80, sub-section (1) and sub-section

(2) of section 81 and section 82 of the Factories Act, 1951 state provisions for child and youth regarding working time, rest time and occupational safety, employment of child and young persons on prohibiting or restricting work places and methods of the employment of child and young persons. Provisions are attached as annex “J” of the report.

Sub-section (a) and sub-section (b) of section 13 and sub-section (a), sub-section (b), sub-section (c), sub-section (d) and sub-section (e) of section 14 of shops and establishments Law, 2016 is provided for the employment of child and youth. Provisions are attached as annex “K” of the report.

As ILO Convention 182 on the worst form of child labour has been ratified, child workers are being protected not to be employed the worst forms of child labour by doing awareness raising activities and monitoring. Myanmar is cooperating with the ILO for the programme on the elimination of child labour. The development of hazardous work and workplaces list for child labour is being carried out through this programme. Moreover, it is in progress to implement the National Action Plan on Child Labour in 2017.

While the inspectors are giving awareness raising activities in their respective areas to eliminate child labour, ILO is carrying out data collection and researches in pilot project areas.

Employing child labour without certificate of the responsible doctor has been prosecuted in accordance with the law. The department is monitoring continuously child labour under 18 years who are working in factories, industries, shops and establishments which are entitled under the law. We are carrying out awareness raising activities to employees and the public in order to cooperate and comply with the law relate to child labour.

### **Other forms of Exploitation**

In order to protect children from the other forms of exploitation which are not included in the article 32,33,34,35 of CRC, Section 16(a) of Myanmar Child Law states that in order that every child shall not be subjected to arbitrary infringement of his honor, personal freedom and security, relevant Government departments and organizations shall provide protection and care in accordance with law.



In Myanmar children are protected from labour and sexual exploitations by Myanmar Child Law and Anti-trafficking in Persons Law, and Factories Act 1951. But government is monitoring the working hours of the working children to make sure they have appropriate balance. The sensitization programmes on human trafficking are being conducted for those children living in remote and rural areas. But low level of education and limitation in doing awareness sessions are the challenges facing.

## **Observation on Rehabilitation**

To make sure that every child fully enjoys the rights of the child, Section (26) of Myanmar Child Law mentions as follows:

- a. The Government departments and organizations shall perform their respective functions as far as possible;
- b. Voluntary social workers or non-governmental organizations also may carry out measures as far as possible, in accordance with law.

The Department of Social Welfare is implementing institution based child protection for those children with special needs, and children have being reintegrated into their community in collaboration with TDHL-L.

In carrying out institution-based and community-based activities for children with disabilities, (7) training schools for children with disabilities are being operated by the Department of Social Welfare and the Department is providing technical and financial supports to the training schools for the children with disabilities operated by voluntary and non-government organizations.

In doing community-based rehabilitation in cooperation with local and international non-government organizations, the Department of Social Welfare is taking responsibilities for policy formulation, technical supports, and coordination with regional government departments.

## **Children and young people's participation**

The voices of youth was mobilized as an advocacy force through the U-Report Myanmar. About 18,000 young U-Reporters signed up and participated in weekly polls. Partnerships with Teen Radio and MRTV were established to discuss the polls results. A forum of 50 U-Reporters and

80 Parliamentarians was delivered to discuss how Parliamentarians could use U-Report to better understand the needs of young people in their constituencies (UNICEF Myanmar (2017) – Delivering results for children).

## **Children from Minorities or National Ethnicities**

In accordance with the guidance of the Chairman of the Central Committee of the Development of National Races, the Education and Training Department, Ministry of Border Affairs has been taking responsibility to train basic and advanced education for the youths from border areas to be intellectuals and intelligentsia and be able to serve for the development works in their respective areas, while it is nurturing vocational education to young women from border areas.

In order to implement the development activities for the national races and border areas, government enacted the Development of Border Areas and National Races Law on 13.8.2993. It was amended by the State Peace and Development Council on 22.7.2015. Development Master Plan for the first 3-year plan (1993-1994 to 1996-1997), the first 5-year plan (1996-1997 to 2000-2001), and the second 5-year plan (2001-2002 to 2005-2006) has been implemented. After that 6 phases of 5-year plans starting from 2001-2002 to 2030-2031 has been formulated. Again, to be in line with the changing situations, a long-term 20-year plan for 2011-2012 to 2030-2031 is being implemented.

University for the Development of National Races of the Union (Sagaing), Nationalities Youth Resource Development Degree Colleges (Yangon, Sagaing), Central Training School, (44) Training Schools for the Development of Nationalities Youths from Border Areas, (9) Technical Training Schools for Nationalities Youths in Border Areas, (29) youth training Schools (Parahitta) which is under the supervision of the ETD and (43) Vocational Schools of Domestic Science for Women have been opened throughout the nation.

Aiming at enhancing the academic capacity of teaching staff members since after being upgraded to the university level, the passed out students of the university were facilitated for pursuing Master Degrees in own university and PhD programs in other universities, and foreign trainings as well. In addition to that, teachers have the chance to be promoted during the training period. 35 students for M.Phil (Education) program, 95 students for M.A (Education), 130 students in total graduated and they were allowed for further higher studies. Since 1964 to 2017, total number of 13128 students graduated and 1395 students in 2017-2018 academic year and

14 students M.A (Education) batch (18), 119 students in 1-year teachers' training program in 2018-2019 are pursuing their programs.

## IV. EVAC Legal Framework and Legal Aids

With regards to **laws in full conformity with applicable international human rights standards**, Myanmar's draft of the revised Child Law 1993 is currently under review. The Law "Child Rights Bill" includes more precise definitions on all forms of violence and specific chapters on violence against children, adoption, alternative care and diversion in compliance with the Convention on the Rights of the Child. The new Child Rights Bill was finalised by the Ministry of Social Welfare, Relief and Resettlement (MSWRR) and is pending approval in Parliament and expected to be adopted in the near future. (UNICEF Myanmar (2017) - Delivering results for children). Myanmar is also drafting a Violence Against Women Law and currently revising the Anti-Trafficking in Persons Law.

**On diversion and alternative measures**, Myanmar's Child Law and Rules are currently under review. Suggested amendments include, among others, raising the minimum age of criminal responsibility and incorporating the principle of detention as a last resort, diversion, alternatives to post-trial detention and a stronger imperative for legal aid. The Committee on the Rights of the Child has noted its concern about the low age of criminal responsibility at 7 years, and among other things urged Myanmar to "ensure that pre-trial detention is used only for serious crimes and that alternative measures are used for other crimes (Committee on the Rights of the Child, Concluding Observations – Myanmar, 2012.).

However, this is reportedly rarely used. The Child Law includes some alternatives to post-trial detention including admonition, fine, custody of parents on bond and probation, which are reportedly used often.

There are also measures to minimize time in post-trial detention included in the Child Law, such as release to parents with or without bond, although these are reportedly not often used and not systematically.

## **Juvenile Justice System Strengthening**

After ratifying the UNCRC, Myanmar Child Law 1993 was enacted in order to materialize the child rights mentioned in the Convention. According to the Section 3 (f), the juvenile cases are handled separately aiming at the correcting the moral characters of the child offender. In Yangon and Mandalay, there are specialized Child Court and township judges are delegated with power to handle the juvenile cases in a special room in the remaining townships. The table of juvenile cases handled by the Courts from 2011 to 2016 is mentioned in the annex (I).

Authority concerned from Yangon Regional Justice Hultaw attended the 1st Myanmar Thailand Bilateral Meeting on Strengthening Law Enforcement and Criminal Justice Cooperation in Combating Trafficking in Persons held from 12.11.13 to 15.11.13 in Yangon Hotel, Yangon Region. An official from Yangon Regional Justice Hultaw participated in the 1st Myanmar Joint Coordination Meeting on Child Labour Eradication at ILO Conference Room in Kanbe Street, Yankin Township. Authority concerned from Yangon Regional Justice Hultaw also attended Comprehensive Monitoring and Evaluation Plan (CMEP) for Child Labour Eradication which was held from 5.5.14 to 7.5.14 at Summit Parkview Hotel, Yangon. Relevant personnel from the Union Supreme Court participated in Meeting for the Validation of the Operational Guideline and Work Plan of the National Technical Working Group on Child Labour (NTWG-CL) on 29.1.15 at ShwePyi Taw Hotel, Nay Pyi Taw. Juvenile judge from Yangon Juvenile Court attended the Quick Analysis on Juvenile Justice of My-PEC on 8.6.2015. On 26.9.15, the authorities from Kachin State Justice Hultaw participated in Juvenile Justice Inter Agency Working Group Meeting held in City Park Royal Restaurant in Myitkyina. Also, authorities from Mandalay Regional Justice Hultaw participated in Juvenile Justice Inter Agency Working Group Meeting conducted in Shwe Ye Mon Hotel, Mandalay on 12.12.15.

Regarding juvenile justice, the Union Supreme Court in cooperation with UNICEF has a plan to distribute the pamphlets on juvenile justice aiming at promoting the public awareness. There pamphlets will be available at the information counters of the courts.

## **Case Management Activities**

Department of Social Welfare introduced case management system was launched in 2015 as community based system for child protection and at the present, (188) case managers was assigned in each township. Standard Operation Procedures (SOP).

According to this plan, the cases of child physical and sexual abuses cases of children separated from their parents and guardians, cases of children needed to reunify with family are being managed in cooperation with UNICEF, Save the Children, World Vision, Myanmar Red Cross Society, Ratana Melta Organization, Karuna Mission Solidarity Service, Yangon Kayin Baptist Women Association. In addition to that community awareness programs and linking with resources available in the community are also being made. During 2015 to May 2019 well-trained case managers from DSW and well- in conflict and the law and (1908) child cases that are in conflict with the law. At present with (4448) times a total of (155484) people from states and regions were given child rights awareness talks Information Management system is also being developed in DSW institutions.

With regards to **child, age- and gender-sensitive reporting and complaint mechanisms**, there is a confidential complaints mechanism for children in Department of Social Welfare institutions through boxes for children to make anonymous complaints, which are reviewed by institution directors. This is one of the standards of the Minimum Standards of Care and Protection of Children in Residential Care Facilities in Myanmar developed and published in 2009 by the Department of Social Welfare and UNICEF\*. ( ASEAN Commission on Women and Children (2016) - 'Assembling the future: Child protection system in ASEAN Member States, a baseline study', 2016, p.198.)\*. However, there is concern that there are no safeguards in place for ensuring "safe access to reporting mechanisms" for children – especially for the most marginalised in local levels. The GSHS (Global school-based Students Health Survey – WHO) data indicates that emotional and psychological abuse and violence against children and students in schools is of increasing concern in Myanmar. Boys seem to experience more physical bullying, while girls more emotional and psychological bullying. DHS data for Myanmar also indicates that 15 to 19 year old boys and girls are three times unlikely to disclose or seek help in case of a violent experience. Moreover, seeking help from violence is significantly lower among girls in the age group of 15 to 19 years which compared to adult women. Only 8 per cent of this age group have ever sought help to stop the violence, as compared to 22 to 29 per cent in other age groups (MTR National Consultation – Myanmar, 5 April 2019 (UNICEF Myanmar)).

The 'Guidelines on Registration and Support for Voluntary Organisations and the Minimum Standards of Care and Protection for Children (MSC) in Residential Facilities were developed with the support of UNICEF, aimed at bettering the lives of children in residential care (UNICEF Myanmar (2017) – Delivering Results for Children - Programme of Cooperation between the Government of Union of Myanmar and UNICEF. Online at: [https://www.unicef.org/myanmar/Delivering\\_results\\_for\\_children\\_2017](https://www.unicef.org/myanmar/Delivering_results_for_children_2017)).

The Myanmar Police Force has given priority to child rape cases and punishment has been increased to 20 years and above for perpetrators. The International Police Unit is tasked to respond more effectively to cases of tourists committing crime against children and facilitating the regular exchange of information on black-listed tourists and travellers in Myanmar. The Anti-Trafficking Task Force has also conducted a series of awareness raising on the prevention of child rape (MTR National Consultation – Myanmar, 5 April 2019).

## **Workforce Strengthening**

The respective ministries of Government of Myanmar including Department of Social Welfare, Central Institute of Civil Service (CICS) (Upper and Lower Myanmar) General Administration Department, Police Academy and Union Attorney General Office are conducting child rights awareness raising programme based on their tasks.

During the last two years, over 36 district court judges and 392 township police officers were trained in how to effectively respond to child sexual abuse, reportedly on the rise in Yangon, Mandalay, Magway, Sagaing, Bago and Ayeyarwaddy. In addition, Department of Social Welfare case managers have also received training as part of the national case management system development in Myanmar.

UNICEF Myanmar supported the development of a **Mine Risk Education (MRE)** application for iOS and Android mobile devices to more efficiently scale up MRE to reach hard-to-reach population in communities affected by landmines. The application also enhances teachers' ability to access critical information.

The Myanmar Police Force and civil society organization have also received trainings to design communication/information materials aimed at preventing the **trafficking of women and girls** to China and increasing awareness on safe migration.

The MSWRR in collaboration with the Ministry of Health and Sports (MOHS) has jointly planned and rolled-out an integrated model to prevent and manage sexual violence against children in Mandalay (UNICEF Myanmar (2017) – Delivering results for children.).

## V. Conclusion

### Measures on System Strengthening

An updated report on the situation of children in Myanmar was produced in 2017 drawing on DHS and national household surveys and data on children. The analysis was used extensively to inform policy discussions within several ministries, and to inform the government's vision for addressing key child rights issues. Specifically, the evidence on low budget allocations for key social sectors was used to successfully advocate for the raising of budget allocations for children to the MSWRR in the 2017-18 national budget (UNICEF Myanmar (2017) – Delivering results for children.).

UNICEF continued supporting the production of cross-sectoral sub-national data profiles focused on children. These profiles have resulted in the establishment of platforms for data sharing at State/ Region level that inform local policy makers. The engagement of UNICEF in the national process for monitoring of the Sustainable Development Goals, in partnership with the Central Statistical Organisation, provided an opportunity to influence the development of national systems supporting the collection and compilation of quality data.

The Committee on the Rights of the Child has acknowledged some initiatives by Myanmar to improve interdepartmental information systems and progress made in collecting national level data on the socioeconomic, health and education status of children, however has expressed concern *“at the lack of methodological coherence in the undertaking of data collection and the absence of disaggregated data on areas covered by the Convention”* and the lack of data on child abuse and neglect (Committee on the Rights of the Child, Concluding Observations – Myanmar, 2012.).

Myanmar has established a Committee on the Rights of the Child at the national, State/Region, District and Township levels. This **national mechanism** facilitates and supports the implementation of the various programmes and activities of government agencies in collaboration with UN and international organisations and agencies. While this is a step in the right direction, it has been noted that the mechanism, especially at the State, district and township levels is weak and lacks the capacity and resources needed to effectively respond and provide services much needed by vulnerable children and families at the local levels. This needs to be

strengthened and resourced with required technical expertise to address VAC at the sub-national levels.

DSW is also collaboration with national and international agencies to develop a comprehensive child-focused and holistic prevention strategy, applicable in multiple contexts (development, crisis, conflict, emergency preparedness and disasters). This will include the establishment of a strong national child-centered protection system in Myanmar in the future.



# PHILLIPPINES

## I. Overview of Children in Conflict with the Law in the Philippines

### The Filipino Children

The Philippines is a nation of children. Per the Philippine Statistics Authority (PSA) 2015 Census, the Philippines has a total population of 100.98 million, 38.36 million of which are children (below 18 years old), which represents 38% of the total population broken down as follows:

**Table 13: Profile of Children in the Philippines by Age Range**

Age Range	Population
0-2 years old	6.35 Million (6.3%)
3-4 years old	4.46 Million (4.4%)
5 years old	2.1 Million (2.16%)
6-11 years old	12.9 Million (12.81%)
12-15 years old	8.4 Million (8.34%)
16-17 years old	4 Million (3.96%)
Total: 38.36 Million (38%)	
Male: 19,779,065	Female: 18,583,819

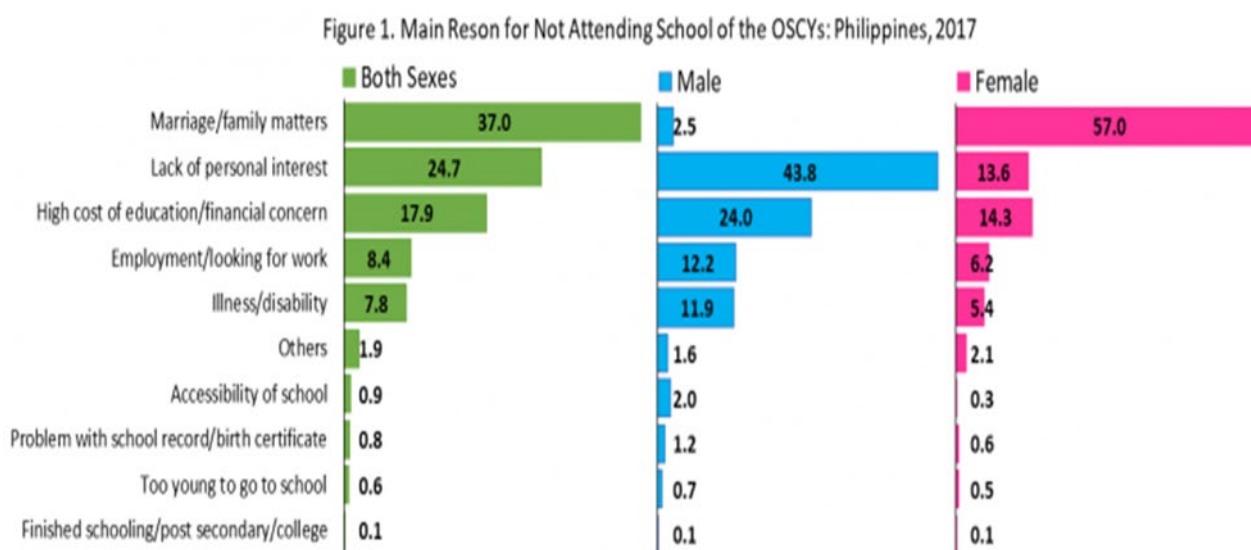
Source: Philippine Statistics Authority

Despite significant economic gains in the recent years, the number of children living in poverty in the country, however, continues to increase. In fact, three (3) in every 10 children belong to poor families.<sup>186</sup> Out of the 38.36 million children in the Philippines in 2015, 31.4% are living in poverty. Poverty incidence is high for families with greater than seven (7) family members and whose head of the family has no grade completed. On top of this, the political situation and the risks brought by natural disasters and conflicts being experienced by the country<sup>187</sup> makes it harder for this group to transcend from the current economic structure they are in.

<sup>186</sup> 2017 Quick Facts on Children by Council for the Welfare of Children

<sup>187</sup> UNICEF's 2018 Situational Analysis of Children in the Philippines

A dimension of poverty with serious implications to the long-term welfare of the child is education. Based on the 2017 Annual Poverty Indicators Survey (APIS), about 9% of the estimated 39.2 million Filipinos aged six (6) to twenty-four (24) years old were out-of-school children and youth (OSCY). Of the 3.6 million OSCYs, 83.1% were 16 to 24 years old, 11.2% were 12 to 15 years old and 5.7% were six (6) to eleven (11) years old. The proportion of OSCYs was higher among females (63.3%) than males (36.7%). The most common reasons among OSCYs for not attending school were marriage or family matters (37.0%), lack of personal interest (24.7%), and high cost of education or financial concern (17.9%). Among females OSCYs, marriage or family matters (57.0%) was the main reason for not attending school while lack of personal interest among males (43.8%).



Source: Philippine Statistics Authority, 2017 Annual Poverty Indicators Survey

### **The State of Juvenile Delinquency in the Philippines**

Case studies show that poverty still remains to be a major factor that puts children at risk of offending—pushing children and young people outside their homes into the streets among their peer groups and compelled to commit crimes for survival. The children also tend to offend in the process of going about their livelihood activities such as peddling and begging, which are considered violations of laws or ordinances in many localities.

The Philippine National Police (PNP) has recorded 11,324 cases of Children in Conflict with Law (CICL) for CY 2018. Theft was recorded as the highest crime committed by children with a total of 1,508 cases followed by violation of RA 9165 (prohibited drugs) with total number of 854 cases. Violation of RA 8353 (rape) was the 3<sup>rd</sup> highest offense committed by children with a total number of 853 cases. Detailed below in Table 14 are the types of offenses recorded to be committed by CICL in CY 2018.

**Table 14: Philippines recorded cases of CICL in CY 2018**

TYPE OF CRIMES	2016	Age Bracket					2017	Age Bracket					2018	Age Bracket					GRAND TOTAL
	CICL	5 and below	6-8 y/o	9-11 y/o	12- 15 y/o	16- 17 y/o	CICL	5 and below	6-8 y/o	9-11 y/o	12- 15 y/o	16- 17 y/o	CICL	5 and below	6-8 y/o	9-11 y/o	12- 15 y/o	16- 17 y/o	CICL
Theft	2,726	3	31	191	1,324	1,177	2,299	1	23	157	1,060	1,058	1,508	1	11	82	702	712	6,533
Physical Injuries	1,091	1	9	24	365	692	1,048	2	6	22	335	683	568	0	3	4	187	374	2,707
RA 8353 (Rape)	877	0	15	37	348	477	1,033	0	16	36	400	581	853	2	7	35	318	491	2,763
Robbery	797	0	3	20	341	433	907	0	5	30	356	516	767	0	0	11	303	453	2,471
RA 9165 (Prohibited Drugs)	478	0	1	0	79	398	563	0	2	1	100	460	854	0	0	4	166	684	1,895
<b>TOTAL</b>	<b>5,969</b>	<b>4</b>	<b>59</b>	<b>272</b>	<b>2,457</b>	<b>3,177</b>	<b>5,850</b>	<b>3</b>	<b>52</b>	<b>246</b>	<b>2,251</b>	<b>3,298</b>	<b>4,550</b>	<b>3</b>	<b>21</b>	<b>136</b>	<b>1,676</b>	<b>2,714</b>	<b>16,369</b>
Other Crimes	8,418	60	71	254	2,941	5,092	8,559	39	40	199	2,845	5,436	6,774	42	35	145	2,271	4,281	23,751
<b>Grand Total</b>	<b>14,387</b>	<b>64</b>	<b>130</b>	<b>526</b>	<b>5,398</b>	<b>8,269</b>	<b>14,409</b>	<b>42</b>	<b>92</b>	<b>445</b>	<b>5,096</b>	<b>8,734</b>	<b>11,324</b>	<b>45</b>	<b>56</b>	<b>281</b>	<b>3,947</b>	<b>6,995</b>	<b>40,120</b>

Source: Philippine National Police (PNP) Data

The table 15 shows the number of CICL cases recorded by the PNP from 2012 to 2018 <sup>188</sup>:

**Table 15: Philippines recorded CICL Cases from 2012 to 2018**

Year	Number of CICL
2012	4,095
2013	5,937
2014	9,844
2015	11,616
2016	9,655
2017	14,409
2018	11,324
<b>Total</b>	<b>66,880</b>

Source: Philippine National Police (PNP) Data

<sup>188</sup> Consolidated data from JJWC (Number of CICL in the Philippines as of Sept 2018) with updates from PNP for 2017 and 2018.

Children who are more inclined to commit crimes are those from the 15-18 age range. Table 16 below indicates that the highest recorded number of offenses was committed by children above 15 but below 18 years of age for both 2017 and 2018. The age group that posted the most number of CICTL cases next to 15-18 age range was the group of children ages 12–15 years old. This was true for 2017 and 2018.

**Table 16: Philippines number of children investigated by the PNP by age group**

Age Group	No. of Children Investigated by PNP (2017)	Percentage	No. of Children Investigated by PNP (Jan-Sept 2018)	Percentage
5 years old and below	20	0.15%	9	0.11%
6–8 years old	116	0.88%	68	0.9%
9–11 years old	794	6%	317	.42%
12–15 years old	5088	38%	2739	36%
Above 15 but below 18 years old	7242	55%	4,382	58%
Total	13,227	-	7,523	-

Source: Philippine National Police Data

### **Philippine Legislation**

The Philippine Constitution of 1987 declares that the State “recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.” Thus, with the said State policy, the Philippine Congress and the Supreme Court have provided a specific set of laws and rules for dealing with cases involving children, including children in conflict with the law (CICTL). The following are among the Philippine laws and issuances that set down standards and procedures by which CICTL should be treated by the time of initial contact with law enforcement officer until aftercare:

- **Republic Act (R.A.) 7160 or the Local Government Code of 1991.** Provides for the roles and responsibilities of local government units in the creation and implementation of programs and services for the youth, including CICTL, as well as of welfare services that prevent juvenile delinquency.

- ***R.A. 8369 (1997) or the Family Courts Act.*** Established family courts all over the country and their jurisdiction. The Family Courts in the Philippines are the only court allowed to handle CICL cases.
- ***R.A. 7610 (1991) or Special Protection of Children against Child Abuse, Exploitation and Discrimination.*** Provides special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial their development; also provides for sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination.
- ***Special Protection of Children in Situations of Armed Conflict Act.*** Aims to protect children in situations of armed conflict from all forms of abuse and violence by stipulating strict provisions that would allow the government to prosecute persons or groups violating the measure.
- ***Harmonization of Administrative Memo No. 02-1-18-SC (The Revised Rule on Children in Conflict with the Law) with R.A. 9344 as Amended by R.A. 10630 (2018).*** The rule that governs the procedure in handling cases involving CICL by the judiciary. The rule has been harmonized with the provisions in handling CICL cases as stated in the Juvenile Justice and Welfare Act.
- ***Rule on the Commitment of Children.*** This ruling took effect in April 2002 (Administrative Memorandum [AM] No. 02-1-19-SC). It is the procedure applied in court when a child is legally entrusted to the care of the Department of Social Welfare and Development (DSWD) or any duly licensed child-placement or child-care agency or individual (parent/guardian or any interested party). This Rule applies to: (1) a dependent child, without parent/ guardian, or whose parents/guardian for good reason wish to be relieved of care and custody and so is dependent upon public support; (2) an abandoned child; and (3) a physically or emotionally neglected child. If the CICL is found to be one of these children, the DSWD or any licensed child-placement or child-care agency may file a petition for the commitment of the child.
- ***Rule on Examination of a Child Witness.*** Issued by the Supreme Court and effective beginning December 2000, it governs the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.
- ***The Katarungang Pambarangay*** was set in place with the promulgation of Presidential Decree 1508 in 1978. It was strengthened by provisions in the Local Government Code

of 1991 and emphasized by the Supreme Court in its Administrative Circular No. 14-93 issued in July 1993. Under the Katarungang Pambarangay, conciliation can be performed by a Lupong Tagapamayapa (peace-and-order committee) for all disputes where the parties involved are from the same barangay.

### **The Juvenile Justice and Welfare Act**<sup>189</sup>

In line with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and most importantly the Convention on the Rights of the Child, the Philippines guarantees that CICL are treated in accordance with proper procedures and their rights as a child. Furthermore, the Philippines enacted R.A. 9344 as amended by R.A. 10630, otherwise known as the “Juvenile Justice and Welfare Act” or JJWA.

The JJWA defines the Juvenile Justice and Welfare System as a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programmes and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development. In the Philippine laws, the term often used is CICL instead of “juvenile”.

Philippine laws defined “*Child*” as a person under the age of 18 years.<sup>190</sup> The Juvenile Justice and Welfare Act defines “*Child at Risk*” or CAR as a child who is vulnerable to and at the risk of committing criminal offences because of personal, family and social circumstances. Some of the examples of CAR mentioned in the law are being abandoned or neglected, and living in a community with a high level of criminality or drug abuse. Children at Risk also includes children who violate the ordinances enacted by local government units concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, as well as light offenses and misdemeanors against public order or safety, such as drunkenness, mendicancy and trespassing. A “*Child in Conflict with the Law*” or CICL, meanwhile, refers to a child who is alleged as, accused of, or adjudged as, having committed an offence under Philippine laws.

