

MOLISA

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**CREATING A PROTECTIVE ENVIRONMENT FOR
CHILDREN IN VIET NAM: AN ASSESSMENT
OF CHILD PROTECTION LAWS AND
POLICIES, ESPECIALLY CHILDREN IN SPECIAL
CIRCUMSTANCES IN VIETNAM**

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Introduction

Protection, care and education of children are one of the best traditional practices of Vietnam. That tradition has been protected, respected and promoted. The attention and care of children are more evident since Vietnam has signed the United Nation Convention on the Rights of the Child in 1990; which is a strong commitment of the Government of Socialist Republic of Vietnam regarding of protection, care and education of children, ensuring all children are subject to equal treatment and best conditions for full potential development and a safe and healthy living environment so that all children are entitled to basic rights and fulfil their obligations.

Vietnam has been developing and improving its legislation in general as well as child care and protection legislation and policy. Vietnam's legislation has reflected international standards and harmonious adoption of them in Vietnam's specific context. This is the legal framework to ensure the exercise of child rights. However, in accompanied with rapidly increasing and diversified social relationships in child protection, the legal regulations in child protection need continuously review assessment and revision to accommodate Vietnam context as well as international legislations.

Facing this situation, Department of Legislation, Ministry of Labour, war Invalids and Social Affairs (MOLISA) has cooperated with expertise of some relevant ministries and agencies to conduct the assessment of legal documents, focusing on legislation for children in special circumstances; comparing with international legislation to identify the shortcomings and limitation of Vietnam legislation and on that basis, making recommendations for the improvement of Vietnam's legislation to ensure the harmonious development with international legislation and standards.

This document of "Assessment of child protection law and policy, particularly for children in special circumstances in Vietnam" will be helpful for managers, policy makers, child protection workers to make references and apply in their context, contributing its part on the protection, care and education of children.

We would like to express our gratitude towards legal experts, managers, and officers of relevant ministries, agencies, localities and international organisations in the area of child protection who have participated in the development process and contributed their views for this report. We also would like to thank United Nations Children's Fund (UNICEF) for its provision of technical experts and financial supports for the development and printing of this document.

It is recognised that there will be shortcomings in the development process of this document. Therefore, any feedbacks and comments from readers shall be appreciated and considered for the next revision.

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1. Introduction

The purpose of this report is to provide a comprehensive review of child protection legislation, policies and practices in Vietnam. Since the country's ratification of the Convention on the Rights of the Child in 1990, many different laws, decrees, policies and programmes on child protection have been promulgated. This report seeks to analyse and evaluate those legal normative documents against the Convention on the Rights of the Child and other international child protection standards. The objective is to identify key gaps and inform future policy and programme development in the child protection sphere.

This report is based on a desk review of relevant laws, subsidiary legislation, policies and programmes on child protection. To the extent possible, information about the implementation and effectiveness of those laws, policies and programmes has been drawn from available reports, surveys and studies on the child protection situation in Viet Nam. Any gaps in information may be addressed through field work to obtain input from key stakeholders at the national and sub-national levels.

The following definitions are proposed for the purposes of this Report:

Child: According to Vietnam's Law on Protection, Care and Education of, a child is a person under the age of 16 years. Under the UN Convention on the Rights of the Child, children are persons under the age of 18 years. Unless otherwise indicated, "child" in this report is used to indicate persons under the age of 16, except when used in reference to international standards.

Children at Risk: are children who have not yet fallen into special circumstances, but are vulnerable or at higher risk of falling into special circumstances due to the presence of risk factors in their family or community. This generally includes: children from poor families, children from single-parent household, children from dysfunctional family, children with developmental disabilities, and children from ethnic minority groups.

Children in Special Circumstances: The Law on the Protection, Care and Education of Children, Article 40 defines "children in special circumstances" (CSC) to mean destitute, abandoned children, disabled children, children being victims of toxic substances, children affected by HIV/AIDS, children doing hard and hazardous jobs or contacting noxious substances, children working far from their families, street children, sexually abused children, children addicted to narcotics and children in conflict with the law.

