



**BỘ TƯ PHÁP**

Chính phủ Việt Nam - Chương trình Phát triển Liên hợp quốc  
Government of Viet Nam - United Nations Development Programme

*“Tăng cường tiếp cận công lý và bảo vệ quyền tại Việt Nam”  
“Strengthening Access to Justice and Protection of Rights in Viet Nam”*



*Empowered lives.  
Resilient nations.*

## **The 1<sup>st</sup> Legal Policy Dialogue in 2013: “Criminal laws in Viet Nam in the context of international integration”**

### **Diễn đàn Đối thoại chính sách pháp luật lần thứ nhất năm 2013:**

**“Pháp luật hình sự trong thời kỳ hội nhập tại  
Việt Nam”**

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**(Materials in English)**

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**Hà Nội, 29.08.2013**

# **The 1<sup>st</sup> Legal Policy Dialogue in 2013:** **“Criminal laws in Viet Nam in the Context of International Integration”**

## **AGENDA**

**Thursday, 29 August 2013**

**Venue: Hotel Melia, 44B Ly Thuong Kiet Street, Ha Noi**

### **Co-chairs:**

- Mr. Nguyen Van Hien, Chairman of the Judiciary Committee of the National Assembly, member of the Standing Committee of the National Assembly, member of the Central Steering Committee for Judicial Reform
- Mr. Hoang The Lien – Vice Minister of Justice cum National Project Director
- Mrs. Louise Chamberlain – Country Director, UNDP Viet Nam

**8.00 - 8.30            Registration**

**8.30 - 8.35            Introduction**

Ms. Dang Hoang Oanh, General Director of the International Cooperation Department, Ministry of Justice

**8.35 - 8.45            Opening remarks by Co-chairs**

- Mr. Hoang The Lien – Vice Minister of Justice cum National Project Director
- Mrs. Louise Chamberlain – Country Director, UNDP Viet Nam

**8.45 - 9.10            A snapshot on the 1999 Penal Code enforcement and directions for its amendment to meet international integration requirements**

Mrs. Nguyen Kim Thoa, General Director of the Department on Administrative and Criminal Laws, MOJ

**Q & A**

- 9.10 - 9.35**            **Criminal legislation and requirements for criminalizing acts of violations in the spirit of the UN Convention against Corruption**
- Mr. Nguyen Cong Hong, Vice Chairman of the Judicial Committee, National Assembly
- Q & A**
- 
- 9.35 - 9.50**            **Comments of UNDP expert on the criminalization of corruption from a comparative perspective**
- Mr. Jairo Acuna-Alfaro, Policy Advisor on Public Administration Reform and Anti-corruption, UNDP Viet Nam
- Q & A**
- 
- 9.50 - 10.00**        **Tea break**
- 
- 10.00 - 10.25**        **Improving the criminal policy and the criminalization requirements of the UN Convention against Transnational Organized Crime and the supplementary Protocol to Prevent and Suppress Trafficking in Persons**
- Mr. Nguyen Ngoc Anh, Director of Legal Department, Ministry of Public Security
- Q & A**
- 
- 10.25 - 10.40**        **Comments of UNODC expert on international requirements and standards on transnational organized crime and trafficking of human being in line with the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons**
- Mrs. Zhuldyz Akisheva, Country Director of UNODC in Viet Nam
- Q & A**
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- 10.40 - 11.05**        **Improving the juvenile criminal policy and requirements for incorporation in domestic laws of relevant rules of the international Convention on the Rights of the Child**
- Mr. Tran Cong Phan, Deputy Chief Prosecutor, Supreme People's

Procuracy

**Q & A**

**11.05 - 11.20**      **Comments of UNICEF expert on criminal policy to juveniles in line with the UN Convention on the Rights of the Child and international child rights standards**

Mr. Vijay Ratnam Raman, Legal Specialist of UNICEF

**Q & A**

**11.20 - 11.50**      **Overall discussion**

**11.50 - 12.00**      **Closing by Co-chairs**

**12:00**              **Luncheon hosted by the organizers**

## **CONTRIBUTIONS AT THE LEGAL POLICY DIALOGUE**



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- 1. A snapshot on the 1999 Penal Code enforcement and directions for its amendment to meet international integration requirements –** *Nguyen Thi Kim Thoa, General Director of Department of Criminal and Administrative Legislation, Ministry of Justice*
- 2. Criminal legislation and requirement for criminalizing acts of violations in the spirit of the UN Convention against Corruption –** *Nguyen Cong Hong, Vice Chairman of the Judicial Committee, National Assembly*
- 3. Improving the criminal policy and the criminalization requirements of the UN Convention against Transnational Organized Crime and the supplementary Protocol to Prevent and Suppress Trafficking in Persons –** *Nguyen Ngoc Anh, General Director of Legal Department, Ministry of Public Security*
- 4. Improving the juvenile criminal policy and requirements for incorporation in domestic laws of relevant rules of the international Convention on the Rights of the Child –** *Tran Cong Phan, Deputy Chief Prosecutor, Supreme People's Procuracy*

# **A SNAPSHOT ON THE 1999 PENAL CODE ENFORCEMENT AND DIRECTIONS FOR ITS AMENDMENT TO MEET INTERNATIONAL INTEGRATION REQUIREMENTS**

**NGUYEN THI KIM THOA**  
**General Director**  
**Department of Criminal and Administrative Legislation**  
**Ministry of Justice**

The 1999 Penal Code was adopted by the 10th National Assembly at its sixth Tenure on December 21, 1999 and came into effect on July 1, 2000. The Penal Code is one of the effective legal instruments in social management, crime prevention and combat, contributing significantly to the achievement of political and social security of Vietnam and the protection of interests of the whole nation as well as Vietnamese citizens. Given the rapid economic and social growth in the light of the country's international integration, the Penal Code now needs, after 12 years of enforcement, to be amended and supplemented as a result of the urge to combat crime in a new context.

## **I. ENFORCEMENT OF THE PENAL CODE AND ITS REVEALED SHORTCOMINGS**

### **1. Enforcement of the 1999 Penal Code**

A report of the Ministry of Public Security<sup>1</sup> shows that, for eight years from 2003 to 2011, investigation agencies and other units under the People's Public Security who were assigned to carry out investigation activities initiated 522,220 criminal cases with 809,917 defendants. Specifically, investigation agencies under the People's Public Security initiated 520,816 cases with

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<sup>1</sup> Report No. 553/BC-BCA-V19 dated November 07, 2012 by the Ministry of Public Security to review 08 years of enforcement of the 2003 Criminal Procedure Code in the People's Public Security

809,917 defendants (accounting for nearly 99% of the criminal cases and more than 99% of the accused throughout the country). Over the past three years alone, investigation agencies and other units under the People's Public Security initiated 340,130 criminal cases with 532,548 defendants, accounting for nearly 99% of the criminal cases and more than 99% of the accused throughout the country. Specifically, 63,168 cases with 96,223 defendants were initiated in 2008; 70,367 cases with 108,508 defendants in 2009; 61,871 cases with 95,085 defendants in 2010; 69,266 cases with 110,455 defendants in 2011, and 75,458 with 122,277 defendants in 2012<sup>2</sup>.

According to a report of the Supreme People's Court, the People's Courts at all levels heard 507,050 criminal cases at first instance with 842,674 defendants<sup>3</sup> from 1999 to 2012. Regarding the army, according to the statistics of the Central Military Court<sup>4</sup>, all military courts heard 3,494 cases with 5,521 defendants from 2000 to 2012. Specifically, 111 of the cases with 133 defendants are related to violation of duties and responsibilities of army personnel and 3,383 cases with 5,388 defendants are related to other offenses.

The above statistics have indicated that generally provisions in the existing Penal Code have established a comprehensive legal basis for prosecution agencies in the combat against crime. Based on the assessment of ministries and agencies<sup>5</sup>, the enforcement of the Penal Code has produced positive results. Legal proceedings agencies at all levels strictly implemented and followed the Penal Code in investigation, prosecution and adjudication so that these stages were carried out objectively and precisely. Legal proceedings agencies have heightened the sense of responsibility and effectively cooperated with other agencies and departments relating to crime prevention and combat; thus, the

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<sup>2</sup> Report on summarizing 03 years of the enforcement of the Penal Code by People's Public Security (Report No. 214/BC - BCA dated 06/3/2013).

<sup>3</sup> Report No.40/TANDTC-KHXX dated.21/.12/2012 by the Supreme People's Court to review the enforcement of the 1999 Penal Code.

<sup>4</sup> Report No. 3870/BQP-VPC dated 07/12/2012 by Ministry of Defense: Summarizing 11 years of the enforcement of the Penal Code.

<sup>5</sup> Statistic on summarizing the enforcement of the Penal Code by 21 Ministries, agencies, and 63 provinces and cities.

number of unjustly has been kept minimal. A report of the Judiciary stated that the recent application of the provisions in the Penal Code to crime prevention and combat has brought positive results. The application of the Penal Code also indicated the sense of determination to fight crimes through penalties to warn, educate, and reeducate offenders into good citizens, as well as to develop the citizens' awareness of social responsibilities, law compliance, and encourage them to actively participate in crime prevention and combat. Adjudication was also improved in terms of both quantity and quality of justly solved cases. Most verdicts were approved by the public<sup>6</sup>.

## **2. The revealed shortcomings of the Penal Code**

Having achieved these results, the enforcement of the Penal Code still faces some challenges due to its general and specific shortcomings.

*a) General problems and shortcomings:* The enforcement has revealed some problems and shortcomings of the Penal Code.

*First,* some provisions in the Penal Code are still unclear; circumstances, constituents of a crime and determination of the penalty bracket are qualitative and ambiguous. Meanwhile, elements of many crimes are similar, and some provisions are in conflict. Even though ministries and agencies have paid attention to giving guidance on enforcing the Penal Code, the progress is still slow. There have no clear guidance on dealing with several groups of crimes prescribed in the existing Penal Code; instead, the Code only specifies guidance on some particular crimes such as environment-related crimes, crimes of infringing upon the economic management order, crimes of infringing upon administrative management order, crimes of infringing upon citizens democratic freedom, and crimes of infringing upon judicial activities, etc.

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<sup>6 6</sup> Report No 40 /TANDTC-KHXX dated 21/12/ 2012 by the Supreme People's Court: Summarizing the enforcement of the 1999 Penal Code.



*Second*, given the current context of socio-economic development and international integration, many dangerous acts have taken place and need to be criminalized. However, the Penal Code has not had provision for such acts as taking advantage of introducing children for adoption for self-interests, organ trafficking for profits, law-breaking acts related to social insurance premium payment obligations, providing fraudulent information for competent agencies, causing serious consequences; psychological harassment; violating the code of ethics in notarization and authentication, causing serious consequences; violating the right to hold a demonstration of laborers, establishing or participating criminal groups like gangs, etc. Although the 1999 Penal Code was amended and supplemented in 2009, it still needs to be improved to catch up with the current situation as many crimes were not prescribed clearly and the guidance on implementing provisions are inadequate and inappropriate. Some dangerous acts should be criminalized in the Penal Code and several penal policies and institutions need amending and supplementing to meet the requirements of the judiciary reform and international integration in the new context.

*Third*, some provisions in the Penal Code, the Criminal Procedure Code and other laws are in conflict, making it hard to apply them. Typically, the provision regarding the initiation of a case under the request of the victim against the act of intentionally inflicting injuries and the Penal Code's provision concerning abusing trust in order to appropriate property are linked to the concept of "fleeing" in the Law on Residence. These problems cause difficulties for legal proceedings agencies and make the people lose their confidence in the judiciary system.

*Fourth*, due attention has not been put on giving guidance on the implementation of the Penal Code and promulgating it. Some proceedings-conducting agencies and officials may not have a thorough understanding of the provisions in the Penal Code, yet they are enforcing it. The application of specific provisions in the Penal Code has not been consistent, resulting in unjustly convicted cases.

*b) Issues arising from the need for international integration of Vietnam have not been prescribed in the Penal Code.* The need for international integration has posed considerable challenges for Vietnam. One of these challenges is to improve the Penal Code to narrow the gap between Vietnamese legislation and international standards.

*First,* regarding the penal liability of legal entities, the existing Penal Code only prosecutes individual defendants, not legal entities. In fact, many organizations and businesses which are considered legal entities have violated legal regulations and committed serious crimes such as speculation, tax evasion, illegal trading, smuggling or violations of regulations on banking, securities trading, environmental protection, and labor protection to seek profit regardless of the safety and interest of the whole society. Such legal entities must be held criminally responsible and handled before law to deter and prevent crime.

*Second,* the Penal Code neither prescribes clear definitions of the organizer, instigator, and helper nor explains the term “close collusion”, thus some provisions are not easy to be applied. Besides, the Penal Code has not defined the principle of “individualizing penalties” to ensure fairness and justice when considering the nature and gravity of a criminal act and the offender’s antecedent in relation with applicable penalties in criminal complicity cases. Therefore, in many complicity cases, the accomplice may play very small role but he/ she may get a punishment be punished the same as the penalty bracket for the direct perpetrator. Therefore, the fairness and justice when considering their nature and gravity of the criminal act and the offender’s antecedent in relation with applicable penalties cannot be ensured.

*Third,* some dangerous acts have arisen from international integration but have not been criminalized. This is the list of examples: human trafficking for labor exploitation, child abuse, abortion for sex selection, establishment or participation in criminal groups; trade in and appropriation of human organs and fetuses, violations of regulations on road traffic by walkers, appropriation of property through pyramid schemes, illegal recruitment of labor and international

students; property embezzlement, bribery in the private sector, bribery with foreign officials, unjust enrichment, illegal acts related to social insurance such as appropriation tax debts, prolonged social insurance debts causing serious consequences or losses to the State Budget, social insurance frauds, intentionally creating good conditions for social insurance frauds, etc.

*Moreover*, the existing Penal Code has not mentioned concrete definitions of “more than one criminal”, “re-offending”, and “committing more than one crime”; thus, the understanding of these concepts has not been consistent. The concepts of “re-offending” and “committing more than one crime” or “re-offending” and “repeated violation” are often confusing. As a result, one dangerous act could be prosecuted for two crimes while two dangerous acts could be prosecuted for one crime. Research shows that many nations have now been able to completely get rid of this problem in their penal codes. Thus, this shortcoming is a barrier to the cooperation among countries in crime combat and prevention in the context of global integration.

## **II. RATIONALES FOR COMPREHENSIVE AMENDMENT OF THE PENAL CODE**

### **1. Changes in economic development policies**

The biggest change is Vietnam is following the model of socialist-oriented market economy under the Government’s policies. The market economy not only opens up opportunities but also brings about several challenges, especially concerns in the prevention and combat of crime in the market economy.