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<sup>189</sup> Excerpts from the “*Overview of Philippine Juvenile Justice and Welfare*” by Jeza Mae Sarah C. Sanchez submitted to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

<sup>190</sup> Executive Order No. 209, s. 1987 or the Family Code of the Philippines; R.A 9344 as Amended by R.A. 10630 or the Juvenile Justice and Welfare Act.

The concept of “*restorative justice*” as opposed to retributive justice has also been introduced by the JJWA. It “refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.”.<sup>191</sup>

The Age of Criminal Responsibility in the JJWA placed the age of criminal responsibility at 15 years old.<sup>192</sup> A CICL who is above 15 but below 18 is also exempted from criminal responsibility, unless the child acted with discernment. If said CICL acted without discernment, the child shall be dealt with in the same manner as a child who is below the age of criminal responsibility but for those who acted with discernment, he/she shall proceed to diversion.<sup>193</sup> It must be noted, however, that the exemption from criminal liability of children does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

## **II. Children in Conflict with the Law within the Context of Philippines Justice and Welfare System**

The enactment of R.A. 10630 in October 2013 amended some provisions of R.A. 9344 and introduced changes in managing cases of children, particularly for (i) children above 12 up to 15 years of age who are exempt from criminal liability but have committed a serious crime, or (ii) alleged to have committed an offense for the second time or oftener.<sup>194</sup> It has also incorporated new provisions to improve the institutional structures and establish new mechanisms to ensure that a comprehensive juvenile justice and welfare system is efficiently and effectively implemented from the community to the national level. In particular, it put the Juvenile Justice Welfare Council (JJWC), the body mandated to coordinate and monitor the implementation of the JJWA, under the Department of Social Welfare and Development. It also provided for the creation of Regional Juvenile Justice and Welfare Committee (RJJWC) in each region to ensure the effective

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<sup>191</sup> Section 2(q) of R.A. 9344 as Amended by R.A. 10630 or the Juvenile Justice and Welfare Act.

<sup>192</sup> The JJWA raised the age of criminal responsibility from nine (9) years old as established by the Revised Penal Code Article 12 (2 and 3) as reiterated by Presidential Decree. 603.

<sup>193</sup> “Diversion Program” refers to the program that the CICL is required to undergo after being found responsible for an offense, without resorting to formal court proceedings. (Revised Rules and Regulations Implementing Republic Act No. 9344, as amended by R.A. 10630)

<sup>194</sup> A child who is above 12 up to 15 years of age and who commits serious offense shall be deemed a neglected child under P.D. 603 as amended and shall be mandatorily placed in a special facility within the youth care facility or “Bahay Pag-asa” called the Intensive Juvenile Intervention Support Center (IJISC). A child who is above 12 up to 15 years of age and who commits an offense for the second time or oftener, shall be deemed a neglected child under P.D. 603 as amended and shall undergo an intensive intervention program supervised by the LSWDO or if the best interest of the child requires that he/she be placed in a youth care facility or “Bahay Pag-asa”, the child’s parents or guardians shall execute a written authorization for the voluntary commitment of the child. (Sections 20-A and 20-B, R.A. 9344 as amended by R.A. 10630)

implementation of the Act at the regional and LGU levels. A JJWC National and Regional Secretariat were, likewise, established to assist the Council and the Committees in the performance of their mandate, duties and functions.

In addition to the enactment and implementation of the JJWA and cognizant with the aim to ensure the promotion and protection of the rights and welfare of CICL and CAR, the Philippines also issued the following plan, manuals and guidelines:

- ***Comprehensive National Juvenile Intervention Program 2018-2022.*** An inter-agency and multisectoral action plan of the Philippine Government of which goal is to protect and promote the rights and welfare of the country's CAR and CICL. It primarily aims to prevent CAR from committing crimes and ensure that CICL are rehabilitated and reintegrated into their families and communities. It is also meant to institutionalize a restorative justice and welfare system for CAR and CICL by encouraging and strengthening institutional partnerships.
- ***Philippine National Police (PNP) Manual in Handling Cases of CAR and CICL.*** Contains child-sensitive rules and rights-based procedures that every PNP personnel is expected to observe and implement in handling CAR and CICL cases.
- ***Barangay Protocol in Managing Cases of CICL and CAR.*** Provides information on how to handle child-related cases, initial contact, diversion proceedings, prevention programs, child custody, and other CAR and CICL interventions. Serves as a practical guide for barangay officials and other duty bearers to properly assist CAR and CICL.
- ***DSWD Guidelines on Community-Based Management of CICL Cases.*** Intends to provide social workers in the DSWD; social workers assigned in social welfare offices of the cities, municipalities, provincial government units; and social workers in non-government organizations, a guide in (i) handling and managing CICL cases, and (ii) conduct of diversion proceedings and diversion programs.
- ***Prosecutors' Manual on Handling Child-Related Cases.*** Provides for unified legal procedures in handling CICL cases by prosecutors in accordance with standards and existing laws on child protection.<sup>195</sup>
- ***Protocol for Case Management of Child Victims of Abuse, Neglect, and Exploitation.*** Highlights the roles and responsibilities of government agencies and their partners, from reporting or referral of a child abuse case until its termination,

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<sup>195</sup> It must be noted that to further ensure that the provisions of the Prosecutor's Manual in Handling CICL Cases are consistent with the law, the JJWC is coordinating with the Department of Justice to harmonize the manual and the law.



ensuring that child victims are dealt with in a most child-sensitive and appropriate manner. In particular, the protocol also details the role of the Department of Justice, the Department of Interior and Local Government, the DSWD as well as other non-government organizations, and other stakeholders.

- ***Department of Education Guidelines and Procedures on the Management of CAR and CICL.*** Aims to assist schools and Community Learning Centers, including all concerned authorities, in the management of CICL and CAR cases.
- ***Integrated Care Management Protocol for Handling of CICL and for CAR.*** A guide material to help all duty bearers understand the “big picture” when handling CICL or CAR. It is primarily designed to support each duty bearer’s usage of flowcharts in handling CICL and CAR cases.

The Philippine Government continues to strive to ensure that an effective institutional framework (juvenile justice arrangements) is in place to guarantee the fulfillment of the rights and remedies for CICL under national legislations as well as those provided in international laws, treaties and standards on juvenile justice and welfare.

The following are among the child-sensitive rules and rights-based procedures carefully observed by duty bearers with particular emphasis on the initial contact with the children in conflict with the law or during the initial interview / investigation.

### **Initial Contact with the Child**

“*Initial contact with the child*” refers to the apprehension or taking into custody of a CICL by Law Enforcement Officers (LEO) or private citizens. *Law Enforcement Officers* refers to police officers, barangay (village) officials, such as the Punong Barangay (Chairman) and other elected officials, and Barangay Tanod (Barangay Police Officer). In any case, the LEO needs to exercise due diligence and sensitivity in apprehending or taking into custody a child in conflict with the law.<sup>196</sup>

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<sup>196</sup> Rule 5 of the Philippine National Police Rules and Guidelines for the Proper Handling and Treatment of Children in Conflict with the Law Pursuant to R.A. 9344

A CICL shall only be searched by a law enforcement officer of the same gender.<sup>197</sup> From the moment the child is taken into custody, the LEO shall faithfully observe the following procedures<sup>198</sup>:

1. Properly identify oneself and present proper identification to the child.
2. Immediately notify the child's parents or guardians, the Local Social Welfare and Development Officer (LSWDO), and the Public Attorney's Office (PAO) of the child's apprehension which shall be made not later than eight (8) hours after apprehension.
3. Explain to the child, in simple language and in a language or dialect, which the child can understand: (i) The reason for placing the child under custody; (ii) The offense allegedly committed; and (iii) The child's constitutional rights and the child's rights under Republic Act 7438.<sup>199</sup>
4. Determine the age of the child.
5. Take the child immediately to the proper medical or health officer for a thorough physical and mental examination. Whenever medical treatment is required, steps shall be immediately undertaken to provide the same.
6. Immediately but not later than eight (8) hours after apprehension, turn over the custody of the child to the Local Social Welfare and Development Office or other accredited NGOs.

As part of the initial contact the apprehending police officer explains to the child the following "Rights of a Person Under Custodial Investigation" to the child in a language or dialect which he/she understands:

- *You have the right to remain silent. Do you understand?*
- *You have the right to have an independent and competent counsel of your choice. Do you understand?*
- *If you cannot afford the services of a lawyer, the government will provide a lawyer to assist you free of charge. Do you understand?*

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<sup>197</sup> Sec 21 of RA 9344 as amended by RA 10630

<sup>198</sup> Rule 26 of the Revised IRR of RA 9344 as amended

<sup>199</sup> An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof

- *Anything you say will be used against you in any court of law. Do you understand all these rights?*<sup>200</sup>

If the child cannot understand the language or local dialect or suffers from disability, the LEO is expected to immediately bring the child to the station for proper assistance e.g. consultation with health professionals, or interpreter. The apprehending officer shall prevent any possible violence or injury that may be inflicted against the child by any person, including the victim or the complainant from the time the CICL is taken into custody.

### **Interviewing<sup>201</sup> the CICL**

In cases when the LEO is a barangay (village) officer, the LEO shall also observe the following procedures:

1. Introduce self to CICL
2. Explain to CICL:
  - why the child is taken in custody
  - what the child's constitutional rights are
  - what offense the child allegedly committed
3. Ask for CICL's name, address and name of parents (for purposes of immediately getting in touch with the child's relatives).

Likewise, in cases when a CICL case is referred to the police,<sup>202</sup> the Philippine National Police -- Women and Children Protection Desk (PNP-WCPD) Officer, upon receipt of the CICL, interviews the child and fills out intake forms for CICL<sup>203</sup> (**Annex A, Annex B and Annex C**). The PNP-WCPD officer shall ensure that all statements signed or thumb marked by the child during the investigation shall be witnessed by the child's parents or guardian, the Local Social Welfare and Development Officer (LSWDO), and counsel in attendance, who shall affix their signatures to the

<sup>200</sup> Section 3.2 of the PNP Manual in Handling Cases of CAR and CICL.

<sup>201</sup> Under the Juvenile Justice System, "interview" is used instead of "interrogation". This is in line with the country's promotion of the principle of restorative justice and as part of the child-sensitive approach in dealing with the CICLs.

<sup>202</sup> The CICL case must be immediately referred to the police if the child: 1) committed serious offense or repeat offense 2) exploited by adults in committing the offense or 3) is above 15 years old and the penalty to the offense is above six (6) years.

<sup>203</sup> PNP DIDM Investigative Directive number 2015-04. PNP Manual in Handling CICL

- Annex A: Case Summary
- Annex B: Initial Contact Form
- Annex C: Intake Form

said statement. Records of the case are logged in a confidential blotter book. The Women and Children Protection Center (WCPC) is mandated to monitor PNP activities governing the treatment of CICL. It serves as the final repository and source of nationwide data on CICL which shall be used in crafting policy, strategic planning and for purposes of conducting appropriate training.

In the interview of the CICL, the WCPD Officer shall strictly observe the following<sup>204</sup>:

What to ask during the initial interview:

1. Determining the child's personal circumstance including among others, his or her name, name of his or her parents, the child's date of birth, and home address.
2. Determining the age of the child.
3. Determining if the child is Dependent, Abandoned, Repeat Offender, Neglected or Abused (DARNA).
4. Determining if the child had been hurt or otherwise injured by the apprehending officer.

What NOT to ask during the initial interview:

The WCPD and/or any police officer in contact with the CICL shall never ask the child about the crime that has just been committed except in the following cases:

1. The CICL is not criminally liable because he/she is 15 years old or below, or even 15 years old above but did not act with discernment;
2. The CICL agreed to undergo diversion and the CICL and his/her parents or guardians have signed the Consent to Diversion Form
3. The CICL is willing to make a statement
4. The CICL is subjected to a legal and proper custodial investigation.

The WCPD Officer who interviews the child shall:

1. Conduct the interview in a child friendly manner which allows the child to participate and express herself/himself freely;

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<sup>204</sup> PNP Manual in Handling CICL

2. Ensure that the apprehending officer is not present during the interview of the CICL;
3. Conduct the interview in a place that will promote the confidentiality, security and comfort of the CICL;
4. Immediately notify and summon the parents or guardians, if the child's parents are not yet present;
5. Explain the purpose of the interview;
6. Ensure that the interview is child-friendly and non-threatening;
7. Be patient in managing the child;
8. Avoid unnecessary interruptions, distractions and/or participation from non-parties during the interview;
9. Use simple and understandable language in taking the statement of the child;
10. Listen to what the child says and take note of what the child actually says during the interview;
11. Be neutral to the parties by using open-ended questions and refrain from being judgmental or from lecturing for or against any of the parties present; and
12. Assure the child and his/her parents of the confidentiality of the case.

Further, should the CICL is willing to make a statement regarding the crime that was committed, the following will be strictly observed:

1. Only trained Women and Children Protection Desk (WCPD) Officer shall take the statement of the child;
2. The child shall only make a statement in the presence of (i) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (ii) child's parents, guardian, or nearest relative, as the case may be; and (iii) Local Social Welfare and Development Officer;
3. In the absence of the child's parents, guardian or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the Barangay Council for the Protection of Children (BCPC);
4. No law enforcement officer shall compel any child to make any statement or provide any information that might incriminate the child. The law enforcement

officer shall have the duty to inform the child of his or her rights under the Constitution and Republic Act 7438<sup>205</sup>;

5. The WCPD shall ensure that all statements signed or thumb marked by the child during the investigation shall be witnessed by the child's parents or guardians, the LSWDO, and counsel in attendance, who shall likewise affix their signatures to the said statement;
6. The interviewer shall prepare a written statement in the very language used by the child and not in the language used by the police officer;
7. In all cases, the interviewer shall follow the procedures in interviewing a child;
8. The WCPD Officer may forgo the presence of the child's counsel where the child is not critically liable; and
9. Where the child agrees to undergo Diversion, the statement of the child under this provision can never be used as evidence against him / her.

The WCPD Officer interviews the CICL separately from the victim. The WCPD Officer is expected to carefully avoid face-to-face confrontation unless both the victim and CICL are ready to listen to the other party.

In cases where the child is fifteen (15) years old or below,<sup>206</sup> the LEO, upon assessment and recommendation of the LSWDO, shall immediately release the child to the custody of the child's parents or guardian, or in their absence, the child's nearest relative. The LSWDO is expected to create a community-based intervention program for the child, which the child should undergo. Nevertheless, if the child falls under any of the three (3) categories described in the law, the child may be placed in a facility called Bahay Pag-Asa.<sup>207</sup>

If the child is 15 years old and one (1) day or above, the law enforcement officer should refer the child and the child's records to the LSWDO. The LSWDO shall prepare a report indicating an

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<sup>205</sup> Philippine Republic Act 7438 or an Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation As Well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof

<sup>206</sup> A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthday.

<sup>207</sup> RA 9344 as amended by RA 10630 provides the following categories of children below age of criminal responsibility which may be placed in a Bahay Pag-asa facility, namely those:

1. Over 12 to 15 years who commit serious crimes enumerated in the law (Sec 20A)
2. Over 12 to 15 years who commit repeat offenses (Sec 20B)
3. 12 years but below 15 who has been found dependent, abused, neglected or abandoned by their parents and it is in their best interests to be placed in Bahay Pag-asa (Sec 20)

assessment on whether the child acted with discernment within seven (7) working days, for purposes of determining whether to proceed:

- with the intervention program if without discernment,
- with the diversion program if with discernment and crime is punishable by six (6) years imprisonment or below, or
- with filing of case in court if the offense is punishable by six (6) years imprisonment and above (in such case, child may still qualify for diversion upon the judge's discretion).

It must be noted that the LEO must turn over the physical custody of child to appropriate person within eight (8) hours.

Taking into consideration the sensitivity of handling the CICL in respect to the international and national standards and rules for the administration of juvenile justice, law enforcers are required to regularly attend relevant trainings. In the case of the Philippine National Police, the WCPD personnel regularly undergo trainings on the proper handling of CICL cases. As of CY 2018, the PNP has 1,918 capable Women and Children Protection Desks nationwide.

### **Intake and Initial Assessment: Social Case Management of CICL**<sup>208</sup>

Section 16 of the JJWA provides that all local government units shall appoint a duly licensed social worker to assist the CICL. This is in line with the social workers' critical role in the assessment of the presence or absence of discernment in the commission of a crime as well as the development and implementation of intervention and diversion programs. The following are the steps to be undertaken by the authorized social worker immediately after having been notified by a LEO, of the apprehension of a child (for CICL 15 years old and below)<sup>209</sup>:

1. The City / Municipal Social Welfare and Development Office (C/MSWDO) shall conduct an assessment on the circumstances and needs of the child as basis in determining immediate actions to be done.
2. Prepare a social case study report (SCSR) not later than two weeks from the date the CICL was turned over to his/her office. The SCSR shall be the basis for implementing appropriate interventions.

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<sup>208</sup> Managing Cases of Children in Conflict with the Law in the Community: A Self-Instructional Manual for Social Workers. DSWD, 2012.

<sup>209</sup> DSWD Administrative Order No. 10 Series of 2007 re Guidelines for Social Workers in the Handling and Treatment of Children in Conflict with the Law. A separate procedure will be strictly observed once the age of the child is discerned.

3. Implement an intervention program with the child in coordination with the Barangay Council for the Protection of Children (BCPC), school, Sangguniang Kabataan Council, existing support organizations and community volunteer.
4. Monitor the child's compliance and response to the intervention program and assess whether or not the rehabilitation goal has been achieved. He/she must consider the readiness of the family and community to accept the CICL.
5. Terminate the provision of interventions once the rehabilitation goal of the child has been achieved and submit a quarterly report to the local council for the protection of children on number of cases served and implementation of intervention program.

As mentioned earlier, from the moment the child is taken into custody the law enforcement officer should immediately notify the LSWDO. In all cases, the LEO is expected to turn over the physical custody of the child to the LSWDO within eight (8) hours from apprehension, as required under Section 21(i) of R.A. 9344. The physical custody of the child shall be transferred to the LSWDO, even if the law enforcement officer has not yet exhausted all measures to determine the age of the child under Rule 35.b and even if the initial investigation under Rule 27 has not yet been terminated.

Immediately after being notified of the apprehension of a child who is fifteen (15) years old or below, the LSWDO conducts an initial assessment to determine the appropriate intervention and prevention programs, in consultation with the child and the person having custody over the child. The assessment phase starts with an intake where the CICL's problem is assessed and appropriate actions are taken to protect the child's rights. The social worker uses his/her skills in problem solving to gather information about the nature and causes of the child's circumstances. The result of the assessment is the basis for the initial response and a decision of child's custody and whether the child will undergo an intervention or a diversion program.

The first face-to-face contact between the CICL and the social worker is usually held at the office of the City or Municipal Social Welfare and Development Office (C/MSWDO). The child may or may not be in company of his/her family or guardians. After ensuring that the child is comfortable, the social worker proceeds with the intake interview which is composed of the following three major parts:

- The **beginning part** establishes child – social worker relationship, the purpose of the interview and exploring the problems that led to the child's being in conflict with the law.



The intention is to establish a situation in which the child feels at ease and comfortable enough to express him/herself and to tell his/her story. The social worker takes steps to ensure there is privacy during the interview and assure the child of the confidential nature of any shared information with the agency. The social worker attends to the immediate needs of the child to make him/her comfortable and safe.

- The **middle part** is deepening of the relationship through sharing/gathering of information about the child's problems, assessing his/her strengths and resources, clarifying initial actions to be undertaken in accordance with the law as well as his rights. If a referral to another agency, if appropriate, is to be made, the purpose and terms of referral is explained to the child and his/her guardians. Options for the child's custody must be identified and decision is made to ensure the child's safety and protection. During the course of the interview, the intake form attached herein as Annex D is accomplished.
- The **closure part** of the interview focuses on a summary of what has taken place and agreement on what are the follow-up actions. The social worker reviews with the child and his/her guardians the next steps they have to undertake such as a home visit, collateral information, another interview for the administration of the child and family functioning checklists and discernment tools, if child is 15 years old and below 18 years old.

During the intake interview process, the social workers are encouraged to observe the following:

- Explain who they are and the reason for the interview; to use language known to the child to make the child more comfortable;
- Build rapport with the child by chatting about neutral topics; ensure privacy and confidentiality;
- Always maintain a supportive and caring attitude;
- Be objective;
- Encourage child to ask questions at any point; use open ended questions, short and simple sentences;
- Engage the child in decision-making; and
- Do not push the interview longer than the child can concentrate; consider the child's level of development.

The social worker in the first interview shall:

- Gather basic information about the child and family in relation to the child's social, cultural, economic and legal status/condition; Be sensitive to child's sex/gender, ethnic, cultural and religious background;
- Review actions taken by the barangay and/or the law enforcement officer as to:
  - Determination of age, medical and mental examination
  - The nature and cause of offense committed and circumstances of apprehension;
  - Actions/s taken by victim against child; and
  - Status of case (charges filed or not); note record of prior offenses, if any;
- Take note/observe the child's physical and psychological condition and behavior and refer child to appropriate agencies to address these needs such as medical care/treatment and psychosocial care for traumatized children;
- Observe child's reactions / attitude towards the offense, the harm or damage done to others (victim and community) resulting from the offense;
- Explain to the child and his/her parents the consequences of the child's acts with a view towards counselling, rehabilitation and diversion from the justice system and reparation, if appropriate;
- Assess the accountability and attitude of parents towards their responsibility and that of the child's responsibility for the offense;
- Determine status of child and current functioning as well as his/her family and relatives as basis for appropriate action relative to the custody of the child;
- Identify the problem, what action has been done, what resources are available, and what options can be resorted to solve the immediate problem of the CICL;
- Work out a plan for continuing contacts especially of child is above 15 years old for the determination of discernment and intervention planning for those 15 and below; and

Accomplish the intake form / sheet as part of the interview (**Annex D**). Depending on the situation / condition during the interview, some info in the intake sheet can be completed at a later time.

### **Diversion Program**

Sec. 23 of R.A. 9344, as amended, provides for the conduct of diversion proceedings for CICL who are above 15 but below 18 years of age and who has been assessed to have acted with

discernment. Diversion refers to an alternative, child appropriate process of determining the responsibility and treatment of a CICL on the basis of his/her social, cultural, economic, psychological and educational background without resorting to formal court proceedings. The first level of diversion is community-based diversion, which can be administered by the following duty bearers with consideration on the type of offense committed:

- Law enforcement officer, if the child allegedly committed an offense with an imposable penalty of not more than six (6) years of imprisonment;
- LSWDO, if the child allegedly committed a victimless offense with an imposable penalty of not more than six (6) years of imprisonment; and
- Prosecutor, if the child allegedly committed an offense with an imposable penalty of more than six (6) years of imprisonment.

The second level of diversion is court diversion, which can be conducted by the Judge after the case of a child who allegedly committed an offense with an imposable penalty of more than six (6) years of imprisonment has been filed in court.

The Revised IRR of R.A. 9344 provides for a more exhaustive discussion of the guidelines in the conduct of diversion proceedings outside the court, the organization of diversion committees at the different levels of diversion and the duties of the authorities administering diversion, the formulation of diversion programs to include recommended forms of diversion programs, the formulation of a contract of diversion, the duration and termination of diversion proceedings.<sup>210</sup>

### **Other Good Practices in the Implementation of the JJWA**

***Localization of the Comprehensive National Juvenile Intervention Program.*** Under the law, the Local Government Units (LGUs) are mandated to institute a Comprehensive Local Juvenile Intervention Program (CLJIP) every three (3) years through the Local Council for the Protection of Children (LCPC). The localization of the CNJIP aimed to collaborate with the LGUs in institutionalizing a process of developing a local comprehensive juvenile intervention program utilizing the *Comprehensive National Juvenile Intervention Program Framework*. Specifically, it sought to: (i) assist the LGUs in planning, designing, developing and implementing their CLJIP; (ii) assist the pilot LGUs to develop model programs for community-based prevention, intervention, rehabilitation and reintegration for children at risk (CAR) and children in conflict with

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<sup>210</sup> Rules 43 to 56, Part X of the Revised IRR of RA 9344 as amended

the law (CICL) for replication or adoption by other LGUs; (iii) install an effective referral mechanism, data management and information system; (iv) mobilize community and local government support for programs and services for CAR and CICL; and (v) develop tools for monitoring and evaluation of local juvenile intervention programs. To enjoin more LGUs to develop CLJIP, the Department of the Interior and Local Government issued Memorandum Circular No. 2016-68 or the “Guidelines for LGUs on the Development of the Comprehensive Local Juvenile Intervention” which guides the LGUs in handling cases of CICL.

***Community Juvenile Justice at the Barangay Level through the Katarungang Pambarangay.*** The Revised Katarungang Pambarangay Law under R.A. 7160, also known as the Local Government Code (1991), introduced substantial changes to the authority granted to the Lupong Tagapamayapa as well as in the procedures to be observed in the settlement of disputes within the authority of the Lupon.<sup>211</sup> The Punong Barangay, with the assistance of the local social welfare and development officer or other members of the LCPC, conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice.<sup>212</sup>

***Compensation to the Victim by the CICL including the Parental Liability of the Parents of CICL in the Commission of Offense.*** Under the Revised Rules and Regulations Implementing Republic Act No. 9344 as amended by R.A. 10630, the parents/guardians of children in conflict with the law are “jointly liable for the civil liability of the child” (Rule 34) unless they prove, to the satisfaction of the Court, that they were exercising reasonable supervision over the child at the time the child committed the offense, and exerted reasonable efforts and utmost diligence to prevent or discourage the child from committing an offense. The Diversion Committee shall design a diversion program taking into consideration both (1) the individual characteristics and peculiar circumstances of the CICL, and (2) secure satisfaction of the civil liability and accountability of the child in accordance with section 2180 of the Civil Code. Inability to satisfy the civil liability shall not by itself be a ground to discontinue the diversion program of a child.<sup>213</sup>

***Customizing the Diversion Program Based on the Needs and Interest of the CICL as well as Available Resources in the Community.***<sup>214</sup> One of the commonly-used indicators of an

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<sup>211</sup> Ibid4.

<sup>212</sup> Ibid5.

<sup>213</sup> UNICEF- EARPO (2017). Diversion Not Detention: A Study on Diversion and other Alternative Measures for Children in Conflict with the Law in East Asian and Pacific. Thailand: UNICEF-EARPO

<sup>214</sup> JJWC (2018). Study on Diversion and Alternative Measures to Detention: A Documentation of Good Practices (Draft)

effective or successful program is when the needs of the CICL are appropriately addressed. With this, it is not enough that the duty-bearer or LGUs have standardized menu of interventions but shall individualize the same for the best interest of the CICL. Social workers should involve the CICL in designing the diversion program to ensure appropriateness of the interventions to the interest and needs of the latter. As observed by the social workers, the children became more confident of themselves and able to complete the program. Local practitioners, on the other hand, believe that in order to sustain the participation of CICL in the program, their common interest (which is sports) should be tapped and available resources explored to respond to it. To keep the children of different gangs away from unnecessary conflict and to prevent re-offending, local officials engaged the CICL in boat rowing (Dragon Boat) training. Through the training, the children developed discipline and demonstrated understanding on the importance of teamwork. The diversion program paved the way for them to leave the risky activities and serve as good role models with their peers.

***Presence of Functional and Multi-Disciplinary Diversion Committee.***<sup>215</sup> Having multi-disciplinary committee in the facilitation of diversion enables each duty bearer to effectively perform its functions and ensure continuum of services. It makes the planning more comprehensive as there are different lens from different backgrounds assessing the CICL cases. These advantages are very evident in the Regional Trial Court- Branch 106 (Quezon City). Upon initial contact, the prosecutor works closely with the social worker to determine if the child acted with discernment and comes up with a comprehensive report as well as immediate interventions to CICL. When the case is punishable with imprisonment for above 6 years but below 12 years, the prosecutor refers the same to the court. On the receipt of the case, the clerk of court assigns a special CICL docket number indicating that the accused is a minor and that the case number shall not be accessible for public viewing unlike regular filed cases. Then, the clerk of court convenes the Diversion Committee to discuss the case.