For the purpose of this Report, it has been proposed that some of these categories of CSC be combined, as follows;

- 1. Orphaned and abandoned children:** this includes children whose both parents are either deceased or have abandoned them and have no relatives to rely on; children with one parent who is deceased and the other is either missing or incapable of raising the child; and children who have been abandoned by their parents and are without parental care. This section of the report will also include a discussion of national and international adoption of children.
- 2. Sexually Abused Children and Commercial Sexual Exploitation:** includes children who have been sexually abused (rape, obscene acts, etc) and children subject to commercial sexual exploitation (prostitution, sex tourism, pornography, sale and trafficking).
- 3. Street Children / Homeless Children/Children working far from their families:** "Street children" has been defined in Vietnam to include four groups of children: a) children who have run away from home and live and work on the street, in public areas such as parks, under bridges in cities without their parents/guardians; b) children from migrant families living and working on the street, in public areas with one or both parents/guardians; c) children working on the street

who live at home with their parents/guardians; and d) children who have left home for economic reasons and live and work on the street, in public areas such as parks, under bridges in cities without their parents/guardians¹.

4. **Children subject to harmful or hazardous labour:** the report will distinguish between children who engage in acceptable work, and children who are subject to harmful or hazardous labour. Harmful or hazardous labour has been defined by the ILO Convention 182 as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (for example work in dangerous conditions, work in illegal activities such as drug trafficking, work that is physically too heavy for the child's age, etc.)

(See Section 6.5 below)

5. **Children affected by HIV/AIDS:** Children "affected" by HIV/AIDS are broader than just children infected with HIV/AIDS. It is defined by the international instruments as: children who are HIV-positive; children who are affected by HIV/Aids because of the loss of a parental caregiver and/or because their families are severely strained by its consequences (orphans and children living in affected families); and children who are most prone to be infected.
6. **Children who Misuse Drugs:** includes children who use illegal drugs and who are addicted to illegal drugs.
7. **Juveniles in Conflict with the Law:** this includes all persons under the age of 18 who are alleged or accused of committing a law violation, either administrative or criminal.
8. **Children with Disabilities:** includes children with physical and mental disabilities and applies equally to children who were born with disabilities, or children who are disabled due to accidents, illness, landmines/UXO or exposure to chemical substances.

¹ A study on Street Children In Hanoi and an assessment of UNICEF's Street children's project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003)

2. Overview of situation of children in special circumstances and vulnerable children

2.1. Child Protection at the Global and Regional Level

Although there has been near universal ratification of the Convention on the Rights of the Child (CRC), large numbers of children throughout the world are poorly protected from violence, abuse, exploitation, and maltreatment. Despite the high level of support expressed by governments through the ratification of various international conventions, protocols and agendas for action, abuses against children continue, including: violence in the schools and home; sexual exploitation through child prostitution, trafficking and pornography; engagement of children in hazardous work and forced labour; child soldiering; and harmful traditional practices such as early marriage. Child victims of these abuses are estimated to number more than 300 million².

The exploitation, abuse and maltreatment of children are detrimental to national socio-economic development. It contributes to childhood death, disability, and lifelong developmental problems, and affects children's ability to learn as well as their evolving capacities as parents, as citizens, and as productive members of society. Children who have suffered failures of protection have the right to help with physical and psychological recovery and social re-integration. However, equally important is ensuring that all children in society enjoy a protective environment to keep them safe.

In various countries throughout the world, legal reforms and special child protection programmes have been introduced to improve services to children who have experienced abuse, exploitation and maltreatment, and to ensure that those who mistreat children are held accountable for their actions. However, the magnitude and persistence of child maltreatment globally indicates that these legal and service interventions alone are not effective in reducing incidences of child maltreatment. Child rights based programming approaches shows that there should be more attention paid to prevention and intervention services to protect all children from abuse.

For this reason, there has been a growing recognition of the need to adopt an approach to child protection that considers a range of systemic factors, stressing prevention alongside response and intervention. Strategies now focus on building a "protective environment" for children, and in particular the key elements of: government commitment and capacity; legislation and enforcement; culture and customs; open discussion; children's life skills, knowledge, and participation; capacity of families and communities; essential services; and monitoring, reporting, and oversight³. In each country, the unique systematic factors that enable violence, exploitation, and abuse against children have to be understood and addressed. Only such broader, systemic child protection strategies will have lasting impact.

