

A Measure of Last Resort?

The Current Status of Juvenile Justice in
ASEAN Member States

Country Researchers:

BRUNEI DARUSSALAM:

Datin Paduka Hajjah Intan bte
Haji Mohd Kassim

CAMBODIA:

Aekje Teeuwen

INDONESIA:

Indah Amaritasari

LAOS:

Champathong Phochanthilath

MALAYSIA:

Shelley Casey

MYANMAR:

Charlotte Moreau

PHILIPPINES:

Maria Lourdes Fugoso-Alcain

SINGAPORE:

Kelsey Lefebvre Ekman

THAILAND:

Kattiya Ratanadilok

VIETNAM:

Vu Ngoc Binh

THE RAOUL WALLENBERG INSTITUTE OF HUMAN RIGHTS AND HUMANITARIAN LAW

is an independent academic institution, founded in 1984 at the Faculty of Law at Lund University in Sweden. In legal terms, the Institute is a charitable trust under Swedish private law, governed by a board of trustees. The Institute is named after the Swedish diplomat Raoul Wallenberg, in order to pay homage to his well known humanitarian work in Hungary at the end of the Second World War.

The Institute has a wide mandate, thematically as well as geographically, to promote the respect for human rights and humanitarian law, by means of research, academic education and institutional development programmes. Hosting one of the largest human rights libraries in Northern Europe and engaged in various education, research and publication activities, the Institute provides a conducive environment for studies and research. The Institute combines academic programmes with extensive international human rights capacity development programmes, thus providing a unique platform where theory and practice meet and interact in order to further the development and application of international human rights law.

The Institute cooperates with a variety of Swedish and international partners and belongs to different networks in Sweden and abroad. The activities of the Institute do not involve official reporting on State performance, monitoring of State compliance or other methods of work which could be considered confrontational in character or nature.

Table of Contents

Glossary of Abbreviations	8
Summary of Findings	9
Chapter I. Introduction	12
1. Overview	12
2. Juvenile Justice in ASEAN	13
3. Study Objectives	13
4. Methodology	14
Chapter II.	
The State of Juvenile Justice in Brunei Darussalam	15
1. Legislative Framework for Juveniles in Conflict with the Law	15
2. Institutional Framework for Juveniles in Conflict with the Law	18
2.1 Policing and Investigation of Criminal Activities	19
2.2 Diversion	19
2.3. Adjudicating and Sentencing	21
2.4. Treatment of Convicted Juveniles	25
2.4.1 Residential	25
2.4.2. Non-residential	26
3. Main Challenges to the System	26
4. Summary and Statistics	28
Chapter III.	
The State of Juvenile Justice in Cambodia	32
1. Legislative Framework for Juveniles in Conflict with the Law	32
2. Institutional Framework for Juveniles in Conflict with the Law	39
2.1 Policing and Investigation of Criminal Activities	39
2.2 Diversion	39
2.3 Adjudicating and Sentencing	40
2.4. Treatment of Convicted Juveniles	42
2.4.1 Residential	42
2.4.2. Non-residential	43

3. Reform Initiatives	43
4. Main Challenges to the System	44
5. Summary and Statistics	50
Chapter IV. The State of Juvenile Justice in Indonesia	52
1. Legislative Framework for Juveniles in Conflict with the Law	52
2. Institutional Framework for Juveniles in Conflict with the Law	54
2.1 Policing and Investigation of Criminal Activities	54
2.2. Diversion	55
2.3. Adjudicating and Sentencing	58
2.4. Treatment of Convicted Juveniles	61
2.4.1. Residential	61
2.4.2. Non-residential	63
3. Reform Initiatives	63
4. Main Challenges to the System	64
5. Summary and Statistics	65
Chapter V. The State of Juvenile Justice in Laos	68
1. Legislative Framework for Juveniles in Conflict with the Law	68
2. Institutional Framework for Juveniles in Conflict with the Law	69
2.1. Policing and Investigation of Criminal Activities	69
2.2. Diversion	70
2.3. Adjudicating and Sentencing	71
2.4. Treatment of Convicted Juveniles	71
2.4.1 Residential	71
2.4.2 Non-residential	72
3. Reform Initiatives	72
4. Main Challenges to the System	72
5. Summary and Statistics	73
Chapter VI. The State of Juvenile Justice in Malaysia	75
1. Legislative Framework for Juveniles in Conflict with the Law	75
2. Institutional Framework for Juveniles in Conflict with the Law	79
2.1. Policing and Investigation of Criminal Activities	79

2.2. Diversion	81
2.3. Adjudicating and Sentencing	82
2.4. Treatment of Convicted Juveniles	83
2.4.1. Residential	83
2.4.2. Non-residential	86
3. Reform Initiatives	87
4. Main Challenges to the System	88
5. Summary and Statistics	90
Chapter VII.	
The State of Juvenile Justice in Myanmar	92
1. Legislative Framework for Juveniles in Conflict with the Law	92
2. Institutional Framework for Juveniles in Conflict with the Law	96
2.1. Policing and Investigation of Criminal Activities	96
2.2. Diversion	99
2.3. Adjudicating and Sentencing	100
2.4. Treatment of Convicted Juveniles	104
2.4.1. Residential	104
2.4.2. Non-residential	106
3. Reform Initiatives	107
4. Main Challenges to the System	108
5. Summary and Statistics	112
Chapter VIII.	
The State of Juvenile Justice in Philippines	115
1. Legislative Framework for Juveniles in Conflict with the Law	115
2. Institutional Framework for Juveniles in Conflict with the Law	123
2.1. Policing and Investigation of Criminal Activities	123
2.2. Diversion	125
2.3. Adjudicating and Sentencing	128
2.4. Treatment of Convicted Juveniles	130
2.4.1. Residential	130
2.4.2. Non-residential	132
3. Reform Initiatives	134
4. Main Challenges to the System	135

5. Summary and Statistics	138
Chapter IX.	
The State of Juvenile Justice in Singapore	143
1. Legislative Framework for Juveniles in Conflict with the Law	143
2. Institutional Framework for Juveniles in Conflict with the Law	145
2.1. Policing and Investigation of Criminal Activities	145
2.2. Diversion	146
2.3. Adjudicating and Sentencing	149
2.4. Treatment of Convicted Juveniles	151
2.4.1. Residential	151
2.4.2. Non-residential	153
3. Reform Initiatives	156
4. Main Challenges to the System	159
5. Summary and Statistics	161
Chapter X.	
The State of Juvenile Justice in Thailand	166
1. Legislative Framework for Juveniles in Conflict with the Law	166
2. Institutional Framework for Juveniles in Conflict with the Law	167
2.1. Policing and Investigation of Criminal Activities	167
2.2. Diversion	168
2.3. Adjudicating and Sentencing	169
2.4. Treatment of Convicted Juveniles	170
2.4.1. Residential	170
2.4.2. Non-residential	172
3. Reform Initiatives	172
4. Main Challenges to the System	178
5. Summary and Statistics	178
Chapter XI.	
The State of Juvenile Justice in Vietnam	181
1. Legislative Framework for Juveniles in Conflict with the Law	181
2. Institutional Framework for Juveniles in Conflict with the Law	186
2.1. Policing and Investigation of Criminal Activities	186
2.2. Diversion	186

2.3. Adjudicating and Sentencing	188
2.4. Treatment of Convicted Juveniles	190
2.4.1. Residential	190
2.4.2. Non-residential	191
3. Reform Initiatives	192
4. Main Challenges to the System	194
5. Summary and Statistics	198
Annex I. Juvenile Justice System in ASEAN Member States	208
ANNEX II. Juvenile Offender Procedure	209

Glossary of Abbreviations

ASEAN	Association of Southeast Asian Nations
CAT	The Convention Against Torture, and Other Cruel Inhuman or Degrading Treatment or Punishment
CAT - OPT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CRC	The Convention on the Rights of the Child
CRC – OPT - AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
CRC – OPT - SC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography
NGO	Non Governmental Organisation
RWI	Raoul Wallenberg Institute of Human Rights and Humanitarian Law
UN	United Nations
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office on Drugs and Crime

Summary of Findings

The fear of an increasing number of juveniles in conflict with the law in member states of the Association of Southeast Asian Nations (ASEAN) has sparked concerns throughout the region. While this report confirms that crime is on the rise, the number of juveniles brought into formal contact with the criminal justice system remains surprisingly low: we estimate that approximately 70 000 juveniles are formally charged with a criminal offence each year in ASEAN member states. Comparatively, this number is far lower than, for example, the European Union (EU) or USA.^{1,2}

Another main finding of the report is that the highest number of juvenile crimes reported is within the category of theft. Robbery and drug related crimes are other crimes high on the statistics. In particular Thailand reports of extremely high percentages of drug related crimes (45.51%).

A rough estimate of figures provided shows that around 16 000 children are deprived of their liberty within the ASEAN region.

In comparison, statistics from 2012 in the European Union shows that 8700 children in 21 out of the 28 member states were detained in custodial institutions.³ In 2010 a staggering 70 000 juvenile offenders in USA were in residential placement facilities.⁴

It was outside of the scope of the study to report quantitatively on the conditions of juvenile residential institutions. It is, nevertheless, an undeniable fact that many still serve in prisons together with adults, and that there is much room for improvement within rehabilitation centres. This is particularly important for institutions housing juvenile drug users.

The country reports indicate that throughout 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 recently installed, or are in the process of installing a distinct legislative framework for juvenile justice. This is compatible with the UN Convention on the Rights of the Child. Several of the country experts highlight the instrumental role UNICEF and other organisations are playing in the facilitation of improving legislative and institutional

1 “Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the European Union”, *European Commission* 2014, p.4. The report summary finds that in 8 out of the 28 members states of the EU alone, the number of children charged was 134 477. In 2010, the number of juvenile cases in the USA was 1,4 million. The population of USA is only half that of ASEAN member states. “Juvenile Offenders and Victims: 2014 National Report”, *National Center for Juvenile Justice* p.151.

2 One explanation behind the relatively low figure may be that underreporting of juvenile crime is known to be common in Asia, where many tend to live in tightly knit communities where crimes are more likely to be resolved without contact with the formal criminal justice system.

3 It is important, however, to be cautious in drawing conclusions also on this figure keeping in mind the difficulties in obtaining and verifying statistical information from most ASEAN states.

4 “Juvenile Offenders and Victims: 2014 National Report”, *National Center for Juvenile Justice*, p. 188.

frameworks throughout the region. This has clearly strengthened efforts in the establishment of comprehensive child-friendly justice systems.

The report reveals, however, that the minimum age of criminal responsibility remains markedly low for international standards. The average in the region is 10.4 years, which is well below the 2009 estimated world median of 12 years.⁵ General Comment No. 10 of the Committee on the Rights of the Child states the absolute minimum age for criminal responsibility should be not less than 12 years.⁶

A majority of the countries formally include in their laws alternatives to custodial sentences or measures of diversion. However, despite a legal framework in place, diversion is not always used; decision-makers lack adequate knowledge and resources to implement the programmes. Diversion procedures also vary across the region. Some countries alluded to the need for proper facilities and increased staff to encourage diversion programmes and other non-residential options for children in conflict with the law. Another important finding is the diverging uses of traditional restorative justice models within the different ASEAN countries. While some member states leave the mediation process to traditional village based institutions, others maintain a strict governmental control over the diversion process. Whichever procedure is applied, the outcomes are often similar and include reactions typical to restorative justice such as community work or some sort of compensation to the victim.

Very few countries in the region have established specialised police and investigation units for children in conflict with the law. If units are present, access to properly trained police and investigators is often limited. This is in line with most country reports emphasising the need to increase training of all duty-bearers for juvenile justice rights. Increased capacity building is required not only for police and investigators but also for prosecutors, judges, parole officers and social workers.

Another significant finding is that nearly all researchers have concerns over adequate legal aid for children in conflict with the law. In some states these are practically non-existent while others employ them to a limited degree. Only a few states provide full rights and actual access to free legal aid throughout the proceedings.

Nearly all researchers conducting the country studies for this report stated that it had been difficult to obtain reliable and up-to-date statistical data on the situation of children in conflict with the law. There is a clear need to improve this to ensure transparency and possibilities for research.

By conducting this study, RWI aimed to shed light on the current situation on juvenile justice throughout ASEAN in hopes of contributing to bringing domestic norms and implementation in the region into compliance with international human rights standards. Increased regional cooperation and coordination on key cross-cutting issues can increase the potential to address urgent needs to reduce

5 Cipriani D (2009) *“Children’s Rights and the Minimum Age of Criminal Responsibility – a global perspective”*, Ashcroft.

6 UN Committee on the Rights of the Child (CRC), CRC General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 Paragraph 32.

the number of children in conflict with the law and decrease the number of children deprived of liberty. In the following section, we provide recommendations for a few areas in which cross border and regional cooperation would be beneficial in order to ensure the implementation of international standards and norms in the field of juvenile justice:

- Develop regional dialogue and share best practices on:
 - Implementation of a separate juvenile justice legal framework
 - Ensuring institutional frameworks are in place
 - Data accumulation and data sharing across ministries and other relevant juvenile justice sectors through use of the UNODC, UNICEF juvenile justice indicators
 - Diversion programmes outside the formal legal system
 - Educational and vocational training for children in juveniles homes and prisons
 - Ensuring legal aid is accessible to children in conflict with the law
- Develop regional monitoring and evaluation mechanisms.
- Develop a strong regional juvenile justice network to enhance lobbying efforts for governments and donors to prioritise juvenile justice.
- Strengthen and support education initiatives in the field of juvenile justice related research and education.
- Work towards a set of ASEAN Guidelines on the promotion and protection of juvenile justice that are compatible with the CRC and other international juvenile justice standards.

Chapter I. Introduction

1. Overview

Children below 18 years old in conflict with the law is an issue of increasing global concern, not least throughout Asia with its growing youth population.⁷ In the member states of ASEAN alone, 27 per cent of citizens are between five and nineteen years of age, and there are reports of a rise in crimes committed by youth.⁸

Responses to this increase in juvenile crimes vary considerably. There has until now been an overuse of detention and prison sentencing. UNICEF in 2009 estimated that more than one million children at any given time were deprived of liberty worldwide.⁹ There are numerous ongoing reform initiatives promoting diversion or alternatives to detention, often applying principles of restorative justice. This is in accordance with the international legal framework on juvenile justice and supported by research which promotes non-custodial measures. Leading studies conclude that incarceration of children does not have any positive outcomes for the children and it can negatively impact their physical and mental well-being.^{10,11} Some effects include developmental delays, disability, psychological damage, and increased rates of suicide and recidivism.¹²

The international community continues to work to ensure children in conflict with the law enjoy the rights guaranteed to them through relevant international treaties, guidelines and standards. These includes the UN Convention of the Rights of the Child (CRC), the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing rules), The UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) 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. Despite the inclusion of juvenile justice provisions in several national, regional and international normative instruments, full protection is yet to be provided. Intergovernmental organisations as well as international and national non-governmental organisations are tirelessly working with governments to improve the situation for children in conflict with the law.

7 ASEAN Statistical Yearbook 2013. Figures shows that in 2012 the total population of ASEAN was 617 million while the age group 5-19 years comprised 168 Million.

8 See examples: Jan Van Dijk, "The World of Crime" *SAGE Publications*, Inc 2008, p.335, "Youth Violence in South East Asia", *Griffith University*, Asia Pacific Centre for the Prevention of Crime Policy Brief Series #2, October 2013.

9 "Progress for Children – a report card on child protection", *UNICEF* September 2009.

10 A-L Norderhaug Ferguson, "Expert Consultation: Global Study on Children Deprived of Liberty" *Defence for Children International* 2014 p. 8.

11 P. Jaffé, "Expert Consultation: Global Study on Children Deprived of Liberty" *Defence for Children International* 2014 p. 7.

12 UN Secretary General's Study on Violence against Children, "Rights of the child" (2006) para. 54.

2. Juvenile Justice in ASEAN

Regional organisations have the potential to strengthen standard setting and cross border cooperation. In South East Asia, ASEAN is rapidly reinforcing its role not only as an important economic powerhouse, but moreover as an actor for supporting regional cultural and social development. Strong collaborative mechanisms throughout ASEAN have the potential to also effectively address the urgent need to decrease the number of children in conflict with the law and those deprived of liberty.¹³

The ASEAN Intergovernmental Commission on Human Rights (AICHR) has listed juvenile justice as one of 11 core thematic issues with the goal to produce regional based studies in its five year work plan 2010-2015.¹⁴ Moreover, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) entered setting performance standards on an integrative child protective system, including children in juvenile justice systems, into its Work Plan 2012-2016.¹⁵

Several ASEAN states have reformed, or are in the process of reforming their legislative framework in order to improve the protection of juveniles in the criminal justice system; however, cross-border cooperation on juvenile justice in the region is only in its initial phase and comparative research limited .

3. Study Objectives

The Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) decided in 2014 to draft this baseline study on juvenile justice in ASEAN, thus contributing to regional juvenile justice research. This report aims to identify issues of common concern across member states and highlight areas in which there is potential for regional cooperation. It provides information on the current status of the juvenile justice systems in all ASEAN countries and contributes directly to the overall objective of raising awareness and political commitments among stakeholders. RWI hopes that it may lead to new joint activities and dialogue between ASEAN member states that may enhance the protection of children in conflict with the law.

¹³ A. McGrath, “A Voice for the Future of Juvenile Justice in Asia-Pacific: Introduction to the Asia Pacific Council for Juvenile Justice and leading juvenile justice reforms in the region” *The Asia Pacific Council for Juvenile Justice, International Juvenile Justice Observatory*, (2013) p. 20.

¹⁴ The Five Year Work Plan aims to initiate thematic studies on issues relating to human rights, at least one issue per year, in close collaboration with sectoral and other relevant ASEAN bodies. The 11 thematic issues include Corporate Social Responsibility, migration, trafficking, child soldiers, women and children in conflicts and disasters, juvenile justice, right to information in criminal justice, rights to health, rights to education, right to life and right to peace.

¹⁵ ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, *Work Plan 2012-2016 and Rules of Procedures ROP* (2012) p. 8.

4. Methodology

The study has been coordinated and edited by the RWI field office in Jakarta, which has been supporting juvenile justice activities in Indonesia and in the region for over a decade. The office identified experts to draft studies from each ASEAN member state which formed the basis of this report. Researchers were expected to acquire existing data on the normative framework and implementation of juvenile justice including national laws, secondary legislation, existing research, criminal data statistics and civil society reports. Where necessary, the researchers contacted civil servants, justice officials, academics or representatives from civil societies to conduct formal and informal interviews.

The researchers followed a joint template originally developed from the UNICEF and UNODC Juvenile Justice Indicators. All phases of justice relevant to juveniles were included: Policing and investigation of criminal activities; Diversion; Adjudication and sentencing; and Treatment of convicted juveniles. In addition to providing a narrative report, each expert was responsible for producing a dataset consisting of a basic overview of the juvenile justice system (ie. Ratification status of the CRC, relevant legislation for juveniles in conflict with the law, age of criminal responsibility, responsible institutions for juvenile delinquents, etc.) as well as provide statistics where possible on offences, policing and law enforcement, diversion, trial and sentencing, and imprisonment. The data was to be collected for the most recent year available, which varied significantly across ASEAN member states. Due to the challenges of data collection in the region, the UNODC and UNICEF indicators were modified, and thus not adapted to provide complete information on all aspects relating to juvenile justice and children deprived of liberty in each member state. They were rather developed to provide us with a basic dataset and a comparable tool to which we can begin to assess potential avenues for cross-collaboration in ASEAN.

It is important to highlight that this report is a RWI study, and in no way an official government or ASEAN document. Moreover, it is not intended as a human rights monitoring report. As for the statistical data in the report, it is important to emphasise that most researchers experienced great difficulties in gaining access to statistical data and/or verifying the information they received. RWI has attempted to review the data, and while we cannot certify that all figures are correct, we believe they represent the current status of publicly available statistics in the region.

The study was made possible due to financial support from the Swedish International Development Cooperation Agency. RWI is solely responsible for the content of this report.

Chapter II.

The State of Juvenile Justice in Brunei Darussalam

Datin Paduka Hajjah Intan bte Haji Mohd Kassim

1. Legislative Framework for Juveniles in Conflict with the Law

Brunei Darussalam is signatory to many Conventions including the CRC with reservation only on sub paragraphs (3) of Article 20 and sub paragraph (b) – (e) of Article 21. In the Country's efforts to show commitments to the protection of children, other reservations have been removed. After signing the CRC, Brunei has also moved toward reforming legislations affecting children to be in line with international standards.

The CRC defines “child as a person under the age of 18.”¹⁶ However in some countries, including Brunei, the application of this to juvenile crimes tends to be more complex. The age of accountability to criminal acts or age of criminal responsibility is not in line with the definition of a child under the CRC. It also tends to differ with the age of transition into adult status as reflected by marriageable age under the different legislation for Muslims and Non-Muslims and also under related legislation such as driving eligibility. Under Brunei Law, the age of criminal responsibility is 7-12 years of age.¹⁷ Despite the CRC, Brunei has decided not to make any amendment to the minimum age of criminal responsibility as provided by the Brunei Penal Code Cap 22 (The Code). Section 82 of the Code provides that nothing is an offence which is done by a child under 7 years of age. Further on, Section 83 provides that nothing is an offence which is done by a child above 7 and under 12, who has not attained “sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.” With this provision, the age of criminal responsibility for children between the ages of 7-12 is tied up to the maturity of the child. The low age of criminal responsibility at 7-12, makes Brunei appear to be less juvenile friendly than those countries with a higher age of criminal responsibility. However, practically in Brunei, though the lower age limit is seven, rarely is a child of seven years considered to be of “sufficient maturity of understanding” to be charged as a juvenile; the net effect is that the age of actual criminal responsibility is higher. No case has ever been reported to the Royal Brunei Police Force or the Attorney General Chamber of crimes committed by children between the ages of 7 to 10.

¹⁶ Convention on the Rights of The Child, Article 1.

¹⁷ Brunei Penal Code, Cap 22.

In 2011, the youngest reported offender was 12 years of age and it was also in relation to driving without a valid licence. To date, there have been no serious cases nor deaths caused by a juvenile reported in Brunei Darussalam. The sentence of whipping for juveniles is still in existence under Section 257 of the Criminal Procedure Code Cap 7 (The CPC). Youthful offenders, where the laws require it, are subject to whipping of not more than 18 strokes where it shall be inflicted in the way of school discipline with a light rattan. In practice there has been no occasion of such sentences passed on young offenders.¹⁸

In 2010, a comprehensive piece of legislation encompassing all aspects to the welfare and care as well as child justice was enforced in the form of the Children and Young Persons Act Chapter 219 (CYPA). This act which replaced The Children Order 2000, was adopted in 2006 and came into force in 2010. The guiding principle of the legislation is the best interest of the children, but at the same time juveniles who are in conflict with the law are not exempted from the responsibility of being accountable to their misdeed. The reformed legislation is centered on maximising diversion from the court system, proactively addressing offending behavior and engendering family and public support in the management of young offenders. The Children and Young Persons Act Chapter 219 is now the key legislation governing the affairs of children in Brunei, including juvenile justice. The legislation provides for the jurisdiction of the Juvenile Courts for offenders between 7 and 18 years of age and contains the procedure required to be followed in matters involving a child or young person as well as the rights of the young person. This Act provides two separate definitions for young people below the age of 18. The following definitions are provided:

- “child” means a person who has not attained the age of 14 years; and
- “juvenile” means a person who has attained the age of 7 years of age but who has not attained the age of 18 years.

The definition of “juveniles” appears to be related to children in conflict with the law.

The age of consent in Brunei differs according to different legislation. The Unlawful Carnal Knowledge Act Cap, 29 (UCK) states it as 16 years. Under Section 2 of the UCK, it is an offence to have sexual relationship with a child under 16 irrespective of consent. Under Section 90 of the Penal Code Cap 22, a child of age 12 and below is incapable of consent. As to marriageable age for Non-Muslim, it is 14 years for male and female.¹⁹ The Chinese Marriage Act Cap 126 states it as 16 years for female and no age limit for male. For Muslim, “puberty” is the criteria under the Islamic Family Law Act 2010. Other provisions are age for driving and employment. The age for obtaining driving license is 18²⁰ and employment is 16.²¹

18 CRC Report, 2013.

19 Marriage Act Cap 76

20 Law of Brunei, Road Traffic Act Chapter 68, Section 21 (a).

21 Labour Act, Chapter 90.

Currently Brunei practices a dual system of law; the civil system based on the English Common Law and the Syariah Law. The Syariah Court has jurisdiction over Muslims only. It is a well-known fact that Brunei is moving towards application of the Syariah Law with the recent passing of the Syariah Penal Code Act (the SPC). It has jurisdiction both for Muslim and Non-Muslim. The SPC will be implemented in three stages; Phase 1 came into force in Brunei Darussalam on 1 May 2014. This phase concerns all the offences found under Part IV Chapter IV that are punishable only by fine or imprisonment e.g. failure to perform Friday prayer, disrespecting the month of Ramadhan etc. Phase 2 will be introduced 12 months after the Syariah Courts Criminal Procedure Code is gazetted. This includes all offences under Part IV Chapter I, II and III that are punishable by Hadd²², Qisas²³, Diyat²⁴, Badal–Al-Sulh²⁵ or Arsy²⁶, except offences punishable by death. Phase 3 will be introduced 24 months after the Syariah Courts Criminal Procedure Code is gazetted.²⁷ The SPC will then be fully enforced including offences punishable by death. The Syariah Criminal Procedure Code is yet to be passed, although drafting has been completed. Pending the passing of the Syariah Criminal Procedure Code, the current CPC is applicable for the current offences under Phase 1. Offences under Phase 1 are not new to Brunei because it has already been in force under different legislations.

The Syariah Penal Code 2013 lays out specific offences and punishments for crimes prescribed by the Al-Quran and *Sunnah*,²⁸ However, there are some offences and punishments that are not prescribed by the Al-Quran and *Sunnah* that have been included in the SPC, such as making it mandatory for Muslim men to attend Friday prayers and the offence of disrespecting Ramadhan.

The passing of the SPC brings another dimension to the concept of criminal responsibility once it is fully implemented. Section 12 of the Syariah Penal Code states that, “Nothing is an offence which is done by a child who is not Mumaiyiz.”

“Mumaiyiz” has the same meaning as assigned to it under Section 3(i) of the Syariah Courts Evidence Order, 2001 (S63/2001). The Order defines Mumaiyiz

22 Under S52 (i) of SPC. “hadd” means punishment or penalty as ordained by the Al-Qur’an or Sunnah Rasulullah Sallallahu ‘Alaihi Wa Sallam (Sunnah Rasulullah Sallallahu ‘Alaihi Wa Sallam means traditions of the Prophet Muhammad).

23 Under S118 of SPC. “qisas” means retaliation or similar penalty for offences of qatlul-‘amd or causing hurt to anybody (qatlul-‘amd is defined in section 125; for purpose of understanding the concept it is causing death or grievous bodily harm with intention).

24 Under S119 of SPC, “diyat” means the specified amount payable to the heirs of victim of qatl. “Qatl” means an act of a person which causes the death of another (S121 (i) SPC).

25 S122 of SPC defines “badal-al-sulh” means by the mutually agreed compensation according Hukum Syara to be paid or given by the offender to a *wali-ad-dam* in cash or in kind or in the form of movable or immovable property. Hukum Syara is defined in SPC as “the laws of any sect which the court considers valid.

26 S121 of SPC- “Arsy” means specified amount determined by Hukum Syara (muqaddar) or specified amount not determined by Hukum Syara’ (ghairu muqaddar) for compensation payable to victim of hurt.

27 Information obtained during lectures given on the Syariah Penal Code.

28 Traditions of the Prophet Muhammad.

as, “a child who has attained the age of being capable to differentiate a matter”. This is a subjective definition which may require expert assessment on the mental ability of the child.

The (SPC) has another provision, Section 13, which brings in another meaning to criminal responsibility under the Code: “No *hadd*²⁹ or *qisas*³⁰ punishment may be imposed on any offence liable to *hadd* or *qisas* punishment, committed by a *mumaiyiz* child who is not *baligh* but may be punished with punishments other than *hadd* or *qisas*.”³¹

- *Mumaiyiz* is defined as a child who has attained the age of being capable to differentiate matter.³²
- *Baligh* is defined as a person who attained the age of puberty in accordance with Syariah Law.³³

Therefore for *hadd* and *qisas* offences, there are two tests applicable to the child. Firstly the child has to be “*Mumaiyiz*” and secondly “*Baligh*”.

At this stage, it is not certain what the status of the CYPA will be once the SPC is fully implemented. The position will only be known once the Syariah Criminal Procedure Code is introduced. Currently, there are provisions for diversion under both the CPC and the CYPA. It is yet to be known whether those provisions will be included in the Syariah Criminal Procedure Code to keep the Country in line with the obligations under the CRC. It is also still a question whether the Juvenile Courts will be functional in the future.

2. Institutional Framework for Juveniles in Conflict with the Law

The management and treatment of juvenile offenders in Brunei is based on the philosophy that every juvenile has the capacity to change and the primary objective is to treat, rehabilitate and integrate them into society and become useful members of their communities. Being a country which stresses family cohesiveness, in many programmes and interventions by the Government agencies, Brunei tries to balance between parental authority and the interests of the child offenders. Having this philosophy in the background, the overall manage-

29 Provided by Royal Brunei Police Force through a letter dated December 15, 2014 under reference AD/13/DCI/34.

30 Prison Department Letter; October 28, 2014.

31 To understand the concept of *hadd* and *qisas*, the following are the offences and punishments: *Hadd* is a punishment as ordained by Quran and Hadith, including amputation of hand (theft), death or amputation of hand/foot (robbery), stoning to death or whipping (adultery or rape). *Qisas* is a retaliation or similar punishment. For a murder case, the victim’s closest relative holds the right to kill the murdered if the court allows.

32 Section 3(t) of the Syariah Courts Evidence Order, 2001 (S63/2001).

33 *Supra* note 32.

ment of juvenile offenders after court appearance is placed under the purview of the Department of Community Development, Ministry of Culture, Youth and Sports; the Ministry responsible for welfare in Brunei. The Ministry formed an inter-ministry committee called the Action Team on Child Protection, provided for under Section 13 of Children and Young Persons Act, Cap 219, to look into the affairs of young persons which includes juveniles in conflict with the law. This is an attempt to coordinate efforts of the various ministries who are involved in the handling of the young people so that the interests of the young persons are protected. The Action Team meets whenever the Ministry thinks fit. In practice, the Action Team seldom meets which affect its ability to supervise the efforts of the various ministries.

2.1 Policing and Investigation of Criminal Activities

The Royal Brunei Police Force has a special unit which investigates cases involving children and women. The unit is called the Women and Children Investigation Unit. This unit is at Police Headquarters level and cases involving children will be referred to it. The police personnel are well-trained on children issues. However, there are still cases which would be handled at the police districts level. There are no fixed criteria for which type of cases will be referred to the unit. It will be up to the discretion of the police districts. However, the Unit may call for the cases handled by the police districts to be transferred to the unit whenever necessary.

2.2 Diversion

Diversion is the most common practice of the police. The juveniles are let off with warning, bail out or referred to other departments such as the Department of Community Services or the Narcotics Control Bureau for supervision or treatment and rehabilitation programme. The estimated figure according to an informal Police's source is 90%.

Once investigation commences, the discretion to divert from formal trial once a case involving a juvenile is disclosed rests with the Public Prosecutor. There appears to be no specific guidelines or criteria as to when a particular case is deemed suitable for diversion. Most decisions whether to proceed or not is based upon the juvenile's school report and previous criminal records. As such it is on case-by-case basis. Detention pending trials in most instances are serious cases involving both juveniles and adults. Where offences are not serious, bails are not objected and frequently granted.

The establishment of the juvenile court facilitates more appropriate practice for young offenders. By virtue of Section 262 and 263 of the Criminal Procedure Code, when any youthful offender is convicted of an offence punishable by fine or imprisonment or both, the court may instead of sentencing the juvenile to a fine or to a sentence of imprisonment of any kind, deal with the juvenile as provided by the CYP A and the Offenders (Probation and Community Service) Or-

der 2006 respectively. The CYPA ³⁴ lists the powers of Juvenile Courts on proof of offence committed by the offender and also other orders including probation order, community service order and bond of good behavior.

When a juvenile is brought before the Juvenile Court, the Court in most instances would require a pre-sentence report for the purpose of determining the most appropriate order. Depending on the gravity of the offence and merits of each case, among the options the Juvenile Court may consider are one or more of the following:³⁵

- i. Discharge the case conditionally or unconditionally;
- ii. Place a bond on the parent/guardian to ensure proper care and supervision of the juvenile;
- iii. Place the juvenile under the care of a “fit person”;
- iv. Place him/her on standalone community service order;
- v. Place him/her on probation for a period ranging from 6 month to 3 years with or without conditions
- vi. Order the juvenile to be committed to an Approved School for juvenile offenders for rehabilitation for a period between 24 to 36 months.

Probation Order

Probation is the conditional suspension of punishment while an offender is placed under the supervision of a Probation Officer and given guidance or treatment within the community. The period of probation ranges from six months to three years.³⁶ The conditions imposed as part of the probation order differ in terms of the level of supervision, monitoring and restrictions imposed.

Bound Over

This is a practice adopted by police when dealing with young offenders. A young offender might be released and bound over for good behavior with conditions for a certain period of time. The Juvenile Court may also bound over a juvenile offender with conditions as part of sentencing.³⁷

34 Section 51.

35 Ibid.

36 Ibid.

37 Ibid.

Supervision Scheme for drug offenders

The Misuse of Drugs Act, Chapter 27 is the main legislation for drug crimes in Brunei Darussalam and the Narcotic Control Bureau (NCB) is the lead agency to combat drug abuse activities. There is no special provision for children in any of the legislation enforced by the NCB to divert children from court prosecution. The NCB policy, since its inception in 1988, has always been a balance of supply reduction (law enforcement) and demand reduction (treatment and rehabilitation, supervision and aftercare, and education). In its demand reduction approach for young offenders, the NCB has continuous programmes to educate and raise student awareness on the harmful effects of the misuse of drugs, by disseminating anti-drug messages through nationwide campaign and school-based drug prevention programmes. With regards to young offenders, NCB takes into account the best interests of the child by putting emphasis on treatment and rehabilitation in the community, thus avoiding a conviction record at young age which may jeopardise their education and future employment prospects. For children found to be committing a non-serious drug offence, they will be placed under the NCB's supervision scheme for a period not exceeding twenty-four months. This is a non-residential programme in which the child will undergo regular urine tests, counselling sessions, peer group support and life-skill training. It is a well-structured scheme composed of three phases for a period of up to three years. The scheme also runs as a post rehabilitation programme. The NCB also carries out periodic visits to the child's place of residence to interview family members on the well-being of the child and also to conduct family counselling.³⁸

2.3. Adjudicating and Sentencing

The CYPA provides for the setting up of juvenile courts which was previously non-existent in Brunei. Before 2010, juvenile offenders were tried in courts as adult offenders with a similar system as adult offenders.

Under The CYPA, juvenile courts sit in all four districts of the Country, which are Brunei-Muara, Belait, Tutong and Temburong. The Juvenile Court deals with three categories of cases namely, criminal offences committed by juveniles below 18 years old, juveniles who are beyond parental control and juveniles who are in need of care and protection orders. The Juvenile Court is presided over by a magistrate but when deciding the method of dealing with the young offenders, the court must obtain a written report regarding the offender background, family history and school record. The magistrate is also required to sit with a panel of two advisers appointed by the Chief Justice. In offences under the exclusive jurisdiction of the High Court under Brunei Laws, the Public Prosecutor can apply to the Juvenile Court for the young offenders to be charged in the Juvenile Court instead. The exception is where the juvenile is charged jointly with an adult.

38 Narcotics Control Bureau and CRC 2013 Report.

Section 262 of the CPC provides sentencing options involving juveniles:

- (1) When a youthful offender is convicted before any Criminal Court of any offence punishable by fine or imprisonment such Court may instead of passing a sentence of fine or imprisonment:
 - (a) order such offender to be discharged after due admonition if the Court thinks fit;
 - (b) order such offender to be delivered to his parent or to his guardian or nearest adult relative or to such other person as the Court shall designate on such parent, guardian, relative or other person executing a bond with or without sureties, as the Court may require, that he will be responsible for the good behavior of the offender for any period not exceeding 12 months;
 - (c) order such offender to be released on probation of good conduct on his entering into a bond with or without sureties, and during such period as the Court may direct, to appear and receive judgment, if and when called upon, and in the meantime to keep the peace and be of good behavior;
 - (d) commit in the case of the High Court such offender to custody in a place of detention for any period of not less than one year and not more than 5 years and so that such period shall not extend beyond the day when apparently the offender will attain the age of 20 years and in the case of any other Court transfer the case to the High Court with a view to such offender being committed to custody under the provisions of this paragraph.
- (2) Whenever a case is transferred to the High Court under the provisions of paragraph (d) of subsection (1) the magistrate may remand such offender in custody to a place of detention, or to such other place as the magistrate deems fit, pending the decision of the High Court, and the High Court either with the youthful offender present or in his absence as the High Court may think fit shall:
 - (a) as respects the conviction, satisfy itself as to the correctness legality or propriety of any finding and as to the regularity of any proceedings of the inferior Court and have the powers conferred upon a Judge by section 298; and
 - (b) as respects the committal to custody, have the powers conferred upon it by paragraph (d) of subsection (1) in the case of a youthful offender convicted by it: Provided that a youthful offender in respect of whom the High Court has made any order under this paragraph may appeal to the Court of Appeal against such order as if he were a person convicted before the High Court appealing against sentence.

- (3) In this section “place of detention” means any place appointed by His Majesty in Council to be a place of detention for the purposes of this section.
- (4) The Minister³⁹ may at any time by writing under his hand order any youthful offender who is detained in a place of detention within Brunei Darussalam, and has been so detained for a period of one year or more, to be released on parole subject to such conditions, if any, as the Minister may in such writing prescribe.
- (5) His Majesty in Council may make rules:
- (a) to appoint places of detention within or without Brunei Darussalam and to provide for their inspection;
 - (b) to regulate the classification, treatment, employment, education, discipline, control, diet and recreation of youthful offenders detained in any place of detention within Brunei Darussalam;
 - (c) to provide for the appointment of an Advisory Board to advise the Minister on the exercise of the powers conferred on him by subsection (4) of this section and to perform such other duties as may be prescribed in such rules;
 - (d) to prescribe the circumstances under which, the persons by whom, and the manner in which youthful offenders who have been released on parole under subsection (4) may be re-arrested and re-committed to a place of detention;
 - (e) to provide for the transfer of youthful offenders from one place of detention to another;
 - (f) to regulate, prohibit or prevent the conveyance or transmission of articles or messages into or from a place of detention and to provide for the exclusion of persons from places of detention and for the arrest of persons found contravening any rule made under this paragraph, and to prescribe the penalty, not exceeding a fine of \$4,000 or imprisonment for a term of 3 months or both such fine and imprisonment, with which the contravention of any rule made under this paragraph shall be punished.
- (6) The Court before which a youthful offender is convicted may, in addition to or instead of punishing such offender in manner provided in this section, inflict on his parent or guardian a fine of \$1,500 in any case in which such Court, after summary inquiry, is satisfied that such parent or guardian has, by neglecting to take proper care or otherwise, conducted to the misconduct of such offender: Provided that no parent or guardian shall be fined without

³⁹ Refers to the Minister of Youth, Culture and Sports who is also the Minister in charge of welfare in Brunei.

his having had an opportunity of being heard and (if he desires it) of adducing evidence in his defence.

- (7) When a youthful offender has been released on probation under paragraph (c) of subsection (1) the Court by which the order was made, if satisfied by information on oath that the offender has failed to observe any of the conditions of his bond, may issue a warrant for his apprehension, and the provisions of subsections (4) and (5) of section 263 shall apply as if such offender had been apprehended under warrant issued under subsection (3) of that section: Provided that:
 - (a) if such offender is remanded, he shall be committed to custody in a place of detention or in such other place as the Court deems fit; and
 - (b) the Court may, instead of passing sentence on him of fine or imprisonment, exercise any of the powers conferred by subsection (1) or (6) of this section.
- (8) This section shall apply to all offences, whether or not a minimum sentence has been prescribed for any offence.

The CYPA further specifies sentencing in cases involving murder as follow:⁴⁰

- (1) Where a child or young person is convicted of murder, or of culpable homicide not amounting to murder, attempted murder or of voluntarily causing grievous hurt, and the court considers that none of the other methods by which the case may legally be dealt with is suitable, it may sentence him to be detained during His Majesty the Sultan and Yang Di-Pertuan's pleasure.
- (2) Where a sentence has been passed under subsection (1), the child or young person shall during that period, notwithstanding any other provision of this Act, be liable to be detained in such place and on such conditions as His Majesty the Sultan and Yang Di-Pertuan may direct, and whilst so detained shall be deemed to be in legal custody.
- (3) Any person so detained may, at any time, be released by His Majesty the Sultan and Yang Di-Pertuan on licence which may be in such form and contain such conditions as His Majesty the Sultan and Yang Di-Pertuan may direct and may at any time be revoked or varied by His Majesty the Sultan and Yang Di-Pertuan.
- (4) Where a licence has been revoked, the person to whom the licence relates shall return to such place as His Majesty the Sultan and Yang Di-Pertuan may direct, and if he fails to do so he may be apprehended without warrant and taken to that place but without prejudice to the power to release him on licence again.

⁴⁰ Section 45.

- (5) Subject to the powers of His Majesty the Sultan and Yang Di-Pertuan under this Act and any other written law, if a person is ordered to be detained under subsection (2), the Board of Visiting Justices for the prison or the board of visitors for any other place —
- (a) shall review that person’s case at least once a year; and
 - (b) may recommend to His Majesty the Sultan and Yang Di-Pertuan on the early release or further detention of that person, and His Majesty the Sultan and Yang Di-Pertuan may thereupon order him to be released or further detained, as the case may be.

There are also cases where juveniles are tried in adult courts and this is usually the case where the juvenile is charged jointly with an adult and for serious offences. For offences involving capital punishment, there is provision under the CPC, which provides that “no sentence of death shall be imposed on person under the age of 18 years”.⁴¹

Brunei Darussalam provides legal aid only for cases with death penalty. There is no special legal aid system in place for children.

2.4. Treatment of Convicted Juveniles

2.4.1 Residential

The juvenile detention center, which is a residential facility, serves as a rehabilitation center and the Centre works closely with the Ministry of Health in the assessment and care of the juvenile’s mental health. For juvenile drug offenders, the Narcotics Control Bureau has treatment and rehabilitation programmes but it is under the same facility as adults. The CYP A provides for approved places of detention for young offenders up to the age of 18.⁴² With the passing of the legislation, part of a welfare home belonging to the Ministry of Culture, Youth and Sports was gazetted as place of detention as well as approved school for purpose of detaining juvenile offenders. It is a modern facility established in 1982. The Centre can detain a child up to 18 years of age.

The Advisory Committee of the Centre comprising of a panel of advisers from various relevant ministries, public sectors and NGOs advises on release of the detained children. The release will be followed by probation period under supervision of a welfare officer. The Centre has separate wings for boys and girls.

41 Section 238(1).

42 Section 63(1).

The following programmes for juvenile offenders are in existence:⁴³

1. Academics – the juvenile offenders can continue their academic studies in the facilities. Teachers are employed to come to the facility.
2. Religious and moral education
3. Vocational trainings
4. Counselling
5. Sports and fitness
6. Extra-curriculum activities

Where a juvenile is jointly charged with an adult, there might be occasion where the juvenile will be detained or remanded in adult prison. There is no special facility for children in the Brunei Prison and juvenile offenders are sent for remand in adult remand facilities. However, under the Prison Act Cap 51, youthful offenders are kept apart from adults and confined in separate buildings of the same penal institution.⁴⁴

2.4.2. Non-residential

There is no specific non-residential treatment facility for children.

3. Main Challenges to the System

The following are some of the main challenges to the Juvenile Justice System in Brunei Darussalam:

Gaps in legislative and institutional frameworks. The legislative framework is quite sufficient in dealing with the current scenario of juvenile offenders but the challenge for Brunei is to ensure that the institutional framework is there with proper facilities to ensure the juvenile offenders are looked after in all aspects. As it is, Brunei has a modern facility but lacking in services. The services in terms of programmes such as educational, skill development, youth building, etc are not sufficiently provided in the Centre. There is also limitation in term of numbers of officers who specialized in handling the juveniles. Many of the officers are multi-tasking and are not fully trained in handling juvenile offenders.

43 Community Development Department.

44 Rule 6 of the Prison rules made pursuant to Section 62 of the prison Act.

Some of the Legislative provisions are not being utilized to the fullest. For instance, the Community Service Order (CSO) is provided for both adult and young offenders but in practice the Court has not been applying this provision. In fact it can be introduced as a condition of probation or as a standalone order. Even with probation orders, the Court has not been dynamic and creative in giving the order.

Improve diversion programmes. Brunei has a Youth Development Centre which is an institution for skill development of young people who are not able to achieve the academic standard for formal education in higher institutions. This can be used as a diversion programme which will have the benefit of empowering the juvenile offenders. It can serve as a platform for vocational development and skills acquisition.

The overall institutional framework does not permit the full implementation of the initiatives provided for by legislation. The Judiciary, namely the juvenile courts, is also slow in adopting all the provisions in the legislation especially those of diversion. It is a chicken and egg situation. If the judiciary is not progressive and dynamic, it does not promote the progression of the institutional framework.

Data availability and proper database system covering issues relating to children. There is no central database for children so data has to be collected from various sources and the statistics collected are not in line with the international database. There is need to strengthen existing mechanism of data collection and indicators disaggregated by gender, age and urban and rural areas. This covers all children up to the age of 18 years with specific emphasis on those who are particularly vulnerable and marginalised, including children with disabilities and youth at risk

Lack of trained officials in the area of counseling, rehabilitation and even in the judiciary. In his speech, in the 2013 Legal Year, the Brunei Chief Justice expressed his concern and stated that there was a need for specialist judges and magistrates, as well as social workers and counselors.

The introduction of the SPC. It is not specifically stated anywhere the position of the CYPA after the full implementation of the SPC in respect of children in conflict with the law. Being a Muslim State, the general rule is that Syariah Law prevails over others, however the SPC is a legislative provision which may be interpreted differently in its application.

4. Summary and Statistics

Brunei Darussalam is a small country with a total population of 399,800. It is composed of a multi-ethnic society: Malays comprising 262,800, followed by Chinese 41,000 and other ethnic groups 96,000. The 2012's population statistic also shows that out of that total population, 134,600 are young population below the age of 19. There are conflicting provisions regarding when a person is categorized as an adult. Brunei is party to the CRC; as such a child is an adult when she/he reaches 18. However Brunei has the followings legislative definition:

- i) A 'child' is defined under the Children and Young Persons Act, Cap 219 as "a person who has not attained the age of 14 years".
- ii) The minimum age of marriage varies between existing relevant legislations. The Marriage Act (Cap 76) requires both parties to be at least 14 years of age in order to be able to enter into contract of marriage. This Act is applicable to Non-Muslim. The Chinese Marriage Act (Cap 126) provides that the female must be 15 years of age and it is silent on the minimum age of marriage for male. For Muslims, the Islamic Family Law Order Act 2010 does not expressly provide for the minimum age of marriage. Puberty seems to be the criteria.
- iii) Age for obtaining driving license is 18 (under the Brunei Road Traffic Act Cap 68) and age of employment is 16 (under the Brunei Labour Act Cap 93).

In Brunei, there are several different legislations regarding the age of criminal responsibility. Section 82 of the Brunei Penal Code (Cap 22) provides that nothing is an offence which is done by a child under 7 years of age. Section 83 of Penal Code (Cap 22) provides that nothing is an offence which is done by a child above 7 and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. Under Section 113 of the Evidence Act, there is a presumption that a boy under 13 cannot commit rape:

"It shall be an irrebuttable presumption of law that a boy under the age of 13 years is incapable of committing rape"

Section 2 of the Criminal Procedure Code defines youthful offenders as: "youthful offender" includes any child convicted of an offence punishable by fine or imprisonment who in the absence of legal proof to the contrary is above the age of 7 and under the age of 18 years in the opinion of the Court before which such child is convicted. The Syariah Penal Code Order 2013 in Sec 12 of the Order states that nothing is an offence which is done by a child who is not Mumaiyiz. "Mumaiyiz" has the same meaning assigned to it under Section 3(1) of the Syariah Courts Evidence Order, 2001 (S63/2001) as defined in Syariah Courts Evidence Order. The definition of "Mumaiyiz" under the Syariah Courts Evidence Order, 2001 (S63/2001) states: "Mumaiyiz" means a child who has attained the age of being capable to differentiate a matter.

The Syariah Penal Code Order has another provision which brings in another meaning to criminal responsibility under the Code and this is Section 13 which states: “No hadd or qisas punishment may be imposed on any offence liable to had or qisas punishment, committed by a mumaiyiz child who is not baligh but may be punished with punishments other than hadd or qisas.” “Baligh” has the same meaning assigned to it under Section 3(i) of the Syariah Courts Evidence Order, 2001 (S63/2001). The definition of “baligh” under the Section 3(i) of the Syariah Courts Evidence Order, 2001 (S63/2001) is: “baligh” means a person who has attained the age of puberty in accordance with “Hukum Syara”.⁴⁵

There is no minimum age for receiving prison sentence in Brunei. However by virtue of Section 262 and 263 of the Criminal Procedure Code, when any youthful offender is convicted of an offence punishable by fine or imprisonment or both, the court may instead of sentencing him to a fine or to a sentence of imprisonment of any kind, deal with him as provided by the Children and Young Persons Act, Cap 219 and the Offenders (Probation and Community Service) Order 2006 respectively.

In 2012, the crime statistics for cases handled by Police was 5,037, while those handled by other enforcement agencies such as Narcotics, Corruption, Labour, Immigration, Custom was 852 cases; which brings to the total of 5,889 cases before the Police from the general public. The statistics for 2011 was 4,891 and 1,036 respectively; giving an overall figure of 5,927.⁴⁶ Statistics from the Royal Brunei Police Force (RBPF) showed that in 2009, 126 offenders aged 18 and under were arrested for a variety of offences including assault, theft and vandalism. Figures from RBPF also showed that between January and March 2010, 39 minors were arrested in a three-month period, a 19 per cent increase from the same time period in the previous year.⁴⁷ Recent figures obtained from the Police reported that in 2013, the total number of crimes was 6,441 and 5,888 in 2012 (note slight discrepancy from data given in the Brunei Statistical Yearbook 2012 for year 2012).⁴⁸ For the year 2013, RBPF recorded a total of 76 juvenile arrests and in 82 arrests in 2012. Both figures include juveniles aged 17 and below.⁴⁹ According to prison records, there is no juvenile convicted for cases involving the death penalty. Currently there is only one juvenile in prison.⁵⁰ Statistics obtained from the Judiciary indicated that for the year 2012, there were two juveniles convicted and for 2013, there were four. All those convicted were either sent for probation or to approved homes.⁵¹ From the data obtained, there appears to be some discrepancies and differences in the age criteria when the RBFP released their statistics. In view of the discrepancies, the data obtained for Brunei Darussalam can be treated as general indicator only. Brunei has no central data system for young persons.

45 The age of puberty is not defined.

46 Brunei Darussalam Statistical Year Book, 2012.

47 Brunei Times, January 15, 2011.

48 Provided through their letter dated 15 December 2014- Under reference AD/13/DCI/34.

49 Ibid.

50 Prison Department Letter, 28 October 2014.

51 Letter from Judiciary dated 17 November 2014 under ref SC/AC-PROWAC/A47H.

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Brunei

Name of Law	Date of Adoption	Date of Entry Into Force	Revised
Children and Young Persons Act, Cap 219	March 2006	2010	-
The Offenders (Probation and Community Service) Act Chapter 220	2006	2010	2012
The Penal Code, Cap 22	1951	1951	1984 and 2001
The Criminal Procedure Code, Cap 7	1951	1951	1984 and 2001
Syariah Code Evidence Order 2001	2001	2001	
The Syariah Penal Code Order 2013	2013	First phase in 2014	

Table 2. Number of Crimes Committed in Brunei

	2012	2013
Criminal Case	5,888	6,441
Crimes Committed by Juveniles	82	76

Table 3. Crimes Committed by Juveniles Divided by Type (2012)

Offences	Age 17 and below		
	Male	Female	Total
Sec 379, 380 & 381 Theft under Penal Code	36	3	39
Misuse Drugs Act	10	-	10
Sec159 Disturbing the peace	7	-	7
Sec 379 Theft	5	1	6
Sec 323 Causing hurt	6	-	6
Sec 379 Car breaking & theft	3	-	3
Sec 324-326 causing grievous hurt	3	-	3
Under Custom & Excise	1	1	2
Sec 427 Mischief	1	-	1
Unlawful Carnal Knowledge Act	1	-	1
Sec 447, 448 Trespassing	1	-	1
Sec 354- outraging modesty	1	-	1
Custom and Excise Act	1	-	1
Immigration Act	1	-	1
Total	77	5	82

Table 4. Crimes Committed by Juveniles Divided by Type (2013)

Offences	2013	
	Male	Female
Customs and Excise	1	-
Public Order	1	-
Misuse of Drugs Act	12	7
Penal Code – False information	-	1
Sec 293 Women and Child Protection	1	2
Sec 323 Penal Code	6	-
Sec 324-326 Penal Code	-	1
Sec 376 –rape under Penal Code	6	-
Unlawful Carnal Knowledge Under Penal Code	2	-
Sec 379 A Theft of Car under Penal Code	5	-
Sec 379 Breaking in and Theft of Car under Penal Code	2	-
Sec 379, 380 & 381 –Housebreaking under Penal Code	17	5
Sec 389 Extortion under Penal Code	1	-
Sec 427 Mischief under Penal Code	1	-
Sec 447, 448 Trespassing under Penal Code	1	1
Sec 509 –Using insulting words/sign	-	2
Section 510 under the Penal Code	1	-
Total	57	19

Chapter III.

The State of Juvenile Justice in Cambodia

Aekje Teeuwen

1. Legislative Framework for Juveniles in Conflict with the Law

The International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, set out a number of specific provisions for the treatment of juveniles in criminal justice proceedings and are supported by further international rules and guidelines. The abovementioned Covenant as well as Conventions have all three been ratified by Cambodia in 1992.