*The socialist-oriented market economy* is proved to be a good choice for Vietnam and is being intensively developed further with a wide range of patterns of ownership, economic sectors, and forms of business and distribution. The Political Report of the Eleventh asserts that Vietnam’s economy is “a multi-component commodity economy functioning in accordance with market mechanisms under the management of the State and the leadership of the

Communist Party. This economic model complies with principles of the market economy and sticks to principles and the nature of socialism as well.” Along with other documents in the national legislation system, the Penal Code serves as an effective instrument to protect and promote the development of the market economy. However, in general, the current Penal Code is still considered a “product” of the early transition period from the centrally-planned economy with state subsidies to a socialist-oriented market economy. Therefore, it fails to comprehensively present principles of the socialist-oriented market economy. Some regulations of the Penal Code seem to be outdated since new types of crime related to such fields as insurance, taxation, finance, securities, etc have arisen along with the market economy but have not been included in the Code. These limitations have put negative impacts on economic growth.

*Additionally*, after 20 years of innovation, the dark side of the socialist-oriented market economy gradually has come up. Problems in the dark side of the economy need to be addressed by resolute and consistent approaches a healthy economy which develops in the right track. Thus, the Penal Code shall be a sharp legal instrument to protect and strengthen the sound, on-track development of the socialist-oriented market economy, in which economic sectors can operate smoothly and have their legitimate rights and interests protected; fair competition is maintained, overuse of power to interfere in economic activities is severely punished; and the comprehensive, healthy development of markets in the economy is protected.

## **2. The development in the perception of society about political institutions and basic human rights**

In the society, the perception about human rights, democracy, and a law-governed socialist State which respects the human right and basic civil rights and ensures a safe, secure, and healthy living environment becomes increasingly widespread and clearly-held. It is also one of the most significant directions identified in the amendment to the 1992 Constitution to respect and promote

human rights and basic civil rights, recognize and ensure these rights are maintained in the daily life. However, the human rights and basic civil rights are not fully respected and protected in reality. People do not feel safe and secure in their living environment. Environmental pollution and infringements on regulations on food safety, occupational safety, construction, and transportation are alarming issues. Savage, cruel murder and robbery cases have stirred the public, causing worries for citizens. Therefore, the Penal Code should be developed to create a secure living environment for citizens, better protect values of the law-governed socialist State, human rights, and democracy.

### **3. Global integration trend**

For the last few years, Vietnam has been taking further steps toward international integration, which is a need of the country to develop. In fact, Vietnam has participated in several international and regional organizations and is a member of multilateral international treaties, including conventions on crime prevention and combating such as three United Nations conventions against drug, namely the United Nations Convention against Transnational Organized Crime supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the United Nations Convention against Corruption, and various international treaties related to anti-terrorism, anti-money laundering, etc. as well as agreements on legal assistance with other countries.

Apart from opportunities and advantages offered by globalization and international integration, the country also has been facing many challenges and difficulties such as the increase in transnational organized crimes and the potential spread of these crimes to our country. Despite being amended in 2009, the Penal Code has not well presented the nature and requirements of crime prevention and combat in the context of global integration. It also fails to provide a sound legal basis to enable international cooperation to combat crime in general and penal legal assistance between Vietnam and other countries in particular.

Thus, the Penal Code still needs improvements to incorporate international treaties to which Vietnam is a party into domestic laws, offering a favorable legal basis to actively taking part in and strengthening international cooperation in crime prevention and combat, especially transnational organized crimes.

### **III. PROPOSED AMENDMENTS TO THE PENAL CODE TO MEET THE NEED FOR INTERNATIONAL INTEGRATION**

The current situation of crime, socio-economic development, and diplomatic relations are important factors to determine the improvement of the Penal Code to meet the requirements of crime prevention and combat in the new context. Along with general objectives like better protection of human rights and basic civil rights (of offenders and victims in criminal cases), protection and promotion the development of Vietnam's market economy, overcoming existing problems (regarding legislative techniques and contents), another important objective is to amend the Penal Code to match the requirements of crime prevention and combat in the context of international integration.

After several studies, it can be seen that to realize these objectives, the Penal Code needs to be amended in terms of both general provisions and specific provisions concerning types of crimes.

#### **1. Proposed amendments to the general part in the Penal Code**

##### *a. Narrow down the groups of offenses subject death penalty*

Death penalty is the most serious punishment in the Penal Code. Giving the death sentence not only prevents defendants from correcting their mistakes but also poses potential risk that it will be impossible to remedy the mistake of legal proceedings agencies when they impose the sentence to the innocent person. Besides, the State also has other types of penalty that are both deterrent and risk-free. Therefore, many countries have abolished the capital punishment in reality. To meet the requirements of international integration, specific conditions to impose the death penalty should be added to limit the use of this penalty as much

as possible. The death penalty should only be applied to very grave crimes *such as murder in a barbarous manner, killing for robbery, killing for rape, killing with vile motives, etc*) that threaten human life, crimes *such as infringement of national security and duties and responsibilities of army personnel* that threaten the existence of the State, such crimes as *drug crime* that severely threaten social security and human development, and crimes of global concern *such as terrorism, corruption, crimes against peace and humanity, war crimes, etc* that threaten international peace and security. Accordingly, the number of provisions which prescribe the death penalty in the Penal Code should be reduced a mechanism to postpone the execution of the death penalty should be applied to limit the cases of death penalty in reality.

*b) Continue to improve penal policies related to juvenile offenders*

Physically and psychologically, juveniles are those who are not fully developed. They lack real-life experience and have inadequate understanding of real-life incidents in general and criminal acts in particular. Therefore, Article 3 in the Convention on the Rights of the Child states “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Besides, Article 37 in this Convention also states, “State Parties shall ensure that: No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” This means that legal proceedings agencies will deprive the freedom of juveniles as the last resort after applying other choices such as putting them under the custody of parents or organizations. Based on this article, the current Penal Code has a separate chapter prescribing provisions applicable to juvenile offenders. This chapter of the Penal Code has somewhat represented the spirit of the Convention on the Rights of the Child (such as promoting education measures or applying extenuating circumstances and penal liability exemption). However, in accordance with the

international standards for handling children/ juveniles, the Penal Code should be amended and supplemented as follows:

*First*, principles for handling juvenile offenders should be improved to ensure juveniles' benefits as well as to protect juvenile victims.

*Second*, based on the principles of the application of custodial measures, termed imprisonment is applied as the last resort in short periods. The conditions to apply this penalty to juveniles should be explicitly stated. Non-custodial measures for juveniles should be added.

*Third*, the policy on "*reduction of termed imprisonment*" to enable juvenile offenders who have made good progress to reintegrate into society.

*Fourth*, the provision for applying "*alternative measure*" (or redirection) to juvenile offenders should be added. This means that regarding juvenile offenders, as penal measures are not necessarily applied, competent agencies could decide not to initiate the case and the offender or decide to suspend the case and then apply education measures to the offender. However, the role of parents and political and social organizations under the current mechanism of "everybody's business is nobody's business" cannot enable this measure to produce expected results. Therefore, the measure necessitates the involvement of education staff in charge of educating juvenile offenders. They can be current social workers but are trained.

*Fifth*, the application scope of penal liabilities of juveniles should be considered. Specifically, offenders from full 14 to under 16 years old will be held criminally responsible for certain types of crimes, instead of those stipulated in the current Penal Code<sup>7</sup>.

*Sixth*, "*committing crimes against children*" should be considered to be an aggravating circumstances for some crimes<sup>8</sup>.

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<sup>7</sup> Report

<sup>8</sup> Death penalty, international experience and lesson learned for Vietnam, **Professor Jorg Menzel**, University of Born, Germany presented in the conference "Improving the provisions of the Penal Code to protect basic rights of citizens in the current conditions", Ministry of Justice, August 2012.



In addition, regarding juvenile chronic offenders, committing particularly serious crimes in a barbarous manner should be considered an aggravating circumstance for juveniles aged from full 16 to under 18 years old. Furthermore, the provisions for the combination of penalties in cases of committing multiple crimes should be amended. Moreover, it is essential to study amendment and supplement of the current Penal Code related to protection of victims who are juveniles / children, especially children who are victims of trafficking, violence, labor exploitation and sexual abuse in general and sexual abuse in travelling and tourism sector in particular or other forms of children sexual abuse on internet.

*c) Research on the possibility of supplementing the Penal Code with penal liabilities of legal entities*

Penal liabilities of legal entities are not a newly-emerged issue and have been mentioned in the penal codes of many countries. In Vietnam, this issue was brought out when developing the 1999 Penal Code. During the amendment of the Penal Code in 2009, penal liabilities of legal entities were recommended to be added to the Code to deal with complicity cases because many economic organizations which are legal entities committed crimes for their self –interests. In fact, many economic organizations have committed such criminal acts as speculation, tax evasion, illegal business activities, smuggling, environmental pollution, etc causing serious consequences for the society. However, in many cases, it is difficult to identify individual responsibilities while imposing administrative sanctions oneconomic organizations and businesses is not enough. Hence, it is necessary to pay attention to the possibility of supplementing the Penal Code with provisions concerning penal liabilities of legal entities. These provisions should identify: (1) types of legal entity which must bear penal liabilities (like economic entities), (2) types of crime for which legal entities must bear penal liabilities (for examples, economic and environmental crimes, etc.), (3) sanctions applied to legal entities (for examples, declaration of legal entity dissolution, prohibition of securities issues, termed or indefinite ban on several legal entities' fields of business, etc.).

*d) Proposed amendments to the Penal Code's provisions concerning the confiscation of property acquired through the commission of crimes*

The confiscation of property (objects, money) directly related to crimes in Vietnam are provided for in a number of articles of the Penal Code. Article 40 of the Penal Code states “Confiscation of property means to confiscate part or whole of the sentenced person’s property for remittance into the State’s fund. The property confiscation shall apply only to persons sentenced for serious crimes, very serious crimes or particularly serious crimes prescribed by this Code. When all their property is confiscated, the sentenced persons and their families shall still be left with conditions to live.”

According to Article 41 of the Penal Code, “property confiscation for State funds shall apply to: Tools and means used for the commission of crimes, objects or money acquired through the commission of crime or the trading or exchange of such things, objects banned from circulation by the State. Things and/or money illegally seized or used by offenders shall not be confiscated but returned to their lawful owners or managers. Things and/or money of other persons, if these persons are at fault in letting offenders use them in the commission of crimes, may be confiscated for State funds.”

Regarding the return of property, repair or compensation for damage, and compelling to make public apologies, Article 42 of the Penal Code states “Offenders must return appropriated property to their lawful owners or managers and repair or compensate for material damage determined as having been caused by their offenses, etc.”

Thus, property confiscation serve two purposes: it is an additional penalty, accompanying most of principal penalties, excluding “warning” and “fine” applied for offenders committing less serious crimes relating to infringement on the economic management order, public order, administrative management order; on the other hand, it is a judicial measure. Confiscating cash, property, and items directly related to criminals shall be conducted by legal proceedings agencies in the process of prosecution, investigation, adjudication.

Compared to regulations in the United Nations Convention against Transnational Organized Crime and the United Nations Conventions against Corruption, provisions in the current Penal Code still reveals a number of problems. Therefore, to make the Penal Code more compatible with the Conventions above, especially in the context of international integration, it is necessary to widen the scope of application of property confiscation as an additional penalty for some types of crimes related to corruption, human trafficking, infringement on the economic management order like smuggling, conducting business illegally, trading prohibited goods and crimes for illicit profits.

e) Moreover, to better the deterrent effect, in the general part of the code, the provision regarding “*criminal organization*”<sup>9</sup> should be added and the act of the organizer or the participants who are aware of the operation and voluntarily join the organization shall be criminalized because they have not been included in the provision regarding accomplices and Article 79 of the Penal Code. This is essential to make the Penal Code of Vietnam more compatible with the penal codes of other countries and the United Nations Convention against Transnational Organized Crime.

## **2. Proposed amendments to the part specifying types of crimes**

a) Provisions in the Penal Code shall be developed based on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Human trafficking, especially women and children trafficking is an issue of global concern. Due to its “transnational” nature, the prevention and combat of human trafficking entails not only national and regional efforts but also global efforts. Therefore, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter referred to as the Protocol on Prevention

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<sup>9</sup> Refer to Nguyen Quoc Viet, “*Amending the Penal Code based on the Convention on the Rights of the Child*”, Proceedings of the Conference, “Improving the provisions of the Penal Code in accordance with the international standards,” Ministry of Justice, August 2012.

<sup>10</sup> Explained (9).

and Combat of Human Trafficking) which supplements the United Nations Convention against Transnational Organized Crime is the most significantly advanced document in terms of both politics and law. It is also an important international legal basis for strengthening international cooperation in preventing and combating human trafficking as well as protecting victims of the crime. Regarding its content, the Protocol mentions five (05) fundamentals of prevention and combat of human trafficking: (1) definition of human trafficking, (2) human trafficking criminalization, (3) assistance to and protection of victims of trafficking in persons, (4) repatriation and rehabilitation of victims of trafficking in persons, (5) international cooperation in prevention and combat of human trafficking.

Through research, it can be seen that to make the Penal Code match with provisions of the Protocol, the amendments to the provisions concerning types of crimes in the Penal Code should be considered as follows:

*First, elements of a crime specified in Articles 119 and 120 of the Penal Code should be amended and supplemented.* Accordingly, these articles will not be limited to the concept of “trading” but encompass other elements to constitute this crime including any step in human trafficking: recruitment, transportation, transfer, sheltering and receiving.

*Second, purposes of sexual abuse, labour exploitation, and other forms of abuse or taking organs from the victims’ bodies, and overuse of power and/or position, inhuman purposes, dangerous recidivism, crimes against relatives and children which causes serious, very serious, or extremely serious consequences should be added as aggravating circumstances to increase the penalty bracket.*

*Third, other factors, especially the “approval” element from the victim, should be closely examine to distinguish this crime from other related crimes such as harboring prostitutes, procuring prostitutes, organizing other persons to*

flee abroad illegally or other legal infringements, conducting marriage brokerage involving foreign elements, and organizing labors to work abroad illegally<sup>10</sup>.

b) Provisions concerning corruption in the Penal Code should be amended and supplemented based on the United Nations Convention against Corruption

The United Nations General Assembly approved the United Nations Convention against Corruption on October 01, 2003. The Convention responds to the urgent need of the international community because it creates an international legal framework for international cooperation to prevent corruption and its consequences. On June 30, 2009 Vietnam signed the Approval Decision and officially became a member of the Convention on September 18, 2009. The Convention requires member countries to apply legislative and other necessary measures to criminalize these following acts: bribery of national public officials (Article 15), bribery of foreign public officials and officials of public international organizations (Article 16), embezzlement, misappropriation or other diversion of property by a public official (Article 17), trading in influence (Article 18), abuse of functions (Article 19), illicit enrichment (Article 20), bribery in the private sector (Article 21), embezzlement of property in the private sector (Article 22), laundering of proceeds of crime (Article 23), concealment (Article 24), and obstruction of justice (Article 25). Regarding criminalization of illicit enrichment (Article 20) and laundering of proceeds of crime (Article 23), member countries shall integrate these articles into their own laws. Besides requirements on criminalizing some acts of corruption, Article 26 of the Convention also requires member countries to stipulate legal liabilities of legal entities.