***Development of a National Management and Information System for CICL.*** The Government completed establishing the National Juvenile Justice and Welfare Management Information System (NJJWMIS). This system will assist the Government in monitoring children who have come in contact with the justice system to ensure that they are provided proper intervention and do not end up in jail. The web-based system has three components: 1) Registry for Children in Conflict with the Law and Children at Risk 2) integrated case management and 3) monitoring and evaluation. With the completion of the pilot-testing of the CAR and CICL registry in 2017, JJWC

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<sup>215</sup> Ibid. JJWC (2018)

is now focused on the monitoring of the use of said Registry and provision of technical assistance to the trained users.

### III. Detention during Interview of CICL

#### **Children Who May Be Institutionalized**<sup>216</sup>

Children in Conflict with the Law who are above fifteen (15) but below eighteen (18) years of age, and who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction should be committed in a “Bahay Pag-asa”, a 24-hour child-caring institution established, funded and managed by accredited LGUs and licensed and/or accredited non-government organizations (NGOs). Children in Conflict with the law who are 12 to 15 years old may also be committed in a youth care facility or Bahay Pag-asa under the following circumstances: (i) declared dependent,

abandoned, neglected or abused;<sup>317F</sup><sup>217</sup> (ii) committed serious crimes;<sup>318F</sup><sup>218</sup> (iii) who repeat offense.<sup>319F</sup><sup>219</sup>

If the CICL was under eighteen (18) years of age at the time of the commission of the offense, and was found guilty of the offense charged, the Court shall place the CICL under a suspended sentence. The CICL will be placed in the Regional Rehabilitation Center for Youth (RRCY). The CICL can be ordered discharged by the Court when, upon the recommendation of the Social

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<sup>216</sup> Revised IRR of the JJWA.

<sup>217</sup> (a) “Dependent” when the child is without a parent, guardian or custodian; or one whose parents, guardian or other custodian for good cause desires to be relieved of the child’s care and custody; and is dependent upon the public for support, as provided in Art. 141(1), Title VIII of P.D. 603; 33; (b) “Abandoned” when the child has no proper parental care or guardianship or when the child’s parents or guardians have deserted the child for a period of at least six (6) continuous months, as provided in Art. 141(2), Title VIII of P.D. 603; (c) “Neglected” when the child’s basic needs have been deliberately unattended or inadequately provided, as provided in Art. 141(3) of P.D. 603; or (d) “Abused” when upon the evaluation of the LSWDO, the child is determined to be maltreated, whether habitual or not, as defined in Section 3(b) of Republic Act 40 No. 7610, or the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act” [“R.A. 7610”]. (Revised IRR of JJWA)

<sup>218</sup> The law provides for the following procedure for these categories of children who commit serious crime. A child who has committed a serious crime (parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or car napping where the driver or occupant is killed or raped or offenses under the Comprehensive Dangerous Drugs Act of 2002 punishable by more than 12 years of imprisonment) will be mandatorily placed under the Intensive Juvenile Intervention and Support Center (IJISC). Within the 24-hour period from the time the social worker received the report on the alleged commission of the crime, the social worker must file a petition for involuntary commitment with the court. The court shall determine the initial period of placement of the child within the IJISC of the Bahay Pag-Asa which shall not be less than one year.

<sup>219</sup> A child above 12 years of age up to 15 years of age, who is also exempt from criminal liability and has been subjected previously to a community-based intervention program, but commits an offense for the second time or oftener, shall be deemed a neglected child and will be subjected to an intensive intervention program or shall be committed to a youth care facility if the best interest of the child so requires.

Worker who has custody of the child, it finds that the objective of the disposition measures have been fulfilled.

If the CICL has reached eighteen (18) years of age, while under suspended sentence, the Court shall determine whether to discharge the child in accordance with the JJWA, to order the Execution of Sentence, or to extend the suspended sentence for a certain period, or until the child reaches the maximum age of twenty-one (21) years. Before the CICL reaches 21 years old, the Court shall determine whether the case shall be terminated or must serve his or her sentence. A CICL may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the Bureau of Corrections in coordination with the DSWD.

### **Residential Care Facilities for Children in Conflict with the Law**

R.A. 9344 provides for the placement of children in child-caring institutions and youth rehabilitation centers specifically established for CICL pending trial of the criminal case. In no uncertain terms, the court cannot commit the detention of a child in jail.<sup>220</sup>

The following are the residential facilities for CICL:

1. **Bahay Pag-asa.** The Bahay Pag-asa or House of Hope is a 24-hour child-caring institution established, funded and managed by accredited local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are above fifteen (15) but below eighteen (18) who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.<sup>221</sup> Provinces and highly urbanized cities with high incidence of CICL have mandates to establish a Bahay Pag-asa.<sup>222</sup>

The important feature of the Bahay Pag-Asa is the establishment of the Intensive Juvenile Intervention and Support Center (IJISC) for children who are exempt from criminal responsibility, those above 12 years up to 15 years of age, but have committed serious crimes such as parricide, murder, rape, destructive arson, etc. The law also requires a multi-disciplinary team to operate

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<sup>220</sup> Section 35 of RA 9344 as amended by RA 10630

<sup>221</sup> Sec. 4 of RA 9344 as amended by RA 10630

<sup>222</sup> Sec. 49 of RA 9344 as amended by RA 10630

the Bahay Pag-Asa in the LGU. The said team is composed of a licensed social worker, a psychologist or mental health professional, a medical doctor, an educational or guidance counselor and a member of the BCPC. The team will be required to work and implement the individualized intervention plan with the child and the child's family.

2. ***Regional Rehabilitation Center for Youth (RRCY)***. The RRCY is a facility designed to provide intensive treatment in a residential setting for the rehabilitation of CICL whose sentences have been suspended. It serves as a nurturing out-of-home placement for children in need of rehabilitation.

While the RRCY provides institutional rehabilitation for CICL, community-based rehabilitation programs are also being provided by the DSWD. Whenever necessary, the RRCY links its center-based service to community-based programs or the programs provided in a community setting developed for the purpose of intervention and diversion (from formal court proceedings) as well as rehabilitation of the CICL, for final reintegration into his family and community. As of June 2018, a total of 1,473 CICL are in RRCYs.

The Government, through the JJWC, monitors the BPA throughout the country. As of December 2018, the JJWC monitored and documented 63 Bahay Pag-Asa facilities throughout the country. Out of 63 BPAs, 60 are managed/operated by LGUs and the other three (3) are run by NGOs. Of the 58 operational BPAs, eight (8) are accredited by the DSWD and 50 are receiving technical assistance from the RJJWCs for pre-accreditation. The JJWC has also developed the standard design for BPA facilities and currently finalizing the intensive juvenile intervention and support program guide for the institution. The JJWA allocated an amount of Php 400 Million for construction or improvement of BPA. All these are done to ensure that minimum standards required of the facilities are complied with and maintained.

For other detention facilities, in 2018, the JJWC inspected 379 detention facilities throughout the country, which includes youth homes and BJMP/LGU-managed jails, leading to the discovery of 333 children in detention. Of the detained CICL, 29% (96) were awaiting follow through interventions or in the process of release, 26% (87) were referred to LSWDO/PAO, 7% (25) were transferred to prison or were found to be of age of majority while the rest were released or transferred to a rehabilitation center or youth home, released to the family or awaiting court disposition.



## IV. REFORM INITIATIVES

As a result of the conduct of 2017 Universal Periodic Review (UPR) of the Philippines by the Human Rights Council held on 8 May 2017 in Geneva, Switzerland, the Philippines pledged and accepted the following relevant recommendations:

1. Take measures in order to fully guarantee the rights of children, in particular with reference to treatment to juveniles in the juvenile system and to prevent and combat the involvement of children in armed conflicts, their trafficking and their exploitation in the prostitution and pornography industry; and
2. Ensure that all legislative amendments affecting children's rights take into account the superior interest of the child in accordance to the international standards.

Furthermore, the Council for the Welfare of Children (CWC) completed the Preparation of the 5th and 6th Country Implementation Report of the Convention on the Rights of the Child which underwent enhancement and was reviewed through various consultations with the CWC structures. Finally, said report was already endorsed by the Presidential Human Rights Committee (PHRC) to the Office of the President (OP) for approval.

The Philippines justice system provides a law that treats every CICL, in a manner that recognizes and upholds human dignity and worth, and instills in the child respect for the basic rights and freedom of others. This is the landmark legislation otherwise known as the Juvenile Justice and Welfare Act (R.A. 9344).

Furthermore, the enactment of R.A. 10630 in October 2013 amended some provisions of R.A. 9344 by clarifying the process in handling for and accountability and rehabilitation of children below the minimum age of criminal responsibility who committed an offense. It has also incorporated new provisions to improve the institutional structures and establish new mechanisms to ensure that a comprehensive juvenile justice and welfare system is efficiently and effectively implemented from the community.

On the other hand, a measure has been introduced at the Philippine Senate, Senate Bill No. 2198 or "An Act Strengthening the Youth Social Welfare Programs and Extending the Scope of Reformation and Rehabilitation of Children in Conflict with the Law," was submitted for plenary considerations last January 30, 2019. This was contained in the 13-page Committee Report 622,

which recommended the lowering of minimum age of criminal liability (MACR) from 15 years to 12 years old. The proposal transfers the responsibility of the local government units to fund and manage these facilities (Bahay Pag-asa) to the social welfare department.

## Annexes

A	Case Summary (PNPM-NSU-24-1-16)
B	Initial Contact Form (PNPM-NSU-24-1-16)
C	Intake Form (PNPM-NSU-24-1-16)
D	Intake Form (DSWD Manual for Social Workers in Managing Cases of Children in Conflict with the Law)

# SINGAPORE

## **I. Structure of the Country Report**

This report provides an overview of the youth justice system in Singapore with particular focus on the interviews conducted with children and young persons who are in conflict with the law. This group of children and youth will include those who are involved in law enforcement investigations (i.e., young suspects), as well as those receiving rehabilitation services following their adjudication in courts for their offending behaviours (i.e., young or youth offenders). Whilst the focus is on interview practices, it is clearly necessary to evaluate information on interview practices in the context of youth justice system in Singapore, as well as how different practices and legislation are consistent with the philosophy of restoration and rehabilitation of young offenders (and offenders in general).

As such, this country report is structured in the following manner – first, the introduction of the historical background of Singapore, its political and judicial system, as well as overarching legislations in relation to young suspects and offenders (e.g., the Children and Young Persons Act (CYPA), the Penal Code, the Criminal Procedure Code, and the Probation of Offenders Act). Second, the adoption of best practices pertaining to interviewing of vulnerable and young suspects by law enforcement and rehabilitation agencies. These also include the general guidelines for management and handling of young suspects and offenders. Good practices and challenges will be highlighted.

Next, the report will detail how the Government has worked closely in tandem with the community legal fraternity to better help young suspects to access legal help so that they can be adequately represented in court proceedings. Lastly, we conclude with a brief discussion of the recommendations.

## **II. Background of Singapore**

Singapore is an independent island city-state with a land area of 722.5 square kilometres as at June 2018. It has a total population of 5.64 million people, which includes 3.47 million citizens and

0.52 million permanent residents<sup>223</sup>; another 1.64 million are non-residents living and working in Singapore. Singapore has an ethnically-diverse resident population (i.e., citizens and permanent residents) comprising of 74.3% Chinese, 13.4% Malays, 9.0% Indians, and 3.2% from other ethnicities.<sup>224</sup> With regard to religious beliefs, 33.2% of Singapore's resident population aged 15 years and over in June 2015 are Buddhist, 18.8% Christian, 14.0% Muslim, 10.0% Taoist, 5.0% Hindu, and 18.5% declared that they do not subscribe to any religious faith.<sup>225</sup>

Singapore was founded by Sir Stamford Raffles, and was established as a trading post of the British East India Company in 1819. Singapore became part of the Straits Settlements in 1826, which was under the jurisdiction of British India, and was designated as the regional capital in 1836. During World War II, Singapore was occupied by the Japanese from 1942 to 1945. Subsequently, Singapore united with Malaya, North Borneo, Sarawak to form Malaysia, which gained independence from the United Kingdom in 1963. In 1965, Singapore separated from Malaysia because of ideological differences to become a sovereign nation.

Since achieving independence in 1965, Singapore has developed its own political and legal system that is relevant and unique to its socio political and economic situation. Modelled after the United Kingdom's Westminster system of government, the Government of Singapore has three separate branches: The Executive, Legislature, and Judiciary. The Executive comprises the Elected President, Cabinet, and the Attorney General. The President is elected by the people and is empowered to veto government budgets and the appointments of office-holders. The Cabinet is made up of the Prime Minister and Cabinet Ministers who are appointed from the Members of Parliament. It is responsible for the general direction of the government and is accountable to the Parliament. The Attorney General is the principal legal adviser to the Government and has the power and discretion to prosecute offenders.<sup>226</sup>

The Legislature, comprising the President and the Parliament, is the legislative authority that is responsible for deliberating and enacting laws for Singapore; taking an inquisitorial role to check on actions and policies of the Government; as well as scrutinising the State's finances.<sup>227, 228</sup> The

<sup>223</sup> Department of Statistics, *Population and population structure*. DEPARTMENT OF STATISTICS, SINGAPORE (Jan. 23, 2019, 10:00 AM), <https://www.singstat.gov.sg/find-data/search-by-theme/population/population-and-population-structure/latest-data>

<sup>224</sup> Department of Statistics, *Singapore residents by age group, ethnic group and gender, end June, annual*. DEPARTMENT OF STATISTICS, SINGAPORE (Jan. 22, 2019, 10:30 AM), [https://data.gov.sg/dataset/resident-population-by-ethnicity-gender-and-age-group?view\\_id=ce206ba3-ea36-46fe-9e9a-6351a9c6805f&resource\\_id=f9dbfc75-a2dc-42af-9f50-425e4107ae84](https://data.gov.sg/dataset/resident-population-by-ethnicity-gender-and-age-group?view_id=ce206ba3-ea36-46fe-9e9a-6351a9c6805f&resource_id=f9dbfc75-a2dc-42af-9f50-425e4107ae84)

<sup>225</sup> General Household Survey 2015, Department of Statistics, <https://www.singstat.gov.sg/publications/ghs/ghs2015content>

<sup>226</sup> Prime Minister's Office, *The Government*, PRIME MINISTER'S OFFICE, SINGAPORE (Jan. 22, 2019, 3:17 PM), <https://www.pmo.gov.sg/the-government>.

<sup>227</sup> Ministry of Law, *Our Legal System*, MINISTRY OF LAW, SINGAPORE (Jan. 22, 2019, 4:05 PM), <https://www.mlaw.gov.sg/our-legal-system.html>.

<sup>228</sup> Singapore Parliament, *System of Government*. SINGAPORE PARLIAMENT (Jan. 22, 2019, 3:15 PM), <https://www.parliament.gov.sg/about-us/structure/system-of-government>.

Parliament is composed of elected, non-constituency, and nominated Members of Parliament. The President's assent is needed for all bills passed by the Parliament and the President has discretion to withhold his or her assent to certain bills.

Safeguarded by the constitution, the Judiciary (made up of the Supreme Court, the State Courts, and the Family Justice Courts) is a system of courts that independently interprets and applies the laws in Singapore. In particular, the Supreme Court comprises the Court of Appeal and the High Court, which hear both criminal and civil matters. The State Court is made up of the District Courts, Magistrates' Courts, Coroner's Court, the Small Claim Tribunals, the Community Disputes Resolution Tribunal, as well as the Employment Claims Tribunal. The Family Justice Courts, on the other hand, is composed of the Family Court, Youth Court, and the Family Division of the High Court. Judicial power in Singapore is vested in the Supreme Court and the head of the Judiciary is the Chief Justice.

Given the historical context of Singapore, it is unsurprising that the legal system as well as many statutes in Singapore are based on English law (e.g., the Criminal Procedure Code, 2012)<sup>229</sup> and practices. However, there are some statutes that have roots in the legislation from other jurisdictions; for example, the Penal Code (2008)<sup>230</sup> is based on the Indian Penal Code, which was (nonetheless) first formulated by the English in 1800s. Although there are similarities in the way that offences are defined in Singapore when compared with the abovementioned countries, the exact language of some laws vary somewhat. The Application of the English Law Act, which clarifies the English laws and statutes in Singapore, came into effect in 1993 (and revised in 1994).<sup>231</sup>

### **III. Key Statistics on Population and Youth Crimes**

#### ***Singapore Resident Population***

As at June 2017, Singapore has 3,965,800 residents<sup>232</sup>, of which 778,400 (20%) were aged 18 years and below and 637,600 (17%) were children and young persons aged below 16 years.

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<sup>229</sup> Criminal Procedure Code, Chapter 68 (2012).

<sup>230</sup> Penal Code, Chapter 224 (2008).

<sup>231</sup> Application of the English Law Act, Chapter 7A (1994).

<sup>232</sup> We provided the statistics for 2017, as at the time of this report, statistics on the number of youth offenders is not yet publicly available.

## **Youth Crime Statistics**

In 2017, there were 1,088 youths aged between 7 and below 16 years old arrested for various offences. This figure represented 0.3% of the overall population of youths who were aged between 7 years and below 16 years. Amongst all arrested persons who are residents in 2017 (12,231), 23% of them are 19 years old and below with 76% of them being males and 24% of them being females.

The CYPA has been amended to allow more children and young persons to benefit from more age-appropriate and rehabilitation-focused options. These rehabilitation-focused options include community-based sentences by the court or pre-court diversionary programmes, where if successfully completed, will not be charged.

## **IV. Policy and Legislative Framework for Youth Justice in Singapore**

Across most advanced jurisdictions in the world, the youth justice system faces the challenge of considering the need for positive development in youth offenders, in addition to providing deterrence and ensuring public safety, which are paramount considerations to the rehabilitation of the youth offender. As such, the contemporary youth justice system's primary goal, in principle, is to administer "custom-made" dispositions to adolescents based on a case-by-case consideration of each youth's distinct rehabilitative needs.<sup>233</sup> The rehabilitation focus of the youth justice system means that dispositions are chosen to help, and not to merely punish, the youth offender. Such tailoring should lead to different youth court orders for youth offenders who may commit similar offences but present with different personality and sociodemographic characteristics up to the point of the offence.

Singapore's approach to the criminal justice system is anchored by the following fundamental principles:

- a. Laws and criminal process must protect society from crime and uphold law and order;

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<sup>233</sup> Allan Horwitz & Michael Wasserman, *Formal rationality, substantive justice, and discrimination: A study of juvenile court*, 4 LAW HUMAN BEH. 103 (1980).

- b. Due process and the rule of law must be observed, and sentences commensurate with responsibility of the offender and gravity of the offence;
- c. Law enforcement agencies are empowered to discharge their duties effectively; and
- d. Offenders must be given the opportunity to be rehabilitated and reintegrated into society.<sup>234</sup>

Consistent with this philosophy, the emphasis of the Youth Court<sup>235</sup> is on restorative justice, which recognises the potential for change and reform in young offenders and delinquent youths.<sup>236, 237</sup> With the consideration of the youths' strengths and limitations, the Youth Court seeks to reintegrate children in conflict with the law into their families and the community, while balancing effective deterrence and the need for restoration and rehabilitation.<sup>238</sup> A common thread running through the Singapore Justice System, regardless of offending age, is a balance between retribution, deterrence, and rehabilitation. This approach and philosophy to youth justice is perhaps best emphasised by then Chief Justice Yong Pung How, in his address at the Subordinate Courts' Workplan 1997/1998<sup>239</sup>:

*"The complexity of youth crime requires a multi-pronged approach. It has to incorporate elements of deterrence, incapacitation and rehabilitation. A balance will have to be struck between the need for rehabilitation and accountability for the offending behaviour. Restorative justice seeks to achieve this..."*

The main legislation on youth justice in Singapore is the Children and Young Persons Act (CYPA).<sup>240</sup> The CYPA provides for the welfare, care, protection and rehabilitation of children and young persons. Other than the CYPA, there are laws under the Penal Code<sup>241</sup> and the Criminal Procedure Code<sup>242</sup> to guide the criminal justice system. The Penal Code relates to criminal offences. The Criminal Procedure relates to criminal procedures; for example, it states the criminal

<sup>234</sup> K Shanmugam, *Speech by Minister for Foreign Affairs and Home Affairs, K. Shanmugam, at Criminal Law Conference 2014*, MINISTRY OF LAW, SINGAPORE (Jan. 30, 2019, 2:45 PM), <https://www.mlaw.gov.sg/news/speeches/speech-by-min-at-criminal-law-conference-2014.html>

<sup>235</sup> The Youth Court was formerly known as the Juvenile Court.

<sup>236</sup> Family Justice Courts, *Philosophy – Restorative Justice Model*, (Jan. 14, 2019, 1:48 PM), <https://www.familyjusticecourts.gov.sg/Common/Pages/YouthMatters.aspx>

<sup>237</sup> UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, FOURTH AND FIFTH PERIODIC REPORTS OF STATES PARTIES DUE IN 2017 – SINGAPORE 48 (2017).

<sup>238</sup> Family Justice Courts, *Youth Court Matters*, SUPREME COURT, JUDICIARY, SINGAPORE (Jan. 15, 2019, 1:45 PM), <https://www.familyjusticecourts.gov.sg/Common/Pages/YouthMatters.aspx>.

<sup>239</sup> Yong Pung How, *Chief Justice's Keynote Address. Introduction of the Seventh Workplan 1997/1998: Subordinate Courts*, NATIONAL ARCHIVES OF SINGAPORE (Jan. 23, 2019, 2:07 PM) <http://www.nas.gov.sg/archivesonline/data/pdfdoc/19990410009.pdf> (1998).

<sup>240</sup> Children and Young Persons Act (1993).

<sup>241</sup> Penal Code, Chapter 224 §83 (2019).

<sup>242</sup> Criminal Procedure Code, Chapter 68 (2012).



jurisdiction of the courts, the powers of the police to investigate crimes, proceedings in courts, as well as sentencing for offences.

Singapore acceded to the United Nations Convention of the Rights of the Child (UNCRC) on 5<sup>th</sup> October 1995, a charter which sets minimum standards in the provision of healthcare, education, legal and social services to children. According to Article 3 of the UNCRC, “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” In particular, the UNCRC establishes key principles for youth justice through Articles 37 and 40 (See Annex B).

## **V. Legal Definition of Children and Persons, and the Age of Criminal Responsibility**

The CYPA defines a “child” as a person below the age of 14 years. Parliament has passed amendments to the CYPA to raise the age limit of a “young person” in need of protection or rehabilitation from 14 to below 16 years, to 14 to below 18 years. This amendment would allow youth offenders aged 16 years to below 18 years to benefit from a wider range of sentencing options.<sup>243</sup>

Currently, under the Penal Code, the minimum age of criminal responsibility is 7 years; in particular, the Penal Code states that “nothing is an offence which is done by a child under 7 years of age.”<sup>244</sup> Additionally, the Penal Code states that “nothing is an offence which is done by a child above 10 years of age and under 12, who has not attained sufficient maturity to understanding to judge the nature and consequence of his conduct on that occasion”.<sup>245</sup> However, there may be cases whereby a child’s age cannot be factually ascertained. In these cases, he or she is to be presumed to be the alleged age, even if it is subsequently invalidated. A medical practitioner may be required to ascertain a child’s age if the exact age is in doubt.<sup>246</sup>

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<sup>243</sup> Ministry of Social and Family Development, *Status of review into the criminal justice system for youths*, MINISTRY OF SOCIAL AND FAMILY DEVELOPMENT, SINGAPORE (Jan. 29, 2019, 11:50 PM). <https://www.msf.gov.sg/media-room/Pages/Status-of-review-into-the-Criminal-Justice-System-for-Youths.aspx>.

<sup>244</sup> Penal Code, Chapter 224 §82 (2019).

<sup>245</sup> Penal Code, Chapter 224 §83 (2019).

<sup>246</sup> Children and Young Persons Act, §4 (1993).

Other common law jurisdictions such as Australia, Hong Kong, England, and Wales and Northern Ireland have a minimum age of criminal responsibility of 10 years old.

## **VI. Laws Related to Children and Young Persons in Conflict with the Law**

The CYPA is just one component of the youth justice system. Besides the CYPA, the Penal Code, and the Criminal Procedure Code, another pertinent legislation that relates to children in conflict with the law is the Probation of Offenders Act, which is an Act that provides for the supervision of offenders in the community.<sup>247</sup>

Youth justice in Singapore, as a whole, is premised on graduated intervention. Children and young persons who had committed offences and subsequently arrested by law enforcement officers, are liable to be brought to the Youth Court. The public prosecutors, under the direction of the Attorney General, have the discretion to determine whether to charge the youth. Youth offenders, including those aged between 16 and 18 years, are generally diverted away from the criminal justice system where possible. Youth offenders who are not charged are either (i) let off with a police warning or (ii) placed on programmes outside the criminal justice system, known as “diversionary programmes”. Placing youth offenders on diversionary programmes outside the criminal justice system allows them to be accountable for their actions, and prevents disruption to other areas of their development, such as education.

It is noted that currently almost four out of five youths arrested are not charged in Singapore.<sup>248</sup> For youth offenders who are charged, they may be ordered to do community service or undergo probation supervision. In some instances, they may be placed on residential rehabilitation (see Annex C for sentencing options and diversionary programmes) or reformatory training. For youths aged 16 to 18 years facing criminal charges in Court, there are existing protective measures in place today. Offenders in this age group usually have their cases heard by the community court, which takes a more restorative and rehabilitative approach than the adult court.

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<sup>247</sup> Probation of Offenders Act, Chapter 252 (1985).

<sup>248</sup> K Shanmugam, *Speech by Mr K Shanmugam Minister for Home Affairs and Law. Committee of Supply Debate 2018*, MINISTRY OF COMMUNICATIONS AND INFORMATION, SINGAPORE (Jan. 23, 2019, 3:00PM), <https://www.gov.sg/microsites/budget2018/press-room/news/content/speech-by-mr-k-shanmugam-minister-for-home-affairs-committee-of-supply-debate-2018>.

Under the CYPA, the Director-general of Social Welfare, an appointed Protector, or a police officer are able to obtain information on the child or young person's family background, general conduct, home environment, education and medical histories, as well as his or her state of development. Such information is useful in helping the Youth Court deal with the case in the best interests of the child or young person. These may include any written report of a probation officer, an approved welfare officer, a registered medical practitioner or any other person whom the Youth Court thinks fit to provide a report on the child, and may be received and considered by the Court.<sup>249</sup> The Youth Court could also direct the child or young person and the family to undergo any medical, psychological, or other assessment or interviews as the Youth Court deems necessary. In addition, the Youth Court could release the child or young person on bail or remand him in a place of detention in order to facilitate the gathering of information or the conduct of assessments. Lastly, to protect the identity and privacy of the child and young person who is a subject of any investigation or court proceeding, the media is prohibited from publishing or broadcasting any pictures or information that may disclose the identity of the child or young person.<sup>250, 251, 252</sup>

## **VII. Interview of Young Suspects by Law Enforcement**

First, it should be highlighted that the term "interrogation" is not used within the youth justice context in Singapore. Upon the arrest of a child or young person by law enforcement agencies (e.g., the Singapore Police Force and the Central Narcotics Bureau)<sup>253</sup>, the youth suspect is first brought into custody by the respective agency. During the investigation process, youths who have been arrested are interviewed by the law enforcement officers. The interview allows the law enforcement officers to record important details of the incident or offence, such as when and where the incident or offence occurred, and the sequence of events. Although primarily relying on written statements, investigative interviews may be conducted via video recording where appropriate or necessary.

Second, when dealing with children and young persons in conflict of the law, law enforcement agencies and officers adopt a rehabilitative approach as far as possible. The exposure to the youth justice system can be a very difficult experience for the youth, especially if the youth had past experiences of trauma. Where possible, investigation process by law enforcement officers is

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<sup>249</sup> Children and Young Persons (Amendment) Act, Chapter 38 §42 (2014).

<sup>250</sup> Children and Young Persons (Amendment) Act, Chapter 38 §27A (2011).

<sup>251</sup> Children and Young Persons Act, §111(1993).

<sup>252</sup> Children and Young Persons (Amendment) Act, Chapter 38 §87A (2011).