The CRC Committee has declared that the UN Guidelines and Rules on Juvenile Justice provide important principles for the implementation of the Convention on the Rights of the Child. These include 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 the United Nations Guidelines for the Prevention of Juvenile Delinquency (The “Riyadh Guidelines”).⁵²

The Constitution of Cambodia explicitly recognizes the CRC and guarantees that the State shall protect the rights of children, while the statutory framework also makes provision for differentiated treatment of juveniles in a number of important areas.⁵³

The Cambodian legislation consists of the Constitution, international laws recognized by Cambodia, domestic laws and subsidiary legislation.

The hierarchy of laws within Cambodia is presented in order below:

- 1) The Constitution, which is the Supreme Law of Cambodia, International laws in the form of treaties or conventions, which have been recognized by Cambodia,
- 2) International laws in the form of treaties or conventions, which have been recognized by Cambodia,

⁵² *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, 2007, p. 595.

⁵³ Constitution of Cambodia, articles 31 and 48.

- 3) Laws⁵⁴ (*Kram*) adopted by the National Assembly and the Senate, and promulgated by the King,
- 4) Sub-decree (*Anukret*) adopted by the Prime Minister,
- 5) Regulation (*Prakas*) adopted by a Minister,
- 6) Circulars or Ministerial implementing measures (*Sarachors*) which are more specific guidelines to explain or clarify certain legal or regulatory measures or to provide instructions,
- 7) Decision (*Sechkdei Samrech*), signed by the Prime Minister, a minister or a governor within the framework of his/her own regulatory powers.⁵⁵

The Cambodian legislative framework on child protection is divided across various laws and regulations, which have developed considerably since 2006 with the adoption of core codes, such as the Civil Code (2007), Criminal Procedure Code (2007), Penal Code (2009) and as well as specific laws and policies, such as the Policy on Alternative Care for Children (2006), the Law on Suppression of Human Trafficking and Sexual Exploitation (2008), the Inter-Country Adoption Law (2009) and the Law on Prisons (2011).

More specifically with respect to the legislative framework for juveniles in conflict with the law in Cambodia, an array of domestic legislation is in place. Presently, there is no specific law for dealing with juvenile offenders, rather provisions of particular relevance to children can be found throughout a number of codes, laws and decrees. Relevant legislation includes, but is by no means limited to:

- Constitution of the Kingdom of Cambodia (1993);
- Criminal Procedure Code (2007);
- Penal Code (2009);
- Civil Code (2007);
- Law on Prisons (2011);
- Law on Press Regime (1995);

54 Laws, which are adopted in Cambodia, apply to all government entities across geographic locations in the country. *Prakas* are mainly binding within the Ministry in which they are signed as well as lack the power to criminalize or sanction any acts.

55 *A Selection of Laws Currently in Force in the Kingdom of Cambodia*, the Cambodian Office of the High Commissioner for Human Rights, 2005, p. 5; S. Brown and the Child Justice Program Team, *Cambodian Law and the Convention on the Rights of the Child*, Legal Aid of Cambodia, 2008, p. 286 and 287.

- *Prakas* No. 62 on the Use of Court Screen and Courtroom TV-Linked Testimony form Child/Vulnerable Victims or Witnesses (2008);
- Sub-decree No.162 on the Creation of the National Treatment and Rehabilitation Center for Drug Addicts (2010).

A draft Juvenile Justice Law establishing procedures for dealing with juvenile offenders has been in the process of being developed for over a decade now and is expected to be passed in 2015.

The draft JJ Law (draft version from September 2014) addresses specific provisions on the following:

- Specially trained police, judges and prosecutors in juvenile justice;
- Social workers trained in juvenile justice to provide services to children in conflict with the law, including, facilitating with community members in formulating the diversion plan for minors, providing psycho-social support, monitoring and case follow-up as well as rehabilitation and reintegration services;
- Diversion procedures at the prosecution, investigating and trial levels, and use of community services to determine diversion measures;
- Procedures for child-friendly interviews and investigations.

A ‘minor’ is defined by the Civil Code as persons below eighteen years of age and the Law on Prisons describes a ‘juvenile’ as a person who is more than fourteen years of age but below 18 years of age.⁵⁶ Furthermore, the draft JJ Law defines a ‘minor’ as any person below the age of 18 years old whilst they commit a crime.⁵⁷ The Penal Code as well as the draft JJ Law state that, “[t]he criminal legal age is set at 18 years of age”. “However, the court may pronounce a criminal conviction against a minor of 14 years of age or more, if the circumstances of the offence or the personality of the minor justify in doing so.”⁵⁸

The Criminal Procedure Code (CPC) states that as a general principle, the freedom of an accused must be allowed.⁵⁹ The CPC provide detention limits for children 14-18 years of age in police custody and during pre-trial. Minors below 14 years of age cannot be detained.⁶⁰ The draft JJ Law declares that the apprehension and detention of a minor shall only be used as a measure of last resort and for the shortest possible period of time.⁶¹

56 Civil Code, article 17; Law on Prisons, article 4.

57 Draft JJ Law, article 4.

58 Penal Code, articles 38 and 39; Draft JJ Law, article 7.

59 CPC, article 203.

60 CPC, articles 96, 212-214; Draft JJ Law article 39.

61 Draft JJ Law, article 5.

	Age	Custody
Felony	14<16	36 hours
	16<18	48 hours
Misdemeanour	14<16	24 hours
	16<18	36 hours

	Age	Pre-Trial Detention Period
Felony	14<16	4 months
	16<18	6 months
Misdemeanour	14<16	2 months
	16<18	4 months

The CPC sets out the limited circumstances in which pre-trial detention can be used, including, where it is necessary to prevent the harassment of witnesses or victims; to prevent the offence from happening again; to preserve evidence or exhibits and or to preserve public order.⁶²

The draft JJ Law states that the court shall process cases of minors as a priority, particularly the cases of minors who are held in pre-trial detention.⁶³ The CPC outlines provisions for pre-trial release.⁶⁴ The CPC declares that the investigating judge may order pre-trial release of a minor at any time by his/her own initiative, by the request from the prosecutor, accused or his/her lawyer.⁶⁵ The CPC as well as the draft JJ Law⁶⁶ include provisions on alternatives to pre-trial detention. The investigating judge may place an accused minor, who is punishable by a sentence of imprisonment, under judicial supervision, which has the effect of subjecting an accused person at liberty to the following obligations, such as, the prohibition to meet certain people identified by the investigating judge; the prohibition to change residence without the authorization of the investigating judge or to present himself personally on fixed dates at the police office or military office specified by the investigating judge.⁶⁷ The CPC furthermore sets out that minors below 14 years of age cannot be placed under judicial supervision.⁶⁸

The Penal Code contains a specific provision on the placement of minors under judicial protection, including that: “[i]n case of placement under judicial protection, the court designates a person to be in charge of surveillance of the minor”.⁶⁹

The CPC as well as the draft JJ Law have set out the procedural rights, to which children, who are alleged as, accused of, or recognized as having infringed the penal law, are entitled to.⁷⁰ The CPC contains specific provisions on the

62 CPC, articles 204 and 205.

63 Draft JJ Law, article 45.

64 CPC, articles 215-217.

65 CPC, articles 215-217.

66 Draft JJ Law, chapter 7.

67 CPC, articles 223-230.

68 CPC, article 224.

69 Penal Code, article 41.

70 Draft JJ Law, article 5.

right of an accused to legal representation whilst held in police custody, and at the investigating and trial stages.⁷¹ However, detainees in police custody are not entitled to access legal representation during the first 24 hours of their arrest.⁷² The CPC guarantees a child's right to legal representation during the trial stage, requiring that a child must have the assistance of a lawyer and if there is no one available, one shall be appointed.⁷³ Besides this, judicial police officers are required to notify the parents, legal representatives or a person who is responsible for the child, when the detained person is a minor.⁷⁴

Under the CPC, the court can order a completely, or partially closed trial, if the court determines that a public trial will create a significant danger to public order or morals.⁷⁵ The draft JJ Law further specifically stipulates that during the trial of a child, the trial should be closed to the public in order to protect the privacy of the child.⁷⁶ Furthermore, the Law on Press Regime prohibits the press, unless there is permission from the court, to “publish information, photographs or drawings that may make it possible for the readers to identify and know the name of youth under the age of 18 in any civil or criminal suits”.⁷⁷

Prakas No. 62 on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims or Witnesses (2008) requires the court to use a court screen or courtroom TV-Linked testimony “in a criminal case when taking testimony from a child/vulnerable victim or witness, and the alleged perpetrator is present in court, and where testifying in the presence of the accused in the courtroom would cause undue stress or trauma to the child/vulnerable victim or witness.” This *Prakas* has been developed to be used in cases of child victims as well as child offenders.

In Cambodia, the minimum age at which a sentence of imprisonment may be imposed on a child is 14 years of age and life imprisonment for children is not allowed.⁷⁸ Rules on mitigation of sentences of minors and probationary suspended sentences are provided by the Penal Code, including that the trial judge must reduce the penalty for imprisonment when imposing prison sentences upon minors.⁷⁹

Besides this, a decision was issued by the Constitutional Council in 2007 regarding the Law on Aggravating Circumstances for Felonies and the Convention on the Rights of the Child. This decision “reaffirmed, in accordance with the Constitution, that the courts in Cambodia must take into account Cambodia's commitments under the international human rights treaties, and in particular the Convention on the Rights of the Child, when interpreting the law and deciding cases”.⁸⁰

71 CPC, articles 100, 143 and 301.

72 CPC, article 98.

73 CPC, article 301.

74 CPC, article 100.

75 CPC, article 316.

76 Draft JJ Law, article 47.

77 Law on Press Regime, article 15.

78 Penal Code, article 160.

79 Penal Code, articles 160, 164, 165; draft JJ Law, chapter 11.

80 United Nations Office of the High Commissioner for Human Rights in Cambodia (UNOHCHR Cambodia), Public Statement: *Decision of the Constitutional Council regarding the Law on Aggra-*

The draft JJ Law in addition, declares that the sentencing of a minor shall only be used “as a measure of last resort and for the shortest possible period of time”.⁸¹

According to Cambodian law, when detention is deemed unnecessary or inappropriate, alternatives are available at the sentencing stage. An alternative to a custodial sentence may involve a condition that the child has to fulfill in order to not return to detention. Alternatives to custodial sentences are decided at the end of the trial, after the case has been heard and decided, or after the offender has pleaded guilty to the charges. Alternatives to custodial sentences under the Penal Code are for example community service or simple suspended sentences. With respect to community service, the provisions in the Penal Code apply to both minors and adults; however, places limitations on the duration of community service as it applies to juveniles.⁸²

Under Cambodian law, a minor who commits an offence is: “...subject to measures of surveillance, education, protection and assistance,” including, handing over a minor to the custody of his/her parents or guardian, a public social welfare agency, or a specialized hospital or institution.⁸³ It should be noted that these provisions are not formal diversion measures available to the court, however in practice when implemented they have a similar effect by removing the minor away from the criminal justice system.

The draft JJ Law further includes a chapter with regard to diversion at the prosecution, court investigation and trial stages. The chapter contains provisions on procedures of diverting authorities, principles and conditions for diversion, measures as well as monitoring mechanisms. Importantly, under the provisions of the draft JJ Law the police are empowered to issue formal warnings for petty offences committed by minors and subsequently refer minors in need of assistance and protection to the provincial department of the Ministry of Social Affairs. In addition judges and prosecutors are also authorized to divert misdemeanor cases committed by minors towards the community, who then determine and design the most appropriate diversion plan for the minor.⁸⁴

Under the Law on Prisons specific conditions have been outlined for prisoners, including that “[c]onvicted prisoners shall be provided with all means to access general education programmes and vocational training programmes.” The Law further contains specific provisions for juvenile convicted prisoners prescribing that: “[s]pecial attention shall be paid to the particular needs of juvenile convicted prisoners for education, vocational training, rehabilitation and reintegration in collaboration with the Ministry of Social Affairs, Veterans and Youth Rehabilitation and the Ministry of Education, Youth and Sports.”⁸⁵ Besides this, the Penal Code sets forth, that minors held in detention are entitled to “...a special and individualized regime that canvasses a place for education and professional

vating Circumstances for Felonies and the Convention on the Rights of the Child, 25 July 2007.

81 Draft JJ Law, article 5.

82 Penal Code, article 162.

83 Penal Code, articles 39 and 40.

84 Draft JJ Law, chapter 10.

85 Law on Prisons, article 67.

training.”⁸⁶ The draft JJ Law has included a chapter describing comparable provisions on conditions for juveniles in detention.⁸⁷

Under Cambodian law, a number of provisions have been outlined regarding the requirement to separate prisoners during detention. The Penal Code, the draft JJ Law as well as the Law on Prisons, all set forth that detained children should be separated from adults.⁸⁸ In addition the Law on Prisons, further details the separation of prisoners, emphasizing that pre-trial detainees must be separated from convicts and female prisoners must be separated from male prisoners.⁸⁹

The Constitution of Cambodia prohibits the death penalty as well as forbids physical abuse, coercion, physical ill treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner.⁹⁰ The Constitution in addition outlines that “[c]onfessions obtained by physical torture or mental pressure shall not be admissible as evidence of guilt.”⁹¹ Furthermore, the Penal Code stipulates that torture or barbarous acts against any individual are punishable by imprisonment and that the crime is further aggravated in case it is committed “on a person particularly vulnerable due to his/her age.”⁹² The Ministry of Justice Instruction No. 01 on the Implementation of International and National Laws related to Juvenile Justice (2005) includes a provision on the prohibition of torture or other cruel and inhuman treatment of arrested or detained children.⁹³

The draft JJ Law supports the rehabilitation and reintegration of minors in conflict with the law into society and the community.⁹⁴

Under Cambodian law, several regulations refer to institutions for children, other than prisons, where their liberty is restricted, such as youth drug centers. Sub-decree No.162 on the Creation of the National Treatment and Rehabilitation Center for Drug Addicts (2010) aims to decrease drug addiction, treat, educate, rehabilitate and provide vocational training to drug addicts and reintegrate those, who are recovering from their drug addiction, into their community and families.⁹⁵ The aim of the youth rehabilitation center, as contained in several *Prakas* of MoSVY, is to receive, manage, educate, and train children who are in conflict with the law or affected by drugs in a lesser degree, as well as to reintegrate them into their family or community.⁹⁶

86 Penal Code, article 166.

87 Draft JJ Law, chapter 14.

88 Penal Code, article 166; draft JJ Law, article 82.

89 Law on Prisons, article 26.

90 Constitution of Cambodia, articles 32 and 38.

91 Constitution of Cambodia, article 38.

92 Penal Code, articles 210 and 211.

93 The Ministry of Justice Instruction No. 01 on the Implementation of International and National Laws related to Juvenile Justice (2005), para. 12.

94 Draft JJ Law, article 1.

95 Sub-decree No. 162 on the Creation of the National Treatment and Rehabilitation Center for Drug Addicts (2010), articles 1 and 2.

96 *Prakas* No. 303 on the Establishment and Organization of the Youth Rehabilitation Center (2006), item 1; *Prakas* No. 470 on the Conditions and Procedures for Admission.

2. Institutional Framework for Juveniles in Conflict with the Law

2.1 Policing and Investigation of Criminal Activities

There are no specific institutions responsible at the police/investigation level for juvenile delinquents in Cambodia. The Cambodia National Police (CNP) is a division of the Ministry of Interior (MoI). The CNP deals with children, as well as adults in conflict with the law through its Judicial Department. This department includes, amongst other departments, the Criminal Department and the Anti-human Trafficking and Juvenile Protection Department (which primarily supports child victims). Within the Cambodian National Police, there exists no central contact point responsible for juvenile justice issues.

The Ministry of Interior, General Department of Prisons (GDoP) is responsible for dealing with all delinquents in Cambodia, including juveniles (pre-trial detainees as well as convicted juveniles). There is no specific unit within the GDoP addressing juvenile delinquent issues.

2.2 Diversion

Diversion in Cambodia is a relatively new concept, as such currently there are no formal laws on diversion yet in place. This will change when the draft Juvenile Justice Law is adopted, as this law will include an entire chapter on diversion, emphasizing the restorative justice approach.

The NGO Legal Aid of Cambodia (LAC)⁹⁷ has worked with justice officials over the last few years to establish alternative sentencing mechanisms, as well as diversion programs allowing children to avoid prison for minor criminal acts. A pilot project was initiated by LAC in Banteay Meanchey Province, supported by Friends-International/UNICEF Partnership programme to strengthen civil society's involvement and coordination in building child protection systems. The objective of the pilot project was to advocate at the court level, in order to have children placed under judicial supervision, for example by sending them to NGOs. In addition, at the district and commune levels police were also encouraged to implement diversion and mediation tactics, such as in cases where children have committed minor offences.⁹⁸

As a result of this pilot project, in 2013, 16 children who committed minor offences were diverted by police and court officials via the use of community conferencing. Upon receiving technical support from LAC, the administrative police, as well as members from the Commune Committee for Women and Children (CCWC), conducted community conferencing for ten children who committed minor offences within their community. In addition to this, court

97 Legal Aid of Cambodia (LAC) is a non-governmental organization founded in 1995. LAC's mission is to provide free, quality legal services and to advocate for Cambodia's poor in both criminal and civil cases.

98 Data provided by the NGO Legal Aid of Cambodia.

officials diverted a further six cases back to the community. This pilot project was terminated in October 2014 as a result of funding restrictions.

In addition to the diversion project mentioned above, the organization Friends International cooperates with police stations in Siem Reap province, to develop a mechanism where children who are arrested for minor offences or for living on the streets are passed over into their care instead of being sent to prison. The children are placed into temporary housing, education programmes, vocational training centres or reintegrated into their families. However, the children are permitted to withdraw from the services at their own free will. In 2013, the police in Siem Reap referred 76 children.⁹⁹

2.3 Adjudicating and Sentencing

Presently, Cambodia does not operate a separate court system for juvenile offenders. There are neither children's courts nor judges and prosecutors specialized in the area of juvenile justice and the application of the rights of the child. As a result, children are often subjected to the same judicial procedures and processes as adults. Although international and national laws describe special provisions when hearing juvenile offenders, in practice this is not always implemented. The majority of children who are convicted of a crime in Cambodia are sentenced to prison. Non-custodial sentencing is hardly ever applied by judges in Cambodian courts.

This is also shown by the sample below, which was extracted from the Cambodian Center for Human Rights (CCHR) Trial Monitoring Project report and includes data involving juvenile cases from two courts in Cambodia, collected between 1 January 2012 and 30 June 2012.¹⁰⁰ It should be noted that the data from this monitoring project included below is from 2012, therefore the situation throughout the judicial process for children in conflict with the law, may have been subject to change over the last two years. During the monitoring process, 42 trials involving juveniles were monitored, including a total number of 59 juveniles.

Was there anything to suggest that the judge considered imposing a non-custodial sentence before passing a custodial sentence?

	Phnom Penh Court	Banteay Meanchey Court
Yes	0 (0%)	1 (5%)
No	30 (100%)	19 (95%)

99 J. Mayhew, 'Teenage Prisoners' Future', *Asia LIFE Cambodia*, 5 October 2014, www.asialifemagazine.com/cambodia/teenage-prisoners-future, visited on 20 October 2014.

100 Cambodian Center for Human Rights (CCHR) Trial Monitoring Project has been an independent and impartial monitor of criminal trials in Cambodia since August 2009. In this role, the purpose of the Project is to collect data that can be analyzed to identify strengths and weaknesses in the justice system. During the Sixth Reporting Period (1 January 2012 - 30 June 2012), 354 criminal trials involving 719 individuals accused of criminal offences, including 42 trials involving 59 juveniles, were monitored at the Phnom Penh Court, Banteay Meanchey Court and Ratanakiri Court.

All juveniles monitored who were convicted of a criminal offence were sentenced to prison.¹⁰¹ In one case the judge imposed a prison sentence of six months and three years of probation instead of three years and six months to custody. Thus, in the latter case, the judge gave some consideration imposing a non-custodial sentence.

A project sample has been included into this report from Legal Aid of Cambodia's Justice for Children Project. The sample provides an indication for which type of offence juveniles were sentenced, however this sample does not represent the entirety of juvenile offenders in Cambodia. During July 2013 and June 2014, LAC's Justice for Children Project represented a total of 62 juveniles throughout their legal process. Out of this number 26 juveniles were pre-trial detainees, 34 juveniles were convicted to a prison sentence and two juveniles were acquitted. Out of those convicted to a prison sentence, theft is the most common offence amongst convicted minors (13 cases) and intentional violence is the most common offence amongst the pre-trial detainees (10 cases).

Furthermore, the number of years the convicted juveniles were sentenced to prison, ranged from two months for drug use, to 13 years for homicide. It was reported by the project staff that in each and every case the judge considered the age of the juvenile and reduced the sentence in compliance with the law.

Court officials do hold some opportunities under present laws, although limited, to use alternative punishment. These include bail, conditional release, suspended sentences and community service (see Chapter 1 on the Legislative Framework). As a result of the limited understanding by judicial authorities, as well as restricted practical opportunities to implement these alternatives, these opportunities are not applied as consistently as could be possible by the courts.¹⁰²

Several courts, as well as police officials interviewed during an assessment of juvenile justice practices in Cambodia conducted in 2013 by a team of the Ministry of Justice, all expressed to be willing to divert criminal cases involving juveniles away from court proceedings or to apply sentencing alternatives, however several issues were highlighted. These included the lack of existing mechanisms to implement alternative measures for detention or imprisonment. Local authorities also demonstrate resistance to deal with measures involving the supervision of young offenders, as there are few services available in Cambodia, such as centers to provide shelter and rehabilitation services to juvenile offenders, suspected or convicted of a crime.¹⁰³

Several officials expressed reluctance to return a juvenile offender back to his/her community, as they stated they feared for the child's well being, if the community felt an alternate sentence inappropriate and they delivered their own

¹⁰¹ With respect to this table, the number of juveniles differs from the tables on pre-trial detention and privacy set out in the chapter on Challenges to the System, due to the reason that the announcement of the verdict was delayed by the judge in several cases involving juveniles and therefore the outcome of those verdicts could not be monitored during the hearings.

¹⁰² Cambodia Criminal Justice Assistance Project (CCJAP) Phase III, *Juvenile Justice Strategy*, 2009, p. 7.

¹⁰³ J. Vijghen, *Assessment of Juvenile Justice Practices in Cambodia: Change is Long Overdue*, A paper in support of a training programme for court officials, 2013, < www.academia.edu/2771317/Assessment_of_Juvenile_Justice_Practices_in_Cambodia>, visited on 10 October 2014.

form of justice. In addition, court officials expressed skepticism of the effectiveness of placing juveniles under a court ordered supervision of their parents, as most offences occurred originally due to a general lack of parental engagement and supervision.¹⁰⁴

In 2014, the Ministry of Justice, in cooperation with the Cambodia Community Justice Assistance Partnership Program (CCJAP), issued guidelines (circulars) to all the courts in Cambodia to encourage them to implement provisions on court supervision, community service and probation in case of misdemeanour offences as outlined by the CPC.¹⁰⁵ The MoJ, in cooperation with CCJAP, conducted several workshops for court officials as well as local law enforcement officers, during which time the existence, as well as the implementation of the guidelines was explained.

2.4. Treatment of Convicted Juveniles

2.4.1 Residential

There are 28 prisons in Cambodia, none of which can be exclusively defined as a specialized juvenile prison. Prey Sar Correctional Center 2 (CC2) Prison, situated in Phnom Penh is not an exclusive juvenile prison, however, it holds the largest population of incarcerated juveniles in Cambodia. The prison in addition detains women in a separate section of the compound. Certain prisons in Cambodia segregate children and adults whilst in detention, through placing them in separate cells, however there are other prisons within Cambodia where there is very little separation, or none at all.

Presently, a limited number of organizations work on prison rehabilitation (educational or vocational training service provision) for children incarcerated in prison. Some examples include the organization Friends International, which offers besides non-formal education, life skills sessions in Siem Reap prison. As well, the organization This Life Cambodia offers vocational training in motor mechanics and electronics to juveniles in the prisons of Siem Reap and Banteay Meanchey.

Furthermore, LICADHO's prison project monitors 18 of Cambodia's 28 civilian prisons, and provides a variety of services to juveniles, as well as adults inmates within these prisons, including paralegal aid, social assistance and medical treatment. The organization Prison Fellowship works in a range of prisons across Cambodia providing educational, as well as basic needs services to adults and juveniles. Furthermore, the organization M'Lop Tapang provides social and legal services to the juveniles incarcerated in Sihanoukville prison. In addition, the Office of the United Nations High Commissioner for Human Rights in Cambodia (OHCHR Cambodia) works in partnership with the Ministry of Interior's General Prisons Department on a Prison Reform Support Programme, which aims to help improve prison conditions and the treatment of prisoners

¹⁰⁴ *Ibid.*

¹⁰⁵ Guidelines issued by the Ministry of Justice in 2014 on Court Supervision, Suspended Sentencing and Community Sentencing.

2.4.2. *Non-residential*

Children in conflict with the law are rarely convicted to non-residential sentencing measures in Cambodia and there are no formal programmes available currently to support or implement non-residential sentencing alternatives.

3. Reform Initiatives

Presently, several reform initiatives in Cambodia with regard to juvenile justice are taking place or will be initiated in the near future. The most crucial one is the adoption of the draft JJ Law, which is expected to be passed in 2015. As described above, this will provide children who come into contact with the law, with an entire new range of rights and specialized procedures.

Furthermore, since August 2014, the Ministry of Justice has been in the process of establishing a separate department within the Ministry, which will be responsible for criminal affairs related to juveniles in conflict with the law. This department will be mandated with various tasks including the creation of a database for collecting and monitoring juvenile cases, as well as the establishment of a complaint mechanism. Furthermore it is anticipated the newly established department will provide training to judges, prosecutors and police, in addition to the provision of financial means for delivering legal assistance to children in conflict with the law.

Another reform initiative will be executed by the NGO Legal Aid of Cambodia, along with the organization Children Rights International (CRI), who have been working with the Ministry of Justice on a planned pilot project in order to establish a child-friendly chamber in the Battambang court (a Province in the West of Cambodia) with potential to be replicated in other provinces throughout Cambodia. However, further funding is necessary to continue this project.

For a large number of years the Government of Cambodia have been co-operated on a project with UNICEF for the establishment of a comprehensive child-friendly justice system in Cambodia (Child Justice Project). The project was part of the broader Legal Protection Project of the Royal Government with UNICEF, which had the objective of strengthening the legal protection of children especially children in conflict with the law and victims of violence through improvement of appropriate legal instruments, the related systems and their proper enforcement in conformity with the Convention on the Rights of the Child and other international instruments concerning children. The project included key strategies such as law and regulatory framework development, capacity-building, advocacy and awareness-raising, direct service delivery and monitoring and evaluation. As it stands, the individual components of UNICEF's Child Justice projects have been finalized and child justice has been mainstreamed into a comprehensive child protection program.

4. Main Challenges to the System

Although the overall number of children in prison has been steadily decreasing in recent years and it has been reported that an increasing number of judges and prosecutors have gained an improved understanding and awareness of children's rights, children in Cambodia still continue to face a significant amount of challenges and potential rights violations when they come into contact with the law. There are currently no children's court, nor did judge or prosecutor specialize in the field of child rights. As a result, children are frequently subjected to the same criminal procedures as adults.

Children's rights are often reported to be neglected and violated throughout the criminal justice process. Examples of violations include issues regarding access to legal representation, pre-trial detention, as well as harsh cross-examinations, examples of which have been highlighted below. In addition, many criminal justice authorities often neglect to consider alternative options to imprisoning children in conflict with the law, as well as providing access to social workers who provide the needed psycho-social support to children throughout the criminal justice process. Furthermore, limited capacity of criminal justice authorities, as well as corruption issues remain prevalent throughout the judicial process, including within the prisons.

An analysis on the Situation of Children in Conflict with the Law throughout the Legal Process conducted by the NGO Legal Aid of Cambodia in 2011 revealed several legal and non-legal issues throughout the legal process of children who come in contact with the law, several of which findings have been included below.¹⁰⁶ It should be noted that the data from this study included below is from 2011, therefore the situation throughout the judicial process, as well as in prisons for children in conflict with the law, may have been subject to change over the last few years.

A total number of 93 children in prison, including 10 girls, were interviewed about their experiences throughout the legal process, of whom thirty-two percent were pre-trial detainees and sixty-eight percent were convicted juveniles. Key results from the interviews with the children about their arrest experiences were reported as follows:¹⁰⁷

- Over seventy-four percent were not given any reason for their arrest;
- Over sixty-three percent had been hand-cuffed during their arrest;
- Above ninety-three percent had no parents attending/participating during questioning by the Judicial Police;

¹⁰⁶ *Report on the Baseline-Survey covering the Situation of Children in Conflict with the Law throughout the Legal Process*, Legal Aid of Cambodia, 2011. The study was conducted between 25 May 2011 and 23 June 2011. A total of 93 children were interviewed in the prisons of Siem Reap, Kampong Cham, Ratanakiri and Banteay Meanchey. In addition, 40 Judicial Police, 8 Court Officials and 8 Prison Officials were interviewed in the provinces of Siem Reap and Banteay Meanchey.

¹⁰⁷ *Report on the Baseline-Survey covering the Situation of Children in Conflict with the Law throughout the Legal Process*, Legal Aid of Cambodia, 2011, p. 13 and 14.

- None of them experienced the presence of a social worker during questioning by the Judicial Police;
- Nearly fifty percent claimed to have been beaten by the Judicial Police;
- Nearly thirteen percent were forced to confess to the crime;
- One-third had been subject to verbal abuse;
- Nearly twelve percent had been asked to pay bribes;
- More than forty percent had been asked by the Judicial Police to place their fingerprints on the report after having been interrogated by them without the police neither asking the children to read the report, nor having someone else read the report for them.¹⁰⁸

In addition to the issues mentioned above, conditions of detention in police holding cells are reported to be inadequate, access to medical treatment is limited and juvenile and adult detainees are often not separated.¹⁰⁹

The study further revealed several findings with respect to diversion of children from the justice process:¹¹⁰

- Over sixty-seven percent of the Judicial Police interviewed mentioned they were aware of diversion, including mediation, in the case of children committing minor crimes.
- Twenty percent of the Judicial Police interviewed reported that, in case of minor crimes committed by children, they had asked the child to sign a contract in the presence of their parents and village chiefs promising not to recommit the crime and advise the parents/guardians to better educate and discipline their child.
- Fifteen percent of the Judicial Police interviewed, reported that they had reconciled the cases or settled conflicts outside the judicial system at the commune level, by allowing both parties of the conflict to sit and talk together in order to reach an agreement outside the court system (mediation).
- Several legal and non-legal issues in Cambodia exist throughout the investigation process when a child comes in contact with the law. A

¹⁰⁸ CPC, article 93 requires the Judicial Police to either let the accused person read the report by him/herself or ask someone else to read the report for him/her before asking the accused person to provide his/her fingerprint.

¹⁰⁹ *Torture & Ill-Treatment: Testimony from inside Cambodia's police stations and prisons*, LICADHO, June 2014, p. 5.

¹¹⁰ *Report on the Baseline-Survey covering the Situation of Children in Conflict with the Law throughout the Legal Process*, Legal Aid of Cambodia, 2011, p. 16.

considerable number of these issues and violations of children's rights were highlighted in the study conducted by Legal Aid of Cambodia in 2011:

- Seventy-four percent had their investigating interviews conducted without the participation of lawyers;
- Over eighty-seven percent of their investigating interviews were conducted without the presence of their parents/guardians.

As shown in the abovementioned sample, access to legal representation remains a challenge. This is often due to reasons such as, a lack of lawyers specializing in children's issues or a shortage of lawyers available in the immediate area or vicinity, shortage of funds for legal aid lawyers, low level of interest in handling such cases, and in some circumstances, (investigating) judges not appointing lawyers as required by law.¹¹¹ There are a number of organizations in Cambodia providing free legal representation to children in conflict with the law. The organizations Legal Aid of Cambodia (LAC), Protection of Juvenile Justice (PJJ), International Bridges to Justice (IBJ), and the Bar Association of the Kingdom of Cambodia (BAKC) have in recent years all worked to provide legal representation to juvenile offenders.

In addition to the issues surrounding access to legal aid, the findings of the analysis conducted by Legal Aid of Cambodia further indicated the following:

- Nearly forty percent were not informed about their charge during the investigating interviews, and nearly sixty percent were not informed about their rights as an accused child;
- Thirty-five percent had their fingerprint placed after the investigating interview on the document without the chance to read the report themselves or having had someone else read it to them.

Currently, a total of 318 juveniles are being detained in the different prisons in Cambodia of whom 197 are pre-trial detainees and 121 are convicted children.¹¹² With regard to pre-trial detention, international standards clearly dissuade its application in relation to juveniles as in the majority of cases it is in the best interests of the child to ensure they are not separated from their parents.¹¹³

Detention of children should only be used as a measure of last resort and for the shortest appropriate period of time.¹¹⁴ Besides this, national as well as international laws specifically stipulate that juveniles should be separated from adults when in exceptional circumstances juveniles are detained in pre-trial detention.

111 Information was provided by members of several national and international organizations, working on human rights and/or with children in conflict with the law.

112 Statistics from January 2014-September 2014 provided by the General Department of Prisons, Ministry of Interior.

113 CRC, article 9.

114 CRC, article 37(b).

The sample below was extracted from the Cambodian Center for Human Rights (CCHR) Trial Monitoring Project report.

Trials involving juveniles

Data	Phnom Penh Court	Banteay Meanchey Court
Number of trials	28	14
Felony	10 (36 %)	3 (21 %)
Misdemeanour	18 (64 %)	11 (79 %)

During the monitoring process, 42 trials involving juveniles were monitored, including a total number of 59 juveniles. Pre-trial detention was monitored for 35 juveniles (ninety-two percent) at Phnom Penh Court, and 19 juveniles (ninety percent), in Banteay Meanchey Court.

Besides the high levels of pre-trial detention cases involving juveniles, considerable issues remain regarding juveniles being held in pre-trial detention beyond the legal time limit as described by law.¹¹⁵ These excessive pre-trial detention issues have also been indicated by the Legal Aid of Cambodia Study in the sample below:¹¹⁶

- Above forty-seven percent of prison officers reported that there were children placed in temporary detention in their prisons beyond the legal time limits provided by law.
- Over twenty percent of the convicted children reported that they had been temporarily detained for a duration of less than one month and thirty-eight percent had been placed in pre-trial detention between one to six months before they were convicted.
- Forty-one percent of the convicted children interviewed reported that they had been temporary imprisoned between seven to twenty-six months before they were convicted, which is in violation of the legal limits provided by Cambodian law.
- At least sixteen percent of the convicted children interviewed reported to have been below 14 years of age at the time they were placed in temporary detention, which is in violation of the Criminal Procedure Code.¹¹⁷

Although it has been reported that an increasing number of judges and prosecutors have gained an improved understanding and awareness of children's rights,

¹¹⁵ CPC, articles 213 and 214 setting out the maximum provisional detention times applicable for minors between 14-18 years of age who have committed a felony or misdemeanour.

¹¹⁶ *Report on the Baseline-Survey covering the Situation of Children in Conflict with the Law throughout the Legal Process*, Legal Aid of Cambodia, 2011, p. 20.

¹¹⁷ CPC, article 212 stipulates that a minor below 14 years of age cannot be put under pre-trial detention.

not all court officials adhere to child-friendly procedures, including the lack of child friendly interviewing techniques, and that court hearings for child offenders are still conducted without the presence of a parent, guardian or any other person responsible for the welfare of the child.¹¹⁸

This is also shown in the Legal Aid of Cambodia Study below.¹¹⁹

- More than half of the children lacked the presence of their parents/guardians when they were tried in court;
- Over forty-four percent reported that the judges and prosecutors used inappropriate language towards them. Examples were given including: using harsh words, shouting at them, threatening and forcing them to answer or confess;
- Nearly eight percent had been tried without the assistance of a lawyer;
- Over seventy-six percent did not appeal their cases to the Appeal Court after they were sentenced to prison. Reasons included, a lack of knowledge how to lodge an appeal, lack of financial means, and/or being afraid of having to serve a longer time in prison.

In addition, five out of the eight court officials who were interviewed during the survey were reported to interview children adopting child friendly interview techniques. Examples were given such as, taking the time to explain the court process as well as the children's rights, using simplified language, asking clear questions, explaining the children not to be afraid, and ensuring the presence of parents/guardians and/or lawyers during the interview/court hearing.

Furthermore, there are still violations with respect to the lack of measures to ensure privacy for children during court hearings, including the absence of tools such as court screens and TV-linked testimonies which are hardly ever used during hearings to protect juvenile offenders.¹²⁰ As well, violations appear on the restriction of public access to courts and the prohibition to disclose certain information to the public.

This is shown in the example below taken from the Cambodian Center for Human Rights Trial Monitoring Project report.

118 Information was provided by members of several NGOs, working with children in conflict with the law.

119 *Report on the Baseline-Survey covering the Situation of Children in Conflict with the Law throughout the Legal Process*, Legal Aid of Cambodia, 2011, p. 22 and 23.

120 A *Prakas* was developed on the use of court screens and TV-linked testimonies, requiring the court to use a court screen or courtroom TV-Linked testimony "in a criminal case when taking testimony from a child/vulnerable victim or witness, and the alleged perpetrator is present in court, and where testifying in the presence of the accused in the courtroom would cause undue stress or trauma to the child/vulnerable victim or witness."

Were members of the public denied access to the courtroom or dismissed from the courtroom or where any measures taken to protect the juveniles' privacy during the hearing?

Data	Phnom Penh Court	Banteay Meanchey Court
Number of trials	28	14
Yes	0	0
No	28	14

It was monitored that both courts permitted unhindered access to members of the public in all trials involving juvenile offenders. This should be avoided in order to protect the child's privacy. This can be implemented through for example establishing separate courtrooms dealing exclusively with juvenile cases and where the public is not permitted access. In case this is not feasible, the public should not be allowed free access to the courtroom during hearings involving juveniles.¹²¹ In addition, personal information regarding the juvenile, such as his/her name should not be made public on any notice board or pictures depicted in the press.

The living conditions in Cambodian prisons where children are incarcerated are often inadequate and degrading. There is hardly or no access to education, vocational training, recreational activities, rehabilitation programs and counselling services, including for drug and alcohol addiction.¹²² The difficult conditions in the prisons are also highlighted in the research findings of the survey conducted by Legal Aid of Cambodia.

Children interviewed within four prisons in Cambodia were asked about their living conditions inside the prison,¹²³ including the number of inmates in their cells, which varied from one prison to another, and was an average of 18 prisoners per cell. It was reported that the lowest number of people sharing a cell together was four and the highest number of people was 26 people per cell. Over sixteen percent of the children reported they were sharing a cell with 25 other inmates. All child respondents reported that they were placed in cells with inmates from the same sex; however, over forty percent reported not to have been separated from adults.¹²⁴

In addition, a large number of children interviewed reported that the conditions of their cells were unsuitable. Examples were given, including overcrowding, lack of light, limited clean water and soap, lack of access to proper sanitation and lack of available mosquito nets, as well as the food provided twice a day is often insufficient and of poor quality. Furthermore, children reported to have observed other children in the prison with diseases or health issues, including skin diseases, fever, dizziness, headaches, exhaustion and fainting. However, en-

121 Cambodian Center for Human Rights (CCHR), Sixth Bi-annual Report: *"Fair Trial Rights in Cambodia"*, December 2013, p. 46.

122 Concluding Observations of the CRC Committee, CRC/C/KHM/CO/2 (2011), para 76.

123 A total of 93 children were interviewed in the prisons of Siem Reap, Kampong Cham, Ratanakiri and Banteay Meanchey.

124 *Report on the Baseline-Survey covering the Situation of Children in Conflict with the Law throughout the Legal Process*, Legal Aid of Cambodia, 2011, p. 23 and 24.

courageously several children reported to attend vocational training and/or literature classes, including Khmer and English lessons, within their prisons.

The study found that over twenty percent of the children interviewed, had not been visited by their families since they arrived at the prison for the principle reason of lacking financial resources. It was reported that the frequency of family visits depended on several reasons such as financial situation of the family, transportation, distance, and ease of access to the prisons to meet their children.

The majority of the children who had been visited by their families reported that their families had to pay in order to get access to the prison.

Over sixty-five percent of the children reported that they were not discharged from the prison on their release date.

5. Summary and Statistics

A person is regarded as an adult in Cambodia when they reach the age of 18, according to the Civil Code, article 17, Law on Prisons Article 4, and draft Juvenile Justice Law (version 2014) article 4. The age of criminal responsibility is, likewise, set at 18 years old under the Penal Code, articles 38 and 39 and draft juvenile justice law article 7. However, a person as young as 14 years old can still be sentenced to imprisonment according to Penal Code Article 160.

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 (until September 14, 2014) a total of 318 juveniles are being detained in the different prisons, including 16 girls, of whom 197 are pre-trial detainees and 121 are convicted juveniles.¹²⁵ There are 28 prisons in Cambodia, none of which can be defined exclusively as a specialized juvenile prison.

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Cambodia

Name of Law	Date of Entry Into Force
Constitution of the Kingdom of Cambodia	24 September 1993
Criminal Procedure Code TS/RKM/807/024	10 August 2007
The Penal Code TS/RKM/022	30 November 2009
Civil Code TS/RKM/1207/030	8 December 2007
Law on Prisons NS/RKM/1211/021	21 December 2011
Draft Juvenile Justice Law	Expected in 2015
Constitutional Council Decision regarding the Law on Aggravating Circumstances for Felonies and the Convention on the Rights of the Child 092/003/2007	2007
The Ministry of Justice Instruction on the Implementation of International and National Laws related to Juvenile Justice 01	2005

¹²⁵ Data provided by the General Department of Prisons, Ministry of Interior (MoI).

Table 2. Number of Juveniles in Detainment

Year	Number of juveniles detained in Cambodian prisons¹²⁶
2005	403
2009	867
2010	772
2013	342

¹²⁶ J. Vijghen, 'Assessment of Juvenile Justice Practices in Cambodia: Change is Long Overdue', A paper in support of a training programme for court officials, 2013, < www.academia.edu/2771317/Assessment_of_Juvenile_Justice_Practices_in_Cambodia>, visited on 10 October 2014.

Chapter IV. The State of Juvenile Justice in Indonesia

Indah Amaritasari

1. Legislative Framework for Juveniles in Conflict with the Law

In 2012, Indonesia's parliament passed Act no. 11 year 2012 on a Juvenile Justice System (SPPA). The act replaced the Juvenile Court Act no. 3 (1997).

The act introduces the term "child in conflict with the law" to replace the previously used term "naughty child".¹²⁷ It also increases the age of criminal responsibility from eight years old to 12 years old in accordance with the decision made by the Constitutional Court in 2010.¹²⁸ Should a child under 12 years old commit or be suspected of committing an offense, the child should either:

- a) be returned to his or her parents or guardian, or
- b) be placed in an educational, guidance or counseling program provided by a government agency or Social Welfare Center (LPKS).¹²⁹

As long as the child is above 12 but below 18 years old, the juvenile courts have exclusive jurisdiction. Should an offence have been committed by a child before the age of 18, but brought in front of the court after the child reached the age of 18, the case should still be tried in the juvenile court as long as the offender is below 21 years old.¹³⁰

Throughout the entire process, from prosecution to imprisonment, the child must be kept separate from adults, receive legal assistance, be accompanied by parents or trusted adults, and not have his or her identity published. If a child is sentenced to juvenile prison, he or she has the right to:

- be free from torture, inhumane and degrading treatment,
- receive health care and social advocacy,
- obtain recreational activity,
- a right to their personal life, and
- accessibility in the case of disabled children.¹³¹

127 Act on Juvenile Justice System, Article 3 (f)

128 Constitutional Court Decision No. 1/PUU-VIII/2010.

129 Article 21, *supra* note 127

130 Article 20, *supra* note 127

131 Article 3, *supra* note 127.

Imprisonment as a form of punishment can only be given to juveniles who are 14 years or older. The child must get a just and fair decision by the court and cannot receive a death sentence or life imprisonment.¹³² A child who serves a sentence is entitled to a sentence reduction, participate in assimilation, obtain leave for family visits, obtain conditional release, obtain leave prior to release, obtain conditional leave and maintain other rights as provisioned in the legislation.¹³³ A juvenile who has served half of the program in the juvenile prison and shows good behavior is entitled to conditional release.¹³⁴ A juvenile who is not yet 14 years old can only receive so called “actions”.¹³⁵ Actions given to juveniles may include:

‘returning him or her to the custody of his or her parents; placing him or her in the custody of a designated person; placing him or her in a mental hospital; treatment in a Social Welfare Institution; requiring the juvenile to participate in formal education and/or training run by a state or private institution; revocation of the juvenile’s driving license, and/or repairing any damage caused by the offense.’¹³⁶

A child can only be treated in a social welfare institution for a maximum of one year. Similarly, participation in formal education and/or training by a state or private institution and revocation of driver’s license can only be imposed for one year.¹³⁷

The most substantial addition in the act is the prioritization of restorative justice and diversion. Restorative justice means a fair resolution that involves the perpetrator, victim, families and other parties affected by a crime, where all parties involved collectively try to resolve the conflict fairly by emphasizing on restoring the situation to the previous state rather than retaliation.¹³⁸ As a form of restorative justice, diversion can only be applied to the case of offences that carry a prison term of less than seven years and not by repeat offenders.¹³⁹ The agreement on the diversion decision entails an approval from the victim and/or the family of the victim and the willingness of the child and his/her family. The diversion result does not need approval if the crime committed was a minor offence, victimless offence, or if the loss born by the victim does not exceed local provincial minimum wage.¹⁴⁰ The diversion agreement may consist of settlement with/without compensation, returning the child to the parents/guardian, participation in an education or training course provided by an educational institute, LPKS or other social welfare institution for approximately three months or community service.¹⁴¹

132 *Ibid.*
133 Article 4 (1), *supra* note 127.
134 Article 81 (4) *supra* note 127.
135 Article 69 (2) *supra* note 127.
136 Article 82 (1) *supra* note 127.
137 Article 82 (2) *supra* note 127.
138 Article 1 (6) *supra* note 127.
139 Article 7 *supra* note 127.
140 Article 9 (2) *supra* note 127.
141 Article 11 *supra* note 127.

The act also regulates the possibility of imprisonment and fine for law enforcement officers who deliberately fail to carry out their duties, including failure to exercise the diversion effort.¹⁴² Judges were originally included in the provision, but it was annulled after a decision made by the Constitutional Court.¹⁴³

2. Institutional Framework for Juveniles in Conflict with the Law

2.1 Policing and Investigation of Criminal Activities

Investigators of a case involving a juvenile will be designated through an order of the Chief of the Indonesian National Police (POLRI) or designated by other official as appointed by the Chief of POLRI.¹⁴⁴ These special investigators should fulfill certain requirements, such as “experienced as an investigator (for offense committed by adults); possesses interest, attention, dedication and an understanding of children’s issues; and, has taken special training on the juvenile justice system.”¹⁴⁵ However, in the case where an investigator with the required qualifications is not available, the duty of conducting an investigation may be assigned to an investigator who normally investigates crimes committed by adults. In investigating a case involving a juvenile, the investigator needs to seek the advice of a “*Pembimbing Kemasyarakatan*” (a Probation Officer) as soon as possible after the offense has been reported.¹⁴⁶ The *Pembimbing Kemasyarakatan* is an official of Balai Pemasyarakatan (Bapas) who is responsible for creating a social report on the child suspect’s economic, educational and religious background. The official will also review the child’s social interaction for the purpose of investigation, prosecution and trial. The *Pembimbing Kemasyarakatan* is expected to submit the report to the Investigator within 3 x 24 hours (seventy two hours) upon receiving the request from the investigator.¹⁴⁷

When necessary, the investigator can also seek the advice and consideration of educationalists, psychologists, psychiatrists, religious figures, professional social workers or other social welfare workers.¹⁴⁸ In investigating child witnesses and child victims, the investigator has to seek for a social inquiry report from a professional social worker after the offense has been reported.¹⁴⁹ The investigator must also coordinate with the public prosecutor. Such coordination must be conducted within 24 hours after the investigation was initiated.¹⁵⁰

The investigator can only keep a child arrested for a maximum of 24 hours.¹⁵¹ The law states that “the calculation of the 24 hour period of arrest by the inves-

142 Article 96-101 *supra* note 127.

143 Constitutional Court decision No. 110/PUU-X/2012.

144 Article 26 (1) *supra* note 127.

145 Article 26 (3) *supra* note 127.

146 Article 27 *supra* note 127.

147 Article 28 *supra* note 127.

148 Article 27 (2) *supra* note 127.

149 Article 27 (3) *supra* note 127.

150 Article 31 *supra* note 127.

151 Article 30 (1) *supra* note 127.

tigator has to be based on working time”. The child should be placed in a child only room, away from adults.¹⁵² Should there be no child-only room in the area, the child should be placed in a LPKS. The cost incurred for every child placed in the LPKS will be allocated to the related Ministries’ budget.¹⁵³

For the purposes of the investigation, the juveniles may only be detained for a maximum of seven days which can only be extended by the Public Prosecutor for an additional eight days should there be a request from the Investigator.¹⁵⁴ The child cannot be detained if s/he is guaranteed by his/her parents/guardian and/or by an institution that s/he will not run away, remove or destroy evidence, and/or nor repeat the offence. A juvenile can only be detained when s/he is 14 (fourteen) years of age or older and suspected of having committed a criminal offense that carries a prison term of seven years or more. The detainment order need to state clearly the age of the juvenile and the length of prison term that the offense carries.¹⁵⁵ During detainment, the juvenile’s physical, spiritual, and social needs must be fulfilled. For the protection of the child, s/he may be placed in a LPKS.

A child may only be detained for the purpose of prosecution for a maximum of five days, which can be extended for an additional five days by the District Court Judges.¹⁵⁶ At the district level, the judge is entitled to order the detainment of a child for a maximum period of 10 (ten) days with a possible extension of another 15 (fifteen) days. Should the case proceed to the High Court, the child can be detained for the maximum of ten days during the review process and can be prolonged for a maximum of 15 days.¹⁵⁷ At the next level, the Supreme Court can issue an order of detainment of a juvenile for a maximum period of 15 days and may be extended for a maximum of 20 days by the Chairman of the Supreme Court. The juvenile has to be released from detention facility by operation of law when the period of extension is expired.¹⁵⁸ The arresting or detaining officer is required to inform the child and his or her parents/guardian on the right to legal counsel. If the officer does not inform the child and family on that right, the criminal process against the child can be annulled.¹⁵⁹ The court has an authority to confiscate the evidence at a maximum period of two days.¹⁶⁰

2.2. Diversion

The Juvenile Justice Law states that the intention of the diversion is to “achieve an amicable settlement between the victim and the child; reach an out of court settlement; prevent children from being deprived of their liberty; encourage pub-

152 Article 30 (2) *supra* note 127.

153 Article 30 *supra* note 127.

154 Article 32 *supra* note 127.

155 Article 32 *supra* note 127.

156 Article 34 *supra* note 127.

157 Article 37 *supra* note 127.

158 Article 34, 35, 37, and 38 *supra* note 127.

159 Article 40 *supra* note 127.

160 Article 36 *supra* note 127.

lic participation; and to instill a sense of responsibility in the child.”¹⁶¹ Diversion efforts shall be made at the stages of investigation, prosecution, and at the district courts. It may be applied for offenses that “carry a prison term of less than seven years; and the juvenile is not a repeat offender.”¹⁶²

Diversion is done through a restorative justice-based discussion between the child and his or her parents/guardian, the victim and/or his or her parents/guardian, Pembimbing Kemasyarakatan, and a social worker. The diversion process shall take into account:

- a. the victim’s interest;
- b. the juvenile’s welfare and responsibility;
- c. prevention of negative social stigma;
- d. retaliation prevention;
- e. ensuring social harmony; and
- f. considerations of propriety, morality and public order.¹⁶³

When considering diversion for a case, the investigator, public prosecutor and judge have to consider:

- a. the category of the offense;
- b. the age of the child offender;
- c. the findings of the social enquiry report prepared by the Bapas;
- d. support from the child’s family and environment.¹⁶⁴

The agreement on diversion entails an approval from the victim and/or the family of the victim and proof of willingness from the child and his/her family. Diversion does not need approval if the crime committed was a breach offence, minor offence, victimless offence, or if the loss born by the victim does not exceed local provincial minimum wage.¹⁶⁵ Approval from the family of the victim is only needed when the victim is a minor. An agreement on diversion for the offense with no victim’s involvement can be done by the investigator together with the suspected juvenile and/or his/her family, Pembimbing Kemasyarakatan, and possible participation of a community figure.¹⁶⁶ In writing a diversion agreement, the investigator does so at the recommendation of the Pembimbing Kemasyarakatan. The result of the agreement could be done in the form of:

- a. compensation for the victim, if applicable;
- b. medical and psychosocial rehabilitation;
- c. the return of the child’s care to the parents/guardian;

161 Article 6 *supra* note 127.

162 Article 7 *supra* note 127.

163 Article 8 (3) *supra* note 8.

164 Ministry of Women Empowerment and Child Protection, Profile of Indonesian Children, 2012 (Jakarta:CV Miftahur Rizky), Article (9):1.

165 Article 9 (2) *supra* note 164.

166 Article 10 *supra* note 164.

- d. participation in an education or training course provided by an educational institution or LPKS for approximately 3 (three) months; or
- e. community service for approximately 3 (three) months.¹⁶⁷

The diversion agreement has to be submitted to the local court for confirmation by the Pembimbing Kemasyarakatan within a maximum of three days from the signing. Confirmation on the diversion agreement may take no more than three days from the submission of the diversion agreement to the court. The confirmation must be forwarded to the Pembimbing Kemasyarakatan, investigator, public prosecutor, and judge within three days from the issuance. The investigators can issue an order for termination of investigation or issue an order for termination of prosecution after receiving the confirmation.¹⁶⁸ The criminal proceeding may resume due to the following conditions:

- a. the diversion process does not produce an agreement; or
- b. the diversion agreement is not adhered to.¹⁶⁹

The responsibility of enforcing the implementation of the diversion agreement falls on the direct superiors of the responsible officers at each stage of the juvenile justice process. Throughout the diversion process and until the agreement is executed, the Pembimbing Kemasyarakatan is required to provide assistance, guidance and exercise supervision. If a diversion agreement is not implemented within the agreed timeframe, the Pembimbing Kemasyarakatan must immediately report it to the responsible officer. The officer in charge needs to take follow-up action on the basis of such a report within seven days.¹⁷⁰

At the investigation level, the investigator is mandated to seek diversion within seven days after the investigation is initiated.¹⁷¹ The diversion agreement has to be executed within the period of 30 days after the diversion is in effect.¹⁷² When the agreement has been successfully implemented, the investigator is requested to prepare a police report of diversion to the head of the district court so that a court order can be issued. But, if the diversion fails, the investigator has to continue the investigation and be required to submit the case file to the Public Prosecutor, by including the diversion report and social inquiry report.¹⁷³ The maximum period for the officer to seek for diversion and the effectiveness of days for diversion are the same at the prosecution and court level.