2.2. Children in special circumstances and Vulnerable Children in Vietnam

Over the last two decades, Vietnamese society has undergone radical economic, social and political changes. In general, the standard of living of the Vietnamese people has improved in recent years, and significant progress has been made in combating poverty. However, economic growth has been uneven, and significant segments of the population have yet to benefit fully from economic development. In order to address these inequities, the Government has promoted the development of social welfare schemes and has laid the legal and policy framework for poverty reduction and social welfare. One of the general ideas overriding Vietnam's consistent lines and policies is that people should be put at the centre of the country's development. Therefore, the protection and development of children have always been top priorities. Vietnam was the first country in the region and the second in the world to sign and ratify the UN Convention on the Rights of the Child (CRC).

2 Landgren, Karen, The Protective Environment: Development Support for Child Protection

3 Landgren, Karen, The Protective Environment: Development Support for Child Protection

However, as with all other countries in the world, ensuring that all children are protected from violence and exploitation remains a challenge in Vietnam. The increasing gap in living standards due to the shift to a market economy, rapid urbanization, family break-ups, and the erosion of traditional values have led to increased number of abandoned, neglected, abused and exploited children. MOLISA reports that, in 2004, there were over 2.5 million children in special circumstances - over 3 percent of the total child population. According to MOLISA and other government agencies, there are over 1.2 million children with disabilities, 263,000 children affected by HIV/AIDS (8,500 of whom are infected), 150,000 orphans, 23,000 child labourers, 20,000 child sex workers, 21,000 street children, 13,000 children in conflict with the law, 8,000 drug users, and 126,309 children who were deprived of the care of their biological parents. In addition, there are also 1.2 million children living in poverty situations, 86% of whom are Kinh (Kinh is one of the 54 ethnic groups in Vietnam). Many children in special circumstances are struggling to survive on their own; some are forced to work and live on the streets, and a small number are living in institutions.

Vietnam has demonstrated its commitment to tackle these challenges through the development of numerous legal normative documents, programmes and other initiatives to promote a protective environment for all children. In addition to the CRC, it has ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (December, 2001), the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict., Convention No. 182 of the International Labour Organization (ILO) on the Elimination of the Worst Forms of Child Labour (December 2000), the UN Convention on Combating Transnational Organizational Crimes (signed December 2001 but not yet ratified). Presently, Viet Nam is considering ratification of the Hague Convention on Protection of Children and Cooperation with respect to Inter country Adoption. Vietnam is also considering ratifying the UN Protocol on Prevention, Repression and Punishment of Trafficking in Persons, especially Women and Children

3. Child protection system in Viet Nam

In recent years, the Party and State of Vietnam have gradually developed and improved Vietnam's legal system to secure better consistency, reliability and promptly react to the newly emerging social relations as well as to steadily integrate into the internationally shared legal regulations. This increasingly improved legal system can be considered a firm foundation for the protection, care and education of children, for the balanced development of children to shoulder the future of the country.

Many legal normative documents have been introduced to address various aspects of child protection. Basic principles and roles and responsibilities for the child protection system have been defined in the Law on the Protection, Care and Education of Children, passed by the National Assembly of Vietnam in 1991 and amended in 2004. A Child Protection Strategy (2006-2010) has also been developed (still in draft form) to provide greater strategic guidance. In addition, several Programmes have been introduced and implemented to address specific categories of children in special circumstances, including the National Programme for the protection of Children in Especially Difficult Circumstances 1999-2002 (Decision No.134/1999/QĐ-TTg), the National Program of Action for Preventing and Tackling the Issues of Street Children, Sexual Abuse of Children and Child Labour for 2004-2010 (programme #19); the National Program of Action against Prostitution during 2006-2010 (draft); the National Plan of Action on Trafficking in Humans Decision No. 312/2005/QĐ – TTg by the Prime Minister on the approval of projects under the Action Plan against women and child trafficking for 2005-2010; Decision 17/2007/QĐ-TTg on the reception and community reintegration protocols for returned women and children victims of trafficking and the National Plan on Crime Prevention for 2005-2010 (including provisions on crimes committed by children and against children) and Decision 65/2005/QĐ-TTg of Prime Minister on the approval of Project on “Care of orphans, abandoned children, children with severe disabilities, children victims of toxic chemicals and children infected with HIV/AIDS”