The study shows that the Penal Code, in general, meets the requirements of the Convention. However, in order to satisfy all the requirements of the Convention, the Penal Code needs more studies and amendments which focus on criminalizing such violations as bribery with foreign officials, bribery in the

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<sup>11</sup> Refer to Associate Prof. Dr. Nguyen Thai Phuc “Organized crime: International Standard, practical experience and challenges to develop the Penal Code in Vietnam”. Proceedings of the Conference “Improving the Provisions of the Penal Code in accordance with International Standards”, Ministry of Justice in August 2012.

private sector, and embezzlement in the private sector under the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. Accordingly, the definition of “person with positions” (Article 227 of the Penal Code) should not be limited to those who hold positions in government agencies, the armed force, and the state-owned enterprises but encompass foreign officials, persons holding positions such as Director, Vice Director, Accountant, Cashier, Storekeeper, etc. In addition, for acts of bribery and corruption which are sincerely confessed and have their consequences compensated by the violators, increases in pecuniary penalties and reduction or exemption other forms of punishment should be considered<sup>11</sup>. The criminalization of unjust enrichment needs throughout examinations as the nature of Vietnam’s economy makes it hard to control such issues as incomes of the country’s citizens, the proportion of farmers and farmers’ incomes, and exported labourers. In the short term, declaration of assets must be strictly followed by public servants and officials, and severe sanctions should be imposed on any act of dishonesty in asset declaration. Regulations on account payment should be also improved further in order to form a ground to put forward the criminalization of unjust enrichment in the next stage<sup>12</sup>.

c) Following the study of cyber-crime, the Twelfth National Assembly decided to amend a number of articles of the the Penal Code, including Articles 224, 225, 226, 226<sup>a</sup>, and 226b which are related to cyber-crime. Nevertheless, the enforcement of the Penal Code has posed a lot of concerns<sup>13</sup>. Thus, a new chapter

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<sup>12</sup> Refer to Le Thi Van Anh M.A. “Protocol on human trafficking and the requirement on criminalizing human trafficking”, Proceedings of the Conference, “Improving the provisions of the Penal Code in accordance with the international standards”, Ministry of Justice in August 2012.

<sup>13</sup> Refer to DR. Tran Van Dat “*Developing provisions of the Penal Code in accordance with the United Nations Convention against Corruption*”, Proceedings of the Conference, “Improving the provisions of the Penal Code in accordance with the international standards,” Ministry of Justice in August 2012.

<sup>14</sup> DR. Tran Van Dzung “*Developing corruption crimes in accordance with the United Nations Convention against Corruption*”, Proceedings of the Conference held by the National Assembly’s Judicial Committee in October 2012.

<sup>15</sup> Refer to Colonel, DR. Tran Van Hoa, *Division chief of High Tech Crimes Department, Ministry of Public Security* “*High tech crimes and recommendations for developing provisions of the Penal Code in the context of international integration*”, Proceedings of the Conference, “Improving the provisions of the Penal Code in accordance with the international standards,” Ministry of Justice in August 2012.

regarding “Information Security Crime”<sup>14</sup> should be added to the Code. On the other hand, the following issues concerning cyber-crime should be considered:

*First, with respect to proof of consequence:* For most cyber-related offenses, it is extremely challenging to obtain clear evidence of damage or consequence. For example, it is generally difficult to measure – from criminal perspective – consequences caused by a spread of viruses or a DDOS attack on a bank’s website which makes its network resource unavailable to its intended users, and hackers deleting, modifying, or stealing website data and use stolen data, especially national security information. As a result, it is hardly possible to categorize such offenses based on the level of seriousness or gravity. Therefore, in the penal code of many countries, cyber-related offenses only require proof of completion of the guilty act – they don’t require proof of consequence element.

*Second, fault should not be considered a material element of crime for this type of crime.* Using computers and the internet are distant, anonymous and secret activities. It is also not an easy task to track and question such criminals. Therefore, in most of the cases, it is hard to prove whether the act of a cyber offender is intentional or not.

*Third, the use of computer networks or digital devices to appropriate assets should be criminalized as illegal collection and storage of private data, illegal exchanging, giving, publicizing and trading on private information, especially bank account information which is an aggravating circumstance, internet frauds to appropriate private property (in e-commerce, online advertisement, currency trading, financing, online securities trading, online games, breaches of regulations on the use of foreign currencies for virtual money, money laundering through virtual currencies, organized online multilevel buying and*

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<sup>16</sup> Refer to Colonel, DR. Tran Van Hoa, *Division chief of High Tech Crimes Department, Ministry of Public Security* “High tech crimes and recommendations for developing provisions of the Penal Code in the context of international integration”, Proceedings of the Conference, “Improving the provisions of the Penal Code in accordance with the international standards,” Ministry of Justice in August 2012.

selling), the use of computer networks or digital devices to fake seals and documents; the use of computers and computer networks for the distribution of pornography, especially child pornography through the internet, the use of computers and computer networks to attack national infrastructures such as the national telecommunications system, national power transmission line, and air traffic control system.

*Forth*, the regulation on completion time of this crime shall be amended. For example, the crime is considered completed when the stealing of personal information, credit card information, storing these information in personal computer, email, and trading these information are proved. Proving the victim and the direct loss is not required (no need to directly withdraw cash by stolen credit card).

*Fifth*, the illegal foreign access to database in Vietnam and vice versa shall be treated under the Penal Code of Viet Nam. This is also the legal basis for international cooperation in crime investigation<sup>15</sup>.

d) Developing provisions of anti-laundering in the Penal Code.

The 1999 Penal Code, Law Amending and Supplementing a Number of Articles of the Penal Code in 2009, 2012 Law on Anti-money Laundering, and Joint Circular No 09/2011/TTLT-TATC-VKSNDTC-BCA-NHNN of November 30, 2011 guiding the application of Articles 250 and 251 of the Penal Code are regarded as important steps in developing legal framework for money laundering crime. In general, Vietnam takes considerable strides in this field<sup>16</sup>. However, there exist many issues that need to be addressed.

As Vietnam's law is analyzed and compared to existing international standards, the provisions for money laundering and money laundering-related

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<sup>17</sup> Explained.

<sup>18</sup> Evaluation Report in Annual Meeting of the Asia-Pacific Group On Money Laundering in Australia in July 2012 recognized the compliance with most of Recommendation 01 of the Financial Action Task Force (FATF)

<sup>19</sup> Refer to M.A., Nguyen Thi Bich Ngoc "*Improving provisions for money laundering and related crimes in the Penal Code in accordance with related international standards*," Proceedings of the Conference, "Improving the Provisions of the Penal Code in accordance with International Standards," Ministry of Justice, August 2012



crimes in the Penal Code, given the context of international integration, should be amended as follows:

*First*, related concepts should be used consistently in legal normative documents. For example, the concept “property” includes “money,” thus both concepts should not be used in the same provision and the concept “money laundering” should be used consistently in basic legal documents like the Penal Code, the Law on Prevention of Money Laundering, decrees, and circulars providing guidelines.

*Second*, although the current approach of Vietnam’s law has not provided the list of precursors of money laundering, Vietnam still needs to add a number of crimes such as to meet the requirements of relevant international standards. For example, “piracy” should be added to the Code as a new crime in Vietnam, and the provisions pertaining to “terrorism” and “providing material support for terrorism” Should be amended.

*Third*, regarding penalties applied to money laundering, it is necessary to understand that any criminal wants to enjoy the “achievement” of his/her crime. Based on practical studies, it is important to completely criminalize money laundering. If imprisonment is the only penalty for this crime just like other serious crimes, it is difficult to minimize the frequency of its occurrence in the society. Therefore, it is necessary to conduct research and base on that research to have “fair, suitable and deterrent” penalties and financial sanctions for money laundering<sup>17</sup>, not just using the word “may” when talking about the selection of a penalty.

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# CRIMINAL LEGISLATION AND REQUIREMENT FOR CRIMINALIZING ACTS OF VIOLATIONS IN THE SPIRIT OF THE UN CONVENTION AGAINST CORRUPTION

**NGUYEN CONG HONG**  
Vice Chairman  
Judicial Committee of the National Assembly

## I. RATIONALE

As one of the first country members that ratified the Convention against Corruption of the United Nations (“**Convention**”) in December 2003, Vietnam regards anti-corruption as its top priority policy and the target of pursuit that decides the survival of the whole system. Vietnam’s determination to fight corruption has been more strongly confirmed by the State President Nguyen Minh Triet by signing Decision 950/2009/QD-CTN dated June 30, 2009 ratifying the Convention. Until now, the Convention has officially become effective in Vietnam.

To implement the Convention, Vietnam is required to design and adopt various consistent solutions, the first of which is to improve its legal system. The advantage for us is the fact that Convention contains many good rules consistent with principles of the international law, including respect for national sovereignty and territorial integrity, and non-interference in the internal affairs of the country. The Convention also consists of very progressive rules which are the results of the study of and leaning from advanced legislations on anti-corruption of many continents of the world, particularly those pioneering in this field namely Europe and America, and reflects many lessons learned and practical experiences in the fight against corruption in many countries around the world. Contents of the Convention basically are not contrary to the law of Vietnam. Moreover, the

Convention contains many progressive provisions that we can use to supplement and improve our legal system, and also to facilitate the effective enforcement of laws.

It should be noted that, upon signing and ratification of the Convention, Vietnam was one of the 28 countries (out of 35) that reserved Article 66.2 on “*procedures for dispute resolution*”. Vietnam also states that it is not bound by “*the provisions on criminalizing acts of illicit enrichment*” (Article 20 of the Convention), and “*the provisions on liability of legal persons*” (Article 26 of the Convention) and does not treat the Convention as a legal basis for extradition. Such the reservation and declarations are in line with the scope of the Convention and not contrary to the Vietnamese law, and guarantee a consistent and effective enforcement of both general laws and the law against corruption. On the other hand, Vietnam’s reservation and declaration are based on the principles of national independence and sovereignty and non-interference in the internal affairs of other countries.

Vietnam started to review its legal system even before the ratification of the Convention. The review showed that Vietnamese laws are basically consistent with what is required under the Convention. The majority of the Convention’s requirements have been addressed in relatively specific provisions in our current legal normative documents. Although there still remain some requirements that have not been specified, general provisions are already been in place in the Vietnamese law to enable specific legislation to be issued when Vietnam joins the Convention or they can be found in the international agreements and treaties that Vietnam has signed or acceded to. Also, the Convention imposes some requirements that are not yet addressed by the Vietnamese law such as the establishment of specialized anti-corruption authority, financing for political parties, criminalizing acts of illicit enrichment and disposal of the assets obtained through corruption, however these are discretionary or serve as recommendations only.

It should frankly be admitted, however, that the system of policies and laws on fighting corruption in Vietnam contains several shortcomings as it is not yet strategic, comprehensive, consistent and timely and inaccessible, therefore unable to meet the requirements of the "war against corruption". The limited capacity for policy making and institutional building constitutes a major barrier to Vietnam's complete performance of its obligations under the Convention as one of its official members. Therefore, to enforce the Convention and at the same time to better protect the national interests and improve the efficiency of the fight against corruption in Vietnam, continued improvement and perfection of the institutional arrangements play a crucial role in fighting corruption.

Within the scope of this paper, I would like to mention only the rules of the Criminal Code concerning the crimes of corruption and several provisions of the Criminal Procedure Code on international cooperation in order to assess the compatibility of the Vietnamese law to the international requirements and suggest some improvement recommendations in the spirit of the Convention.

## **II. PROVISIONS OF THE CRIMINAL CODE ON CRIMES OF CORRUPTION**

The 1999 Criminal Code<sup>18</sup> establishes as crimes of corruption the following 7 acts:

### **Embezzling property (Article 278).**

This is the clearest expression of corruption and is the most serious act of corruption. Under this Article, a person who abuses his/her positions and/or powers to appropriate the property under his/her management valued between VND2,000,000 to VND50,000,000 or less than VND2,000,000 but causing serious consequences, who has been disciplined for this action but repeats it or has been convicted for one of the crimes of corruption (Section A, Chapter XXI)

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<sup>18</sup>. Revised in 2009.

with undeleted criminal records yet commits the offence shall be found guilty of embezzling property and be sentenced to between 2 and 7 years of imprisonment.

Thus, embezzling property as a crime has the following typical features:

- The offender is a person having a position, powers and duty to manage the property;

- He/she has abused that position or powers to appropriate the property under his/her management;

- The appropriated property is valued VND2,000,000 or more. If a person appropriates the property of less than VND2,000,000 but causes serious consequences (either physical or mental) for example appropriation of relief funds for the victims of storms/floods, payments for the beneficiaries of social policy or if a person has been disciplined (by a warning or reprimand) for an act of embezzlement and now commits a violation or if a person has been sentenced for one act of corruption (property embezzlement, bribe taking, abuse of position and power to appropriate property etc) and repeats it, that person shall be prosecuted for criminal liability for property embezzlement.

### **Receiving bribes (Article 279).**

Receiving bribes is the most serious offence in the series of position-related offences under the Criminal Code that has been undermining the implementation of the Party policy and the laws of the State.

Receiving bribes refers to an act of a person who has a position and powers and abuses that position and powers to accept, either directly or through intermediaries money, property or other material interests in any form valued between VND2,000,000 and less than VND10,000,000, or less than VND 2,000,000 but with serious consequences, or of a person who has been disciplined this act and now commits a violation, or of a person who has been sentenced for one of the crimes of corruption (Section A, Chapter XXI) with undeleted criminal records yet commits the offence in order to do or not to do a thing for the benefit

of or at the request of the bribe giver shall be found guilty of receiving bribes and shall be sentenced to between 2 and 7 years of imprisonment

Receiving bribes can take place in many forms and many ways which are in deed so diversified that even laws cannot anticipate. In addition, bribes are concealed in different forms including gifts, bonuses, loans, trips etc. Taking these in order to do or not to do a thing for the benefit of or at the request of the giver shall be regarded as committing the crime of receiving bribes. In the spirit of this Article, any prior agreement on the giving and taking of money, property or other material interests serves as a required indication, physical take over and hand over of the property, in fact, have no meaning in the determination of crime. The crime of receiving bribes is established at the time a position-holding person agrees to accept money or material interests although his/her promise to the giver of doing or not doing a thing does not yet happen in reality.

**Abusing positions and/or powers to appropriate property** (Article 280).

The act of a person abusing his/her positions/powers to appropriate property is the illustration of how serious the corruption is getting nowadays. Offenders usually abuse their positions and powers to harass and cause troubles in order to appropriate property of people, agencies and organizations. Abusing one's position/powers means acting beyond the scope of the power vested in him/her by the law in order to appropriate property. This act takes many forms and is committed in different manners involving many tricks, for example a market control officer, at his own discretion, enters a house or a business establishment to search and appropriate some properties, a customs officer discretionarily classifies a goods item as prohibited import in order to seize and appropriate it or a local officer imposes some types of fees/charges and then appropriate the fees/charges paid by people. The maximum punishment for this crime is life imprisonment.