At the prosecution level, the public prosecutor is required to submit the diversion reports to the head of district court for the issuance of the court order. When diversion fails, the public prosecutor has to submit the case file to the court, in-

167 Article 10 (2) and 11 *supra* note 164.
 168 Article 12 *supra* note 164.
 169 Article 13 *supra* note 164.
 170 Article 14 *supra* note 164.
 171 Article 29 (1) *supra* note 164.
 172 Article 29 (2) *supra* note 164.
 173 Article 29 (3) and (4) *supra* note 164.

cluding the diversion report.¹⁷⁴ At the district court, the diversion process has to be arranged in the court's mediation room. In case the diversion is successfully implemented, the judge has to prepare a diversion outcome report for the district court in order to issue a court stipulation.¹⁷⁵ After reading out the indictment, the judge shall instruct the Pembimbing Kemasyarakatan to read out the social inquiry report about the child, which includes the diversion proceedings report, in the absence of the child, unless the judge thinks otherwise.¹⁷⁶ During the diversion process, the Pembimbing Kemasyarakatan has to prepare a social inquiry report; to carry out outreach, guide, and supervise the child during the diversion process; and, oversees the agreement implementation. Pembimbing Kemasyarakatan is obligated to report to the court should the agreement fail to be implemented.¹⁷⁷

2.3. Adjudicating and Sentencing

Juveniles are required to be tried in a special courtroom reserved for juvenile cases. While waiting for trial, the juvenile has to wait in a room separate from adults. The session for juveniles has to be prioritized before the adult.¹⁷⁸ Inside the court, the child is going to be heard by a lone judge, free of formal attributes, who has experience, interest and knowledge on cases involving children.¹⁷⁹ A juvenile case proceeding is closed for public except for the reading of verdict.¹⁸⁰ A child, or his parents, guardian, and/or advocate can bring the case for judicial review to the Supreme Court even after the case has achieved a final and conclusive effect.¹⁸¹

Special protection for a child witness and/or child victim is regulated under several laws such as the Juvenile Justice System Act, Child Protection Law and Witness, and Victim Protection Act. Article 58 of the Juvenile Justice System Act states that "during the examination of a child witness and/or a child victim, the Judge may direct that the accused child be escorted out of the courtroom." Parents or guardians, advocates and parole officer can remain in the room during the examination of the child witness and/or child victims. In a case where child witness and/or child victim is unable to attend the hearing to testify, the judge may instruct the child witness and/or child victim to testify:

- a. outside the courtroom by using electronic recording device provided by a Pembimbing Kemasyarakatan in the same legal jurisdiction, in the presence of an investigator or public prosecutor or social advocate; or,

¹⁷⁴ Article 42 *supra* note 164.

¹⁷⁵ Article 52 *supra* note 164.

¹⁷⁶ Article 57 *supra* note 164.

¹⁷⁷ Article 65 *supra* note 164.

¹⁷⁸ Article 53 *supra* note 164.

¹⁷⁹ Article 43 *supra* note 164.

¹⁸⁰ Article 54 *supra* note 164.

¹⁸¹ Article 51 *supra* note 164.

- b. through long distance direct examination using audio-visual communication device, with the child being accompanied by parents, guardians, or other trusted adult companions.¹⁸²

Detailed protection for a child in criminal justice system is available in the Child Protection Act. It is divided into different categories. Special protections for a child in conflict with the law or child victim are under the responsibility of the government and the community. Methods of protection are conducted through:

- a. ensuring humane treatment for children in accordance with the dignity and rights of children;
- b. the early assignment of counselors to help children;
- c. the provision of special infrastructure and facilities;
- d. ensuring the imposition of appropriate sanctions in accordance with the best interest of the child;
- e. continuously monitoring and recording the development of the child who finds himself in dealings with the law;
- f. the provision of guarantees concerning the protection of the relationship between a child and his parents and family;
- g. ensuring that the child's activity is not released in the mass media and preventing stigmatization of the child.¹⁸³

The child victims of criminal offense have special protection in terms of:

- a. rehabilitation efforts of both an institutional and non-institutional nature;
- b. ensuring that the child's identity, is not released through mass media and preventing stigmatization of the child;
- c. providing physical, mental, and social safety guarantees to victims and expert witnesses;
- d. ensuring access to information regarding the development of the legal process.¹⁸⁴

182 Article 58 (3) *supra* note 3.

183 Article 64 (2) of Child Protection Act.

184 Article 64 (3) *supra* note 183.

Children from minority and isolated groups are entitled to have protection in form of infrastructure and facilities for the children enjoying their own culture, practicing their own religion, and speaking their own language.¹⁸⁵ More provisions are available for children who went through economic or sexual exploitation, victims of narcotics, alcohol, psychotropic and other addictive substance, victims of violence, disabled victims, and victims of mistreatment and neglect.¹⁸⁶

In regard to penal sentences, imprisonment is applicable when the juvenile has committed a severe crime or a violent offense.¹⁸⁷ The maximum amount of time served by a juvenile is equal to half of the same time an adult serve in prison for the same crime. If the crime committed deserves capital punishment or life sentence when committed by adult, then the maximum punishment for the juvenile is ten years of imprisonment.¹⁸⁸ Minimum imprisonment is not applicable to juveniles. The Juvenile Justice System Act administers two types of penal sentences: primary and supplementary. The primary penal sentences consist of official reprimand, conditional punishments, vocational training, institutionalized guidance, and imprisonment.¹⁸⁹ The aforementioned conditional punishment refers to non-custodial training, community service, or supervision.¹⁹⁰ The supplementary penal sentence includes forfeiture of the profits obtained from the crime, or an order to comply with the requirements of customary law.¹⁹¹ None of the punishment can be degrading to the juvenile's dignity. The imprisonment and a fine can be substituted by vocational training if the juvenile is charged with cumulative penal sentences.¹⁹² However, it is important to note that arresting, detaining, and imprisoning a juvenile are the last resorts.¹⁹³

The official reprimand by the judge should not restrict a child's freedom.¹⁹⁴ A probation period can be imposed by the judge in the case of imprisonment for at least two years. Generally, it requires the juvenile to refrain from committing offense and other additional requirements from the Judge while continuing to preserve the child's liberty. The maximum term of a probational period is three years.¹⁹⁵ The juvenile under probation will be put under the supervision of a prosecutor and under the counsel of Pembimbing Kemasyarakatan.¹⁹⁶ If the probationer violates a condition of probation, the responsible officer may recommend to the supervising judge to extend the period for no more than twice the amount of the current probation period.¹⁹⁷ As for the community service, it has to be

185 Article 65 *supra* note 183.

186 Article 66-71 *supra* note 183.

187 Article 79 (1) *supra* note 3.

188 Article 81 (6) *supra* note 3.

189 Article 71 (1), *supra* note 3.

190 Article 71 (1) b *supra* note 3.

191 Article 71 (2) *supra* note 3.

192 Article 71 (3) *supra* note 3.

193 Article 3 (g) *supra* note 3.

194 Article 72 *supra* note 3.

195 Article 73 *supra* note 3.

196 Article 77 *supra* note 3.

197 Article 75 (2) *supra* note 3.

imposed at the minimum of seven hours and a maximum of 120 hours.¹⁹⁸ Different from community service, the vocational training as a form of punishment is implemented for a minimum of three months and a maximum of one year, depending on the child's age.¹⁹⁹

2.4. Treatment of Convicted Juveniles

2.4.1. Residential

There are three types of residential treatment facilities for convicted juveniles: Juvenile Special Rehabilitation Facility (LPKA), Juvenile Detention Facility (LPAS), and Juvenile Social Welfare Facility (LPKS). The LPKA is for juvenile offenders serving their sentences whereas the LPAS is for juveniles awaiting or undergoing trial. As for the LPKS, it is to accommodate juveniles who undertake social services.²⁰⁰

LPKAs were previously called Lembaga Pemasyarakatan Anak (Juvenile Prison). Imprisonment is applied when the juvenile committed a severe crime or an offense that involved violence.²⁰¹ The children in the penitentiary facility have the right to be provided with instruction, guidance, supervision, outreach, education and training. They are required to have education, vocational training and guidance, and to fulfill other rights of juveniles as may be provided for by the provisions of the laws and regulations in effect.²⁰² The parole officer is responsible to prepare a report to identify a preferable form of educational programs and conduct supervision in respect of the programs. The Juvenile Justice System Act requires that "a convicted juvenile who has not finished serving his sentence and has reached the age of 18 shall be moved to a Young Offenders Correctional Facility." According to the Corrections Act article 20, the programme for the juvenile should be based on classification on age, gender, type of crime, length of sentences, and other criterion associated with need or development of his/her programme. According to government regulation number 31 of 1999 on Coaching and Assisting Inmates, the programme for juvenile consists of three stages: early, advanced, and final. Article 19 of the regulation states as follows:

(i) Development of an early stage as referred to in Article 17 paragraph (2) letter a covering:

- a. observation period, and the introduction of environmental studies at the latest one month;
- b. personality development program planning and self-reliance;
- c. implementation of development programs of personality and self-reliance; and
- d. assessment phase of the initial implementation of the coaching program.

198 Article 76 (3) *supra* note 3.

199 Article 78 *supra* note 3.

200 Article 1 (20, 21,22) *supra* note 3.

201 Article 79 *supra* note 3.

202 Article 85 (2) dan (3) *supra* note 3.

(2) Development of advanced stage as referred to in Article 17 paragraph (2) letter b shall include:

- a. advanced coaching program planning;
- b. advanced coaching program implementation;
- c. assessment of advanced coaching program implementation; and
- d. stats and assimilation program implementation.

(3) Development of the final stage as referred to in Article 17 paragraph (2) letter c include:

- a. planning integration programs;
- b. the implementation of integration programs; and
- c. termination of the final stages of implementation guidance.

The regulation is still referring to the previous law on juvenile justice. Article 20 states that the early and advanced programmes are conducted inside the correctional facility and the final one is implemented outside penitentiary. If the child has not fulfilled the requirement of obtaining the final stage programme, s/he can join the programme inside the facility. A special programme is given for children who are unable to receive assimilation and/or integration opportunities. There are, however, no further details defining the types of special programmes. There is no specific programme for detainees. Under the penitentiary management, inmate and detainee's education covers formal education, life skill, scouting, and vocational training.²⁰³

Vocational training as referred to article 71 (1) c of the Juvenile Justice Law, has to be implemented in an institution that organizes vocational training.²⁰⁴ It can only be implemented in minimum of three months and maximum of one year and is effected in vocational training or educational facilities administered by private or public institutions.²⁰⁵ A juvenile who has served half of the sentence in the institution and shows at least three months of good behavior is entitled to conditional release.²⁰⁶ The public institution for vocational training as part of custodial term is usually conducted under the Ministry of Social Welfare. The programmes managed by Ministry of Social Welfare are:

- Social assistance / subsidies for the fulfillment of basic fundamental right;
- Accessibility to basic social services;
- Restorative justice programme;
- Self development and child creativity; and
- Strengthening the responsibility of parent / family and community.²⁰⁷

203 Directorate General of Corrections, *Standard Minimum on Correctional Services*, 2014; p 184.

204 Article 78 (1) *supra* note 3.

205 Article 80 *supra* note 3.

206 Ibid.

207 Ministry of Social Services, *Guidance on Programme for Child Social Welfare*, 2011.

The overall programme includes protection, recovery, rehabilitation, advocacy, reunification, and reintegration.²⁰⁸ It provides a systematic, structured, planned and integrated treatment with the advanced perspective of the victim and the child's best interests.²⁰⁹

2.4.2. Non-residential

Programme outside the incarceration facility is regulated in article 75 of the Juvenile Justice System Act. It encompasses any counseling and education program organized by officers responsible in the institution; participation of therapy in psychiatric hospital; or participation for substance abuse (alcohol, narcotics, psychotropic, and other addictive substance) treatment.²¹⁰ If during the sentence the child violates special requirements, the responsible officer may recommend to the supervising judge to extend the period no more than maximum of two times of unimplemented programme.²¹¹

Private institutions, government agencies, and civil society have made efforts to improve the situation of children in conflict with the law through many initiatives. Some of the programmes are related to restorative justice and diversion.

3. Reform Initiatives

Several reform initiatives have been launched over the last ten years, culminating in the new Juvenile Justice System Act.

In order to implement the new law, the ministry of national development planning (BAPPENAS) has established a secretariat to coordinate activities. These include:

- Drafting of implementing regulations;
- Developing training modules and training/certification of those implementing the law;
- Monitoring implementation of the law.

There are also a number of non-governmental organizations who have programmes in relation to restorative justice for children in conflict with the law.

208 B. Siregar, *Evaluation: Child protection programme through social house protection*, < http://www.academia.edu/3198883/PROGRAM_PERLINDUNGAN_ANAK_MELALUI_RUMAH_PERLINDUNGAN_SOSIAL_ANAK_RPSA_2011>, visited on 28 September 2014.

209 Ibid.

210 Article 75 *supra* note 3.

211 Ibid.

4. Main Challenges to the System

The Juvenile Justice System Act formally came into force on 31 July 2014. As previously indicated, the substantial addition in this law is the provision on diversion and restorative justice. Article 15 of the law also dictates that the guidelines for the implementation of diversion processes, procedures, and coordinating implementation of the diversion will be regulated through the implementing regulations in the form of Government Regulations (PP). These have not yet been passed, questioning the effective implementation of the new law in an important transition phase, and there are reports of cases in which the new regulations have not been followed.²¹²

Based on the research made by the Institute for Criminal Justice Reform (ICJR), of 115 court decisions in Jakarta issued after the law came into force, 113 ended with sentences. Of these, 109 were sentenced to imprisonment and four to probation.²¹³ This indicates that criminal punishment, especially imprisonment, is still the main choice. The ICJR confirmed that the absence of the government implementing regulation could threaten the optimum use of diversion mechanism.²¹⁴ The law enforcement officers have different knowledge on the implementation of the law, particularly on diversion and restorative justice.

Some key challenges to the implementation of the law are:

1. Different understanding among law enforcement officers on how to handle children in conflict with the law;
2. Lack of knowledge by law enforcement officers on diversion and restorative justice;
3. Lack of cooperation between parties involved in child cases;
4. Negative public perception on diversion and restorative justice;²¹⁵
5. Law enforcement officers' retributive culture;²¹⁶
6. Lack of commitment and priority for a child in criminal justice system;
7. Lack of infrastructure and available facilities;
8. Lack of knowledge of the law by regional governments which may have an effect on budgeting;

²¹² Detik news; *Agar pencuri bebek tak terulang, aparat minta terapkan UU SPPA*, < <http://news.detik.com/read/2014/08/28/151044/2675153/10/agar-vonis-pencurian-bebek-tak-terulang-aparat-di-minta-terapkan-uu-sppa>>, visited on 8 October 2014.

²¹³ Institute for Criminal Justice Reform, *45 hari menuju berlakunya UU SPPA: Diversi dalam UU SPPA terancam gagal*, < <http://icjr.or.id/45-hari-menusu-berlakunya-uu-sppa-diversi-dalam-uu-sppa-terancam-gagal/>>, visited on 8 October 2014.

²¹⁴ Ibid.

²¹⁵ Kedaulatan rakyat, *Bersalah tapi bebas*, < <http://krjogja.com/liputan-khusus/analisis/3217/bersalah-tapi-bebas.kr>>, visited on 10 October 2014.

²¹⁶ Irwansyah Rizi, *Tinjauan yuridis terhadap penerapan prinsip restorative justice dalam perkara anak-anak nakal di kepolisian resort kota besar (Polrestabes) Makassar*, < <http://repository.unhas.ac.id/bitstream/handle/123456789/8956/SKRIPSI LENGKAP.pdf?sequence=1>>, visited on 10 October 2014.

9. Lack of awareness of parole officers' roles among other law enforcement officers when considering the punishment given to the child;
10. Deficiency in number and capacity of parole officers;²¹⁷ and
11. Lack of reliable and up-to-date data on child in conflict with the law

5. Summary and Statistics

The Indonesian government has several provisions regarding when a person is legally regarded as an adult. According to Act on Juvenile Justice Article 1, Human Rights Law Article 1 Section 5, Act on Child Protection Article 1 Section 1, and Act on Corrections Article 1 Section 8 an Indonesian is officially an adult when she or he reaches the age of 18. However, on the Code of Civil Law Article 330 and Act on Child Welfare Article 1 Section 2, an adult is a person that has reached the age of 21. While the age of criminal responsibility is 12, according to Act on Juvenile Justice System Article 1 Section 3, a child under the age of 14 years old cannot receive any criminal sanctions and may only be subjected to particular measures.²¹⁸ There are currently 17 prisons with juveniles in Indonesia. Of those 17 prisons, only 8 are dedicated juvenile prison. The remaining prisons accommodate both detainees and adult prisoners.²¹⁹ Detailed data of mixing juveniles and adults in 2012:

- The total number of children in prisons was 5 549;
- There were 1 893 children held in juvenile prisons;
- 3 650 children were imprisoned/detained in adult facilities;
- 1 654 adults were in juvenile prisons²²⁰

While the Act on Juvenile Justice Law has put diversion as a legal responsibility, the law has just come into force in 2014, which means that no data is available on it yet.

217 Taufik Hidayat, *Peranan Bapas dalam perkara anak*, < <http://bangopick.wordpress.com/2008/02/09/peranan-bapas-dalam-perkara-anak/>>, visited on 10 October 2014.

218 Act on Juvenile Justice System Article 69 Section 2.

219 Indonesian Statistic, 2010, <http://www.bps.go.id/hasil_publicasi/flip_2011/4401003/index11.php?pub=Profil%20Kriminalitas%20Remaja%202010>, visited 5 September 2014.

220 Ibid

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Indonesia

Name of law	Date of adoption
Act on Juvenile Justice System 11/2012	30 July 2012
Act on Child Welfare 4/1979	23 July 1979
Act on Indonesia Public Prosecution 5/1991	22 July 1991
Act on the Indonesia Police 2/2002	8 January 2002
Act on Corrections 12/1995	30 December 1995
Act on Ratification of the Convention Against Torture, Inhuman, and Degrading Treatment 5/1998	28 September 1998
Act on Child Protection 23/2002	22 October 2002
Act on Domestic Violence 23/2004	22 September 2004
Act on Witness and Victims Protection 13/2006	11 August 2006
Act on Eradication of Trafficking in Persons 21/2007	19 April 2007

Table 2. Annual Number of Crimes Reported in Indonesia

Year	Number of Crimes (Cases)	Number of Crimes Committed by Juveniles (Cases)
2005	256 431	Not Available
2006	299 163	Not Available
2007	330 384	3 100
2008	326 752	3 300
2009	344 942	4 200
2010	332 490	Not Available
2011	347 605	Not Available
2012	341 159	Not Available
2013	382 084	Not Available

Table 3. Juvenile Delinquency Based on Types and Percentage

Types of Crimes	Number of Juveniles committed crimes	Percentage
Sharp weapon possession	4	20
Drugs	19	9,5
Rapes/Molestation	12	6,0
Mass beating	8	4,0
Murder	4	2,0
Torture	8	4,0
Reckless riding/driving	10	5,0

Theft	120	60,0
Extortion	2	1,0
Embezzlement	5	2,5
Recipient of the proceed of crimes	5	2,5
Other types of crimes	3	1,5
Total	200	100

Source: Statistic Indonesia

The table above is a survey conducted in 2010 from a random sample of 200 juveniles in detention and correctional facilities.

Table 4. Total number of child and adult offenders imprisoned in January 2015

Group of Age	Status	Male	Female	Total
(1)	(2)	(3)	(4)	(4)
Adult	Inmates	104 076	5 679	109 755
	Detainee	49 557	2 794	52 351
	Total	153 633	8 473	162 106
Juvenile	Inmates	2 738	59	2 797
	Detainee	736	12	748
	Total	3 474	71	3 545

Source: Indonesia Correctional Services online database.

Chapter V. The State of Juvenile Justice in Laos

Champathong Phochanthilath

1. Legislative Framework for Juveniles in Conflict with the Law

Lao PDR acceded to the United Nations Convention on the Rights of the Child (CRC) without reservations in 1991. As a state party, the Lao Government is obliged to give effect to the Convention by means of laws, policies and implementation designed to achieve its goal. In Laos, the juvenile justice for both children in conflict with the law and children in need of protection are governed by the Law on the Protection of the Rights and Interests of Children and Law on Juvenile Criminal Procedure.

The Law on the Protection of the Rights and Interests of Children was adopted in 2006, and entered into force a year later. The law outlines children's fundamental rights to be protected from all forms of physical and moral abuse, the right to be recognized and to acquire a nationality, the right to access to education and information as well as the right to access to health care and the right to life and development. They also have the right to receive special protection in legal proceedings, in particular protection for children in conflict with the law, which is also covered in the Law on Juvenile Criminal Procedure which was adopted and came into force in 2013. Furthermore, children have obtained protection through provisions in the Penal Law and the Law on Criminal Procedure which deals with juvenile offenders.

According to the Law on the Protection of the Rights and Interests of Children No. 05/NA 2007 and the Law on Criminal Procedure, "a child is any person below 18 years of age."^{221 222} Meanwhile the National Constitution article 36 has identified an adult as a person age 18 years or above since "Lao citizens aged 18 years and above have the right to vote and those aged 20 years and above have the right to be elected, except insane persons, persons with mental disorders and persons whose rights to vote and to be elected have been revoked by a court."

Since the minimum age of criminal responsibility is at least 15 years old, a juvenile between the ages of 15 and 18 years old has been defined as a criminally responsible child.²²³ However, articles 31 and 32 of the Penal Law states that juvenile offenders may not be sentenced to life imprisonment or house arrest. Article 36 of the Penal Law also states that it is forbidden to mete out a death sentence on offenders who were under 18 years old at the time of the offence. While article

221 Article 2 (t) of The Law on the Protection of the Rights and Interests of Children No. 05/NA 2007.

222 Article 3 (t) of The Law on Criminal Procedure.

223 Article 3 (3) of The Law on Juvenile Criminal Procedure.

44 specifies the prescription of penalties for a child offender under 18, the court may prescribe sentences under the level that is defined by the laws. Article 53 of the Penal Law stipulates appropriate measures for serious offences conducted by children below the age of 15 without resorting to judicial proceedings. The court may also apply these measures to children between 15 and 18 years old who commit minor and major offences.²²⁴

Prior to the adoption of The Law on Child Criminal Procedure in 2013, the officers followed the Joint Guidelines on Child Criminal Procedure 2006 issued by the Public Prosecutor General, the Minister of Public Security and the President of People's Supreme Court.

2. Institutional Framework for Juveniles in Conflict with the Law

2.1. Policing and Investigation of Criminal Activities

The investigations are conducted by the Investigative-Interrogative Agency. When the crime committed is a minor or major offence punishable by imprisonment of less than three years, then the case is sent to the Village Child Mediation Unit (VMU) and the District or Municipal Justice Offices. The case is mediated at each level within 30 days from the date of receiving the petition from the party, and in the event the mediation is unsuccessful, the case shall be sent to the Public Prosecutor for consideration and conduct of criminal proceedings. In contrast, if it is a serious crime punishable under the law by imprisonment of three years or more, the case shall be investigated and sent to the Public Prosecutor for consideration. In addition, the Investigative-Interrogative Agency has a mandate to monitor, inspect, give advice, and manage the list of child suspects and prisoners with its responsibility.²²⁵

The Law on the Protection of the Rights and Interests of Children contains some important sections relating to children in detention. There must be sufficient evidence that the child has allegedly committed a serious crime punishable under the law by imprisonment of three years or more and the detention of a child must be no more than forty-eight hours. The steps to keep a child in detention must be followed carefully by the investigator by the following principles as defined in the law:

1. The child shall be informed of the reasons for the detention and guided on its rights under the law;
2. The child's parents or guardians shall be notified immediately;
3. It is prohibited to use all forms of violation, threat by weapons or other things, foul language and defaming language towards a child offender;
4. The child shall be referred for a medical examination to check the health and

224 Article 53 of The Penal Law.

225 Article 58 of the Law on Protection of the Rights and Interests of Children.

mental condition of the child in detail, and the result shall be kept confidential, except where the concerned authorities have ordered the disclosure;

5. The child's safety shall be ensured while in detention facilities;
6. The detained child must be kept in a specific child detention area separated from the other gender.²²⁶

In practice, the police officer in charge of the police station where the juvenile is detained must notify the parents, guardian, or the protectors of the child as soon as possible and allow them to participate in all steps of the proceeding, particularly, during the interview. The availability of health and mental counselling services during detention are usually limited due to the lack of any specific centres or shelters providing these services for juveniles. The juvenile is usually placed into regular detention centres which also houses adults because of insufficient detention facilities.

The child is entitled to legal assistance at all stages of criminal justice and the police must inform this to the juvenile. A challenge, however, is that the legal aid clinics are only recently established. These are also limited to major cities, including Vientiane capital, Champasack, Savannakhet, Khammuane, Luangprabang, Oudomxai, Xiengkhouang and Vientiane province. To this date, the number of lawyers is very low and there are approximately 144 lawyers countrywide. The number of lawyers who are working on child protection is very low and most of them focus on child victims rather than offenders.

2.2. Diversion

There are provisions in the juvenile laws for diversion. The law on Juvenile Criminal Procedure specifies that juveniles who commit minor crimes are to be handled by four sectors: Village Child Mediation Units, District or Municipal Justice Offices, the Child Investigative-Interrogative Units, and the Child Prosecutor's Units.²²⁷ The Child Investigative-Interrogative Units and the Child Prosecutor's Units have, however, not yet been established. Diversion processes at these levels are thus undertaken by the Investigation-Interrogation Agencies and the Office of Supreme Public Prosecutors.

The Village Child Mediation Units is a fundamental mediation unit at the village level. It formally operates under the auspices of the Ministry of Justice (MoJ), but most of them have been established through the more general village level Mediation Units. Community mediation committees have been appointed by the district administrative offices and are designed to address conflicts at the community level, using a combination of customary practices and institutions, and the law. The committees are comprised of the village chiefs and the representatives of the Lao National Front for Construction (LFNC), Lao Women's Union (LWU), Lao Youth Union (LYU), Village Police and other customary leaders.

226 Article 62 of the Law on Protection of the Rights and Interests of Children.

227 Article 13 and 26 of Law on Juvenile Criminal Procedure

District or Municipal Justice Offices belong to the District or Municipal Administrative Offices under the technical supervision by the Provincial or Vientiane Capital Justice Department. The justice office at each district or municipality has the provision and duties to re-educate and mediate in juvenile cases submitted by Village Child Mediation Units as a result of an unsuccessful mediation at the village level.²²⁸ The District or Municipal Justice Offices shall conduct the mediation within 30 days, and in the event of unsuccessful mediation by the District or Municipal Justice Offices, the Investigation-Interrogation Agency will conduct the investigation and then send the case to the Public Prosecutor for consideration and potential criminal proceedings. The Supreme Public Prosecutors shall either consider referring the case back to the Village Child Mediation Units for solution or solve cases at their own level through mediation. If all these options are unsuccessful, the case may be prosecuted in the juvenile court.

2.3. Adjudicating and Sentencing

The Juvenile Court Chamber has been established separately from the Family Court Chamber since 2007 and juvenile cases have been separated from adult cases since 2009.

The child's parents and legal representatives are entitled to attend all stages of the proceedings. In case the accused child cannot afford to hire a lawyer, the law requires that a court or state must appoint a lawyer to assist an accused child who is without knowledge of the law, especially a child without parents or other lawful defender.

The Juvenile Courts must sit in a different room from where regular court proceedings are held. In practice, this does not occur. For example, at the juvenile court in the Vientiane capital, the cases are held within the regular courtroom.

2.4. Treatment of Convicted Juveniles

2.4.1 Residential

Juveniles and adults are imprisoned in the same locations and there appears to be limited classification systems in place. Similarly, there are no specific facilities for juveniles during the pre-trial detention and prior to receiving a sentence by the court.²²⁹ The facilities are furnished including fans, lamps, and beds. Some facilities have basic sport facilities.

During the imprisonment, the juvenile offenders may receive training, such as handicraft production, vegetable gardening, animal domestication and cooking. The training is provided by the security officers and adult offenders with the required training and skills. The drug addicted offenders also undergo detox.

228 Article 32 of the Law on Juvenile Criminal Procedure

229 P. Sisouvanh, *Judicial Criminal Procedure for Children* (National University of Laos, Vientiane capital, 2011) pp.68-73.

The largest number of juvenile offenders is located in *Somsanga* Drug Treatment and Rehabilitation Centre in Vientiane capital. It was established in 1996 and is located at *Somsanga* village, nine kilometres away from central Vientiane. The centre is comprised of the administration centre, treatment ward, rehabilitation dormitory and vocational building. Services offered at the centre include detoxification for patients addicted to methamphetamine, opium, heroin, alcohol, cannabis and other illegal substances.

2.4.2 Non-residential

Laos currently has no non-residential treatment option for convicted juveniles.

3. Reform Initiatives

In recent years, the Lao PDR has made significant progress towards improving protection for children in conflict with the law. The adoption of the Law on the Protection of the Rights and Interests of Children and the Law on Juvenile Criminal Procedure is a great step in the right direction.

The Juvenile Court Chamber has been established and the juvenile courts are located in each province. The child cases are preceded within the timeframe regulated by the law. The information related to the child in conflict with the law at juvenile courts is collected systematically.

An increasing number of Village Child Mediation Units have been trained and could potentially be regarded as separate from the Village Mediation Units. In other words, the committee members have a clear duty to ensure decisions become more consistent and compatible within a juvenile justice system.

The Government also has partnerships with aid agencies and INGOs such as UNICEF, Friends International (FI), SOS Children's Villages, AFESIP, Save the Children (SCA), Plan International, Norwegian Church Aid (NCA) and World Vision (WV). Those leading child aid agencies have been promoting and conducting several projects as well as networks on child protection.²³⁰ Also, they will be essential partners for improving protection for the child in conflict with the law.

4. Main Challenges to the System

The following are some of the main challenges to the Juvenile Justice System in Laos:

Village Child Mediation Units: Despite the fact that some VMUs have been trained on child protection, concerns have been expressed that they have limited understanding of child rights, in particular international child rights. This is partly

²³⁰ UNICEF, *Social Welfare System in Lao PDR: An Analysis of Welfare Services for the Prevention and Response to Abuse, Violence, and exploitation against Children* (Ministry of Labour and Social Welfare and UNICEF, Vientiane capital, 2009) pp.14-16.

due to the Village Mediation Units being composed of local elders and that there are only a few qualified professionals working on child issues. In many ethnic groups, the customary law is strongly adhered to. The hierarchical power relationship between a child and an adult is unequal, a child is expected to show respect to elders, obligated to reciprocate and depend on parents. Thus, there may be potential for some forms of discrimination against children in customary law.

Child Investigative-Interrogative Units and the Child Prosecutor's Units:

The recent Law on Juvenile Criminal Procedure stipulates that the Child Investigative-Interrogative Units and the Child Prosecutors Units should be established. In practise, this has not been implemented.

Legal Aid: While the laws state clearly the rights of the accused children to legal aid, the child cannot fully exercise those rights in practice because legal assistance is a new phenomenon in Laos. Most children as well as parents are not aware of this right. Taking into account that the legal aid service has only been recently established, that there are not enough lawyers and that the legal aid clinics are located in only main provinces, the coverage of legal aid remains limited, particularly for children in rural and remote areas.

Counselling Centre and Social Workers: Presently, there is only one public counselling centre to offer support for women and child victims: the Centre for Counselling and Protection of Women and Children. There are a few temporary houses for human trafficking victims by INGOs. Unfortunately, specific counselling centres for juveniles in conflict with the law have not yet been established and there is a lack of qualified social workers.

Separation from adults: Child offenders are held together with adults and subjected to the same treatment. This does not adhere to international standards which have been issued to protect children from the exploitation and negative influences by the adults. Furthermore, juvenile offenders shall receive specific confinement, including privacy, access to medical treatment, adequate nutrition, clothing and availability of educational and creational activities, contact with family and preparation for release.²³¹ The actual treatment programme focuses on re-education, which emphasise reconstructing the ideology of state policies and legislation and might not be adequate to prevent the juvenile from recidivism.

5. Summary and Statistics

In Lao PDR, a person is deemed to be an adult when she or he has reached the age of 18 years according to the constitution and the Law on Protection of the Rights and Interests of Children and the Law on Juvenile Criminal Procedure. However, a person who has reached the age of 15 is criminally responsible and may receive a prison sentence even though the child still has to be placed separately from an adult.

231 UNICEF, *Innocenti Digest Juvenile Justice* (UNICEF) pp.12-13

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Laos

Name of Law	Date of Adoption	Date of Entry Into Force
Penal Law (Amendment) No. 12/NA	9 May 2005	9 November 2005
Law on Criminal Procedure No. 17	10 July 2012	1 August 2012
Law on the Protection of the Rights and Interests of Children No. 05	27 December 2006	16 January 2007
Law on Juvenile Criminal Procedure No. 41	20 December 2013	20 December 2013

Table 2. Total Number of Juvenile Cases Divided by Type of Crime

Type of crimes	2011	2012	2013
Homicide	5	8	10
Assaults, robbery, kidnapping	12	23	17
Sexual violence,	7	10	7
Theft, motor vehicle theft, burglary	33	52	89
Drug-related crime	16	45	63
Other	24	32	60
Total	97	170	246

Chapter VI.

The State of Juvenile Justice in Malaysia

Shelley Casey

1. Legislative Framework for Juveniles in Conflict with the Law

The Constitution of Malaysia guarantees everyone, including children, equality before the law and freedom from arbitrary arrest and detention.²³² Children in conflict with the law are also entitled to additional rights and protections under the Child Act 2001,²³³ which stipulates special procedures for dealing with children's cases at all stages of the criminal justice process and defines the roles and responsibilities of various institutions handling juvenile offenders. A child who is arrested, detained and tried for any offence (subject to certain specified limitations) must be handled in accordance with the provisions of the Child Act, rather than the normal criminal procedures applicable to adults.²³⁴ Where the Child Act does not address a specific issue, reference may be made to the standard procedures under the Criminal Procedure Code.²³⁵

The minimum age of criminal responsibility in Malaysia is 10.²³⁶ A *doli incapax* provision is also applied, which states that children aged 10 to under 12 are not criminally responsible if “the child has insufficient maturity to understand and judge the nature and consequences of his/her conduct”.²³⁷ Special juvenile justice protections generally apply to all children under the age of 18. However, the full protections under the Child Act do not apply to children who turn 18 before they are formally charged or while the proceedings are on-going,²³⁸ children co-ac-cused with an adult,²³⁹ and children charged with offences punishable by death (including murder, certain terrorism offences, hostage taking, waging war, gang

232 Constitution of Malaysia, 1957, Part II Fundamental Liberties

233 Child Act, 2001(Act No. 611 of 2001).

234 Child Act, s. 83(1).

235 Child Act, ss.11(6) and 83(1).

236 Penal Code (Act No. 574 of 1997), s. 82.

237 Penal Code, s. 83.

238 Pursuant to s. 83(2) of the Act, if a child turns 18 while the proceedings are on-going, the Court for Children must continue to hear the case, but has discretion to apply the special dispositions available for children or impose an adult term of imprisonment. Section 83(3): If a child commits an offence while s/he is under 18 but turns 18 before being formally charged, the trial is heard by the adult criminal court and the court may choose to apply the special dispositions available for children or impose an adult term of imprisonment.

239 Section 83(4) the trial will be heard in the adult criminal court, rather than the Court for Children.

robbery with murder, drug trafficking, etc.).²⁴⁰

The Child Act also includes provisions for certain status offences, including being “beyond control”.²⁴¹ Although not classified as offenders, these children are nonetheless subject to similar treatment as children who commit crimes, including temporary detention and the possibility of being deprived of their liberty in a social welfare institution for up to three years.

The Child Act has limited provisions with respect to arrest and investigation of children.²⁴² It requires police to inform a probation officer and the child’s parent or guardian immediately after the arrest, and states that a copy of the charge must be sent to the probation officer to facilitate the preparation of a probation report.²⁴³ However, there is no requirement to have a probation officer, parent, or other support person present while a child is being questioned by the police. Police power to arrest without warrant is quite broad, including the arrest of “any person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself”. If a person forcibly resists arrests or tries to escape, the police may use all means necessary to affect the arrest.²⁴⁴ These legal provisions apply equally to both children and adults and there are no special provisions in law restricting the use of formal arrest or force when handling children.

If a child is held in police custody, appropriate arrangements must be made to prevent the child from coming into contact with adult offenders, and to protect the child’s privacy from the media.²⁴⁵ The Act requires that the child be brought before the court within 24 hours and creates a presumption in favour of pre-trial release. The court must release the child on a bond executed by his/her parents (with or without requiring a cash deposit) unless: a) the child is charged with one of the listed grave crimes;²⁴⁶ b) it is necessary in the best interests of the child to remove him/her from association with any undesirable person; or c) the court has reason to believe that the release of the child would defeat the ends of justice.²⁴⁷ Children who are not released on bail are remanded pending their trial to a “place of detention” appointed and gazetted by the Ministry.²⁴⁸ There is no statutory limit on the length of time a child can be held on remand while waiting for trial.

The Child Act does not include any specific provisions with respect to pre-trial diversion of children. Under the Federal Constitution²⁴⁹ and the Criminal

240 Section 11 (5) these crimes are outside the jurisdiction of the Court for Children.

241 Section 46.

242 F.N. Dusuki, ‘The UN Convention on the Rights of the Child and the Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia’, 1 *Asia Law Quarterly* (2008), at p. 149.

243 Section 87.

244 Police Act 1967 (Act344), s. 27.

245 Child Act, s. 85.

246 Child Act, s. 2(1) defines this as murder, culpable homicide, attempted murder, an offence under the Firearms (Increased Penalties) Act, 197, an offence under the Dangerous Drugs Act 1952 punishable with imprisonment for more than five years or with death, and an offence under the Kidnapping Act 1961.

247 Child Act, s. 84.

248 Child Act, s. 58.

249 Article 145(3).

Procedure Code,²⁵⁰ the public prosecutor has the power, exercisable at his/her discretion, to institute or discontinue criminal proceedings, which could be used as the basis for diversion.

The Child Act states in general terms that children have the right to be legally represented for the purposes of preparing and presenting their defence, and that, where a child is not legally represented, his/her parents, guardian, relative, or responsible person may assist him or her in the case.²⁵¹ However, it is not mandatory to have a lawyer or legal representative present during police questioning, and the court is not required to appoint a lawyer for any child who comes before the court unrepresented.

The Child Act calls for the establishment of the Court for Children, presided over by a Magistrate and two lay Court Advisors, one of whom must be a woman. The Court has jurisdiction to hear all cases of children in conflict with the law and children in need of protection, except for children accused of crimes that are punishable by death, where the child is co-accused with an adult, or where the child has turned 18 before being formally charged.²⁵² The Court for Children must, if practicable, sit either in a different building or room, or on different days, than the normal Magistrate's Court.²⁵³ Arrangements must be made to prevent children from coming into contact with adult offenders when they are being transported to and from the court or while waiting at the courthouse, as well as to prevent the child being filmed or photographed.²⁵⁴ Proceedings of the Court for Children are closed to everyone except members and officers of the Court, children and their parents, guardians, advocates, witnesses, and other persons directly concerned with the case.²⁵⁵ The Court must require the child's parents or guardian to attend all the stages of the proceedings, unless it is unreasonable to do so or not in the best interest of the child.²⁵⁶

Whenever a child is brought before the Court for Children, the court is required to explain the substance of the alleged offence in simple language suitable to the child's, age, maturity and understanding. Before accepting a guilty plea, the court must ensure that the child understands the nature and consequences of the admission. Where the child pleads not guilty, the child has the right to present evidence and cross-examine witness, with the assistance of the court if s/he is unrepresented. At the conclusion of all of the evidence the court must explain the substance of the evidence to the child, and give him/her an opportunity to make a statement.²⁵⁷

If the child is found guilty, the Court for Children must consider a probation report (social inquiry report) before deciding what order to impose. The report must contain information with respect to the child's general conduct, home surround-

250 Sections 376(1) and 254.

251 Section 90(7).

252 Sections 11, 83.

253 Section 12(1).

254 Section 85.

255 Section 12(3).

256 Sections 88, 89.

257 Child Act, s. 90(1) to (9).

ings, school record, and medical history.²⁵⁸ The Court for Children may impose the following orders:²⁵⁹ admonish and discharge; good behaviour bond; custody of fit person; fine, compensation or costs; probation order for between 12 months and three years, which may include placement in a probation hostel for up to 12 months;²⁶⁰ committal to an Approved School for a fixed period of three years;²⁶¹ committal to a Henry Gurney School for a period of three years or until the child reaches the age of 21 (whichever is first);²⁶² whipping with not more than ten strokes of a light cane, applicable only to boys; and imprisonment for any term which could be awarded by a Sessions Court.²⁶³ Children charged with grave crimes and those who turn 18 before being formally charged or during the course of the proceedings may be subject to any period of imprisonment applicable to adults. However, the death sentence may not be imposed on any person under the age of 18 at the time of the offence. In lieu of the death sentence, children may be sentenced to indefinite imprisonment “at the pleasure” of the Yang di-Pertuan Agong.²⁶⁴

The Child Act does not include guiding principles for sentencing, and there is no explicit requirement that the best interest of the child be a paramount consideration or that deprivation of liberty be used as a last resort. However, the Act does have some restrictions on institutional placements. Imprisonment can only be imposed on children over the age of 14 years, and must not be ordered if the child “can be suitably dealt with in any other way.”²⁶⁵ Orders committing a child to a Henry Gurney School or prison can only be imposed on children 14 years or older who are found guilty of an offence punishable with imprisonment, who are habitually in the company of persons of bad character and are not suitable to be rehabilitated in an approved school, and if the court is of the view that the offence committed is serious in nature and “by reason of the nature of the child’s criminal habits and tendencies it is expedient that the child be subject to detention.”²⁶⁶ Approved School order can only be used if the offence is “not serious in nature” and if the child’s parents or guardian can no longer exercise proper control and the court believes the child is in need of institutional rehabilitation.²⁶⁷ However, probation orders are not available for children who have committed specified grave crimes,²⁶⁸ voluntarily causing grievous hurt, rape, incest, outraging modesty, and other “unnatural offences” under the Penal Code.²⁶⁹

258 Section 90 (12) and (13).

259 Child Act, s. 91.

260 Section 98(3) and (6).

261 Section 67(2).

262 Section 74.

263 Section 75.

264 Section 97. The Board of Visiting Justices for the prison where the child is being held must review the case at least once per year and make recommendations regarding his/her release or continued detention.

265 Section 96.

266 Section 74.

267 Section 67.

268 Murder, offences under the Firearms (Increased Penalties) Act, the Kidnapping Act, and certain offences under the Dangerous Drugs Act.

269 Section 98(1).

The Child Act does not require all children subject to custodial orders be subject to periodic review at set intervals, but some provision is made for early release. Children in Approved Schools may be released early by the Board of Visitors after serving at least one year.²⁷⁰ However, the person in charge of the approved school may also extend the child's detention by an additional six months, with the approval of the Board of Visitors, if they are of the view that the child needs additional care and training, without which s/he will not be able to find a suitable job.²⁷¹ Children in Henry Gurney Schools may be released early by the Director General of Prisons after serving at least 12 months.²⁷² Children released from approved schools (but not prison facilities) are provided 12 months aftercare under the supervision of a probation officer.²⁷³

2. Institutional Framework for Juveniles in Conflict with the Law

2.1. Policing and Investigation of Criminal Activities

Malaysia has not yet developed a comprehensive, specialised police response to children in conflict with the law. The Royal Malaysia Police has established a Sexual and Children Investigation Division (D11), but its mandate relates only to cases involving child victims of crime, not child offenders. Responsibility for investigating children alleged to have committed a crime depends on the type of offence involved and is spread across various specialist police departments (e.g. the narcotics department, the traffic branch, and the criminal investigation department).²⁷⁴ Concerns have been expressed about the treatment of children by the police, including inappropriate use of force and handcuffs and over-reliance on confession-based investigation.²⁷⁵

When a child is arrested, the police must either release the child on bail, or bring him/her before a magistrate within 24 hours.²⁷⁶ As a general rule, investigations must be completed within that initial 24 hour period.²⁷⁷ If the investigation is not completed within that time period, the police must bring the person before

270 Section 67 (3) and (4).

271 Sections 69.

272 Section 74.

273 Section 70.

274 UNICEF Malaysia and Ministry of Women, Family and Community Development, *The Malaysian Juvenile Justice System: A Study of Mechanisms for Handling Children in Conflict with the Law*, 2013, at p.35.

275 Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police, 2005; F.N. Dusuki, 'The UN Convention on the Rights of the Child and the Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia', 1 *Asia Law Quarterly* (2008), at p. 148.; N. Ahmad, 'The Unheard Voices of Child Offenders: Time for Reform for the Youth Justice System in Malaysia?', presented at 6th world Congress on Family Law and Child Rights, Sydney, Australia, 2013, available at: <http://www.lawrights.asn.au/6th-world-congress/papers.html>; at pp. 3-4; SUHAKAM Annual Report 2008.

276 Criminal Procedure Code, s. 28.

277 Criminal Procedure Code, s. 28, 29.

a magistrate for a decision as to whether to extend the period of police custody, or release the person on bail. The Child Act does not include specific provisions with respect to the length of time that children may be held in police custody for investigation, and the law has been interpreted to mean that the normal provisions under the Criminal Procedure Code and other laws apply equally to children.²⁷⁸ Under the Criminal Procedure Code, the police may hold a person for investigation of a criminal offence for up to seven days if the offence is punishable with imprisonment for less than 14 years (four days for the first detention and three days for the second detention, with the requirement that a Magistrate review the case and decide whether the second period is warranted). For more serious offences, the maximum period is seven days for the first detention and seven days for the second detention.²⁷⁹ Persons arrested for drug offences may be detained in police lock-ups for up to 60 days at the discretion of the police, without Court oversight.²⁸⁰ The Securities Offences (Special Measures) Act 2012 also allows a person to be detained by police for up to 28 days for the purposes of investigation, without Court oversight.²⁸¹

Children who are detained at a police station must be prevented from coming into contact with adult offenders.²⁸² Specialised juvenile lock-ups have been established in some cities, but there is generally a shortage of specialised facilities. Where there is no separate juvenile lock-up, boys are placed in a separate cell from adults, but girls are detained with adult women due to lack of facilities.²⁸³ Concerns have been raised about conditions in police lock-ups, in particular with respect to overcrowding, sanitary conditions, the poor quality of food, lack of privacy in toilets and showers, inadequate sleeping arrangements, lack of clothing and other necessities, and the lack of stimulation and fresh air for children in police custody for longer periods.²⁸⁴

Once the investigation is complete, children who are formally charged are either released on bail or remanded into custody pending their trial. Decisions about bail are generally made by the regular Magistrate Court, rather than the specialised Court for Children. To be released on bail, children require a parent or relative to sign a bond and deposit a cash amount with the Court as security. Concerns have been raised that a high number of children are held in remand for minor offence because of parents' inability or unwilling to pay the bail amount.²⁸⁵

278 *Public Prosecutor v. N(A Child)*, [2004] 2 MLJ 299; Dusuki, *supra* note 275, at p. 150; N. Ahmad, 'The Administration of Juvenile Justice System in Malaysia: Moving Towards Restorative Justice Process?', 6: 1 *Jurnal Intelek* (2011), at p. 3.

279 Criminal Procedure Code, s. 117.

280 Dangerous Drugs (Special Preventative Measures) Act 1985, s.3.

281 Act 747 of 2012, s. 4.

282 Child Act, s. 85.

283 UNICEF, *supra* note 274, at p.36.

284 UNICEF, *supra* note 274, at pp. 36-37; *Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police*, 2005; SUHAKAM *Law Reform Report: Rights of Remand Prisoners*, 2001.

285 UNICEF, *supra* note 274, at pp. 43-44; Ahmad, *supra* note 275, at pp 5-6.

Children who are remanded may be placed in the custody of either the Ministry of Women, Family and Community Development, Jabatan Kebajikan Masyarakat (Department of Social Welfare) or the Prisons Department. Jabatan Kebajikan Masyarakat (JKM) operates 10 Asrama Akhlak (probation hostels) and nine Sekolah Tunas Bakti (approved schools) that are used for remanded children, convicted children and children found to be “beyond control”. The Prisons Department operates three Henry Gurney Schools, one fully separate Juvenile Correctional Centre and five Juvenile Correctional Centres co-located with adults prisons which are used for both remanded and convicted children.²⁸⁶ Children and young persons (defined as a person under the age of 21) are required to be separated from adults in all Prisons Department facilities, however a recent survey has found that this protection is not being consistently applied.²⁸⁷ In JKM facilities, children under remand are generally kept separate from convicted children, however in Prisons Department facilities there is no separation between convicted children and children on remand.

Malaysia currently has both government-funded Legal Aid Bureau²⁸⁸ and private, pro-bono legal aid services available through the Bar Council Legal Aid Centres. Both give attention and priority to providing legal assistance to children in conflict with the law. The Legal Aid Bureau has 22 branches nationwide staffed by legal and paralegal officers. However, the overall capacity and coverage of legal aid services is currently limited due to shortage of resources and lack of specialised training on handling children’s cases.²⁸⁹

2.2. Diversion

Malaysia does not currently have formal diversion programmes or processes.²⁹⁰ However, the police reportedly do exercise some charging discretion in very minor cases. For example, in cases of traffic violations, minor shoplifting or fighting between two children, the police will sometimes simply warn the child or try to mediate an amicable resolution between the parties. This practice is reportedly not widely used or actively encouraged and no records are kept of these types of resolutions.²⁹¹

Similarly, the Public Prosecutor has broad discretion under the Criminal Procedure Code to decide whether to institute, conduct, or discontinue any proceedings for an offence, and can dismiss a case at any point prior to the court

286 UNICEF, *supra* note 274, at p.45; International Centre for Law and Legal Studies (I-CeLLS), Justice Audit Malaysia, 2012, available at: http://malaysia.justicemapping.org/?page_id=34, accessed on 30 September, 2014.

287 Ahmad, *supra* note 275, at p. 5

288 Legal Aid Act 1971 (Act 26), Second Schedule.

289 UNICEF, *supra* note 274, at pp. 58-59.

290 N. M. Naziri, ‘Report on Diversion: Opportunities and Challenges in Malaysia’, unpublished report for UNICEF and Jabatan Kebajikan Masyarakat Malaysia, May 2013; N. Ahmad, *supra* note 275, at pp. 5-6.

291 UNICEF, *supra* note 274, at p. 52.

making a ruling.²⁹² In minor cases such as shoplifting or fighting that causes no injuries, if the deputy public prosecutor believes that it is not necessary to prosecute, he or she can send the investigation papers to the head of the department for review. If, after reviewing the file, it is decided that no further action should be taken, the child will not be charged. In addition, if it is considered in the best interests of the child, the prosecutor can advise the investigating officer to refer the child to JKM for further action. However, this discretion to withdraw a charge is reportedly used quite sparingly, and generally only in cases where there is insufficient evidence to prove the offence.²⁹³

2.3. Adjudicating and Sentencing

Malaysia has two dedicated Court for Children in Kuala Lumpur and Shah Alam.²⁹⁴ In other districts, children's cases are heard separately by a magistrate sitting as the Court for Children on specific day(s) of the week. The Magistrates Court has a computerised system for registering and tracking all cases filed with the court and there is a separate "code" for children's cases that allows them to be tracked and scheduled appropriately.²⁹⁵ Magistrates sitting as the Court for Children are assisted by a court clerk, who also acts as interpreter, and two Court Advisors. Court Advisors are appointed by the Prime Minister's Office, and most are retired social workers, probation officers, or teachers. Their main function is to advise the magistrate with respect to sentencing and to give advice to parents.²⁹⁶

Court for Children proceedings are generally conducted in a regular courtroom, in the same building as court hearings involving adult offenders. The courtrooms used to hear children's cases, including the full-time court in Kuala Lumpur, are physically the same as the regular Magistrates Court. In some jurisdictions, magistrates try to reduce the formality and intimidation of the courtroom by re-arranging seating, or by conducting guilty pleas more informally in their chambers. However, these practices are at the discretion of the magistrate and there is no standardised practice or directive in this regard.²⁹⁷

There is no statutory limit for completion of cases before the Court for Children, however a Practice Directive issued by the Chief Justice instructs all magistrates to ensure that children's cases are completed within three to six months.²⁹⁸ The majority of children's cases are completed within six months and backlogs and delays in the Court for Children are significantly less than in the regular criminal courts. However, there are a significant number of cases where proceedings stretch on for up to or in excess of 12 months.²⁹⁹ In its Concluding Observa-

292 Criminal Procedure Code, s. 376(t) and 254.

293 Naziri, *supra* note 290; UNICEF, *supra* note 274, at pp. 52-53; SUHAKAM *Fair Trial Forum*, 2005.

294 I-CELLS, *supra* note 286; Discussions with UNICEF-Malaysia child justice specialist.

295 UNICEF, *supra* note 274, at p.64.

296 Child Act, s.11(4).

297 Dusuki, *supra* note 275, at p. 151; UNICEF report, *supra* note 274, at pp. 64-65.

298 Chief Registrar Circular No 2, Year 2002 dated 26 July 2002 – Child on Remand.

299 UNICEF, *supra* note 274, at p.67.

tions to Malaysia's Country Report under the CRC, the UN Committee on the Rights of the Child expressed its concern at long pre-trial detention periods and delays in dealing with cases involving children.³⁰⁰

As noted above, there is a range of custodial and non-custodial dispositions that the court may impose on children who have been found guilty of an offence. A review of Court for Children data between 2003 and 2009 found that the most common order imposed by the Court for Children is a bond of good behaviour, used in 55 per cent of all cases. In general, the courts favoured non-custodial options, with 77 per cent of children being subject to alternatives such as admonishment, bond of good behaviour, care to a parent or fit person, and fines. Imprisonment was used quite sparingly, in only 5 per cent of cases, however other custodial orders (probation hotels and approved schools) were used more frequently (18 per cent of cases) and often for minor offences such as theft. Whipping was imposed on 21 children between 2003 and 2009. Most of the children subject to custodial orders remain for the full fixed term of 12 months in the case of a Probation Hostel order and three years for approved school and Henry Gurney School orders.³⁰¹

The review process for children who are detained indefinitely at the pleasure of the Ruler is reportedly not functioning regularly.³⁰² The use of indeterminate sentences against children was challenged as being unconstitutional, however the practice was upheld by the Federal Court.³⁰³ In its Concluding Observations to Malaysia's Country Report, the UN Committee on the Rights of the Child expressed concern at the deprivation of liberty at the pleasure of the Ruler, which causes problems in terms of the development of the child, including her/his recovery and social reintegration.³⁰⁴

2.4. Treatment of Convicted Juveniles

2.4.1. Residential

Malaysia has a range of residential centres for children under the Social Welfare Department (JKM) of the Ministry of Women, Family and Community Development, and under the Prisons Department of the Ministry of Home Affairs.