Vietnam is in the process of gradually developing a system of child protection organizations from the central to grassroots level. However, the country does not as yet have a comprehensive, integrated system for preventing and responding to children in special circumstances, and as yet there are no designated, qualified social workers at the grassroots level to respond to child protection cases. Contingents of specialised staff at all levels working with children, families, and communities remain insufficient in quantity and quality, and social work has not been recognized as a profession. Social welfare policy in general and child protection approaches in particular are characterised by a “charitable” rather than rights-based approach. The provision of social services to vulnerable groups relies largely on voluntary efforts and non-profit organisations, rather than trained, paid professionals⁴.

The former Committee for Population, Family and Children (now MOLISA) has responsibility for state administration over child protection and is responsible for coordinating the implementation of programs, plans for children. However, there is no one national lead or focal agency responsible for all aspects of child protection. Implementing responsibility for various aspects of child protection has been designated to different Ministries and Sectors in line with their own functions as well as the classification of children. Under the Law on the Protection, Care and Education of Children, and Decree No. 36/2005/ND-CP on the implementation of that law, responsibility has been assigned as follows:

- * **CPFC:** responsible for State management on matters relating to children,, including developing policies and laws for children; organising the implementation of programmes on the protection and care of disadvantaged children; coordinating education and awareness on child protection; State management of child-support establishments with mixed elements; collection and analysis of data on child protection; and promulgation of criteria, norms and guidelines on child protection and child-support establishments. Under Programme 19, CPFC also has primary responsibility for schemes on juvenile delinquency prevention and support for street children. Under the National Plan against Trafficking and Women and Children 2006-2010, it has primary responsibility for

4 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

prevention of trafficking in children and commercial sexual exploitation of children. (This has been transferred to MOLISA since August 2007)

- * **MOLISA:** prime responsibility for promulgating regimes and policies towards children with deformities or disabilities, orphans and street children; State management over social support establishments, detoxification establishments and vocational training establishments; and promulgating and inspecting the enforcement of laws on child labour. Under Programme 19, MOLISA also has primary responsibility for the scheme on prevention of and solution to the situation of sexual abuse of children and the scheme on prevention and solution to children working in heavy labour and hazardous conditions. It is also primarily responsible, under the National Plan against Trafficking and Women and Children 2006-2010, for organising vocational training, job placement, and community re-integration for the cross-border trafficked women and children who returned home.
- * **Ministry of Public Security:** responsible for application of measures to prevent and combat acts of infringing upon children's rights and educating and reforming juveniles in conflict with the law; They are also the coordinating agency for implementing the National Plan of Action on Trafficking in Women and Children, as well as the Plan on the Prevention and Fight against Prostitution.
- * **Ministry of Justice:** providing legal assistance for disadvantaged children; managing adoption (foreign and domestic); conducting awareness and education on child protection legislation;
- * **Ministry of Health:** responsible for improving the quality of medical treatment for children, with special attention to children in special circumstances
- * **Ministry of Education:** Prime responsibility for developing programmes for awareness and education on child protection; adopting policies on tuition fee exemption and reduction, and appropriate measures for disadvantaged children to integrate themselves into study; coordinate with MOLISA to define educational programmes for schools and classes for children with disabilities; define the education programme for reform schools.
- * **Planning and Investment Ministry:** to develop child protection plans and include them in annual and long-term socio-economic development plans; mobilise domestic and international resources for child protection work
- * **Ministry of Finance:** guide other ministries and People's Committee in making annual and long-term budget estimates for child protection, propose policies for mobilising funding sources for the work of child protection;

In general, implementing responsibility in the field of child protection has been assigned under various programmes and plans of actions addressing particular categories of children in special circumstances, rather than through a comprehensive, systems building approach.

4. Primary Prevention Activities

“Primary Prevention” refers to activities directed at the general population with the goal of promoting a healthy, protective and caring environment for all children, and preventing the occurrence of children in special circumstances before it starts. This generally encompasses the promotion of children’s rights in general, poverty reduction, public awareness campaigns, and capacity building of parents. In addition, primary prevention activities often include a specific focus on gender issues, and in particular seek to address the low status of girls in society and the impact that this has on their victimisation.