<sup>253</sup> The Central Narcotics Bureau is the drug enforcement agency in Singapore.

expedited so as to minimise the trauma experienced by the youth. In this regard, law enforcement agencies and officers are guided by the following general considerations:

- a. Public interest in fair and effective investigations to determine truth;
- b. Best interest of the young person; and
- c. Shared responsibility among parents and other relevant stakeholders in caring for the young person.

**Support for vulnerable persons in interviews.** Understandably, investigation interviews by law enforcement officers may provoke anxiety in vulnerable suspects such as children and young persons, as well as those with mental health conditions or disabilities. In particular, there are concerns that the vulnerable person may misunderstand questions asked of them due to the anxiety they face, and therefore they may not accurately convey information to the officers. For these groups of vulnerable persons, additional help in the form of emotional support is thus necessary to aid them during the investigation and interview processes.

Two schemes, the **Appropriate Adults for Persons with Mental Disability (AAPMD)** and the **Appropriate Adults Scheme for Young Suspects (AAYS)**<sup>254</sup>, were launched in 2013 and 2017 respectively to enhance support for vulnerable persons with mental disabilities and young suspects during the investigation and interview processes. Under these schemes, suitable independent volunteers are appointed and trained as Appropriate Adults (AAs). The AAs accompany these vulnerable persons during investigation interviews, provide emotional support and aid communication between the person and the investigation officer. During the interview, AAs are tasked to look out for signs of distress and play a supportive role without interfering with the interview. As such, the AA is obligated to highlight to the Interviewing Officer if he or she deems that the young suspect is not in a condition to be interviewed. The Interviewing Officer may then decide to discontinue the interview.

Unlike other countries' jurisdictions, however, the AAs do not act as the advocates/legal counsel for the vulnerable person. Furthermore, parents and advocates of the child are not allowed to undertake the role of AAs like in other countries such as England, Australia, and China. Several studies have shown that having parents of young suspects act as AAs may in fact be detrimental to the child. For example, AAs who are parents or advocates for the child may be partial and are unable to separate the role of a parent from an independent AA.<sup>255</sup> Furthermore, parents may not

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<sup>254</sup> The AAYS is currently in its 2<sup>nd</sup> phase and full implementation is targeted to be completed in the 3<sup>rd</sup> quarter of 2019.

<sup>255</sup> SUE THOMAS & ANTHEA HUCKLESBY, REMAND MANAGEMENT (Youth Justice Board for England and Wales, 2002).

be adequately trained to understand or are unfamiliar with the system. They may also be facing stress from the investigation carried out on their children. Even worse, there may be instances where parents pressure their children to confess to the offence in order to expedite the investigation and court proceedings.<sup>256</sup>

**Activation guidelines for Appropriate Adults.** The AAs must be activated for young suspects below 16 years of age, unless certain waiver conditions are met. For those aged 16 to below 18 years, the investigation officers may similarly activate an AA for them where appropriate or necessary, such as if they are co-accused with those younger than them. However, it should be noted that when the investigation is time critical, law enforcement agencies can make an exception to the activation of AAs for young suspects so as to expedite investigations and ensure any further law enforcement operations are not compromised.

**Law enforcement officers handling of young suspects and offenders.** Law enforcement officers involved with the criminal justice process are adequately trained when dealing with youth suspects and offenders throughout the investigation and interview process. For example, all investigation officers are trained to use child-sensitive interviewing techniques.<sup>257</sup> During interviews with vulnerable or young suspects and offenders, the investigation officers ask clear, open-ended questions instead of leading and suggestive questions to obtain information or responses from the person during the interviews with vulnerable and young suspects and offenders.

If the young suspect is to be brought to the law enforcement agency from the school, a staff from the school will accompany the young suspect to the place of interview, to provide emotional support to the young suspect until the AA arrives. After the investigation interview is completed, the school staff will contact the young suspect's parents to render support, as well as monitor the young suspect's emotional well-being when he or she returns to school.<sup>258</sup>

**Ascertaining mental and psychological health information of the young suspect.** Children or young persons who are suspected of offending, or have offended, may have mental or psychological issues that law enforcement officers may not know of. These can render the young

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<sup>256</sup> David Brown et al., *Changing the Code: Police detention under the revised PACE codes of practice*, HOME OFFICE RESEARCH AND PLANNING UNIT (1992).

<sup>257</sup> UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, FOURTH AND FIFTH PERIODIC REPORTS OF STATES PARTIES DUE IN 2017 – SINGAPORE 48 (2017).

<sup>258</sup> Ministry of Education, *Ministerial Statement by Acting Minister for Education (Schools) on Schools' Procedures for Students Under Police Investigation*, MINISTRY OF EDUCATION, SINGAPORE, <https://www.moe.gov.sg/news/parliamentary-replies/ministerial-statement-by-acting-minister-for-education-schools-on-schools-procedures-for-students-under-police-investigation-on-tuesday--1-march-2016> (2016)

suspect more vulnerable during investigations or interviews. As such, law enforcement officers are required to request the young suspect's school to provide information on any known psychological or mental conditions pertaining to the young suspect, if the information is available or the gathering of such information is operationally possible prior to the interview. As mentioned above, the school will also make a preliminary assessment to determine the young suspect's physical and emotional well-being prior to the interview.

**Support for young suspects.** After the investigation interview by law enforcement officers is completed, there is a brief period of contact time with their parents or care-givers granted to the youth suspect or offender. During this time, the Investigation Officers will also share the AA's observations of the young person's emotional and mental state with the parents or care-givers, their points of assistance as well as general information about the investigation. At the same time, the school or institution, if the young suspect is under statutory supervision, are also informed within 24 hours of their arrest, so that they may render counselling or support to the youth and their families if necessary.

Following investigation interviews by law enforcement agencies, AAs will also record their observations or any signs of distress on the part of the young suspect that may require follow up. These observations or red flags will then be raised formally to the young suspect's school principal or institution in charge of the young suspect (if he is a resident of the Children's Home) for additional support, where necessary.

**Video recording of interviews.** To enhance the objectivity of the investigation interview, a recent amendment was made to the Criminal Procedure Code to allow discretion by law enforcement officers to take statements via writing or video recording.<sup>259</sup> Video recorded interviews can help the Court assess the weight of a statement by taking into account how the interview has been conducted, and the demeanour of the suspect (or witnesses). In particular, "[w]hile video recording will not completely eliminate the possibility of a suspect's statement being obtained by threat, inducement or promise, it will enable the court to quickly adjudicate on voluntariness and weight by objectively showing the flow of the interview and the demeanour of the interviewer and interviewee."<sup>260</sup> Currently, the video recording of investigation interviews are being implemented in phases for selected offences.

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<sup>259</sup> Criminal Procedure Code (Amendment), Chapter 68 §22(3) -(5) (2018)

<sup>260</sup> Ministry of Law, *Table of proposed legislative changes to the Criminal Procedure Code ("CPC") and the Evidence Act*, MINISTRY OF LAW, SINGAPORE (Feb. 6, 2019, 3:00PM), <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/AnnexB.pdf>

## VIII. Post-Law Enforcement Investigation: Triage Interviews with Youth Offenders

Following the investigation interviews by law enforcement agencies, youth offenders who have committed minor offences and had accepted their responsibility in the commission of the offences, may be referred for Triage assessment instead of being charged. The Triage system, which began in 2016, is a multi-agency collaboration between law enforcement agencies, the Ministry of Social and Family Development, and social service organisations. It is aimed at early assessment and identification of the youth offender's risks and needs, in order to divert suitable youths from the criminal justice system for more upstream rehabilitation.<sup>261</sup>

Triage Officers, who are social workers, are stationed at police divisions to assess the risks and needs of the youth offenders, including their suitability for rehabilitation.

Triage Officers meet the youth offender for an interview to better understand his risk profile and suitability for pre-court diversionary programmes as well as to identify issues the family might face. During the interview, at least one parent or caregiver will also be present, so that family factors can also be examined. The Triage Officer uses a risk assessment tool called the Youth Level of Service/Case Management Inventory: Screening Version (YLS/CMI-SV), which was developed in Canada, and has been adapted for use in Singapore so as to ensure that it is applicable and sensitive for the population here.<sup>262</sup> Prior to the Triage Interview, school reports are also sought so that appropriate judgements can be made regarding the youth's schooling and education. The information gathered provides a holistic assessment of the youth offender, and allows the Triage officer to identify his level of risk, criminogenic risk and personal characteristics (e.g., motivation, family circumstances, personality, and values). This process is characteristic of the Risk-Need-Responsivity framework<sup>263</sup> that underpins the rehabilitation approach for youth offenders in Singapore. In particular, the Risk-Need-Responsivity framework has been introduced in Singapore since early 2000s<sup>264</sup>, and youth justice agencies have adopted the framework to work with children and young persons in conflict with the law.

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<sup>261</sup> Ministry of Social and Family Development, *Triage System*, MINISTRY OF SOCIAL AND FAMILY DEVELOPMENT, SINGAPORE (Jan. 30, 2019, 1:50 PM), <https://www.msf.gov.sg/policies/Rehabilitation-of-Offenders/Community-based-Rehabilitation/Pages/Triage-System.aspx>

<sup>262</sup> Chi Meng Chu et al., *The utility of the YLS/CMI-SV for assessing youth offenders in Singapore*, 41 CRIM. JUS. BEH., 1437 (2014).

<sup>263</sup> Donald Arthur Andrews, et al., *Classification for Effective Rehabilitation: Rediscovering Psychology*, 17, CRIM JUST. & BEH, 19 (1990).

<sup>264</sup> Jonathan Chua et al., *Implementation of the Risk-Need-Responsivity framework within the juvenile justice agencies in Singapore*, 21 PSY. PSYCHOL. LAW, 877 (2014).

## IX. Pre-sentence Assessments: Interviews by Professionals

**Assessment for suitability for Probation Order.** A Probation Order is a community-based sentencing option where the youth offender is placed under the supervision of a Probation Officer for a period between 6 months and 3 years.<sup>265</sup> During this time, the youth offender (also referred to as a “probationer”) can continue with most of his daily activities such as school, work or National Service.<sup>266</sup> Besides supervision, a probationer may also be required to fulfil other conditions such as regular reporting sessions to the Probation Officer, or being placed on electronic monitoring, time restriction, and undergo programmes specific to their risks and needs. In 2017, 265 youth offenders under 18 years old were placed on probation orders and 29.8% of these were offenders under the age of 16 years (see Table 18 Annex A).<sup>267</sup> Youths placed on probation generally have good outcomes, as more than 80% of them successfully complete their probation orders.<sup>268</sup>

To assess the youth offender’s suitability for a Probation Order, the youth offender and his family members undergo interviews by trained Probation Officers. Prior to the interviews, informed consent is obtained from the youth offender, as well as their parents or legal guardians (given that these young persons are below the age of majority, which is 21 years old). The Probation Officers may also make home visits to better understand multiple factors such as the physical home environment, personal and social backgrounds, family dynamics and the neighbourhood environment. Where necessary, mental health professionals (e.g., psychologists) may also be called in for assessment and professional opinions, especially where there is mental health, severe violence and/or sexual violence concerns. In general, these assessments are guided by code of ethics that govern the practice in Singapore and would also require informed consent from the youth offenders, and their parents or legal guardians to continue. Importantly, informed consent is necessary because the young offender must agree to be placed on probation. These professionals are also versed in the Risk-Need-Responsivity framework (RNR)<sup>269</sup>, as well as the Good Lives Model<sup>270</sup>, which espouse principles of respect for the youth offenders, working with

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<sup>265</sup> Probation of Offenders (Amendment) Act, Chapter 252, §5(1) (1993).

<sup>266</sup> Enlistment Act, Chapter 93 (2001)

<sup>267</sup> Probation and Community Rehabilitation Service, Ministry of Social and Family Development.

<sup>268</sup> Ministry of Social and Family Development, *Probation: Completion and recidivism rates*, MINISTRY OF SOCIAL AND FAMILY DEVELOPMENT, SINGAPORE (Feb. 1, 2019, 2:50PM), <https://www.msf.gov.sg/research-and-data/Research-and-Statistics/Pages/Probation-Completion-and-Recidivism-Rates.aspx>.

<sup>269</sup> Donald Arthur Andrews, et al., *Classification for Effective Rehabilitation: Rediscovering Psychology*, 17, CRIM JUST. & BEH, 19 (1990).

<sup>270</sup> Tony Ward, *Good Lives and the Rehabilitation of Offenders: Promises and Problems*, 7 AGGRESS. VIO. BEH., 513 (2002).



the youth offenders through a strength-based perspective, as well as modifying interviewing and rehabilitation strategies to tailor to the characteristics of the youth offenders.

Similar to Triage, the Probation Officer uses a structured risk assessment tool, the Youth Level of Service/Case Management Inventory (YLS/CMI), to assess the youth offender's risk of re-offending, criminogenic needs and protective factors. The Probation Officer then documents the assessment details in a report and makes a recommendation for a Probation Order, based on the information gathered and their assessment of the youth offender. Often times, the Court may also call for a pre-sentencing report before determining the sentencing option for the offender.

**Assessment or interview for drug offenders for suitability for rehabilitation.** For youth offenders who are found guilty of drug consumption or are assessed to have some low risks in terms of drug-related offences, the youth offenders may be diverted to early intervention programmes in lieu of being charged in court. One such programme is the Youth Enhanced Supervision (YES; see Annex C). Prior to placement on such a programme, the drug offender will be assessed and interviewed by both anti-narcotic officers and psychologists of the Central Narcotics Bureau to assess his or her criminal and drug abuse history, family support, and anti-social peer associations; a recommendation would be put forth to the Director of Central Narcotics Bureau (who has the statutory authority to issue executive orders for supervision or rehabilitation as stipulated in the Misuse of Drug Act, which is the Act that provides for the control of dangerous or otherwise harmful drugs and substances). The risk profile of the youth will determine suitability for emplacement on the YES programme or more structured drug rehabilitation regimes. Similarly, professional code of ethics governs the conduct of the officers and psychologists.

**Assessment or interview to assess suitability for Reformatory Training.** Reformatory training is another rehabilitative option for offenders between 14 and 21 years old (See Annex C). Prior to undergoing reformatory training, offenders are assessed by appointed psychiatrists and Correctional Rehabilitation Specialists (CRS) from Singapore Prison Service (SPS) to determine their suitability to undergo reformatory training, and if so, the level of intensity of interventions required to address their risk and needs. This is so that offenders can be grouped accordingly to provide a more targeted set of interventions. During reformatory training, each Reformatory Trainee will also have a personal supervisor (a prison officer) to provide guidance and counselling to aid in the rehabilitation. Interviews conducted by the prison officers, specialists, and psychologists are typically guided by Risks-Needs-Responsivity (RNR) principles whilst balancing security considerations.

## **X. Post-sentence Assessments: Interviews by Professionals**

Other than law enforcement officers and probation officers, professional social workers and psychologists also provide support in the assessment and rehabilitation of these youth offenders during the post-sentencing phase, especially for those with mental and behavioural conditions. This practice is in line with international standards and ethical principles, which emphasises that respect for the youth offenders' rights and dignity is of paramount importance. Generally, informed consent to receive treatment or participation in rehabilitation programmes is obtained for interviews and interventions that are not mandated by the Court or law.

## **XI. Detention of Young Suspects during Interviews or Pretrial**

One of the general considerations under the CYPA is that youth offenders must be separated from adult offenders. In particular, children and young persons detained during police investigation interviews or pre-Court trial proceedings are not to associate with an adult offender, unless the adult is charged with the same offence and is jointly charged with the child.<sup>271</sup> The presumption of innocence is an important and fundamental principle of Singapore's Criminal Justice System. Hence, it is imperative that an accused has the right to be presumed innocent and lead a normal life until a verdict on the charge is reached. Under the CYPA, The Youth Court or Magistrate shall release a young person on a bond<sup>272</sup>, entered into by the parent or guardian unless the court deems that:

- a. The offence can only be tried by the High Court
- b. He would be associating with undesired persons
- c. That there is high risk of absconding or committing further offences
- d. There is risk of loss or destruction of evidence relating to the offence charged
- e. There is risk of interference with any witnesses relating to the offence
- f. Bail would otherwise defeat the ends of justice

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<sup>271</sup> Children and Young Persons Act, §35 (1993).

<sup>272</sup> Some offences are non-bailable. However, a Magistrate or District Judge has the discretion to grant bail even though the offence is non-bailable.

## XII. Legal Aid for Children and Young Persons in Conflict with the Law

As a member of the United Nations (UN), Singapore is bound by international law to respect the right to a fair hearing.<sup>273</sup> This right is co-related to the right to legal counsel and is embodied in the Singapore Constitution [Article 9(3)], which states that: “*Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and **shall be allowed to consult and be defended by a legal practitioner of his choice*** [emphasis ours]. Today, legal aid schemes are government-funded and cover both civil and criminal cases, with the former by the Legal Aid Bureau (LAB) and the latter through the Criminal Legal Aid Scheme (CLAS), which is administered by the Law Society Pro Bono Services (LSPBS). These services are made available for persons with limited means. In addition to legal aid, community legal clinics are available for those who are unable to afford a lawyer, to seek free basic legal advice.

The CLAS is accessible to **all Singaporeans and foreigners** who have been charged in court, including children and young persons, for offences covered by CLAS. To qualify, applicants must pass both a means test and a merits test. Under the means test, applicants with a disposable income of not more than S\$10,000 per annum and a disposable capital of not more than S\$10,000 (refer to Annex D for the full criteria) may be granted legal aid. The CLAS also serves a wide range of clients including vulnerable groups, lawyers are also assisted by professionals such as interpreters and psychiatrists on a pro-bono basis. To enable more persons to be served under the Scheme, the Singapore Government started funding the CLAS since 2015. The Government also worked with the Courts, the Law Society and the Criminal Bar to enhance the Scheme by increasing the number of offences covered and providing legal representation for accused who intend to plead guilty and where aid can make a difference in the sentencing.<sup>274</sup> Enhanced CLAS now serves more than three times as many accused persons (around 1,500 per year) compared to pre-enhanced CLAS (around 400 per year). Again, this is in line with the Government’s commitment to enhance access to justice for accused persons of limited means who cannot afford their own lawyers.

**Support from the legal fraternity.** In many cases, while the government can take a lead role, help from the community is crucial to ensure success. This is consistent with the “many helping

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<sup>273</sup> Article 10 of the Universal Declaration of Human Rights, as cited in Lee, J.T., (2012). *Reforming the right to legal counsel in Singapore*, School of Law, Singapore Management University Opinion Series (2/2012) (Jan. 18, 2019, 4:28 PM), [https://ink.smu.edu.sg/cgi/viewcontent.cgi?article=3053&content=sol\\_research](https://ink.smu.edu.sg/cgi/viewcontent.cgi?article=3053&content=sol_research).

<sup>274</sup> Prior to the enhancement, legal aid can only be given where the accused intends to claim trial.

hands approach” where it is recognised that the community can play a crucial role in providing help for those in need. In the area of legal aid, support from the legal fraternity has been crucial in enabling CLAS to serve more accused persons. One example is the CLAS Fellowship Scheme, where private law firms have generously pledged to second or sponsor young lawyers to work full time to represent CLAS applicants for a one-year tenure. This allowed an increased pool of lawyers to take on cases under this scheme. Since the launch of the enhanced CLAS in 2015, the number of successful applications for Criminal Legal Aid have more than tripled (see Annex E), a testament to the success of the enhancement of this scheme and partnership between the Government and the legal fraternity.

### **XIII. Good Practices and Challenges**

Although many of the practices by law enforcement are guided by legislation, there are some generally accepted good practices that we alluded to in the preceding sections. First, it is emphasised that for investigation interviews conducted by law enforcement agencies (e.g., police, anti-narcotics, immigration, customs etc.), there is an implicit acknowledgement that a developmentally-sensitive approach is needed when interviewing most youth suspects who are not yet entrenched in syndicated and serious crimes. The implementation of the AA schemes are examples that demonstrate Singapore’s commitment to improving best practices in the youth justice system. Importantly, there is also emphasis on the shared responsibility among parents, the community and relevant social service organisations in caring for the young person.

Second, there is increasing promulgation of government-community partnerships in provision of services (e.g., Triage and Appropriate Adults Scheme) that tap on the unique strengths of volunteers and community experts. Although law enforcement agencies are trained to use a rehabilitative approach when dealing with youth suspects and offenders, they are often still perceived to be intimidating or adversarial to young persons. Furthermore, the youth justice system as a whole can be a difficult process and sometimes traumatising experience for the young person. Thus, it is critical to involve our community volunteers and social workers to provide the “softer touch” in supporting the young offender. Such initiatives can only be made possible by the commitment of various governmental and community agencies to ensure that the interview processes adhere to the legal requirements whilst providing the necessary support in a timely manner. Where the government has finite resources, co-creation and collaboration between the government and community agencies gives greater ownership and involvement to the community in the lives of young offenders. These efforts also show Singapore’s commitment in line with Article

3 of the UNCRC, which emphasises that the best interests of the child are the first and foremost consideration.

Third, the guiding philosophy of the youth justice system is that youth offending is best contained and prevented through rehabilitation of the youth offender. There is recognition that rehabilitation needs of the youth offenders are crucial, notwithstanding considerations for retribution, punishment, deterrence, and public safety when determining suitable ways to deal with the offender. This is clearly demonstrated in Singapore's approach to divert the youth offender away from the criminal justice system where possible, as well as to rehabilitate the youth offender so that they may re-integrate with their families and the community. Notably, the youth justice agencies in Singapore have generally adopted the Risk-Needs-Responsivity framework<sup>275</sup>, which not only clarifies the evidence-based, best practices for youth offender rehabilitation, but also describes how youth offenders can be managed through positive and respectful interactions that are tailored in accordance with their personal characteristics (such as motivation, family circumstances, personality, and values). Furthermore, instead of focusing on negative aspects of the youth offender's life, it is increasingly recognised that these young offenders have strengths and share the same fundamental rights as others (e.g., human rights as well as respect of their entitlement to well-being and freedom).<sup>276</sup> This is well articulated by the Good Lives Model, a strength-based approach to offender rehabilitation<sup>277</sup>, which is increasingly used in conjunction with the Risk-Needs-Responsivity framework by youth justice agencies. Although there are debates between the proponents of the models, there are similarities and complementary principles that are deemed to be beneficial in the Singaporean youth justice context. Importantly, relevant to this report, the relevant professionals from the youth justice agencies are generally guided by these tenets (e.g., strength-based, respect for the youth offender, the examination of the offender's aspirations and strengths etc.) in their interaction and interview practices with children and young persons who are in conflict with the law.

In terms of challenges, there was a need for the agencies to coordinate the availability of the AAs to ensure that the interviews (and investigation) were conducted expediently and that the young suspects did not need to be held for a prolonged period during the implementation of the AA schemes. Importantly, these initiatives brought together governmental, legal, as well as community agencies, whereby trust and alignment needed to be forged across the agencies before co-creation of ideas and plans could materialise. Likewise, the implementation of the Risk-

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<sup>275</sup> Donald Arthur Andrews, et al., *Classification for Effective Rehabilitation: Rediscovering Psychology*, 17, CRIM JUST. & BEH, 19 (1990).

<sup>276</sup> Good Lives Model, *The Good Lives Model of offender rehabilitation: A strengths-based approach for lives in transition*, (Feb. 1, 2019, 11:29 PM), <https://www.goodlivesmodel.com>.

<sup>277</sup> CHI MENG CHU & TONY WARD, *POSITIVE CRIMINOLOGY* 140-61 (Natti Ronel & Dana Segev eds., Routledge 2015).

Need-Responsivity framework within the youth justice system required coordination across the youth justice agencies. The training of the professionals, the dissemination of information, and the subsequent adoption of framework needed deliberation, synchronisation of procedures, and adaptation to the local context to ensure sustainability.

## **XIV. Recent and Upcoming Reform Initiatives**

Over the years, reforms to the youth justice system have gradually been made to better align the legislation, procedures, and services with the best interests of the child and young person. Amendment to the CYP A has passed to enhance the protection for children and young persons, as well as to provide greater support for the rehabilitation of youth offenders. This includes raising the age threshold to include persons aged 16 to below 18 years. Other legislative amendments were also made to the Penal Code, the CPC, and the Probation of Offenders Act, to better support rehabilitation of offenders. Additionally, the Probation of Offenders Act further provides for first-time offenders below 21 years old to be placed on probation. These reform initiatives have the effect of allowing young offenders to benefit from a wider range of sentencing options. Moreover, the Penal Code Review Committee also recommended in light of the issue of raising of the minimum age of criminal responsibility, that those acquitted by virtue of being below the minimum age should attend treatment or counselling and other non-custodial programmes where necessary so as to address his criminogenic needs and guide him away from antisocial conduct in the future. This has the effect of addressing his problem behaviours without coming into contact with the criminal justice system. Moreover, the terms “sentencing”, and “conviction” are not used in relation to offenders in Youth Court to avoid criminalising them.<sup>278</sup>

The AA schemes are major reform initiatives that demonstrate the importance of providing emotional support for vulnerable persons (including persons with mental disabilities and children and young persons) and assisting in their communication with law enforcement officers during investigation interviews. Over time, there are also plans to expand the use of video recording for investigation interviews, and to better use technology and evidence-based practices to guide agencies’ work in rehabilitating youth offenders even more effectively.

There have also been efforts to divert youth offenders who commit minor offences from the Criminal Justice System. One such example is the Triage System, which aims to assess the suitability of young offenders for diversionary programmes. Since its inception in 2016, the number

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<sup>278</sup> Children and Young Persons (Amendment) Act, Chapter 38 §41 (2014).

of youth offenders under 16 years old assessed under the triage programme have increased by more than 25%. In this, the caseworkers also interview the offenders after the law enforcement (e.g., police and anti-narcotics) investigations and, concurrently with the law enforcement, make recommendations to the prosecution on the suitability of diversionary programmes for the young offenders.

More recently, a review of the interview processes also allowed for video recording of interviews so as to enhance the objectivity of the interview and capture relevant and important details such as suspect's emotions and demeanour. This will have the added effect of facilitating the court in the assessment of the weight of a statement by taking into account how the interview has been conducted. However, this is not implemented for the entire spectrum of young suspects; currently only those who have committed rape or selected non-capital drug cases, those with mental disabilities, before implementation is expanded in subsequent phases. Furthermore, the use of video recorded police interviews as evidence in court proceedings was also made possible through recent amendments to the Criminal Procedure Code.<sup>279</sup>

There have been a number of reviews and implementation of new legislations and practices to improve the general management of children and young persons who are in conflict with the law (throughout the entire continuum from investigation to rehabilitation) in Singapore. With regard to the recommendations, there are legislative provisions for the usage of video recorded interviews, but such a practice has not been rolled out to all interviews involving children and young persons who are in conflict with the law. Whilst it is understandable that the video recording of interviews is implemented in phases, presumably due to logistical considerations, this would be a massive step forward when implemented system-wide – which would include recording the interviews with children and young persons who are in conflict with the law. The scrutiny from this process will undoubtedly lead law enforcement officers and other professionals to raise their standards of practice pertaining to interviewing. In this case, there will be a need for the law enforcement and youth justice agencies to synergise efforts to help the officers and professionals enhance their interviewing practices. Next, it would also be useful to evaluate the success (and impact) of various initiatives including video recording of interviews, the Triage system, as well as the AA schemes. Importantly, the insights from the both process and outcome evaluations of these initiatives will improve the design and procedures, and ultimately the experience of these children and young persons in conflict with the law.

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<sup>279</sup> Criminal Procedure Code (Amendment), Chapter 68 §264A (2018). The roll out of this reform is conducted in phases. It is currently for suspects investigated for rape, suspects with mental disabilities and selected non-capital drug cases.

## XV. Conclusion

As aforementioned, youth crime is highly complex. The youth justice system must balance rehabilitation and accountability for the offending behaviours. As a society matures and evolves, there is a need to ensure the youth justice system continues to be able to meet the ever-changing needs of young persons. Singapore, being a signatory of the United Nations Convention on the Rights of the Child is committed to protecting and promoting the wellbeing of our children. It continues to refine its policies and legislations as necessary to better meet their needs in an evolving society. Furthermore, the new interview and investigative procedures (i.e., the AA schemes) adopted by law enforcement are designed to be child sensitive and considers the vulnerability as well as the welfare of young suspects.