300 UN Committee on the Rights of the Child Concluding Observations: Malaysia, CRC/C/MYS/CO/1, 25 June 2007.

301 UNICEF, *supra* note 274, at p. 81.

302 Dusuki, *supra* note 11; UNICEF, *supra* note 275, at p.85-86 .

303 *KWK (A Child) v. PP.*, November 2009

304 UN Committee on the Rights of the Child Concluding Observations: Malaysia, CRC/C/MYS/CO/1, 25 June 2007.

Social Welfare Department (JKM) Institutions

JKM operates 10 Asrama Akhlak (probation hostels)³⁰⁵ for child offenders subject to probation combined with a 12-month custodial order. They are also used for children under remand, children in transit to an STB and children who are “beyond control”. Asrama Akhlaks generally have a capacity of between 50 and 80 children. They have a daily schedule of activities which generally includes marching drills, time for education or training, religious instruction, sports and recreation, and free leisure time. Children who were in school prior to being placed in the Asrama Akhlaks may be permitted to continue their education outside the institution. However, the number of children who benefit from this is generally quite small (one or two per institution). Those who are not enrolled in formal schooling are provided basic instruction in reading and writing and some vocational training. Training facilities are generally quite limited and primarily focusing on basic, practical skills such as haircutting, gardening and landscaping, fish rearing, cooking, and music classes. The institutions also organise regular community outings to movies, sports centres, sporting competitions, etc.³⁰⁶

JKM also operates nine Sekolah Tunas Bakti³⁰⁷ (approved schools) for child offenders, children who are beyond control, and some children on remand, six for boys and three for girls. The Child Act states that their purpose is education, training and detention of children.³⁰⁸ STBs are generally large-scale facilities with a capacity of between 100 to 200 children. A 2011 assessment found that the STBs in Pahang and Kuala Lumpur were operating over capacity.³⁰⁹

As with Asrama Akhlaks, children in STBs follow a structured daily programme of regular roll calls and marching drills, education and vocational training, religious instruction, and recreation or leisure time. Some STBs offer formalised schooling taught by qualified teachers seconded from the Ministry of Education and follow the same curriculum as State schools. Children sit the public exams as independent candidates so there is no record of them having been in an institution. Basic literacy and numeracy classes are also available. Children beyond the level of schooling available in the institution may be permitted to attend local community schools, though the number of children who do so is generally quite small. For children not participating in formal education, STBs offer a range of vocational training programmes, including gardening, fish rearing, motor mechanics, furniture making, welding, plumbing, construction, and electrical wiring for boys, and sewing, cooking, and batik for girls. The training programmes are relatively informal and not certificate-based.³¹⁰

JKM institutions have a mix of staff, including welfare assistants, religious instructors, temporary teachers, security guards, and other support staff. The level of security is relatively low; whilst the institutions are contained within a

305 Department of Statistics Malaysia, *Social Statistical Bulletin*, 2013, at p. 109.

306 UNICEF, *supra* note 274, at pp. 104-105.

307 Department of Statistics Malaysia, *Social Statistical Bulletin*, 2013, at p. 109.

308 Section 65.

309 I-Cells, *supra* note 286.

310 UNICEF, *supra* note 274, at pp. 107-109.

perimeter fence, children are generally free to wander the grounds during the day. Children who attend public schools are permitted to leave daily, whilst other children go out only for organised group outings. Sleeping arrangements are generally group dorm style but with security bars on doors and windows. The policy on family visits is quite liberal and parents are encouraged to visit and stay in contact with their child. Children are permitted regular home leave from between five to 10 days per year, but this is only available to convicted children who have been in the institution for at least 12 months.³¹¹

The approach to rehabilitation in JKM institutions is generally centred around discipline, religious instruction and vocational training, with some individual counselling if the child is experiencing personal difficulties. In general, all children in a particular STB or Asrama Akhlak follow the same generic programme, with no individualised approach to treatment or rehabilitation. Most STBs have a full-time counsellor on staff, while Asrama Akhlaks rely on visits from the district counsellor.³¹²

Prisons Department Institutions

The Prisons Department operates two levels of institutions for child offenders: Henry Gurney Schools and Juvenile Correctional Centres.

Malaysia has three Henry Gurney Schools, one for both boys and girls, one for girls only, and one for boys only. The schools receive children and young offenders between the ages of 14 to 21, including both convicted and remanded children. Each has capacity for approximately 300 students.³¹³ Henry Gurney Schools operate with a more strict security regime than JKM facilities; the institution grounds are generally quite spacious, but the compound is surrounded by high security fencing and guarded by armed prison personnel. Sleeping quarters are dormitory-style, with children divided into different “houses”, each supervised by a house master.³¹⁴

Henry Gurney Schools were designed on the British borstal model. They apply a structured “Putra model” of integrated rehabilitation, which involves four phases: 1. Orientation and Discipline Building (2 months); 2. Character Reinforcement (6-12 months): group counselling session, moral and civic education, religious talks, and academic instruction; 3. Skills Building (6-12 months): For boys, this includes a range of certificate-based vocational training programmes such as welding, tailoring, electrical, plumbing, construction, landscaping, as well as non-certificate programmes in laundry, carpentry and cooking. For girls, there are courses in landscaping, cooking, tailoring, and batik. Spiritual, counselling and sporting activities are continued through this phase as well. 4. Community Programme (6 months): Children are prepared for reintegration by engaging in community volunteer work outside the institution, as well as indi-

311 *Ibid*, at p.109.

312 *Ibid*.

313 I-Cells, *supra* note 286

314 UNICEF, *supra* note 274, at p. 111; Henry Gurney School Regulations 1949 (L.N. 616 of 1949).

vidual and family counselling.³¹⁵

The Prisons Department also operates six Juvenile Correctional Centres for boys between the ages of 14 and under 21. The centre in Sungai Petani is a stand-alone facility, whilst the others are co-located with adult prisons. Co-located facilities are fully separate from adult facilities, with their own programmes for young prisoners.³¹⁶ In the dormitories, boys under 18 are separated from those who are 18 to 21, but remanded and convicted prisoners are mixed. There are no special prison facilities for girls. Girls are detained together with adult women in specialised women's prisons, however they are reportedly kept separated.³¹⁷

Juvenile Correctional Centres are high-security facilities that operate in accordance with the standard prison regime. The Prison Act, 1995 requires that young offenders be separated from adults "so far as local conditions permit", but does not make any other special provision for the care and treatment of children.³¹⁸ Children participate in religious classes and self-development courses in accordance with the standard modules developed for adult prisoners, however there is generally no individualised approach to rehabilitation. The Juvenile Correctional Centre in Sungai Petani has vocational training programmes in tailoring, welding, carpentry and air conditioner repair, but the other juvenile centres do not have vocational training facilities.³¹⁹

Through a collaboration between the Prisons Department and the Ministry of Education, an "integrity school" programme has been introduced in all six juvenile correctional facilities and Henry Gurney Schools. Under the programme, qualified teachers have been appointed by the Ministry of Education to provide formal curriculum instruction in Forms three through six, as well as non-formal literacy and numeracy classes. The Ministry of Education fully funds the appointment of qualified teachers and provides textbooks and other teaching materials. Students who complete their education are encouraged to continue their studies at the tertiary level through distance learning.³²⁰

Both Henry Gurney Schools and Juvenile Correctional Centres are staffed by prison personnel who rotate between juvenile and adult facilities. All staff undergoes general training through the Correctional Academy, but do not receive any specific instruction on the Putra model or in handling young prisoners.³²¹

2.4.2. Non-residential

Primary responsibility for community-based supervision, rehabilitation and reintegration programmes for convicted children rests with the Children's Division of JKM. JKM has a cadre of district-level probation officers who

315 UNICEF, *supra* note 274, at p.111.

316 I-Cells, *supra* note 286; UNICEF, *supra* note 43, at p. 112.

317 UNICEF, *supra* note 274, at p. 112-113

318 Act 537 of 1995, s. 49(3).

319 UNICEF, *supra* note 274, at p.115

320 UNICEF Malaysia, Access to Education for Persons in Detention in Malaysia, 2009; UNICEF, *supra* note 274, at p. 114-115.

321 UNICEF, *supra* note 274, at pp.113-114.

provide supervision and support to children subject to a community-based order (bond of good behaviour, probation order) and also those released from a JKM institution.³²² They are supported by professional staff counsellors. Voluntary Child Welfare Committees have also been established at the district level to assist probation officers and oversee the welfare of children in conflict with the law.³²³

Children who are placed under the supervision of a probation officer are generally required to attend the probation office once per month, accompanied by a parent. These meetings last approximately 15 minutes and are used as an opportunity to provide the child and parent with guidance and advice. Due to limited staff and resources, probation officers generally have limited ability to provide individual guidance and support to children.³²⁴

The primary community-based rehabilitation programme available for child offenders is the “interactive workshop”. The interactive workshop programme, operated by JKM district counsellors, involves individual and family counselling, parenting workshops and a family camp. The main objective of the programmes is to strengthen parenting skills and improve the parent-child relationship. All child offenders and their parents who have been ordered by the Court to participate in the programme first undergo an assessment process. Standardised case management forms have been developed to record the intake interview, assessment, interventions, and family progress.³²⁵ Follow-up generally involves a series of family counselling sessions, referral of the parents to a parenting session, motivational sessions on topics such stress management, civics and anger management, and participation of the parent and child in a family retreat.

3. Reform Initiatives

Malaysia’s National Policy and Plan of Action for Children, 2009 outlines a number of priority areas for action to reform the juvenile justice system, including the following:

- Create a child-friendly environment in all criminal justice system agencies as well as provide support services to child witnesses and offenders in each court;
- Provide legal aid services as well as counselling to children free of charge as far as possible;
- Develop special rehabilitative treatment programmes for child offenders;
- Introduce diversion programmes (restorative justice, family conferencing, community service) for children involved in criminal cases.
- Develop standard and appropriate child protection training modules for all those working directly with children.

322 I-Cells, *supra* note 286; UNICEF *supra* note 274, at p.93.

323 Child Act, s.2(i); Juvenile Welfare Committee (Constitution and Responsibilities) Regulation, 1976

324 UNICEF, *supra* note 274, at p. 94.

325 Jabatan Kebajikan Masyarakat, Standard Operational Procedure of Interactive Workshop, 2009.

With the support of UNICEF, the Ministry of Women, Family and Community Development is currently in the process of developing a diversion model for children in conflict with the law. An inter-agency task force has been exploring international models and approaches to diversion, as well as the legal basis for diverting children under existing national laws. The diversion model will be piloted in one or more locations and then gradually rolled out.³²⁶

The Ministry is also in the process of revising the Child Act, 2001. A comprehensive new draft Bill has been prepared and is undergoing internal review. It is not yet available for public comment.³²⁷

Malaysia's Judicial Services and the Judicial and Legal Training Institute have also taken steps to strengthen in-service training on children in conflict with the law. With the support of Voice of the Children and UNICEF, judges, magistrates and other legal officers will have improved access to specialised training on handling children in conflict with the law.³²⁸ The Bar Council is also in the process of developing ethical guidelines and a training programme on representing children, including child offenders.³²⁹

4. Main Challenges to the System

Malaysia has made significant progress in establishing a separate and distinct system of juvenile justice. However, a number of challenges remain:

Gaps in the legal framework: The Child Act, 2001 (currently under review) outlines a separate and distinct approach for handling children in conflict with the law. However, the minimum age of criminal responsibility is low by international standards, and protections do not apply equally to all children under the age of 18 at the time the alleged offence was committed. There are limited special provisions with respect to arrest and investigative procedures and no provision for diversion. Clearer restrictions are needed on the use of police custody and pre-trial detention, and on the maximum timeframe for final adjudication, particularly where the child is on remand. Sentencing provisions do not fully accord with the CRC principles of proportionality and deprivation of liberty as a last resort, and allow for corporal punishment, life imprisonment and indefinite detention.

No Diversion Programmes: Malaysia's approach to juvenile justice is grounded in formal Court-based interventions and institution-based rehabilitation. Diversion and restorative justice approach have yet to be introduced. A recent assessment found that 80 per cent of children's cases are resolved by guilty plea,

326 Discussions with UNICEF-Malaysia child justice specialist

327 *Ibid.*

328 Country Programme Action Plan 2011 - 2015 between the Government of Malaysia and United Nations Children's Fund, 2010; Discussions with UNICEF-Malaysia child justice specialist; Voice of the Children website, <http://voc.org.my/blog/blog/2014/09/10/legal-training-magistrates/>, accessed 30 September, 2014.

329 Discussions with UNICEF-Malaysia child justice specialist

and most children appearing before the court are charged with relatively minor offences such as theft.³³⁰ These cases could be handled more effectively, and cost-efficiently, through diversion, thereby reducing court backlogs.

Penalisation of Children for Status Offences: Provisions under the Child Act allowing children to be detained for being “beyond control” are regularly used to respond to children committing status offences such as running away from home, engaging in sexual behaviour, substance abuse, and being repeatedly disobedient to parents. Although not classified as offenders, these children are nonetheless subject to similar treatment as children who commit crimes, including temporary detention and the possibility of being deprived of their liberty in a social welfare institution for up to three years. Girls are more often targeted under these provisions due to the perceived need to control their behaviour and sexuality and because they represent a higher proportion of runaways.³³¹

Limited Police Specialisation: Malaysia does not have a comprehensive, specialised police response to children in conflict with the law. While the Child Act includes some provisions on the arrest of children, it provides limited guidance with respect to issues such as alternatives to arrest, restrictions on use of force or restraints, duration and conditions in police custody, and the presence of a parent, lawyer or other support person during investigative procedures. While the police are generally cognizant of the need to handle children’s cases more sensitively, they have not been provided the necessary skills, directives, facilities, and oversight to ensure that this happens in all cases. As a result, complaints of police abuse persist.³³²

Excessive Use and Duration of Pre-Trial Detention: Concerns have also been raised about the number of children on remand, often for minor offences such as theft, due to their inability to pay bail, lack of alternative programs available for supervising children whose parents are unwilling to pay the bail amount, and the absence of clear legislative restrictions on the use for remand especially for minor crimes.³³³ In most cases, children on remand have their cases dealt with within the maximum six-month time frame recommended by the UN Committee on the Rights of the Child. However, due to the lack of legislated standards and systemic monitoring practices, there are cases of children being held on remand for lengthy periods of times. Although children should be separated from adults, this is not consistently applied in practice.³³⁴

330 UNICEF, *supra* note 274, at p.67.

331 Child Rights Coalition Malaysia, *Status Report on Children’s Rights in Malaysia*, 2012, at p. 12; M.Z. Rashid, ‘Juvenile Justice in Malaysia: The Role of the Department of Social Welfare’, presented at SUHAKAM seminar on Human Rights and the Administration of Juvenile Justice, September 2008.

332 Ahmad, *supra* note 275, at pp. 3-4; UNICEF, *supra* note 274, at pp. 35-36.

333 UNICEF, *supra* note 274, at p. 45; Ahmad, *supra* note 275, at pp. 5-6.

334 Ahmad, *supra* note 275, at p. 5.

Inconsistent Sentencing Practices: The CRC principles of proportionality and institutionalisation as a last resort are not adhered to consistently, resulting in children being subjected to lengthy, fixed-term custodial orders, often for very petty crimes such as theft. Mechanisms designed to provide periodic review and early release are not functioning effectively.³³⁵ By international standards, Malaysia has limited sentencing options available, and children over the age of 14 who commit more serious offences are subject to adult terms of imprisonment.

Limited Rehabilitation Programmes: The Malaysian system remains largely oriented towards institution-based rehabilitation of child offenders, and existing rehabilitation programmes, both residential and non-residential, tend to be under-resourced and lacking in diversity. In institutional settings, the approach to rehabilitation is centred on discipline, vocational training and religious instruction, with limited individualised assessment or care planning. The large size of most institutions makes it difficult to provide individualised treatment and to foster trusting relationships between children and staff. In non-residential settings, the primary support provided to children is supervision and guidance by a probation officer. The only structured, community-based rehabilitation programme available for child offenders is the interactive workshop, which tends to be offered only on an ad hoc basis. Due to a shortage of staff, training and resources, probation officers and counsellors have limited ability to provide individual guidance and support to children under their supervision. The programme has been in operation for several years, but has yet to undergo a full evaluation of its impact and effectiveness.³³⁶

Lack of Systematic Collection, Sharing and Analysis of Data: Data on children in conflict with the law is not consistently disaggregated, collected and shared across agencies and analysed to inform policy and programme development. Justice sector data is generally considered sensitive and often not made publicly available.

5. Summary and Statistics

A person is legally regarded as an adult when she or he has reached the age of 18 according to Child Act 2011 Section 2 (1). While a child cannot receive a prison sentence unless they have reached the age of 14, children over the age of 10 are criminally responsible. However, the children over the age of 10 and under 12 are not criminally responsible if they have not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion. Malaysia does not currently use diversion. Police sometimes issue informal warnings for some minor offences, but no records are kept. There are 18 institutions used to deprive juveniles of their liberty as a form of disposition after

335 Child Rights Coalition Malaysia, *supra* note 100, at p. 28; UNICEF, *supra* note 43, at p.85-86.

336 Child Rights Coalition Malaysia, *supra* note 100, at p. 28.

a finding of guilt. Nine of them are operated by the Prisons Department. The remainder are closed institutions operated by the Department of Social Welfare.

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Malaysia

Name of Law	Date of Adoption	Date of Entry Into Force
Child Act 6111, 2001	15 February 2001	1 August 2002

Table 2. Data on the Number of Juveniles Convicted by type of Crime (2013)

Types	Cases
Property Crimes	2,621
Crimes Against Persons	906
Minor Offences Act	78
Violating Supervision	6
Drugs	968
Gambling	74
Weapons	104
Traffic	253
Escaping Custody	6
Other	568

Table 3. Number of Juveniles Currently in Detainment^{337 338 339}

Location	# of Juveniles
Probation Hostels (2013)	183
Approved Schools (2013)	1,010
Henry Gurney School (2011)	620
Juvenile Correctional Centres (2012) ³⁴⁰	5, 230
Adult Prisons	0

337 Department of Social Welfare, Laporan Statistik 2013, Bahagian C – Perkhidmatan Institusi/ Section C : Institution Services.

338 I-CeLLS, Justice Audit Malaysia, (malaysia.justicemapping.org/?page_id=34), visited 21 September, 2014.

339 Department of Statistics Malaysia, Social Statistical Bulletin, 2013, at p. 144

340 The Juvenile Correction Centre and Henry Gurney School data includes all “young offenders” under the age of 21. No separate data is available on children under 18 in institutions under the Prisons Department. It is not clear if this also includes young offenders on remand.

Chapter VII.

The State of Juvenile Justice in Myanmar

Charlotte Moreau

1. Legislative Framework for Juveniles in Conflict with the Law

In Myanmar, the formal Juvenile Justice System is defined by three main instruments: the Child Law (1993) the penal code (1860) and the Code of Criminal Procedure (1898), which are completed by punctual statutory laws. This legislative framework falls under the general umbrella of the Constitution (2008).

The Constitution of the Union of Myanmar, adopted on 29 May 2008, gives the Union a general responsibility to care for children,³⁴¹ who shall enjoy equal rights.³⁴² It enshrines three judicial principles: to administer justice independently, to dispense justice in open court unless and to guarantee in all cases the right of defense and the right of appeal.³⁴³ The Constitution also specifies that judicial power is shared among the Supreme Court (which is the highest court), High Courts and Courts of different levels and that Criminal Laws and Procedure shall be enacted by the Union Parliament (Pyidaungsu Hluttaw).³⁴⁴ Regarding criminal proceedings, it also guarantees non-retroactivity of the penal law and *non-bis in idem* principles, the right not to be penalized to a penalty greater than applicable, the right to receive a penalty that respects human dignity, the right of defense, and the right not to be held in custody for more than 24 hours without the remand of a competent magistrate.³⁴⁵ The Constitution does not guarantee the presumption of innocence,³⁴⁶ and apart from the right to life and personal freedom recognized to any *person*, its guarantees are applicable to *citizens* only. The laws define fundamental rights, and they can also restrict or revoke them, in order to maintain the discipline or to carry out peace and security. Finally, redress by due process of law

341 Constitution of the Republic of the Union of Myanmar, September 2008, section 32 (a).

342 Among those rights are the right of a *person* to life and personal freedom, and the rights of any *citizen* to equality, liberty and justice, the right not to be discriminated, the right to express, assemble and form associations, the right to freedom of conscience and religion, the right to cultivate culture and traditions, finally, the right to education, and health-care.

343 The Constitution, *supra* note 341, section 19, and section 375 (right of defense).

344 The Constitution, *supra* note 341, section 96 and point 11 (c) of Schedule One of the Union Legislative List.

345 The Constitution, *supra* note 341, sections 43, 44, 373, 374.

346 Although reference to this principle seems to exist as a legal maxim within Myanmar legal texts.

can also be denied in times of foreign invasion, insurrection or emergency.³⁴⁷

Myanmar became a State party to the United Nations Convention on the Rights of the Child (CRC) in 1991, and the Child Law (1993) was adopted by the State Law and Order Restoration Council in July 1993, in order to implement and protect the rights of the child recognized in the CRC. One of its main goals in particular is to enable “a separate trial of a juvenile offence and to carry out measures with the objective of reforming the character of the child who has committed an offence.”³⁴⁸

The Child Law is therefore the main instrument related to juvenile justice in Myanmar. In line with the CRC, it defines children as subject of rights³⁴⁹ and integrates international guiding principles, such as best interest of the child, non-discrimination, child participation and respect for their views in decision-making. It also introduces protective measures to preserve the child’s life, integrity and security. The Child Law is composed of 75 sections, of which 37 are specific provisions regarding investigations (chapter IX), trial (chapter X), detention and custody (Chapter XII, XIII, XIV and XVI) and probation (chapter XV). Chapter XVIII is dedicated to provisions applicable to youth. Finally, chapter XVII provides for a list of offenses committed against children and penalties. Pursuant to section 74 (a), the Ministry of Social Welfare, Relief and Resettlement promulgated the “Rules related to the Child Law” on 21 December 2001.³⁵⁰ This set of rules and procedure completes the Child Law and is “a comprehensive document consisting of 17 Chapters of 109 Rules and 36 Standard Forms covering all aspects related to the children,”³⁵¹ and notably juvenile justice proceedings.

The penal code was adopted in 1860 and is in fact the former Indian Penal Code. It was imported from India by the British rulers when Myanmar (then known as Burma) became a British province in 1886. It was amended once by the Criminal Law Amending Law in 1963 and is still in force nowadays. It provides for the list of offenses and punishments applicable in Burma and general principles related to criminal responsibility. It notably prescribes that:

an act committed by a child under seven years or by a child above seven and under twelve of ‘immature understanding’ (ie ‘who has not attained sufficient maturity of understanding to judge of the nature and conse-

347 The Constitution, *supra* note 341, section 381.

348 The State Law and Order Restoration Council, ‘The Child Law’, Law No. 9/93, 14 July 1993, <www.ilo.org/dyn/natlex/docs/ELECTRONIC/72890/74311/F1884014594/MMR72890.pdf>, visited on 15 September 2014. Chapter II section 3 (a) and (f).

349 Among those fundamental rights are: the inherent right to life 9. (a), the right to citizenship, the right to express his own views and taken in consideration in accordance with his maturity (13), the right to equality and the right not to be discriminated (14) the right to freedom of conscience, speech and religion (15), the right to free primary education, the right to enjoy health facilities provided by the State.

350 The Government of the Union of Myanmar, Ministry of Social Welfare, Relief and Resettlement, Directive No. 1/ 2001 Yangon, ‘The Rule related to the Child Law’, 21 December 2001, UNICEF’s courtesy copy.

351 Committee on the rights of the Child, ‘Replies to List of Issues, CRC/C/MMA/2’, 2004, p. 47 <www.bayefsky.com/issuesresp/myanmar_crc_2_36_2004.pdf>, visited on 24 September 2014.

quences of his conduct on the occasion') could not by way of general exception, be an offence.³⁵²

The Code of Criminal Procedure was adopted in 1898 and was extended to Burma as part of the statutory laws designed in the English Common law model for use in India. The Code was amended in 1973, and provides for three references related to “the person under sixteen”.³⁵³ Although it is largely outdated and lack basic fair trial rights, its provisions shall be complied with when there are no specific provisions in the Child Law.³⁵⁴

The Child Law repealed ‘[t]he Young Offenders Act, 1930’ and ‘[t]he Children Act, 1955’ but it did not supersede other laws. Several legal statutes and edicts that were sometimes enacted under the military rule and can define offenses in contradiction with Myanmar’s international obligations and notably the CRC. Several laws illustrate it and can affect children more specifically. For instance, the Police Act (1945), which allows punishment for up to two years for begging or seeking for alms, the Emergency Provisions Act (1950) which provides for a seven years maximum imprisonment sentence for “spread[ing] false news, knowing beforehand that it is untrue,” or the State Protection Act (1975) also allows a person to be imprisoned without trial for up to three years and restrict all fundamental rights if deemed necessary,³⁵⁵ or also, the Burma Official Secrets Act 1923 which amendment recently failed in Parliament.³⁵⁶

Certain provisions also place the child victims in the position of a criminal: under the Suppression of Prostitution Act, 1949, amended in 1988 to increase sentences, criminalizes solicitation or luring of customers for the purposes of prostitution with a term from one year to five years “rigorous imprisonment” plus possible fine. Although section 65 (a) of the Child law provides that it is an offence to permit prostitution for persons below 16, child victims of sexual abuse or exploitation are often treated as criminals under this law. In the same way, child soldiers who are victims of illegal recruitment, and who desert the army are treated like adult soldiers and can be sentenced to prison for as long as 5 years.

In Myanmar, a *child* is defined as a person who has not attained 16 years old, a *youth* is someone who has attained the age of 16 years but has not attained the age of 18 years, and the Juvenile Justice System only fully applies to children in conflict with the law. According to section 28 of the Child Law and in accordance with the penal code, the age of minimum criminal responsibility is seven years old, which also corresponds with the minimum age to be sentenced to prison.

352 The Penal Code, 1860, sections 82 and 83, <www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf>, visited on 17 September 2014.

353 Regarding bail, whipping, unlawful detention and permission to compound an offence: The Code of Criminal Procedure, section 345 (4), 392 (2), 497 and 552, <www.ilo.org/dyn/natlex/docs/ELECTRONIC/61341/99607/F-865467823/MMR61341.pdf>, visited on 24 September 2014.

354 The Child Law, Supra note 348, Section 72

355 Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts, §§7–14, <www.burmalibrary.org/docs6/State_Protection_Law+amendment.pdf>

356 In September 2014, a motion to reform “the Secret Act” was denied in Parliament and 10 journalists have been arrested on this ground

This minimum age is raised to 12 years old, based on a maturity examination conducted by the judge, who will decide if the child had attained “sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”³⁵⁷

These thresholds are not in line with the CRC Committee’s recommendation, which holds a minimum age of criminal responsibility below the age of 12 years as not internationally acceptable considering the child’s emotional, mental and intellectual maturity. It has also strongly recommended to avoid a system of two minimum ages, which leaves too much discretion to the court and may result in discriminatory practices.³⁵⁸ The Committee has also reminded all state parties that “every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.”³⁵⁹

Myanmar’s society is still mainly regulated by customs and “[a]necdotal evidence ... strongly suggests that informal justice systems are used more frequently at local level than the formal system.”³⁶⁰ If “[t]he Child Law establishes the juvenile justice system, social control of children is also exercised through customary processes which effectively divert children away from the system. Little is known about these informal processes.”³⁶¹ In vast portions of the country, mainly in the ethnic states, customary law still prevails. These practices were formally recognized by the British rulers and are still in force nowadays. In fact, village chiefs (or ‘headmen’) wield certain quasi-judicial powers of investigation, arrest and punishment.³⁶² In the Kachin State for example:

“The three-pillar (kahpu-kanau, mayu, dama) social system is a unique identity of Kachin people and it is a system for social tying, bonding and bridging among Kachin. Even in the case of a serious offence or murder, the three-pillar social system is applied as a conflict resolution mechanism. When Kachin people are in conflict with each other, the conflicting parties are one way or other related to each other by the three-pillar system. When the conflicting parties realize they are connected to one another, it then becomes much easier to discuss about the conflict. The British were aware of the strong social system of the Kachin and their traditional ways of dealing with conflict. Therefore the British allowed Kachin customs to act as a mechanism for dealing with conflict among Kachin.

357 The Child Law, *Supra* note 348, Section 28 (b)

358 Committee on the rights of the Child, ‘General Comment No 10- Children’s rights in juvenile justice’, CRC/C/GC/10, 25 April 2007, para.30, <www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>, visited on 16 September 2014.

359 *Ibid.* para. 37

360 UNICEF, ‘Myanmar, Country Programme of Cooperation 2011-15- Mid Term Review Report’, 7.1.5, p.21 <www.unicef.org/myanmar/GoMUNICEF_MTR_Report_FINAL.pdf>, visited on 16 September 2014.

361 Dr Cindy Banks, ‘An evaluation of “Strengthening juvenile Justice in Myanmar”’, 18 August 2011, p.10, <aid.dfat.gov.au/countries/eastasia/burma/Documents/strengthen-juvenile-justice-eval.pdf> visited on 17 September 2014.

362 Towns Act 1907, <www.burmalibrary.org/docs11/The-Towns-Act-1907.pdf> and the Village Act 1907 <www.burmalibrary.org/docs11/The-Village-Act-1907.pdf> and the Criminal Code of Procedure, *supra* note 38, para. 45 of

*The Kachin Hill Tribes Regulation was adopted in 1895. Kachin people and people living in Kachin State have a choice to bring a criminal or civil case to the court or to solve the conflict in Kachin Custom through the Kachin Hill Tribes Manual. Since the British colonial period, the Burma Socialist Programme Party period and up till the present, the Kachin custom has been widely used in dealing with conflict.*³⁶³

In general, there is very little information on customary processes and how they apply specifically to juveniles.

2. Institutional Framework for Juveniles in Conflict with the Law

2.1. Policing and Investigation of Criminal Activities

According to the Child Law, when a child is accused of having committed an offense, police officers and persons authorized to take cognizance are in charge of the arrest and investigation.³⁶⁴ The police's investigative powers are described in the CCP,³⁶⁵ and are also granted to village-headmen and local chiefs.³⁶⁶ The Child Law does not refer to special police units tasked with juveniles protection, however in 2013 three "Child Protection Task Forces" were created with UNICEF's support in Mandalay, Yangon and Nay Pyi Taw. They are composed of two to three police officers, are located in Special Anti-trafficking Units but have "no overarching policy or strategy, standard operating procedures or other guidance in place to frame their purpose and work, especially in relation to other departments."³⁶⁷ The Mandalay task force is the only operational one. It functions in conjunction with the TCRC and intervenes primarily on child victims' procedures.

A police officer (or a person authorized to take cognizance) has the power to arrest a child in the circumstances provided in the criminal code of procedure,³⁶⁸ but he has the duty to follow a basic set of protective measures guidelines, detailed in the Child Law, the Rules 2001 and the "Protocols on Child Friendly Police Investigations" a national directive issued in October 2010 by the police force, with the support of UNICEF. He (or she) shall not handcuff the child,

363 N Ganesan and Kyaw Yin Hlaing 'Myanmar: State, Society and Ethnicity' p.246, <books.google.com.mm/books?id=rRQaoRuucF8C&pg=PA246&lp=PA246&dq=Kachin+Hill+Manual&source=bl&ots=JRpcvmabgk&sig=_xRrOETHmu_HEnLZJ_kAIEYUjSI&hl=fr&sa=X&ei=e2E7VKS7FseouQSRyILOAg&redir_esc=y#v=onepage&q=juvenile&f=false>, Visited on 13 October 2014.

364 The Child Law, *supra* note 348, section 37, 38 and 39.

365 The Penal Code, 1860, sections 82 and 83, <www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf>, visited on 17 September 2014

366 CPP, *supra* note 365, section 245. See also the Towns Act and the Village Act

367 UNICEF, 'Government of the Republic of the Union of Myanmar-UNICEF Country Programme of Cooperation 2011-15 Mid Term Review Report', 7.1.5, p.21 <www.unicef.org/myanmar/GoMUNICEF_MTR_Report_FINAL.pdf> visited on 16 September 2014.

368 The Code of Criminal Procedure, *supra* note 365, 'Chapter V of arrest, escape, and retaking'.

or tie with a rope, shall not keep or send the child together with adult prisoners and if it is a girl, shall keep or send her, with a woman guard. He (or she) shall not maltreat or threaten the child and inform the parents or guardians as soon as possible and in a maximum time frame of 24 hours after the arrest. Despite these clear guidelines, in practice, in particular at township level, police officers are not aware of this principle and poor treatment happens often, especially on boy offenders, who report being beaten, intimidated and even tortured.³⁶⁹ Children are usually mixed with adults in police lock-up, and girl victims can be interrogated by male police officers. Police officers have received some training on the Child Law, and booklets of police guidelines protocols have been distributed, which slightly improved practices, but maltreatments remain common.

According to the Child Law, the Child must be sent to the relevant Juvenile Court as soon as possible and pursuant to rule 65, within a maximum of 24 hours. This deadline is in line with the Constitution, but can be extended up to 30 days according to the CPP. As a principle, pre-trial detention is strictly prohibited in Myanmar.³⁷⁰ When the child cannot be sent as soon as possible to Court, he can either be released on execution of a bond, or alternatively sent to a temporary care station or to another appropriate place.³⁷¹ Temporary care stations are governmental institutions established by DSW for the custody and care of children in need of protection or homes established by a voluntary social worker, or a non-governmental organization, and recognized as such.³⁷² The protection sub-committee on the rights of the child can also provide “temporary care for those children who are in conflict with the law in the townships where temporary care stations are not available.”³⁷³ In practice, releases on bond are rare and children remain for extended periods under police custody, either in police stations or at the police officer’s home, to avoid the financial costs of transportation to temporary care stations. Minor cases are usually finalized in court within one month but more serious offenses can take three months and sometimes up to nine months.³⁷⁴

In principle, when sending the child for prosecution, the person in charge of the investigation must also provide supporting evidence of the age of the child.³⁷⁵ It can either be a birth certificate, a citizenship scrutiny card, a foreigner’s registration certificate, a true copy of an extract of school admission register, a doctor’s medical certificate or any other valid supporting evidence.³⁷⁶ In practice, when the child has no document – which happens frequently – police officers will rarely investigate to find the relevant information and will send the child to a Juvenile Court and more often to an adult court without document.

369 Dr. Cyndi Banks, ‘An Evaluation of “Strengthening Juvenile Justice in Myanmar”’, 18 August 2011, <aid.dfat.gov.au/Publications/Pages/strengthen-juvenile-justice-eval.aspx>, visited on 15 September 2014.

370 The Child Law, *supra* note 348, section 41 (c).

371 The Child Law, *supra* note 348, section 37 (g) and (h).

372 The Child Law, *supra* note 348, section 55

373 Written replies of Myanmar 2012, *supra* note 16, para.9.

374 Evaluation of Strengthening Juvenile Justice, *supra* note 369, Annex 4- p. 63.

375 The Child Law, *supra* note 348, section 38 (c).

376 The Child Law, *supra* note 348, section 41.

According to the Constitution, every accused has a right to defense. In the Child Law, this right translates in two ways: the child can either be represented by a lawyer and if he cannot or does not wish to engage a lawyer, can make an application to be granted permission to be defended with the assistance of an appropriate person.³⁷⁷ In Myanmar, there are 8,272 advocates (with full rights of audience in all tribunals) and 39,682 higher grade pleaders (who appear only in District and Township Courts).³⁷⁸ As a general rule, and pursuant to section 374 of the Code of Criminal Procedure, legal aid is only made available to criminal defendants in cases punishable with the death penalty. In Juvenile cases, the Attorney General's Office and respective law offices appoint a lawyer at the expense of the Government to defend an indigent child accused of an offence punishable with death.³⁷⁹ In that case, the Courts Manual provides a payment of 50 Kyats per case, payable as soon as the Advocate or Pleader accepts the brief, and an additional fee of 25 Kyats per diem for each day's appearance in excess of two.

The Court Manual however clearly states that:

"it is an obligation of the Union to provide for the defence of accused persons at public expense. In providing for payment of fees the above scale, the Government appeals to the tradition of the bar that the defence of poor persons is an act of merit on the part of Advocates and Pleaders, and trusts that the scale may receive ready acceptance, even though the fees may be less than those which would be paid by wealthy clients charged with grave offences."

To respond to this gap, a project to provide free legal representation for children in contact with the law and mobilize pro bono lawyers was started in 2008 with the support of UNICEF. The project started in 31 townships within Yangon with 45 lawyers (31 women) and at the end of the project in October 2011, covered 245 townships in all States and Regions (except Kayah State), and 1168 Lawyers (733 women). During those three years, 2947 children in conflict with the law were given free legal assistance (2003 boys and 944 girls)³⁸⁰ and 1334 in the last year. Although the project and the funding stopped, the network created still continues to exist under the "Tharmadi foundation" ("integrity" in Burmese). Due to a lack of funding, only 400 lawyers are still fully committed and they intervene in approximately 400 cases a year, which is three times less than in 2011. Other legal youth clinics are also found within the country. However, in practice, very few lawyers have received trainings on children rights and the Child Law, and representation is often ineffective.

377 The Child Law, *supra* note 348, section 13.

378 International Bar Association "The Rule of Law in Myanmar: Challenges and Prospects", December 2012, p. 15 <www.ibanet.org/Document/Default.aspx?DocumentUid=DE0EE11D-9878-4685-A20F-9A0AAF-6C3F3E>, visited on 16 October 2014.

379 The Rules 2001, *supra* note 350, rule 75 and 98.

380 Legal Aid Programme in Myanmar (MCC & UNICEF) <angara.files.wordpress.com/2011/12/legal-aid-novrol-workshop5dec2011.pdf>, visited on 20 September 2014.

The Code of Criminal Procedure does not provide for a right to access a lawyer during custody or the right to speak with a lawyer to seek legal advice concerning the circumstances of their arrest and the Child Law does not specify at what point lawyers can intervene in juvenile cases. In practice, it seems to vary according to police officers. During the study, some lawyers of the Tharmadi foundation indicated that prior to the UNICEF project, they would only take on a case in court, but things have progressed and police officers now call upon the child's arrest and request assistance to find evidence on the child's age and to find the parents. However, it seems like lawyers cannot meet the child in custody, and only have access to the child once he is in court.

2.2. Diversion

According to the Child Law, the National Committee on the Rights of the Child (NCRC) is the institution in charge of prevention for children at risk and has the duty to lay down and carry out "work programmes in order to take preventive measures against occurrence of juvenile crimes."³⁸¹ The expenditures of the Committee are borne out of the budget of the Social Welfare Department (DSW) which is the government agency tasked with child's protection within the Ministry of Social Welfare. The NCRC is chaired by the Minister of Social Welfare, and formed by heads of Government departments and organizations, representatives from non-governmental organizations, voluntary social workers and a person assigned responsibility by the Secretary Chairman.³⁸² Pursuant to section 6 of the Child Law, the NCRC can also form committees at the State, division, district and township levels. At the State level, Committees are chaired by a DSW officer but not at lower levels, where General Administration Department's head administrators (under the Ministry of Home Affairs) act in this capacity as Secretary Chairmen. Committee members come from various departments (police, health, labor etc.). In 15 August 2011, nine Sub-committees (Legal affairs, Health, Education, Protection, Information, Awareness, Funding and Finance, Sport and Monitoring and Evaluation Sub-Committees) were also created under a Working Committee³⁸³, and in principle, the Protection Sub-committee works to prevent children from committing crimes and implement activities at the local level to protect vulnerable children.³⁸⁴

In practice, the NRC has been reported as inactive for a long period and was only reactivated recently, but it is not clear what its actions or powers are. At the grass roots level, notably at the township level, township committees on the rights of the child (TCRC) have been activated only in areas where there are strong com-

381 The Child Law, *supra* note 348, section 5 (f).

382 The Child Law, *supra* note 348, section 4.

383 State Party's initial Report- CRC/C/8/Add.9- 18 September 1995, para. 30, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.9&Lang=en>, visited on 17 September 2014.

384 Written replies of Myanmar*CRC/C/MMR/Q/3-4/Add.1, 12 January 2012, para 80, <www.bayefsky.com/issuesresp/myanmar_crc_2011.pdf>, visited on 17 September 2014.

munity child based groups with international aid support. They are supported by volunteer social workers appointed by DSW and their efficiency will depend on the interest and willingness of their chairman. In terms of prevention, they contribute to raising awareness on child protection issues and rights but do not have the budget to promote activities or provide livelihood support. When a child comes in conflict with the law, the DSW Committee chairman at the state level is alerted but unless the case is serious, it will be resolved at the community level. Indeed, if diversion is not provided by the Child Law, informal diversion is the rule at Township or District level and cases are dealt with informally by parents and respected community members, who will be ‘correcting’ and reprimanding the child,³⁸⁵ and/or imposing fines. Police officers may likewise prefer to release the child with a simple warning without opening a formal case file.

2.3. Adjudicating and Sentencing

According to the Constitution, the Supreme Court stands at the apex of the judicial system and presides over 14 state and regional High Courts (also known as State or Divisional Courts), 67 District and Self-Administered Area Courts, and 324 Township Courts. Most cases begin in Township Courts (the lowest level) or District Courts, and decisions of these tribunals may be appealed to a High Court – also known as the State or Divisional Court – and ultimately to the Supreme Court, which also has original jurisdiction over certain matters.³⁸⁶ In total it is estimated that there are 1,131 judges in Myanmar, 570 of them being female judges. There are about 1,700 prosecutors, based in regional offices all over the country, and all are subject to the direction of the Attorney General, whose powers and duties are described in the Attorney General of the Union Law 2010 and become involved once a case reaches a court.³⁸⁷

According to the Child Law, juvenile cases shall only be tried by a Juvenile Court, which is defined as a “court where the sittings of a judge on whom power to try juvenile offences is conferred, are held.” In accordance with section 40 (a), the Supreme Court may either, establish Juvenile Courts and appoint juvenile judges, or alternatively confer powers of a juvenile judge on a Township Judge.

In practice:

“the Supreme Court of the Union has established two separate Juvenile Courts in Yangon and Mandalay to try juvenile cases. The Juvenile Court (Yangon) has been constituted to try juvenile cases occurring at 20 townships in Yangon City Development Area. The Juvenile Court (Mandalay) has been constituted to try juvenile cases occurring at five Townships in Mandalay City Development Area. For other Townships, the Supreme

385 An evaluation of Strengthening Juvenile Justice in Myanmar, *supra* note 369, p. 27

386 The Constitution, *supra* note 341, section 315, 316, 306, 295; see IBAHRI report, *supra* note 378, p.21.

387 SPDC Law No 22/2010, available as a scanned attachment via <groups.google.com/forum/?fromgroups=#!topic/myanmarlaw/LA7gzGTvO9s.>, visited on

*Court of the Union issued the Notification Number 25/1993 on 29 July 1993 to confer the power of juvenile Judge on the township Judges to try juvenile offences in accord with the Child law.*³⁸⁸

One judge sits at each of the Juvenile Courts and rotates every six months to one year. Although it is not a formal rule, only women are appointed judges at Juvenile Courts, for they are believed to be more compassionate and sensitive to children issues. The former practice – according to which Juvenile Court judges had to be women with children – no longer prevails and township judges appointed as juvenile judges can be men. Judges do not necessarily receive training on the Child Law when they are appointed in a juvenile case or court and in most cases, judges lack awareness of the existence of the Child Law or child friendly procedures, especially at the township level.³⁸⁹

With the Court for Municipal offence and Court for traffic offence, Juvenile Courts are one of the three Courts constituted by law, and therefore only have jurisdiction “on the cases stipulated by this law”.³⁹⁰ According to the Child Law, Juvenile Courts have jurisdiction in respect to a child who is accused of having committed an offense, who has reach the minimum age of criminal responsibility and who has not attained the age of 16 years old at the time of committing the offence. As a result, juvenile courts have jurisdiction only on child offenders’ cases: youth are automatically sent “for prosecution to the Court which has jurisdiction in respect of the offense”³⁹¹ while child victims and child witnesses are sent to adult courts. Upon receiving a case, the Juvenile Court must determine whether it has jurisdiction. Therefore it has “first and foremost [to] scrutinize the supporting evidence in respect of the age of the child, contained in the proceedings ... [and] determine whether the offender is a child or not.” Adult Courts shall also determine the supporting evidence in respect of the age of the youth.³⁹² In practice, the determination of the age is not always ascertained: only 72, 4% of children aged 0-59 months are registered in Myanmar, with 95, 2% in Yangon as the highest incidence, and 24, 4% only in the Chin State. Although other type of evidence might support the age determination (vis-a-vis Xrays, for example), in practice children without documentation, are usually denied from the Child Law protection and treated as adults.

Once the age of the child is deemed ascertained, the judge may proceed with the trial itself. If the offense is serious, (punishable with death, transportation for life, or imprisonment exceeding three years), the judge will proceed in the

388 ‘Written replies of Myanmar’ 2012, *supra* note 384.

389 During the second phase of the partnership between UNICEF, Myanmar and AusAID to strengthen the juvenile justice system (2007-2011) the Supreme Court gave trainings to 43 judges. Trainings are still ongoing punctually.

390 The State Peace and Development Council, The Union Judiciary Law, Law No. 20 / 2010, 28 October 2010, section 57 <www.unionsupremecourt.gov.mm/sites/default/files/supreme/union_judiciary_law.pdf>, visited on 3 October 2014.

391 The Child Law, *supra* note 348, Section 67.

392 The Child Law, *supra* note 348, section 68

manner in which a warrant case is tried.³⁹³ For all the other offenses, he will proceed in the manner in which a summon case is tried.³⁹⁴ The Code of Criminal procedure also lists 35 offences punishable under the penal code that might be compounded by the competent person.³⁹⁵ When the person competent is under 18 years, “any person competent to contract on his behalf may with the permission of the Court compound such offence.”³⁹⁶ As a result of this procedure, the accused is either discharged or acquitted of the offence which has been compounded.³⁹⁷ This procedure does not seem to be used in juvenile cases.

Some protective measures shall be abided by the Court: the case must be tried in a separate court, building, or room other than in which the ordinary sittings of the court are held, in closed hearings and speedily. In case the child is not represented by a lawyer, whether by choice or by necessity, he or she can request the assistance of any other appropriate person for his defense. An interpreter shall be made available by the Court.³⁹⁸ In order to protect the privacy of the child, Juvenile Courts in Yangon and in Mandalay have been equipped with special CCTV by UNICEF. But both courts were moved on several occasions, and this equipment was not installed again and is no longer used. In practice, even when a child is deaf, interpreters are not appointed.

When trying a juvenile case, a judge has specific powers: if it is deemed appropriate for the interests of the child, the judge can indeed order anyone, including the child, to leave the court-room; he may also decide to try the case in absence of the child if his presence is not considered necessary, or request the parents or guardians to attend proceedings every day. Finally, the judge can reveal the identity and display a photograph of the accused child, or of a child witness in the media, if it is believed to be of benefit to the child.³⁹⁹

During trial, the child may either be released on the execution of a bond, be entrusted to the care of parents or guardian or commit to the custody of a temporary care station or other appropriate place subject to conditions (that are not specified).

According to the Child Law reformatory sentences shall prevail, and imprisonment shall remain exceptional. Death penalty, transportation for life and a sentence of whipping are prohibited, both for the child and for the youth, although they are still valid forms of punishments under the penal code.⁴⁰⁰ The Rules of the Child also prohibits rigorous labor as part of the sentence for the child.⁴⁰¹

393 CPP, *supra* note 365, chapter XXI section 251-259.

394 CPP, *supra* note 365, chapter XXII section 260 to 265.

395 CPP, *supra* note 365, section 345. For example, assaults or uses of criminal force punishable under section 352, 355, 358 of the penal code can be compounded by the person assaulted or by the person to whom criminal force was used against.

396 CPP, *supra* note 365, section 345(4).

397 CPP, *supra* note 365, section 259 and 345.

398 The Child Law, *supra* note 348, section 42.

399 The Child Law, *supra* note 348, section 43

400 The Child Law, *supra* note 348, section 45 and 71. Although the penal code still allows death penalty, in practice, the last execution in Myanmar was carried out in 1988, and the government is abolitionist by practice.

401 Rules on the Rights of the Child, 2001, Rule 79 (d) and 100 (b)

Before passing an order on a child who is found guilty, the Juvenile Court has to take into consideration all relevant circumstances that will allow to “pass an order which is reformatory and which will be beneficial to the child.”⁴⁰² Circumstances to be taken into consideration are the age and character of the child, the environmental circumstance of the child, the cause committing the offense, and any other circumstance that have to be taken in consideration in the interests of the child. The judge may direct a probation office – either an employee of the DSW or a suitable citizen appointed as such – to make inquiries and submit a report “of the personal history, character, conduct, behavior and environmental circumstances of the child and his parents or guardian.”⁴⁰³ The probation officer shall investigate the case and submit the report to the relevant Juvenile Court within 14 days,⁴⁰⁴ and if deemed necessary, the report might be rebutted by the child or his parents or guardians. In practice, there are only 20 probation officers covering the whole country and voluntary social workers can be appointed by the DSW to fill this huge gap. Nonetheless, probation officers usually do not have the means to investigate and produce the background report on the child and judges rarely request them, because of the undue delays it creates in the procedure. There is no provision in the Child Law referring to the presumption of innocence or to the principle according to which a person shall be proven guilty beyond reasonable doubt. The provisions of the CPP on judgments shall therefore apply.⁴⁰⁵ As prescribed by section 49 (a) of the Child Law, children also have the right of appeal or the right of revision in accordance with the CPP.

The Child Law provides for various sentences, according to the seriousness of the offense, the situation of the child, and his or her character. The Judge can order a release after due admonition, he may impose a fine, entrust the child to the custody of his parents or guardians on execution of a bond or submit the child to the supervision of a Probation Officer for a maximum of three years, or finally commit the child to the custody of any training school for a minimum term of two years or until he attains the age of 18 years as a maximum term. Under exceptional circumstances, the judge might also decide to send a child to prison, but the sentence shall not exceed a term of seven years (ten years for a youth). Under the first circumstance, a child can be imprisoned if the judge is satisfied a child has committed a grave crime (ie: an offence punishable with death or by transportation for life under any existing law). Under the second circumstance, a child can be imprisoned when he is deemed of “so unruly or depraved” character or if he is considered “absolutely uncontrollable”. Imprisonment is therefore either based on the seriousness of the crime or on the personality of the child which assessment depends on the judge’s appreciation. There is no such requirement for youth and in practice, only youth – either persons between 16 and 18 years old, or children whose age could not be ascertained and who were considered as such – are actually sentenced to imprisonment. There are no statistics available regarding most frequent sentences in juvenile

402 The Child Law, *supra* note 348, section 44.

403 The Child Law, *supra* note 348, section 43 (e) and (f).

404 The Rules 2001, *supra* note 350, rule 77 (b).

405 CPP, *supra* note 365, chapter XXVI.

cases, but sentences really depend on the judge's awareness and knowledge of the Child Law. The more trained the judge is, the less inclined he will be to institutionalize the child and the more reformatory the sentence will be. The contrary also stands true and ignorant judges may issue sentences that actually violate the Child Law. Most of the time, most boys sent to custody in a training school (bearing in mind that the time served before sentence is not taken into account) are sentenced to the minimum period allowed by law of two years, and some boys with more serious charges for three years or more, up until age 18 years.⁴⁰⁶

2.4. Treatment of Convicted Juveniles

2.4.1. Residential

Detention in prison: A child (or a youth) can be sent to prison, but in principle he (or she) shall be kept “in a separate ward or room which adult prisoners cannot have access.”⁴⁰⁷ There are no juvenile prisons per se in Myanmar,⁴⁰⁸ and out of the 43 prisons administered by the Ministry of Home Affairs, only the three main central prisons have facilities to receive juveniles – namely Insein Prison, Mandalay Prison and Thar Yar Waddy prison – but only for boys. Separate barracks are provided for them at night but not during daytime and girls stay at all-times with adult female inmates.

The welfare of prisoners is governed by the Jail Manual which dates from 1894.⁴⁰⁹ Since 2010, prisons, labor camps, and police lock-ups have been reopened to inspections by judicial officers (ie. the Chief Justice of the Union, Judges of the Supreme Court and Judges of the other courts) with the specific objective of enabling convicted persons and those under detention to enjoy lawful rights and preventing undue delay in the trial of cases.⁴¹⁰ Since the end of 2012, the International Committee of the Red Cross (ICRC) also has gained access to the 43 prisons in Myanmar and to the 100 labor camps.

Convicted juveniles sentenced to prison are usually sent to the three centralized prisons, where they represent approximately 1 per cent of the overall population. There are apparently no juveniles in labor camps. Prisons usually suffer from overpopulation and lack of space. In December 2011, the MNCHR was allowed to visit three prisons and a labor camp and stated that “the number of prisoners in the Insein Prison far exceeds its maximum capacity [and that] the prison congestion is an important source of grievances which should be addressed in a

406 An Evaluation of Strengthening Juvenile Justice in Myanmar, *supra* note 369, annex 4, p. 63.

407 The Child Law, *supra* note 348, section 52 (b)

408 Although in 1995, the Jail Department has made arrangements for the separate admittance and receptacles of child prisoners and youth prisoners at Meiktila Jail alone, see ‘The Courts Manual’, Volume I, Fourth edition published by the Supreme Court, 1999, page 414, para. 764, < www.burmalibrary.org/docs14/Courts_Manual-ocr-en.pdf>, visited on 25 September 2014.

409 Manual of Rules for the Superintendence and Maintenance of Jails in Burma<www.burmalibrary.org/docs16/Jail_Manualpp1-114.pdf>, visited on 25 September 2014.