**Abusing positions and/or powers while performing official duties**  
(Article 281)

The constituent factor of this crime is described as an act of a person with position/powers, who, for self-seeking or other personal motivations, abuses his position/powers to act contrary to the assigned official duty causing damages to the State and social interest or to the rights and legitimate interests of citizens. Thus, the fact is that an act of abusing one's position/powers, doing contrary to the assigned official duty causing damages to the State and social interest or to the legitimate rights and interests of citizens has been committed. From the aspect of will, the offender must commit that act for self-seeking or other personal motivations.

It should be noted that this is the most general among the series of offences that involve the abuse of one's powers/positions and it does not have any typical features as those also committed by persons with positions/powers already set out by Criminal Code such as receiving bribes, abusing positions and/or powers to influence other persons for personal profits, forgery in the course of employment etc. The maximum punishment for this crime is 15 years imprisonment.

**Acting beyond one's powers while performing official duties** (Article 282)

A person is found guilty of this crime when he has a position and powers and acts, for self-seeking or other personal motivation, beyond his powers contrarily to his official duties, causing damage to the interests of the State and the society, and/or to the rights and legitimate interests of citizens.

Acting beyond one's power means a person with position and powers acting beyond the scope of such mandatory powers. This is an act of corruption if the offender commits the act for self-seeking or other personal motivations. Like abusing one's positions and/or powers while performing official duties, this is the most general among the offences that involve acting beyond one's powers and

has no typical features like other offences of the same nature such as abusing powers to appropriate property, acting beyond the power to illegally arrest, seize or put people in custody, acting beyond the power to release illegally a detainee etc.

An act beyond one's power is regarded as a crime when the offender commits the act for self-seeking or for other personal motivations and thereby causes damages to the interests of the State and the society, and/or to the rights and legitimate interests of citizens. The maximum punishment for this crime is 20 years imprisonment.

**Abusing positions and/or powers to influence other persons for personal profit.** (Article 283).

Under this Article, any person who abuses positions and/or powers, has accepted or will accept directly or through intermediaries money, property or other material interests in any form valued between VND2,000,000 and less than VND10,000,000, or less than VND2,000,000 but causing serious consequences, has already been disciplined for such act but continues to commit it, to use his/her influence and incite persons with positions and powers to do or not to do something within the sphere of their responsibility or directly related to their work or to do something they are not allowed to do, shall be sentenced to between 1 and 6 years of imprisonment.

This act is distinguished itself from an act of taking bribes in its purpose. By receiving bribes, a person shall make use of his position or powers to directly do or not to do a thing at the request of the bribe giver whilst a person abusing his positions and/or powers to influence other persons seeks for personal benefits by using his influence to force a competent person to do a thing in favor of the money/property offeror.

Abusing one's positions and/or powers to influence other persons for personal profits is an act of illicit enrichment that would adversely affect the



fulfillment of official duties, undermine the reputation of State officials and officers. Therefore, offenders of this crime should be strictly dealt with. The maximum punishment for this crime should be life imprisonment.

### **Forgery in the course of employment (Article 284).**

This crime is stipulated in Article 284 of the Criminal Law. This is an act of a person with position and/or powers who, for self-seeking or other personal motivation, abuses his positions and/or powers to commit a series of forging acts during the employment including amending or falsifying contents of papers, documents; making and/or granting counterfeit papers; forging signatures of other persons with positions and powers etc.

From the aspect of will, a person committing this crime is very well aware that this is a wrong doing but he still does it. It should be noted, however, that if a person with position and/or power, who, due to lack of responsibility, issued documents/papers in contrary to the regulations, shall be disciplined or prosecuted for criminal liability for neglecting causing serious consequences.

*Self-seeking or other personal motivations* are the two mandatory elements of this offence. The purpose of the offender's act by amending or falsifying contents of papers, documents; making and/or granting counterfeit papers is to seek for a physical benefit for himself. The maximum punishment for this crime is 20 years imprisonment.

### **III. SOME COMMENTS AND RECOMMENDATIONS ON HOW TO MAINTAIN A BALANCE BETWEEN THE NATIONAL CRIMINAL LAW AND THE UN CONVENTION**

On the above brief analysis of some relevant aspects in our legal law system, we found that the criminal law of Vietnam has basically been compatible with the rules of the Convention. Most of the acts that the expects to be criminalized have been set out in the Criminal Code. Moreover, the 2003

Criminal Procedure Code now has 2 new Chapters covering the principles of international cooperation in the criminal proceedings sector which created a legal basis for us to join with international community in the fight against corruption.

An Article-by-Article review, however, reveals some gaps between the national law and the Convention. Specifically:

*First*, the Convention uses a broader concept of corruption than our laws. Some acts, which although are addressed by the Convention, are not treated as acts of corruption under our law (although they have been criminalized and subject to a very strict punishment for examples acts of giving bribes, acting as intermediaries in bribery, and other crimes of infringing upon judicial activities etc). In addition, several Articles of the Convention provide recommendations on the criminal policy that need to be considered during this time of revision of the Criminal Code.

*Secondly*, under the Convention the rules of bribery also applies to the private sector, foreign public officials and officials of public international organizations, however our criminal law is silent on this.

In our opinion, there are some improvements that need to be considered during this time of radical and comprehensive revision of the Criminal Code in order to make our criminal policy more effective in the fight against corruption:

*First*, to revise the Criminal Code to criminalize any act of giving bribes to foreign public officials or officials of public international organizations (under Article 16 of the Convention).

The Part on Specific Crimes of Vietnam's Criminal Code has not contained any specific provisions or clauses to establish as crime any act, committed intentionally, of promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, or committed intentionally, the solicitation or acceptance by a

foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. Both Articles 279 and 289 mentioned above cannot be applied to punish acts of giving or taking bribes respectively to and by foreign public officials or officials of public international organizations as they fall beyond the scope of the term “persons with positions” used in these two Articles.

To improve the efficiency of the fight against corruption and fully meet the requirements of the Convention, Vietnam needs to further consider expanding the governing scope of Articles 279 and 289 of the Criminal Code or adding to the Code new provisions on the offences of taking and giving bribes respectively by or to foreign public officials and officials of public international organizations.

*Secondly*, to criminalize acts of illicit enrichment (under Article 20 of the Convention).

Pursuant to Article 2 of the Criminal Code a person shall bear criminal liability only when he’s committed one criminal act under the Criminal Code and that act is regarded as a crime. The current Criminal Code does not yet treat illicit enrichment as a crime. However, under the Criminal Procedure Code upon suspect of a criminal sign as denounced by citizens, notified by an organization/agency or published on the mass media etc, the investigating agency is responsible to examine and verify the source of information and decide whether to prosecute or not. Thus, for illicit enrichment, upon suspect that the significant increase in the property of a public official given his just income links with the criminal, the Investigating agency shall examine and verify whether any criminal sign exists, if yes, the Investigating agency shall initiate a case and make a decision to prosecute against the accused.

Under the above analysis, a public official can be prosecuted by the Investigating agency after a criminal sign has been verified just on the basis of a suspect of the significant increase in his property. However, illicit enrichment at the moment is not treated as a crime in the Criminal Code. Establishing illicit

enrichment as a crime, in our opinion, is quite a strong provision and will help to achieve a high level of efficiency in the detection and control of corruption, contributing to the construction of a clean and strong State.

In the future, the Criminal Code should be revised to establish illicit enrichment as a crime, specifically if the property of a public official significantly increases as compared to his legal income and that official cannot explain the reason for the significant increase, he will be accused of illicit enrichment and be prosecuted for criminal liability. In addition, criminalizing acts of illicit enrichment in the Criminal Code in line with the spirit of the Convention requires the Criminal Procedure to be revised in terms of the provisions on the burden of proof of the crime. For the time being, as the newly adopted Law Against Corruption has partially addressed this requirement of the Convention, the absence of these provisions in the Criminal Code creates no difficulty in ratifying the Convention.

*Thirdly*, to revise the Criminal Code to criminalize acts of bribery in the private sector (Article 21 of the Convention).

The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, or the solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity have been criminalized in Articles 279 and 289 of the Criminal Code as the crimes of taking and giving bribes, respectively. However Vietnamese laws, in general, and the Criminal Code, in particular, only touch upon bribery in the public sector but not the private sector.

Corruption in the private sector is a relatively new issue which is not even recognized in many countries, including Vietnam. However, as it is revealed in the fight against corruption in our country in recent years, corruption is most likely to occur in the areas of interference between the public and private sectors, and can be clearly seen where the public sector is directly responsible to provide a desired service (public service), to apply particular regulations or implement certain policies. Due to the seriousness and increasing level of influence of this

act on the economic development of the country, it is essential to consider criminalizing this act of corruption in the private sector in order to enhance the efficiency of the fight against corruption in current context and contribute to implementing the Convention.

*Fourthly*, criminalize liability of legal persons (Article 26 of the Convention).

At present, Vietnam does not address the liability of legal persons for the violations of criminal laws, including corruption. Pursuant to the legislation on dealing with administrative offences and civil laws of Vietnam, a legal person can be held responsible for administrative or civil liability, since all the acts required by the Convention have been established as crimes under the Vietnamese law, legal persons cannot be prosecuted for administrative liability for those acts. However, upon joining the Convention, Vietnam declared not to be bound by Article 26 (on liability of legal persons), but the practice has proven the necessity to provide for the criminal liability of legal persons to prevent and punish acts of corruption, money laundering, economic and financial crimes committed by legal persons.

*Fifthly*, to add new provisions to the Criminal Procedure Code requesting a person committing an offence to prove the lawful origin of the alleged property or other property being seized and adopting special investigation techniques. It is an obligation of member countries to the Convention to adopt special techniques to investigate corruptions. Meanwhile, Vietnam's criminal laws only address such investigation techniques as interrogation of the accused, taking testimony of witnesses, victims, plaintiffs, civil defendants, persons with related right and obligations to the case; arrest, custody, temporary detention, search, forfeiture, seizure, seizure and confiscation of property; scene examination, autopsy, confrontation, identification and expert's examination. Even the Agreements on Mutual Legal Assistance that Vietnam has signed with other countries do not mention any special investigation techniques. Therefore, in the future, to fight corruption effectively, it is critical to stipulate and adopt special investigation

techniques such as electronic and other forms of surveillance, and undercover activities within the territory of Vietnam to ensure that the collected evidence will be admissible in court as recommended by Article 50 of the Convention./.

**IMPROVING THE CRIMINAL POLICY AND THE  
CRIMINALIZATION REQUIREMENTS OF THE UN CONVENTION  
AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE  
SUPPLEMENTARY PROTOCOL TO PREVENT AND SUPPRESS  
TRAFFICKING IN PERSONS**

**NGUYEN NGOC ANH**  
General Director  
Legal Department  
Ministry of Public Security

## **1. Rationale**

Today, transnational organized crime has become one of the issues of more concerns on a global scale. Transnational organized crime is getting increasingly serious in the world and Asia Pacific region. According to the estimates of UN experts, transnational organized criminals in East Asia – Pacific alone generate 90 billions of dollars of illicit income every year which is double of the Gross National Income (GNI) of Myanmar, eightfold of Cambodia's GNI, or 13 times higher than Laotian GNI<sup>19</sup>. In particular, the most notable crimes include trafficking in persons, illegal immigration, illegal trade of narcotics, production of and trade in counterfeit goods, environmental crime etc... Trafficking in persons, especially women and children is a problem of complexity which tends to increase on a global scale. Trafficking in persons is a crime against human beings, as it seriously violates human rights, including the most fundamental rights such as freedom to travel, the right to the safety of life, health, the right to work etc. Together with drug- and weapon-related crimes, victims of trafficking have become a "commodity" generating great amounts of illicit profits.

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<sup>19</sup> UNODC's report on risk assessment of transnational organized crimes in East Asia - Pacific, 2013.

According to the estimates of the United Nations Office on Drugs and Crime (UNODC), trafficking in persons is a market worth 30-40 billion dollars per year in the Asia - Pacific region. The latest estimates of profits in the market of trafficking in persons for the purpose of sexual exploitation, only in Thailand and Cambodia, project a figure of is 181 million dollars per year<sup>20</sup>. Trafficking in persons brings about severe consequences to the victims and their families in particular, and to the society in general. Victims of the crime have to suffer from trauma, injury and even losses of life. Trafficking in women and children is also detrimental to the social order and safety, giving rise to many social problems with long-term and immeasurable consequences.

In Vietnam, offences, particularly drug-related and trafficking in persons, have becoming more and more complicated for the recent years with adverse effects on many aspects of the social life. Given this context, functional agencies of Vietnam have been taking uniform and consistent measures to improve the efficiency of crime control and raise awareness on the movement “entire people for the protection of national security”. Many special campaigns have been launched to attack and suppress criminals; enhance investigation activities in the key areas and localities; and strengthen international cooperation in the prevention and control of crime etc. As a result, there have been many improvements in the way criminals are dealt with, specifically offenders are properly punished in accordance with the law and according to their crimes, which, in turn, makes contribution to restraining crimes from increases and maintaining the social order and safety.

From the perspective of legal practices in Vietnam, the criminal policy is embodied in different documents with the most specific, clearest, centralized provisions being found in the current Penal Code (PC) (which revised the 1999 PC). Provisions of the PC reflect the policy of the State of Vietnam to combat crime at various levels. PC also serves as the legal basis for education and implementation of the criminal policy in real life. In deed, the criminal policy

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<sup>20</sup> Id.



must be consistent at all 3 phases from policy-making to interpretation and enforcement<sup>21</sup>.

As revealed by the implementation of the PC in reality for the past time, which is seen as the realization and concretization of the criminal policy of the State of Vietnam, current PC basically has promoted the efficiency and effectiveness of the State management in this area; illustrated the tolerant and humanitarian policy of the State; institutionalized the guiding instructions on crime control and prevention with the motto of being proactive in preventing and attacking criminals which go with education and application of deterrent measures to improve the efficiency of the fight against crime and at the same time to serve the cause of construction and protection of the Fatherland. The PC, in addition to governing the social life in a relatively comprehensive way, sets up a legal framework for both functional agencies and people to engage in the fight and to effectively protect the State interest, rights and legitimate interest of citizens. Adequate attention has been paid to the organization and enforcement of PC with clear assignments of duties among the key players and close interdisciplinary coordination. Agencies are now more focused on rule-making activities to implement the PC and as a result the Code has been proved useful and consistently applied in reality. Given the new context, it is essential to renovate the general criminal policy to meet the requirements of the socio-economic development and the needs of a ruled-by-law State, and to respond to the challenges of the fight against crime in the new situation.