Singapore is well-known as a safe and peaceful place, with a low crime rate. It is consistently ranked amongst the most peaceful societies in the Global Peace Index.<sup>280</sup> This is not achieved by accident, but by the commitment of law enforcement as well as well-deliberated, tough (but fair) laws. Nevertheless, there is a need to balance deterrence and rehabilitation for all offenders especially the young and vulnerable. Although whole-of-government efforts leverage the unique skills of different agencies, the government has limited resources. Therefore, the involvement of community agencies, who have unique skills in working with children and young persons, is more ubiquitous within the youth justice context in Singapore. It is expected that community partners will play an increasing role to complement the youth justice and law enforcement agencies in future initiatives and reform.

In conclusion, it is clear that any approach to reforms to youth justice must be come from a multi-systems perspective. In Singapore, gradual changes over the years have been made at different levels from the processes of investigation and interview with young suspects, to the amendment of legislation and laws regarding handling of children and young persons who are in conflict with the law, to the diversion of those of young offenders from the youth justice system, and lastly, to providing second chances for offenders. Notably, the youth justice agencies in Singapore are committed to evidence-based, offender assessment and rehabilitation frameworks, which guide the professionals in terms of interviewing during the investigation, pre-sentence assessments, and the offender rehabilitation phase. As observed in many reform initiatives over the years, the Singapore government is committed to engage and work together with the community to make necessary

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<sup>280</sup> Institute for Economics and Peace, *Global Peace Index 2018: Measuring peace in a complex world*, INSTITUTE OF ECONOMICS AND PEACE, SYDNEY (Feb. 5, 2019, 7:30PM), <http://visionofhumanity.org/app/uploads/2018/06/Global-Peace-Index-2018-2.pdf>.



changes to safeguard the well-being of the population; and in this case, the children and young persons in conflict with the law.

## **ANNEX A**

**Table 17: Resident Population aged 7 to 18 years & below and Youth Crime statistics in Singapore (2017)**

<b>Age group</b>	<b>Total</b>	<b>Males</b>	<b>Females</b>	<b>Number of young persons arrested in 2017</b>
7 – 15 years	373,063	189,744	183,319	1,088
16 – 18 years	140,795	72,377	68,418	

**Table 18: Singapore Proportion of youth offenders under Diversionary Programmes (DP) and Probation in 2017**

<b>Age group</b>	<b>Number of offenders</b>	<b>Males</b>	<b>Females</b>
<b>Diversionary Programmes</b>			
Total	509	396 (77.80%)	113 (22.20%)
Below 16 years	295 (57.96%)		
16 – 18 years	214 (42.04%)		
<b>Probations</b>			
Total	265	229 (86.42%)	36 (13.58%)
Below 16 years	79 (29.81%)		
16 – 18 years	186 (70.19%)		

## **ANNEX B**

United Nations Convention on the Rights of the Child (UNCRC) – Articles related to youth justice

### **Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### **Article 40**

1. States Parties recognise the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, 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 such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

# **ANNEX C**

## **Rehabilitation and Sentencing Options in the Youth Justice System**

### ***Pre-court Diversionary Programmes***

Instead of being charged in court, youth offenders may be diverted to pre-court diversionary programmes such as the Guidance Programme (GP) and Enhanced Streetwise Programme (ESWP) and the Youth Enhanced Supervision (YES) Scheme. These diversionary programmes aim to impart life-skills to minimise their risk of reoffending.<sup>281</sup>

The GP is for youth offenders who committed minor offences. Children who successfully complete the programme are then given a warning in-lieu of court prosecution. Using a case management approach, the youth is engaged using individual, group-based and family sessions in order to educate him on taking responsibility for his actions, problem solving in a prosocial manner, forming healthy relationships and being engaged meaningfully in school or work and managing his emotions.

Conversely, the ESWP is for youth offenders who are involved in minor gang-related offences but are assessed to be at a low risk of future offending. This programme requires the youth offender to report to the Police, monitoring of school or work attendance, restrictions on places he can visit and people he can associate with.

Finally, the Director of the Central Narcotics Bureau (CNB) have the authority to place drug offenders under a supervision order for a period not exceeding 2 years or to undergo treatment or rehabilitation at an institution. These orders do not need to go through the court system. In addition, suitable young drug offenders assessed by psychologists at CNB may also be referred to an intervention programme such as the Youth Enhanced Supervision (YES) Scheme. This is a 6-month structured programme jointly rolled out in 2013 by the Central Narcotics Bureau and the Ministry of Social and Family Development for youth offenders below 21 years old, arrested for drug consumption for the first time<sup>282</sup>. Supported by Social Service Agencies, this programme complements supervision with casework management and counselling components. Caseworkers would engage the young drug

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<sup>281</sup> UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, FOURTH AND FIFTH PERIODIC REPORTS OF STATES PARTIES DUE IN 2017 – SINGAPORE 48 (2017).

<sup>282</sup> Youths on probation may also be referred for the YES programme. Although YES is a 6 month programme, it can be extended for up to an additional 6 months.

offender, minimally for 25 sessions, using individual, group-based and family sessions to address his motivation for change and teaching new skills to desist from drugs. The enlistment of family involvement is also critical where parents are equipped with parenting skills to help the youth star away from drugs. Additionally, this programme includes bi-weekly urine tests and reporting requirements for up to 2 years.<sup>283</sup>

### ***Community Rehabilitation***

Community rehabilitation can take the form of a Probation Order, Community Service Order or a Detention Order. Community rehabilitation does not carry a criminal record, unlike other sentences such as imprisonment or reformatory training.<sup>284</sup>

Children aged 14 years and above must be willing to comply with the Probation Order for it to come into effect. Youth offenders who refuse the Probation Order may be given other sentencing options such as imprisonment, reformatory training, or community-based sentences. Furthermore, if a youth on probation has failed to comply with the requirements of a probation order, the court may at its discretion impose a fine or detain the probationer in prison.

Youths may also be ordered to perform community service if he or she has attained an age of 14 years and is deemed suitable to perform such an order. The maximum duration of the community service order is capped at 240 hours.<sup>285</sup>

Under the Detention Order, a youth offender below 16 years can be ordered to reside in a place of detention not exceeding three months and undergo a series of exercise drills and group work to equip him with relevant skills during detention. Detention, if ordered, could be served prior to or after the Probation Order. Detention could also occur for weekends only under the Weekend Detention Order and served concurrently with a Probation Order.

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<sup>283</sup> Ministry of Social and Family Development, *Pre-Court Diversionary Programmes*, MINISTRY OF SOCIAL AND FAMILY DEVELOPMENT, SINGAPORE (Jan. 30, 3:35 PM), <https://www.msf.gov.sg/policies/Rehabilitation-of-Offenders/Community-based-Rehabilitation/Pages/Pre-Court-Diversionary-Programmes.aspx>.

<sup>284</sup> Youth offenders may be ordered to serve more than one order. For example, an offender may be required to Probation and also perform community service, or probation and detention on weekends.

<sup>285</sup> Children and Young Persons Act, Chapter 38, §3(1) (2001).

## ***Residential Rehabilitation***

Youth offenders can also be ordered to serve a period of rehabilitation in Juvenile Rehabilitation Centres.<sup>286</sup> The policies of residential rehabilitation are guided by five core principles: (i) Providing care with the aim of reintegration back into family and society; (ii) developing and fostering a safe and supportive environment for rehabilitation; (iii) Maximising strengths and potential for each person; (iv) strengthening the family; and (v) fostering synergistic partnerships with the community.

Under the Ministry of Social and Family Development, the Singapore Boys' Home and Girls' Homes are established as Juvenile Rehabilitation Centres and places of safety for the reception of males and female offenders with the aim of effectively rehabilitating them and successfully reintegrate them back into the community.

## ***Reformative Training***

Reformative training is another form of rehabilitative sentencing option for youth offenders above 14 and below 21 years. In order to be ordered to undergo Reformative Training, a report submitted by the Commissioner of Prisons (or an authorised proxy) is necessary, detailing the offender's physical and mental condition, his suitability for reformative training and nature of rehabilitation recommended. Youth sentenced to Reformative Training are detained and rehabilitated in a structured environment called the Reformative Training Centre for between 6 and 48 months. Unlike other community or residential based sentencing options such as probation or emplacement in a Juvenile Rehabilitation Centre, youths sentenced to Reformative Training will have a criminal record.

Reformative trainees undergo two phases: The Residential Phase and the Supervision Phase. In the former, trainees undergo rehabilitation programmes such as psychology-based programmes in addition to academic and vocational training. Trainees may also undergo other programmes such as religious services, family programmes and personal development programmes. Throughout this phase, a Personal Supervisor guides and monitors the trainees' discipline and progress of his rehabilitation journey. In the latter, trainees will go on Release on Supervision after they are assessed ready to be reintegrated into the community. During this period, they will either study or work while on supervision and will be discharged from the reformative training sentence when assessed to have made good progress in their reintegration.

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<sup>286</sup> Children and Young Persons Act, Chapter 38, Children and Young Persons (Juvenile Rehabilitation Centres and Places of Safety) Order (2012).



## ***Restrictions on Punishment of Children or Young Persons***

While the courts have the discretion of different sentencing options for young offenders, there are certain restrictions in place:

- a) Children under the age of 10 years may not be sent to a juvenile rehabilitation centre, remand home or a place of detention, unless the court is satisfied that he cannot be dealt with otherwise or for certain grave crimes such as murder, attempted murder, culpable homicide, or voluntarily causing grievous hurt.
- b) A young person also shall not be sentenced to imprisonment if he is unable or defaults to pay a fine or cost, unless he is certified by the court that he is of so unruly a character that he cannot be detained in a place of detention or juvenile rehabilitation centre.
- c) If the young person is under 21 years of age and sentenced to imprisonment, as far as possible, he should not be housed together with adult offenders.
- d) For children and young persons, corporal punishment may only be meted out by the High Court.

The Criminal Procedure Code also prohibits the death penalty to be imposed on a person under the age of 18 years at the time of offence commission. The young person should instead be sentenced to life imprisonment instead. Additionally, in line with article 37(a) of the Convention of the Rights of the Children, a young person sentenced to life imprisonment may apply to the Ministry of Home Affairs to review his case and possibly released, if he has served a minimum of 20 years of the prison sentence. Youths sentenced to life imprisonment will also be given opportunities whilst in prison to participate in rehabilitative activities. They may also participate in work within the institution or emplaced on vocational and educational programmes, subject to good progress and behaviour.<sup>287</sup>

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<sup>287</sup> UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, FOURTH AND FIFTH PERIODIC REPORTS OF STATES PARTIES DUE IN 2017 – SINGAPORE 48 (2017).

# **ANNEX D**

## **Criteria for Criminal Legal Aid Scheme<sup>288</sup>**

### **Who can apply?**

Anyone in Singapore including foreigners who is charged in court for an offence under the below statutes, provided he/she cannot afford to pay<sup>289</sup> for a lawyer to represent him/her.

Statutes where offences allow the application for legal aid:

1. Arms & Explosives Act
2. Arms Offences Act
3. Computer Misuse and Cybersecurity Act
4. Corrosive & Explosive Substances & Offensive Weapons Act
5. Dangerous Fireworks Act
6. Enlistment Act
7. Explosive Substances Act
8. Films Act
9. Miscellaneous Offences (Public Order and Nuisance) Act
10. Misuse of Drugs Act
11. Moneylenders Act [Sections 14 and 28]
12. Penal Code
13. Prevention of Corruption Act
14. Undesirable Publications Act

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<sup>288</sup> Law Society, *Criminal Legal Aid Scheme*, LAW SOCIETY, SINGAPORE (Jan. 22, 2019, 5:30 PM), <http://probono.lawsociety.org.sg/Pages/Criminal-Legal-Aid-Scheme.aspx>.

<sup>289</sup> Subject to a means test.

15. Vandalism Act
16. Women's Charter [Sections 65(8) and 140(I)(i)]

### **Means Test**

Under the means test, persons with a Disposable Income of not more than S\$10,000 per annum and a Disposable Capital of not more than S\$10,000 may be granted legal aid.

"Disposable Income" refers to the applicant and the spouse's income during the 12 months preceding the date of application after deducting:

- a) S\$6,000 for the applicant
- b) S\$6,000 for the working spouse
- c) Up to S\$6,000 for each dependent
- d) An amount not exceeding S\$20,000 for rent (if any)
- e) The applicant's contribution to the Central Provident Fund (CPF) <sup>290</sup>
- f) The spouse's contribution to the CPF

"Disposable Capital" refers to the applicant's property, excluding:

- a) Clothes;
- b) Tools of their trade;
- c) Household furniture;
- d) The house the applicant lives in, but only if it has an annual value of not more than S\$13,000, or is a Housing and Development Board (HDB) flat;
- e) Savings up to S\$30,000, only if the applicant is 60 years of age or above;
- f) Applicant's CPF.

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<sup>290</sup> The Central Provident Fund (CPF) refers to a mandatory social security savings scheme co-funded by employers and employees aimed at serving the needs for retirement, housing and healthcare.

## **ANNEX E**

**Table 19: Number of applications and applications granted for criminal legal aid,  
Singapore<sup>291</sup>**

	<b>2015 (% successful)</b>	<b>2016 (% successful)</b>	<b>2017 (% successful)</b>
Number of applications	1,913	2,361	2,327
Aid granted	1,018 (53%)	1,777 (75%)	1,477 (64%)

Source: Law Society, Singapore

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<sup>291</sup> Law Society, *Lawyers going global: It's in our hands. Annual Report (2018)*, LAW SOCIETY, SINGAPORE (Feb. 6, 2019, 4:11 PM), <https://www.lawsociety.org.sg/Portals/0/AboutUs/AnnualReport/2018/index.html?page=3>.

# THAILAND

## I. Policy and Legislative Framework (including Special Laws on Anti-terrorism, Armed Conflicts, Emergency Situations, Marshal Law and Other Measures Pertaining to Children) and Key Data

According to the Thailand Official Statistics Registration Systems, the number of children population in Thailand has been decreasing in the past five years. With the ratio of boys and girls of about 51 percent of boys to 49 percent of girls, the total number of children decreased from 7,714,758 in 2014 to 7,201,662 persons in 2018, a 7 percent reduction of the population (see more detail in Table 20).

**Table 20: Number of children population under 18, 2014-2018, classified by gender in Thailand.**

Gender	2014		2015		2017		2018	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Male	3,958,572	51.31	3,861,306	51.31	3,723,731	51.33	3,696,727	51.33
Female	3,756,186	48.69	3,664,121	48.69	3,530,300	48.67	3,504,935	48.67
Total	7,714,758	100	7,525,427	100	7,254,031	100	7,201,662	100

Source: Calculated Statistics from [http://stat.dopa.go.th/stat/statnew/upstat\\_age.php](http://stat.dopa.go.th/stat/statnew/upstat_age.php)

Disaggregated by age, in 2018, about 55 percent of children were aged 10 to not yet 15, and 45 percent of children aged 15 to not yet 18. Looking at the ratio of changes in the population comparing the years 2014 to 2018, there was quite a drastic reduction of the percentage of children in the older group compared to children in the younger age group. While the percentage of children aged 15 to not yet 18 reduced from 3,691,147 to 3,214,793 counted for a 12.91 percent reduction, the number of children aged 10 to not yet 15 decreased from 4,023,611 to 3,986,869, which counted for only a 0.91 percent reduction (see more detail in Table 21).

**Table 21: Number of children population under 18, 2014-2018, classified by age in Thailand.**

Year	2014	2015	2016		2017		2018	
Age	Number	Number	Number	Percent	Number	Percent	Number	Percent
10 not yet 15	4,023,611	3,986,394	3,983,268	54.21	3,991,516	55.02	3,986,869	55.36
15 not yet 18	3,691,147	3,539,033	3,364,964	45.79	3,262,515	44.98	3,214,793	44.64
Total	7,714,758	7,525,427	7,348,232	100.00	7,254,031	100.00	7,201,662	100.00

Source: Accumulated Statistics from [http://stat.dopa.go.th/stat/statnew/upstat\\_age.php](http://stat.dopa.go.th/stat/statnew/upstat_age.php)

### **A. Legal definition of children and age of criminal responsibility**

In Thailand, particularly in the justice system, the word “juvenile” more often connotes a young offender rather than just a young person. Currently, the age of criminal responsibility in Thailand is 10 years old, and work is in progress to increase the age to match the requirement of the international standard, which is 12 years old. According to the Act Amending the Penal Code (No. 21) B.E. 2551 (2012), Chapter 4 Criminal Liability, Section 73, a child not yet over ten years of age shall not be punished for committing what is provided by the law to be an offence. Thus, any offence that is defined in the penal code will be considered as an offence for children and youth only when the person who committed the offence is aged 10 years old or older. The Act Juvenile and Family Court Procedure B.E. 2553 (2010), Section 4, indicates that a “Child” means any person under the age of fifteen (15) years, and a “juvenile” means any person who is over the age of fifteen (15) years, but has not attained the age of eighteen (18) years. In this way in Thailand “juvenile” refers to children and adolescents aged 10 years and older but who have not yet reached 18 years of age who have committed an act that is defined in the Penal Code as an offence. In a criminal case where a child or juvenile is alleged to have committed an offence, the age of the child or juvenile shall be considered at the time when the offence is committed.<sup>292</sup>

Therefore, the juvenile offence is no different in definition from an adult offence. Comparing to some other countries where there is a status offence, that is, an offence only illegal if perpetrated by children or youth at a certain age—such as drinking alcohol or buying cigarettes—they can be arrested and charges pressed. In Thailand, “status offences” committed by children under 18 years old are considered disorderly conduct and will be processed according to the nation’s Child

<sup>292</sup> Section 5, the Act of Juvenile and Family Court and Procedure for Juvenile and Family Cases B.E. 2553 (2010).

Protection Act B.E. 2546 (2003) by child protection officers, currently governed by the Ministry of Social Development and Human Security (MSDHS) and not by the Ministry of Justice (MOJ).

## B. Incidents of children in conflict with the law and types of offence

Data collected by the Department of Juvenile Observation and Protection's Information Technology Centre<sup>293</sup> have illustrated the changes of the offences committed by children over the past five years. From information in Table 22, the average number of juvenile offenses from 2014 to 2018 was 27,075 cases per year with the lowest number of cases in 2018 (21,046 cases), and the highest number of cases in 2014 (33,436 cases). It is noteworthy that over the period of five years, despite the steady decrease in the number of total offenses by both genders (37 percent comparing years 2014 to 2018), there was an increase in offences committed by girls, from 6.29 percent in 2014 to 7.92 percent in 2018 (a 20.58 percent increase).

**Table 22: Number of juveniles in 2014-2018, classified by gender in Thailand.**

Gender	2014		2015		2016		2017		2018	
Year	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Male	31,125	93.09	28,455	93.18	25,112	92.20	21,334	92.27	19,379	92.08
Female	2,311	6.91	2,083	6.82	2,124	7.80	1,787	7.73	1,666	7.92
Total	33,436	100	30,538	100	27,236	100	23,121	100	21,046	100

Source: Accumulated Statistics from [http://stat.dopa.go.th/stat/statnew/upstat\\_age.php](http://stat.dopa.go.th/stat/statnew/upstat_age.php)

In Table 23, the data show that the majority of cases of juvenile offences were committed by children aged 10 to under 18 years old. The percentage of children age 10-15 entering the justice system remained the same ratio in the past five years, being 12.19 percent in 2014 and 12.85 percent in 2018, despite the reduction of the total number of cases. In addition, comparing the years 2014 to 2018, the percentage of reduction of the children in the younger age group is 33.64 percent (4,073 to 2,703) compared to a 37.50 percent (29,326 to 18,331) reduction of the older group. Considering the tendency of the decreasing number of population of children in the past five years (2014-2018), particularly the older group, we might expect to see a greater reduction in this group in the next few years (The number of percentage did not include the children not in the 10-18 age range).

<sup>293</sup> Department of Juvenile Observation and Protection's Information Technology Centre <<http://www.djop.go.th/english>> accessed 20 April 2019.

**Table 23: Number of juveniles offences in 2014-2018, classified by age in Thailand.**

Year	2014	2015	2016		2017		2018	
Age	Number	Number	Number	Percent*	Number	Percent*	Number	Percent
10 - not yet 15	4,073	3,879	3,606	13.25	3,029	13.11	2,703	12.85
15 - not yet 18	29,326	26,625	23,616	86.75	20,081	86.89	18,331	87.15
Not in 10-18 range	37	34	14	-	11	-	12	
Total	33,436	100	30,538	100	27,236	100	23,121	100

Source: Accumulated Statistics from [http://stat.dopa.go.th/stat/statnew/upstat\\_age.php](http://stat.dopa.go.th/stat/statnew/upstat_age.php)

There were also changes in the number of children committing different types of offences. According to Table 24, the offences related to drugs have always been the most prevalent offences and are the only ones on the rise (other than the Land Traffic Act Violation which increased from 7.79 percent in 2017 to 8.11 percent in 2018), from 31.55 percent in 2014 to 51.83 percent in 2018. It is noteworthy that with all other types of crimes that have reduced, the two that are considered violence offences including Homicide and Assault and Rape (12.12 percent in 2017 to 9.70 percent in 2018) and Sexual Assault (5.35 percent in 2017 to 4.49 percent in 2018) have also shown to decrease.

**Table 24: Number of juvenile offences in 2014-2018, classified by type of offences in Thailand.**

	2014	2015	2016	2017		2018	
Type of Offence	Number	Number	Number	Number	Percent*	Number	Percent*
Total	33,436	30,538	27,236	23,121	100	21,046	100
Property Offence	4,418	5,030	4,552	3,543	15.32	2,816	13.38
Homicide and Assault	2,827	3,788	3,545	2,802	12.12	2,041	9.70
Rape and Sexual Assault	1,017	1,287	1,360	1,236	5.35	945	4.49
Peace and Order	724	808	805	608	3.03	505	2.40
Drug Related Offences	11,886	11,720	11,810	10,524	45.52	10,909	51.83
Weapons and Explosives	2,202	2,496	1,786	1,356	5.86	1,066	2.26
Land Traffic Act Violation	1,411	1,771	1,801	1,800	7.79	1,706	8.11
Gambling Act Violation	550	605	246	274	1.19	194	0.92
Other Offences	764	831	850	694	3.00	560	2.66
Not specified	7,637	2,202	301	284	1.23	304	1.44

Source: Statistics from [http://stat.dopa.go.th/stat/statnew/upstat\\_age.php](http://stat.dopa.go.th/stat/statnew/upstat_age.php)



### **C. Laws related to children in conflict with the law**

Juvenile justice systems, in most countries, were created to ensure protection and rehabilitation by reducing harm and stigma that may occur when entering the justice system for children in conflict with the law. The Thai juvenile justice system was created by reasons not much different from those of other countries. It was set as the first mission of the Thai Department of Juvenile Observation and Protection (DJOP) to promote child rights protection and child welfare, and to strengthen family and societal institutions through the use of restorative justice, diversions and other alternative measures. The reasons underlying the separation of the juvenile justice system from the adult justice system are the understanding that children and youth do not have the same level of maturity, ability to make decisions, and experience that most adults may have. In addition, children and youth may not appreciate the consequences of their own behaviour, but are more amenable to change than their adult counterparts. As a result, the juvenile justice system in Thailand, like many other countries, is designed not to find fault or to punish the children but to search for the causes of the wrongdoing and to provide personalised treatment and intervention that suit the needs of each child and youth so that he/she can be rehabilitated back to his/her family and be a productive member of the community and society.

In Thailand, the Courts of Justice are separated from the Ministry of Justice, having the Office of the Judiciary as an independent administrative unit. The Department of Juvenile Observation and Protection (DJOP), as a subsidiary of the Ministry of Justice of Thailand (MOJ), is the organization that provides services for juveniles and families in criminal cases and family cases through the Juvenile Observation and Protection Centres and the Juvenile Training Schools situated around the country. The court that is in charge of adjudicating juvenile cases is the Juvenile and Family Court, established 28 January 1951. The Juvenile and Family Court has jurisdiction in any criminal case involving children (aged 10 to 14) and youths (aged 15 to 18) and any civil action under the Civil and Commercial Code involving proceedings concerning any minor (under age 20). The Juvenile and Family Court also serves to hear matters such as divorce or any proceedings that involve children in child abuse and dependence cases. The Juvenile and Family Court requires four judges, two of whom are career judges and two lay judges, to complete a composition for each trial. The law also mandates that of the four persons on the bench at least one of them has to be female.<sup>294</sup> Such rules were laid down in the Act Establishing the Juvenile Court B.E. 2494 (1951) and in the Act Juvenile Procedure B.E. 2494 (1951). The provisions of these laws relate to children and young people, both in civil and criminal cases. Later, these two laws were revised and combined into one law, namely, the Act Establishing the Juvenile and Family Court and Juvenile and Family Procedure B.E. 2534

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<sup>294</sup> Thailand Court. <<http://www.thailandcourt.com/special-courts-in-thailand.html>> accessed 5 December 2016.

(1991). The Court is authorised to make judgments on family cases in line with international concepts and standards that hold that the family is an important foundation of the community. As a result, the court's name was changed from “Juvenile Court” to “Juvenile and Family Court.” The major revision of this special court law is the Act Juvenile and Family Court Procedure B.E. 2553 (2010), promulgated in November 2010 and entered into force in May 2011. According to the Act, there are two main reasons for the amendment. The first one is to be in line with the established power, duty and structures, and the second one is to ensure protection for children and women conforming to the Constitution, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>295</sup> The Act Juvenile and Family Court Procedure B.E. 2553 (2010), because it was created as an exception to the main laws, must be used in conjunction with the other two main laws, the Criminal and Civil Codes and the Criminal Procedural Codes laws and regulations, to create a framework for children in conflict with the law that governs the juvenile justice system from the arrest, investigation, detention, bailing, trial, prosecution and adjudication to the process of parole, treatment and rehabilitation (Ratanadilok, 2014).

The latest amendment of the Act Juvenile and Family Court Procedure B.E. 2553 (2010) was only a minor revision promulgated in 2016. This amendment was made due to some aspects of the law that caused difficulty in practice and the need to ensure conformation to the Convention on the Rights of the Child, particularly the application of diversion measures for children committing minor offences or who are in need of child welfare services. The final and the monumental movement was the legislation of a new law initiated by the Department of Juvenile Observation and Protection, Ministry of Justice (MOJ), to have its own Act, instead of depending mostly on the Juvenile and Family Court Procedure B.E. 2553 (2010) to govern the administration of the rehabilitation procedure in pre- and post-adjudication detention centres under the Department of Juvenile Observation and Protection. The Act Juvenile Offenders Rehabilitation Administration was promulgated in 2018. In creating this Act, the MOJ envisioned that the development of the regulations and the quality control of the rehabilitation process could be improved and would be monitored directly from a multidisciplinary committee under the MOJ. Moreover, the Act mandated the development of the standards and guidelines of juveniles' reintegration system that mandate collaboration among government and civil society agencies to ensure a comprehensive and continuation of care for the children after release.

For the children in conflict with the law whose age is below the age of criminal responsibility, there are three main laws and regulations governing the practice of the related officials. The first one is the Criminal Code amendments to the Criminal Code Act (Issue 21) B.E. 2551 (2008). The Child

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<sup>295</sup> Act Juvenile and Family Court Procedure B.E. 2553 (2010).

Protection Act B.E. 2546 (2003) and its subsequent law, the National Child Protection Act Committee Regulations Regarding the Method of Welfare Protection for Children in Conflict with the Law but is Below the Age of Criminal Responsibility (2008 amended in 2012).