410 The Union Judiciary Law, 2010, *supra* note 390, section 67-68

timely fashion.”⁴¹¹ Even if rehabilitation centers under the Department of Prison are supposed to provide basic primary education courses and vocational training,⁴¹² one of the biggest issue for children is the lack of meaningful education in prison. Juveniles that were previously studying can sometimes continue their studies, but most of the time, access to education and vocational trainings is very limited and depends on the circumstances (for example if some adult detainees are teachers and willing to help etc.). Because most juveniles are being sent to the three centralized prisons, which are usually far away from their families, it is difficult to keep family ties. A program by the ICRC support families to visit prisons, and juveniles specifically and is also working on a case by case bases to reunite prisoners’ members of a same family inside the walls of the prison.

Pursuant to the Child Law, children in conflict with the law are usually not sent to prison, but to training schools where they will serve a minimum term of two years or until they attain the age of 18 years as a maximum term.⁴¹³ Like temporary care stations, training schools are either established or recognized by the DSW and can be governmental institutions, or private homes established by a voluntary social worker or a non-governmental organization for custody and care of children in need of protection. These facilities separate boys from girls, and provide custody and care for both “children in need of protection and care” (mainly street children, orphans, victims) and for children in conflict with the law. Children sentenced to prisons can be transferred to training schools if it is considered beneficial for the child and the Minister of Social Welfare orders it.⁴¹⁴

In practice, DSW operates 22 residential institutions, of which six receive mostly children in conflict with the law.⁴¹⁵ The average stay in training schools is two to three years and the Director General of the DSW may also decide transfers between training schools⁴¹⁶ or even release.⁴¹⁷ In boy governmental training schools for example, a “disciplinary committee” comprising the Principal, Deputy Principal, vocational teachers and caretakers from the institution reviews boys cases after one year of their sentence is served and based on their assessment, a review report may recommend an early release of the child to the court. The recommendation is based on the committee’s assessment of the child’s behavior.”⁴¹⁸ Private and religious organizations usually lack such regulation. Training

411 Myanmar National Human Rights Commission, ‘Statements issued by the Myanmar National Human Rights Commission, September 2011- February 2014’, March 2014, p. 13, Courtesy copy of the MNHRC.

412 Union of Myanmar Ministry of Social Welfare Relief & Resettlement National Committee on the Rights of the Child Myanmar National Plan of Action for Children 2006 -2015 - para 79 <vcsupport.net/wp-content/uploads/Documents/Myanmar_National_Plan_of_Action_for_Children_2006_2015_1.pdf>, visited on 15 September 2014.

413 The Child Law, *supra* note 348, section 47 (d).

414 The Child Law, *supra* note 348 section 59 (b).

415 Namely: the Thanlyin boys training school, the Hgnet Aww San Boys training school; the Mandalay Boys training school, the Mawlamyine Boys training school, the Vocational training center for women inYangon and the Vocational training center for women in Mandalay.

416 The Child Law, *supra* note 348, section 36 (c).

417 The Child Law, *supra* note 348, section 59 (a).

418 An Evaluation of Strengthening Juvenile Justice in Myanmar, *supra* note 369, Annex 4- p. 63.

schools are usually open, and girls' institutions seem to be better kept and more staffed than boys' institutions. Access to education and vocational training is very limited, and there is almost no time for entertainment. Studies undertaken with children in institutions also reveal significant physical abuse in the name of disciplining children. Practices such as beating with a stick, pulling ears, pinching/squeezing the stomach and so on are apparently used as a regular means of disciplining children.

The Child Law does not refer to a specific procedure to reintegrate children who have served a sentence in prison or in training schools. However, the Ministry of Social Welfare has requested some international non-governmental organizations to carry out reintegration programs and since 2013, "Terre des Hommes" have been offering training on reintegration. They started with the Nget Aw San School and expanded to the other two main schools. They identify gaps and weaknesses in the system, they make cases assessment with DSW and then work on the actual reintegration using a seven steps motto to make sure reintegration is sustainable and is carried on in a way that serve the child's best interests. World Vision International has also been recently and punctually assigned by the Ministry to carry out family reunifications.

2.4.2. Non-residential

Pursuant to section 47 (c) and 61 (b) of the Child Law, a child can be submitted to the management and supervision of a Probation officer during a period not exceeding three years. As mentioned earlier, a probation officer can either be an employee of the DSW or a suitable citizen appointed as such. In order to supervise and manage the child, the Probation Officer shall carry out a number of activities such as, prescribing rules of discipline for the child to abide, providing guidance for the improvement of moral character of the child, meeting and discussing with the child, his parents or guardian at least once a month, visiting to the school and meeting with the headmaster and teachers some time to time.⁴¹⁹ In principle, the probation officer's duties and task shall be assisted, monitored and supervised by the TCRC,⁴²⁰ and he (or she) must submit a monthly report of the child who is under his supervision and management to the Juvenile Court.⁴²¹

In practice the number of probation officers reported vary from four to 20 in the whole country, which is an insufficient number to cover the needs of probation alternatives. Currently, probation officers only serve at the Division/Regional level and volunteer members of the TCRC serve the lower levels. The lack of appropriate staff is therefore a major issue. There is no diploma to be trained as a probation officer and no professional training either. Probation officers usually lack the basic means to carry out their mission. There is no DSW quarters at the township and district level, and the costs for transportation are not covered. Probation officers are also supposed to work during office hours, which do not allow them to actually

419 The rules 2001, *supra* note 350, rule 91.

420 The rules 2001, *supra* note 350, rule 11 (g).

421 The rules 2001, *supra* note 350, rule 81.

meet with the children and/or their families. It is difficult therefore to know what kind of supervision and management children actually receive.

3. Reform Initiatives

The Child Law is currently being reviewed and the new legislation drafted with technical assistance from UNICEF by the Attorney General's Office and the Social Welfare Department. The drafting process began in 2010 and in December 2011, a joint consultative meeting was organized to bring together government officials, representatives from UN agencies, international and national non-governmental organizations.⁴²² The draft is expected to be finished before the elections and both the Government and UNICEF hope that it will be voted in the spring of 2015. Lots of hope has been put into this reform to follow the Committee on the Rights of the Child's recommendations. The main lines for the reform regarding juvenile justice are as follow:

- Definition of the child and age of Minimum Criminal Responsibility: the whole frame for juvenile justice might change to apply from 12 to 18 instead of the current 7 to 16. It is still too early to say what the Government will decide. The reasoning behind keeping those ages is that it corresponds to Myanmar's culture and that children from 7 to 12 could be used more easily by adults to commit crimes; the concern is also that there are no social services that could take care of those very young irresponsible offenders.
- New Chapter on witnesses and victims regarding the substance of their rights (some specific rules should also follow)
- Stronger imperative regarding Legal Aid
- Diversion as a principle should be acknowledged in the Law: the mechanisms themselves would be put in place in 5 years
- Emphasize the principle of detention as a last resort

Also, since 2011, there have been talks about bringing Myanmar's detention facilities up to modern standards by reforming the Jail Manual (1894) and the United Nations Office on Drugs and Crimes have issued a draft containing numerous amendments.⁴²³ Such reforms have yet to be enacted.

422 UNICEF, Media release 'The Government of Myanmar and UNICEF hold first ever Consultative Workshop to review the Myanmar Child Law', 9 December 2011, <[www.unicef.org/myanmar/Review_on_Myanmar_Child_Law_\(Eng\).pdf](http://www.unicef.org/myanmar/Review_on_Myanmar_Child_Law_(Eng).pdf)>visited on 25 September 2014.

423 Shwe Yinn Mar Oo, 'Government to Submit New Jail Law: Minister', *Myanmar Times* (5–11 September 2011), <www.mmtimes.com/2011/news/591/news59124.html>; see also, Ahunt Phone Myat, 'Prisons Act Reform Proposal Rejected by Home Minister', *Democratic Voice of Burma* (30 August 2011), <www.dvb.no/news/17351/17351> Both visited on ...

4. Main Challenges to the System

In Myanmar, the main challenges to the system affecting an effective protection of children in conflict with the law and full compliance with the CRC and international standards are as follows:

Discrepancies with the CRC still exist in the legislative framework: In 2012, the UN Committee on the Rights of the Child clearly urged the Government of Myanmar to “promptly amend the 1993 Child Law and ensure that it incorporates all principles and provisions of the Convention and [to] undertake a comprehensive review of domestic legislation, namely codified and customary laws, in order to ensure that it is brought into compliance with the Convention.”⁴²⁴ The Committee has in particular engaged Myanmar to raise the legal age of criminal responsibility to “an internationally acceptable level, and in no case below the age of 12 years.”⁴²⁵ One of the biggest concerns expressed by juvenile justice professionals was in relation to the lack of protection of child victims and child witnesses, who do not benefit from *any* protection from the law and are often re-traumatized when they come in contact with the law.

Limits to the democratic reform process: This Committee’s recommendations will hopefully be followed by the legislators as the Child Law is being redacted and be included in the major reforms on the judiciary planned. However, there already is criticism concerning the lack of consultations of the civil society regarding the Child Law reform. Moreover, if the overall reform process is generally perceived as genuine, the concerns expressed by the Special Rapporteur on the Situation of Human Rights in July 2014 clearly underlines several challenges to be overcome:

“While I was encouraged by the scope and pace of the legislative reform process, I heard many concerns regarding the lack of consultation on draft laws, with some laws drafted in secret, published at a late stage with little time for comments to be provided or with unclear or no information on where comments should be submitted. In raising these issues consistently during my mission, I came away with the impression that greater coordination, priority-setting, transparency, consistency and clarity in the process by which laws are reviewed, consulted and drafted is vitally needed. Clear timelines should be given to enable broad consultation and proper consideration of draft laws, including by civil society and international organizations. Consultation should be meaningful and not merely superficial, with comments properly taken into account and concerns addressed. Additionally, more efforts should be made to raise awareness of new laws amongst the general public, beyond their publication in newspapers and journals.”⁴²⁶

424 ‘Concluding Observations of the CRC’, 2012, para. 10

425 Committee on the Rights of the Child, ‘Concluding observations’, 14 March 2012, para. 94 (a), <...>

426 Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar, 26 July 2014,

Moreover, the army still has control over 25 per cent of legislative seats and has a virtual veto over proposed constitutional amendments, which require the support of ‘more than’ 75 per cent of all legislators. This presents a formidable obstacle to systemic reform, because many regulatory matters, including important funding and appointment provisions, are part of the Constitution.

Social values regarding children and concept of social welfare: While children are referred as *gems of the nation*, social values and norms require children to study hard and/or work hard and there is little allowance for their need for play and recreation, or their participation to decisions affecting them (at school for example).⁴²⁷ After decades of military rule, it is also believed that strict discipline can fix almost anything and should therefore prevail, and the system still prioritize institutionalization, appropriate punishment and retributive sanctions, to rehabilitation and reintegration. Moreover it is believed that:

*“the conceptualization of the role of the State in protecting children remains heavily influenced by the British child welfare system of the late 1800s–early 1900s. Although there has been some legislative reform and national adaptation over time ... outdated notions of child protection concerns grounded in parental unfitness and immorality or children “beyond control” are reflective of this lingering colonial influence, as is the overall rescue and reform approach to child and family welfare services.”*⁴²⁸

Lack of information on customary practices: As mentioned before, there is very little information regarding customary practices to deal with the child in conflict with the law. Some information seems to imply that corporal punishment is an appropriate way to discipline a child, in line with culture and Buddhist traditions. Without such an assessment, it is impossible to assess the advantages and disadvantages or the fairness of those informal social control mechanisms and customs

Persistence of internal armed conflict: The Union of Myanmar is still deeply divided by several internal armed conflicts and in practice, almost half of the territory is not accessible to the Government. These parts of the country’s regions are under the authority of ethnic armed groups, which sometimes have their own government, their own police and function as separate national entities, and which enforce their own policies. Furthermore, the 140 000 persons living in Internal Displaced Persons (IDPs) camps across the country, seem to settle disputes involving children using mediation processes. There is no precise information on the subject.

<www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14909&LangID=E>, visited on 30 Oct. 2014.

427 UNICEF Annual report, p.18

428 National Child Protection Systems Mapping in the East Region and Pacific Region, <www.unicef.org/eapro/Child_Protection_Systems_Mapping.pdf> p. 74

Systematic Mistreatment of stateless population: One million people in Myanmar are state-less (Rohingya people) and do not benefit from the general protection of the law. This statelessness results both from the Burma Citizenship Law of 1982 and local orders that were issued by the Ministry of Immigration and it also affects children. In practice, the rights of this population are systematically denied and their movements in particular are under strict restriction within the village tracts, which creates isolation. This movement restriction is imposed both by local and governmental authorities. State-less children who travel with the intention of leaving the country can be arrested and sent to prisons under section 188 of the penal code for “disobedience to order duly promulgated by public servant.”

Lack of coordination policies: Juvenile Justice stands at the crossroad between child protection and criminal justice, and policies need to address both those topics:

“Juvenile Justice does not just cover situations where a conflict with criminal law has arisen. The topic includes many issues including; delinquency prevention, law enforcement, adjudication and rehabilitation. It is a key area of social policy, dealing with a growing number of children who have been marginalized and displaced by socio-economic changes. How these children are treated by the justice system is a critical factor in determining how they will be reintegrated into their families, schools and communities.”⁴²⁹

Myanmar Government is yet to define a comprehensive policy on Juvenile Justice to coordinate actions. Cooperation, cross-sector communication and coordination still remains very limited among government bodies.⁴³⁰ Until 2011, a project to strengthen juvenile justice was supported by UNICEF; a Juvenile Justice Inter-Agency Working Group (JJIAWG) acted as a coordination body with the goal of “protecting the welfare of children by addressing problems ... ensuring justice ... finding solutions ... understand ... each department ... sharing information, and formulating solutions to ensure Children’s rights.”⁴³¹ Although this body had no terms of reference and its precise role, functions and powers (if any) remained unclear, the results were both concrete and very significant.⁴³² At the time of the consultancy, the JJIAWG had apparently ceased to exist.

Lack of meaningful budget at the DSW level: If Myanmar’s Government has clearly stated its intent to improve prevention and rehabilitation for children in conflict with the law in the National Plan of action on Children, social sector spending is still among the lowest in the world and in 2011–2012, it represented two per cent of the total budget, with only 0, 02 per cent allocated to the Department

429 UNICEF & Penal Reform International 2006 ‘Juvenile Justice Training Manual’, page 3

430 Mapping 2014, *supra* note 428, p.26

431 At the time, membership comprised representatives from the Supreme Court, Ministry of Home Affairs, Myanmar Police Force, General Administration Department Prisons Department, Office of the Attorney General, Department of Social Welfare and the Yangon City Development Committee (YCDC) (p. 16)

432 An evaluation of strengthening the Juvenile Justice System in Myanmar, *supra* note 369, p.21.

of Social Welfare.⁴³³ The lead government structure in charge of child protection and crime prevention do not have the means to carry out their mission.

Lack of awareness and lack of training: In fact, systematic violations are due mostly to the lack of awareness on children's rights, procedures and laws. Professionals working in the Juvenile Justice System – judges, lawyers, police officers, probation officers, and training school staff – lack basic knowledge on the Child Law. Although Judges receive a judicial training in Hlaing Tharyar Township where courses are run by the Supreme Court, this training does not include courses on the CRC and although UNICEF recently trained 40 police officers in Sittwe on the CRC and the Child Law, Police academy does not include courses on the subject. As said earlier, social workers do not benefit from any training and social studies has only reappeared in university after having long disappeared from the programs under the military regime. Building capacity of these professionals have proven to be very efficient and the lack of trainings along with the lack of post-training monitoring is therefore one of the biggest challenges to the system.

Lack of awareness in the public and lack of legal Aid: The Child Law is still not widely disseminated to the public, and communities, children and families, lack awareness on child rights. Legal aid is still very limited, and even when a lawyer is appointed, lawyers lack basic skills and tools to properly defend the child, and capacity to absorb outside help. The Bar Council is chaired since 1989 by the Attorney General, and is clearly not independent. Focus is also mainly placed on prosecution without providing resources to criminal defendants for counsel. No figures are available for children but for adults, the conviction rate is reportedly very high (some private lawyers estimated 90-95 percent) – convictions are based almost exclusively on confessions and police testimony.⁴³⁴

Corruption and lack of trust in the legal system: The justice system is still mainly perceived as a means for oppression rather than a tool to ascertain one's rights and the judiciary is viewed as highly susceptible to corruption. Judicial officials are seen as typically ill-read, inefficient, weak and corrupt:

"According to one lawyer's association, a defendant ordinarily had to pay a bribe of 100,000 kyat (about £110) just to get bail. Another group complained that judges were easily intimidated. Township Court judges were often very young, because the minimum age for appointment had recently been reduced to 25, and all judges feared complaints from clients, reprimands from superior judicial officials, and pressure from the government or military."⁴³⁵

433 Mapping 2014, *supra* note 428, p. 61

434 New Perimeter, Perseus Strategies, and the Jacob Blaustein Institute for the Advancement of Human Rights. "Myanmar Rule of Law Assessment", 2013, <www.jbi-humanrights.org/files/burma-rule-of-law-assessment.pdf> visited on 5 October 2014.

435 IBAHRI report 2012, *supra* note 378, p.58.

In worst case scenarios, the child-victim is represented by an ineffective lawyer, treated as a criminal and cross-examined by aggressive lawyers appointed by a very wealthy defendant who has already bribed the Court.

5. Summary and Statistics

The CRC entered into force in September 1990 and the Union of Myanmar acceded to the Convention (CRC) on 16 July 1991 and became a State Party on 15 August 1991.⁴³⁶ Upon accession, the Government of Myanmar made two reservations with regards to article 15 (related to freedom of peaceful assembly) and 37 (relating to the prohibition of torture, capital punishment and detention), but notified the Secretary-General its decision to withdraw them on 19 October 1993.⁴³⁷

In the Child Law, a person is legally regarded as an adult upon attaining 18 years old but is considered a *child* only before reaching 16 years old. Between 16 and 18 years old, a person is regarded as a *youth*, and although not treated as an adult, is less protected than the child. Chapter XVII of the Child Law provides for the main principles applicable in court when a youth is accused of having committed an offence.

If the Constitution requires a citizen to have attained 18 years of age on the day on which the election commences to have the right to vote,⁴³⁸ laws are quite inconsistent otherwise regarding the age where a person is deemed to reach adulthood. Definitions vary depending on the sector and laws applicable.⁴³⁹

A person is criminally responsible when she or he has reached the age of 7, according to The Child Law Chapter VI Section 28 (a). However, section 28 (b) introduces a conditional responsibility based on a maturity standard up to 12 years stating that “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.” In addition, pursuant to section 46 of the Child Law, “a child shall not ordinarily be sentenced to imprisonment” and “such sentence shall not exceed a term of 7 years”. When a person turns 16 but is still until 18 years old, he or she is considered to be a youth, and the maximum term of imprisonment becomes ten years.

Since only recently “the first ever child protection units within the police have been established in Mandalay, Yangon and Nay Pyi Taw,” with 2 to 3 police officers per unit under the anti-trafficking section.

Section 40 of the Child Law provides that the Supreme Court may either establish juvenile courts or confer powers of a juvenile judge on a Township Judge

436 Office of the High Commissioner for Human Rights, ‘II. Convention on the Rights of the Child New York, 20 November 1989’, p.8, <treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-II.en.pdf>, visited on 16 September 2014.

437 *Ibid.*, pp.23 – 24

438 Constitution of the Republic of the Union of Myanmar, September 2008, Section 391 (a)

439 State Party’s initial Report- CRC/C/8/Add.9- 18 September 1995, para. 43, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f8%2fAdd.9&Lang=en>, visited on 17 September 2014.

to try juvenile cases. There are two juvenile courts, one in Yangon covering 20 townships in Yangon City Development Area, one in Mandalay, covering five Townships in Mandalay City Development Area. In the rest of the country, there are 330 Township judges who can be conferred powers of a juvenile judge.

The Child Law does not provide for mediation processes to divert children from the Juvenile Justice system. However, in practice, diversion occurs through customary processes, mostly in the ethnic states.

There are no juvenile prisons per se in Myanmar, however the three central prisons (Insein Prison and Thar Yar Waddy prison in Yangon and Mandalay Prison in Mandalay) have separate barracks but only for boy prisoners at night, and not during the day. Girl prisoners are kept with the women at all times. Chapter XV of The Child law refers to 'Probation Officers' working under the Ministry of Social Welfare, Relief and Resettlement (The Ministry of Social Welfare). There are 20 probation officers in the whole country and they have a broad range of duties regarding both children in conflict with the law and children in need of care and protection.

According to sections 5 and 6 of the Child Law, the National Committee on the Rights of the Child (NCRC) and its local representations at the State, divisional, District or Township levels, are established to lay down and carry out work programmes in order to take preventive measures against occurrence of juvenile crimes.

In Myanmar, there are no specialized juvenile prisons but detention facilities for persons under 18 years called training schools. In 2012, the Government of Myanmar indicated to the CRC that Children sent by Juvenile Courts were taken care of in three schools run by the Department of Social Welfare. It indicated that:

- 226 children were kept in Hynet Aw Son Boy's Training School (near Yangon)
- One in Mawlamyaing Boys' Training School (in the South of the country)
- 80 in Mandalay Boys' Training School (in Mandalay) ⁴⁴⁰

In total there are 43 prisons in Myanmar but only the three central prisons have separate facilities for youth and children and this is where they are usually sent. Mandalay prison has approximately 4500 detainees, Insein detention center in Yangon 7000 detainees and Thar Yar Waddy prison, 1500 to 2000 detainees. The total percent of juveniles in prison represents 1% of the total population. The total estimate for juvenile population could be 200. In 2013, the United States Department of Human Rights report estimated the total prison population to be 60000 persons and evaluated the population of minors and young prisoners to 1.6% of the total population.⁴⁴¹ Girls are not separated from women in prisons, and children can also be in prison with their mother until they reach six years

440 Written replies of Myanmar*[CRC/C/MMR/Q/3-4/Add.1](http://www.bayefsky.com/issuesresp/myanmar_crc_2011.pdf), 12 January 2012, para 80, <www.bayefsky.com/issuesresp/myanmar_crc_2011.pdf>, visited on 17 September 2014.

441 International Center for Prison Studies, Myanmar, <www.prisonstudies.org/country/myanmar-formerly-burma>, visited on 20 October 2014.

old. There are no public figures on this subject. Juveniles were not reported to be present in labor camps.

In Myanmar, statistics on crimes and criminal justice are not publically available and they are not systematic either. When they do exist, they are often considered unrealistic and unreliable and they can also be quite contradictory. This lack of data holds true for juvenile justice matters. The statistics that are provided below are the most recent statistics the consultant could find that were both available and open to the public.

It should be noted however, that several governmental institutions are collecting relevant statistical data on cases disaggregated by gender and age, notably the Supreme Court, the Attorney General’s Office and the police. Data regarding children in institutions are also collected monthly by the Department of Social Welfare by age, gender, and reason for being detained (offender, orphan, street children etc.). The Government has provided access to these figures to several United Nations agencies, notably the United Nation Development Program (UNDP), the United Nation’s Children Fund (UNICEF) ⁴⁴² and the United Nation Office on Drugs and Crime (UNODC).

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Myanmar

Name of law	Date of adoption
The State Law and Order Restoration Council Law No. 9/93 (Child Law)	14 July 1993

Table 2. Statistics taken from a sample of 1291 cases (1334 children), from December 2010 to October 2011, also show a prevalence of thefts, bodily harm and special law offender cases:⁴⁴³

Types	Cases
Theft	23.41%
Rape and “Unnatural”	21.22%
Bodily Harm	20.75%
Kidnapping	7.04%
Murder and Homicide	4.02%
Purpose of Prostitution	0.15%
Special Law	7.35%

442 For the first time, UNICEF was able to access the national level Criminal Department of the Myanmar Police Force (MPF), ‘Annual Report for Myanmar, EAPRO, Executive Summary’, 2012 <www.unicef.org/about/annualreport/files/Myanmar_COAR_2012.pdf>, visited on 15 September 2014.

443 UNICEF, ‘Legal Aid Program’, 2011, p. 12 to 20 ‘Legal Aid program in Myanmar’, 2011, <anggara.files.wordpress.com/2011/12/legal-aid-novrol-workshop5dec2011.pdf>, visited on 15 September 2014.

Chapter VIII.

The State of Juvenile Justice in Philippines

Maria Lourdes Fugoso-Alcain

1. Legislative Framework for Juveniles in Conflict with the Law

The 1987 Philippine Constitution, special laws enacted by the Philippine Congress and international treaties ratified by the Philippines provide the legal foundation for the State's proactive role in the protection of all children, the promotion of their rights, as well as the establishment of current comprehensive juvenile justice and welfare system of the Philippines.

The Constitution ensures the role of the State in rearing and protecting the Filipino children.⁴⁴⁴ Although it contains no specific provision regarding the rights of a child in conflict with the law, the right of every person not to be deprived of life and liberty without due process of law and without equal protection of the law is enshrined as a fundamental human right under the Bill of Rights of the Constitution.⁴⁴⁵ The Bill of Rights of the highest law of the land also mandate the State to strictly observe and protect the fundamental human rights of an accused during search, seizure and arrest⁴⁴⁶, during custodial investigation and detention⁴⁴⁷, the right to bail,⁴⁴⁸ the rights of an accused during trial⁴⁴⁹ and the rights to be observed during the service of sentence.⁴⁵⁰

The Philippines is a state party to about 23 international human rights instruments under the UN system⁴⁵¹, including the UN Convention on the Rights of the Child (CRC) which was signed and ratified by the Philippines in 1990. Art. II, Sec. 2 of the Constitution provides that the Philippines adopts the generally accepted principles of international law as part of the law of the land. In line with this constitutional mandate, provisions of international human rights instruments ratified by the State such as the CRC created legal rights and obligations which are given force and implemented in local jurisdiction.

444 Article II, Sec. 12 and Sec. 13 and Article XV, Sec. 3

445 Article III, Sec. 1

446 Article III, Sec. 19

447 Article III, Sec. 12

448 Article III, Sec. 13

449 Article III, Sec. 14

450 Article III, Sec. 18 (2) and Sec. 19

451 Commission on Human Rights of the Philippines, *On Applying the Rights-based Approach to Development and Governance*, <www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/ab-thr036-040.htm> , visited on 1 October 2014

Republic Act 9344 or the Juvenile Justice and Welfare Act of 2006 is a special law enacted to establish a comprehensive and child sensitive justice system in the Philippines where children can be held accountable using procedures that avoid their incarceration and emphasized on prevention and rehabilitation so that there is lesser risk of re-offending.⁴⁵² This law provides for a special procedure in managing, not only cases of children alleged as, accused of or adjudged as having committed an offense under Philippine laws but also children-at-risk of coming into conflict with the law. The enactment of R.A. 10630 in October 2013 amended some provisions of R.A. 9344 and introduced changes in managing cases of children above 12 up to 15 years of age who are exempt from criminal liability but has committed a serious crime⁴⁵³ or alleged to have committed an offense for the second time or oftener.⁴⁵⁴ 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. R.A. 9344, as amended by R.A. 10630⁴⁵⁵, has repealed specific provisions relating to minority as an exempting circumstance under the Revised Penal Code as well as provisions of Presidential Decree 603 on juvenile delinquency.

An overarching principle that is deemed written in all the provisions of this special law is the application of the principle of restorative justice in the management of cases of children in conflict with the law, from initial contact up to the point of reintegration of the child to the community. Section 2 (f) of R.A. 9344 clearly provides that “The State shall apply the principles of *restorative justice in all its laws, policies and programs applicable to children in conflict with the law.*” The law defines restorative justice as “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.”⁴⁵⁶

Sec. 2 of the law also explicitly expressed the State’s policy of guaranteeing that proceedings before any authority shall be conducted in the best interest of the child and in a manner which allows the child to participate and to express himself/herself freely.⁴⁵⁷

R.A. 9344 covers the different levels of intervention from prevention to rehabilitation and reintegration, not only for children who are in conflict with the

452 Juvenile Justice and Welfare Council, *Keeping the Minimum Age of Criminal Responsibility at 15 Years: When It is not a Matter of Choice* (Philippines, 2012)

453 Sec. 20-A, R.A. 9344 as amended by R.A. 10630

454 Sec. 20-B, R.A. 9344 as amended by R.A. 10630

455 Republic Act 10630: An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose Republic Act 9344, Otherwise Known as the “Juvenile Justice and Welfare Act of 2006” and Appropriating Funds Therefor was signed into law by President last 3 October 2013. The amendatory law came into force on 7 November 2013.

456 Sec. 4 (q) of R.A. 9344

457 Sec. 2, R.A. 9344

law, but also for children at-risk and all children. Under Section 2 of the said Act, a child refers to a person under 18 years of age. On the other hand, the law defines a child at risk (CAR) as a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, (i.e. abused, exploited, abandoned, dysfunctional family) while a child in conflict with the law (CICL) is defined as a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws. It is important to note that R.A. 9344 refrained from using the terms “juvenile delinquents” or “youthful offenders” which has been used in the repealed sections of the Revised Penal Code and P.D. 603 to refer to children in conflict with the law. The change hopes to avoid the labeling and the misconception that the said children are offenders already even if there have been no formal charges yet against them and before they can even be adjudged as having offended the law.

Another salient provision of this law is Sec. 5 of R.A. 9344 which provides for the rights of a child in conflict with the law. Among the rights which are only available to a child in conflict with the law but not to an adult accused under the criminal justice system are: the right of a child deprived of liberty to be separated from adult offenders at all times; the right to diversion if he/she is qualified and voluntarily avails of the same; the right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice; the right to have restrictions on his/her personal liberty limited to the minimum; the right to automatic suspension of sentence; and the right to be free from liability for perjury, concealment or misrepresentation. The rights of a person accused, detained or under custodial investigation under Republic Act 7438 also apply to a child in conflict with the law.

The Supreme Court further clarifies the aforementioned rights in the Revised Rules on Children in Conflict with the Law which shall be respected and protected by the court in all criminal proceedings instituted against them, to wit:

- “(a) To be presumed innocent until guilt is proved beyond reasonable doubt;
- (b) To be informed promptly and directly of the nature and cause of the charge and if appropriate, through the child’s mother, father, legal guardian, or appropriate custodian;
- (c) To be present at every stage of the proceedings, from arraignment to promulgation of judgement. The child may, however, waive presence at the trial pursuant to the stipulations set forth in the bail bond, unless presence at the trial is specifically ordered by the court for purposes of identification. The absence of the child without justifiable cause at the trial of which there was due notice shall be considered a waiver of the right of the child to be present. Escape by the child under custody shall be deemed a waiver of the right to be present in all subsequent hearings until custody over such child is gained;

- (d) To have legal and other appropriate assistance in the preparation and presentation of the child's defense; in case of a child arrested for reasons related to armed conflict, to have immediate free legal assistance;
- (e) If detained, to be released (i) on recognizance to the willing and responsible mother or father or appropriate guardian or custodian, or in the absence thereof, the nearest relative; (ii) on bail; or (iii) by commitment to a youth detention home or youth rehabilitation center;
- (f) Not to be detained in a jail or transferred to an adult facility pending trial or hearing of the case, unless detention is used as a last resort which must be done for the shortest time possible, and only upon order by the court;
- (g) In the case the child has been arrested for reasons related to armed conflict, either as combatant, courier, guide or spy:
 - (i) To be segregated and have separate detention quarters from adults except where families are accommodated as family units;
 - (ii) To immediate free legal assistance in the absence of private counsel;
 - (iii) To immediate notice of such arrest to the parents, guardians or custodians or nearest relatives of the child; and;
 - (iv) To be released on recognizance within twenty-four (24) hours to the custody of the Department of Social Welfare and Development or any responsible member of the community as determined by the court.
- (h) To testify as a witness in his/her own behalf; and subject to cross-examination only on matters covered by direct examination. The child shall not be compelled to be a witness against himself/herself and the child's silence shall not in any manner prejudice him/her;
- (i) To confront and cross-examine the witnesses against him/her;
- (j) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in the child's behalf
- (k) To have speedy and impartial trial, with legal or other appropriate assistance and preferable in the presence of the child's parents or legal guardian or custodian, unless such presence is considered not to be in the best interest of the child taking into account the latter's age or other peculiar circumstances;
- (l) To be accorded all the rights under the Rule on Examination of a Child Witness;

(m) To have the child's privacy fully protected in all stages of the proceedings; and

(n) To appeal in all cases allowed and in the manner prescribed by law.⁴⁵⁸

One of the most important provisions of R.A. 9344 is the legislation of a higher minimum age of criminal responsibility (MACR) in the Philippines which has been increased from nine years, as formerly provided under Presidential Decree 603 (P.D. 603), to 15 years of age. Under R.A. 9344 as amended, children 15 years of age and below are exempt from criminal liability. A child is deemed to be 15 years of age on the day of the fifteenth anniversary of his/her birth date.⁴⁵⁹ The law also provides that a minor who is above 15 but below 18 years of age shall likewise be exempted from criminal responsibility unless he/she has acted with discernment. Further, the minor, under this law, enjoys the presumption of minority.⁴⁶⁰

R.A. 9344 as amended also exempts *all children* from being penalized for commission of status offenses.⁴⁶¹ Also, the law provides that no penalty shall be imposed on children for violation of local ordinances enacted by local governments concerning juvenile status offenses (ex. curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, etc.) as well as light offenses and misdemeanors against public order or safety (ex. disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing). Appropriate intervention program shall be provided to said children who will be considered as children-at-risk.

R.A. 9344 as amended provides for a different approach, intervention and treatment of children below the age of criminal responsibility. Under the law, a child who is exempt from criminal responsibility by reason of his age, shall be subjected to an intervention program such that if it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Under the same provision, the authority shall give notice to the local social welfare and development officer who will determine the appropriate community-based intervention programs in consultation with the child and with the person having custody over the child. However a child who is found to be dependent, abandoned, neglected or abused by his/her parents maybe committed in a youth care facility. The law clarifies though that the minimum age for a child to be committed in a youth care facility shall be 12 years old.

The amendatory law, R.A. 10630, provides for a different procedure and intervention program that should be followed when a child above 12 years of age up to 15 years of age, who is exempt from criminal liability, has committed a serious crime or alleged to have committed an offense for the second time or oftener.

458 Sec. 39 of A.M. No. 02-1-18-SC Revised Rule on Children in Conflict with the Law

459 Sec. 6 of R.A. 9344 as amended by R.A. 10630

460 Sec. 7, R.A. 9344

461 Sec. 57 of R.A. 9344, as amended by R.A. 10630

Sec. 20-A of R.A. 9344, as amended by R.A. 10630, provides that the said 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 carnapping 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). This section also provides for a 24-hour period for the social worker, from the time of the receipt of the report on the alleged commission of the crime, to file a petition for involuntary commitment with the court who shall determine the initial period of placement of the child within the IJISC of the *Bahay Pag-Asa*. On the other hand, 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.⁴⁶²

While the same procedure under Sec. 20 of the law will apply to a children above 15 years but below 18 years of age who do not incur criminal liability because they have been assessed to have acted *without discernment*, the law provides for a different procedure for child in conflict with the law above 15 years of age and below 18 years of age who has been assessed to have *acted with discernment*. The latter will be subjected to other appropriate proceedings which can be a diversion program at the level of the law enforcer, local social welfare officer or under the prosecutor or the court. Sections 23 and 24 of R.A. 9344 provide more guidance on the conduct of diversion proceedings at the different levels.

The Supreme Court Revised Rule on Children in Conflict With the Law, issued on 24 November 2009, amended the old Supreme Court Rule on Juveniles in Conflict with the Law to incorporate the substantive rights under R.A. 9344. It also further clarified the procedure that should be taken to protect and enforce the rights of a child in conflict with the law from custodial investigation up to service of sentence. The said Rule provides that at the custodial investigation, a child who has been taken into custody shall have the following rights:

- (a) At the police station, to be immediately assisted by a lawyer and a social worker who shall make sure that the child is effectively informed of his/her rights, as far as the child's maturity and discernment allow;
- (b) To demand that the questioning or interrogation take place in conditions that respects the rights of the child and are complaint with child-sensitive procedural rules;
- (c) To have the child's family located and notified with dispatch;

462 Sec. 20-B of R.A. 9344, as amended by R.A. 10630

- (d) To be informed, together with the parents, guardians or custodians or nearest relatives, by the social welfare and development officer of the local government unit or of the Department of Social Welfare and Development of the consequences of the offense alleged to have been committed with a view towards counseling and rehabilitation, diversion from criminal justice system and reparation if appropriate;
- (e) To have the results of the child’s medical and dental examination kept confidential unless otherwise ordered by the court. Whenever medical treatment for any physical or mental defect is necessary, to demand that steps must be immediately taken by the medical officer to provide the child with the necessary and proper treatment;
- (f) To have the right of privacy respected and protected at all times, including the utilization of all measures necessary to promote this right, including the exclusion of the media; and
- (g) While under investigation, not to be fingerprinted or photographed in a humiliating and degrading manner.⁴⁶³

R.A. 9344 as amended clarifies the policy of the State that institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Sec. 35 of the law mandates the court to resort to alternative measures to detention and explicitly prohibits detention of a child in jail pending trial or hearing of the child’s case. According to the law, if a child is detained, the court shall order: (a) the release of the minor on recognizance to his/her parents and other suitable person; (b) the release of the child in conflict with the law on bail; or (c) the transfer of the minor to a youth detention home/youth rehabilitation center. Sec. 36 further provides for alternative measures that may replace institutionalization or detention pending trial which include close supervision, intensive care or placement with a family or in an educational setting or home.

R.A. 9344 provides for the placement of children in child-caring institutions and youth rehabilitation centers specifically established for children in conflict with the law pending trial of the criminal case. R.A. 9344 reiterates the requirement under the Family Courts Act of 1997 regarding the establishment of youth detention homes and provides that “... *Whenever detention is necessary, a child will always be detained in youth detention homes* established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides. The law adds that “In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child’s appearance in court whenever required.”

463 Sec. 12 A.M. No. 02-1-18-SC Supreme Court Revised Rule on Children in Conflict with the Law

Section 9 of R.A. 10630 amended Sec. 49 of R.A. 9344 and provided for the mandatory establishment of a *Bahay Pag-asa (House of Hope) instead of Youth Detention Homes* in provinces and highly urbanized cities. The *Bahay Pag-asa* 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.

The important feature of this *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 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 Barangay Council for the Protection of Children. The team will be required to work and implement the individualized intervention plan with the child and the child's family.

However, the provision of the Supreme Court Rule on Children in Conflict with the Law which provides for the placement of a child under the care of a provincial, city or municipality jail in the absence of a youth detention home established by the local government in the city or municipality where the child resides or, a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court, or the Department of Social Welfare and Development or other appropriate local rehabilitation center, contradicts the explicit prohibition of the law against detention of children in jails pending trial or hearing of their cases.

The automatic suspension of sentence for children found guilty of the offense charged is another salient provision of R.A. 9344. Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, *instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application.* The law also provides that *suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.*⁴⁶⁴ Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Revised Rule on Children in Conflict With the Law.

The extent of parental responsibility and liability was introduced by the amendatory law, R.A. 10630, which vested in the courts the power to require the parents of a child in conflict with the law to undergo counseling or any other intervention that, in the opinion of the court, would advance the welfare and best interest of the child. The same provision also makes the parents or guardians

464 Sec. 38, R.A. 9344 as amended

liable unless they prove that they were exercising reasonable supervision over the child at the time the child committed the offense and exerted reasonable effort and utmost diligence to prevent or discourage the child from committing another offense.⁴⁶⁵ Sec. 20-C of R.A. 9344 as amended by R.A. 10630 also provided for the imposition of the maximum penalty prescribed by law for the crime against persons who would exploit children for commission of crimes.

2. Institutional Framework for Juveniles in Conflict with the Law

2.1. Policing and Investigation of Criminal Activities

During the initial contact, the first police responder, whether assigned with the patrol, traffic, intelligence, anti-illegal drugs and the like, needs to exercise due diligence and sensitivity in apprehending or taking into custody a child in conflict with the law.⁴⁶⁶

From the moment the child is taken into custody, the law enforcement officer shall faithfully observe the following procedures⁴⁶⁷:

- (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: a. The reason for placing the child under custody; b. The offense allegedly committed; and c. The child's constitutional rights and the child's rights under Republic Act 7438.⁴⁶⁸ If the child cannot understand the language or local dialect or suffers from disability, an interpreter or a mental health professional shall be provided.
- (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.

465 Section 20-D of R.A. 9344, as amended by R.A. 10630

466 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

467 Rule 26 of the Revised IRR of R.A. 9344, as amended

468 An Act Defining Certain Rights of Person Arrested, Detained or 19 Under Custodial Investigation as well as the Duties of the Arresting, 20 Detaining and Investigating Officers, and Providing Penalties for Violations 21 Thereof

- 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.

However, in cases where the child is fifteen (15) years old or below, the law enforcement officer shall immediately release the child to the custody of the child's parents or guardian, or in their absence, the child's nearest relative, upon assessment and recommendation of the Local Social Welfare Development Officer.

A child in conflict with the law shall only be searched by a law enforcement officer of the same gender, as prescribed in Section 21 of the Act.

It is also the duty of the law enforcement officer to refer the child to the LSWDO for the determination of discernment.

Initial investigation is the stage after initial contact, when the law enforcement officer gathers relevant evidence including the testimonies of witnesses, documents, object evidence, local knowledge and review of scenes when a crime allegedly involving a child is reported.

The conduct of the initial investigation shall be guided by the principle of the best interest of the child and consideration for the concerns and needs of the victim. It is the duty of the law enforcement officer to refer the child to the LSWDO for the determination of discernment as provided under Rule 38.⁴⁶⁹

The law enforcement officer may interview a child for the purpose of 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.⁴⁷⁰

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 under RA 7438.

Any statement or information made by the child referring to the crime shall require the presence of the following persons:

- (1) The child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office;
- (2) The child's parents, guardian, or nearest relative, as the case may be; and
- (3) The LSWDO.

The law enforcement officer from the Women and Child Protection Desk 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 LSWDO, and counsel in attendance, who shall affix their signatures to the said statement.

469 Rule 27, Part VII of the Revised IRR of R.A. 9344

470 Rule 27.a of the Revised IRR of R.A. 9344 as amended

2.2. Diversion

Sec. 23 of R.A. 9344, as amended, provides for the conduct of diversion proceedings for children in conflict with the law who are *above 15 but below 18 years of age* and who has been assessed to *have acted with discernment*. Both conditions have to be present before diversion proceedings can be conducted.

Part X, Rule 43 of the Revised IRR of R.A. 9344, as amended, provides an overview of the diversion proceedings implemented in the Philippines:

“Diversion refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law, on the basis of the child’s social, cultural, economic, psychological or educational background, without resorting to formal Court proceedings. Diversion process shall be centered on the restorative approach, and as far as applicable, shall use restorative justice processes, which may include but not limited to: (a) victim offender mediation; (b) community and family group conferencing; (c) circle sentencing; (d) peacemaking circles; (e) reparative probation and community boards and panels and (f) existing community accepted justice practices that embody restorative justice. In formulating and implementing a diversion program, the following principles shall be considered: (a) Application of restorative justice principles in accordance with Rule 7; (b) Use of positive measures;(c) Full mobilization of all possible resources, which include the family, volunteers, schools and other community institutions;(d) Effective, fair and humane dealing with the child; and(e) Promotion of the well-being of the child.”

Under Rule 28 of the Revised IRR, diversion is to be administered by:

- (a) Law enforcement officer, if the child is above 15 but below 18 years of age, acted with discernment, and allegedly committed an offense with an impossible penalty of not more than six (6) years of imprisonment; or
- (b) LSWDO, if the child is above 15 but below 18 years of age, acted with discernment, and allegedly committed a victimless offense with an impossible penalty of not more than six (6) years of imprisonment.
- (c) The Prosecutor or Judge, if the child is above fifteen (15) but below 18 years of age, acted with discernment, and allegedly committed an offense with an impossible penalty of more than six (6) years of imprisonment.

The Revised IRR of R.A. 9344 also 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.⁴⁷¹

The *Katarungang Pambarangay* (*barangay* or local community justice system) shall have jurisdiction to conduct diversion proceedings where the imposable penalty for the offense committed is not more than six years. Diversion is conducted with the participation of the child and the child's family through mediation, family conferencing and conciliation and, where appropriate, shall 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 and the formulation of a diversion program.

At the law enforcement level, diversion shall be conducted when the child or the child's parents or guardian do not consent to a diversion at the *Katarangungang Pambarangay* level and the *Punong Barangay* (Chairman of the Barangay) forwards the case of the child as provided or when the law enforcement officer determines after the initial investigation that the child is above 15 but below 18 years of age, acted with discernment and allegedly committed an offense, that is not a victimless crime, with an imposable penalty of not more than six (6) years of imprisonment.⁴⁷²

In victimless crimes where the imposable penalty is not more than six (6) years imprisonment, the *local social welfare and development officer* shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the Barangay Council for the Protection of Children. On the other hand, if the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be *resorted to only by the court*.

Because of the independence of the judiciary and the constitutionally vested power granted to Supreme Court to promulgate rules concerning pleading, practice and procedure in all courts, the Supreme Court Revised Rule on Children in Conflict with the Law issued in 2009 shall continue to guide the conduct of diversion proceedings in court.

The Supreme Court Revised Rule on Children in Conflict with the Law requires the formation of Diversion Committee in each court composed of its Branch Clerk of Court as chairperson; the prosecutor, a lawyer of the Public Attorney's Office assigned to the court, and the social worker assigned by the court to the child, as members.⁴⁷³ The said committee shall determine if the child can be diverted and referred to alternative measures or services or if the diversion is not proper. Pending determination of diversion by the Committee, the court shall release the child on recognizance to the parents, guardian or custodian, or nearest relative; or if this is not advisable, commit the child to an appropriate youth detention home or youth rehabilitation center which shall be responsible for the presence of the child during the diversion proceedings. If the Diversion Committee determines that diversion is not proper, or when the child or the private complainant objects to the diversion, or when there is failure if the diversion

471 Rules 43 to 56, Part X

472 Rule 48.a, Revised Implementing Rules and Regulations of R.A. 9344, as amended by R.A. 10630

473 Sec. 31 Supreme Court Revised Rule on Children in Conflict with the Law

program if undertaken by the child, it shall submit a report to the court recommending that the case be subjected to formal criminal proceedings.⁴⁷⁴

“Upon receipt by the Committee of a case for diversion from the Office of the Clerk of Court, the chairperson shall call for a conference with notice to the child, the mother or father, or appropriate guardian or custodian, or in their absence, the nearest relative, the child’s counsel, and the private complainant and counsel to determine if the child can be diverted to the community continuum instead of formal court proceedings.

In determining whether diversion is appropriate for the child, the Committee shall consider the following factors: (a) The past records, if any, involving the child in conflict with the law; (b) The likelihood that the child will be an obvious threat to himself/herself and the community; (c) Whether the child has feeling of remorse for the offense committed; (d) If the child or the parent are indifferent or hostile; and whether this will increase the possibility of delinquent behavior; and (f) If community-based programs for the rehabilitation and reintegration of the child are available.

If the Committee finds that diversion is appropriate, it shall design a diversion program in for the consideration and approval of the court.

Should the Committee determine that diversion is not appropriate, it shall make the corresponding report and recommendation.

The Committee cannot recommend diversion in case the child or the private complainant objects.”⁴⁷⁵

The Supreme Court Revised Rule on CICL also provide for recommended diversion programs which include any or a combination of the following: (a) Written or oral reprimand or citation; (b) Written or oral apology; (c) Payment of the damage caused; (e) Payment of the cost of the proceedings; (f) Return of the property; (g) Guidance and supervision orders; (h) Counseling for the child and his family; (i) Training, seminar and lectures on (i) anger management skills; (ii) problem-solving and/or conflict resolution skills; (iii) values formation; and (iv) other skills that will aid the child to properly deal with situations that can lead to a repetition of the offense; (j) Participation in available community-based programs; (k) Work-detail program in the community; or (l) Institutional care and custody. The diversion program shall also contain a plan that will secure satisfaction of the civil liability of the child. Inability to satisfy the civil the liability shall not by itself be a ground to discontinue the diversion program of a child. On the other hand, consent to diversion by the child or payment of civil indemnity shall not in any way be construed as admission of guilt and used as evidence against the child in the event that the case is later on returned to the court for

474 Sec. 32 Supreme Court Revised Rule on Children in Conflict with the Law

475 Sec. 33 Supreme Court Revised Rule on Children in Conflict with the Law

arraignment and conduct of formal proceedings.⁴⁷⁶

The court social worker shall conduct regular monthly visit to the child undergoing diversion proceedings and shall submit the corresponding reports about the status of the diverted child to the committee. At any time before or at the end diversion period, the committee shall file with the court of the report recommending termination or extension of diversion. The said report shall be heard by the court within 15 days from receipt of the same.⁴⁷⁷

Based on the report and recommendation of the Diversion Committee, the court may:

- (a) Issue a closure order terminating the case if it is convinced that the child has complied satisfactorily with the diversion program; or
- (b) Extend the period of diversion if it is convinced that the child may still be rehabilitated; or
- (c) Order the case to undergo formal court proceedings if it finds that the child has not complied with the diversion program, is incorrigible, or that the program is not serving its purpose.⁴⁷⁸

2.3. Adjudicating and Sentencing

The Supreme Court Revised Rule on CICL, A.M. No. 02-I-18 outlines the procedural rules and standards that should be strictly followed by all courts in conducting the trial, in the promulgation and ordering the automatic suspension of sentence, in placing the child under probation and in issuing other disposition orders.

Cases involving children in conflict with the law are heard in Family Courts⁴⁷⁹, or in places where there is no designated family court, in Regional Trial Courts hearing family and youth cases. With the passing into a law of Republic Act 8369 or the Family Courts Act in 1997, the Supreme Court designated some 78 family courts in the country to principally hear cases involving children and families.⁴⁸⁰

The promotion of the best interest of the child is the guiding principle in the conduct of all judicial proceedings and hearings involving a child in conflict with the law. The SC Rules also provide that all hearings shall be conducted in an environment that will allow the child to participate fully and freely in accordance with the Rule on Examination of a Child Witness.⁴⁸¹

476 Sec. 34 Supreme Court Revised Rule on Children in Conflict with the Law

477 Sec. 37 Supreme Court Revised Rule on Children in Conflict with the Law

478 Sec. 38 Supreme Court Revised Rule on Children in Conflict with the Law

479 Republic Act 8369 which took effect in 1997 established the Family Courts which has jurisdiction over cases on adoption, guardianship, custody of children, support, acknowledgment, complaints for annulment or nullity of marriage, criminal cases where one or more of the accused is below 18 years of age, domestic violence against women and children, and other cases involving children and families.

480 Judge N. Vilches, *The CASA/GAL Volunteer Program*

481 Sec. 45 Supreme Court Revised Rule on Children in Conflict with the Law

The court, in rendering judgment against a child in conflict with the law shall ensure that the judgment shall: (1) be in proportion to the gravity of the offense; (2) consider the circumstances and the best interest of the child, the rights of the victim, and the needs of society in line with the demands of balanced and restorative justice; (3) ensure that restrictions on the personal liberty of the child shall be limited to the minimum; (4) ensure that no corporal punishment shall be imposed; and (5) shall resolve doubt in the prosecution's evidence, in favor of the child.⁴⁸²

If after the trial, the court should find the child in conflict with the law guilty beyond reasonable doubt of the offense charged, it shall impose the proper penalty, including any civil liability which the child may have incurred.⁴⁸³ However, instead of executing the judgments of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application. Suspension of sentence can be availed of even if the child is already eighteen years (18) of age or more but not above twenty-one (21) years old, at the time of the pronouncement of guilt, without prejudice to the child's availing of other benefits such as probation, if qualified, or adjustment of penalty, in interest of justice.

If the child in conflict with the law reaches eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with the provisions of Republic Act 9344, or to extend the suspended sentence for a maximum period of up to the time the child reaches twenty-one (21) years of age, or to order service of sentence.⁴⁸⁴

In case of suspended sentence, the court shall set the case for disposition conference wherein it shall determine and issue any or a combination of the following disposition measures best suited to the rehabilitation and welfare of the child:

- (1) Care, guidance, and supervision of orders;
- (2) Community service orders;
- (3) Drug and alcohol treatment;
- (4) Participation in group counseling and similar activities; and
- (5) Commitment to the Youth Rehabilitation Center of the Department of Social Welfare and Development or other centers for children in conflict with the law authorized by the Secretary of the Department of Social Welfare and Development.⁴⁸⁵

Upon the recommendation of the social worker assigned to the child, the court shall, after due notice to all parties and hearing, dismiss the case against

482 Sec. 46 Supreme Court Revised Rule on Children in Conflict with the Law

483 Sec. 47 Supreme Court Revised Rule on Children in Conflict with the Law

484 Sec. 48 Supreme Court Revised Rule on Children in Conflict with the Law

485 Sec. 49 Supreme Court Revised Rule on Children in Conflict with the Law

the child who has been issued disposition measures, even before reaching 18 years of age, and order a final discharge if it finds that the child has been rehabilitated and has shown the capability to be a useful member of the community.

If the court finds that the child (a) is incorrigible; or (b) has not shown the capability of becoming a useful member of society; or (c) has willfully failed to comply with the conditions of the disposition or rehabilitation program; (d) or the child's continued stay in the training institution is not in the child's best interest, the child shall be brought before the court for execution of the judgment.

The final release of the child shall not extinguish the civil liability. The parents and other persons exercising parental authority over the child shall be civilly liable for the injuries and damages caused by the acts or omissions of the child living in their company and under the parental authority subject to the appropriate defenses provided by law.⁴⁸⁶

The child in conflict with the law who has undergone preventive imprisonment shall be credited in the service of the sentence consisting of deprivation of liberty, with the full time during which the child has undergone preventive imprisonment, if the child agrees voluntarily in writing to abide by the same or similar disciplinary rules imposed upon convicted prisoners. The rule shall not apply if the child is a recidivist or has been convicted twice or more times of any crime; or the child failed to surrender voluntarily upon being summoned for execution of sentence.