From practices of the fight against crime and the tradition of criminal justice and pursuant to the capacity and level of socio-economic development, the PC is proposed to be revised on the following standpoints<sup>22</sup>:

- First, to pursue the target of creating a consistent legal framework for combating crime; maintaining national security, social order, safety and peaceful

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<sup>21</sup> The Ministry of Justice, Academy of Jurisprudence (2003), Dictionary of Law, Encyclopedia Publisher and Justice Publisher, p. 138

<sup>22</sup> The Ministry of Public Security, Summative Report on the Implementation of the 1999 Penal Code (as revised in 2009), Hanoi, 2013.

life for people; protecting national sovereignty, independence, unity and territorial integrity, safeguarding the interest of the State, rights and legitimate interests of organizations and individuals; and ensuring that people live in a safe, healthy and highly humane environment.

- Secondly, to comply with the policy and guidelines just set out in the Resolution of the XI Party's Central Committee and the State's Political Program for the Country Development in the transitional period to the socialism (updated in 2011); the Strategy for Socio-Economic Development in the 2011 - 2020 period and in line with the judicial reform progress.

- Thirdly, in the spirit of renovating the thinking of criminal policy, to improve the rule-making capacity, promote transparency and predictability, continue those provisions that remain appropriate and contribute to addressing the problems and difficulties in the fight against crime.

- Fourthly, to focus on the requirements of the actual fight against crimes as already identified in the review of implementation of the PC for the recent time; to learn, on a selective basis, from criminal law making experiences of other countries in the world that fit with Vietnam's situation to ensure the consistency and uniformity of the legal system.

- Fifthly, to make contributions to creating a more favorable legal basis for the international cooperation to combat crime.

- Sixthly, to ensure [that] the revision process of the PC strictly complies with the order and formalities set out in the Law on Promulgation of Legal Normative Documents and its implementing documents.

On the above principles, one of the purposes for amending the PC this time, is to make it in line with the international treaties that Vietnam has acceded to. Towards this, it is essential to compare the provisions of PC to the requirements of the international treaties that Vietnam has joined in order to have a basis for incorporating those requirements in domestic laws and proposing appropriate amendments of the PC.

On the above analysis, it is true that further considerations and studies are really needed to come up with appropriate solutions to improve the criminal policy in general and amend the PC in particular in line with the international treaties that Vietnam has joined including the universal unilateral international treaties in the field which is the United Nations Convention against Transnational Organized Crime (the **Convention**) and the Protocol on Trafficking in persons. This important task need to be done in a well-organized manner with a clear roadmap which requires close coordination of researchers, practical professionals, advisors and competent authorities. Within the scope of this paper, we would like to mention some results of our comparative studies of theories and practices with a hope to improve the provisions of current CC.

## **2. Overview of the United Nations Convention Against Transnational Organized Crime and the Supplementary Protocol to Prevent and Suppress Trafficking in persons, particularly women and children<sup>23</sup>**

From December 12 to 15, 2000 in Palermo, Italy, representatives of 14 countries signed the United Nations Convention against Transnational Organized Crime (Convention). This was a milestone at the turn of the new century marking a new era of global coordination in the fight with transnational organized crime. This Convention is recognized as a historic highlight in the international cooperation in fighting transnational organized crime. 147 out of 176 nations and organizations have ratified this Convention. This important instrument provides a fundamental legal basis for the world community to join in a global combat with transnational organized crime.

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<sup>23</sup> For more details, please see Assoc. Prof. PhD Nguyen Ngoc Anh, Nguyen Truong Giang, the United Nations Convention Against Transnational Organized Crime and Protocols thereto, People's Police publisher, Hanoi, 2005; 2011 Profile of the Government to the President for ratification of the UN Convention Against Transnational Organized Crime and accession to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the Convention.

The Foreword of the Convention briefly describes how the Convention was drafted and calls upon all member States to recognize this danger and to promptly ratify the Convention and its Protocols.

With the total of 41 Articles, the Convention touches upon all relevant aspects of transnational organized crime with many issues falling within the domain of international public law, criminal law and criminal justice. Although they are touched upon in different way and from different perspectives, the Convention does not deviate from internationally accepted fundamental principles of the international law in general and the criminal law in particular. Specifically, Article 1 of the Convention confirms the purpose of the Convention which is to promote cooperation to prevent and combat transnational organized crime more effectively. The Convention further confirms (in Article 4) that while carrying out their obligations under the Convention, States Parties shall abide by the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States, and shall neither exercise jurisdiction nor perform any activities in the territory of other States contrary to the domestic law of those other States. In order to improve the efficiency of the applicable measures to control criminals and conduct international cooperation in combating transnational organized crime, the Convention requires that each member State must take all necessary actions to criminalize participation in an organized criminal group (Article 5), legalization of property acquired from the commission of crime (Article 7), corruption (Article 8), and obstruction of justice (Article 23).

To prevent and combat crime, it is critical to develop and adopt a global-scale legal instrument to supplement the Convention, because the Convention addresses only broad and overall aspects of transnational organized crime. Thus, the Protocol to Prevent and Suppress Trafficking in persons, particularly women and children (**Protocol**) came out to supplement the Convention. The Protocol's purpose is to prevent and combat trafficking in persons with particular attention to women and children; protect and assist the victims of such trafficking, with full

respect for their human rights; and promote cooperation among States Parties in order to meet those objectives. The Protocol took effect on December 25, 2003 and now has 156 members.

The Protocol has introduced, for the first time on a global scale, a consistent definition of “trafficking in persons”, created an international legal framework for prevention, investigation and prosecution of offenses involving trafficking in persons, put forward a legal foundation for cooperation between legal enforcement and border forces, and for protection and assistance of victims and help to improve the efficiency of international cooperation efforts in preventing and combating trafficking in persons.

For the interest of the international community in general and national communities in particular, the Protocol calls upon its member States to adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation, when committed intentionally. In addition, the Protocol also calls upon its State members to adopt such legislative and other measures as may be necessary to establish as criminal offences unfinished act of trafficking in persons or acting as an accomplice in trafficking in persons.

These two important documents have created a legal foundation for the fight against transnational organized crime on a global scale, punishing and suppressing trafficking in persons particularly women and children. Vietnam signed the Convention on December 13, 2000 in Italy, ratified and acceded to the Protocol on December 29, 2011 and these two legal instruments became enforceable in Vietnam on July 8, 2012. However, Vietnam declared not to apply both the Convention and the Protocol directly, and committed to step by step consider incorporating the provisions of these two documents in its domestic laws. On April 18, 2013, the Prime Minister issued Decision 605/QĐ-TTg to approve the Plan for Implementation of the Convention and the Protocol.

### **3. Several issues relating to the PC amendments in light of the criminalization requirements of the Convention and the Protocol<sup>24</sup>**

#### ***3.1. With regard to the requirements of the Convention***

Although the Convention does not introduce a specific definition of transnational organized crime, it contains very clear provisions on organized criminal groups and the transnational nature of the offences that fall within the governing scope of this Convention.

##### *a) Definition of organized crimes*

Article 2(a) of the Convention states: “Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”.

“Structured group means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure” (Article 2(c)).

A serious crime under Article 2.2 of the Convention means “a conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.

With regard to the subject, Article 2(a) introduces a new definition of organized crime, and therefore has addressed the lack of consistency in current provisions by specifying the number of 3 members in an organized criminal group. The purpose of a criminal group is to obtain a financial or other material benefit. Organized criminal groups usually exist for a long time with a coherent structure and defined positions and roles of each member therein, in addition to a network that is specialized in the service of illegal activities. Any operation in the group is top-down controlled with very strict disciplines. Top leaders assign work

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<sup>24</sup> For more details please see Assoc. Prof. PhD Nguyen Ngoc Anh, Nguyen Truong Giang, Id.

to lower members and any member of the group has to abide the “rule of silence” to protect the safety of other members and the organization.

Organized crimes are of a serious nature which is attributable to the mode of their operations which is very sophisticated, clandestine and at the same time daring and blatant, not only within one country but across countries. Criminals even solicit and bribe high ranking officials in the state apparatus as well as in law enforcement authorities. Moreover, with very strong financial resources, many criminal groups equip themselves with even more modern technical equipment than those furnished by the specialized authorities of the State.

The Convention is of high compatibility because it contains very specific provisions on organized crimes with clear explanation both theoretical and practical, therefore member States would have few difficulties in applying the Convention in reality.

Vietnam’s PC does not contain any provisions on organized crimes other than those on complicity and organized commission of a crime. Article 20 of the PC defines complicity as “*where two or more persons intentionally commit a crime*” and committing crime in an organized manner as “*a form of complicity with close collusion among persons who jointly commit the crime*”. Committing crime in an organized manner is a form of complicity of which the “organized” nature is reflected in the fact that there is an instigator who takes lead of the crime, assigns work to others, sets out rules of operation and forms of disciplines etc... This form of complicity poses high risks to the society and is regarded an aggravating circumstance under Article 48.1(a) of the PC and is the one that determines the bracket for some offences under the PC. Per our calculations, the circumstance of “committing crime in an organized manner” is mentioned twice in the General Provisions Part of the PC and repeated 93 times in the Specific Crimes Part of the PC. This feature plays a decisive role in the determination of the punishment. There have not been any significant problems arising from the practical application of these Articles. Organized crimes are seen as a further and higher level of development of the commission of crime in an organized manner,

and so is the nature of their danger. While a crime committed in an organized manner is a form of particularly serious crimes, organized crimes are extremely detrimental to the society. Therefore, in our opinion, it is necessary to consider supplementing or expanding the PC definitions of complicity and organized commission of a crime in light of the definition of Organized Crimes of the Convention. Doing this would certainly strengthen the legal framework and make the fight against crime more effective.

*b) The obligation to criminalize organized criminal groups*

Criminalization of participation in an organized criminal group would be one of the important solutions to address actual difficulties in preventing and combating crime, and to improve the efficiency of the fight against transnational organized crimes.

Although some countries have established as a crime participation in an organized criminal group, there are many member States which have not done so other than prosecuted for criminal liability the acts committed by members of those groups. Some countries, like Vietnam and Myanmar etc, have even not said anything about organized crimes, particularly transnational organized crimes. The lack of consistency in the criminal law systems of many countries has been recognized as a undeniable obstacle given the context of new requirements of the fight against transnational organized crime as an urgent task. In this spirit, the obligation imposed by the Convention on its member States to criminalize the participation in organized criminal groups serves as an important foundation to overcome the above obstacle.

Pursuant to Article 5.1, an act of participation in an organized criminal group takes one the following forms:

- *“Agreeing with one or more other persons to commit a serious crime”* (5.1(a)(i) which, where required by domestic law, involves an act undertaken by one of the participants in furtherance of the agreement or involves an organized criminal group”.



- Actual participation, which under Article 5(1)(a)(ii) is defined as the “*Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:*

+ *Criminal activities of the organized criminal group;*

+ *Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim”;*

The above two acts do not have necessarily to be committed or finished crimes to be regarded as participation in an organized criminal group. Thus, if a person participates in an organized criminal group with intention to illegally trade in narcotics, that person might be prosecuted based on two charges including participation in an organized criminal group and illegal trading of narcotics.

- “*Organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group*”, under Article 5.1(b) of the Convention is also regarded as the participation in an organized criminal group. In this case, the offender does not directly commit crime but takes other actions to aid and facilitate the commission of crime by others.

The fault of a person who participates in an organized criminal group must be intentional. That means such person must know the aim and general criminal activities of that organized criminal group and takes an active part in the activities of the criminal group. His participation in the organized criminal group is for a purpose “*relating directly or indirectly to the obtaining of a financial or other material benefit*”.

It can be said, that the Convention’s requirement that member States criminalize the participation in an organized criminal group is one of the very important provisions of the Convention that helps further strengthen the cooperation between nations in combating transnational organized crime and

improve the efficiency of the fight at a national scale.

Although Vietnam's PC has not yet mentioned organized crimes and participation in organized criminal groups, it would not be too difficult for it to address this because the principle of Vietnam's PC is to individualize criminal liability and only consider criminal liabilities of individuals. For the time being, in our opinion, we need to amend and supplement the provisions of Vietnam's current PC on "complicity" and "organized commission of a crime" in light of the Convention provisions on organized crimes and participation in organized criminal groups.

*c) Criminalization of the legalization of property acquired from the commission of crimes*

Each year, transnational organized criminal groups obtain huge illegal incomes. Hence, there is a great need to legalize illegal property. According to estimates, hundreds of billions of dollars are laundered, causing negative impacts on countries' finances. It is one of the threats that destabilize the political economy of many countries around the world.

The first legal definition of legalization of property acquired from the commission of crimes in an international legal document is the one stated in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. However, this Convention only targets at the activities involving property derived from drug trading. Since then, the international community has agreed to build several international treaties and international rules in the field of prevention of money laundering.

The provisions on the obligation to criminalize the legalization of property acquired from criminal activities in the Convention is an important basis to prevent transnational organized criminal groups from achieving material or financial goals by the commission of crimes; and at the same time, from reusing illegal incomes to develop and expand the scope of their activities.

The legalization of property acquired from the commission of crimes can

be understood in two meanings:

- Narrow meaning: It is money laundering, where criminal groups transfer proceeds of crimes such as corruption, drug trade, human trafficking, fraud, and so on, into banking and financial systems for legalization.

- Broad meaning: It includes all types of activities aimed at transforming illegal property acquired from the commission of crimes into legitimate ones (money laundering in broader meaning).

Under the Convention, the legalization of property acquired from the commission of crimes is understood in a broad meaning, including all kinds of property acquired from the commission of crimes.

According to Articles 6.1(a) and 6.1(b), the legalization of property acquired from the commission of crimes includes the following activities:

- The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

- The acquisition, possession or use of property, (depending on the law of each country) knowing, at the time of receipt, that such property is the proceeds of crime;

- Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

Property, according to Article 2(d), “shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.”

As stated in Article 2(e), “Proceeds of crime shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence.”

While Article 2(h) defines that “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in Article 6 of this Convention.” Those are criminal activities that generate legalized illegal proceeds of crime.

In addition, the Convention also considers supporting activities such as colluding with, or guiding for the above three types of acts to be legalization of property acquired from commission of crime, which is a very different and advanced point in comparison with the previous regulations.

Among activities of legalization of property acquired from commission of crime, money laundering is one of the most popular. Money laundering is an act of transfer of proceeds of criminal activities into banking and financial systems for legalization. In recent years, money laundering is increasing in the world, adversely affecting countries’ finances. Therefore, the Convention provides measures to combat money laundering (Article 7) in order to limit and then completely prevent these criminal activities.

Accordingly, member States shall institute comprehensive domestic regulatory and supervisory regimes for banks and non-bank financial institutions susceptible to money laundering; cooperate and exchange information at the national and international levels to collect, analyze and disseminate information regarding potential money laundering; implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across the borders, etc.