The exception to the aforementioned laws relating to the interviewing and interrogation of the children in conflict with the law is the special law to be used in emergency situations. In Thailand, the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) has been mainly used for the unrest situation in a few of the deep southern provinces. This special law would be in effect only when the government deems that it is expedient to use combined forces to address the emergency situation for the safety of the public and security of the state and it is stated to last no longer than three months. However, if it is deemed necessary, the government can declare successive extensions for the term not exceeding three months for each extension. With this Emergency Decree once the state of emergency has been declared, under Section 11 (2) the person (including children) could be subjected to be ordered to report to a competent official or to come in to give statements relating to an emergency situation. Under Section 12, the competent official can take the person into custody by receiving the court's permission; however, the person could not be held longer than seven days and if deemed necessary the period could be extended seven days each time and could not exceed 30 days. After 30 days if there is a need to keep the person in custody, the legal procedure under that Code of Criminal Procedure then is mandated to be employed. In addition, the person shall be kept in custody in a place that is not a police station, jail, penitentiary, or a prison, and is not to be treated as a criminal.

## **II. Interrogation and Interview, Background of, and Legal Aid for Children in Conflict with the Law**

The juvenile justice system in Thailand, like that in many other countries, is very comprehensive and involves many stakeholders from different organizations including but not limited to the police, the Juvenile and Family Court, the Office of Attorney General, and the Department of Juvenile Observation and Protection. To be concise, for the purpose of this report, the following section explains the core steps of the process starting from the juvenile entering into the system and ending when he/she leaves the system (see Appendix for a diagram of the process). As a result, this section will cover the roles of law enforcement officers as well as other officials such as social workers and psychologists in relation to the interrogation and interview of children in conflict with the law. The Act Juvenile and Family Court Procedure B.E. 2553 (2010), referred to here as the Act, and the rules and regulations that can be summarised according to the following areas.

## **A. Interrogation and interview of children in conflict with the law**

The child can enter into the justice system by being arrested by, being brought in by, or by turning himself or herself in to, the police officers. The police officers then conduct a preliminary inquiry in accordance with Section 70 of the Juvenile and Family Court Procedure B.E. 2553 (2010) by asking the child or juvenile for his or her name, family name, age, nationality, place of residence, place of birth and occupation including name, family name and personal details of his or her parents, guardians, any persons or representatives of an institution with whom the child or juvenile is residing and shall inform these persons of the charge. Then the police officers notify the Director of the Juvenile Observation and Protection Centre (JOPC) that has jurisdiction over the juvenile. In Section 71 of the Act, if the juvenile has been summoned, sent to or has come to or appeared before the inquiry official, or has been accompanied by the inquiry official, the inquiry official shall proceed with steps under Section 134 of the Criminal Procedure Code. In Section 72 of the Act, in the case that the children are being arrested, the inquiry official must accompany the arrested child or juvenile to the court within 24 hours from the time the juvenile arrived at the office of the responsible inquiry official in order to verify the arrest. In Section 73, after the court has verified that the arrest was lawful, then the juvenile either is returned home with parents or guardian on bail or other types of agreement, or, if it appears that the act of the juvenile poses a serious threat to other persons, or if there are other rational justifications, the court may order that the alleged juvenile be held in custody in a Juvenile Observation and Protection Centre (pre-trial detention) or in other places established under the law and considered appropriate by the court. Section 75 of the Act details the requirement to ensure child protection while investigating the child. It is required that the inquiry is carried out in an appropriate place without any discrimination and the child be separated from other alleged offenders.

For the police interview and interrogation, according to the Penal Code Section 133 there are three types of child-offending cases which require additional participation of a social worker or a psychologist in the police interviewing and interrogation procedure. First are the cases that are punishable by imprisonment of three years or more. The second are cases with an offence that is punishable by a prison sentence of not more than three years, but the accused is requesting the participation of a psychologist or social worker. And the third condition is for the physical assault cases with the victim(s) who are children aged not exceeding 18 years old. The Code of Criminal Procedure Section 134 also required that the prosecutor participate in the inquiry under these three conditions. The Code indicates that the inquiry shall be carried out using language that is easy for the child or juvenile to understand, taking into consideration their human dignity. If the child or juvenile cannot communicate or does not understand Thai, then an interpreter shall be provided.

The legal adviser of the child or juvenile alleged to have committed an offence shall always be present at the time of informing of the charge or interrogating, and the juvenile shall be informed of his or her right to silence and that his or her statements may be used as evidence in the trial.

For the children in conflict with the law whose age is below the age of criminal responsibility, under the provisions of Section 73 of the Criminal Code, the official who has the duty to interview and investigate the child is the child welfare official not the police officials. The Code stipulates that for the child aged not more than 10 years who committed the criminal offence, the inquiry official shall hand the child over to the competent (child protection) official to provide welfare protection under the Child Protection law. The Child Protection Act B.E. 2546 (2003) and the regulation subsequent to this Act, which is the National Child Protection Act Committee Regulations Regarding the Method of Welfare Protection for Children in Conflict with the Law but is Below the Age of Criminal Responsibility (2008 amended in 2012), states in Article 5 of this regulation that, in the event that the inquiry official receives a child in conflict with the law at the age not yet more than 10 years of age, the inquiry official shall notify the competent official prior to surrendering the child to the custody of his or her parents or guardian or submit the child to the competent official in the event that the child does not have a parent, guardian, or person or organization in which the child lives with to proceed relief or protection of child welfare accordance with the child protection law. In Clause 7, after the competent (child protection) official has been notified by the inquiry official under Article 5, the official then investigates and examines the facts about the child including investigating the cause of wrongdoing, family relationships, well-being, parenting, habits, and behaviour of children and prescribing guidelines for the protection of the proper welfare for that child as well.

## **B. Investigation of the background/circumstances of juveniles**

After the child has come or has been sent to the Juvenile Observation and Protection Centre (JOPC), the child and family will be interviewed and assessed according to Section 36 of the Act. According to this section, the JOPC will prepare a pre-trial report consisting of detailed information of the child and his or her family on the background, behaviours, intelligence, education and training, physical and mental conditions, character, occupation and financial status including the cause of the offence in order to report to the court or to support the consideration of relevant officials.

## **Needs and risks assessment**

To strengthen the investigation, the DJOP research team has developed a Needs and Risks assessment protocol (interview forms and multidisciplinary team data-collection process) to be used by the related staff, in conjunction with the assessment from the multidisciplinary team (including psychologists, social workers and physicians) to provide the level and type of risks to recidivative and criminogenic needs that should be addressed. This evidence-based tool ensures that the important information in relation to the child, the circumstances and his family are being collected and that the report that will be provided to the judges and related officials, including the attorneys and police officers, and provides an accurate and comprehensive picture of the child so that the treatment plan that will be assigned to him or her addresses the issues pursuant to the individual child in order to ensure reduction of the likelihood of the child recommitting the offence in the future.

Next, the pre-trial report will be sent to the police, the public prosecutors and the judges. The public prosecutors then review the information received from the investigation report of the police officer and the pre-trial report from the JOPC and pass judgement if the evidence provided is sufficient to prove the offender's guilt to the court and then give prosecution orders or non-prosecution orders against the alleged juvenile offenders.

### **C. Legal aid for children in conflict with the law**

Because Thailand has the special court separating children from adult offenders with the main purpose to provide rehabilitation and not punishment to the children in conflict with the law, the Act Juvenile and Family Court Procedure B.E. 2553 (2010), Section 120, indicates that in a court that has jurisdiction over juvenile and family matters, the defendant cannot have a lawyer to resolve the case but the court will allow the defendant to have a legal counsel to perform the same duties as the lawyer. Similar to Section 73 of the Act, Section 120 states that in the case that the child defendant has no legal counsel, the court shall appoint a legal counsel to the child (at no cost). According to the regulations of the President of the Supreme Court on the training regulations of legal consultants, the legal counsel refers to the lawyer who has passed the specified training course(s) according to, and was registered as a legal counsel, at the Central Juvenile and Family Court. The roles of the legal counsel are similar to that of the defense lawyer, for example, as stated in Section 75 of the Act, in the notification of allegations and oral examinations for children or youth that they have committed an offense, there must be a legal counsel of the child or youth in attendance at all times. However, there is not a clear consequence if there is a violation of this section. In Section 133 of the

Criminal Procedure Code, it is clearly stated that without the legal counsel participation, the allegations and oral examinations process are not admissible.

### **III. Detention During Interrogation/Pre-trial**

#### **A. Residential detention**

It is suggested in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty that the juvenile justice system should support the rights and safety and promote the physical and mental well-being of juveniles and that imprisonment should be used as a last resort. However, when it is deemed necessary to place the youth in the secure placement, it is suggested that the purpose should be rehabilitation and not punishment. As a result, the appropriate and individualised treatment that ensures children's rights protection and minimization of the negative effect of detention should be provided to the youths so that they can be successfully reintegrated back to their family and community.

According to the Act Juvenile and Family Court Procedure B.E. 2553 (2010), Section 57 in Chapter 5 on Training, the court may sentence the juvenile receiving treatment in any place other than the Juvenile Training School (JTS) that is established by the law and deemed appropriate by the court. However, in most cases, the children are usually placed at the detention under custody of the DJOP, Ministry of Justice. For the pre-trial detention, the court usually places the youths awaiting trial in the remand home at the Observation and Protection Centre, and for the post-adjudication the court will order the juveniles to be placed in the Juvenile Training School. In very few cases does the court place the juveniles in the child welfare placement (under the care of the DSDHS) due to the structure of the place not being designed to keep juveniles in but for the children who are in need of child protection. There have been movements and attempts to increase the use of institutional placement in a child welfare system particularly for children who have committed criminal offences at a very young age, such as 10-12 years old but who lack appropriate supervision or have been abused by their parents or caregivers and have been proven to need only protection and welfare services.

Another increasing need to place children in conflict with the law in the residential placement at the child welfare agency concerns the children in conflict with the law whose ages have not yet reached the age of criminal responsibility (currently 10 years old for Thailand but is advocating to increase to 12 to conform with the CRC). There are also quite a few foundations operated by non-profit and non-governmental organizations, boarding-school style that may also take care of the youths in the community; however, they are often similar to the child welfare placement with limited resources to address any problematic behaviour that the juveniles may have. In addition, there is no formal

registration of the places to provide services for the youth from the court's orders, which means that there is no control and no monitoring of the intervention programs they provide for the youths. They are usually funded by donations from inside and outside of the country. As a result, in Thailand, the residential placements are mainly operated by the governmental organizations. The non-governmental institution designed for juveniles is not yet established partly due to the fact that there has been no creation of related laws, rules and regulations for setting up this type of placement in the country.

For the treatment provided, at the remand home of the Observation and Protection Centre, the main task is to keep in custody the juveniles alleged to have committed an offence during the investigation or trial or as required by a judgement or a court's order. There were some concerns in the past when designing the "treatment programme" for these children, given the requirements of the presumption of innocence, that the children awaiting trial are not yet proven to be guilty of the crime they are being charged with, so they should not be put in the treatment program for a crime of which they may be proved to be innocent. However, the children should receive some type of service and program necessary for their development including basic education and a health care program.

According to the Act Juvenile and Family Court Procedure B.E. 2553 (2010), the remand home (a pre-trial detention) is required to carry out and coordinate with other agencies and institutions in providing support, treatment and rehabilitation to a juvenile when he or she is held in custody. Section 41 of the Act confirms that while a juvenile is in the custody of the Juvenile Observation and Protection Centre (JOPC), the Director of the JOPC shall provide the juveniles with primary education or vocational training, or social welfare services, or other training, or to assign them with any tasks that are suitable to the physical and mental conditions including the social environment of the persons, taking morality and ethics into main consideration. It is mandated for the organization under the DJOP, along with the Section 42 of the Act, that the only punishments to be inflicted upon a juvenile in the custody of the Juvenile Observation and Protection Centre are to: (1) undergo a special rehabilitation plan for a change of behaviour; and (2) forfeit certain benefits and facilities provided by the Juvenile Observation and Protection Centre. These rules also apply to the treatment of children being placed in a Juvenile Training School (JTS).

Conforming to the recommendation found in several of the United Nation's guidelines on reconnecting with their family and community and on reducing the duration of the institutional stay and the transfer to community-based treatment whenever possible, the Act Juvenile and Family Court Procedure B.E. 2553 (2010) states in Section 59 that, when a juvenile has achieved remarkable progress in the training, or has special achievements, the Interdisciplinary Committee



shall give recommendations to the Director of such Training Centre, school, training facility or psychological advisory service facility to grant any of the following benefits to the child or juvenile: (1) a promotion to an upper level; (2) a leave entitlement to visit their family; (3) a reduction in the number of training days; or (4) a training break. Additionally, Section 62 of the Act states that the court's judgement or order may be amended if the Director of the Training Centre proposes a report to the court if the juvenile shows evidence of significant progress and has proved to benefit more from other types of treatment than being placed in the juvenile institution.

## **B. Other measures (e.g., electronic monitoring, community-based measures, CSO coordination)**

In Thailand, community-based or non-institutional treatment is being employed at pre-trial, trial and post-adjudication levels with different government agencies responsible for delivering the services for the juveniles. At the pre-trial stage, the Department of Juvenile Observation and Protection (DJOP) is the main agency that executes the treatment starting from conducting an investigation of the background and circumstances of the juveniles to providing supervision and monitoring to ensure that the juvenile and their parents or guardians follow the agreed conditions and treatment plan. The Act Juvenile and Family Court Procedure B.E. 2553 (2010), Chapter 7 “The Special Measure in Place of Criminal Prosecution” gives authority to the Director of the Juvenile Observation and Protection Centres (Section 86), or the Juvenile and Family Court judges (Section 90), to apply diversionary measures to children who have committed minor offences and to match with the criteria listed in the law in order to avoid traditional judicial processing and to receive supervision and services at their home in their community. It is believed that this type of alternative measure will help save prosecution and judicial resources for concentration on major cases and to provide, where appropriate, a vehicle for restitution to communities and victims of crime.<sup>296</sup> With that intention, however, since the amendment of the Act Juvenile and Family Court Procedure in 2010, there has been a drastic reduction from about 9 to 10 percent of the cases that were successfully organized and has resulted in no prosecution order in the period from 2003 to 2005 to be less than 1 percent in 2016. This has resulted in the children having to penetrate deeper into the judicial system unnecessarily and thus be prone to be affected negatively by the process. The amendment in 2017, the revision of Section 86 of the Act Juvenile and Family Court Procedure B.E. 2553 (2010), has helped to clarify the criteria and thus to increase the chance that the children will be diverted out of the system at the pre-trial stage and be rehabilitated in their home and community.

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<sup>296</sup> Pretrial Diversion. <<https://www.justice.gov/usam/usam-9-22000-pretrial-diversion-program>> accessed 7 December 2016.

At the trial and post-adjudication stages, the main governmental agency that is assigned to be a service provider for the community-based treatment programmes is the Department of Probation (DOP), a subsidiary of the Ministry of Justice. In addition to the probation services provided for children or youth probationers, the DOP is responsible to provide community-based treatment to adult probationers (aged 18 years and over) who were designated by the court to be on a suspended sentence or suspended punishment according to the Penal Code Section 56(2) and probationers (parolees) who are on parole or sentence remission. Another main responsibility of the DOP is being an agency to enforce the Narcotic Addict Rehabilitation Act 2002. The treatment programs that are stated to be provided to the probationers by the department include counselling, physical and mental illness treatment, education, vocational training, and behaviour modification. According to the statistical report of the number of monitoring and supervision in 2016, the total number of probationers was 194,857, with 8,540 cases being children and youths (773 being 10-14 years, and 7,767 being 15-17 years).<sup>297</sup> Due to the small number of children, and the much larger number of adult probationers, DOP personnel have struggled to ascertain the individualised and comprehensive care that the child probationers may need to be rehabilitated in their community and to pursue crime-free lives after finishing their sentences. It is well understood that children and young persons have specific needs that differ from those of adults. As a result, to be successful in providing services for this population, the DOP is also greatly in need of specialised professionals trained to work with the children and youth population. The DOP has been developing a programme where people in the community are invited to support offender rehabilitation by becoming Volunteer Probation Officers (VPO's). A VPO is expected to help mentor and monitor the adult and children probationers as well as provide welfare services and submit the probationer's progress report to the probation officers on a regular basis.<sup>298</sup> In addition, formally launched in 2013, the experimental use of electronic monitoring was introduced as a tool to increase use of community correction to use as an alternative to custody in order to relieve the current crisis of overcrowded prisons. It was also believed that it would enable the probation services to encourage participation of members of the community in crime prevention and rehabilitation of the offenders.<sup>299</sup>

The Convention on the Rights of the Child (CRC) requires state parties to promote the establishment "wherever appropriate and desirable" of measures for dealing with juveniles in conflict with the law without resorting to formal judicial proceedings, provided that human rights and legal safeguards are fully respected.<sup>300</sup> At their best, these new developments in interventions of the DOP are in need of

<sup>297</sup> Supervision and Rehabilitation. <[http://210.246.159.139/probation\\_en/index.php/supervision-and-rehabilitation](http://210.246.159.139/probation_en/index.php/supervision-and-rehabilitation)> accessed 4 December 2016.

<sup>298</sup> VPO. <[http://210.246.159.139/probation\\_en/index.php/volunteer-probation-officers](http://210.246.159.139/probation_en/index.php/volunteer-probation-officers)> accessed 7 December 2016.

<sup>299</sup> Electronic Monitoring. <[http://210.246.159.139/probation\\_en/index.php/9-yr-sample-data/category1/77-electronic-monitoring-system-in-probation](http://210.246.159.139/probation_en/index.php/9-yr-sample-data/category1/77-electronic-monitoring-system-in-probation)> accessed 7 December 2016.

<sup>300</sup> Article 40 (3) (b); McGrath (2013), p. 23.

regular monitoring and evaluation to ensure that the practices are in accordance with the requirements and recommendations of the CRC and related United Nations standards and norms, and that the results are what are to be expected.

## IV. Reform Initiatives

Three reform initiatives that aim to end violence against children in justice system are explained in this report. These include increasing the age of criminal responsibility from 10 to 12 years, increasing the use of restorative justice as a special measure at the pre-trial stage in replacement of the criminal prosecution, and using comprehensive and continuation of care to reduce time in residential placement. Following the reform initiatives is the proposal to increase the child protection in juvenile interrogation and concluding observation.

Beginning with the attempt to increase the age of criminal responsibility from 10 to 12 years, following the concern raised by the UNCT that the minimum age of criminal responsibility at 10 years old for Thailand still remains below internationally acceptable standards, Thailand's Universal Periodic Review (UPR) submission in 2016 reported that the Ministry of Justice is studying the feasibility of raising the minimum age of criminal responsibility from 10 years to 12 years, in conformity with the international standard.<sup>301</sup> The current stage is that the Ministry of Justice Thailand by the Office of Justice Affairs (OJA) has proposed the amendment of the Criminal Code Act regarding increasing of the minimum age of criminal responsibility from 10 to 12 years after the conduction of a review and public hearing following the requirement of provisions in Section 7 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and currently awaiting the result from the legislative committee.<sup>302</sup> One of the recommendations from the report of the OJA concerns the readiness of the child protection organizations that would be the agencies responsible for providing not only welfare but also rehabilitation and reintegration for the children whose age has not yet reached the age of criminal responsibility but who have already committed criminal acts. Several research studies have reported that children who began their criminal behaviors at a very young age have a higher risk of reoffending and of committing more serious crimes if their problem behaviors are not addressed early enough (Ratanadilok, 2010). Based on the findings of the research on The Effects of Changing the Age of Criminal Responsibility Law to the Welfare of Children in Conflicts with Law, of which the main purpose was to evaluate the consequences of increasing the age of criminal responsibility from 7 to 10 years old for the group of children in conflict with the law in Thailand, it

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<sup>301</sup> Thailand: Children's rights references in the universal periodic review. <<https://archive.crin.org/en/library/publications/thailand-childrens-rights-references-universal-periodic-review.html#recommendations>> accessed 9 July 2019.

<sup>302</sup> Office of Justice Affairs. <<http://www.oja.go.th/TH/law-amendment-child-2/>> accessed 9 July 2019.

was reported that children who commit offences at an early age with or without intention may experience risks for developing Post Traumatic Stress Disorder (PTSD) in several periods after the offence occurred including at the time of incident, at the time of being arrested, during the investigation, after returning home or in some cases deemed necessary, being sent to a child welfare place. When there is no clear guideline, the related personnel may not know how to respond to the child in time of his or her needs, which may be the cause of the behavioral problems not being addressed properly at the crucial time. The results of the study indicated that almost all of the children aged less than 10 years old who had committed criminal offences including theft, physical offences, sexual offences and murder received very little—if any at all—interventions appropriate for their needs and risk problems. In addition, all of the related staff who were interviewed in this study reported that they do not fully understand the requirements of the law and do not know the appropriate course of action to deal with such young persons. Even though there are rules and regulations in relation to the Child Protection Act created to protect the rights of children under the age of criminal responsibility committing an offence, the rules were not clear and not easy to understand (e.g., no clear instruction to get the police to contact the social worker at the time of arrest). Moreover, there was no procedure or manual of practice, nor was there skills training for staff. These children (and their parents) were left at their home to deal with all the problems on their own. The problems that they would need to face are problems of the victims and people who were affected by their criminal behaviors, and problems of community rejection (Ratanadilok, 2010). In order to prepare for this additional work which could pose similar challenges as when the last increase occurred (from 7 to 10 years), the Ministry of Social Development and Human Security (MSDHS) is reported to be working to prepare child support strategies in such cases which, although at present there are not many, need specific protection measures.

The second reform is to increase the use of diversionary measures at the pre-trial stage in replacement of the criminal prosecution. Despite the empirical findings of the benefits of using alternative measures to reduce time that the children spend in the justice system and confinement, the number of children receiving the diversionary measures still was very low. According to the Department of Juvenile Observation and Protection (DJOP) statistic in 2016, of the cases that were proposed to use diversion based on Section 86 of the Juvenile and Family Court Procedure Act B.E. 2553 (2010), the Special Measure in Place of Criminal Prosecution, only 243 cases of 11,940 offence cases were punishable by less than five years (the first criterion that qualifies for pre-trial diversion), or 2.03%. In 2016, the DJOP, with support of UNICEF Thailand, this author began to conduct a series of research efforts to study the ways to increase the use of this special measure for the children. We found that by raising awareness of the problems, and by increasing the knowledge, skills and participation of related personnel—including the police officers, conference

facilitators, directors of the Juvenile Observation, Protection Centers (JOPC), and attorneys together—made it be one of the indicators of the JOPC to evaluate the effectiveness of their work and helped increase the use dramatically. The DJOP's statistics in years 2017 and 2018 show that of 9,839 offence cases in 2017 and 7,710 offence cases in 2018 that were punishable less than 5 years, 1,283 cases (13.03%) in 2017, and 2,603 cases (33.67 %) in 2018 were proposed to use this special measure. However, with the proposal to increase the use of this pretrial diversion, the number of the cases that could be successfully executed (the children completing the treatment program and the cases closed) declined from 80% to 54.01%. One of the possible explanations is due to the effect of the way the success indicator was set, that it was set to be the number of cases being proposed to use the diversion, so it was possible that with that pressure, the screening of the cases may not have been as rigorous. Also, because the indicator was only measured at the use and not the result, the JOPC may not (or may not have been able to, due to the high number of cases with their limited resources) have invested adequately in mentoring and monitoring the cases.

The author has proposed to the executives of the DJOP to adjust the indicator for year 2019 to be more qualitative oriented; for example, to count the number of cases that successfully complete the program, and the number of recidivisms after completing the program. Additionally, to solve the inadequate number of DJOP staff to follow up with the plan, the increasing the roles of community involvement to provide supervision for the children and support for their families were also set to be in the plan for future implementation.

The last to be reported here is a reform to improve the effectiveness of the rehabilitation program by the use of comprehensive and continuation of care to reduce time in residential placement. One such successful reform has been demonstrated already. If the purpose of the juvenile justice system is to rehabilitate the youth, and not to incapacitate them for the rest of their lives, one of the most important efforts by the system, then, is to make sure that they are successfully reintegrated back to their family and community. It is unfortunate that the children in conflict with the law have to go through so much only to end up being locked up in a secure place separated from their family and community. In Thailand, at least, it is a new way of thinking about rehabilitation programmes for children at the Juvenile Training School when ones see that residential placement is not the end goal but is an opportunity for a new beginning. Social capital must be developed from within the placement (not waiting until they are released), and it must be emphasized that the rehabilitation process is outside more than inside the centre. Beginning in 2012, the DJOP Research and Development Institute conducted a pilot project on the development of a comprehensive and thorough care named the “Uninterrupted tailor-made routing programme for children,” targeting the children being placed in the residential placements. The program aims to provide a holistic approach

and is based on the risks–needs responsivity model that balances well-being and life skills by addressing five domains of risks: 1) Education/Work: providing opportunity for jobs and increasing their cognitive, social and practical skills for employment and education; 2) Housing: ensuring living arrangements and an appropriate place to live; 3) Peers: reducing negative influences; 4) Leisure time: encouraging participation in productive and healthy leisure-time activities; and 5) Social Network: assisting the youths to restore, create and develop social networks and positive relationships with family and other people in their community. In summary this program provides a comprehensive and a continuum of services, and its emphasis is on skills-building and a mentoring approach, and not control or deterrence. In this program, the juveniles participating in this program are assigned a special case manager called an “Individual Routing Counsellor” or “IRC” who works with them from the first month that they are placed in the JTS to the last day, and an additional continuation of care 12 months after release. The IRC’s main responsibility is to engage ongoing pro-social support of the youth’s family and friends in the youth’s community. Primary consideration in all actions is given to the children developing meaningful relationships and then motivating to change, as well as ensuring that everything is in the best interest of the child. For the research project, there are two main goals for the youth, the first one being no recidivism within 12 months after release from JTS and another year after finishing the program, and the second being to remain working and/or studying after release. As of December 2016, after two years after-release follow-up with 90 youth under the care of six IRC’s, of 71 youth being released (19 still in the JTS) only 1 recommitted during the first 12 months, and of 55 youth graduated from the program (and finishing with the IRC), none recidivated. This combination of institutional and community-based treatment resulted in a very positive outcome and shows that with the right conditions, the children can change.