*Any form of physical restraint imposed on the child in conflict with the law, including community service and commitment to a rehabilitation center, shall be considered preventive imprisonment.*⁴⁸⁷

The court may, after it shall have convicted and sentenced a child in conflict with the law and upon application at any time, place the child on probation if qualified, in lieu of service of sentence taking into account the best interest of the child⁴⁸⁸

2.4. Treatment of Convicted Juveniles

2.4.1. Residential

The requirement to establish a Youth Detention Home in every local government unit under R.A. 9344 has been replaced with the requirement under R.A. 10630 for each province and highly urbanized city in the Philippines to establish a *Bahay Pag-Asa* (House of Hope) to serve children in conflict with the law.⁴⁸⁹ The *Bahay Pag-Asa* is a 24-hour child-caring institution established, funded and managed by local government units and licensed and/or accredited non-government organizations providing short-term residential care for children in conflict with the law who are above 15 but below 18 years of age who are awaiting court

486 Sec. 51 Supreme Court Revised Rule on Children in Conflict with the Law

487 Sec. 53 Supreme Court Revised Rule on Children in Conflict with the Law

488 Sec. 52 Supreme Court Revised Rule on Children in Conflict with the Law

489 Sec. 49, R.A. 9344 as amended by R.A. 10630

disposition of their cases or transfer to other agencies or jurisdiction.⁴⁹⁰

The recently enacted amendatory law, R.A. 10630, also required the inclusion of a special facility called the *Intensive Juvenile Intervention and Support Center* (IJISC) within the *Bahay Pag-Asa* to serve children who are 12 years up to 15 years of age who are either: 1) found to be dependent, neglected, abandoned or abused; 2) have committed a serious crime as provided under the law; or 3) have committed an offense for the second time or oftener.

A Multi-Disciplinary Team (MDT) composed of a Social Worker, a psychologist/mental health professional, a medical doctor, an educational/guidance counselor and a member of the Barangay Council for the Protection of Children (BCPC), shall operate the “Bahay Pag-asa.” The MDT will work on the individualized intervention plan with the child and the child’s family.⁴⁹¹

As of 2014, there are already 18 *Bahay Pag-Asa* constructed all over the country. According to the data shared by the Protective Services Bureau of the Department of Social Welfare and Development (DSWD), a total of 583 cases have been served by these *Bahay Pag-asa* centers. However, the standards as well as the program manual for the operation of these facilities will have to be revised and harmonized with the amendments introduced by R.A. 10630.

The Department of the Interior and Local Government (DILG), which is the national government agency exercising supervision over the local government units and also a member-agency of the JJWC, in its Memorandum Circular No.2014-43 issued on 03 April 2014, stated that a considerable number of children in conflict with the law are still confined in Bureau of Jail Management and Penology (BJMP)-manned jails nationwide due to the fact that some judges continue to issue commitment orders for the confinement of CICL in said jails pending trial of their cases. In the said memorandum, the Secretary of the DILG urged all provincial governments and highly-urbanized cities to immediately establish a *Bahay Pag-Asa* within their jurisdiction in accordance with the mandatory provision of R.A. 9344, as amended to avoid the commitment of children in conflict with the law in jails.

Under R.A. 10630, a total of Php400 million was allocated for the establishment of *Bahay Pag-Asa* centers in provinces and highly urbanized cities prioritized by the JJWC and the DSWD. However, the said funding for the establishment of *Bahay Pag-Asa* legislated under R.A. 10630 have not been earmarked and incorporated yet in the budget of the JJWC under the General Appropriations Act of 2014. The JJWC and DSWD has already drafted the Guidelines on the Selection of Priority Local Government Units (LGUs) and on the Procedure of Allocating Five Million National Government Contribution for the Improvement, Completion, Construction or Establishment of Bahay Pag-asa. The structural and physical design of the Bahay Pag-asa which already includes the special facility which is the IJISC is also being finalized by the JJWC while it continues to lobby for the allocation of the amount provided under R.A. 10630 in the 2016 budget of the JJWC.

490 Sec. 4 (s), R.A. 9344 as amended by R.A. 10630

491 Ibid.

In addition to the establishment of *Bahay Pag-Asa*, R.A. 9344, as amended also requires the establishment of Youth Rehabilitation Centers (or “Youth Center”) which refers to a 24-hour residential care facility that provides *children in conflict with the law on suspended sentence* with protection, care, treatment and rehabilitation services, under the guidance of a trained staff. The “residents” of the Youth Rehabilitation Center are cared for under a structured therapeutic environment, with the end view of re-integrating them into their families and communities, as socially-functioning and productive individuals.⁴⁹²

Currently, there are 13 Regional Rehabilitation Centers for Youth, one National Training School for Boys and one Home for Boys operating as Youth Rehabilitation Centers in 15 different regions of the Philippines. These Youth Rehabilitation Centers, managed by the Department of Social Welfare and Development, has served a total of 1,497 children in conflict with the law last 2013. Data shared by the DSWD-Protective Services Bureau show that ten out of these 15 Youth Rehabilitation Centers reported being over capacity of their standard beds as these facilities continue to receive children in conflict with the law referred by the LGUs which have not established or do not have any Bahay Pag-asa or youth care facility for children in conflict with the law within their jurisdiction.

2.4.2. Non-residential

R.A. 9344 as amended provides for the creation and strengthening of mechanisms and systems, not only at the regional or national level, but also at the local government level to ensure that the rights of the children provided for under this special law and other international laws and instruments adopted by the Philippines are realized at the level of the community.

Since the delivery of basic social services has already been devolved to the Local Government Units (LGUs) upon the enactment of R.A. 7160 or the Local Government Code of the Philippines in 1991, R.A. 9344 provides for the establishment of a comprehensive juvenile justice and welfare system that shall operate under a devolved system of governance.

In addition to being required to establish a *Bahay Pag-Asa* or a residential facility specifically for children in conflict with the law, the LGUs are also mandated to accomplish the following to ensure that a comprehensive local or community-based juvenile justice and welfare intervention is in place:

- 1) Allocation of at least 1% of their share in the Internal Revenue Allotment (IRA) for the strengthening of and implementation of the programs of the Local Councils for the Protection of Children (LCPC);
- 2) Appointment of a duly licensed social worker as its local social welfare and development officer tasked to assist children in conflict with the law; and

⁴⁹² Rule 81.a, Part XIV of the Revised Implementing Rules and Regulations of R.A. 9344 as amended by R.A. 10630

- 3) Development and implementation of a comprehensive juvenile intervention program aligned with the national program implemented by the Juvenile Justice and Welfare Council.

The following table shows the result of the monitoring of by the Department of the Interior and Local Government in 2014 on the compliance of LGUs nationwide to the provisions of R.A. 9344:

LGUs with 1% IRA Allocation for Strengthening of LCPCs/BCPCs	<ul style="list-style-type: none"> • 20 provinces (25%) • 42 cities (29.37%) • 526 municipalities (35.28%) • 13,837 barangays (32.93%)
LGUs with With MORE THAN 1% IRA allocation for Strengthening of LCPCs/BCPCs	<ul style="list-style-type: none"> • 11 provinces (13.75%) • 29 cities (20.28%) • 156 municipalities (10.46%) • 2216 barangays (5.27%)
LGUs with Licensed Social Worker as Local Social Welfare and Development Officer	<ul style="list-style-type: none"> • 29 provinces (36.25%) • 78 cities (54.54%) • 700 municipalities (46.95%) • 338 barangays (0.80%)
LGUs with Comprehensive Juvenile Intervention Program	<ul style="list-style-type: none"> • 17 provinces (21.25%) • 62 cities (43.36%) • 337 municipalities (22.60%) • 1530 barangays (3.64%)
LGUs with LGU-operated Youth Homes	<ul style="list-style-type: none"> • 12 provinces (15%) • 37 cities (25.87%) • 66 municipalities (4.43%) • 100 barangays (0.24%)
LGUs with NGO-operated Youth Homes	<ul style="list-style-type: none"> • 6 provinces (7.5%) • 8 cities (5.59%) • 12 municipalities (0.80%) • 12 barangays (0.03%)

Source: Department of the Interior and Local Government – National Barangay Operations Office

Rule 24. a. of the Revised IRR of the law provides that the local government units (LGUs), such as the provinces, cities and municipalities, through their Local Social Welfare and Development Office and their Local Planning and Development Office, shall develop their Comprehensive Local Juvenile Intervention Program (CLJIP) which shall be guided by the principles set forth in the CNJIP, but shall be designed to be particularly responsive to the assessed local situation.

Currently, there are seven pilot LGUs implementing the Localization of the CNJIP. The said pilot project aims to institutionalize a localized process of translating the CNJIP Framework to practical models of juvenile intervention programs that local government units can adopt and replicate based on their distinct needs and resources. The other components of this pilot project include

the installation of a local juvenile justice information system, development of a local referral network and mechanism, advocacy, capacity building of local implementers and monitoring and evaluation. The Department of the Interior and Local Government (DILG), a member-agency of the Council which chairs the Technical Working Group implementing the said pilot project, has initiated the expansion of the pilot testing of the localization of the CNJIP in 16 more LGUs under the Capacity Building for LGUs on Human Rights-Based Handling of Children at Risk (CAR) and Children in Conflict with the Law (CICL) Project, funded by the EPJUST II Programme.

3. Reform Initiatives

As a policy-making, coordinating and monitoring body tasked with the implementation of the Juvenile Justice and Welfare Act, as amended, the JJWC takes the lead role in introducing and implementing reform initiatives in the juvenile justice and welfare system of the Philippines. As it has targeted in the previous Strategic Plan for 2012 to 2016 formulated by the Juvenile Justice and Welfare Council in consultation with stakeholders, the Council has identified the following five key result areas to prevent children at risk from committing crimes and to ensure that children in conflict with the law are rehabilitated and reintegrated with their families and communities:

1. policies, plans and program development
2. advocacy and social mobilization
3. research and data management
4. technical assistance for agencies, LGUs, the council and other stakeholders
5. coordination, monitoring and evaluation

Following the amendment of the law in 2013 and the issuance of the Revised IRR of R.A. 9344 as amended last 2014, the JJWC developed its Strategic Plan for 2015 to 2017. There are two major goals identified by the JJWC under the latest Strategic Plan. First, children at risk are prevented from committing crimes, and children in conflict with the law are rehabilitated and reintegrated with their families and communities; and second, institutional partnerships are strengthened in pursuing collectively and effectively the Council's mission.

The improved coordination of government actions for the implementation of the juvenile intervention programs and activities is identified as the organizational outcome of the JJWC. The said outcome shall contribute to the achievement of the JJWC's Major Final Output (MFO) which is restorative justice and welfare policy services for children at risk and children in conflict with the law.

With the passage of R.A. 10630, certain reform initiatives have been legislated and are to be regarded now as obligations which have to be fulfilled by the JJWC and other institutions. These include the following:

- 1) Establishment of Regional Juvenile Justice and Welfare Committees and their corresponding regional secretariats in all regions (RJJWC) in all 17

regions of the Philippines which include children and youth sector representatives, establishment of their corresponding Regional Secretariat and strengthening of the JJWC National Secretariat through the creation of additional permanent positions for technical and administrative support staff members;

- 2) Creation of mandatory registry and development by the JJWC of a national information management system on children at risk and children in conflict with the law;
- 3) Establishment of *Bahay Pag-Asa* and the Intensive Juvenile Intervention and Support Centers in all provinces and highly-urbanized cities as well as formation of Multi-Disciplinary Teams to operate the *Bahay Pag-Asa* and the IJISC;
- 4) Development, implementation and funding of effective and comprehensive juvenile intervention programs through the integration of the Comprehensive Local Juvenile Intervention Program (CLJIP) in the Local Development Plan and Annual Investment Plan of the LGUs;
- 5) Enhancement of existing policies or development of new national, regional or local policies to revised IRR.

4. Main Challenges to the System

Proactive and Intensified Advocacy, Education and Lobbying Against the Lowering of the Minimum Age of Criminal Responsibility (MACR): Since R.A. 9344 has been enacted in 2006, some lawmakers have taken steps to amend the law and lower the minimum age of criminal responsibility from 15 years old to 12 or even to nine years of age. The absolute exemption from criminal liability of children who are 15 years of age and below as provided under the law has been pointed out by some lawmakers and law enforcers as the main reason why children have allegedly been emboldened to commit offenses. Between the years 2012 to 2013, the JJWC, together with partner NGOs and civil society, successfully opposed the lowering of the MACR by the Philippine Congress despite the fact that the House of Representatives already passed House Bill 6052 in June 2012 which lowered the MACR from 15 years to 12 years of age. R.A. 10630, which took effect on 7 November 2013 and amended R.A. 9344, retained the MACR at 15 years of age and even incorporated the suggested reforms to the juvenile justice system. However, after the recent amendment of the law, a number of proposed bills have been forwarded to Congress to lower the MACR again. At present, House Bill 2300, while it was filed to propose a New Criminal Code, also include a provision to lower the MACR from 15 years of age to 13 years of age. The JJWC should continue to lead an intensified legislative advocacy work together with members of the civil society and other stakeholders to oppose the proposed bills to lower the MACR, to remind the legislators to adhere to the

State's obligations to the UN CRC and to mobilize the support of the public by continuously educating the communities on the rights of children in conflict with the law, the root causes of offending and the effective strategies to prevent children from coming into conflict with the law.

Development and Harmonization of Policies and Programs of Concerned Institutions: The amendments to R.A. 9344 as well as the revision of the rules and regulations to implement the amended law will also require the review, harmonization and development of new or revised policies and programs by all agencies tasked to implement the comprehensive juvenile justice and welfare system in the country. Ensuring that the crafting, issuance and implementation of new and rationalized policies and programs by member and coordinating agencies is prioritized is a challenge for the JJWC and all other stakeholders. At present, the Department of Education (DepEd), a member agency of the JJWC, has already finalized the DepEd Guidelines and Procedures on the Management of Children-at-Risk and Children in Conflict with the Law, which outlines the duties and roles of the schools in juvenile delinquency prevention and in the implementation of intervention program for children-at-risk and children in conflict with the law. The Department of the Interior and Local Government (DILG), also a member-agency of the JJWC, has also finalized their Guidelines for LGUs in Development of their Comprehensive Local Juvenile Intervention Program. The JJWC, in consultation with the stakeholders, is also developing a new set of process flowcharts to help the duty-bearers from the field in implementing the amended Act and its Revised IRR.

Strengthening, Capacity-Building and Continuing Education Program for Duty-Bearers: The best interest of the child should be a guiding principle in all actions and decisions that will be taken in the management of cases of children at-risk and children in conflict with the law. The effective and efficient translation of these principles and rights into realities for children largely depends on duty-bearers who are capacitated and equipped with all the necessary resources to implement this comprehensive juvenile justice and welfare system from the community to the national level. In the Philippines, as in other jurisdictions, it is not uncommon to have concerns about turnover or transfer of trained staff or service providers. The challenge will be for institutions and agencies to ensure that in-service training, specialized training and continuous education program are regularly implemented and adequately funded. Adequate funding to support the hiring and retention of a good number of competent staff members and service providers is also a big challenge faced by most juvenile justice and welfare institutions.

Development of the National Information Management System and Conduct of Researches on Juvenile Justice and Welfare in the Philippines: Policies, programs and framework of actions on juvenile justice and welfare should be shaped by evidence-based data and sound research findings. Data-gathering and data-sharing should be systematic and efficient and assessment should involve both stakeholders and experts in the different fields of specialization relating to juvenile justice and welfare. Information management system should also ensure that safeguards are in place to protect the confidentiality of the individual cases

of these children. There should also be a proactive engagement and collaboration with both the legislative and judicial branches of the government on data-sharing to guide them in rule or policy-making on issues relating to juvenile justice and welfare and identify possible points of collaboration in terms of the utilization of mechanisms and tools for information management.

Regular Monitoring of Detention Centers and Legal Representation and Assistance to CICL: Prior to the passage of Republic Act 9344 in 2006, a total of 52,576 children were in detention or under custodial setting from 1995 to 2000.⁴⁹³ After the enactment of the law, the JJWC, along with partner NGOs and institutions, worked to ensure the immediate discharge of these children to their families or their transfer to youth caring facilities or youth rehabilitation centers. To ensure that the fundamental rights as well as statutory rights of every child in conflict with the law are protected and promoted, it is important that competent and specially-trained legal advocates or counsels should represent them and defend their cases before the courts of law.

In 2011, the Bureau of Jail Management and Penology (BJMP) reported that 484 children in conflict with the law were committed to BJMP jails. Regular monitoring of detention centers to ensure that no child is detained therein and moving for the immediate discharge or transfer of children from the said jails to existing Bahay Pag-Asa or other youth rehabilitation centers should be a priority agenda for all concerned institutions.

As a response to this challenge, one of the priority activities for 2015 by the JJWC and all the newly-established RJJWCs is the setting-up of Quick Response Teams and Joint Monitoring Teams to ensure that the rights of children in conflict with the law are protected at all times and that children are not committed within detention facilities. The DSWD has also entered into a Memorandum of Agreement with the Integrated Bar of the Philippines for the provision of legal services to children served by the DSWD, to include children in conflict with the law.

The specific provision of the Supreme Court Revised Rule on Children in Conflict with the Law allowing the commitment of children in jails or detention centers pending trial of their cases if there is no available youth home in the local government unit should be stricken out since it contradicts the clear prohibition against commitment of children in jails pending trial of their cases under R.A. 9344 as amended. The said provision has justified the commitment of a number of children in detention cells while the court is hearing their cases.

Prevention of Reoffending Through the Aftercare Programs and Services:

One of the concerns raised by legislators who would like to lower the minimum age of criminal responsibility is the fact of reoffending committed by children in conflict with the law. It is important that the positive outcomes and gains of rehabilitation, whether community-based or in a residential setting, shall be sustained and strengthened once the child or former child in conflict with

493 Juvenile Justice and Welfare Council, *Five-Year Strategic Plan for 2012-2016* (Quezon City, 2012)

the law is reintegrated to his or her family and community. The importance of monitoring and provision of aftercare programs and services for the child and his or her family cannot be overemphasized. There should be assurance that the family or guardians to whom the former child in conflict with the law has been reintegrated with will support the rehabilitation of the child, will ensure that all his rights shall be protected and fulfilled and will provide a better quality of life for the child and help the child avoid all risk factors that may make the child at-risk again of coming into conflict with the law.

5. Summary and Statistics

In the Philippines, children refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.⁴⁹⁴ While a child as young as 15 years of age can be criminally responsible, they will automatically receive suspension of sentence once the child under 18 years of age found guilty of the offense charged. Provided, however, that suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Republic Act 9344, as amended by Republic Act 10630, created the Juvenile Justice and Welfare Council (JJWC), an inter-agency council tasked to monitor and ensure the effective implementation of the law.⁴⁹⁵ Section 8 of R.A. 9344, as amended by R.A. 10630, created inter-agency committees at the regional level called the Regional Juvenile Justice and Welfare Committee mandated to ensure the effective implementation of the Act at the regional and local government unit levels and coordination among its member agencies. R.A. 9344 provides for the strengthening and creation of Local Councils for the Protection of Children (LCPC).⁴⁹⁶ Diversion takes place at the *Katarungang Pambarangay*⁴⁹⁷ level.

The Philippines do not have specialized juvenile prisons. Instead, R.A. 9344, as amended by R.A. 10630, provides for the establishment of child-caring institutions at the local government level called the *Bahay Pag-asa* (House of Hope).

494 R.A. 7610, Section 3.

495 Sec. 8 of R.A. 9344, as amended by R.A. 10630.

496 SEC. 15, R.A. 9344 provides that "Local Councils for the Protection of Children (LCPC) shall be established in all levels of local government, and where they have already been established, they shall be strengthened within one (1) year from the effectivity of this Act. Membership in the LCPC shall be chosen from among the responsible members of the community, including a representative from the youth sector, as well as representatives from government and private agencies concerned with the welfare of children. The local council shall serve as the primary agency to coordinate with and assist the LGU concerned for the adoption of a comprehensive plan on delinquency prevention, and to oversee its proper implementation.

497 Presidential Decree 1508 or the *Katarungang Pambarangay* Law which was enacted in 1978, established a system of amicably settling disputes at the *barangay* level. The *barangay* is the most basic political unit in the Philippines. According to the National Statistical Coordination Board of the Philippines, there is already a total of 42,028 *barangays* in the Philippines as of 31 March 2014.

Sec. 4 of R.A. 9344, as amended by R.A. 10630, defines the *Bahay Pag-asa* as a “24-hour *child-caring institution* established, funded and managed by 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) years of age who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.”

Another residential facility for youth required to be established under R.A. 9344, as amended, is the Youth Rehabilitation Center. Sec. 4 (t) of the law describes a Youth Rehabilitation Center as:

“a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licensed and/or accredited NGOs monitored by the DSWD, which provides care, treatment and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. Physical mobility of residents of said centers may be restricted pending court disposition of the charges against them.”

Last 2013, a total of 1,497 children in conflict with the law were served in Youth Rehabilitation Centers managed by the Department of Social Welfare and Development. These residential care facilities established for children in conflict with the law include 13 Regional Rehabilitation Centers for Youth, one National Training School for Boys and one Home for Boys which are located in 15 different regions of the Philippines.⁴⁹⁸

498 Source of data: Policy Development and Planning Bureau, Department of Social Welfare and Development

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Philippines

Name of Law	Date of Adoption	Date of Entry Into Force
An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes, Republic Act 9344	18 April 2006	20 May 2006
An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose Republic Act 9344, Otherwise Known as the “Juvenile Justice and Welfare Act of 2006” and Appropriating Funds Therefore, Republic Act 10630	3 October 2013	7 November 2013

Table 2. Total Number of Crimes (Incidents) Reported to the Philippine National Policy (PNP)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Total number crimes (incidents) reported	91,433	86,897	79,897	79,229	73,181	67,769	69,004	505,400	328,329	252,276	223,114
Allegedly committed by Number of incidents allegedly involving children	5,657	3,283	2,644	2,471	1,955	1,825	2,158	2,735	4,246	5,318	5,308

Table 3. Number of children in conflict with the law committed to the custody of the Bureau of Jail Management and Penology (BJMP) based on BJMP data

Year	2007	2008	2009	2010	2011
Total number of juveniles detained in the custody of BJMP	484	338	310	412	484

Table 4. Total Number of Children in Conflict with the Law Diverted to Community-Based Programs for 2013 based on the data of the Department of Social Welfare and Development (DSWD)

Released on	Community-Based Custody/Supervision	Mediation/Diversion	Other Community-Based programs
Total no. of children in conflict with the law diverted to community-based programs	134	433	119
			1,365

Table 5. Total Number of Children in Conflict with the Law Committed to the Bahay Pag-Asa (Child-Caring Institution for Children in Conflict with the Law) Based on the Data of the DSWD

Bahay Pag-Asa (as of 2014)	
Total no. of children in conflict with the law served	583

Table 6. Juvenile Cases Divided by Type of Crime

Types	Cases
Homicide	365
Rape	2,592
Theft	16,402
Drug Related Crime	1,040
Physical Injuries	3,666
Robbery	2,822

Chapter IX.

The State of Juvenile Justice in Singapore

Kelsey Lefebvre Ekman

1. Legislative Framework for Juveniles in Conflict with the Law

The Constitution of the Republic of Singapore is the fundamental law of the nation. Article 12 of the Constitution guarantees all persons are equal before the law and entitled to equal protection of the law.⁴⁹⁹ These rights are extended to all persons irrespective of their race, descent or place of birth.⁵⁰⁰

The Children and Young Persons Act Chapter 38 (CYPA) is the central legislation governing the administration of juvenile justice in Singapore. Originally enacted in 1949, the CYPA provides for the care and protection of children and young persons who are below 16 years of age and provides for the rehabilitation of children and young persons who commit offences or are beyond parental control. Amendments were made to the Act in 1993, 2001 and 2011. The 2001 amendments, in particular, widened the options for rehabilitating youth offenders.

The CYPA establishes a Youth Court which extends to children in need of care and protection,⁵⁰¹ children in conflict with the law⁵⁰² and children beyond parental control.⁵⁰³ The Youth Court has jurisdiction over all children or young persons charged with or tried for an offence.⁵⁰⁴ However, exclusions are made for those who are charged with a capital offence triable only by the High Court,⁵⁰⁵ where a joint trial is proceeding with a person above the age of 16 years⁵⁰⁶ or where the young person has turned 16 years of age before being formally charged.⁵⁰⁷ The Court sits in a standalone building together with the Family Court, as is prescribed by law⁵⁰⁸ and shall sit as often as necessary.⁵⁰⁹ Rights to privacy are observed and proceedings are closed to everyone except members and officers of the court, parties to the case, solicitors, counsel, witnesses and other persons di-

499 Constitution of the Republic of Singapore (1965) s. 12(1).

500 *Ibid.*, s. 12(2).

501 Children and Young Persons Act Chapter 38 (1993) s. 49.

502 Children and Young Persons Act Chapter 38 (2001) ss. 44 & 46.

503 *Ibid.*, s. 51(1).

504 *Ibid.*, s. 33(1).

505 CYPA, *supra* note 501, s. 33(2).

506 *Ibid.*, s. 33(3).

507 *Ibid.*, s. 33(6).

508 *Ibid.*, s. 34(2).

509 *Ibid.*, s. 34(1).

rectly concerned with the case.⁵¹⁰ Bona fide representatives of newspapers or news agencies are allowed to be present,⁵¹¹ however, restrictions on the publication of information relating to proceedings are provided to protect the child or young person's identification.⁵¹²

Procedures are in place to ensure a juvenile offender receives a fair trial. Where a child or young person is brought before the Youth Court, the Court is required to explain the substance of the alleged offence in simple language, suitable to the child's age and understanding.⁵¹³ The child or young person is then asked if he admits the facts constituting the offence.⁵¹⁴ If the child does not plea guilty, witness and cross-examinations will ensue.⁵¹⁵ If the child or young person is not legally represented, a parent or guardian can assist him or her in conducting the defence.⁵¹⁶ At the conclusion, the Court must explain to the child or young person the substance of the evidence against him or her and allow him or her to give evidence or make a statement under oath.⁵¹⁷ If the child admits to the offence, or if the Court is satisfied that the offence is proved, the Judge calls for a Pre-Sentence Report from the Ministry of Social and Family Development prior to making a ruling.⁵¹⁸ In doing so, the Court may take into consideration the child's family background, general conduct, home surroundings, school records, medical history and state of development.⁵¹⁹ This provision ensures cases are dealt with in the best interests of the child or young person.⁵²⁰

The CYPA further specifies provisions on sentencing. A Judge may discharge the youth offender or charge him or her with a fine or bond. Where applicable, community-based rehabilitation orders are made, including: Community Service Orders (CSO), Weekend Detention Orders (WDO), Probation with CSO, Probation with WDO, or Probation with Detention. Additionally, the Court has discretion to issue Residential Rehabilitation Orders to a Place of Detention for no more than six months or a Juvenile Rehabilitation Centre for a period not exceeding three years.⁵²¹

Under certain circumstances, the Youth Court can order an offender to be brought before a District Court. This can occur if a child has reached 16 years of age, or is 14 years of age and has previously been sentenced to a juvenile rehabilitation centre. In so doing, the offender is subject to section 305 of the Criminal Procedure Code 2010, whereby the court may impose a sentence of reformatory training, the most intensive form of institutional rehabilitation.⁵²² Prior to im-

510 *Ibid.*, s. 34(2).

511 *Ibid.*, s. 34(2).

512 *Ibid.*, s. 35.

513 *Ibid.*, s. 42(1).

514 *Ibid.*, s. 42(2) CYPA.

515 *Ibid.*, ss. 42(3)(4).

516 *Ibid.*, s. 42(5).

517 *Ibid.*, s. 42(7).

518 *Ibid.*, s. 42(9).

519 *Ibid.*, s. 42(9).

520 *Ibid.*, s. 42(9).

521 *Ibid.*, s. 47.

522 *Ibid.*, s. 44(i)(k).

posing a sentence, the Director of Prisons must provide a report detailing the offender's physical and mental condition as well as suitability for reformatory training. The child may be held in remand for a period not exceeding one month while the report is being issued.⁵²³

The Probation of Offenders Act Chapter 252 influences the administration of juvenile justice in Singapore by providing the Youth Court a range of probation orders that are commonly used. The Act requires Courts to take into account all circumstances of the case, including the nature of the offence and the offender's character.⁵²⁴ Together, the CYP Act and the Probation of Offenders Act provide a continuum of graduated sanctions that correspond to each juvenile offenders' needs, while also providing community safety, immediate intervention at the first sign of delinquent behaviour and ownership and accountability from the family of the offending juvenile.⁵²⁵

2. Institutional Framework for Juveniles in Conflict with the Law

2.1. Policing and Investigation of Criminal Activities

There is no designated section for the investigations of crimes committed by youth within the Singapore Police Force; however, statutory limitations are provided on police powers and the handling of detained juveniles. Limitations on police powers include informing the parents of a child or young person immediately upon arrest,⁵²⁶ limiting the preliminary investigations period to a maximum of four hours, and releasing the juvenile on bail to the custody of the parents.⁵²⁷ After the investigations are complete, the case is referred to the Attorney-General's Chambers with police recommendations on whether charges should be made against the juvenile.⁵²⁸ The recommendations will consider whether the child is a first-time offender.

Besides charging the offender, the police have three alternative options at their disposal for the treatment of juvenile offenders. The police may release the juvenile with a warning, release the juvenile with a referral to a social service agency for assistance or counselling or, on the advise of the Attorney General, they may ask the juvenile to participate in the Guidance Programme, a six month diversionary programme. Recognizing the need to properly assess the youth offender for purposes of diversion, a social worker has been deployed at selected police stations in Singapore where pilot programs are currently being carried out.⁵²⁹ There

523 Criminal Procedures Code Chapter 15 of 2010 (2010) s. 305.

524 C. Kamal, 'Directions of Juvenile Justice Reforms in Singapore', Resource Material Series No. 59 *118th International Training Course Visiting Experts' Papers* (2002) p. 114.

525 *Ibid.*, p. 115.

526 UN Committee on the Rights of the Child, CRC/C/SGP/2-3 *Consideration of reports submitted by States parties under article 44 of the Convention : Convention on the Rights of the Child : Initial reports of States parties due in 1997 : Singapore* (2002) para. 480.

527 *Ibid.*

528 *Ibid.*

529 K. Amirthalingam, 'Criminal Justice and Diversionary Programmes in Singapore', 24 *Criminal*

is no legislative basis for issuing warnings and is done so on a consensual basis.⁵³⁰

When a person below 16 years of age is arrested and is not released, he or she shall immediately be brought before the Youth Court.⁵³¹ When he or she cannot be brought immediately before the Youth Court, the police officer, without further delay, must bring the young person before a Magistrate.⁵³² Provisions are provided so that no child or young person being detained in a police station, or being conveyed to or from court, shall have association with an adult offender.⁵³³

The CYPA protects juvenile offenders who have not been released on bail and are below 16 years of age by requiring him or her to be placed in a remand home, rather than remanding him in custody in a prison. The police officer is provided a degree of discretion in ensuring a remand home is the safest option for both the offender and other children held in remand.⁵³⁴

The Singapore Police Force established a Youth Offenders Unit in 2012 that oversees prevention programmes, monitors trends and coordinates public education and outreach programmes for youth.⁵³⁵

2.2. Diversion

At present, no legal regime exists for pre-trial diversion in Singapore.⁵³⁶ Despite the lack of legal framework, several programmes aimed at young offenders and pre-delinquents have been installed.

The National Committee on Youth Guidance and Rehabilitation at the Ministry of Social and Family Development was established in 1995. The Committee addresses juvenile delinquency by working with partners to support youth-at-risk, coordinate and review existing intervention programmes to identify gaps, lead collaborative research on youth-at-risk and work together with social service agencies, self-help groups and other community organisations to develop programmes and build capabilities.⁵³⁷ The Central Youth Guidance Office is the secretariat to the Committee and includes representatives from the Ministry of Social and Family Development; Ministry of Education; Ministry of Health; Ministry of Home Affairs; Central Narcotics Bureau; Singapore Police Force; Singapore Prison Service; State Courts; National Council of Social Services; National Crime Prevention Council; National Youth Council; Academics; and self-help groups.⁵³⁸

Law Forum (2013) p. 552.

530 *Ibid.*, p. 549.

531 CYPA, *supra* note 501, s. 30(1).

532 *Ibid.*, s. 30(2).

533 *Ibid.*, s. 28.

534 *Ibid.*, s. 53.

535 T.C. Hean, *Ministry of Home Affairs: Home Team Speeches: Written Reply to Parliamentary Question on Recommendations by Working Group on Youth Gangs*, <www.mha.gov.sg/news_details.aspx?nid=MjgoNw%3D%3D-e8ZTDakkUNY%3D>, visited on 12 November 2014.

536 Amirthalingam, *supra* note 529, p. 546.

537 Ministry of Social and Family Development, *National Committee on Youth Guidance and Rehabilitation: About Us* <app.msf.gov.sg/NYGR/About-Us>, visited 2 November 2014.

538 *Ibid.*

The Central Youth Guidance Office focuses on early-intervention and preventative programmes for youth-at-risk. Examples of early-intervention programmes include: the Youth Go! Programme, a community-based outreach programme directed at youth aged 12-21 who are out of school and not working;⁵³⁹ BeaconWorks run by Singapore Children's Society focuses on stabilising behavioural problems that split the cohesiveness of the family unit;⁵⁴⁰ and the Delta League youth engagement programme organised by the Singapore Police Force in which competitive football matches serve as a platform for youth to learn about the value of teamwork from mentors and coaches while at same time keeping youth meaningfully occupied during school breaks.⁵⁴¹

While children beyond parental control (BPC) are not classified as offenders, a brief discussion on BPC is warranted as these children are often brought before the Youth Court and subject to similar treatment as offending juveniles. Children BPC are those below 16 years of age who display serious behavioural problems at home or school; their behaviour may be serious enough where parents turn to the Youth Court for assistance in handling them.⁵⁴²

It is recognised that in the interest of the child, certain procedures should be in place to help keep borderline cases out of the court system. In so doing, the court can refer borderline cases to the Singapore Children's Society, a non-governmental organisation with a special focus on juvenile delinquency. The Children's Society provides BPC pre-complaint mediation services. If counselling is considered successful, and parents agree to withdraw their complaint, the case will terminate in Youth Court; if the Children's Society is unable to help the family, the case will proceed within the court system.⁵⁴³ The Youth Court has the power to discharge a complaint, order statutory supervision or order the child or young person to a place of safety and undergo residential rehabilitation for no more than three years. If a child is to undergo residential rehabilitation, he or she may be housed in the same residence as juvenile offenders.⁵⁴⁴

539 Ministry of Social and Family Development, *National Committee on Youth Guidance and Rehabilitation: Youth and Family Programmes* <app.msf.gov.sg/NYGR/Our-Programmes/Early-Intervention/Youth-Family-Programmes>, visited on 7 November 2014.

540 Singapore Children's Society, *Family Services* <<https://www.childrensociety.org.sg/Family-Services>>, visited on 10 November 2014.

541 Singapore Police Force, 'Annual Crime Brief 2013', *Singapore Police Force* (2014) p. 13.

542 Ministry of Social and Family Development, *Policies: Beyond Parental Control* <app.msf.gov.sg/Policies/Children-Youth/Children-Beyond-Parental-Control>, visited on 10 November, 2014.

543 The Subordinate Courts of Singapore, *Top 5 Most Popular FAQs* <ifaq.gov.sg/subcourts/apps/fcd_faqmain.aspx?qrst=2fN7e274RAp%2bbUzLdEL%2fmCxs7iwcgv8gv2atNDOvsL-B9o5KYKpV7UurOzv9uMOetEasFrwhSms2QluSBwSiuvQGDT4absg4M3UjdJh5iwW2GiwtxtpW19msOkrdzI47Cv1%2fkRq%2fuBvBgF%2fJAKC6GQLxIdQc5hqu62h8Lnc2OknVC-N%2bkbqfZgRWL763AMwblyMFVthEASXLaF%2fGjoS%2b7yKUK3apiUIKHXXZIIeUL-23qXoG2kOA3A32X6dM6A4cBIHGqzAQTCWSYMXOQAFiKKmowW%2fWzXDym#-FAQ_2151>, visited on 10 November 2014.

544 UN Committee on the Rights of the Child, CRC/C/SGP/CO/2-3, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention : Concluding Observations : Singapore* (2011) para. 46.

Counsellors and social workers from Children's Society offer structured supervision, counselling and alternative programs to the juveniles involved in BPC cases for a period of one to three years.⁵⁴⁵ In 2013, there were 83 new BPC cases, 57 per cent of which were female. It is common for BPC cases to involve females, many of whom defy their parents, run away and become involved in sexual activities at a young age.⁵⁴⁶ Concerns have been raised that the BPC system may stigmatise the child unnecessarily and goes against the CYPA, which encourages parents and guardians to have primary responsibility for the care and welfare of the child or young person.⁵⁴⁷

The Probation Services Branch of the Ministry of Social and Family Development oversees Pre-Court Diversionary Programmes. Guided by a social worker, the youth is voluntarily involved in a programme aimed to help youth make the right choices and live a crime-free life.

The National Committee on Youth Guidance and Rehabilitation manages the Guidance Programme in collaboration with several other agencies, including the Attorney-General's Chambers, the Singapore Police Force, local schools and relevant Social Service Agencies.⁵⁴⁸ The programme was introduced in 1997 for youth offenders below 16 years of age. The programme is six months in duration and focuses on counselling and rehabilitation with active parent participation. The aim of the programme is to help the juvenile develop better self-control, take responsibility for his or her actions and acquire life skills.⁵⁴⁹

As previously stated, no legislative framework exists for the administration of the Guidance Programme and admittance into the programme is made on a discretionary basis. A police officer decides if the first-time youth offender is believed to be suitable for the Guidance Programme and then brings the case to the Attorney-General's Chambers. The offender will then be given a formal conditional warning from the Attorney-General's Chambers.⁵⁵⁰ So long as he or she successfully completes the programme, no prosecution will commence.⁵⁵¹ In 2003, Guidance Programme Plus was initiated and extended services to young offenders aged 16-19 years; Guidance Programme-ID was installed in 2006 to cater to young offenders with intellectual disabilities. The Attorney-General's Chambers has designated a deputy public prosecutor as a Guidance Programme

545 J. Ozawa, 'Juvenile Justice: A Study on National Judiciaries for the United Nations Asia Far East Institute for the Prevention of Crime and the Treatment of Offenders', Resource Material Series No. 78 *139th International Training Course Visiting Experts' Papers* (2009) p. 75.

546 *Ibid.*, p. 74.

547 UN Committee on the Rights of the Child, *supra* note 46, para. 46.

548 Amirthalingam, *supra* note 529, p 552.

549 Ministry of Social and Family Development, *Policies: Rehabilitation of Children and Youth* <app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Pre-Court-Diversionary-Programme-Guidance-Program>, visited on 30 October 2014.

550 Amirthalingam, *supra* note 529, p. 553. The types of offences for which the Guidance Program may be invoked include shoplifting/theft, criminal trespass, unlawful assembly, technical housebreaking robbery or extortion where no hurt or violence is committed, and any minor offence on the recommendation of the police.

551 *Ibid.*, p.552.

duty officer to take responsibility of all Guidance Program cases.⁵⁵² In 2013, there were 580 (468 male; 112 female) new Guidance Program cases.

The Streetwise Program, launched in 1997, is directed at youth (age 13-18 years) who have unwittingly drifted into gangs and aims to help youth gain a fresh start in life through an intensive six-month programme that incorporates elements of counselling, family conferencing, peer support, recreation and academic activities.⁵⁵³ In 2013, there were 106 (102 male; 4 female) new Streetwise cases.⁵⁵⁴ The Enhanced Streetwise Program is aimed at youth offenders who have a minor-role in gang related offences. If the offenders complete the Programme, they may be let off with a stern warning in lieu of prosecution. The Youth-Enhanced Supervision Scheme is a programme aimed at youth offenders who abuse drugs.

2.3. Adjudicating and Sentencing

Singapore's Youth Court adopted restorative justice as its guiding philosophy towards juvenile offenders in 1997.⁵⁵⁵ The courts have endorsed this view in some exemplary cases: *PP v. Mok Ping Wuen Maurice*; *Lim Pei Ni Charissa v. PP*; and *PP v. Mohammad Al-Ansari bin Basri*.⁵⁵⁶ While legislation is clear in that it recognises young offenders can and should be rehabilitated, rehabilitation is never granted as a right.⁵⁵⁷ In Youth Court, the juvenile is made accountable for the offending behaviour and is meant to take responsibility for the consequences.⁵⁵⁸

As prescribed by law, the Youth Court is housed together with the Family Court, but in a separate building from adult criminal courts. The Court is surrounded with comfortable surroundings and does not have an open gallery for the public, thus protecting the identities of the juvenile offenders.⁵⁵⁹

The Family Justice Act 2014 stipulates judges of a Youth Court be chaired by a District Judge, or Magistrate, who is designated by the Chief Justice. He or she is assisted by two advisors, from a panel of advisors, who are nominated by the President.⁵⁶⁰ There are no requirements for the Youth Court Judge to have experience with child welfare prior to being appointed, nor does the CYPA prescribe any basic criteria or qualifications as pre-requisites for appointments to the

552 *Ibid.*

553 State Courts Singapore, *Reaching Out To The Juvenile* <app.statecourts.gov.sg/juvenile/print.aspx?pageid=7520#1>, visited on 4 November 2014.

554 Ministry of Social and Family Development, *Research Room: Streetwise Programme: New Cases* <app.msf.gov.sg/Research-Room/Research-Statistics/Streetwise-Programme-New-Cases>, visited on 8 November 2014.

555 W-C. Chan, 'Family Conferencing for Juvenile Offenders: A Singaporean Case Study in Restorative Justice,' 8:1 *Asian Criminology* (2013) p. 1.

556 Amirthalingam, *supra* note 529, p 551; *PP v. Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439; *Lim Pei Ni Charissa v. PP* [2006] 4 SLR(R) 31; *PP v Mohammad Al-Ansari bin Basri* [2008] 1 SLR(R) 449.

557 Kamal, *supra* note 524, p. 114

558 M. Desai, 'A comparative study of measures for children in conflict with the law in Goa and Singapore,' 52 *International Social Work* (2009) p. 319.

559 Ozawa, *supra* note 545, p. 72.

560 CYPA, *supra* note 501, s. 32(3).

position of panel advisor.⁵⁶¹

As previously described, the CYPA provides regulations on the Youth Court's adjudication and sentencing processes. These provisions include: protecting juveniles from coming in contact with adult offenders;⁵⁶² mandatory attendance of parent or guardian;⁵⁶³ restrictions on publication of information;⁵⁶⁴ restrictions on the punishment of juveniles;⁵⁶⁵ jurisdiction of Youth Court;⁵⁶⁶ procedures in Youth Court;⁵⁶⁷ and powers of Youth Court on proof of offence.⁵⁶⁸

The Youth Court can also order Family conferencing in an effort to rehabilitate the juvenile offender. Unlike other jurisdictions, family conferencing is not used as a pre-court diversionary tool but rather caters to youth offenders found guilty or have pleaded guilty to an offence. The sessions are legally convened and combine judicial mediation, problem solving, and advocacy.⁵⁶⁹ ProjectHEAL is an alternative form of family conferencing that also involves the victim of the offence; however, this project constitutes a small proportion of the total family conferences held each year.⁵⁷⁰

To aid the sentencing process, the Youth Court follows an assessment criterion that was developed by the Psychological Services at the Subordinate Courts which places offenders along a continuum.⁵⁷¹ The Juvenile Offender Behaviour Criteria allows the Judge to individualise and objectify the sentencing of youth offenders. Consistent with the notion of restorative justice, the criteria allow youth offenders to be evaluated differently, taking into account many variables to enable an individualised rehabilitation program. The idea is that the judicial process will lead to a multi-systemic set of options in sentencing.⁵⁷²

The above provisions are not relevant, however, if a juvenile has committed a serious offence such as murder, rape, drug trafficking or armed robbery, whereby he or she may be tried by the High Court. The High Court has the power to order a child or young person to be sentenced to corporal punishment, which is legitimised in Singaporean legal frameworks and society.⁵⁷³ In so doing, male juveniles may be subjected to judicial caning. As the death penalty is forbidden for those below 18 years of age, juveniles could be subject to life imprisonment whereby they are detained at The President's Pleasure.⁵⁷⁴ Youth detained at The

561 A. Saibaba, 'Juvenile Justice: Critically Juxtaposing the Models in India and Singapore', Working Paper Series No.028 *Asian Law Institute* (2012) p. 15.

562 CYPA, *supra* note 501, s. 29.

563 *Ibid.*, s. 31.

564 *Ibid.*, s. 35.

565 *Ibid.*, s. 37.

566 *Ibid.*, s. 33.

567 *Ibid.*, s. 42.

568 *Ibid.*, s. 44.

569 Ozawa, *supra* note 545, p. 76.

570 Chan, *supra* note 555, p. 13.

571 Chan, *supra* note 555, p. 14.

572 J.P. Ozawa, 'Juvenile Offender Behaviour ('JOB') Criteria: Assessing Risk of Recidivism in Juvenile Court', *Focus*. Available online at: <www.lawgazette.com.sg/2001-7/July01-focus3.htm>

573 Saibaba, *supra* note 561, pp. 16-17.

574 UN Committee on the Rights of the Child, 'Consideration of reports submitted by States parties

President's Pleasure participate in rehabilitative activities and take part in vocational and educational programmes. Regular family visits are allowed and their conduct and progress is reviewed annually (it was previously every four years). When the offender is found suitable for release, a recommendation will be made to the President who can then order a release.⁵⁷⁵

In addition to the Youth Court and High Court, the Community Court was installed in 2006 where certain classes of offenders could have differential treatment; among which were the accused aged 16-18. In 2008, the upper age limit was raised to 21 years of age.⁵⁷⁶ The court adopts a problem-solving approach that combines criminal justice with community resources and offenders are rehabilitated in the community where possible.⁵⁷⁷

2.4. Treatment of Convicted Juveniles

2.4.1. Residential

The management of offending juveniles falls largely within the purview of the Ministry of Social and Family Development, which includes the Probations Services Branch. Several other agencies, however, play an important role in the treatment of convicted juveniles, including: The Ministry of Education; Ministry of Health; Ministry of Home Affairs; State Courts; Central Narcotics Bureau; Singapore Police Force; Singapore Prison Service; the National Committee on Youth Guidance and Rehabilitation; the Central Youth Guidance Office; the National Council of Social Services; National Youth Council; the National Crime Prevention Council; and several Voluntary Welfare Organisations.

Institutionalisation of a young offender is considered only as a last resort, after all else had failed and when it becomes sufficiently clear that committing a young offender to an institution is really in her or her best interest.⁵⁷⁸ Singapore's policies, strategies and activities relating to institutionalisation are guided by five principles: Providing care with the aim of reintegration back into family and society; developing and fostering a safe and supportive environment for rehabilitation; maximizing the strengths and potential of each person; strengthening the family; and, fostering synergistic partnerships with the community.

Three forms of institutional rehabilitation exist in Singapore. The first, and least restrictive form of institutionalisation is at a place of detention. The court can mandate an offender to reside in a place of detention for a maximum of six months. This order can be made in addition to a probation order, in which case the offender can reside in the place of detention for a maximum of three months

under article 44 of the Convention : Convention on the Rights of the Child : 2nd and 3rd periodic reports of States parties due in 2007 : Singapore' CRC/C/SGP/2-3 (2010) para. 472.

575 *Ibid.*, para. 473.

576 Ozawa, *supra* note 545, p. 77.

577 Desai, *supra* note 558, p. 322.

578 Kamal, *supra* note 524, p. 122.

and undergo a series of exercise drills and groupwork.⁵⁷⁹

For more serious offences, the young offender can be detained at a Juvenile Home for two to three years. The Ministry of Social and Family Development runs two Juvenile Homes: Singapore Boys' Home and Singapore Girls' Home. These homes are considered "closed institutions" whereby security is kept tight with the aim to prevent offenders from leaving; closed circuit TV monitors, alarm systems, sensors, and grills and bars on the windows and doors are installed and the premises are surrounded by a barbed wire fence.⁵⁸⁰ The juvenile offender must be within sight of a Home staff member at all times and if the offender commits a serious offence in the home, such as using violence or rioting, he or she may be segregated into a cell and corporal punishment may be meted out at the Boys' Home.⁵⁸¹ In 2013, 322 (235 males; 87 females) juveniles were admitted to MSF Juvenile Homes.⁵⁸² A classification and assessment system helps to identify individual needs and risk factors and assists in accurately placing the offender in the appropriate residential block within the institutions. Singapore Girls' Home has a capacity to hold 214 girls. The facilities include two residential blocks, which allow the offenders and non-offenders to be housed separately. Each residential block has its own dormitories, counselling and activity rooms, dining area, recreations hall, library, courtyard, medical consultation room, sick bay and segregation rooms.⁵⁸³ Singapore Boys' Home houses approximately 380 males whose offences include theft, robbery, rioting, molestation or have been deemed Beyond Parental Control. The Home provides a regimen of academic classes and physical exercises.⁵⁸⁴ New programmes and more services were recently introduced at the Boys' Home, including the introduction of a wider range of academic, vocational and therapeutic programmes. Improvements in infrastructure are underway to facilitate the increasing amount of programmes.⁵⁸⁵

The third form of institutional rehabilitation is reformatory training. The Reformatory Training Centre is operated by the Prisons Department of the Ministry of Home Affairs. It houses young offenders between 14 and 21 years of age who have been sentenced by the Court to undergo reformatory training for up to three years. Training at the Centre consists of two phases: The Residential

579 Ministry of Social and Family Development, *Policies: Detention Order* <app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Detention-Order>, visited on 1 November 2014.

580 L. H. Min, *Juvenile Justice: Where Rehabilitation Takes Centre Stage* (Academy Publishing, Singapore, 2014) p. 74.

581 *Ibid.*

582 Ministry of Social and Family Development, 'Singapore Social Statistics in Brief 2014' *Strategic Planning, Research and Development Division* (2014) p. 5. This number includes those that were put on probation.

583 UN Committee on the Rights of the Child, *supra* note 574, para. 448.

584 Asiaone Singapore Newspaper, 'What is the Boys' Home?', 9 August 2013. Accessed online: <news.asiaone.com/news/singapore/what-boys-home>.

585 Ministry of Social and Family Development, *Press Room: Fact Sheet: Better outcomes for youth in residential care rehabilitative programmes*, (2011) <app.msf.gov.sg/Press-Room/Better-outcomes-for-youth-in-residential-care>, visited on 13 March 2015.

Phase and Supervision Phase. The Residential phase includes counselling, academic and vocation training, and other religious, family involvement and community re-integration programmes. A personal supervisor provides guidance and monitors the trainees' welfare and behaviour.⁵⁸⁶ During the Supervision Phase, trainees are expected to work, study or carry out community work while under the care and supervision of Prison's Reintegration Officers until their release.⁵⁸⁷ Offenders who wish to pursue academic education are transferred to the Tanah Merah Prison (Prison School) where academic and vocational courses are offered.

Offenders undergoing reformatory training are subject to strict disciplinary procedures. Singapore is of the view that regulated use of corporal punishment, including caning and solitary confinement, is an acceptable mode of discipline for juvenile offenders. Corporal punishment does not constitute as violence against children and is not considered as a restricted form of punishment in Section 37 of the CYPA.⁵⁸⁸ Certain limitations are provided to protect those with a physical or mental disability.⁵⁸⁹

Children undergoing institutional rehabilitation can report any incidents of ill-treatment through an independent Board of Visitors.⁵⁹⁰ The Board is appointed by the Minister of Home Affairs and is responsible for the inspection of reformatory training centres and hearing the complaints of inmates.⁵⁹¹ Additionally, a Reformatory Training Centre Advisory Committee is in place to decide and review cases of reformatory trainees that may be fit for release into police supervision, review the conditions of the release supervision orders and decide on the need to recall when a trainee breaches his supervision order.⁵⁹²

2.4.2. Non-residential

The Probation Services Branch provides services for juveniles who have been sentenced to probation and/or community service. The department has a specified youth branch which has an array of responsibilities, including: assessing the suitability of offenders to be placed on Probation and/or Community Service Orders; supervises offenders; engages with the community to help in the rehabilitation of offenders; administers the Probation and / or Community Service Order; and administers the Community Probation Service where members of the public are recruited as Volunteer Probation Officers.⁵⁹³

586 Ministry of Social and Family Development, *National Committee on Youth Guidance and Rehabilitation: Our Programmes* <app.msf.gov.sg/NYGR/Our-Programmes/Rehabilitation>, visited on 3 November 2014.

587 *Ibid.*

588 UN Committee on the Rights of the Child, *supra* note 574, para. 187.

589 *Ibid.*, para. 186.

590 *Ibid.*, para. 187.

591 Ministry of Home Affairs, *Home Team Connection* <www.mha.gov.sg/basic_content.aspx?page-id=95>, visited on 2 November 2014.

592 Singapore Prison Service, *Boards and Committees* <www.prisons.gov.sg/content/sps/default/connectwithus/board_of_committees.html>, visited on 3 November 2014.

593 Ministry of Social and Family Development, *Our People: Probations Services Branch* <app.msf.gov.sg/About-MSF/Our-People/Divisions-at-MSF/Social-Development-and-Support/Rehabilita

The Voluntary Probation Officer (VPO) scheme, established in 1971, recruits members of the public to support government efforts in the rehabilitation of youth offenders. 221 VPOs were registered in 2013.⁵⁹⁴ VPOs mentor, facilitate community service projects, liaise with schools, conduct physical curfew checks and conduct programmes.⁵⁹⁵ Volunteers follow a structured in-house training programme to equip them with the necessary tools when working with offenders and their families.⁵⁹⁶

The Social Service Institute is a division of the National Council on Social Services and is a Continuing Education and Training centre for Community and Social Services.⁵⁹⁷ The Institute provides evidence and practice-based courses for professional youth workers and volunteers working with youth. Probation officers, youth workers and volunteers play an instrumental role in the rehabilitation of young offenders. A continued effort to upgrade their skills is integral to the success of rehabilitating young offenders for both community and institutional-based rehabilitation.

Forms of community-based rehabilitation include community service, weekend detention, and probation. Under a Community Service Order, an offender 14 years and above can be ordered to perform community service for a minimum of 40 hours and a maximum of 240 hours.⁵⁹⁸ Services can include caring for and befriending the elderly and the disabled, general maintenance and repair works in welfare facilities and hospitals and organising fund-raising and social activities for the disadvantaged. There are also value-added community service options available as part of a work development programme which enhances the offender's employability.⁵⁹⁹ The Youth Court may order a stand-alone Community Service Order or a Community Service Order together with probation. In 2013, 1,304 probationers performed community service during the year as part of their Probation Order.⁶⁰⁰

A juvenile offender ordered to Weekend Detention is required to report to a place of detention during the weekends for a period not exceeding 52 weekends. Weekend detention can be imposed as the only order, or it may be imposed together with probation. Under weekend detention, juveniles are required to re-

[tion-and-Protection-Group/Probation-Services-Branch>, visited on 4 November 2014.](#)

594 Probations Services Branch, 'Nurturing Growth: Probation Service Annual Report 2013' *Ministry of Social and Family Development* (2013) p. 27.