Most of money laundering activities has been criminalized according to requirements of the Convention in the Vietnam’s PC as stated in the crime of money laundering (Article 251) and of harboring or consuming property acquired through the commission of crime by other persons (Article 250).

Compared with Article 6 of the Convention, it can be seen that the provisions of the Vietnam's PC regarding criminalization of money laundering meet most of the requirements of the Convention. However, while Article 6.1(b)(i) of the Convention provides that the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime is considered as money laundering; Article 251 of the Vietnam's PC regarding money laundering does not include the "acquisition" or "possession" of property, knowing that such property is the proceeds of crime. Therefore, to fully meet the requirements of the Convention on the criminalization of money laundering, and at the same time, enhance the effectiveness of the combat against and prevention of money laundering in Vietnam, it's important to continue to study and perfect Article 251 of the Vietnam's PC relating to this issue in the future.

*d) Criminalization of corruption*

Transnational organized criminal groups always look for every way to enhance the manipulation of state officials, especially in law enforcement agencies, with many tricks of bribery and control. Gradually, state officials become effective members of organized criminal groups, and public authorities serve as a big umbrella to shield their activities. The fight against transnational organized crimes can't show effective results when even state agencies and officials responsible for fighting crimes "shake hands" with criminals.

Besides, corruption is a dangerous evil and global threat. Therefore, the international community has made efforts to fight it. In particular, the Convention requires countries to criminalize corruption. According to Article 8 of the Convention, "each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another

person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The subject of this act may be anyone who can promise, offer or give state officials an undue advantage under Article 8(1)(a) or a particular subject, state officials solicit, suggest or accept an undue advantage.

Corruption, according to the Convention, essentially consists of two acts of giving and accepting bribes. The act of offering bribes is understood as “the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties” as stated in Article 8.1(a).

The subject of this act may be anyone who can promise, offer or give state officials an undue advantage. Such an undue advantage may be money, property or a certain material benefits, etc, for the official himself or herself or other person (wives, children...) or entities.

The purpose of the act is for the official to act or refrain from acting in the exercise of his or her official duties in favor of the subject.

Bribery can be the potential promise, suggestion or in particular, giving to a public official, directly or indirectly, of an undue advantage.

Corruption can manifest as bribe acceptance, “the solicitation, or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity” as stated in Article 8.1(b).

The subject of this act is state officials. According to Article 8.4, “public official shall mean a public official or a person who provides a public service as

defined in the domestic law and as applied in the criminal law of the state party in which the person in question performs that function."

The solicitation can be construed as the suggestion by a public official of an undue advantage from a person and he or she can implement the person's request. The acceptance means the agreement with the promise, offer of the person giving bribes.

The purpose of this act is to obtain an undue advantage. This advantage can be a boon for the public official himself or herself or other (wives, children, relatives...) or entity.

Here the person offering bribes intentionally commits the crime, because he or she, knowing it to be an illegal act and its dangerous consequences, is determined to conduct.

The Convention allows countries on the basis of the national sovereignty to "adopt such legislative and other measures as may be necessary to establish as criminal offences conduct involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption" as regulated in Article 8.2; and "adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established" as in Article 8.3.

The provisions on criminalization of corruption of the Convention, as well as the provisions of the United Nations Convention against Corruption adopted in 2003 are an important legal basis for the international community to deal more effectively with transnational organized crimes. Vietnam is a member of the United Nations Convention against Corruption and has successfully implemented the first phase of self-assessment of the implementation of this Convention. With these results, it can be stated that in principle, there will not be any major problems related to the provisions on the fight against corruption when Vietnam implements the Convention.

Review and study results show that the Vietnam's PC basically meets the requirements of the Convention in this regard. However, some issues in relation to the PC provisions on giving and accepting bribes and acting as intermediaries for bribery still need further study. First of all, regarding illegal benefits or "bribes", the Vietnam criminal law defines it to be money, property or other material benefits only, while Article 8 of the Convention provides such a broad concept of "bribes" as "an undue advantage", meaning both corporeal or incorporeal benefits.

Second, the Vietnam's PC does not specify when the undue advantage counts, whether it's for a public official himself or herself or for even people close to him/her or agencies and organizations of which he/she is a member. These contents need to be revised through the amendment of PC Articles on receiving bribes (Article 279), offering bribes (Article 289) and acting as intermediaries for bribery (Article 290).

*e) Criminalization of obstruction of justice*

To detect and arrest transnational organized criminal groups is a very difficult task, but to prosecute and bring these groups to trial is far more difficult. With great economic power, as well as various criminal tricks, organized criminal groups can affect the accuracy of decisions made by law enforcement agencies.

To protect their existence, organized crime groups can bribe witnesses, threaten and use violent measures to make those who refuse to cooperate with them not dare testify or tell the truth. More dangerously, they can threaten, even use force to control and interfere in the operation of officials of agencies responsible for dealing with them. Two assassinations of Judge Giovanni Falcone and Paolo Borsellino by Italia Mafia in 1992 are typical examples.

Therefore, regulation of the obligation to criminalize the obstruction of justice is an important measure to effectively prevent and combat transnational organized criminal groups. According to Article 23 of the Convention, the obstruction of justice includes the following activities:



- “The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention” (Article 23(a)).

This obstruction targets at interrogatees (interested parties summoned by investigating agencies to take testimony or to clarify the circumstances of the case), victims (people who bear physical, mental, health damages caused by crimes), and witnesses (people who know important facts of the case and summoned by the competent authorities). The purpose of this act is to prevent interrogatees, victims, witnesses from reporting the facts, providing evidence or to make them give false statements, provide false evidence in favor of those committing offenses. To achieve this purpose, organized criminal groups may use measures of bribery (promises, offering or giving of an undue advantage) or control (threats, use of force, etc).

- “The use of physical force, threats or intimidation to interfere with the exercise of official duties by a judicial or law enforcement official in relation to the commission of offences covered by this Convention.” (Article 23(b)).

This obstruction also targets at judicial or law enforcement officials responsible for or involved in the fight against transnational organized criminal groups. They are those who bear the responsibility to fight transnational organized criminal groups directly, conduct activities affecting their survival and development across the country, namely investigators, prosecutors, judges, etc.

The purpose of this act is to intervene in the execution of duties of judicial and law enforcement officials, forcing them to act in favor of the criminals. To achieve this purpose, organized criminal groups can use physical force against or threaten judicial and law enforcement officials.

Member States only have obligation to criminalize acts of obstruction of justice if those acts involve in serious crimes falling within the scope of the

Convention, namely: participation in an organized criminal group, legalization of property acquired from the commission of crime, corruption and other serious crimes by transnational organized criminal groups.

According to the Convention, member States shall also have the right to promulgate legal normative documents to protect their state officials.

Besides, the Convention provides one Article on the protection of witnesses, the most likely subjects to the bribery and control by criminals. Article 24.1 provides that: "Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them."

In countries with high risk of retaliation, the governments should establish witness protection programs, as in the U.S. and Italia, to ensure their safety from retaliation by organized criminal groups.

The provisions on criminalization of obstruction of justice is an important legal basis for countries to win the war against transnational organized criminal groups, protect social order, help people involve actively in activities of prevention and combat against this dangerous type of criminal.

The obstruction of justice is specified in Article 309 of the Vietnam's PC as bribing or coercing other persons to make false declarations or to supply untrue documents; while in Article 297, coercing judicial personnel to act against laws; and Article 257, resisting persons in the performance of their official duties. In comparison with the provisions as stated in Article 23(a) of the Convention, the provisions of Article 309 are relatively appropriate, even more progressive: the scope of affected subjects is expanded, including other officials involved in the proceedings such as assessors, interpreters. However, the scope of subjects of crime under Article 297 is far narrower than that in Article 23(b) of the Convention. According to Article 297 of the Vietnam's PC, subjects of crime

coercing judicial personnel to act against laws are only those who have positions and/or power (special subjects), while subjects of crime of obstruction of justice under Article 23(b) of the Convention are unlimited. Also, subjects affected by crimes under Article 297 of the 1999 PC only include judicial officials, while Article 23(b) of the Convention also includes law enforcement officials. Therefore, in our opinion, Article 297 of the PC should be amended towards unlimitedly expanding the subjects of crime and supplementing affected subjects as provided in Article 23(b) of the Convention.

These are important legal bases for the prevention and fight against crime in general and organized crimes in particular.

### ***3.2. With regard to the requirements of the Protocol***

As the most important international legal document related to human trafficking, the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime defines the crime of human trafficking in detail. Article 3(a) of the Protocol states: “Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

In Vietnam, the Law on Anti-trafficking in Persons, with effect from January 1, 2012, specifies 13 prohibited acts in Article 3, such as trafficking in persons as provided by Articles 119 and 120 of the CC; transfer or reception of persons for sexual exploitation, labor coercion, removal of organs, or for other

inhuman purposes; recruitment, transportation, harboring of persons for sexual exploitation, labor coercion, removal of organs, or for other inhuman purposes, or for the implementation of acts regulated in Clauses 1 and 2 of this Article; forcing others to commit one of the acts specified in Clauses 1, 2 and 3 of this Article; acting as intermediaries for other persons to implement one of the acts specified in Clauses 1, 2 and 3 of this Article; revenge, threat of revenge against victims, witnesses, denunciators, their relatives or those who prevent acts defined in this Article; etc. ..

Trafficking in persons is prescribed in the Vietnam's 1999 PC in two Articles: Article 119 on trafficking in women and Article 120 on trading in, fraudulently exchanging or appropriating children. In 2009, Article 119 was amended into trafficking in persons in accordance with practical reasoning of the fight against this crime. Unlike the Protocol, the Vietnam's PC does not specify acts of trafficking in persons, so these two Articles of the Code should be revised on the basis of comparison with the definition set out in Article 3 of the Protocol and to ensure the consistency, feasibility and compliance with the Law on Anti-trafficking in persons 2010.

## **Main references**

Assoc. Prof., Doc. Nguyen Ngoc Anh, Nguyen Truong Giang, the UN Convention Against Transnational Organized Crime and The Protocols Thereto, People's Police Publisher, Hanoi, 2005

UNODC's report on the risk assessment of transnational organized crimes in the region of East Asia - Pacific, 2013.

The Ministry of Public Security, in-depth training materials on Law on Anti-trafficking in persons, Labor Publisher, Hanoi, 2012.

The Ministry of Public Security, Report on the Implementation of the Criminal Code of 1999 (as amended and supplemented in 2009), Hanoi, 2013

The Ministry of Justice, National Institute of Jurisprudence (2003), Dictionary of Law, Encyclopedia Publishing House and Justice Publisher

2011 Profile of the Government to the President for ratification of the UN Convention Against Transnational Organized Crime and participation in the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the Convention.

**IMPROVING THE JUVENILE CRIMINAL POLICY AND  
REQUIREMENTS FOR INCORPORATION IN DOMESTIC LAWS OF  
RELEVANT RULES OF THE INTERNATIONAL CONVENTION ON  
THE RIGHTS OF THE CHILD**

**TRAN CONG PHAN**  
Deputy Chief Prosecutor  
Supreme People's Procuracy

For the past few years, Vietnam has made significant improvements in the promotion of the rights of children and juveniles, particularly in the protection and enhancement of these rights by the judicial system which are extended to even child victims of abuse, maltreatment and other crimes as well as juveniles violating laws. The Criminal Code (“CC”), the Criminal Procedure Code (“CPC”) and other legal documents of Vietnam all address the protection of juveniles when they come to contact with the criminal proceedings in the capacity of victims/witnesses or the accused/defendants. Since children are vulnerable and easy to be abused, the CC establishes as crimes many acts of child abuse with strict and highly deterrent punishments, whilst “*committing crimes against children*” is one of the aggravating circumstances applicable to many crimes provided for in Article 48.1.

However, together with the general trend in evolution and growth of criminals, violations of law and offences by juveniles have been also increasing at a worrying level and so has the number of juvenile victims.

Juvenile offenders mostly commit the crimes by infringing upon ownership rights (namely stealing, plunder, property robbery by snatching...), infringing upon life and health (i.e. murder, intentionally inflicting injury, rape, rape against children),

narcotic-related crimes (illegally stockpiling, transporting, trading in or appropriating narcotics) and causing public disorder, destroying important national security works and/or facilities (theft of telephone, electric or telecommunication cables etc...). Under the CC and the CPC, People's procuracies ("PP") have been coordinating with investigating agencies ("IAs") and hearing agencies ("HAs") in conducting investigations, prosecutions and hearings of many cases involving juveniles which helps to stabilize the social order and improve people's awareness on the prevention of criminals among young people, protect rights and legitimate interests and other obligations of juveniles during the proceedings. In practice, the application of the CC and the CPC in dealing with cases that involve juveniles has encountered many difficulties, problems and shortcomings, which consequently results in the failure to meet the expected outcome of the settlement of juvenile offenders in Vietnam, high level of recidivism and low rate of the child community reintegration after the service of a sentence or return from the reformatory school. As recommended and emphasized in many recent reports<sup>25</sup>, in the criminal justice area, it is necessary to further improve the rules of dealing with, and the criminal procedures applicable to, juveniles, since this is a very sensitive subject to touch upon, and to ensure that those rules are more in line with the International Convention on the Rights of the Child (the "CRC") (ratified by Vietnam in 1990), Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography (ratified by Vietnam in 1991), the United Nations (UN) Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, UN minimum standards for juvenile justice system and other international documents.

Most of the difficulties, problems and shortcomings focus on the following specific issues:

***\*Application of CC provisions to juvenile offenders***

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<sup>25</sup> Report in the investigation and hearing procedures relating to children and juveniles – assessment of sensitive procedures to the child – by UNICEF Vietnam in coordination with the Supreme People's Court (SPC); recommendations of UNICEF Vietnam on revisions of Vietnam's criminal laws etc...

+ Article 69 of the 1999 CC sets up several principles of “priority” to deal with juveniles in contact with the criminal proceedings, specifically The handling of juvenile offenders aims mainly to educate and help them redress their wrongs, develop healthily and become useful citizens to society. In any investigation, prosecution or trial of criminal acts committed by juveniles, the competent State agencies shall have to determine whether they are aware of the danger of their criminal acts to the society and the causes and conditions relating to such criminal acts (clause 1); juvenile offenders may be exempt from criminal liability if they commit less serious crimes or serious crimes which cause no great harm and involve many mitigating circumstances and they are received for supervision and education by their families, agencies or organizations (clause 2); the criminal 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 (clause 3); during hearings, 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 (clause 4); 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 aged between full 14 and under 16 years old. Additional penalties shall not apply to juvenile offenders (clause 5); the judgment imposed on juvenile offenders aged under 16 years shall not be taken into account for determining recidivism or dangerous recidivism (clause 6).