## **V. Lesson Learned and Concluding Observations: Proposals to Ensure Child Rights Protection in Interview and Interrogation**

With the good intention of the law designed to ensure protection of children’s rights during interview and interrogation, there is still research to be done on how (and if) children’s rights are truly protected and that related personnel abide by all the rules and regulations. Rujiprapa (2002) conducted a study collecting opinions of related personnel including the police officers, attorney, social workers and psychologists concerned with the investigation process according to the Criminal Procedure Amendment Act (Act No. 20) B.E. 2542 (1999) and found that there were problems and obstacles in operating the interrogation task required by the law, particularly for the police to invite the multidisciplinary team to participate in the interview and the interrogation procedure. The hardships

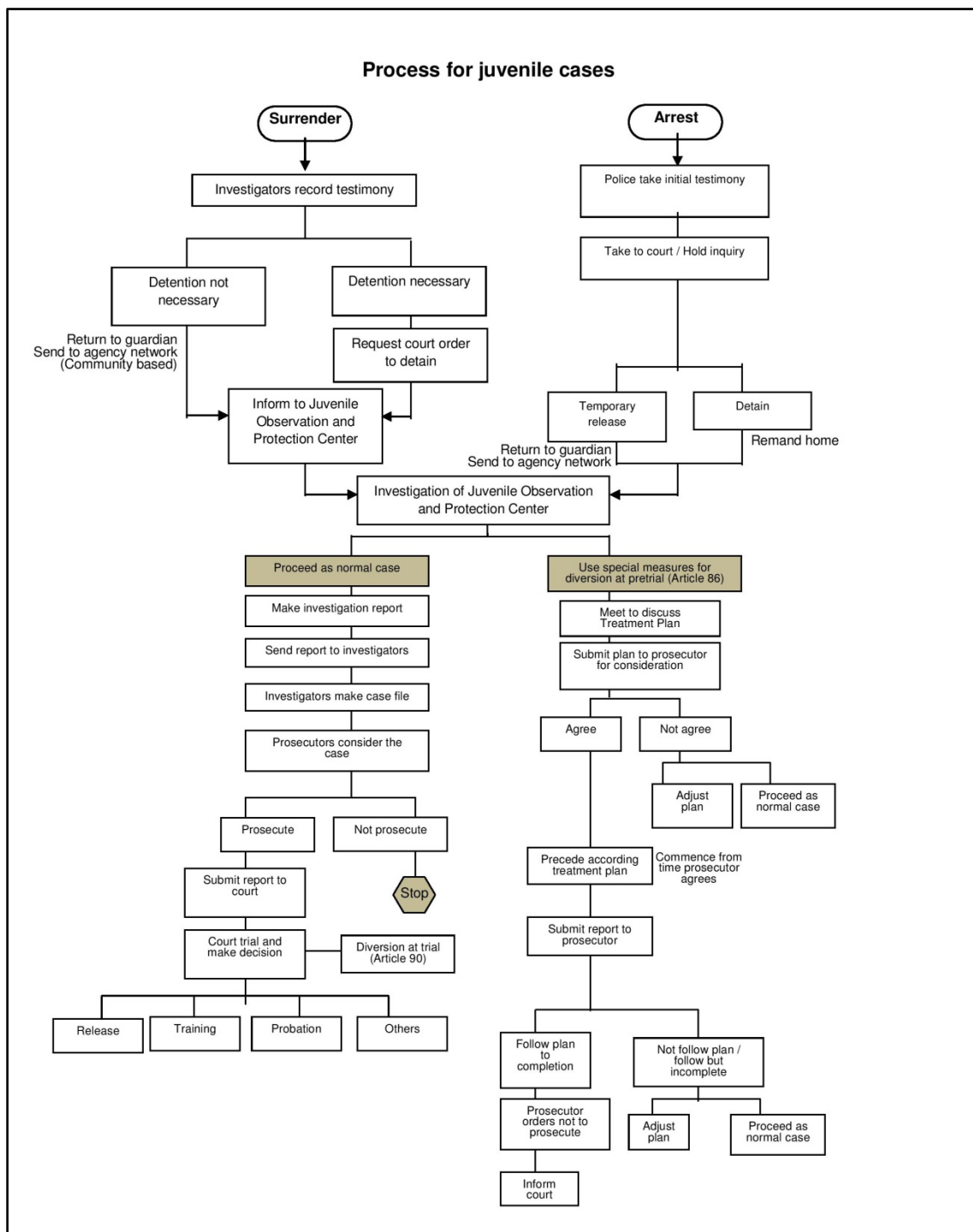
found, particularly caused by the interrogation of the juveniles due to the high number of offences, included lack of equipment and shortage of attorneys and social workers. In addition, the participants considered that the Act increased their workload and it was time consuming, making the tasks difficult to accomplish. They reported not completely understanding their roles under this Act. The author's suggestions include only applying this law to child victims and witness and not offenders, increasing the understanding of roles for the related personnel, and increasing the number of the related officials. Chanthong (2014) pointed out that Thailand may need to amend the law relating to the participation of the professionals in the child interrogation by giving example of the interrogation process of the Japanese Juvenile Justice system that does not require the participation of a psychologist or social worker in the process because the Japanese interrogating officers have adequate knowledge and understanding in dealing with children. Cleary and Warner (2016) posed very important questions that should be asked of the Thai police training in the interrogation to find a gap in their practice that would lead to better performance; for example, how interrogation methods are trained to the police, how often they use these techniques, and whether they employ techniques differently with adult as opposed to children suspects.

The results from this research point to the need to rethink the method of interviews in general and interrogations in particular of the children in conflict with the law. Having a multidisciplinary team including a psychologist or social worker participating in the interrogation process may be ideal if that could really be practiced in real-life situations. The challenges in limited resources of personnel could be solved by using the Japanese model by equipping the police with knowledge and understanding consistent with the level of maturity and emotional development levels of the children in conflict with the law. However, a key difference in the Japanese Juvenile Justice system is that there are far fewer youth offenders than there are in Thailand. Nonetheless, a few methods and strategies for police training that could increase the child sensitive interrogation practice include the following. In order to respond to the limited budget and manpower, development of the body of knowledge concerning a greater understanding of children's level of maturity and emotional development levels could be started even before candidates enter into the police force, for example, by having the knowledge of child-sensitive interrogation techniques be in the entrance exam to enter to the police academy. That way the candidate would need to "study" the related laws and regulations and also child rights in the interrogation procedure to pass the exam. Then once they enter into the police academy, the syllabus should include the topics such as child rights, adolescent and young children's cognitive and emotional development, rapport building techniques, and strategies and approaches for interviewing and interrogating children.

The lesson learned here is that, sometime to improve the justice system we need to amend the law, but more often, or most of the time, the law is not the only solution to the problems, particularly for Thailand, where there are laws that are well crafted following the international standards, and all are well intended. However, amendment of the law not only requires a great amount of time and resources but also by itself may not solve the existing problems. The findings and reform initiatives reported in this paper illustrate that it is imperative to study the situation carefully as to the factors that are related to the problems, which are usually human factors, because people are the ones who implement and enforce the rules and regulations. Therefore, regarding ensuring child rights protection in interrogation and interview in Thailand, knowledge acquisition, capacity building, and continuation of mentoring and monitoring of the related personnel may be the keys to ensure that the “good law” could be implemented and the child rights could then be protected.



## VI. APPENDIX



## VII. REFERENCES

- Act Promulgating the Criminal Code B.E. 2499 (1956). Retrieved from [https://www.unodc.org/res/cld/document/tha/criminal-code-as-of-2008\\_html/Thailand\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/tha/criminal-code-as-of-2008_html/Thailand_Criminal_Code.pdf)
- Amendment to the Criminal Code Amendment Act (No. 21) B.E. 2551 (2008). Ratchakitchanubeksa.125.30A. 19-15. Retrieved from [http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/069/T\\_0127.PDF](http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/A/069/T_0127.PDF)
- ASEAN RPA on EVAC. (n.d.). ASEAN Regional Plan of Action on Elimination of Violence against Children, pp. 1-40.
- Chanthong, W. (2014). Investigation of Children and Youth Offender According to the Juvenile and Family Court and Juvenile and Family Procedure Act of 2010. *Ramkhamhaeng Law Journal*. Vol 3 (1), (pp. 71-80). Retrieved from <https://www.tci-thaijo.org/index.php/lawjournal/article/view/76478/61456>
- Cleary, H.M., & Warner, T.C. (2016). Police training in interviewing and interrogation methods: A comparison of techniques used with adult and juvenile suspects. *Law and Human Behavior*, 40(3): 270-284. doi: 10.1037/lhb0000175. Epub 2015 Dec 14.
- Department of Juvenile Observation and Protection. (n.d.). The Act on Juvenile and Family Court and Procedure B.E. 2553 (2010). (pp. 2-63). In *The Act on Juvenile and Family Court and Procedure B.E. 2553 (2010) and Other Auxiliary Regulations Related to the Department's Work* (pp. 1-186).
- Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005). Unofficial Translation. Translated by the Office of the National Security Council, and reviewed by Chalermprakiat Center of Translation and Interpretation, Chulalongkorn University. Retrieved from <http://www.nsc.go.th/Law/unofficial%20translation%20EMERGENCY%20DECREE%20ON%20PUBLIC%20ADMINISTRATION%20IN%20EMERGENCY%20SITUATIONS.pdf>
- McGrath, A. (2013). A voice for the future of juvenile justice. In *ASIA-PACIFIC: Introduction to the Asia-Pacific Council for Juvenile Justice and Leading Juvenile Justice Reform in the Region*. International Juvenile Justice Observatory: Belgium.
- McMasters, A. (2015). *Effective strategies for preventing recidivism among juveniles*. Honors Senior Theses/Projects: Paper 58.
- National Child Protection Committee Regulations Regarding the methods of child welfare protection that must be found that the act of the law is wrong, but the age has not yet reached the criteria,

must be punished by criminal law (2012). Ratchakitchanubeksa.129.194D.4-6. Retrieved from <http://www.djop.go.th/images/djopimage/protection1.pdf>

Neawprasert, S. (2008). Rights to legal adviser in criminal case: A study on Juvenile and Family Court. Master's thesis. Dhurakij Pundit University.

Office of Justice Affairs. (2018, November 6). Summary report of hearing comments: The minimum age for criminal punishment of children from ten years to twelve years. [Thai]. Retrieved from <http://www.oja.go.th/TH/law-amendment-child-2/>

Ratanadilok, K. (2015). The state of juvenile justice in Thailand. In Raoul Wallenberg Institute (Ed.), *A Measure of Last Resort? The Current Status of Juvenile Justice in ASEAN Member States* (pp. 166-180): Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

Ratanadilok, K. (2010). The Effects of Changing the Age of Criminal Responsibility Law to the Welfare of Children in Conflicts with Law.

Rujiprapa, (A). (2002). The Opinions of Personnel Concerned with the Investigation Process According to the Criminal Procedure Amendment Act (Act No. 20) B.E. 2542). Master's thesis. Thammasart University. Retrieved from <http://digi.library.tu.ac.th/thesis/sw/2611/01TITLE-TABLES.pdf>

Siam Legal. Thailand Law Library. *Criminal Code Terminology*. Retrieved from <http://library.siam-legal.com/thai-law/criminal-code-terminology-section-1/>

Special Courts in Thailand. Thailand Lawyers. Retrieved from <http://www.thailandcourt.com/special-courts-in-thailand.html>

Srithong, K. (2018). The Legal Problems on the Juvenile and Family Courts Act and Procedure of the Juvenile and Family Court, B.E. 2553: A Case Study of Arrest and Review of Arrest. *Kasalongkham Research Journal*, 7(2), 61-75. Retrieved from <https://www.tci-thaijo.org/index.php/ksk/article/view/128129>

Thailand: Children's rights references in the universal periodic review. (2016, May 11). CRIN (Child Rights International Network). Retrieved from <https://archive.crin.org/en/library/publications/thailand-childrens-rights-references-universal-periodic-review.html#recommendations>

# VIETNAM

## I. Policy and Legislative Framework and Key Data

### A. Number of Children Population under 18, Legal Definition of Children & Age of Criminal Responsibility

The current population of Vietnam is 97,072,578 people on February 12, 2019 according to the latest figures from the United Nations and child population is about one fourth.<sup>303</sup>

**Table 25: The current population of Vietnam**

Age group	Total	Male	Female
0	1,406,978	739,733	667,245
1 to 4	6,283,460	3,305,223	2,978,238
5 to 9	7,317,121	3,809,506	3,507,616
10 to 14	7,013,835	3,603,442	3,410,393
15 to 17	4,018,284	2,047,926	1,970,359
Total	26,039,678	13,505,830	12,533,851

Source: General Statistics Office, Major Findings, The 1/4/2016 Time-point Population change and family planning survey, Statistical Publishing house, 2017

**Legal Definition of Child:** under Article 1 of the Law on Child 2016 "a child is a human being under 16 years old."

**Age of criminal responsibility:** 14 years old

The Penal Code (PC) provides that:

- A person from 14 to under 16 years old shall bear criminal responsibility for very serious crimes or extremely serious crimes defined in Article 12(2): Article 123 (murder); Article 134

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<sup>303</sup> <https://danso.org/viet-nam/>.

(Deliberate infliction of bodily harm upon another person); Article 141 (Rape); Article 142 (Rape of persons under 16 years old); Article 143 (Sexual abuse); Article 144 (Sexual abuse of a person aged from 13 to under 16); Article 150 (Human trafficking); Article 151 (Trafficking of persons under 16 years old); Article 168 (Robbery); Article 169 (Kidnapping for ransom); Article 170 (Extortion); Article 171 (Snatching); Article 173 (Theft); Article 178 (Vandalism or deliberate destruction of property); Article 248 (Illegal production of narcotic substances); Article 249 (Illegal storage of narcotic substances); Article 250 (Illegal trafficking of narcotic substance); Article 251 (Illegal trading of narcotic substances); Article 252 (Appropriation of narcotic substances); Article 265 (Organization of illegal racing); Article 266 (Illegal racing); Article 286 (Spreading software programs harmful to computer networks, telecommunications network, or electronic devices); Article 287 (Obstruction or disruption of computer network, telecommunications network, or electronic devices); Article 289 (Illegal access to others' computer network, telecommunications network, or electronic devices); Article 290 (Appropriation of property by computer network, telecommunications network, or electronic devices); Article 299 (Terrorism); Article 303 (Destruction of works, facilities, or vehicles important to national security); Article 304 (Illegal fabrication, storage, trafficking, use, trading, or appropriation of military weapons or military equipment).

- A person from 16 years of age and above shall bear criminal responsibility for every crime, except for those otherwise prescribed by this Code.

In Vietnam's legal system, in addition to the criminal handling system, for the case of less serious violations, or the offenders having criminal acts are under the age of criminal responsibility, administrative sanctions will be applied. Particularly, the Law on handling administrative violations provides that:

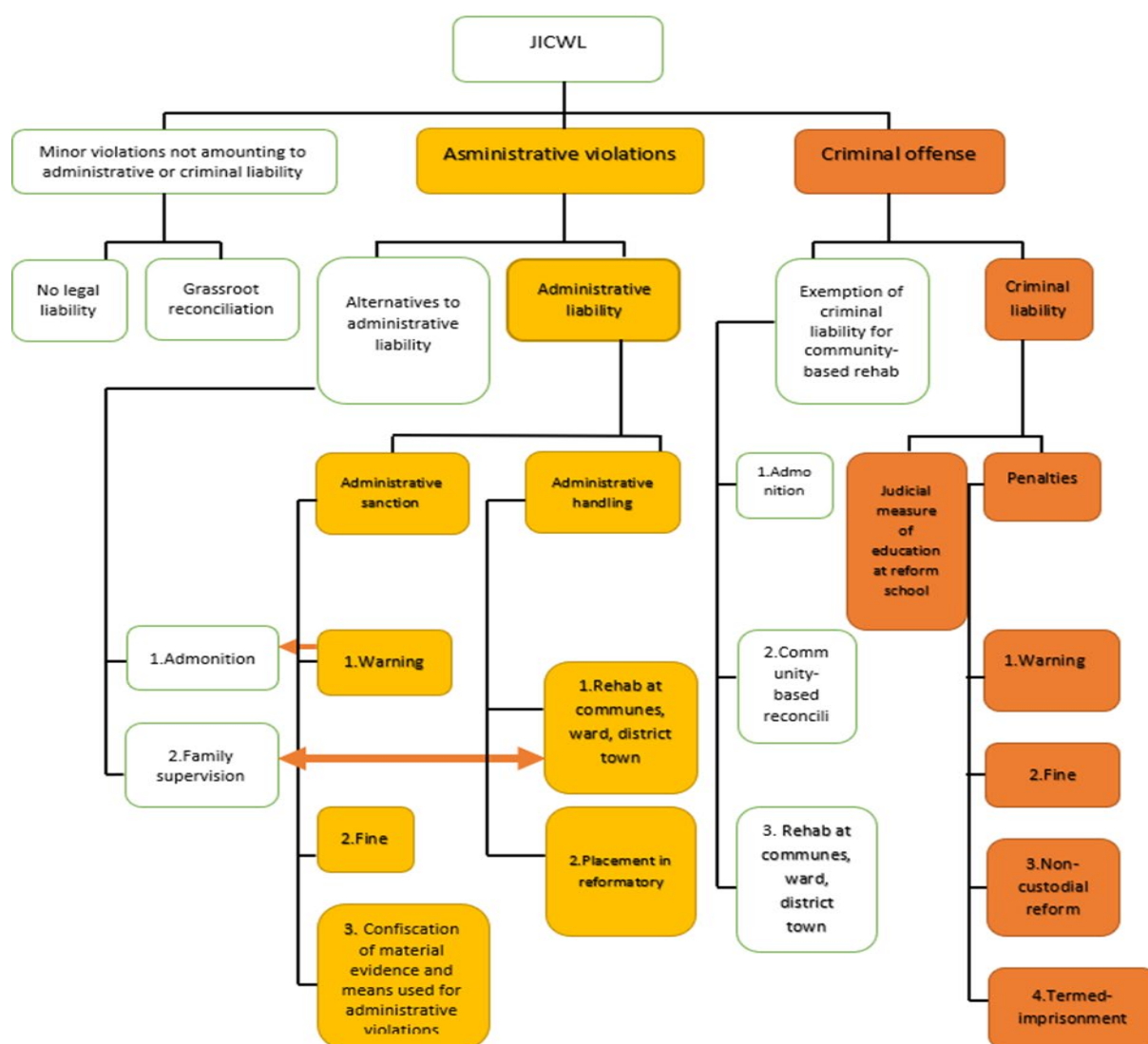
+ Subjects that may be handled for administrative violations include "Persons who are between full 14 and under 16 years old may be administratively sanctioned for intentionally administrative violations; persons who are full 16 years or older may be administratively sanctioned for any administrative violations" (Article 5.1);

+ Persons subject to education in commune, ward or township are between full 12 and under 14 years old and commit acts showing signs of very serious intentional crime prescribed in the Penal Code or between full 14 and under 16 years old and commit acts showing signs of serious intentional crime prescribed in the Penal Code or 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 (Article 90);

+ Persons subject to the measure of consignment to reformatory are between full 12 and under 14 years old and commit acts showing signs of particularly serious intentional crime prescribed

in the Penal Code or between full 14 and under 16 years old and commit acts showing signs of very serious intentional crime prescribed in the Penal Code or between full 14 and under 16 years old, commit acts showing signs of serious intentional crime prescribed in the Penal Code and have previously been subject to the measure of education in commune, ward or township or are between full 14 and under 18 years old, commit for twice or more within 6 months an act of thievery, swindling, gambling or public order disturbance which is not serious enough for penal liability examination, and have previously been subject to the measure of education in commune, ward or township (Article 92).

### Measures for handling juvenile offendings<sup>304</sup>



<sup>304</sup> Juvenile Justice Situation Analysis (JJSITAN) in Viet Nam (2019), Ministry of Justice

## B. Incidents of Children in Conflict with the Law and Types of Offence

According to the statistics provided by the Criminal Police Department, Ministry of Public Security (MPS), during the past decade, there were on average 8,300 annual juvenile offending cases. Around 13,000 JICWL were dealt through the administrative and criminal systems each year. In 2017, the rate of JICWL was 26 per 100,000 of the population aged under 18.<sup>305</sup> The situation of JICWL in the past decade has generally improved. The number of juveniles in conflict with the law, both in the administrative and criminal systems, has decreased by more than 60 per cent, from 16,446 in 2006 to 6,632 in 2018. Similarly, juvenile offending cases have fallen by more than 57%, from 10,468 cases in 2006 to 4,441 cases in 2018.

**Table 26: Juvenile offenders during 2006 – 2018 in Vietnam**

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
No. of juvenile offendings	10468	10361	10482	9484	8430	8589	8820	7208	6297	5925	4879	4454	4441
No. of juvenile offenders	16446	15589	16207	14555	12878	13600	13289	10603	9156	8405	7371	6818	6632

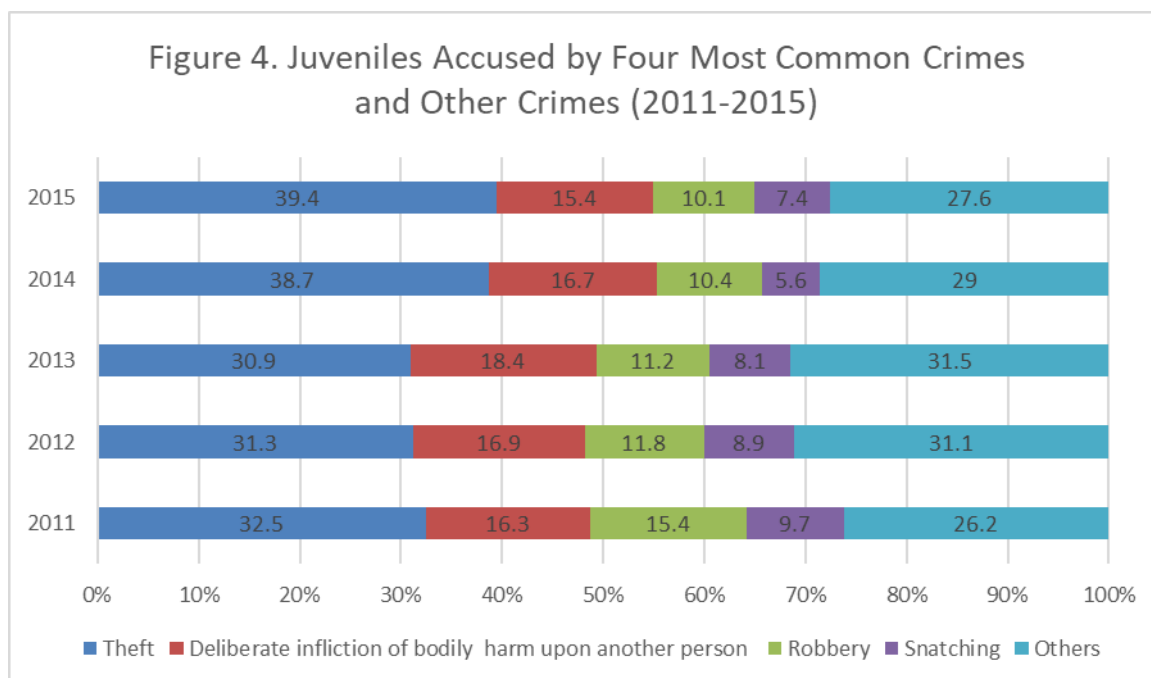
Source: Ministry of Public Security, Vietnam

### Type of Crimes

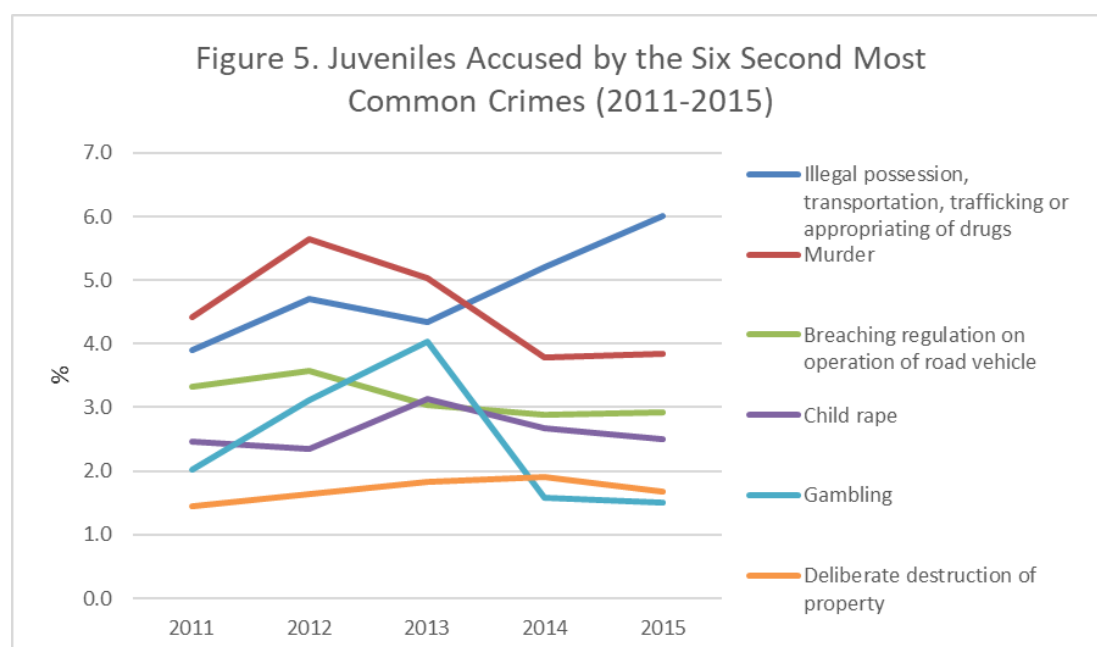
The most common type of juvenile offences were property offences (46%), especially theft (nearly 38%). Infringement on someone's life, health, reputation, and dignity accounted for more than 18 per cent. Particularly serious acts that often attract a lot of attention from the public accounted for only a small proportion, such as murder (1.4%), rape (2%), robbery (3%) and snatching (3.6%). According to the statistic provided by the Department of criminal justice statistics and information technology of the Supreme People's Procuracy (SPP), between 2011 and 2015, nearly 71% of juvenile offenders were charged for one of the following four offences: theft (34 %), deliberate infliction of bodily harm upon another person (16.8%), robbery (11.9%) and snatching (8.1 %) and other crimes are illegal possession, transportation, trafficking or appropriating of drugs (4.8%), murder (4.6%), breaching regulation on operation of road vehicle (3.2%), child rape (2.6%), and deliberate destruction of property (1.7%).<sup>306</sup>

<sup>305</sup> In 2017, there were 6,818 JICWL (Criminal Police Dept., MPS) out of the total of 26,224,704 under-18s population (GSO, 2017 Census).

<sup>306</sup> JJSITAN 2019, Ministry of Justice



Source: Supreme People's Procuracy, Vietnam.

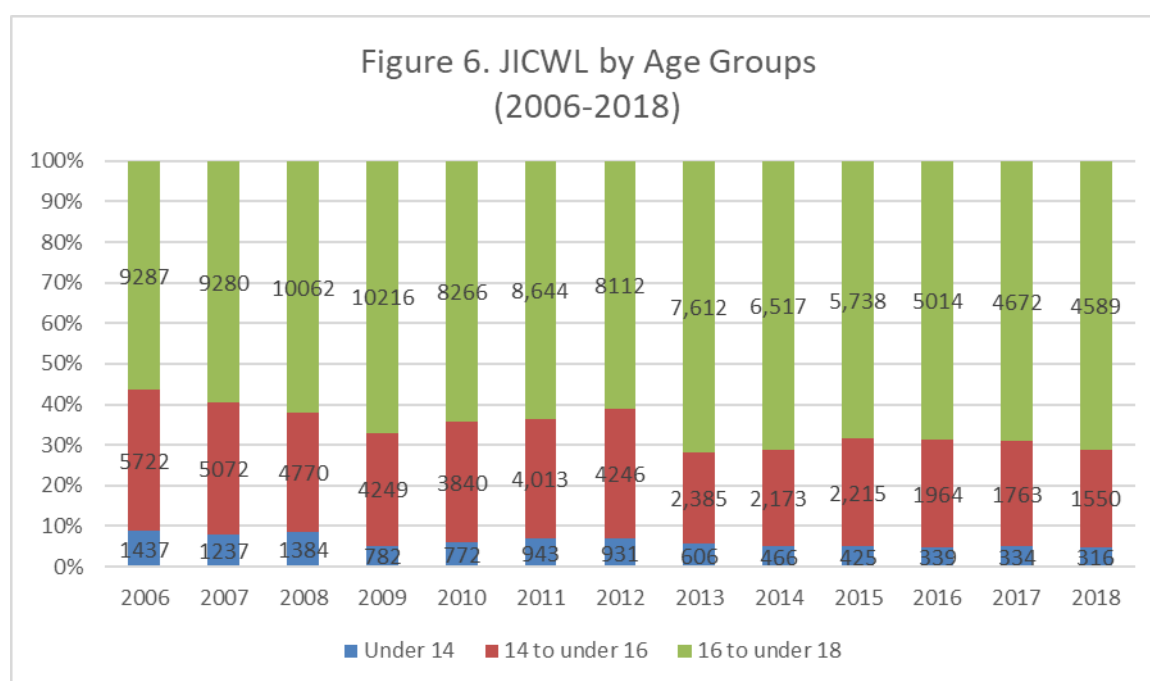


Source: Supreme People's Procuracy, Vietnam.