595 *Ibid.*

596 Ministry of Social and Family Development, *Policies: Community Probation Service* <app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Probation-Order/Community-Probation-Service#sthash.n1W99w9S.dpuf>, visited on 10 November 2014.

597 Social Service Institute, *About Us* <www.socialserviceinstitute.sg/AboutUs/AbtUsr.aspx?tag=1>, visited on 1 November 2014.

598 Ministry of Social and Family Development Policies, *Court-Ordered Options for Offenders: Community Service Order*, <app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Community-Service-Order#sthash.upvoGPPA.dpuf>, visited on 11 November 2014.

599 *Ibid.*

600 Probations Services Branch, *supra* note 594, p. 46.

port to a place of detention by 15:00 on Saturday and be discharged by 17:00 the following Sunday, during which they will undergo a series of exercise drills and will participate in supervised study and group work.⁶⁰¹

Probation is a central community-based rehabilitation programme in Singapore. When a young offender is placed on probation, he or she will be placed under the supervision of a Probation Officer, under Section 5(i) of the Probation of Offenders Act Chapter 252. Probation Officers, administered by the Ministry of Social and Family Development, supervise and support the probationers and work through problems that led to the offence. The Probation of Offenders Act Rule 15 provides for the Minister to appoint a probation committee consisting of persons he or she deems fit to review the work of probation officers and volunteer probation officers. There is a specific Juvenile Probation Case Committee.⁶⁰²

A probation period can last between six months to three years whereby the offender is required to report regularly to his or her Probation Officer, comply with conditions laid out in the order and participate in the programmes formulated for him or her. 55 per cent of probationers in 2014 were sentenced to probation for a period between 12-18 months, with a majority of overall probationers under Intensive-Supervised conditions. The Probation Officer will gather feedback on the offender's progress and report to the Youth Court. After six months, the Court reviews the offender's progress and if progress is considered satisfactory, the Court allows probation to continue or grants early discharge from probation. If progress is deemed unsatisfactory, probation will continue but may include additional conditions or the order may be revoked.

The Court can impose a Periodic Training Order as a condition for probation whereby a probationer is required to report to a social service agency for a certain number of hours and receive social skills training and guidance in education, vocational development or work preparation. This is generally aimed at individuals who are not in school and are unemployed.⁶⁰³

The Court may also make an order to a place of detention as a requirement for probation typically to those who have an unsatisfactory home environment.⁶⁰⁴ There are six Gazette approved places of detention that separate male and female offenders as well as Muslim and non-Muslim offenders.⁶⁰⁵ These places of detention are considered semi-residential and "open institutions" whereby probationers have freedom of movement within the compound and are allowed to work or pursue their education in schools outside the confines of the institution after an initial

601 Ministry of Social and Family Development Policies, *supra* note 598.

602 B.L. Ang, 'Community-Based Rehabilitation of Offenders in Singapore', Resource Material Series No. 61 *121st International Training Course Visiting Experts' Papers* (2002) p. 167.

603 Ministry of Social and Family Development, *Policies: Periodic Training Order* <app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Periodic-Training-Order>, visited on 1 November 2014.

604 Family Justice Courts, *Youth Matters* <app.statecourts.gov.sg/family/page.aspx?pageid=162536>, visited on 4 November 2014.

605 *Ibid.*

one-month period at the institution.⁶⁰⁶ The Probation of Offenders Act restricts conditions of residency on a probationer to no more than 12 months.⁶⁰⁷ The Act further requires a report to be submitted to the Court for the purpose of helping the Court decide whether continued stay at a place of detention is necessary.⁶⁰⁸

There are currently 28 probation programmes available to young offenders.⁶⁰⁹ Five programmes are considered essential for the probationer and his or her parents are required to attend these programmes.⁶¹⁰ The remaining programmes are considered elective. Based on the nature of the crime, coping skills and needs, youth offenders will be selected to undergo selected programmes at the appropriate state of their probation.⁶¹¹ A key component of the rehabilitation programme includes parental involvement by way of parenting talks, interactive Forum Theatre plays, workshops and parent-child interaction programmes.

In 2013, the Probation Service saw a significant change in the demographic and profile of young offenders. Youth assessed to be of a higher risk of re-offending were put on probation, which led to an unprecedented number of juveniles placed in an approved institution or on electronic monitoring with intensive supervision.⁶¹² The most common types of offences committed by youth probationers were theft and related crimes, unlawful assembly and juvenile smoking.⁶¹³

3. Reform Initiatives

As described below, Singapore is undertaking several reform initiatives.

Singapore's Attorney General's Chambers is a lead agency driving pre-trial diversionary programmes. In 2011, the office established a committee to make recommendations on developing a pre-trial diversionary framework where programmes are aimed at youth offenders.⁶¹⁴ The committee has proposed that a formal framework be developed to build on current pre-trial diversion programmes. A legal framework would provide legitimacy in diversionary initiatives, certainty and consistency in its application and protection against arbitrariness and

606 L.H. Min, *Juvenile Justice: Where Rehabilitation Takes Centre Stage* (Academy Publishing, Singapore, 2014) p. 74.

607 Min, *supra* note 580

608 *Ibid.* ss. 6-7.

609 Probations Services Branch, *supra* note 594, pp. 62-64.

610 Ministry of Social and Family Development, *Policies: Probation Core Programmes* <app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Probation-Order/Probation-Programmes/Probation-Core-Programmes>, visited on 1 November 2014.

611 Ministry of Social and Family Development, *Policies: Probation Elective Programmes* <<http://app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Probation-Order/Probation-Programmes/Probation-Elective-Programmes>>, visited on 1 November 2014.

612 Probations Services Branch, *supra* note 594, p. 5.

613 *Ibid.*, 49

614 Amirthalingam, *supra* note 529, p. 547.

abuse.⁶¹⁵ The committee proposed the following measures, some of which were initiated immediately: conditional stern warnings; composition; accused and victim conferencing; fixed penalty notices; penalty notices for public disorder; guidance programs; and drug rehabilitation centres.

Due to success of the original Guidance Programme (GP), GP-Plus was initiated in 2003. The programme was extended to older youth between the ages of 16 and 19 years with a pilot to expand it further for youth between the ages of 19 and 21 (GP 19-21).⁶¹⁶ A modified version of the programme has been developed for intellectually disabled offenders (GP-ID). Additionally, an adult guidance programme is being considered for adults guilty of shoplifting and other minor offences.⁶¹⁷

In addressing the relationship between juvenile delinquency and gang relations, the Inter-Ministry Working Group on Youth Gangs announced their recommendations in November of 2011. As recommended, the Singapore Police Force established its Youth Offenders Unit in 2012 to help facilitate better communication between key stakeholders.⁶¹⁸ Additionally, measures have been improved for youth who show early stages of gang association. Youth must take part in a compulsory programme, which includes reporting to Police, close supervision and restrictions on places the youth may visit and the people he or she associates with.⁶¹⁹ The Government of Singapore is also in the process of strengthening its anti-gang legislation. The amendments will enhance Police powers to address gang formation, recruitment and congregation.⁶²⁰

Recognising that police officers are often ill equipped to assess offenders for the purposes of conditional release and diversion programmes, pilot programs are being carried out at select police stations where a social worker has been deployed to assist in the youth assessment.⁶²¹ The social worker has the necessary training, expertise and knowledge to provide a more qualified decision. In addition, the Attorney-General's Chambers has appointed a deputy public prosecutor as a Guidance Programme duty officer to oversee all Guidance Programme cases.⁶²²

Singapore is increasingly focusing on early-intervention programmes to curb delinquency at its initial stages. In recent years, several programmes have been initiated. For instance, in 2013, the Central Youth Guidance Office started a Parent Outreach and Support project (POSt) in secondary schools to reach out to parents of juveniles who were displaying early signs of risk. Through such dialogues, parents are able to understand how they can play their part to steer their children away from a life of crime. The Central Youth Guidance Office has also been conducting YouthGO!, a street-outreach programme where youth workers

615 *Ibid.*

616 *Ibid.*, p. 550.

617 *Ibid.*

618 T.C. Hean, *Ministry of Home Affairs: Home Team Speeches: Written Reply to Parliamentary Question on Recommendations by Working Group on Youth Gangs*, <www.mha.gov.sg/news_details.aspx?nid=MjgoNw%3D%3D-e8ZTDakkUNY%3D>, visited on 12 November 2014.

619 *Ibid.*

620 *Ibid.*

621 *Ibid.*, p. 552.

622 *Ibid.*

support at-risk juveniles. Since its inception in 2011, the programme has seen almost 8,300 interactions between workers and juveniles or youths.⁶²³

Programmes are being initiated to enhance reintegration support for recently discharged youth up to the age of 21. A Vocational and Reintegration Support Unit was installed in 2010 as a three-year pilot project and provides youth undergoing probation or institutional rehabilitation with increased support in skills development, job placements and career coaching.⁶²⁴ The Unit has also formed industry partnerships to provide internships, apprenticeships and job placements to the youth.⁶²⁵

Combatting juvenile delinquency is a multi-stakeholder process involving several different Ministries, police and organisations. To help mainstream information, the Singapore Government has been awarded a SGD 26.5 million (USD 21 million) contract to build a national IT system for social services. The implementation of the system, called the Social Service Net (SSNet) will launch in the third quarter of 2015. SSNet will allow providers to manage and share information about individual cases, and also provide assessment tools. Safeguards will be put in place to ensure the program will be used responsibly and information is shared only on a needs basis.⁶²⁶

The Good Lives Model (GLM) will guide Singapore's Probation Services approach to rehabilitation from 2014. GLM is a structured case management framework that offers a strengths-based approach to offender rehabilitation and is premised on the notion that building capabilities allows offenders to achieve their goals in life through positive ways.⁶²⁷ The developer of GLM ran training sessions in September 2013. The framework was first used for selected high-risk offenders. Due to its high success, GLM will be implemented to all probation cases as of 2014.⁶²⁸

The increase in the proportion of higher risk offenders on probation places greater demands on the supervision of young offenders. Efforts will be focused on building a professional practice, whereby all Probation Officers will be trained to competently apply evidence-based models during intervention with offenders and families. Support for officers through clinical supervision is understood as an important element to enable officers to maintain a high quality of service. The current supervision framework will be further developed in 2014.⁶²⁹

Singapore is in the process of building a stronger social service sector by decentralising services and opening Social Service Offices across the country. The

623 http://www.mha.gov.sg/news_details.aspx?nid=MzIoNA%3D%3D-kP6qoo43z%2Fw%3D

624 Ministry of Social and Family Development, *Press Room: Fact Sheet: Better outcomes for youth in residential care rehabilitative programmes*, (2011) < app.msf.gov.sg/Press-Room/Better-outcomes-for-youth-in-residential-care>, visited on 12 November 2014.

625 *Ibid.*

626 NG, Kelly, Singapore government to build a national IT system for social services, *Asia Pacific Future Gov*, 24 June 2014. Available online at: <http://www.futuregov.asia/articles/4563-singapore-government-to-build-national-it-system-for-social-services>

627 Probations Services Branch, *supra* note 594, p. 12.

628 Probations Services Branch, *supra* note 594, p. 12.

629 *Ibid.*, p. 43.

process began in 2013 and is expected to take two to three years to complete.⁶³⁰ In addition, Singapore aims to strengthen some larger Volunteer Work Organisations to play a more central role in providing services and at the same time improve the management of volunteers.⁶³¹

4. Main Challenges to the System

While Singapore has made commendable progress in enhancing the protections of juvenile offenders, many challenges remain.

Lack of a National Plan of Action for youth. While numerous strategies and programs across several agencies have been implemented to improve the juvenile justice system in Singapore, the Government lacks an overarching National Plan of Action for addressing children and youth-at-risk and juvenile delinquents. While the on-going programmes are commendable, harmonizing strategies under one action plan could improve diversionary and rehabilitative programmes and better ensure the implementation of rights is achieved.⁶³²

Legislative challenges. Definitions of a child or young person vary across Singapore's legislation, which have different legal consequences. Harmonizing the definition of a child across national legislation, and extending protection under the CYPA to those under the age of 18 would better serve the interests of a child.⁶³³ Additionally, the age of criminal responsibility is lower than is internationally acceptable.⁶³⁴ Sentencing provisions are not in accordance with CRC recommendations and permit the administration of corporal punishment and life imprisonment as sentencing options. The law further permits the use of corporal punishment as a form of punishment for male juvenile offenders. While programmes have been initiated in support of restorative justice, it is not legislatively protected. Key goals of restorative justice should be identified and be legislatively inserted into law.⁶³⁵

Need for more diversionary programmes. At present, the only diversion options available are the Guidance Programme and Streetwise Programme. While the intensity of the Guidance Programme and the specificity of the Streetwise Programme may be well suited for some offenders, it may be unnecessary for those who have committed minor crimes. A graduated diversion programme

630 C.C. Sing, *Ministry of Social and Family Development: Press Room: Committee of Supply 2013: Acting Minister (MSF) Opening Speech* (2013) <app.msf.gov.sg/Press-Room/Committee-of-Supply-2013-Debates-Opening-Speech>, visited on 12 November 2014.

631 *Ibid.*

632 UN Committee on the Rights of the Child, *supra* note 526, paras. 11-12.

633 *Ibid.*, para. 28.

634 *Ibid.*

635 Chan, *supra* note 555, p. 18.

could be beneficial whereby the gravity of offence would be considered. Stern warnings could be used more creatively and a range of conditions could be considered.⁶³⁶ Pre-court diversion programmes should be legally protected.

Lack of Police specialisation. With an increasing desire to keep children and young persons away from the court system, there is a greater reliance on early intervention, diversion and community-rehabilitative programmes. Police officers play an important role in this process as they are the first point of contact into the legal system. There is an increasing need for police officers to be trained to effectively handle juvenile delinquents and continued efforts should be made to include social workers during assessment periods.

Beyond Parental Control practices. Concerns have been raised on the reliance parents have on the court system in handling delinquent behaviour. Strengthened support and services should be provided to parents in order to enhance their capabilities in child-rearing and handling at-risk youth to avoid any unnecessary stigmatisation of a child.⁶³⁷

The UNCRC is not yet fully incorporated into the domestic legal system. Singapore continues to maintain several reservations and declarations to the CRC. All principles and provisions of the Convention should be fully incorporated into the domestic legal system.⁶³⁸ In particular, Singapore's continued use of corporal punishment is not compatible the Convention and legislative measures should be taken to fully incorporate Article 19 prohibiting all forms of physical or mental violence, injury or abuse, neglect and negligent treatment or maltreatment to children who are incarcerated.

A lack of comprehensive statistics on children in conflict with the law. A notable amount of statistics are made publicly available through the Ministry of Social and Family Development Resource Room on programmes under their jurisdiction, such as juveniles sentenced to juvenile homes, probation and those involved in diversion programmes. However, less data is made available on reformatory training. Data which is made publicly available, e.g. annual statistics and publications under the Resource Room from the Ministry of Social and Family Development, Ministry of Home Affairs or Singapore Prison Service Statistics, either do not include or include very little information on the number of children serving time, the offences they committed, and the capacity of the institutions. Despite having a National Committee on Youth Guidance and Rehabilitation under MSF established to work with partners, coordinate and review programmes, and lead collaborative research on juveniles in conflict with

636 Amirthalingam, *supra* note 529, p. 552.

637 Ministry of Social and Family Development, *Policies: Obligations under the UN Convention on the Rights of the Child*, <app.msf.gov.sg/Policies/Children-Youth/Obligations-under-the-UN-Convention-on-the-Rights#sthash.fOVnibJn.dpuf>, visited on 11 November 2014.

638 *Ibid.*

the law, data on juveniles deprived of liberty remains disaggregated and relevant indicators are still missing in the provided data

5. Summary and Statistics

The Children and Young Persons Act establishes that a child is a person below 14 years of age, while a young person is a person between the ages of 14 and 16 and a juvenile as a person who is between the ages of 7 and 16. Similar to other former British Colony, the Singapore Penal Code provides that nothing is an offence which is done by a child under 7 years of age. However anyone between the age of 7 and 12 who has not attained sufficient maturity of understanding to judge of the nature and the consequence of his conduct on that occasion. When the child committed a crime, he or she may not be sentenced to imprisonment if the child is under the age of 16. However, children between the age of 14 and 16 who have previously committed another offence can be sent to a juvenile rehabilitation centre.

There is no designated section for the investigations of crimes committed by youth within the Singapore Police Force. However, a Youth Offenders Unit was established in 2012 which oversees prevention programmes, monitors trends and coordinates public education and outreach programmes to youths.⁶³⁹ Children and young persons below 16 years of age who are in conflict with the law are called before the Youth Court.⁶⁴⁰ The Community Court was established in 2006 and has jurisdiction over youth offenders aged 16-21.

Singapore Children's Society (SCS)⁶⁴¹ provides Beyond Parental Control Pre-Complaint mediation services.

The National Committee on Youth Guidance and Rehabilitation at the Ministry of Social and Family Development manages the Guidance Programme in collaboration with the Attorney General's Chambers, the Singapore Police Force, local schools and relevant social service agencies.

The Central Youth Guidance Office is the secretariat to the National Committee on Youth Guidance and Rehabilitation and includes representatives from the Ministry of Social and Family Development; Ministry of Education; Ministry of Health; Ministry of Home Affairs; Central Narcotics Bureau; Singapore Police Force; Singapore Prison Service; State Courts; National Council of Social Services; National Crime Prevention Council; National Youth Council; Academics; and self-help groups.⁶⁴² The Youth Guidance Office focuses on early-intervention and preventative programmes for youth-at-risk.

639 T.C. Hean, *Ministry of Home Affairs: Home Team Speeches: Written Reply to Parliamentary Question on Recommendations by Working Group on Youth Gangs*, <www.mha.gov.sg/news_details.aspx?id=MjgoNw%3D%3D-c8ZTDakkUNY%3D>, visited on 12 November 2014.

640 The enactment of the Family Justice Act 2014 renamed Singapore's "Juvenile Court" to "Youth Court".

641 Singapore Children's Society is a non-governmental organization and is an active community agency with a special focus on juveniles.

642 Ministry of Social and Family Development, *National Committee on Youth Guidance and Rehabilitation: About Us* <app.msf.gov.sg/NYGR/About-Us>, visited 2 November 2014.

The Prisons Department of the Ministry of Home Affairs operates the Reformatory Training Centre, which houses male offenders between 16 and 21 years of age who have been sentenced to reformatory training. Young offenders who want to continue their education can be sent to Tanah Merah Prison, a Prison School.

The Ministry of Social and Family Development operates two Juvenile Rehabilitation Centres: Singapore Boys' Home and Singapore Girls' Home.

Probation gazetted institutions include: Singapore Boys Hostel (for males only); Bukit Batok Hostel (for older males who are aged above 16 but placed on probation before turning 16); Salvation Army Gracehaven (for non-Muslim females only); Pertapis Adolescent Development Centre (For Muslim males only); Pertapis Centre For Women and Girls (for Muslim females only); and Muhammadiyah Welfare Home (for Muslim females only).

The Ministry of Social and Family Development, under the Probation Services Branch, provides probation services for juveniles;⁶⁴³ including a Voluntary Probation Officer Scheme. The Ministry also provides Youth Guidance Officers for residents of the Singapore Boys' Home and Singapore Girls' Home.

The Social Service Institute provides courses for professional youth workers and volunteers working with youths.⁶⁴⁴

Singapore Children's Society provides case workers who offer structured supervision, counseling and alternative programs to juveniles involved in Beyond Parental Control cases.

A number of Voluntary Welfare Organizations provide social services to at-risk-youth.

The Inter-Ministry Committee on the Convention on the Rights of the Child (CRC) was established in 1996 and coordinates and monitors Singapore's implementation of the CRC.

National Committee on Youth Guidance and Rehabilitation, under the Ministry of Social and Family Development, was formed in 1995 and addresses problems related to juvenile delinquency.⁶⁴⁵ The Central Youth Guidance Office is the secretariat to the National Committee on Youth Guidance and Rehabilitation including representatives from: Ministry of Social and Family Development; Ministry of Education; Ministry of Health; Ministry of Home Affairs; Central Narcotics Bureau; Singapore Police Force; Singapore Prison Service; State Courts; National Council of Social Services; National Crime Prevention Council; National Youth Council; Academics; and Self help groups.⁶⁴⁶

National Council of Social Services provides specialised social services for children and youth.⁶⁴⁷

643 Ministry of Social and Family Development, *Our People: Probations Services Branch* <app.msf.gov.sg/About-MSF/Our-People/Divisions-at-MSF/Social-Development-and-Support/Rehabilitation-and-Protection-Group/Probation-Services-Branch>, visited on 1 November 2014.

644 Ministry of Social and Family Development, *supra* note 642.

645 *Ibid.*

646 *Ibid.*

647 National Council of Social Services, *Children and Youth Services* <www.ncss.org.sg/social_service/children_youth.asp#b>, visited on 27 October 2014.

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Singapore

Name of Law	Date of Adoption	Revised
Children and Young Person Act	1949	15 March 1994, 31 December 2001, 20 July 2011
Probation of Offenders Act	9 July 1951	1985
Criminal Procedure Code No. 15 of 2010	2 January 2011	
Family Justice Act 2014 No. 27 of 2014	1 October 2014	

Table 2. Annual number of Crimes Reported

	Year 2012	Year 2013	Year 2014
Overall crimes reported	31,015	29,984	32,196
Annual number of crimes by juveniles (arrests)	1, 561	1, 329	1, 369

Table 3. New Cases Diverted to Guidance Program by Gender

New Cases	Year 2012	Year 2013	Year 2014
Guidance Program Male	564	528	474
Guidance Program Female	203	122	112
Total	767	650	586

Table 4. New Cases Diverted to Guidance Program by Age

Age	Year 2012	Year 2013	Year 2014
Below 13 years	96	70	74
13-15 years	415	341	317
16 years and above	256	239	195

Table 5. New Cases Diverted to Streetwise Program by Age

Age	Year 2012	Year 2013	Year 2014
Below 13 years	0	0	0
13-15 years	32	54	34
16 years and above	46	53	51

Table 6. New Cases Diverted to Streetwise Program by Gender

New Cases	Year 2012	Year 2013	Year 2014
Streetwise Program Male	77	104	85
Streetwise Program Female	1	3	0
Total	78	107	85

Table 7 and 8. Total Number of Probation Cases Registered by Age and Gender

Gender	Year 2012	Year 2013	Year 2014
Male	736	693	711
Female	189	142	121
Total	925	835	832

Age	Year 2012	Year 2013	Year 2014
Below 12 years	7	5	8
13-15 years	184	191	179
16-18 years	409	344	373
19-21 years	200	228	201
22 years and above	125	67	71

Table 9 and 10. Total Number of Probation Referrals Made by the Youth Court by Age and Gender

Gender	Year 2012	Year 2013	Year 2014
Male	194	215	201
Female	40	43	29
Total	234	258	230

Age	Year 2012	Year 2013	Year 2014
Below 13 years	7	8	7
13-14 years	80	88	100
15 years	147	159	121
16 years and above	0	3	2

Table 11 and 12. Total Number of Probation Referrals Made by the Subordinate or High Courts

Gender	Year 2012	Year 2013	Year 2014
Male	638	573	566
Female	146	134	104
Total	784	707	670

Age	Year 2012	Year 2013	Year 2014
Below 16 years	0	0	0
16-18 years	409	354	351
19-21 years	250	262	242
21 years and above	125	91	77

Table 13. Total Numbers of Juveniles Admitted to MSF Juveniles Home

Age	Year 2012	Year 2013	Year 2014
Below 13 years	6	12	1
13-14 years	70	98	71
15-16 years	153	208	210
Above 16 years	12	22	40

Chapter X.

The State of Juvenile Justice in Thailand

Kattiya Ratanadilok

1. Legislative Framework for Juveniles in Conflict with the Law

There are quite a few laws and regulations that, used together, create a framework for juveniles in conflict with law which governs the juvenile justice system from the arresting, investigation, detention, bailing, trial, prosecution and adjudication to the process of paroling, treatment and rehabilitation. The first and most important law is the Act Juvenile and Family Court Procedure B.E. 2553 (2010). In the creation of this Act, several frameworks were considered and served as important guidelines. According to a remark in the Act Juvenile and Family Court Procedure B.E. 2553 (2010), p. 127, (translated from Thai language), the reasons for the promulgation of this Act are the following:

“... at present time (2010) the Courts of Justice are separated from the Ministry of Justice, having the Office of the Judiciary as an independent administrative unit and the Juvenile Observation and Protection Department as an agency that reports to the Ministry of Justice, it is expedient to revise the law on the establishment of the Juvenile and Family Court and juvenile and family procedures to be in line with the newly established powers, duties and structures. In addition, it is expedient to revise the laws relating to the protection of safety and treatment for children, juveniles, women and family members and the juvenile and family procedures in order to be in line with the Constitution, the Convention on the Right of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.”

Nevertheless, this Act must be used in conjunction with the main laws, the Criminal and Civil Codes and the Criminal Procedural Codes, because the Act Juvenile and Family Court Procedure B.E. 2553 (2010) was created after these two main laws and was created as an exception to the main laws to separate the treatment of the young offenders from adult offenders. As a result, for issues not mentioned in the Act Juvenile and Family Court Procedure B.E. 2553 (2010), the related practitioners must refer to those main laws. Police officers, attorneys, judges, and probation officers, for example, must adhere to these laws as a framework to deal with the youth in conflict with the law. Other legislative frameworks related to the juveniles in conflict with the law include the Child Protection Act (2003), the rules and regulations of the Ministry of justice, the Department of Juvenile

Observation and Protection, the Department of Probation, the Child Protection Committee, and the Ministry of Social Development and Human Security. Even though these rules and regulations came from different government entities, they all have similar intention: that is, to provide services for children in conflict with the law that ascertain the children's rights and child welfare and protection corresponding to the international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice

(The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency

(The Riyadh Guidelines), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

2. Institutional Framework for Juveniles in Conflict with the Law

2.1. Policing and Investigation of Criminal Activities

In Thailand, because there is no single institution responsible for providing services for the children in conflict with the law, when a young person age 10 to 18 years old commits a criminal act, he or she will be processed by several offices from several government entities. While there is no special unit of the police designated to deal solely with juvenile offenders, there are requirements by the laws that govern the acts and duties of the officers.

The Act Juvenile and Family Court Procedure B.E. 2553 (2010) indicates the specific process in the arrest and investigation of criminal activities of the young offenders that the related personnel, including the police officers, need to follow. In the Act, Chapter VI Criminal Investigation, Sections 66–85, provide detailed requirements for the related officers on what needs to be done when they arrest and investigate the children in conflict with the law. The main intent of the Act is that the child alleged to have committed an offence may not be arrested unless he or she has committed a flagrant offence or there is an arrest warrant or a court's order permitting the arrest; moreover, the Act states:

“... the arrest of a Juvenile alleged to have committed an offence shall be in accordance with the provisions under the Criminal Procedure Code (Section 66). The arrest and detention of a Child or juvenile shall be in a careful manner, taking into account the human dignity, and shall not be carried out in a manner that would denounce a Child or juvenile (Section 69). The detention measure may not be used more than is necessary to prevent the escape or for the safety of the Child or juvenile under arrest or of other persons. Under no circumstances may physical restraints be used on a Child unless in case of inevitable necessity in order to prevent the flight or for the safety of the Child under arrest or of other persons (Section 69). In cases where the inquiry official has received the arrested Child or juvenile, the inquiry official shall accompany the arrested Child or juvenile to the court immediately within 24 hours from the time the Child or juvenile has arrived at the office of the responsible inquiry official in order to verify the arrest.

However, the normal amount of time used in transporting the Child or juvenile from the office of the inquiry official to the court shall not be counted towards the required 24-hour period (Section 72)."

Also for an investigation to be lawful, the officers will need to follow the Code of Criminal Procedure; for example, if the accused person is younger than eighteen years, the officer must ensure that the accused must have his or her lawyer (Legal Counsel) or if the young person does not have one, the state will need to provide one for the child. In addition, the interrogation (testimony) of the young person will need to be conducted in a private room that is separate from other cases with the assistance of an attorney, legal counsel, psychologist or social worker, upon request of the child.

2.2. Diversion

There are Juvenile Observation and Protection Centers and Juvenile and Family Courts located in every province in Thailand (there are 77 provinces in Thailand, and there are 77 Juvenile Observation and Protection Centers and 78 Juvenile and Family Courts), and two Juvenile and Family Courts in Bangkok. All of the juveniles being charged with criminal acts have to be processed through the juvenile justice system, i.e., the police, the Court, and the Department of Juvenile Observation and Protection. As a result, the diversions are mostly done formally within the juvenile justice system by the officials.

All of the formal diversions for the youth in conflict with law are authorized by the Juvenile and Family Court. For the pre-trial and pre-adjudicated periods, the Act Juvenile and Family Court Procedure B.E. 2553 (2010) allows the diversion of the juveniles from being prosecuted as indicated in Chapter VII, the Special Measures in Place of Criminal Prosecution, Section 86 and Section 90. Both sections contain similar ideas and processes. The key differences are the level of the seriousness of the crimes, the officials who can make decisions if the child or juvenile should be given a chance, and where the diversion occurs. Section 86 is applicable when a child or juvenile is alleged to have committed a criminal offence that is punishable by a maximum of five years' imprisonment. In this case the Directors of the Juvenile Observation and Protection Centers are the persons who make the final decisions whether or not the youth should be given a chance (taking into account the age, personal records, behaviours, intelligence, educational background, physical and mental conditions, occupation, financial status and cause of the offence, that the child or juvenile may reform himself or herself without the requirement for prosecution), and all of the activities are done at the Juvenile Observation and Protection Centers.

For Section 90, the Juvenile Court Judges make the decisions when a prosecution is brought to the court against a child or juvenile and the alleged criminal offence is punishable by a maximum of twenty years' imprisonment. Then, a rehabilitation plan is prepared for the child or juvenile to comply with. An opinion accompanies the Rehabilitation plan which is submitted to the public prosecutor for consideration. The implementation of the rehabilitation plan is reported to

the court. If it appears to the court that the process of preparing the rehabilitation plan is unlawful, the court may issue an order as it considers appropriate. In addition, the preparation of the rehabilitation plan is subject to consent from the victims and the child or juvenile.

In preparing a rehabilitation plan according to Section 86, the Director of the Juvenile Observation Center invites the alleged child or juvenile and his or her parties, the victim's parties, and psychiatrists or social workers to a conference. The Juvenile Observation Center may also invite community representatives or agencies that have relevant duties or that have been affected by the offence, or a public prosecutor (these participants will act as a committee). After the juvenile has completed the requirements of the committee, the charge should be dropped and there should be no prosecution.

Another diversion venue for the juvenile is indicated in Chapter IX, the Criminal Adjudication. Section 132 indicates that the court has discretion not to prosecute the juveniles, and to order any alternatives for him or her. In this section, if the court considers that under the circumstances of the case it is not yet appropriate to pass a judgment or when parents, guardians, or persons with whom the accused person resides have submitted a request to the court, the court may, after having consulted the victim, issue an order. This order may temporarily release the juvenile and send him or her to the guardians with or without bail, or with bail and security impose conditions requiring that the juvenile report to the Probation Officer or other officer or any person or any organization, undergo treatment and rehabilitation programs, seek consultation, attend rehabilitation or alternative activities, or apply measures for children and juveniles within a period of time as the court considers appropriate, but not beyond the time the juvenile reaches age 20.

After the juvenile has completed the conditions and within the period of time prescribed by the court, the court will order that the case is concluded without passing a judgment in relation to the offence committed by the accused person, except in relation to an exhibit; it is now deemed that there is no longer the right to prosecute the juvenile. However, if the juvenile is in breach of the conditions under Section 132, the court will resume the proceedings (Section 133).

The problems are not so much of the opportunity to be diverted, but it is that the alternatives are not readily available for them to go. There is no such thing in Thailand as a wraparound service for the juveniles should they be released to be treated at their home in their communities. There are the probation services, but, at the present time, the Department of Probation, which is responsible for the probation work for both adults and children, is overworked and understaffed. Therefore, the court tends to send the juveniles that sometimes only need child welfare to be placed in the Detention or Juvenile Training Center at a young age and for a long period of time.

2.3. Adjudicating and Sentencing

The Act Juvenile and Family Court Procedure B.E. 2553 (2010), Chapter X, Criminal Proceeding, from Section 102 to Section 130, has specified requirements

for the juvenile's hearing process. As stated in Section 102, during the trial the court may order the juvenile to be held at the remand home by the Juvenile Observation Center or other places established under the law and deemed appropriate by the court. Section 103 indicates that no physical restraints of any form may be used on a child except in a case where the child is alleged to have committed an offence punishable by a maximum of more than ten years' imprisonment. Section 104 requires that the Juvenile and Family Court without delay inform the date and time of the trial to the Director of Juvenile Observation Center that has jurisdiction over such child or juvenile including parents, guardians, or persons with whom the child or juvenile is residing after it has accepted a charge in which a child or juvenile is alleged to have committed an offence.

Section 107 indicates that the criminal proceedings in which a child or juvenile is the accused must be conducted in a room not used for a normal proceeding. If such a room is not available, the proceeding must be conducted in a normal trial room, provided that the proceeding is not conducted along with other ordinary cases. Section 129 states the importance of having a separate holding room for the juvenile awaiting trial at the court. It states that in bringing an alleged or accused child or juvenile to or from the court or, in keeping the child or juvenile in custody before sending him or her in the trial room, the child or juvenile may not be held in custody together with adult alleged offenders or adult accused persons unless otherwise permitted by the court. For the confidentiality of the trial, Section 130 states that no one may be permitted to take, publish, or print pictures of or record or broadcast the voice of a child or juvenile alleged to have committed an offence, or of related persons, or publish the contents found in the course of investigation by the inquiry official, the public prosecutor, or in the course of the court proceedings which may result in others being able to know the name or family name of the child or juvenile, or publish matters relating to the disclosure of offence record, place of residence, place of work or place of study of the child or juvenile.

According to the *Annual Report 2013 Case Statistics* from the Information Technology Center, Department of Juvenile Observation and Protection, the most common sentencing is for the juveniles to be on probation: 19,770 cases (63.96 per cent) from the total of 30,907 cases. The second most common sentencing is for the juvenile to be in the Training School: 6,912 cases (22.36 per cent). The third most common sentencing is a reprimand or formal warning: 1,460 cases (4.72 per cent).

2.4. Treatment of Convicted Juveniles

2.4.1. Residential

The Juvenile Training Center is a long-term care facility for juveniles adjudicated into the juvenile correctional system. According to the Act Juvenile and Family Court Procedure B.E. 2553 (2010), Chapters IV and V, the Training Centers are government agencies within the Department of Juvenile Observation and Protection, Ministry of Justice, and are under the command of the Director, having powers and duties to provide training to a child and juvenile referred to a Training Center by the Director of Juvenile Observation Center (Section 54). Training

required for a child or juvenile by the court's judgment or order must be conducted in places provided under Chapter IV or such other places that are established by the law and are deemed appropriate by the court. The placement of a child or juvenile in any training program must be proportionate to the age, physical and mental conditions, maturity and benefits that the child or juvenile will receive, also taking into account the wishes of the child and juvenile (Section 57).

For the post-adjudicated youth, there are a total of 19 Juvenile Training Centers in Thailand, 8 in the central part of Thailand and 11 in the regions. There are special Juvenile Training Centers including the following:

1. The Juvenile Training Center for Girls. The only juvenile training school that takes only girls. The rest of the training schools take boys and girls, housing them separately.
2. The Juvenile Vocational Training Center (for boys): the Sirindhorn Juvenile Vocational Training School for Boys. This training school only takes boys and is designated for special vocational training for the boy within a specific period of time of the programs. The boys who indicate an interest in vocational training and fit the classification criteria set by the school will be admitted.
3. The Opened-Training School: the Kanchanapisek Juvenile Training School. This school is designed to be a "no fence school", where the juvenile stay as they were at home, less restricted than other training schools and emphasizes relearning and adjusting their ways of thinking and behaving.
4. The Juvenile Drug Rehabilitation Center: the Phra Nakhon Sri Ayudhaya Juvenile Training School. This training school utilizes the Therapeutic Community method as the way to rehabilitate the drug addiction problems of the juveniles.

In general the services that the Juvenile Training Centers provide are cognitive and behavioural rehabilitation programs, education, vocational training, health and mental health care services, and recreation activities such as sports and arts that are appropriate for the youths. The training programs are run by a multidisciplinary team including psychologists, social workers, educators, and nurses. Each juvenile will have an individualized treatment plan that addresses their needs and problems and which will lead them to successfully integrate back to their families and communities. In order to increase efficiency, the DJOP has adopted into the juvenile justice procedures the international rules and guidelines of the Convention on the Rights of The Child, the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

There are also the Juvenile Remand Homes, the pre-trial residential places housing the juveniles awaiting trial that the court did not allow for bail, or no parents or guardian had come to bail them out. There are a total of 77 provinces

in Thailand, so the children and youths being arrested in the provinces that do not have a remand home or a training school will need to be placed in the provinces that have these sites. As a result, pre-trial juveniles are often placed with convicted juveniles. The Juvenile and Family Court Judges have the authority to place the juvenile in any appropriate place they see fit, so sometimes the convicted juveniles will be placed in the remand home so they can be closer to their homes and their families.

2.4.2. Non-residential

The Department of Probation, Ministry of Justice, is the main organization responsible for providing non-residential services for the youth in conflict with the law. Probation services are a non-custodial measure for offenders, both adults and children. The offenders sentenced to probation will be treated under the supervision of probation officers. The services that are provided by the probation officers include, but are not limited to, supervision, counseling, and monitoring visits. Additionally, treatment programs may be provided such as behaviour modification, and mental and physical treatment as well as education and occupation. Probation services are available at both the pre-trial and post-trial stages. In addition, the Department of Probation is also the main organization responsible for providing compulsory drug treatment and rehabilitation programs for offenders (adults, children and youths) as a result of the Narcotic Addicts Rehabilitation Act of 2002. Even though there are initiatives on engaging community involvement – for example, the Volunteer Probation Officers (VPO) that utilize community resources – with the large amount of offenders that the department needs to serve, both children and adults, with no specific staff designated for the youth group, the inadequate number of staff and budget, the quality of services and effectiveness of the programs in providing care for the youth tend to be rather limited.

3. Reform Initiatives

Throughout the course of the performance in the past, the Department of Juvenile Observation and Protection, Ministry of Justice (DJOP) is committed to continue to improve and develop ourselves for the purpose of the highest efficiency in service and to be able to effectively rehabilitate juveniles with treatment, which will contribute to benefit the children, youth, families, and society at large.

Research projects for the development of the project titled “The Juvenile Justice Reform Project: JJRP” are supported by the Thai Health Promotion Foundation, which in a period of three years and six months (between the years 2010-2013) have been developing the treatment of children and youth in three main aspects – in the areas of screening and classification, rehabilitation programs, and pre-release preparation and follow-up after release. The projects operate under a cooperative network of agencies involved with children and young people in the justice system, including the Department of Probation, and the Rabibhadanasak Judicial Research Institute, and the Bureau of Court of Justice. The objective is to develop new knowledge and evidence-based tools to perform the four major parts of the development:

1. The creation of screening and classification tools and manuals to use to determine the course of treatment, rehabilitation, and the necessity to manage the problems for each child and youth (nine classification tool set for nine stages of services).
 - 1.1 Manual and classification tool: Urgent Screening Form.
 - 1.2 Manual and classification tool: Control / Temporary Release Form.
 - 1.3 Manual and classification tool: Admission Form.
 - 1.4 Manual and classification tool: Remand Home's Level of Services Form.
 - 1.5 Manual and classification tool: Interview to assess the risks and need.
 - 1.6 Manual and classification tool: Health Status Evaluation Form.
 - 1.7 Manual and classification tool: Health and Mental Health Status Assessment Form (for Medical Doctor and Psychiatrist).
 - 1.8 Manual and classification tool: The Training Center's Level of Services Form.
 - 1.9 Manual and classification tool: Probationer Assessment Form (Revision for the Department of Probation).

2. The development of five intervention programs.
 - 2.1 Intervention program and manual to be used with the children and youths awaiting trial at remand home.
 - 2.2 Intervention program and manual to be used with the children and youths for alternatives to custody: a day program for children and youths awaiting trial in their communities.
 - 2.3 The basic intervention program and manual to be used with the children and youths during their rehabilitation time in the Juvenile Training Center.
 - 2.4 The intervention program and manual to work with juveniles with a high level of family problems.
 - 2.5 The intervention program and manual for strengthening self-esteem for juvenile probationers with significant problems of self-esteem.

3. The development of the pre-release readiness preparation program and post-release monitoring program and manual.
 - 3.1 Pre-release readiness preparation program and manual for juveniles before release from the juvenile training schools.
 - 3.2 Pre-release readiness preparation program and manual for juveniles before release from the juvenile remand homes.
 - 3.3 Program and manual for Case Management.
 - 3.4 Program and manual for providing through care, and welfare of children and youths being released from probation and from the Juvenile Training Center.
 - 3.5 Program and manual for preparing children and youths before release

and follow-up after release. The Department of Juvenile Observation and Protection has developed tools and applications and brought to trial in 12 related operating centers (Juvenile Classification Homes, Juvenile Remand Homes, Juvenile Training Schools, and Probation Centers) in three pilot provinces (Bangkok, Ubonrachathani, and Srisaket provinces). Consequently, after the research had been completed, the department specified in the practice manual of the related officials to follow the guidelines and manual to provide evaluation and interventions for the juveniles according to the new standards. These efforts have increased the ability of the DJOP to perform its duties in correspondence with the requirements under the Juvenile and Family Court Act of 2553, and expansion of the use of the systems and tools of the DJOP throughout the country has continued.

4. The creation of a database and the development of public and private network organizations that provide services, shelters, treatment, rehabilitation, and/or community support for juveniles entering the justice system in Thailand. The results are the nine books listing the agencies and organizations in which their work relates to the children and youths entering the juvenile justice system in some of the capacities mentioned above. In summary, this study showed that there are several agencies that have been working with children, youths, and families in communities, both governmental and non-governmental organizations working in relation to the judicial process and not. Whereas the most prevalent activities of private organizations are providing educational, occupational, and professional training and funding for treatment for the children and youth, most activities have focused on preventive activities and have been less involved with the children and youths actually in the justice system. The information from the study indicated that there are approximately 1,528 organizations providing support to children, young people, and the families of the juveniles, but only partly and temporarily serving children and youths in the justice system. Also, it was found that a referral mechanism from the judicial process to these organizations was unsystematic and inefficient.

The JJRP research project study has provided evidence-based tools, systems, and guidelines to be used with children and youths in many respects. After the research had finished, the system's needs analysis was conducted for further improvement; following are the three major findings that needed to be remedied:

1. The majority of the probation officers required to use the Needs and Risks Structured Interview Form to assess the needs and risks of the juveniles do not have adequate knowledge and skills to use it properly, and some of them do not think positively about using it.
2. The organization does not have standardized objective psychological assessment tools to assess mental health problems and traits that are associated with the criminal behaviours of the juveniles.

3. The intervention programs provided for the juveniles in the juvenile training schools are not seamless, do not fully address the needs and factors that reduce the juveniles' recidivism chances, and do not utilize resources in their community, causing the juveniles to stay for unnecessarily long periods in the residential placements and to have insufficient continuing care after release.

In addition to the systems analysis, the research project also conducted a reflection meeting with the research members and related personnel in the pilot sites, to seek suggestions and ways to improve the project management. After completing the activities in the last period of the project, the JJRP asked the Institute of Knowledge Management for Society to achieve a better understanding of the issues and obstacles and also factors that contribute to success. The results of the activities indicated that the strong points of the JJRP project are the project leaders who had vision and emphasized the importance of the operation that involves the department's personnel with multidisciplinary teams to take part in the research and implementation of the results. This has made it more effective to put the findings into practice since it was an action research project. This research assisted the organization to be able to prepare for the increasing expectations that are consistent with the new law (Juvenile and Family Court Procedure Act B.E. 2553) and to raise the standards of practice for the DJOP. However, various difficulties were experienced by the research members and pilot sites, including the level of understanding and participation of the related personnel, and some problems resulting from inadequate communication and involvement of the staff in the research project to take their part as decision makers and not just as receivers from the beginning of the operation. Lessons learned from the JJRP point to the need for more and earlier participation of the related personnel including the executives, the research members, and the pilot sites. Moreover, everyone in the department should be informed and be invited to take part in the research based on their capacities and preferences. This methodology will assist the implementation process to be more successful.

With this predisposition, the new research project, the JOY Project (Justice for Our Youth Project), was created to fill the gap and avoid the drawbacks of the JJRP project.

As a result of problems analysis and the recommendations received from discussions with executives of the agency regarding the needs and requirements of the department's development work, it can be concluded that this research project must aim to develop a system for children and young people in the justice system that builds on the research projects done in the past three years (by the JJRP) and also must necessitate development to raise the standards of practice for the best interests of the youths. The strategic goals and objectives of the project are to be consistent with the Department's Four-Year Strategic Plan and Action Plan (2015–2017).

There are three sections of the JOY project. Section 1 concerns the Capacity Building for the staff regarding their Knowledge, Attitude, and Practice (skills) in using the DJOP's Risks and Needs classification interview form; Section 2 involves the Development of Mental Health and Behavioural Assessment Tools for Juveniles with Mental Health Issues and Complex Problems by Standardized

Adaptation of the Standard Tests; and Section 3 provides for the Development of the Seamless Intervention, and rehabilitation programs for juveniles (Uninterrupted Tailor-Made Routing). The JOY Project can be considered as a continuation of the JJRP, which will continue to improve the effectiveness and services for the children and youth entering the justice system for the DJOP. The JOY Project will be run from 2013 to 2016.

The last initiative for juvenile justice reform in Thailand to be mentioned is the CARE for Children Project (Community Associations Reintegration Effort for Children in Conflict with the Law). This project is funded by UNICEF Thailand for the duration of two years, from 2014 to 2015. The following are the problems regarding youth in custody that this project seeks to address, and the goals the DJOP is working to achieve. The main problems are overcrowding and mistreatment in the residential placements. The overcrowding is the result of juvenile court judges tending to place the youth in pretrial detention and residential placement, while mistreatment results from the overcrowding and the inadequate training and monitoring of the staff. These problems are mainly caused by the fact that there are very limited least restrictive measures that are effective in the community for the children and youth in conflict with the law, pre- or post-trial, and there is public pressure to take these children out from their communities.

There are three main problems that are the points of focus for this initiative. First, with the overcrowding problems, children age 10–14 have been placed with older youths age 15–24, and there has been evidence of acts of violence against children and youths in the detention and residential placements. These problems will contribute to many negative consequences that these young children may receive that may in turn lead to lifelong problems after their release. Second, the international standard of the Age of Criminal Responsibility (ACR) suggested that Thailand, like other member states, increase the ACR to 12 and to 14 years; these children, should they commit a criminal act, should then be served by the child protection and welfare sector, under the Ministry of Social Development and Human Security (MSDHS), and not the criminal justice system. Moreover, the standards demand that the detention should be used as a last resort, and children should be treated rather in their communities and their homes. However, the studies done by the DJOP on the consequences and the readiness for the related organizations to increase the ACR have found that there are no organizations ready and capable of providing services for these populations.

Thus, to solve all related problems, effective ways are needed to reduce the use of residential placements for these young children. Starting from a younger age, and because they are still small in number, such a program is likely to be well received with public support, and the success of this effort will facilitate the country to be prepared for the change of the ACR in the near future.

The following are goals for the CARE for Children project:

1. To provide, early, effective, and alternative interventions to imprisonment for children under the age of 15 committing criminal actions so children can remain at home.
2. To have a workable referral mechanism for the children age 10–14 in conflict

with law at pre-trial and post-trial in place in the Juvenile Observation and Protection Centers and the Training Schools.

3. To have well-equipped community-based organizations (CBO's) willing and able to provide services for the children age 10–14 in conflict with the law. Services shall include residential and non-residential facilities in their communities. The non-residential organizations shall provide support for families to take care of their children in their own homes. The CBO's and their collaborative network service providers will be responsible for providing developmentally appropriate early interventions and community-based services. These services will be referred to and monitored by the social workers at the Juvenile Observation and Protection Centers residing in each province. The community-based services will include the education, accommodations (in the cases they are needed), recreations, child care supporting both the mental and physical health of the child, and family services such as family support and parenting training for the children who are placed in their own homes.
4. To create system accountability and transparency. To have systematic ways of creating and developing the DJOP staff to be skilled at and responsible for transferring, monitoring, and providing adequate support for the community-based organizations that take the children.
5. To rethink institutional placement. To give more least restrictive choices for the Juvenile Court Judges to make decisions on placing the children so that the placements of children under the age of 15 in the pre-trial detention and the residential placement will be reduced. In addition, to give the DJOP a service model of the community-based placements so they can expand them to cover a wider range of the population.
6. To ensure successful reentry. Children under the age of 15 in conflict with law can be placed in their communities or their own homes and receive services that they need so that they can have a better quality of life and are less likely to recidivate.

The project will help improve the treatment for children in conflict with the law in several ways. First, it will help the DJOP achieve its stated vision to be the leader in providing services and protection for children and youth in conflict with the law corresponding to the international standards and guidelines. Moreover, this is the first time that Thailand has ever had this kind of initiative. The new Juvenile and Family Court Act of 2011 permits the DJOP to subcontract with other NGO's to take care of the youth, but the DJOP does not as yet have any guidelines on the process. Therefore, this project will be the model for conducting community-based intervention programs as alternatives to secure placement and from which other organizations can learn. Finally, Thailand is a state member of the Convention on the Rights of the Child (CRC), and the suggested

age of criminal responsibility is no younger than 12, preferably 14; thus, should the minimum age in Thailand be changed, the DJOP can then have the organizations in communities that are ready to help them take care of these children, thus reducing the chance that they will return to the juvenile justice system after they reach the age of criminal responsibility.

4. Main Challenges to the System

The main problems are overcrowding and mistreatment in the residential placements. The overcrowding is the result of juvenile court judges tending to place the youth in pretrial detention and residential placement, while mistreatment results from the overcrowding and the inadequate training and monitoring of the staff. These problems are mainly caused by the fact that there are very limited least restrictive measures such as the non-governmental community-based organizations (CBOs) that are capable of providing care for the children and youth in conflict with the law, at the pre- or post-sentencing. There is also public pressure to take these children out from their communities due to the negative attitudes toward the young offenders and the mistrust for the effectiveness of the correctional system in rehabilitating the juveniles. Finally, there is inadequate budget, which in turn leads to lack of a capacity-building plan for staff and the inadequate creation of evidence-based treatment programs that may successfully address the needs and the problems that the children and youths of Thailand may have.

5. Summary and Statistics

Thailand legally regarded a person as an adult when that person has reached 20 years of age, according to Act Promulgating the Revised Provisions of Book I of the Civil and Commercial Code. The Act Promulgating Criminal Code, B.E. 2499 and The Criminal Code Amendment Act No. 21, B.E. 2551 states that someone that has reached the age of 10 is criminally responsible. However, that child shall not be punished if he has not yet reached 15 years of age and may not be sentenced to imprisonment. There is no special unit of the police forces that is designated for providing services for juvenile delinquents.

Thailand has two institutions who are responsible for mediation, which are Department of Juvenile Observation and Protection of the Ministry of Justice and The Juvenile and Family Courts. While Thailand has the Juvenile Training Centers operating under the Department of Juvenile Observation and Protection, it is not regarded as prisons, and their closed and secured settings are designed to provide training for the young offenders age 10 and 18 at the time of offense. Probation services are provided by the Department of Probation, Ministry of Justice. The services provided by this department include the pre- and post-sentencing probation for children and adults. The services consist of supervision and rehabilitation. The probation services can also be done by the Volunteer Probation Officers, who are under the management of the department.

Regarding the social workers, there are two main groups of social workers provid-

ing services for youth in conflict with the law. The first and most relevant to the youth are the social workers from the Department of Juvenile Observation and Protection, Ministry of Justice. The second group of social workers are from the Office of Welfare Promotion, Protection of Children and Youth, the Disadvantaged and the Elderly, Ministry of Social Development and Human Security. Regarding this group, these social workers are mainly responsible to provide services for the children under the child welfare system. However, there are instances in which the court has ordered the youth to be under the care of the child welfare system, so they sometimes also provide services for this group of children.

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Thailand

Name of law	Date of adoption	Date of entry into force
The Act Juvenile and Family Court Procedure B. E. 2553 (2010)	16 November 2010	22 May 2011

Table 2. Overview of Juvenile Justice in Thailand

Crimes Reported in 2013 (cases)	663, 116	
Crimes Committed by Juveniles in 2013 (cases)	36, 763	
Juveniles Diverted Prior to Sentencing in 2013 (cases)	456	
Juveniles Convicted in 2013	30, 907	
Juveniles Sentenced to Prison or Other Deprivation of Liberty in 2013 (cases)	Prison 112	Reform school 6, 912

Table 3. The number of crimes committed by the juveniles.

Offense Category	Number	Percentage
Total	24,669	99.88
Homicide	502	2.03
Assaults, Robbery, Kidnap- ping	2,536	10.27
Sexual Violence	988	4.00
Theft, Motor Vehicle Theft, Burglary	4,232	17.13
Drug-Related Crime	10,994	45.51
Others	5,417	22.93

Table 4. The total number of crimes committed by the juveniles classified according to the Department of Juvenile Observation's category.

Offense Category	Number	Percentage
Total	36,763	99.99
Assets	7,260	19.75
Sexual Related	1,636	4.45
Against Public Peace, Liberty, Reputation and Public Administration	1,241	3.38
Drug	15,530	42.24
Firearm and Explosive	2,613	7.11
Others	4,220	11.48

Table 5. Total Number of Juveniles Currently in Prison

Specialized Juvenile Prison	Juvenile Section of Adult Prison		Adult Prison	
	Male	Female	Male	Female
5,654	156	8	1,083	218

Chapter XI.