In practice, however, proceeding-conducting agencies rarely deal with juvenile offenders on the above mentioned principles. In many cases, juvenile offenders are not exempt from criminal liability although they fall within the scope of Article 69.2 of the CC. Judicial measures of an educative and preventative nature including “*education at communes, wards or district towns*” or “*sending them to reformatory schools*” under Article 70 of the CC are almost not considered by courts of various levels during handling of juvenile offenders committing less serious crime



to hand them over to the commune, ward or district town for education. Also, the seriousness of the criminal act or the personal records and the living environment of the juvenile are not taken into account either before deciding whether to send juvenile offenders to reformatory schools for between one and two years. The applicable measures under Article 71 of the CC including “*warnings*”, “*finer*”, “*non-custodial reform*”... are rarely adopted. However, another noteworthy thing about these measures is that they can only be applied to juvenile offenders of full 16 years old or more, but not to juveniles aged between full 14 and under 16 years old. The reason is, pursuant to Articles 29, 31 and 72 of the CC, these measures only apply to less serious crimes and several serious crimes, whereas under Article 12 of the CC juveniles aged between full 14 and under 16 years old only bear criminal liability for serious crimes intentionally committed or particularly serious crimes. Therefore, under these rules, juvenile offenders aged between full 14 years and under 16 years old will only be liable for termed imprisonment without any other optional or alternative measures. This is one of the issues that needs further discussed.

+ With regard to the category of sex-related crimes committed against juveniles in general and children in particular, the CC establishes as crimes some acts including “*rape against children*” (Article 112), “*forcible sexual intercourses*” (Article 113.4), “*forcible sexual intercourses with children*” (Article 114), “*having sexual intercourses with children*” (Article 115), “*obscenity against children*” (Article 116) and “*sexual intercourse with juveniles*” (Article 256). It can be noted, however, that criminals are not yet thoroughly dealt with due to lack of complete provisions. For example, Articles 115 and 116 only impose criminal liability on adults leading to the fact that juveniles aged between full 14 years and under 18 years old who have sexual intercourse or commit obscene acts against children shall not be held for criminal liability.

+ In the category of human trafficking crimes, the CC establishes as crimes “*human trafficking*” (Article 119) and “*trafficking in children*” (Article 120). However, as children are defined as persons under 16 years of age (under the Law on

Protection of, Care for and Education of Children), if the victim of human trafficking crime is aged between full 16 years and under 18 years old (i.e. juveniles), the offender of that crime is only held liable for criminal liability under Article 119 other than under Article 20 which provides for higher and more stringent penalties. On the other hand, the victims of these crimes cannot benefit from the policy applicable for people under 16 years old. Also, due to lack of specific provisions on what constitutes human trafficking, in fact there are some offences that have never been treated as human trafficking and therefore never been dealt with in accordance with Articles 119 and 120 of the CC, for example using or holding the elderly, orphans or disadvantaged children and forcing them to go begging, do shoe-polishing or other activities or keeping young girls in detention and using various tricks to force them provide “gonadotrophic” massage services and then appropriating their “remunerations”.

***\*Application of the CPC in investigation, prosecution against and trial of juvenile offenders***

+ The issue of guardians of juvenile offenders, child victims and witnesses of crime is addressed in Articles 135.5, 304 and 306 of the CPC<sup>26</sup>. The guardian (or supervisor) might be a parent, mentor, family representative, lawful representative, teacher or representative of the Youth Organization. Rights and obligations of guardians are provided in Articles 304.2 and 306.3 of CPC. Proceeding-conducting agencies have been in very strict compliance with the CPC provisions on supervision of juvenile offenders right from the stage of custody, initiation of the case and prosecution against the accused. However, guardians (supervisors) sometimes do not fulfill their obligations as law does not provide for their rights and obligations in detail. They misapply the law by not showing up in the testimony-taking or interrogation sessions, failure to ensure the presence of juvenile offenders under the summon or letting the juvenile offenders escape or continue committing crimes while their case is being processed. It is not uncommon that some parents refuse to be the

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<sup>26</sup> Article 135. Taking testimony of witnesses; Article 304. Supervision of juveniles; Article 306. Participation of families, schools and organizations in proceedings.

guardian of their kids, guardians, victims and witnesses do not attend or improperly attend the testimony-taking or interrogation sessions at the request of the proceeding-conducting agencies for many reasons, one of which deals with the incurring of travel and accommodation costs which are neither addressed nor adequately guided by the law.

The practice now is proceeding-conducting agencies invite representatives from the Women Union, Youth Organization, the Fatherland Front or schools to be the guardian of homeless and parentless children or when the parents do not have a permanent address of residence... However, these representatives do not always fulfill their rights and obligations as sometimes they do not appear at the request of proceeding-conducting agencies, which has led to delayed and prolonged cases, violations of the procedural law etc.

+ Arrest of, and application of preventative measures against, juvenile offenders are addressed in Articles 80, 81, 82, 83, 84, 85, 86, 87, 88, 91, 92, 93, 120, 125 and 303 of the CPC<sup>27</sup> and once these provisions are enforced it is necessary to [first] determine the age of the offender pursuant to Article 12 of the CC. In fact, these provisions have been taken into account by proceeding-conducting agencies to ensure the compliance when they arrest juvenile offenders or put them into custody or temporary detention. In most cases, juvenile offenders are arrested or put into custody of temporary detention only when it is necessary and lawful to do so, in which case they are kept in a separate zone for juveniles. For the offenders with clear addresses/residences and a guardian/supervisor, they are let out on bail or banned from leaving the place of their residence.

However, it is necessary to put in custody and temporary detention those offenders who have negative personal records, reside in another locality or street

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<sup>27</sup>Article 80. Arresting the accused, defendants for temporary detention; Article 81. Arresting persons in urgent cases; Article 82. Arresting persons in urgent cases; Article 83. Actions to be taken promptly after arresting persons or receiving arrestees ; Article 84. Arrest minutes; Article 85. Notices on arrests; Article 86. Custody; Article 87. Term of custody; Article 88. Temporary detention; Article 91. Ban from leaving one's residence place; Article 92. Guarantee; Article 93. Depositing money or valuable property as bail; Article 120. Terms of temporary detention; Article 125. Minutes of investigation; Article 303. Arrest, custody and temporary detention.

children after they are caught red-handed or caught in urgent cases, or those who do not have a guardian or any person going on bail for them. Otherwise, these offenders might escape or commit another offence causing delays to the investigation, prosecution and trial process. Thus, in some cases, it is compulsory to adopt preventive measures, although sometimes it is difficult to do so due to impossibility to identify the family or the lawful representative of these offenders to service a notice on the application of preventive measures as required under Article 303.3 of the CPC.

+ Articles 131, 132, 135 (clause 5), 136 and 306.2 of the CPC<sup>28</sup> provide for the interrogation of the accused and taking testimonies from juvenile detainees, victims and witnesses. However, in many cases in practice, these operations are conducted without the participation or full participation of parents, lawful representatives or teachers of the offender as notified by IA. It is much more difficult to enforce these provisions against homeless juvenile offenders who have unclear address, orphans or abandoned children. The participation of the guardian or defender of the rights and legitimate interests of juveniles in the capacity of representative of the family, school and other organization under Article 306 of the CPC remains limited, as these people are not fully aware of their roles and obligations and stay passive in the proceedings. They, therefore, do not appear when IAs take testimony from or interrogate juvenile offenders, which, more or less, makes it difficult for proceeding-conducting agencies to clarify related information about the juvenile offenders as mentioned in Article 302.2 of the CPC<sup>29</sup>. Article 135.5 states “*When taking testimony of witnesses aged under 16 years, their parents, other lawful representatives or their teachers must be invited to attend*” and this clause is also applied when testimony are taken of victims of under 16 years old. However, this is about the obligation of proceeding-conducting agencies. The law does not oblige parents, lawful representatives or teachers to be present when a [juvenile] witness or victim is giving testimony. It would become even more difficult if they refuse to attend. This is also the case with the testimony taking and interrogation of the accused.

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<sup>28</sup> Article 131. Interrogation of the accused; Article 132. Minutes of interrogation of the accused; Article 136. Minutes of witnesses’ testimony taking;

<sup>29</sup> Article 302. Investigation, prosecution and trial.

Moreover, given the physical, mental and intellectual features of juveniles particularly under-16-year-old children, it is necessary to ensure that procedural activities are carried out in a child-sensitive manner and in an appropriate setting to make juveniles feel comfortable without fear and stress. Unfortunately, the current CPC is still silent on this while its provisions on subsidies and support for the accommodation and travel aimed at facilitating their participation in the proceedings are either unavailable or insufficient

+ The participation, at various stages of the proceeding, of lawyers, defense counsels, defenders of the rights and legitimate interests of juvenile accused/defendants, child victims and witnesses have been facilitated by proceeding-conducting agencies in compliance with Articles 56, 57, 59 58 and 305 of the CPC<sup>30</sup>. As soon as the juvenile accused is arrested or becomes the subject of the proceeding initiation, IAs usually request or notify this to responsible agencies and persons so that they can invite or assign a lawyer or defense counsel to protect the interests of the detainee/defendant. The case files are always returned for additional investigation if there are procedural errors found... However, the emerging problem which is become quite popular relates to Articles 57.2 (b) and 305.2 of the CPC, under which if a juvenile accused/defendant or his/her lawful representative cannot choose a defense counsel, the IA, PP or the court must request the bar association to assign a lawyer to act as the defense lawyer for the accused/defendant or request the Committee of the Vietnam Fatherland Front or its member organization to assign a defense lawyer for its member. In many cases it is always the family of the accused/defendant or the accused/defendant himself to refuse the assigned defense lawyer. In fact, this problem has never been uniformly understood and dealt with. The SPC previously issued some guidelines to address this ad hoc problem which applied only to the trial phase<sup>31</sup>.

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<sup>30</sup>Article 56. Defense counsels; Article 57. Selection and change of defense counsels; Article 58. Rights and obligations of defense counsels; Article 305. Defense;

<sup>31</sup> Pursuant to Official Letter 52/1999/KHXX dated June 15, 1999 of the SPC on the implementation of several provisions of the CPC applicable to juvenile defendants, in the court session if a defense counsel is present or absent and the defendant refuses such defense counsel, the Court must make the minutes of such refusal with the signature of the defendant, and then continues hearing the case in accordance with the general procedures.

Another problem is lack of lawyers in Vietnam and the excessive workloads of existing lawyers. This leads to the fact that defense lawyers do not have time to participate from the beginning of the proceedings as defense counsels, under assignment, and they usually step in when the investigation is completed and the case file has been forwarded to the PP for prosecution. In other cases, a Law Office does not promptly assign a defense counsel at the request of proceeding-conducting agencies or just assigns a trainee lawyer for the task. Assigned defense counsels usually perform their obligations irresponsibly and reluctantly, and therefore cannot properly protect the rights and legitimate interests of juveniles and are unable to participate throughout the proceedings in a timely, full and regular manner. They sometimes do not study the case file in advance and send the defense statements instead of being present in the court session. These problems are even more serious and popular in the areas with difficult travel conditions, remote and far-off areas where people's living conditions are still low... The clear reasons include lack of specific provisions of law on the rates of fees/remunerations for the assigned lawyers, unclear rules of the time limits for such assignment at the request of proceeding-conducting agencies, etc.

Since the CPC does not have clear and detailed procedures applicable to juvenile offenders throughout various stages of the proceedings, its interpretation and application remain arbitrary leading to discrepancies among proceeding-conducting agencies. While some argue that if an offender becomes an adult after the time of committing the crime, it is not necessary to apply the rules of criminal procedures applicable to juveniles to him/her including a procedure for requesting a lawyer, others confirm the MUST to ask for a lawyer's participation because at the time the offender committed the crime he/she is just a juvenile. Even proceeding-conducting

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As guided by Part II.3(d.2) of Resolution 03/2004/NQ-HĐTP dated October 2, 2004 of the Judges' Council of the SPC, if both a juvenile defendant and his/her lawful representative preserve the opinion to refuse a defense counsel, this must be recorded in the minutes of the court session and the court proceeds with the trial in accordance with the general procedures and the assigned defense counsel does not need to attend. If only the juvenile defendant but not his/her lawful representative refuses the defense counsel or vice versa, the trial continues in accordance with the general procedures in the presence of the assigned defense counsel.

agencies have different opinions on the issue of assignment of defense counsels for juveniles<sup>32</sup>.

With regard to whether lawyers or defense counsels should be involved in interrogation and testimony-taking sessions of detainees/the accused etc, there exist two groups of opposite opinions. One supports for the idea that lawyers and defense counsels should take part in all interrogations and testimony taking sessions and sign the minutes thereof. The other argues that not all but only some sessions require the participation of lawyers and defense counsels, and therefore they don't need to sign all the minutes of those sessions.

+ The composition of the trial panel in the cases involving juvenile defendants is specified in Article 307 of CPC<sup>33</sup>, which must consist of at least one people's juror being a teacher or officer of the Youth organization.

In deed, during the preparation for trial in these cases, first instance courts pay adequate attentions to the above provision and the trial panel always include a people's juror being an officer of the Youth Organization or a teacher. However, since the law is not clear, there is not a few cases in which the court invited a person who was no longer engaged in youth activities or who was a retired teacher or an officer from the division or department of education and training to be the people's juror. Although, this is not entirely consistent with Article 307.1 of the CPC, it is not regarded as a serious violation of the procedural law because it is seen as a force majeure event<sup>34</sup>.

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<sup>32</sup> Note:

- Pursuant to Official Letter 113/1998/KHXX dated November 5, 1998 from the SPC to Quang Ngai People's Court which addressed the problem arising in a case, where a request was made to a bar association for assigning the defense counsel for a juvenile offender. When the juvenile offender was brought for trial, he was full 18 years old and the Court, therefore, decided to apply the general procedures, i.e. the lawyer's presence was not required neither the people's juror being a teacher or leader of the Youth organization.

- Part II.3 of Resolution 03/2004/NQ-HĐTP dated October 2, 2004 of the SPC Judges' Council guiding the application of Article 57.2(b) of the CPC states: "*If an offender is a juvenile at the time of offence but is full 18 years old at the time of initiation of the proceedings, prosecution or trial, that offender does not fall within the cases set out in Article 57.2(b) of the CPC*".

<sup>33</sup> Article 307. Trial;

<sup>34</sup> Pursuant to Official Letter 52/1999/KHXX dated June 15, 1999 and Official Letter 81/2002/SPC dated June 16, 2002 the definition of a teacher, in the context of the composition of a Trial Panel .... is construed in a broad

Another popular problem arises when one and the same trial panel has to hear, for a certain consecutive period of time, different cases among which some have juvenile defendants, some have adult defendants but some have both etc, therefore it is very difficult to ensure the structure of the Trial panel as required by Articles 302.1 and 307.1 of the CPC.

How juveniles are tried is set out in Articles 18 and 307 of the CPC. Such a trial must be open with a people's juror in the trial panel and might be in close door in case of necessity. However, since the law does not contain any specific provisions on which cases need to be heard in closed-door trials, many cases, which should have been heard in close door trials to protect the juvenile offender, were, in fact, heard in public even itinerant trials to service the fight against criminals and the political mission of the locality.