4.1. *Convention of the rights of children, International Standards and Good Models*

Article 19 of CRC requires States parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention.

The UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) state that the well-being of children from their early childhood should be the focus of any prevention programme. Although the Guidelines are directed at the prevention of juvenile delinquency, their general prevention strategies may be considered to have broader application to all child protection issues. The Guidelines emphasise that due respect should be given to the proper personal development of children, and they should be accepted as full and equal partners in socialisation and integration processes. They recommend that emphasis be placed on preventative policies that facilitate the successful socialisation and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the workplace.

Creating a healthy, protective and caring environment for children requires strategies to ensure that the full range of rights under the CRC are respected and enjoyed by all children. The Committee on the Rights of the Child has highlighted the following key measures for promoting the rights of the child, and creating a protective environment for all children⁵

General Measures to Implement the CRC: The UN Committee on the Rights of the Child has identified a wide range of general measures that are needed for effective implementation of the CRC, including: a comprehensive national plan of action for children; an institution within Government to coordinate implementation of the CRC; systematic monitoring of the implementation of the CRC through effective child-related data collection, analysis, evaluation and dissemination; an independent national institution for children’s rights (such as children’s ombudsman offices); education, training and awareness-raising on children’s rights; and strategies for poverty reduction and to ensure sufficient budgetary allocation for the implementation of child rights⁶.

Promoting Maternal and Child Health: ensuring that everyone has access to quality pre-natal and early childhood health services can help ensure that children get a healthy start in life, and can also improve early attachment between mother and child. Immunization is also essential to prevent illness and disability. In addition, special measures are now necessary to prevent HIV/AIDS transmission, including strategies to promote HIV/AIDS prevention information and education (including peer education and youth-specific HIV education), and to prevent mother-to-child transmission. Children should also be

5 See UN Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5, 27 November 2003 and Recommendations following General Discussions on Violence Against Children Within the Family and in Schools, 2001.

6 UN Committee on the Rights of the Child, General Comment No. 5, CRC/GC/2003/5, 27 November 2003

protected from early pregnancy, HIV/AIDS infection and other sexually transmitted diseases by providing them with access to adolescent-friendly, confidential sexual and reproductive health services, including voluntary HIV/AIDS counselling and testing, information on family planning and contraceptives, the dangers of early pregnancy, safe abortions services, and the prevention and treatment of sexually transmitted diseases.

Child Friendly Schools: In addition to being essential to a child's development, education has been identified as a key preventative strategy, particularly with respect to reducing a child's vulnerability to sexual exploitation, labour exploitation and involvement in criminal activity. The Riyadh Guidelines emphasise that education and vocational training should be available and free for all and should promote the development of the child's personality, talents and mental and physical abilities to their fullest potential. Schools should teach values, promote child-centred, inter-active learning, encourage a child's participation, and provide an environment that is safe and free from violence, including physical discipline or other forms of humiliating or degrading treatment.

Addressing Culture and Customs: creating a protective environment for children also requires changes to culture and customs that are prejudicial to children's rights. For the right to child protection to be respected, traditional practices that are harmful to children, or that reinforce the child's position in society as an object of parental control, must be confronted and changed.

Changing long-standing customs and behaviours is one of the biggest challenges to creating a protective environment for children. Where violent, exploitative, or abusive practices are linked to traditions or belief systems, promoting behavioural change becomes a sensitive matter. If families, communities, and institutions do not attach high value to all forms of child protection, the best legislation in the world cannot keep children safe⁷. Addressing these issues therefore requires concerted efforts to promote dialogue and discussion and to build social consensus for change.

Open Dialogue and Public Awareness: Child protection issues are often considered sensitive and therefore not openly discussed by the government, schools, the community, the media, and in the family. Reluctance to speak openly about sensitive or taboo subjects makes it difficult to promote behavioural change and to identify problems within the community. It also makes children reluctant to talk about their problems or report incidents of abuse and maltreatment.