The State of Juvenile Justice in Vietnam

Vu Ngoc Binh

1. Legislative Framework for Juveniles in Conflict with the Law

In the 2010s in Vietnam, juvenile delinquency has been a growing problem. Both the rising incidence and increasing seriousness of juvenile delinquency have been a major concern in society. The rising incidence of youth-perpetrated crime in large urban centres may have been precipitated by certain socio-economic problems often associated with development. These include poverty, rapid population growth, inadequate shelter and housing, industrialization, urbanization, youth unemployment and underemployment, the breakdown of the family unit, the erosion of traditional values, the adverse influence of the media, a weakening of community-support systems, inadequate provision of social services and social work and the inability of the education system to respond to new challenges. There is a tendency to use a punitive approach and institutionalize children who have acted in breach of the law.

Vietnam has taken many legislative, administrative and other measures to implement the Convention on the Rights of the Child (CRC) since its ratification in 1990. The early ratification of the CRC has also resulted in dramatically increased recognition of child rights issues, including juvenile justice that had never been discussed in public before by government agencies and has put these issues on the national political agenda. The CRC, the International Covenant on Civil and Political Rights (ICCPR) and other relevant human rights standards and norms on juvenile justice have been used as the basic framework, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)⁶⁴⁸, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)⁶⁴⁹, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)⁶⁵⁰, and the Guidelines for Action for Children in the Criminal Justice System (Vienna Guidelines).

648 The Beijing Rules provide guidelines on how juveniles should be treated while part of the justice system addressing issues such as privacy, special training for the police and due process guarantees. In addition, the Rules set out guidelines for the diversion of juveniles from judicial proceedings.

649 The Riyadh Guidelines set standards aimed at preventing juvenile delinquency.

650 The Havana Rules provide detailed minimum standards for the care and treatment of juveniles deprived of their liberty.

International treaties, including the CRC, however, cannot be directly enforced in Vietnam unless they have been incorporated or codified into the national law. International treaties are considered as an integral part of Vietnamese legislation. In cases where a national legal document and an international treaty to which Vietnam is a party contains different provisions on the same matter, the provisions of the treaty shall prevail.⁶⁵¹ In addition, the promulgation of legal documents must ensure that they do not obstruct the implementation of international treaties to which Vietnam is a party. The codification of international treaties has become a principle in the development and promotion of the national legal system, and efforts have been made to ensure compliance with the principles and provisions of the CRC through improving its national legal framework and systems.

Below are key principles concerning ‘children in conflict with the law’⁶⁵²:

1. Children in conflict with the law are educated and assisted by their families, the schools and society to redress their wrong-doings, have a sense of law observance, respect the rules of the social life and be responsible for themselves, their families and the society. The organization of education of child law violators shall be effected mainly at communities or reform schools.
2. The handling of administrative liabilities, civil liabilities or examination for penal liabilities, of child law violators, must comply with law provisions applicable to juveniles.
3. Child law violators who have been handled through administrative or penal measures, separated from their communities for a certain duration, when returning to their families, shall be given conditions and assisted by the commune-level People’s Committees in coordination with concerned agencies and organizations to continue their schooling, to learn and seek jobs.
4. In cases where children have completed their education duration or completely severed their penalties but still have no one to rely on, the provincial-level People’s Committees shall send them to establishments supporting children in special circumstances and create conditions for them to learn and seek jobs.

In addition to an extensive legal framework in support of children’s rights since the ratification of the CRC in 1990, Vietnam has formulated and implemented three national programmes of action for children for 1991-2000, 2001-2010 and 2012-2020. This has been done to create optimum conditions to meet the needs and realize the rights of children; to prevent and diminish the dangers that can

651 Article 6 of the Law on the Signing and Implementation of International Treaties (No. 41/2005/QH11) adopted by the National Assembly on 14 June 2005.

652 Article 58, Law on the Protection, Care and Education of Children.

harm children; and to build a safe and healthy environment where children up to the age of 16 years are protected, cared for, educated and developed.

To strengthen the protection of children, the Government of Vietnam has also adopted the National Programme on Child Protection for 2011-2015 for children in special circumstances, including children in conflict with the law and the National Target Programme on Crime Prevention for 2012-2015 (including provisions on crimes committed by children and against children).

Over the past years, Vietnam has been increasingly engaged in dialogue on international human rights commitments. The country has participated in the Universal Periodic Review (UPR) in 2009 and 2014 under the auspices of the Human Rights Council, during which its government reiterated its commitment to human rights, including children's rights in addition to the most recent Concluding Observations of the UN Committee on the Rights of the Child (the CRC Committee) released in 2012.

Vietnam submitted the first and second periodic reports to the CRC Committee in 1993 and 2002, respectively, and the combined third and fourth report in 2009 which was reviewed in 2012. These country periodic reports have provided substantive information on the legislative, administrative, judicial and other measures undertaken to implement the CRC in Vietnam. The Concluding Observations and Recommendations from the CRC Committee issued later have recognized Vietnam's progress toward implementing the CRC and its Optional Protocols. However, the CRC Committee also advised Vietnam to further improve the legal framework of children's rights and its enforcement in many areas, including juvenile justice.

At present, there is no separate system for juvenile justice in Vietnam, and children in conflict with the law are handled either through special regulations in the criminal justice system or the administrative system. Under the Law on Handling Administrative Violations and the Penal Code, juveniles in conflict with the law include all persons aged 12-18 who are alleged or accused of having committed a law violation, either administrative or criminal. Below 12, no child may be held accountable under the law for her or his actions. Children having reached the age of twelve years may be administratively sanctioned for some offences.⁶⁵³ Once twelve years old, official reaction to delinquent behaviour depends on the seriousness of an offence, a person's age, and the individual's record of previous violations. The administrative system for less serious offences governed by the Law on Handling Administrative Violations is more informal and community-based than the criminal justice system. Decisions should be made by relevant authorities whether to apply criminal penalties or to treat the infringement as an administrative matter.

When a juvenile breaks a moral principle, commits a minor legal infraction, violates administrative regulations or infringes on the legitimate rights or interests of others, he or she may be subjected to administrative sanctions. Children sanctioned under the administrative system are not considered to have criminal records. The sanctions applied to juvenile offenders under the Penal Code are *suspended sentence* (Article 60), *assignment to education in the communes/wards*

653 Articles 90 and 92 of the Law on Handling Administrative Violations.

and district towns (Article 70), *placement in reform schools* (Article 70), *warnings* (Article 71.1), *fines* (Articles 71.3 and 72), *non-custodial reform* (Articles 71.1 and 72) and fixed-term imprisonment (Articles 71.1 and 74).

The administrative system is used by the district People's Committee when a child's behaviour does not constitute an offence under the criminal law, but contravenes public regulations, is contrary to social and moral standards, or affects public order or the civil rights and interest of other people. In such instances, the intervention focuses on the juvenile offenders' needs and his or her education or re-education. When a child is involved in behaviour that carries a criminal responsibility, the process of investigation, prosecution, temporary detention, and adjudication and/or punishment must strictly comply with the dispositions of the Criminal Procedure Code, as proposed by the district People's Committee and decided by the district court. That second form of intervention is therefore meant to be reserved for serious cases of juvenile delinquency.

Under the Law on Handling Administrative Violations, those children may be subject to the following administrative measures:

- (1) Education in communes, wards or district towns (Article 90)
 - a) A child aged between 12 and 14 who has intentionally committed an act of violation that contains elements of a very serious crime as prescribed by the Penal Code;
 - b) A child aged between 14 and 16 who has intentionally committed an act of violation that contains elements of a serious crime as prescribed in the Penal Code;
 - c) A child aged between 14 and 18 who has, twice or more within a six month period, committed larceny, swindling, gambling or causing public disorder but not seriously enough for criminal prosecution.

- (2) Placement in a reform school (Article 92)
 - a) A child aged between 12 and 14 who has intentionally committed an act of violation that contains elements of an especially serious crime as prescribed in the Penal Code;
 - b) A child aged between 14 and 16 who has unintentionally committed an act of violation that contains elements of a very serious crime as prescribed in the Penal Code;
 - c) A child aged between 14 and 16 who has intentionally committed an act of violation that contains elements of a serious crime as prescribed in the Penal Code and who has previously been educated at a commune, ward or district town,
 - d) A child aged between 14 and 18 who has, twice or more within six months, committed larceny, swindling, gambling or causing public disorder, but not seriously enough for criminal prosecution and has previously been educated at communes, wards or district towns.

There are separate chapters on the treatment of juveniles in conflict with the criminal law in both the Penal Code and the Criminal Procedure Code. There are six major stages in the general criminal justice process. These stages are: arrest⁶⁵⁴ and investigation⁶⁵⁵, which can precede or follow each other; prosecution⁶⁵⁶; adjudication⁶⁵⁷; execution of summary⁶⁵⁸; and post-adjudication or reintegration.

Juvenile offenders are those who have reached the age of fourteen, but who are not yet fully eighteen years old. The handling of juvenile offenders aims primarily to educate them and to assist them in becoming productive, well-adjusted citizens. Neither life imprisonment nor the death penalty may be applied to offenders below the age of eighteen, and prison terms for young people must be greatly reduced compared with those of adults.

More than half of the crimes for which minors are charged are not serious offenses. These include petty theft, sniffing of glue or solvents, vagrancy and violation of traffic regulations. Many cases involving children are not reviewed immediately. Most are eventually dismissed by the courts due to out of court settlements or the failure of witnesses to appear during the trial. Many children experience detention in sub-standard conditions for long periods of time before their cases are finally resolved.

Below are the key principles provided by the Penal Code (Article 69) for handling juvenile offenders that promote the consideration of the best interests of the child:

- “1. The handling of juvenile offenders aims mainly to educate and help them redress their wrongdoings, develop healthily and become citizens useful to society.
In all cases of investigation, prosecution and adjudication of criminal acts committed by juveniles, the competent State agencies shall have to determine their capability of being aware of the danger to society of their criminal acts and the causes and conditions relating to such criminal acts.*
- 2. Juvenile offenders may be exempt from penal liability if they commit less serious crimes or serious crimes which cause no great harm and involve many extenuating circumstances and they are received for supervision and education by their families, agencies or organizations.*
- 3. The penal liability examination and imposition of penalties on juvenile offenders shall only apply to cases of necessity and must be based on the nature of their criminal acts, their personal characteristics and crime prevention requirements.*
- 4. The courts, if deeming it unnecessary to impose penalties on juvenile offenders, shall apply one of the judicial measures prescribed in Article 70 of this Code.*

654 Articles 79 to 94, as well as Articles 303 and 304 of the Criminal Procedure Code.

655 Articles 110 to 125, as well as Article 302 of the Criminal Procedure Code.

656 Articles 166 to 169 as well as Article 302 of the Criminal Procedure Code.

657 Articles 170 to 254, as well as Articles 302 and 307 of the Criminal Procedure Code.

658 Articles 255, 256, 257, 308, 309 of the Criminal Procedure Code, as well as Articles 50 to 53 of the Law on Executing Criminal Judgments.

5. *Life imprisonment or the death sentence shall not be imposed on juvenile offenders. When handing down sentences of termed imprisonment, the courts shall impose on them lighter sentences than those imposed on adult offenders of the corresponding crimes. Pecuniary punishment shall not apply to juvenile offenders who are from full 14 to under 16 years old. Additional penalties shall not apply to juvenile offenders.*
6. *The judgement imposed on juvenile offenders aged under 16 years shall not be taken into account for determining recidivism or dangerous recidivism”*

2. Institutional Framework for Juveniles in Conflict with the Law

2.1. Policing and Investigation of Criminal Activities

Juveniles in conflict with the law may be arrested and investigated under both the administrative and criminal systems. Under the administrative system, juveniles alleged to have committed administrative violations may be taken into custody in cases where it is necessary to prevent or immediately stop acts of causing public disturbance or causing injury to other persons, or where necessary to gather and/or verify circumstances of the violation. In general, custody must not exceed 12 hours, but may be extended to 24 hours. Where juveniles are held in custody at night or for more than six hours, their parents must be notified (Article 122 of the Law on Handling Administrative Violations).

Under the Criminal Procedure Code, a person between full 14 years and under 16 may only be arrested, held in custody or temporary detention where they intentionally commit very serious offences or they commit especially serious offences. Juveniles between full 16 years and under 18 years may be subject to arrest, custody or temporary detention only in cases where they intentionally commit serious offences or commit very serious or especially serious offences (Article 303). If a juvenile is arrested, his/her parents must be notified immediately, and the juvenile’s family, teacher, and HCYU representative have the right and obligation to participate in the investigation procedure. Where a juvenile is above 14 and under 16 years of age, a family representative must be present during the taking of statements and interrogation, unless the family representative is deliberately absent without plausible reason (Article 306).’

2.2. Diversion

For juveniles in conflict with the law in particular, the most commonly applied informal sanctions are mediation and the referring of juveniles in conflict with the law to families, schools and social organisations for management, education and supervision. Therefore, in accordance with principles and general regulations of current Vietnamese law, *diversion* from formal to informal sanctions for juveniles in conflict with the law appears in certain cases.

Under Vietnamese law, diversion is an alternative process for dealing with

juvenile offences (crimes and other law violations) in an informal way, outside of the formal justice system. Diversion refers literally to diverting or sending a juvenile away from the formal justice system to an alternative process for dealing with the offence. Similar to Alternative Dispute Resolution, it is a process for resolving juvenile offences without resorting to the courts, often through some form of mediation between the juvenile, victims and community members (see the definition of restorative justice below). The aim of diversion is to give juveniles the chance to reassess their behaviour and take responsibility for their actions without getting a criminal record, and without being subjected to deprivation of liberty. Diversion is intended to reduce recognized negative consequences of involvement in the formal justice system such as loss of family and social contacts, disruption of education, possible mental and physical abuse at the hands of fellow inmates, accelerated learning of criminal behaviour, drug use, exposure to disease including HIV, and social stigmatization. However, the process of diversion in Vietnam applies only to cases where a victim makes a claim for compensation and the matter is dealt with through mediation, leading to the eventual withdrawal of the victim's complaint.

Though the Penal Code does not provide any section or article on diversion, its Article 69.2 and Article 69.3 provide direction to be exercised by the police, the prosecution and the court as follows:

- Juvenile offenders may be exempt from penal liability if they commit less serious crimes or serious crimes which cause no great harm and involve many extenuating circumstances and they are received for supervision and education by their families, agencies or organizations.
- The penal liability examination and imposition of penalties on juvenile offenders shall only apply to cases of necessity and must be based on the nature of their criminal acts, their personal characteristics and crime prevention requirements.

Mediation needs to ensure that juveniles are held accountable in a manner that is appropriate to the offence and contribute to the reconciliation of the victim. It also needs to provide them with the opportunity to develop in a responsible, beneficial and socially acceptable way

Mediation at grassroots level is conducted through the activities of mediation groups such as residents established in hamlets, villages, mountainous villages and other neighbourhoods in accordance with legal regulations⁶⁵⁹. The mediation group consists of a single group leader and a number of group members which are all selected from the communal/ward/town VFF in cooperation with its attached member organisations, elected by the people and recognised by the People's Committee at the same level.

The recommendations/decisions of the mediation groups are not legally binding but are usually respected by the parties of the disputes. The mass-organiza-

659 Articles 12 and 14 of the Law on Grassroots Mediation.

tions, including the youth union, women's union, veterans' association, farmers' union, etc., exist in all localities, including remote communities. These organizations are originally established and sponsored by the state, and operate under the management of the VFF. All mass-organizations assume a common duty of protecting and caring for their members' interests. This duty includes assisting the members in resolving daily life difficulties including mediating disputes between members.

Victim-offender mediation is a process of resolving a conflict or offence where the victim and offender meet face to face, facilitated by a mediator, to reach an agreed settlement to the dispute. Generally involves the offender agreeing to actions to address the harm they have caused, which may include restitution.

Another form of diversion can take place in cases in which a juvenile offender has committed a 'less serious or serious crime' causing no great harm. The offender is sometimes diverted away from the criminal system and placed under the supervision of his/her family or a social organization such as the HCYU.

2.3. Adjudicating and Sentencing

When a juvenile case comes before the courts, the appropriate authorities have several different options for dispensing justice. The courts are encouraged to waive penal liability for serious or less serious crimes if children's families agree to supervise the offender.⁶⁶⁰ Serious crimes are those for which the penalty is seven years in prison or less.⁶⁶¹ If the courts choose to hear a case, they may apply judicial measures or penal measures. Judicial measures include (a) education at communes, wards, or district towns, and (b) placement in a reform school.⁶⁶² Juveniles who are adjudicated through judicial measures are not considered to have a criminal record.

The Penal Code currently provides several different types of disposition for juveniles in conflict with the criminal law, including:

- Suspended sentences (Article 60);
- Education at communes, wards or district towns (Article 70);
- Reform schools (Article 70);
- Warning (Article 71.1);
- Fine (Articles 71.2 and 72);
- Non-custodial measures (Articles 71.3 and 73); and

660 Ibid., Article 69.

661 Ibid., Article 8.

662 Ibid., Article 70

- Termed imprisonment (Articles 71.4 and 74).

When a court decides to apply judicial measures, the authorities may choose to warn the juvenile, fine her or him, assign non-custodial reform, or impose a fixed term of imprisonment in a detention center.⁶⁶³ Fines may be applied only to juveniles over the age of sixteen, provided they have an income or private property.⁶⁶⁴ Non-custodial reform is the adult version of education in the commune level. The law regulating non-custodial reform outlines a regime of study and supervision nearly identical to that prescribed for administrative offenses. Thus, when children are adjudicated under penal proceedings, they are frequently sentenced to a term of imprisonment. The juvenile offenders shall be penalized with termed imprisonment according to the following regulations:

1. For persons aged between full 16 and under 18 when they committed crimes, if the applicable law provisions stipulate life imprisonment or the death sentence, the highest applicable penalty shall not exceed eighteen years of imprisonment; if it is termed imprisonment, the highest applicable penalty shall not exceed three quarters of the prison term prescribed by the law provision;
2. For persons aged full 14 to under 16 when committing crimes, if the applicable law provisions stipulate the life imprisonment or death sentence, the highest applicable penalty shall not exceed twelve years; if it is the termed imprisonment, the highest applicable penalty shall not exceed half of the prison term prescribed by the law provision.⁶⁶⁵

Administrative sanctions may be imposed on juveniles by the court, as proposed by the Chair of the District People's Committee (as prescribed in Articles 105 and 106 of the Law on Handling Administrative Violations).

Where criminal proceedings have been initiated against a juvenile, the trial panel must include a person who is either a teacher or a representative of the HCYU (as prescribed in Article 306 of the Criminal Procedure Code). In addition, a representative of the juvenile's family, a representative of the school or of social organisations must be present at court hearings, and it is obligatory to have a defence counsel present. However, Vietnam has recently established family and juvenile courts at national, provincial and district levels governing the conduct of cases involving juvenile defendants.

663 Ibid., Article 71.

664 Ibid., Article 72.

665 Article 74 of the Penal Code.

2.4. Treatment of Convicted Juveniles

2.4.1. Residential

Though still an administrative sanction, sending juveniles to reform schools is a much more serious matter than requiring them to attend education in their home communities. Reform schools in fact are custodial institutions where delinquent children are sent for rehabilitation through a programme of work and study. Those children may be placed in reform schools under both the administrative and criminal justice systems for periods ranging from six months to two years as an administrative sanction or are placed for a period of 1 to 2 years as a judicial sanction. Reform schools aim to facilitate the rehabilitation of juvenile offenders, help them to become active and positive members of society and reintegrate them into the community after their release.

Placement in a reform school is applicable to juvenile offenders aged 14 to 18 for terms of one to two years depending on the gravity of the offence, the juvenile's personal background and his or her living environment. Juveniles are placed in reform schools when it is deemed necessary to place them in a highly strict disciplinary institution. Reform schools in Vietnam are not necessarily seen by government officials as a form of deprivation of liberty but are seen as a strict measure for juveniles, though for the purpose of compliance with international human rights standards, it is clear that such placements constitute a form of deprivation of liberty.

Article 308 of the Criminal Procedure Code states that juvenile offenders serving a penalty of termed imprisonment must be kept separate from adults, and must be provided with job training or general education. The Law on Executing Criminal Judgments states that juvenile prisoners are separated by age and gender under the regime on management, education, labour, study and daily activities (Articles 127 and 129). Primary education and vocational training for juveniles is mandatory. However, there are some immediate concerns. Juveniles should be separated from adults in penal institutions, including custody houses and temporary detention centres. In addition, existing education and vocational training programmes at reform schools and detention centres should be improved. In particular, the types of vocational training offered to juveniles should be designed to provide them with marketable skills that will assist them to find work upon their release.

Currently, HIV prevention, treatment and care services and drug dependence treatment in prisons and other custodial settings in Vietnam are at an initial stage of development. The MPS has provided some basic health-related care and has undertaken a small-scale prevention information campaign, but an effective response to the HIV epidemic in these settings is in its beginning, and the tools, knowledge and commitment necessary to undertake such a response are still being developed. Moreover, no public baseline data exist to quantify the national HIV-related situation across custodial facilities and populations. At the same time, new programmes are needed to help juveniles in detention centres and reform schools to build social competencies and start addressing their offending behaviours. The practice of imposing mandatory HIV testing on juveniles and not disclosing their status to them

should be discontinued. Instead, juveniles should be provided voluntary testing, counselling, treatment, and prevention information.

Juvenile offenders often face many challenges as they may have a history of social isolation and marginalization, physical or emotional abuse, poor employment or unemployment, and involvement in a criminal lifestyle that began at an early age. Physical and mental disabilities and health issues that are sometimes related to substance abuse and drug addiction may present difficult challenges for them. Many offenders are also challenged by skills deficits that make it difficult for them to compete and succeed in the community: poor inter-personal skills, low levels of formal education, illiteracy or innumeracy, poor cognitive or emotional functioning, and/or a lack of planning and financial management skills. On the other hand, helping these juvenile offenders also involves understanding their “resiliency factors”, the characteristics which protect them as individuals. Supporting resilience in juvenile offenders can facilitate their social integration.

The Law on the Protection, Care and Education of Children states that children in conflict with the law who have been handled through administrative and/or criminal systems and separated from their communities for a certain duration shall, when returning to their families, be given favourable conditions and assisted by commune People’s Committees and concerned agencies and organisations to continue their schooling and take part in vocation training and find work (Article 58). In addition, The Law on Executing Criminal Judgments (Article 139) stipulates that, where a juvenile has completed imprisonment or a term in reform schools, the administration of the facility is responsible, in conjunction with social organizations, assisting juveniles to make the transition to normal life. Article 308 of the Criminal Procedure Code states, where a juvenile has completely served his/her imprisonment penalty, the supervisory board of the detention centre shall coordinate with the administrations and social organizations at the commune, ward or township to help the juvenile to lead a normal life in society.

2.4.2. *Non-residential*

In Vietnam, the educations in the communities and placement in reform schools⁶⁶⁶ have become popular tools the authorities use to educate the offender and prevent further violations. The former is a measure that may be applied to juveniles under both the administrative and criminal systems. The juvenile is placed under the supervision and education of the local communes, wards, district administration or social organizations and must fulfil obligations for study, labour and rehabilitation. This allows children to remain with their families, while the latter requires custodial treatment outside the home. As commune-level education is a non-custodial measure, the president of a local People’s Committee has the authority to decide whether or not a child must participate. Before deciding the matter, the

666 Those custodial institutions have been managed by the Ministry of Public Security (MPS) since 1967 and located in rural areas. They are all staffed by correctional police, with education and training programmes for juvenile delinquents or offenders endorsed by the Ministry of Education and Training (MOET) and the Ministry of Labour, Invalids and Social Affairs (MOLISA).

law requires that he or she organize a meeting with the local police chiefs, legal representatives, representatives of local mass organizations, and the families of those who may be required to participate in the education. Within certain days of this meeting, the president must issue a decision that includes the full name, birth date, and residence of the child subject to education; the legal offenses committed by that person; applicable legal statutes; the agencies responsible for educational training; and the effective dates of the decision. The decision must immediately be sent to the juvenile, his or her family, and any relevant local organizations.

Within a set time limit, the agencies charged with carrying out the education must meet with the juvenile in question to organize and implement a plan of action. Such organizations might include the VFF, the police, the VWU, or the HCYU. Once a month these organizations must report to the local People's Committee on the progress of each juvenile. When the juvenile has finished the duration of her or his sentence, the People's Committee president shall issue certificates. While the juvenile is not considered to have a criminal record, there are clearly records on file with the police, people's committee, and other agencies.

While juveniles being managed and educated in the family or community receive some support and advice from representatives of mass organizations, this support is not systematic or intensive. In some cases, local authorities and mass organizations provide advice, counselling and material support, but they lack specialized skills and programmes to provide the support needed by juveniles, particularly those with more complicated problems. It is therefore recommended that an intensive case management model be piloted to provide psycho-social support to juveniles at risk, juveniles subject to informal sanction, and juveniles on commune-level education. As part of this pilot, programmes could be developed or strengthened to help juveniles and their families address risk factors and improve social competencies (drug/gambling addiction counselling, life skills course, anger management, peer mentoring, empathy clubs for parents, etc).

3. Reform Initiatives

Vietnam has been making efforts to bring its juvenile justice systems in line with the CRC and other international standards to safeguard the basic rights of children who are in conflict with the law. Especially, recent reforms initiatives include the following:

- Aligning national legislative and judicial programmes with international law on juvenile justice and international good practices in this area that foster diversion alternatives to deprivation of liberty (with detention a measure of last resort) and restorative justice;
- Establishing family and juvenile courts at national, provincial and district levels;
- Development of pilot projects for diversion or re-integration of juvenile offenders into society, as well as the establishment of child sensitive procedures

and systems of legal assistance to children which are also relatively new trends and have already show signs of success as ‘good practices’ for dissemination and sharing within the country;

- Creating circumstances in administrative and other government processes that are in the best interests of the child. This refers to judicial systems that are child sensitive and that minimize trauma, recognizing that childhood is the most formative period of a person’s life and the time when individuals are most sensitive and strongly influenced;
- Safeguarding children’s rights, including the most basic protection rights, including the prohibition of the death penalty; the prohibition against torture and corporal punishment; and the right of juveniles to be detained separately from adults and the right to participation by children in the decisions which affect their lives (including judicial and administrative decisions);
- Developing communication and advocacy activities to raise awareness and address the stigmatization of juveniles in conflict with the law, and promote family and community support for the development of community-based rehabilitation options;
- Developing specialized services for juveniles in conflict with the law and youth-at-risk, including prevention services, diversion and restorative justice programmes;
- Continuing to build the capacity of the police, justice and welfare officers, prosecutors, judges to develop and deliver child-friendly services;
- Providing the provision of psycho-social support for juveniles currently in reform schools as a result of conflict with the law, ultimately promoting their early release and preparing them for reintegration back into the community;
- Improving community-based interventions and services for at risk children and juveniles in conflict with the law;
- Developing an inter-agency protocol to strengthen coordination around diverting juveniles in conflict with the law away from the formal justice system; and
- Developing juvenile justice indicators.
- Establishing child-friendly justice structures in selected communities as pilot projects; and
- Increasing the knowledge and skills of local child protection and justice officers on justice for children in selected provinces.

4. Main Challenges to the System

In spite of extensive efforts and recent important initiatives and progress which have been taken to respond to juvenile justice issues throughout the country, the following main and specific challenges remain to be addressed in reforming the juvenile justice system to ensure that the rights of children are protected:

- Vietnamese legislation, especially this child law, however, does not fully harmonize with the 18 years age limit as defined by the CRC. The two concepts of ‘*child*’ or ‘*children*’ (applied to people under 16 years of age) and ‘*juvenile*’ or ‘*minor*’ (applied to people under 18 years of age), currently used in Vietnamese legislation, cause significant confusion and result in different levels of protection for people under 18 years of age. As a result, people between 16 and 18 years can be exposed to situations of vulnerability or harm, such as early marriage, lack of protection due to abuse, exploitation or violence. For this reason, the age of 18 is strongly recommended as the determining line of child status, in line with the CRC and other international standards including the Optional Protocols to the CRC.
- There is a dearth of reliable and systematic information on the situation of children in conflict with the law. The data collected is often not compatible, nor is it openly shared. Data collection on administrative offences committed by young offenders is not centralised. As a result, statistical reporting targets are not being met. Because of the manner in which administrative measures are administered, a large number of officials are involved, many of them at the local level, an effective system for collecting reliable data on the nature of the juvenile delinquency cases dealt administratively and on the sanctions imposed is not yet in place. In the absence of a well structured, periodic data reporting mechanism, the currently available data are incomplete, unreliable and often full of contradictions.
- There are often difficulties for local authorities in determining the ages of many juveniles who come into conflict with the law and that this can cause delays in the criminal justice process, particularly in rural areas or mountainous areas, where many children still do not have birth registration documents, or because juveniles who come into conflict with the law do not have identifications with them if they have left their home communities and are working or living in urban areas.

In addition, the following things are shortages of:

- Child-friendly justice procedures, family support, social assistance and psycho-social care for children and young people in conflict with the law;
- Necessary services for prevention, early identification, intervention, referral to rehabilitative and specialized services and follow-ups;

- Professional social work and protection services to be provided by volunteers and trained workers undertaking complex tasks with the necessary skills at a sub-national level, where the needs of poor families and children are particularly dire;
- Human and financial resources to ensure that children accused of having violated the law have legal counsel or other appropriate assistance;
- Capacity of key criminal justice actors to appropriately deal with juvenile justice;
- Appropriate rehabilitation and reintegration services, as well as professional (such as social workers) working in this area; and
- A separate legal code for juvenile justice;
- Child-sensitive environments as the existing custodial sentence facilities are already overcrowded, due to economic hardship and increasing drug use among juveniles;
- Conditions and services, including general and vocational education for children in conflict with the law at reform schools where they are deprived of liberty; and
- Diversion mechanism and restorative justice programmes in the dispute resolution mechanisms of the current system and deprivation of liberty used as a measure of last resort and for the shortest possible period of time.

Among its many recommendations during 1993-2011, the Committee on the Rights of the Child emphasized the need to disseminate Vietnam's State Party reports, together with the Committee's Concluding Observations, to the general public in order to increase awareness of the CRC and to promote its implementation. In those national reports to the CRC Committee, Vietnam reported that, apart from the continuation and perfection of the legal system with regard to children, it has progress in law enforcement, monitoring and supervision of violations against children. It was however acknowledged that there are still shortcomings in law enforcement relating to children; for example, a gap remains between child rights (stipulated by the laws) and actual implementation of those rights. At the same time, the CRC Committee, while taking note of the amendments to domestic legislation, has remained concerned about domestic laws not yet fully complying with the CRC. Some of the other concerns of the Committee, as noted in its concluding observations, are the long period of imprisonment for delinquent children set forth in national penal legislation that are not in conformity with Article 37 of the CRC. It encouraged Vietnam to continue to strengthen its efforts to ensure that its domestic legislation, in particular in the area of juvenile justice, protection, care and education of children, be brought fully into conformity with the principles and provisions of the CRC. The Committee urged Vietnam to develop alternatives to detention, to ensure

that children are deprived of their liberty only as a last resort, and for the shortest time possible. The Committee also recommended the development of appropriate rehabilitation and reintegration services for children in conflict with the law; services to be offered as much as possible within the community.

The CRC Committee again expressed its concern about Vietnam's juvenile justice and the incompatibility of the existing justice system with the principles and provisions of the CRC and other international standards relating to juvenile justice regarding Vietnam's most recent report which had been reviewed in 2012. The Committee recommended a comprehensive reform of the system of administration of juvenile justice with the following observations⁶⁶⁷:

- Many children have reportedly been and still are subjected to ill treatment or torture while being administratively detained in drug detention centers, including through the imposition of solitary confinement punishment measure.
- Its previous recommendation has not been fully addressed by the State party.
- The lack of a comprehensive juvenile justice system, including the absence of a juvenile court, and that the current measures cover children under the age of 16 years only.
- The rising number of young offenders and the State party's punitive system of dealing with young offenders.
- The limited alternatives to child detention, and the absence of rehabilitation and reintegration programmes.

The CRC Committee recommended the following for consideration and action:

- Take all necessary measures to prevent, prohibit and protect children administratively detained in connection with drug addiction problems from all forms of torture or other cruel, inhuman and degrading treatment or punishment.
- To introduce an easily accessible complaints mechanism for children in such centers, with formal authority to decide complaints.
- To ensure prompt, independent and effective investigation of all alleged cases of torture or ill-treatment of children and, as appropriate, prosecute offenders.

667 Committee on the Rights of the Child. *Consideration of reports submitted by States parties under article 44 of the Convention - Concluding observations: Viet Nam (CRC/C/VNM/3-4)*, Geneva. (2012).

- To provide care, recovery, compensation and rehabilitation for victims.
- To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and consider ratifying the Optional Protocol to that Convention.
- To bring its juvenile justice system fully in line with the CRC, in particular articles 37, 39 and 40, and with other relevant standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice.
- To expedite the revision of the Penal Code, the Criminal Procedure Law and the Ordinance on Administrative Violations, with a view to ensuring their full compliance with the Convention's principles and provisions, inter alia, by including all children under the age of 18 years in the juvenile justice system.
- To establish specialized protection police units for children.
- To allocate adequate human, technical and financial resources to the juvenile justice system to ensure focus on diversion and other alternative measures to deprivation of liberty.

The following relevant laws and codes are set to be amended for compliance with the CRC:

Relevant codes and laws to be amended in 2015-2016

1	The Law on the Protection, Care and Education of Children
2	The Youth Law
3	The Civil Code
4	The Law on Legal Aid
5	The Penal Code
6	The Criminal Procedure Code
7	The Law on Preventing and Combating Domestic Violence

5. Summary and Statistics

Since 1980, Viet Nam has become a State party of several major international instruments on human rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). Viet Nam was the first country in Asia, and the second in the world to ratify the CRC on 28 February 1990 without any reservation and among the first countries to report to the Committee on the Rights of the Child (the CRC Committee). By ratifying the CRC, Viet Nam has accepted the legal obligation to recognize, respect, protect and promote children's rights as human rights, including those of children in conflict with the law and to ensure that its national laws, policies and practices comply with the provisions contained in the child rights convention.

Under the Civil Code, a person is legally regarded as an “*adult*” if she or he is above 18 and a “*child*” is defined as an individual under the age of 16 under the Law on the Protection, Care and Education of Children, while the term “*minor*” or “*juvenile*” are used in the Civil Code, as well as the Penal Code and the Labour Code respectively to denote someone under the age of 18. At the same time, the Youth Law defines “*youth*” as those aged 16-30.

The minimum age for legal responsibility for administrative offences⁶⁶⁸ in Viet Nam is twelve years old, while fourteen years old for criminal offences.⁶⁶⁹ No child below those limits may be held accountable under the law for her or his actions.

A person under fourteen years of age is exempt from criminal liability and the age of criminal responsibility is as follows:

1. Persons aged full 16 or older shall have to bear penal liability for all crimes they commit.
2. Persons aged full 14 or older but under 16 shall have to bear penal liability for very serious crimes intentionally committed or particularly serious crimes.⁶⁷⁰

There is also an upper age limit of 18 for consideration under the system for the administration of juvenile justice. The minimum age for receiving a prison sentence in Viet Nam is from 14 years.

668 *Offence* is any act or omission that is punishable by law (criminal or administrative) under the Vietnamese legal system. *Administrative violation* is a faulty act which is committed by an individual or organization in violation of the state management law but does not constitute a crime and, therefore, must be administratively sanctioned in accordance with law. (Article 2 of the Law on Handling Administrative Violations).

669 Crimes are acts dangerous to society (Article 8 of the Penal Code), as distinct from other administrative law violations. Crimes are classified into:
less serious crimes, maximum penalty 3 years imprisonment;
serious crimes, maximum penalty 7 years imprisonment;
very serious crimes, maximum penalty 15 years imprisonment; and
particularly serious crimes, maximum penalty life imprisonment or capital punishment.

670 Article 12 of the Penal Code.

Juveniles account for almost one third (25.08 million)⁶⁷¹ of the total population of Viet Nam, which, in 2013, was approximately, 91.68 million.⁶⁷² The most common type of criminal offence that juveniles in 2011 were accused of was property offences. This was followed by security related offences and, finally, public order offences. Among the property offences committed by juveniles, the two most common were ‘theft’ and ‘robbery’, although it was reported that the value of property involved was normally quite low, so that imprisonment was often for less than five years, which is a relatively small sentence under the Penal Code. Of security related offences, rape and homicide were common. Out of the offences related to public order and security, the most prevalent offences were “public disorder and offences against public officers” are given a relatively small sentence within the sentencing framework of the Penal Law.

In Viet Nam, there are many government agencies involved in juvenile justice depending on their functions and responsibilities. These institutions are listed in Table 9 below. In addition to those relevant state agencies at both central and local levels, there are non-state organizations which are active in the area of juvenile justice, including the Viet Nam Lawyers’ Association (VLA), the Viet Nam Bar Federation (VBF), the Viet Nam Fatherland Front (VFF) the Viet Nam Women’s Union (VWU) and the Ho Chi Minh Communist Youth Union (HCYU). Those organizations have been joined by emerging NGOs and media in the process. Among them, the VWU and the HCYU are the most active mass organizations involving in one aspect or another of the social response to juvenile crime, and each has its own reporting mechanism, format and timeframe.

671 UNICEF, *The State of the World’s Children*. 2015, available at http://www.unicef.org/esaro/SOWC_2015_Executive_Summary_and_Statistical_Tables_Web.pdf

672 UNICEF, *The State of the World’s Children*. 2015, available at http://www.unicef.org/esaro/SOWC_2015_Executive_Summary_and_Statistical_Tables_Web.pdf

Table 1. Relevant Legislative Framework Regarding Juvenile Justice in Vietnam

Relevant Law				
Code/Law	Related Provisions	Number	Date of Adoption	Entry into force
Constitution	<ul style="list-style-type: none"> • Defines fundamental rights of Vietnamese citizens in all the five spheres – civil, political, cultural, social and economic, including children and obligations of all State actors and others in fulfilling those rights and obligations. • Recognizes equality and non-discrimination as key principles. • Offers an opportunity to strengthen the rule of law, promote human rights and enhance equality. 	2013/HP	28-11-2013	01-01-2014
Law on the Protection, Care and Education of Children	<ul style="list-style-type: none"> • Defines the principle of non-discrimination of children. • Outlines ten groups of fundamental rights and duties of children. • Defines the responsibilities of duty-bearers. • Provides provisions to enhance child protection. 	No. 25/2004/QH11	15-06-2004	01-01-2005
Youth Law	<ul style="list-style-type: none"> • Defines responsibilities of duty-bearers such as the State, family, and society to protect rights of children aged 16-17 who are not considered to be “children” under the Law on the Protection, Care and Education of Children. 	No. 53/2005/QH11	29-11-2005	01-07-2006
Civil Code	<ul style="list-style-type: none"> • Provides principles of equal treatment for Vietnamese citizens without discrimination with regard to ethnicity, sex, social and economic situation, religion; recognizes personal rights. • Stipulates the right to birth registration. 	No. 33/2005/QH11	14-06-2005	01-01-2006
Labour Code	<ul style="list-style-type: none"> • Prohibits all kinds of child labour. 	No. 10/2012/QH13	18-06-2012	01-05-2013

Relevant Law					
Code/Law	Related Provisions	Number	Date of Adoption	Entry into force	
Law on Legal Aid	<ul style="list-style-type: none"> Contains regulations on free legal assistance to children in special circumstances 	No. 69/2006/QH11	29-06-2006	01-01-2007	
Law on Handling Administrative Violations	<ul style="list-style-type: none"> Includes specific regulations on sanctions on minors/juveniles in conflict with the law. It encourages administrative penalties instead of prosecuting them. 	No. 15/2012/QH13	20-06-2012	01-07-2013	
Penal Code	<ul style="list-style-type: none"> Provides special criminal procedures related to children and minors in conflict with the law. Stipulates offences against those who violate children's rights through exploitation, abuse and harm. 	No. 37/2009/QH12	19-06-2009	01-01-2010	
Criminal Procedure Code	<ul style="list-style-type: none"> Regulates the involvement of children and minors in criminal procedures with the right to be heard. 	No. 19/2003/QH11	26-11-2003	01-07-2004	
Law on Executing Criminal Judgments	<ul style="list-style-type: none"> Affirms that judgment exercises to minors/juveniles aims at educating and helping them correct their mistakes, grow healthily and become useful people for the society. Promotes children's rights in penal institutions 	No. 53/2010/QH12	17-06-2010	01-07-2011	
Law on Preventing and Combating Domestic Violence	<ul style="list-style-type: none"> Conveys the message that domestic violence is a violation of the law rather than an internal family affair. Provides measures to prevent and control domestic violence, and to protect and support its victims. Stipulates the responsibilities of different agencies, families and individuals in preventing domestic violence and measures to handle domestic violence. 	No. 02/2007/QH12	21-11-2007	01-07-2008	

Relevant Law				
Code/Law	Related Provisions	Number	Date of Adoption	Entry into force
Law on Marriage and Family	<ul style="list-style-type: none"> • Confirms the importance of the family in Vietnamese society. • Establishes the responsibilities parents in raising their own children. • Provides for the limitation or deprivation of parental rights in the event that the parents are unable, unwilling or unfit to care for their children. • Covers the basic principles and procedures for guardianship and adoption of children. 	No. 52/2014/QH13	19-06-2014	01-01-2015
Law on Grassroots Mediation	<ul style="list-style-type: none"> • Handles legal violations in general and those of children in conflict with the law in particular as an informal sanction. 	No. 35/2013/QH13	20-06-2013	01-01-2014
Law on Organization of People's Courts	<ul style="list-style-type: none"> • Establishes family and juvenile courts at national, provincial and district levels to strengthen the promotion and protection of children's rights. 	No. 62/2014/QH13	24-11-2014	01-06-2015

Table 2. Age Classification in Vietnam

Age Classification			
Key concepts	Age	Code/Law	Article
Child	below 16	the Law on the Protection, Care and Education of Children	1
Juvenile/minor	below 18	the Civil Code	18
Adult/majority	18	the Civil Code	18
Juvenile worker	below 18	the Labour Code	161
Adult worker	18	the Labour Code	161
Youth	16-30	the Youth Law	1

Table 3. Total number of children in Vietnam (under 16), including those in special circumstances and those in conflict with the law during 2008-2012⁶⁷³

	2008	2009	2010	2011	2012
Number of children under 16	23,123,912	23,626,061	24,514,632	25,244,159	26,738,061
Number of children in special circumstances ⁶⁷⁴	1,641,656	1,537,179	1,552,032	1,473,237	1,574,871
Number of children in conflict with the law ⁶⁷⁵	21,545	15,530	13,594	13,922	13,326

⁶⁷³ MOLISA. *Children Indicators in Viet Nam 2011-2012*. Ha Noi. (2014).

⁶⁷⁴ Children in special circumstances are “destitute, abandoned children, disabled children, children being victims of toxic substances, children affected by HIV/AIDS, children doing hard and hazardous jobs or contacting noxious substances, children working far from their families, street children, sexually abused children, children addicted to narcotics and children in conflict with the law”. (Article 40 of the Law on the Protection, Care and Education of Children).

⁶⁷⁵ Children in conflict with the law under Vietnamese law are those who are alleged or accused of any law violation, whether or not they are subsequently convicted of any offence, either administrative or criminal.

Table 4. Juveniles in conflict with the law by age, gender and education in 2011 (in percent)

	Age group			Illiteracy	Primary education	Lower secondary education	Senior secondary education	Drop-out
	Below 14	14-16	16-18					
	6.90	29.65	63.45	7.46	20.17	39.60	32.76	44.32
			Girls					
			3.99					
			22.03					

Table 5. Number of juveniles in conflict with the law by age groups in reform schools during 2001-2009

Year	2001	2003	2005	2007	2009
Aged 12 to under 14	13.32	12.95	13.51	11.60	23.25
Aged 14 to under 16	43.56	44.30	42.20	41.70	57.90
Aged 16 to under 18	43.12	42.75	44.29	46.70	18.60
Total number of juveniles in conflict with the law	1,591	2,208	2,294	2,135	1,904

Table 6. Juveniles in conflict with the law by types of offences in reform schools during 2001-2009

Year	2001	2003	2005	2007	2009
Homicide	0.31	0.32	0.44	0.70	0.95
Robbery/snatching	3.21	3.58	2.22	4.00	10.80
Extortion	2.51	1.40	4.01	1.90	7.74
Rape	1.51	2.36	2.14	2.10	2.73
Malice prepense	11.21	10.55	11.4	9.62	10.23
Theft	67.73	62.23	61.33	62.40	51.70
Swindle	1.32	1.45	1.05	1.73	1.47
Public disorder	18.54	18.66	23.19	21.60	20.70
Others	2.70	7.93	3.79	3.30	2.21

Table 7. Juveniles in conflict with the law by place of residence, gender, education, admission to and graduation from reform schools⁶⁷⁶

Year	2001	2003	2005	2007	2009
By place of residence					
Urban areas	38.53	67.62	50.70	46.20	32.80
Rural areas	61.47	32.38	49.30	53.80	67.60
By levels of education					
Illiteracy	14.52	14.54	9.29	7.90	5.41
Primary education	49.40	41.49	36.57	46.10	34.20
Lower secondary education	29.35	37.41	44.33	32.30	50.30
Upper secondary education	6.73	6.57	9.81	13.70	10.10
Admission and graduation					
Admission (number)	1,591	2,208	2,294	2,135	1,904
Readmission for the second time or more	1.25	2.35	2.83	2.71	2.83
Graduation (number)	1,420	1,727	2,269	2,355	2,138

Table 8. Number of Juveniles in Detention Centres

Year	2001	2003	2005	2007	2009
Number of juveniles	778	1,300	963	1,558	1,171
Juvenile offenders (percent)	84.58	92.85	91.48	93.52	91.63
Children of prisoners (percent)	15.4	7.15	8.52	6.48	8.37

⁶⁷⁶ MOLISA. *Children Indicators in Viet Nam 2009-2010*. Labour and Social Affairs Publishing House, Ha Noi. (2010). p.132.

Table 9. Government Agencies Dealing with Juvenile Justice

Institutions	Responsibilities
Government	
Ministry of Labour, Invalids and Social Affairs (MOLISA)	Bureau of Child Protection and Care State management agency for monitoring, promotion and protection of child rights, social work.
Ministry of Justice (MOJ)	Department of Criminal and Administrative Laws State management agency for legal aid, mediation, legal development and reform.
Ministry of Public Security (MPS)	<ul style="list-style-type: none"> • Bureau of Police for Criminal Investigation • Bureau of Police for Administration of Social Order • Bureau of Pre-Trial Detention and Custody • Bureau of Management of Prisoners and Learners • Bureau of Education, Reform and Social Reintegration State management agency for juvenile justice, investigation, crime prevention and control, education, correction and rehabilitation, pre-trial detention centres, detention centres and reform schools.
People's Supreme Court (SPC)	
<ul style="list-style-type: none"> • Criminal Court • Family and Juvenile Court (from 1 June 2015) 	Adjudication, statistical collection of crimes.
People's Supreme Procuracy (SPP)	
<ul style="list-style-type: none"> • Bureau of Criminal Statistics • Department for Prosecution and Supervision over Investigation of Criminal Cases Related to Social Orders • Department for Supervision over Custody, Detention, Correction and Rehabilitation of Prisoners 	Prosecution, supervision of investigation, custody, detention, correction and rehabilitation, crime statistics.

Annex I. Juvenile Justice System in ASEAN Member States

Country	Ratified the CRC?	Age of Criminal Responsibility	Age of Receiving a Prison Sentence
Brunei	27-Dec-95	7 years old ⁶⁷⁷	Not regulated
Cambodia	15-Oct-92	18 years of old ⁶⁷⁸	14 years old
Indonesia	5-Sep-90	12 years old	14 years old
Lao PDR	8-May-91	15 years old	15 years old
Malaysia	17-Feb-95	10 years old ⁶⁷⁹	14 years old
Myanmar	15-Aug-91	7 years old ⁶⁸⁰	7 years old
Philippines	21-Aug-90	15 years old	18 years old
Singapore	2-Oct-95	7 years old ⁶⁸¹	16 years old
Thailand	12-Feb-92	10 years old	15 years old
Vietnam	28-Feb-90	14 years old ⁶⁸²	14 years old

⁶⁷⁷ There are several conflicting provisions on when a child is criminally responsible in Brunei. It is as young as 7 but a child between 7 and 12 is not criminally responsible, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. Different provision states that a boy under 13 cannot rape, and other provisions use Mumaiyiz and baligh as requirement. For more details, please refer to the chapter on Juvenile Justice in Brunei Darussalam

⁶⁷⁸ The Penal Code on article 38 and 39 states that “the court may pronounce a criminal conviction against a minor of 14 years of age or more, if the circumstances of the offence or the personality of the minor justify in doing so.”

⁶⁷⁹ However, the children over the age of 10 and under 12 are not criminally responsible if they have not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

⁶⁸⁰ The Child Law Chapter VI section 28 (b) introduces a conditional responsibility based on a maturity standard up to 12 years stating that “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.”

⁶⁸¹ However, anyone between the age of 7 and 12 who has not attained sufficient maturity of understanding to judge of the nature and the consequence of his conduct on that occasion.

⁶⁸² Vietnam has two different age of legal responsibility depending on the offence committed. 12 years for administrative offence and 14 years old for criminal offences. For more info please refer to Article 2 of the Law on Handling Administrative Violations and Article 8 of the Penal Code

ANNEX II. Juvenile Offender Procedure

Country	Police / Investigation	Court	Mediation	Prison	Probation/Parole/ Social Workers	Other
Brunei Darussalam	Women and Child Abuse Investigation Unit	The Juvenile Courts	N/A	Juvenile Detention Centre exists but no correctional facility	Department of Community Development	
Cambodia	N/A	In process of establishing a department within the Ministry of Justice that deals with children in conflict with the law	N/A	N/A	N/A	
Indonesia	Women and Child Care Unit	Juvenile Court and Special Prosecution for Child cases	<ul style="list-style-type: none"> • Women and Child Protection Unit at police level • Judge from Juvenile Court • Prosecutor Office for Juvenile cases • Balai Pemasarakatan Indonesia • Commission on Child Protection 	Lembaga Pembinaan Khusus Anak (juvenile prisons)	<ul style="list-style-type: none"> -Balai Pemasarakatan -Social Workers from Indonesia Commission on Child Protection, Social Ministry, or private Social Workers 	<ul style="list-style-type: none"> -Lembaga Pempampatan Anak Sementara (youth detention center for juvenile delinquents awaiting court hearings and/or placements in long term facilities)

Country	Police / Investigation	Court	Mediation	Prison	Probation/Parole/Social Workers	Other
Lao PDR	Investigation-Interrogation Agencies and Offices of the Public Prosecutor	Juvenile Court	<ul style="list-style-type: none"> Village Child Mediation Units District or Municipal Justice Offices Office of the Public Prosecutors 	-Somsanga Drug Treatment and Rehabilitation Centre	The Centre for Counseling and Protection of Women and Children	
Malaysia	Sexual and Children Investigation Division only has a mandate for child victims	One full-time Court for Children, others part time	N/A	three Henry Gurney Schools for Children and Six Juvenile Correctional Centres for Young Offenders (under 21 years)	Jabatan Kebajikan Masyarakat (Department of Social Welfare) for probation and parole services	
Myanmar		Two juvenile courts, one in Yangon and one in Mandalay. In the rest of the countries there are 330 Township Judges who can be conferred powers of a juvenile judge	N/A	N/A	Probation Officers covers both children in conflict with the law and children in need of care and protection	National Committee on the Rights of the Child

Country	Police / Investigation	Court	Mediation	Prison	Probation/Parole/ Social Workers	Other
Philippines	Women and Children's Protection Desk	Designated Family Court and any Regional Trial Court hearing family and youth cases	<ul style="list-style-type: none"> • Diversion at Katarungang Pambarangay level and Diversion Committee in each court 	Bahay Pag-Asa serves as short-term residential care for children awaiting court disposition or transfer to other agency/jurisdiction	Licensed social workers in every local social welfare and development officer specialized in children in conflict with the law	<p>-National and Regional Juvenile Justice and Welfare Council (JJWC), an inter-agency council that monitor and ensure the implementation of RA 9344</p> <p>-Local Councils for the Protection of Children</p>

Country	Police / Investigation	Court	Mediation	Prison	Probation/Parole/ Social Workers	Other
Singapore	N/A (the Youth Offenders Unit does more of prevention and outreach to youth)	<ul style="list-style-type: none"> Youth Court (offender below 16) Community Court (offender between 16-21) 	<ul style="list-style-type: none"> Beyond parental Control Pre-Complaint mediation services by Singapore Children's Society Guidance Programme by National Committee on Youth Guidance and Rehabilitation The Central Youth Guidance Office 	<ul style="list-style-type: none"> Reformative Training Centre (male offenders 16-21) Tanah Merah Prison School Singapore Boys' Home and Singapore Girls' Home Singapore Boys Hostel Bukit Batok Hostel (older males who are aged above 16 but placed on probation before turning 16) Salvation Army Gracehaven (for non-muslim females only) Pertapis Adolescent Development Centre (for muslim males only) Pertapis Centre for Women and Girls (for muslim females only) Muhammadiyah Welfare Home (for Muslim females only) 	<ul style="list-style-type: none"> Probation Service Branch, Ministry of Social and Family Development Youth Guidance Officers for residents of Boys' and Girls' Home Social Service Institute for professional youth workers Beyond Parental Control 	<ul style="list-style-type: none"> Inter-ministry Committee on Convention on the Rights of the Child Central Youth Guidance Office

Country	Police / Investigation	Court	Mediation	Prison	Probation/Parole/ Social Workers	Other
Thailand	N/A	<ul style="list-style-type: none"> The Juvenile and Family Courts 	<ul style="list-style-type: none"> Department of Juvenile Observation and Protection, Ministry of Justice The Juvenile and Family Courts 	<ul style="list-style-type: none"> The Juvenile Training Centers (not regarded as prison but a closed and secured settings designed to provide training for offenders age 10-18) 	<ul style="list-style-type: none"> Department of Probation, Ministry of Justice Social Workers from Department of Juvenile Observation and Protection, Ministry of Justice Social Workers from Office of Welfare Promotion, Protection of Children and Youth, the Disadvantaged and the Elderly, Ministry of Social Development and Human Security 	

Country	Police / Investigation	Court	Mediation	Prison	Probation/Parole/ Social Workers	Other
Vietnam	N/A	Family and Juvenile Court	Grass-root mediation groups (not legally binding) that are established and sponsored by the state and operate under the management of Vietnam Fatherland Front	Separate areas for juveniles in adult prisons	Ministry of Public Security (MPS)	Mass organisations, especially the Ho Chi Minh Communist Youth Union (HCYU), Viet Nam Women's Union (VWU)