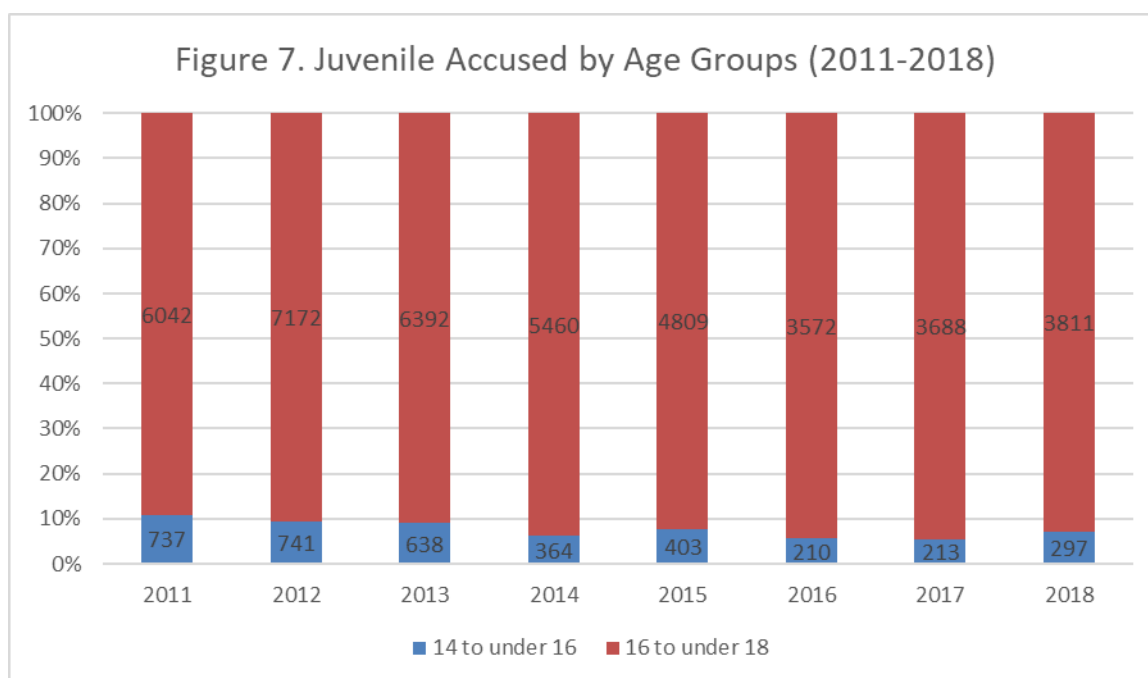
## Age groups

Most juvenile offenders fall in the age group of 16 to under 18. Between 2006 and 2018, the proportion of juvenile offenders in this age group increased from 56 per cent to 71 per cent. Contrary to the observations often made in media and different forums that juvenile offenders tend to be younger, the number of offenders under 14 years of age accounted for the smallest proportion and has been declining - from 9 in 2006 to nearly 5% in 2018. Juvenile offenders in the 14 to under 16 age group also decreased from 34.8 to 24 per cent.



Source: Ministry of Public Security, Vietnam.

In the criminal system, juveniles in the 16 to 18 age group accounted for over 90 % of the total number of juveniles accused. The rate of accused juveniles aged 14 to under 16 fluctuated around 10 % of the total number of accused juveniles is decreasing.



Source: Supreme People's Procuracy, Vietnam.

### C. Laws related to children in conflict with the law (JICWL)

According to Vietnamese system, juvenile who has committed an act that violates the law, depending on the offence's nature and extent of harm caused to society, background of the juvenile and the necessity of violation deterrence, would be subject to either administrative or criminal measures.

There is no specialised law on juvenile justice in place in Viet Nam. Instead, regulations pertaining prevention, treatment, education, rehabilitation and community reintegration for JICWL are scattered across various legal documents, namely the Law on Children, the Law on Handling Administrative Violation, the Penal Code, the Penal Procedure Code, and the Law on Legal Aid. Excluding the Law on Children, which is a specialized law for children, these laws are generally applicable to both adults and juveniles, and in some cases, there may be a separate chapter or specific provisions governing measures or procedures particularly applicable to JICWL.

Major laws directly related to juvenile conflict with the law include:

***The Law on Children (2016):*** Defines children as those below the age of 16 years. The Law provides children's rights and obligations, principles, and measures to ensure the exertion of children's rights and fulfilment of responsibilities of relevant agencies, organizations and individuals. In particular, the Law on Children regulates the protection of children's rights during proceedings and handling of administrative violations. The Law also stipulates the basic requirements for prevention, handling, education, rehabilitation and community reintegration for juveniles in conflict with the law.

***The Law on Grassroots Conciliation (2015):*** Regulates grassroots reconciliation for conflicts, disputes, and law violations, including violations committed by juveniles under the Law.

***The Law on Handling of Administrative Violations (2012):*** Regulates the minimum age of administrative liability, penalties and administrative handling measures, jurisdiction, processes, and procedures for applying penalties and administrative measures. This Law replaces the 2002 Ordinance on the Organization and Activities of Conciliation at the Grassroots. The Law also stipulates specialised principles and procedures applicable to administrative juvenile offenders. In particular, the Law stipulates two alternative measures for handling administrative violations applied to juveniles, which are 'Admonitions' and 'Family Supervision'. These measures aimed at enhancing informal community-based treatment of juvenile offenders whilst at the same time improving the responsibility of families for the education of juveniles. The law also limits the scope for committing children to correctional institutions. Specifically, such decisions are the provenance of Courts (formerly People's Committee at commune level was the responsible authority).

***The Penal Code (2015):*** Regulates the minimum age of criminal liability, crimes, and punishment. The Code stipulates specialised handling principles applicable to juvenile offenders. The PC (2015), which replaced the PC (1999), introduces a number of new regulations in the interests of juvenile offenders to minimize the imposition of criminal penalties, concretizing the conditions for criminal immunity applicable to minors and termed imprisonment and to prioritise community-based education and rehabilitation for JICWL. Also covered are diversion of juveniles in cases of lesser criminal acts, serious acts and very serious acts. Monitoring measures and education are mandated at district and village levels for cases where children are exempt from penal liability.

***The Penal Procedure Code (2015):*** Regulates the order and procedures of receiving and resolving crime information, investigation, prosecution, adjudication and procedures for enforcement of criminal sentences, persons conducting criminal proceedings and participants in the proceedings. The PPC also stipulates special procedures applicable to juveniles when they come into contact with

the criminal justice system either as the accused, as victims or as witnesses. The Code strictly stipulates the grounds and conditions to minimize the application of preventive measures to juvenile offenders. The preventive measures and escort measures shall only be applied in case of extreme necessity. Detention and temporary detention measures shall be applied only when there are grounds to believe that the application of supervisory measures and other preventive measures is ineffective. The time limit for detention for accused under 18 years of age is 2/3 of the detention term for people aged 18 or above. The judicial measure applicable to juvenile offenders has only one measure of education at the reformatory. When it is deemed unnecessary to decide the punishment, the Panel of Adjudication shall apply this judicial measure. Questioning and arguing with defendants who are under 18 years old at the trial shall be conducted in accordance with their age and development level.

***The Law on Legal Aid (2017)***: Regulates the provision of free legal aid services to beneficiaries, including children and juveniles accused aged from 16 to 18.

***The Law on Enforcement of Custody and Temporary Detention (2015)***: Prescribes the principles, order, and procedures for enforcement of custody and temporary detention; the organization, tasks and powers of custody and temporary detention management and enforcement agencies; rights and obligations of persons held in custody or temporary detention. The law requires separate detention for juvenile offenders and specific provisions on regimes for persons under 18 years old held in custody or temporary detention that the food intake standards are 20% higher, the number of times to meet relatives, defense counsels and consular contacts is twice as much in comparing with adults.

***The Law on the Execution of Criminal Judgement (2010)***: Regulates the principles, order, procedures, organisations, obligations, and powers of competent agencies in the execution of penalties and judicial measures in criminal judgments and decisions, including the enforcement of penalties and judicial measures applied to juvenile offenders.

In addition to these laws, there are a number of sub-law documents providing specific regulations on prevention, handling, education, and rehabilitation of JICWL (please refer to Appendix II).

These laws and codes have been issued since 2010, replacing many legal documents enacted in the previous decade. These laws have introduced many new regulations to improve prevention, treatment, rehabilitation and community reintegration for JICWL, demonstrating drastic reform and

establishing a comprehensive, effective, and friendly juvenile justice system that is more responsive to the needs of JICWL.

#### **D. Laws pertaining to public prosecutors & judges on children in conflict with the law**

***The Law on Organisation of People's Courts (2014)***: provides the People's Court trials publicly. In special cases of requirement of state secrets, traditions and customs of the nation, juvenile's rights or private secrets are to be protected or at the request of the involved parties, the People's Courts may hold closed trials. Regulates the establishment of family and juvenile courts as a specialised court in the people's court system. The Family and Juvenile Court is established under provincial and district People's Courts, specializing in criminal cases where defendants are under 18. The courts adjudicate on decisions to send juveniles convicted of administrative offenses to correctional institutions.

Circular 01/2017/TT-TANDTC issued by the Chief Justice of the Supreme People's Court regulates on the courtroom on cases under the jurisdiction of the Family and Juvenile Court. The courtroom shall be arranged in a friendly manner, ensuring the best interests for people under 18. The location of the procedure-conducting persons, the participants in the trial and the sessions in the courtroom are arranged on the same plane, in the form of a round table; and the wall in the courtroom is green. Persons under the age of 18 participating in legal proceedings may sit next to their representatives, defense counsels and protectors of their legitimate rights and interests. Tables and chairs in the courtroom are designed in the style of office tables and chairs.

Circular 02/2018/TT-TANDTC by the Chief Justice of the People's Courts regulates details of the adjudication of criminal cases involving persons who are under the age of 18 under the jurisdiction of Family and Juveniles Courts. The experienced, psychologically knowledgeable persons under 18 years old is a senior in the field of justice, management, training, protection, care and education of people under 18 years old; persons trained in education for adolescents, teenagers, children or other persons who have psychological experiences and understandings of persons under 18 years old.

***Penal Procedure Code (2015)***: stipulates persons conducting legal proceedings for cases with persons under 18 years old must have been trained or have experience in investigating, prosecuting and adjudicating cases involving people under 18 years old, with necessary knowledge in terms of psychology and educational science for people under 18 years old. The composition of the

Adjudication Penal of First Instance includes teachers or Youth Union officials, and persons who are experienced and knowledgeable of the persons under 18 years old. If the accused under 18 years old has not defense counsels or his/her representative does not select a defense counsel, the investigating body, procuracy or court must appoint a defense counsel.

Joint Circular 06/2018/TTLT-VKSNDTC-TANDTC-BCA-BTP-BLDTBXH dated 21/12/2018 provides for the coordination of implementation of some provisions of the Penal Procedure Code on procedures for a person under 18 years old. The investigator, procurator, or judge when assigned to conduct legal proceedings for a case involving a person under 18 years old must have at least one of following conditions: (a) experienced in investigation, prosecution, and adjudication of cases involving people under 18 years old; (b) has been trained and fostered in skills to handle criminal cases involving persons under 18 years old; (c) has been trained in psychology or educational science for people under 18 years old. The Joint Circular also details the notification of legal proceedings; coordination in sending people to participate in the proceedings; the participation in the proceedings of representatives of schools, Youth Union, and other agencies and organizations; coordination in supervising the accused under 18 years old; application of preventive measures and escort measures, coordination in the application of supervision and education measures to persons under 18 years old who are exempt from penal liability; coordination in the application of community mediation; settling complaints and denunciations related to the lawful rights and interests of participants under 18 years old.

## **II. Interrogation and Interview of Children in Conflict with the Law**

### **A. Law Enforcement Officers**

\*Qualifications of law enforcement officers (in cases involving persons under 18 years old)

For assigning persons with authority to conduct legal proceedings, at Article 5 of the interagency circular 06/2018, the investigators, prosecutors and judges, when assigned to conduct legal proceedings for the case involving a participant who is under 18 must have at least one of the following conditions:

- Experience in prosecuting, investigating, prosecuting and adjudicating cases involving persons under 18 years old;
- Have been trained and fostered on skills of handling criminal cases involving people under 18 years old; have been trained and fostered in psychology and educational science for people under 18 years old.

In addition, the jurors participated in the first instance trial, where there are participants under 18 years old, must be teachers, officials of Youth Union or other experienced people understanding psychology of persons under 18 years old. The experienced, psychologically knowledgeable persons under 18 years old is a senior in the field of justice, management, training, protection, care and education of persons under 18 years old; or trained in education for adolescents, teenagers, children or other persons who have psychological experiences and understandings of people under 18 years old.

### **Age determination**

In Article 6 of the interagency circular 06/2018 provides the coordination in the determination of the age of the accused under 18 years old. Accordingly, the determination of the age of the accused under 18 years old based on one of the following documents and documents: Birth certificate; Identity card; Citizen ID card; Registration book; Passport.

In cases where the papers and documents mentioned above are inconsistent, unclear or none of above papers or documents available, the agency and persons competent to conduct the proceedings must coordinate with families, representatives, relatives, schools, Youth Union or other relevant organizations and individuals where people under 18 years old study, work and live in to ask, take testimony, and verify the conflicts or find other papers and documents having proof of the person's age.

In case where the lawful measures have been applied, but only birth month, quarter, first or second half of the year or year is determined, depending on the specific case, Article 417.2 of the PPC (2015) shall be applied to determine the age of person in question. In case the age assessment results only determine the age range of the accused person, the agencies and persons competent to conduct legal proceedings shall apply the lowest age within the determined age range.

### **Interrogation**

The PPC (2015) sets aside a separate chapter regulating special criminal procedures for juveniles, including juvenile offenders (Chapter 32). These regulations have been specified in Joint Circular No. 06/2018/TTLT.

The initiation, investigation, prosecution, and adjudication of juvenile offenders must comply with fundamental procedural principles stipulated by the PPC, including the principles of respect and protection of human rights, legitimate rights and interests of individuals, equality before law, protection of individuals' life, health, honour, dignity and property, presumption of innocence, double jeopardy, and other legal safeguards of people under arrest, accused, and defendants.<sup>307</sup> In addition to the general criminal procedural principles, the handling of juvenile offenders must comply with the following specific procedural principles:

The PPC (2015) has many provisions to promote the involvement of parents and relevant agencies and organizations in order to protect and support juvenile offenders in the proceedings. The PPC (2015) requires that prior to an interview with or interrogation of a juvenile offender, criminal proceeding conducting bodies shall notify the juvenile's parents of the timing and location of the questioning or interrogation, as well as the rights and legal benefits of the juvenile offender. When a juvenile is arrested in an emergency case, the presence of the juvenile's defence counsel or parents or guardian is required during the interview or interrogation.

Representatives of the juveniles' families, schools, the Youth Union, other agencies and organizations have the rights and obligations to participate in the proceedings. The representative of juvenile offenders is allowed to participate in the processes of taking testimonies and conducting interrogation of juveniles; giving evidence, documents, objects, requests, complaints, accusations; and reading, recording and copying documents related to accused persons under 18 years in the case files after the conclusion of the investigation.

The Joint Circular 06/2018 requires LISA agency, Ho Chi Minh Communist Youth Union, Women's Union, Vietnam Association for Protection of Child's Rights and relevant agencies based where a JICWL is detained, where an offence takes place or where the authority of investigation lies to designate a representative for a person under 18 engaged in legal proceeding if he/she does not have a stable residence, does not have a clear background record or has a representative who is absent intentionally or refuses to participate in legal proceeding.

The PPC (2015) requires interviews and interrogations of juvenile offenders not to be held more than twice per day and no more than two hours per day unless otherwise regulated by law. Joint Circular 06/2018 requires persons conducting legal proceedings to have a friendly and gentle attitude, use easy-to-understand language that is suitable to the juvenile's age, gender, and cognitive ability when

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<sup>307</sup> Chapter 2, PPC.



interrogating juvenile offenders. Persons conducting the proceedings should also consider applying appropriate measures to reduce to the lowest the duration and the number of times to take testimonies or conduct interrogations. The interrogation must be immediately suspended when the juvenile shows tiredness, which affects the ability to accurately and fully provide information.

Until 2018, there are 11 juvenile-friendly interview rooms have been set up and put into use in Hanoi, Hai Phong, Lao Cai, Dien Bien, Ho Chi Minh City, An Giang, Dong Thap, Gia Lai and Kon Tum. Dong Thap has three juvenile-friendly interview rooms (one room in the provincial police office and the other two in Hong Ngu and Lai Vung districts); each of the other provinces has one interview room. In addition, one juvenile-friendly room was set up at the People's Police Academy for training purposes.

This juvenile-friendly room is specially designed to interview or interrogate juvenile offenders, victims, and witnesses and is equipped with cameras and sound recording devices. Investigators have been well trained to interview juveniles in the room with the participation of the juveniles' parents or guardians, child protection officers and legal aid officers. Based on this piloted model, the Criminal Police Department, of the MPS established a technical manual on juvenile-friendly interview procedures and a guideline on setting up a juvenile-friendly interview room. <sup>308</sup>

## **B. Social Work Officers**

Responsibilities of child protection workers at commune level in legal proceeding are prescribed in the Law on Children, including:

- Advising, informing, and guiding children and their parents/caregivers on how to access child protection services, legal assistance, social, healthcare and education services, among others.
- Studying and providing information on the background of children and their families to persons with authority of legal proceeding and persons with authority of administrative violations handling, in order for handling and education measures to be applied and decisions to be made appropriately.
- Participating in child-related legal proceeding as per the law or as per the requirements of the persons with authority of legal proceeding.

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<sup>308</sup> Guideline No.2177/C45(P6) of the Criminal Police Department dated 13 December 2012: guiding on the set up and use of juvenile-friendly interview room and juvenile-friendly interview procedures and skills.

Decree 111/2013/ND-CP and Decree 37/2018/ND-CP provide detailed guidance for application of alternative measures to administrative and criminal handling, and the administrative handling measure of education at commune, ward and district town. The decree also promote case management methods in rehabilitation of JICWL. Moreover, the Law on Children has prescribed the roles and responsibilities of child protection workers at commune level in legal proceedings, administrative handling, rehabilitation, and community reintegration. Decree 56/2017/ND-CP prescribes a concrete and appropriate procedure of support, intervention and child protection service provision, enabling JICWL to reintegrate into the community. Decree 37/2018/ND-CP prescribes the establishment of para-professional child justice personnel to supervise and educate JICWL who are exempted from criminal liability and sentenced to community-based education and rehabilitation.

Vietnam has been deploying a National Scheme on social work professional development for the period 2011-2020. MOLISA is building a network of qualified social workers and collaborators at all levels. This will equip professional and trained amateur social workers across the country with better skills to supervise and manage education and reintegration for juvenile offenders. Concurrently, MOLISA also strengthens the child protection system and improves measures to prevent and support children who are exposed to social risks or in need of special protection, including JICWL.

### **C. Legal Aid for JICWL**

The Law on Legal Aid (2017) extends the coverage of legal assistance to all children and juvenile offenders aging from full 16 to under 18.

Article 70 of the Law on Children provides legal aid officers shall have necessary knowledge of child psychology and educational science. Their language must be friendly and understandable to children. Legal aid officer can be assigned as defense counsel of children.

Joint Circular 10/2018/TTLT-BTP-BCA-BQP-BTC-TANDTC-VKSNDTC of the Ministry of Justice, Ministry of Public Security, Ministry of Defense, Ministry of Finance, Supreme People's Court, and Supreme People's Procuracy regulates the coordination of legal aid in legal proceedings between competent agencies, organizations and persons to ensure the rights of legal aid beneficiaries; to register, refuse, cancel the registration of defense; register and refuse to register defense counsels; to appoint defense counsels for accused persons who are entitled to legal aid and the fund to coordinate the legal aid in legal proceedings.

### **III. Detention during Interrogation/Pretrial**

#### **A. Detention**

The PPC (2015) provides numerous deterrent measures that can be applied to prevent offenders from commission of crimes, fleeing or obstruction of justice. These include freedom-restricting measures, such as arrest, custody, and detention, as well as non-freedom-restricting measures, such as bail, surety, and ban from travel outside of the residence.

Article 8 of the PPC (2015) stipulates: “When conducting legal proceedings, within the scope of their duties and powers, agencies and persons competent to conduct legal proceedings must respect and protect protection of human rights, legitimate rights and interests of individuals; regularly check the legality and necessity of the measures taken, promptly cancel or change those measures if deemed to be in violation of the law or are no longer necessary”. Article 414.1 of the PPC (2015) provides: “Ensuring friendly proceedings, in accordance with psychology, age, maturity level, cognitive ability of people under 18 years of age; ensure legitimate rights and interests of people under 18 years of age; to ensure the best interests of people under 18 years of age”. The deterrent and escort measures will only be applied to juveniles in cases of absolute necessity. Only detention shall be applied to the accused being under 18 when having grounds to believe that the application of supervisory measures and other preventive measures is ineffective. Thus, the general principles when applying detention measures to the accused under 18 years of age include:

- Detention measures are the last necessary measure when the application of monitoring measures and other preventive measures is not effective.
- Agencies and persons competent to conduct legal proceedings must regularly check the legality and necessity of detention measures, promptly cancel or change other measures if deeming that they violate law or no longer needed.
- The detention must ensure the best interests of persons under 18 years old, the detention place must be consistent with the psychology, age, maturity level and cognitive ability of people under 18 years old.

The PPC (2015) cuts down the pre-trial detention period significantly compared to the previous the PPC (2003). Specifically, the maximum detention durations applicable to juveniles who committed a less serious crime, serious crime, very serious crime, and particularly serious crime were cut down by 33 per cent (from five months and 15 days to three months and 20 days), 41 per cent (from nine

months to five months and 10 days), 43 per cent (from 13 months and 15 days to seven months and 20 days), and 45 per cent (from 22 months to 12 months) respectively. <sup>309</sup>

The PPC (2015) also requires the individual who issues the arrest, custody, or detention order to inform the juvenile's parents or guardian within 24 hours after the arrest, custody or detention. Under the Law on Execution of Custody and Detention, juvenile offenders shall be kept in a separate area from adults when under custody or detention.

According to Article 419 the PPC (2015), the temporary detention of persons under 18 years of age has 02 cases with the following specific conditions:

In case of temporary detention for persons aged between full 14 and under 16, there must be two conditions:

- The juvenile has committed a very serious crime or particularly serious crime prescribed in one of the 28 crimes listed in Article 12(2) of the PC (2015): Article 123 (murder); Article 134 (deliberate infliction of bodily harm upon another person); Article 141 (Rape); Article 142 (Rape of persons under 16 years old); Article 143 (Sexual abuse); Article 144 (Sexual abuse of a person aged from 13 to under 16); Article 150 (Human trafficking); Article 151 (Trafficking of persons under 16 years old); Article 168 (Robbery); Article 169 (Kidnapping for ransom); Article 170 (Extortion); Article 171 (Snatching); Article 173 (Theft); Article 178 (Vandalism or deliberate destruction of property); Article 248 (Illegal production of narcotic substances); Article 249 (Illegal storage of narcotic substances); Article 250 (Illegal trafficking of narcotic substance); Article 251 (Illegal trading of narcotic substances); Article 252 (Appropriation of narcotic substances); Article 265 (Organization of illegal racing); Article 266 (Illegal racing); Article 286 (Spreading software programs harmful to computer networks, telecommunications network, or electronic devices); Article 287 (Obstruction or disruption of computer network, telecommunications network, or electronic devices); Article 289 (Illegal access to others' computer network, telecommunications network, or electronic devices); Article 290 (Appropriation of property by computer network, telecommunications network, or electronic devices); Article 299 (Terrorism); Article 303 (Destruction of works, facilities, or vehicles important to national security); Article 304 (Illegal fabrication, storage, trafficking, use, trading, or appropriation of military weapons or military equipment).

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<sup>309</sup> Note that these durations include neither extension of detention in exceptional circumstances as per the order of the SPP Prosecutor General, nor detention during appeals stage.

- Having grounds to determine that the person falls into one of the cases prescribed at Points a, b, c, d and e, Clause 2, Article 119 of the PPC (2015), specifically:

- + Has been subjected to other preventive measures but failed to comply;
- + There is no clear place of residence or the identity of the accused;
- + Escaping and being arrested according to wanted decisions or having signs of fleeing;
- + Continuing to commit crimes or showing signs of continuing to commit crimes;
- + Bribing, coercing, or inciting others to make false statements, providing untrue documents; destroying and forging evidences, documents and objects of cases, dispersing properties related to cases; threatening, controlling, retaliating against witnesses, victims, criminals and relatives of these people.

\* In case of temporary detention for persons aged between full 16 and under 18, there must be two conditions:

- The accused is investigated, prosecuted, adjudicated on intentional serious offenses, very serious offenses and particularly serious offenses.

- Having grounds to determine that the person falls into one of the cases prescribed at Points a, b, c, d and e, Clause 2, Article 119 of the PPC (2015) as mentioned above.

In addition, suspects or defendants from full 16 to under 18 years old may be subject to detention measures if they continue criminal acts, abscond and are placed under arrest as per wanted notices after being charged, investigated, prosecuted and tried for unintentional serious offenses or less serious offense punishable by a maximum term of imprisonment of 2 years according to the PC 2015.

## **B. Other measures**

The PPC (2015) regulates the measure of supervision of accused persons under 18 years old in Article 418. Investigation authorities and units assigned to investigate, procuracies and courts can decide to have accused persons under 18 years old supervised by their representatives to guarantee their attendance in response to competent procedural authorities' subpoenas.

Individuals assigned with supervisory duties shall be held responsible for supervising persons less than 18 years old in strict manner, oversee their conduct and morality and educate them.

Individuals assigned with supervisory duties must report and cooperate with competent procedural authorities in prompt manner to implement timely preventive measures if the persons under the age of 18 are likely to abscond or commit the acts of bribing, coercing and fomenting other people to falsify statements or provide false documents; destroying or forging evidences, documents and items related to the case, or shifting property related to the case away; threatening, repressing or avenging witness testifiers, crime victims, denouncers and their kin, or continuing criminal acts.

## **IV. Reform Initiatives**

### ***Continued Improvement of the Legal and Policy Framework Pertaining to Juvenile Justice:***

Vietnam has many special regulations to deal with juvenile offenders. However, these regulations provided in many different legal normative documents. In order to ensure consistency and comprehensiveness in handling juvenile offenders, to provides a more consistent legal framework for the juvenile justice system, it is necessary to consider the formulation of the law on juvenile justice as experienced by many countries. This legal framework will include child friendly procedures consistent with international standards.

### ***Strengthened Capacity Building for Professionals Working in Juvenile Justice***

In order to promote the juvenile justice system, specialization should be strengthened in agencies conducting the proceedings as well as agencies and organizations providing services for JICWL. Vietnam could consider to establish a full-time specialized unit or department directly under the agencies conducting the proceedings to handle all juvenile cases or it could be a specialized police department for juveniles, a juvenile unit under the People's Procuracy or specialized police officials, prosecutors and judges trained to adjudicate juvenile cases

It is necessary to organize quality training so that all relevant officials handling JICWL, including police officers, prosecutors, judges, defence lawyers, correctional officers and social workers, receive regular and continuous professional training, including skills of interrogation of children.

### ***Involvement of Social Workers in the Juvenile Justice System***

Social workers play an important role in the juvenile justice system. Vietnam should consider the following: i) Piloting the model that social workers join juvenile justice in selected localities. In this model, social workers participate in all stages of proceedings, and trained social workers or collaborators will manage and supervise juveniles who are subject to non-custodial measures; ii) based on the above feasibility study results, assigning a Ministry the responsibilities of developing and managing social workers in the justice and state management system to work on the programs on community-based monitoring, education and rehabilitation of JICWL; iii) gradually expanding social workers' participation in the juvenile justice system across the country, starting in areas with the highest number of JICWL; iv) increasing the number of qualified social workers at district and commune levels; v) organizing continuous and quality professional training for social workers and collaborators working with juvenile offenders.

### ***Improved Cross-sectoral Coordination and Cooperation on Juvenile Justice***

In Vietnam, working with juvenile offenders is responsible by different agencies and organizations with different functions and responsibilities. It is crucial to appoint a authority responsible for juvenile justice coordination. This agency would be responsible for: i) coordinating to develop a comprehensive juvenile justice strategy and promote consistent policies, principles and approaches of dealing with juvenile offenders; monitoring and supervising all activities regarding juvenile offenders, including implementation of relating law and policy; ii) ensuring close cooperation between authorized persons, law enforcement officers with social welfare, educational, health care workers, and other professionals.