+ In reality, officers from Youth Organizations, Women Unions and other agencies and associations have initially been participating as support officers or counsels in the criminal proceedings that involve juveniles. Such participation, however, remains limited, spontaneous and sometimes blurry, therefore the role and assistance of these people cannot be developed to the utmost. The reason yet is lack of rules in the Vietnam's criminal law system facilitating the participation of officers from Youth Organizations, Women Unions and other agencies and associations in the proceedings in the capacity of support officers, legal or psychological counsels for juveniles.

It is really rare that support officers or experts participate in the proceedings to provide legal and psychological support, except for some exceptional cases or at the request of proceeding-conducting agencies. The coordination between proceeding-conducting agencies and these socio-professional organizations remains limited while there is not yet a mechanism for the rates of fees/remunerations for these people to take part in the proceeding stages (other than conducting examinations).

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meaning, that includes teachers, who carry out teaching/lecturing job in schools or other educational establishments including retired teachers.



*\* Criminal procedures applicable to juvenile victims and witnesses of crime*

The current CPC has only one Chapter (Chapter XXXII) on the special procedures applicable to the accused and defendants being juveniles and does not contain similar provisions applicable to juvenile victims and witnesses. Although CPC contains provisions on child victims and witnesses<sup>35</sup>, such provisions are either incomplete or inadequate to protect and support for child victims and witnesses in a criminal case. Specifically, the Code does not yet require that proceeding-conducting persons in a case involving child victims or witnesses has to possess necessary understanding of child's developmental stages and child-related interrogation skills; the Code is also silent on how to protect child victims and witnesses when they come to contact with justice; there are neither any provisions to assist child victims and witnesses when they have to make statements before the court in criminal proceedings etc.

The CPC does not contain the same provisions for the composition of trial panel in a case involving child victims and witnesses as those for the cases involving juvenile defendants, resulting in the fact that the trial panel in those cases does not have a People's juror being a Youth officer or teacher.

On the basis of reality of application of the criminal law for the past years and given the context of integration which calls for the compatibility between domestic laws and international laws, we suggest comprehensive revisions of the CC and the CPC particularly those relating to the criminal policy for juveniles, procedures applicable to juvenile offenders and child victims and witnesses, with a particular focus on the following:

**1. For the Criminal Code**

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<sup>35</sup> Article 135.5 states "When taking statements of witnesses aged under 16 years, their parents, other lawful representatives or their teachers must be invited to attend", Article 137 states "The summoning, and taking statements of, victims .... shall comply with the provisions of Articles 133, 135 and 136 of this Code"...

1.1. To supplement and improve the principles of dealing with juvenile offenders toward providing the best protection of their interests and setting up a better protection mechanism for juvenile victims of crime.

1.2. To promote the application of measures which does not involve the deprivation of liberty such as warning, non-custodial reform etc to juveniles from full 16 to under 18 years old who committed less serious crimes and serious crimes, juveniles from full 14 to under 16 years old committing very serious crimes. To limit imprisonment sentences by designing more stringent conditions for applying this measure to juveniles. It is necessary to state that any penalty of deprivation of liberty will only be used as a measure of last resort when there are no other alternatives and only for the shortest appropriate period of time.

1.3. To make more specific provisions on the cases of (possible) exemption of the criminal liability under Article 69.2.

1.4. To consider revising the provisions on the crime of sex abuse against children to ensure that acts of sex abuse shall all be dealt with and offenders shall all be punished.

1.5. To consider revising the provisions on human trafficking crimes in line with international practices by adopting the definition of human trafficking used in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime.

## **2. For the Criminal Procedure Code**

2.1. The CPC should have a separate Chapter on the principles applicable to juveniles when they come to contact with the proceedings. Specifically it should state that the best interests of juvenile should be the primary concern of proceeding-

conducting agencies in making every procedural decision<sup>36</sup>; identify which procedures shall be applied in the cases with juvenile accused/defendants and/or involving child victims and witnesses including the cases in which the offender is more than 18 years old at the time of investigation, prosecution and trial; confirm that investigation, prosecution and trial activities in any cases involving juveniles shall only be carried out by the proceeding-conducting persons who have been trained on how to handle cases of this nature and who have been appointed as experts in this field; set up proceeding time limits applicable to the cases involving juveniles which should be shorter than those in ordinary cases and provide that proceeding-conducting agencies are entitled to extend those time limits only in case of necessity; and respect for the juveniles' right to privacy and dignity. Proceeding-conducting agencies should adopt measures to ensure that the information and records in a case involving a juvenile are kept confidential and only disclosed to the authorized persons; during the course of investigation, prosecution and trial of cases involving juveniles, proceeding-conducting agencies should let juveniles freely express their views and opinions and that such expressed views and opinion should be taken into account before making a procedural decision relating to them<sup>37</sup>; during the course of investigation, prosecution and trial of cases involving juveniles, proceeding-conducting agencies should inform and ensure that juveniles are provided with necessary support and advice in all aspects, ensure that child victims and their parents and guardians are provided with sufficient information about available legal representation, medical, psychological, social and other related services and how to access to those services etc.

2.2. The CRC calls for the establishment of an independent and separate criminal justice system specifically applicable to the accused and defendants being

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<sup>36</sup> Article 3 of the CRC: *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*.

<sup>37</sup> Article 12 of the CRC: *“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”* and *“For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial ... proceedings...”*.

juveniles<sup>38</sup>. In this light, it is necessary to revise the following provisions in Chapter XXXII of the CPC dealing with the principles and procedures specifically applicable to the accused and defendants being juveniles:

2.2.1. Before imposing a stringent preventive measure like arrest, custody or temporary detention, proceeding-conducting agencies need to consider other possible preventive measures set out in the CPC such as guarantee, ban from leaving from one's residence place or depositing money or valuable property as bail<sup>39</sup>. During arrest of a juvenile, investigating agencies must not threaten or use outrageous language; must not act violently, nor use handcuff or other restraining measures except for special cases.

The term of custody or temporary detention specifically applicable to juvenile should be as short as possible<sup>40</sup>. Custody and temporary detention shall be applied to juveniles not merely on the basis of the seriousness of the crime but also on the juvenile's personal records. A juvenile is put under custody or temporary detention if he/she commits a violent crime or in one of the following circumstances: he/she escaped after committing the offence and is re-arrested by warrant; a preventive measure has been applied in his favor such as guarantee, ban from leaving his/her residence place but he/she continues committing offences or willfully and seriously interferes with the investigation, prosecution and trial process; he/she escapes after money or valuable property has been deposited as bail, making it difficult for the investigation, prosecution and trial process.

Any cases in which the accused/defendant is a juvenile who is put under temporary detention should be given priority for settlement to ensure the shortest term of temporary detention for the juvenile. A juvenile in custody or temporary detention has the right to meet with and visited by their parents, guardian and defense lawyers.

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<sup>38</sup> Article 40.3 of the CRC: “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law...”.

<sup>39</sup> Article 37(b) of the CRC: “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

<sup>40</sup> See 9

2.2.2. Testimony of juveniles should be taken at their residence places or in a room furnished with friendly objects to reduce tension and fear. Threatening or using other forms of threatening to force a juvenile to plead guilty or declare shall be prohibited.

When a juvenile is interrogated or gives testimony, he/she must be accompanied by parents, the guardian or lawful representative at his/her choice. Without the presence thereof, such testimony is inadmissible. If a parent, the guardian or the lawful representative refuses to appear, that refusal must be recorded in the minutes. The investigating agency must adopt appropriate measures to ensure the availability of one of the following people at any time to support the juveniles<sup>41</sup>: Defense counsel or legal representative; officer of the commune, women union or youth organization... The number of times of interrogations and testimony taking should be minimized.

2.2.3. Trials of juvenile offenders need to be organized in a manner to ensure the composition of the trial panel as required under Article 307 of the current CPC;

For the sensitive cases involving juvenile offenders, it is necessary to consider closed-door trials to protect them from public opinion and facilitate their re-integration with the community;

The Court might rearrange the seats of the participants in the trial or rearrange things in the court room to bridge the gap between the juvenile and the trial panel and reduce the fear of the juvenile. Juvenile defendants should not be requested to stand behind the bar. The court might allow juvenile defendants to stand next to their parents, guardians, defense counsels, social workers or representatives of other organizations who will assist them during the trial.

The questioning of juveniles at the trial should be done in a friendly and sensitive way appropriate to their age and developmental stage.

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<sup>41</sup> Article 37(d) of the CRC: *“Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance ...”*.

2.3. Both the CRC and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime call for State parties to adopt special measures to protect children when they come to contact with justice as victims or witnesses. Thus, new provisions should be added to the CPC on special procedures specifically applicable to child victims and witnesses of crime focusing on the following:

2.3.1. As soon as they determine the victim is a child, proceeding-conducting agencies must promptly notify this to the child's parents, mentor or lawful representative to enable them to meet and exercise their rights and perform their obligations in the proceedings.

In addition to those persons taking part in the proceedings as the guardian and lawful representatives, proceeding-conducting agencies need to invite specialized officers of the local authority of labor, ward invalids and social affairs, representatives of women union and youth organization of where the proceedings are carried out so that they can assist child victims and witnesses particularly homeless, parentless and disadvantaged children in case they need accommodation, advice, medical/health, legal or psychological support etc... Upon receiving such a request from proceeding-conducting agencies, relevant organizations and agencies need to promptly assign their officers and notify thereof to the requesting agency so that it can facilitate the assigned officers to meet with the child victims or witnesses.

Parents, mentors, lawful representatives and support officers who have assumed the responsibility to assist child victims and witnesses may participate in any stage of the proceedings.

Proceeding-conducting agencies and proceeding-conducting persons must provide necessary information about the proceedings to child victims and witnesses as well as to their parents, mentors, lawful representatives, support officers; ensure the presence of these people to assist and encourage the child victims and witnesses during the proceedings; ensure that child victims and witnesses receive appropriate medical, health, legal or psychological support when needed.

2.3.2. The testimonies of child victims and witnesses must be taken in a private room so that they do not have to face the offender during the testimony taking process. The investigating agency must adopt measures to gradually reduce the number of testimony-taking sessions and minimize the time amount of testimony taking. When taking testimony of child victims and witnesses, the investigating agency must assure the presence of their parents, guardians, support officers, social workers or representatives of organizations to support them and, also, the testimony-taking sessions of child victims and witnesses can be recorded to serve as an evidence at the court trial.

The body search must be conducted by the person of similar gender and the procedures for gathering other crime-related evidence on a victim's body must be carried out in a child-sensitive manner, i.e. in a separate room and in the presence of their parents or other support officers.

It is not permitted to request child victims of sex-related and violence-related crimes to be present in the confrontation sessions together with the accused/defendants.

2.3.3. Under Article 59 of the CPC, victims have the right to ask a lawyer, people's advocate or another person who is accepted by the IA, PP, or courts to protect their interests. Thus, proceeding-conducting agencies must inform child victims of such right and provide them with information about the [legal] aid addresses. If a child victim cannot select any person to protect his/her interests, the IA, PP or court, at his/her request, needs to request bar associations or law offices or agencies/organizations of which the victim is a member to assign a people's advocate to protect the victim's interest.

Proceeding-conducting agencies are responsible to facilitate those persons who protect interests of child victims to exercise their rights and perform their obligations during the proceedings in accordance with the CPC.

2.3.4. The composition of the trial panel in a case with child victims needs to have a people's juror being a teacher or representative of the women union or youth organization.

Upon summoning child victims and witnesses to testify in court, the court must take special measures to facilitate this process by allowing their parents, guardians, social workers and/or support officers to sit next to them; comforting them by allowing them to hold a favorite thing such as a toy or a Teddy bear; or rearranging the seats of proceeding-conducting persons and things in the court room to bridge the gap between the child and trial panel and other proceeding-conducting persons and arranging the child to sit in a position out of the sight of the accused; allowing the child to testify behind the screen so that they do not see the defendants; arranging the timetable for the child victim and/or witness to testify a day before in a more child-sensitive setting which shall be recorded and shown in the court room on the trial day; or making appropriate arrangements for the child to testify directly but from a separate room via video connection etc.

Under Articles 191 and 192 of the CPC<sup>42</sup> when victims or their lawful representatives are absent or when witnesses are absent, the trial panel shall decide, on a case by case basis, either to postpone the trial or to proceed with it. However, in the cases involving child victims and witnesses particularly in such sensitive cases as rape against children, forcible sexual intercourses with children, forcible sexual intercourses with children, having sexual intercourses with children, obscenity against children, sexual intercourse with juveniles etc, the court needs to rely on the documents and evidence in the case file. Such a trial session shall only be postponed if the absence of the child victim/witness or his/her lawful representative would adversely affect or impede the trial process.

The trial panel must question child victims and witnesses in a child-sensitive manner taking into account their ages and developmental stage.

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<sup>42</sup> Article 191. Appearance of victims, civil plaintiffs, civil defendants, persons with interests and obligations related to the cases or their lawful representatives; Article 192. Appearance of witnesses;



Subject to the request of child victims and witnesses or their lawful representatives, defense counsels or parents, the child victims and witnesses should be allowed to access the court room before the trial to get to know the court structure.

2.4. The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime encourages the State parties to ensure that child victims and witnesses shall be assisted by social workers or other support officers during the time they come to contact with the criminal proceedings. However, at the moment Vietnam has not been running any assistance program for victims of crime and the CPC contains no provisions to ensure that child victims as well as child witnesses will be provided with appropriate facilities and assistance during the proceedings. Therefore, new provisions should be added to the CPC to determine and regulate the role of support officers for victims during the investigation, prosecution and trial process, namely responsible agencies must appoint and train support officers for victims of crime; support officers have the right to participate in any stage of investigation, prosecution and trial; support officers must assume responsibility to assist child victims and witnesses in all aspects and to coordinate, when necessary, various healthcare, psycho-physiological and other aid services to improve the resilience and reintegration ability of juveniles during and after the criminal proceedings; if victims and witnesses are requested to testify in court, support officers must take every possible measure to help juveniles and their families to familiarize with the hearing process, including arranging a tour around the court room; and proceeding-conducting agencies must promptly notify support officers of their initiation of any case with criminal signs that involves child victims and witnesses.

2.5. On the above analysis, we believe that it is necessary to have a specialized court in charge of juvenile-related cases/matters. Each of staff, officers and judges of this Court should be a child specialist. Accordingly, the people's procuracy system should also have a separate team for this task.

Above are the recommendations that we would like to share with you on how to improve the juvenile criminal policy as stated in the CC and CPC in order to incorporate relevant rules of the CRC in domestic laws./.

**The 1<sup>st</sup> Legal Policy Dialogue in 2013:**

**“Criminal Laws in Viet Nam in the Context of International  
Integration”**

**Materials of the Project “Strengthening Access to Justice and Protection of  
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**Address: International Cooperation Department, Ministry of Justice  
60 Tran Phu street, Ha Noi**