Creating a protective environment requires acknowledgement and open discussion of child protection issues. Protection failures should be acknowledged at the community and national level, and children should feel free to discuss these issues at home, at school, and with each other. The media should be encouraged to play an active role in educating the public and raising awareness, as well as in calling attention to violations. Public information campaigns should be launched to raise awareness on a broad range of child protection issues, including: the right of every child to grow up in a family environment; the harmful effects physical discipline of children and alternative, non-violent ways to discipline a child; the harmful effects of hazardous child labour and preventative measures; the harmful effects of commercial sexual exploitation of children and measures for children and families to protect themselves; the harmful effects of drug use, and information for parents on early symptoms of drug use in their children and how to get help; prevention of accidental childhood injuries through the development of a safe home environment and traffic safety; land mine awareness; HIV/AIDS prevention; challenging prejudices, superstitions and stigma against disabled children and children affected by HIV/AIDS; and how to report or seek assistance for a child who is suspected to be in need of protection. Children should be meaningfully involved in all aspects of the design and implementation of awareness-raising campaigns, including through peer education efforts.

Promoting Positive Parenting: Parents and other caregivers are generally the single most influential factor in a child's development. Strengthening the protection capacity of families and communities requires strategies to reinforce positive parenting practices, and to encourage the abandonment of harmful ones. In particular, the UN Committee on the Rights of the Child has urged States parties to clearly prohibit physical punishment of children, and to raise awareness on the harmful effects of physical

⁷ Landgren, Karen, *The Protective Environment: Development Support for Child Protection*

punishment, shaming, etc and promote alternative forms of discipline in families. This requires educative measures to change societal beliefs and parenting practices. The Riyadh Guidelines recommend that measures be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care; to promote positive parent-child relationships; to promote family cohesion and discourage the separation of children from their parents (e.g. through abandonment or institutionalisation by the parents); and to sensitise parents to the problems of children and encouraging their involvement in family and community-based activities. Parents should be provided information and training on child development, positive parenting practices, non-violent discipline techniques, maternal and child health issues, and the prevention of accidental childhood injuries through the development of a safe home environment.

Promoting Children's Life Skills, Knowledge, and Participation: Children can also be important agents in their own protection, and empowering them with awareness of their rights and ways to minimise risks can make them less vulnerable and more resourceful. Programmes and activities should be designed (for both in and out of school children) to provide children with information about child protection issues, and to teach children safety and protection skills. In addition, families, schools and communities need to help prepare children for their future responsibilities as adults, parents and citizens, and to create an environment where children can voice their problems and participate in decision-making. Children are less vulnerable to abuse, exploitation and criminal involvement when they are raised in an environment in which children are aware that they have rights, are encouraged to form views and express them, are provided with necessary information, are taught problem solving and negotiating skills, have their self-esteem valued by adults, are feel a sense of connectedness to their family, school and community. Communities should provide a wide range of opportunities for children to participate in the community, including through youth organisations, cultural activities, community centres, and recreational activities.

4.2. Viet Nam, policies, programmes

General Measures to Implement the CRC:

Since ratifying the CRC, Vietnam has taken many efforts to implement the provision of the Convention:

The Committee for Population, Family and Children Committee (CPFC) has been designated as the body responsible for coordinating the implementation of the CRC, and a systemic oversight mechanism has been introduced under CPFC to monitor CRC implementation via collecting, analyzing, evaluating and propagating child-related data. However, Vietnam does not yet have an independent national institution (such as a children's ombudsman or human rights commission) to monitor children's rights.

In addition, National Programmes of Action for Children 1991- 2000 and 2001-2010 have been developed and implemented. The current National Programme of Action for Children is mainly aimed at creating the optimum conditions to meet the needs and basic rights of children, to prevent and push back the dangers of harming children, and to build a safe and healthy environment for Vietnamese children to have the opportunity to be protected, cared for, educated and develop in all fields and have an ever better life. The program sets specific, time-bound objectives in relation to children's health, nutrition, and education, access to clean water and environmental hygiene, cultural and recreation activities. It includes a stated goal of protecting children from social evils and all forms of violence and discrimination, and includes specific targets in relation to care for orphans, rehabilitation and treatment for disabled children, and reductions in the number of childhood injuries and accidents, street children, children engaged in hazardous labour, sexual abuse and trafficking, children addicted to drugs, crimes committed by children, and children infected by HIV/AIDS.

Since Vietnam's ratification of the CRC, significant education, training and awareness-raising on children's rights has been conducted. The CRC has been translated into Vietnamese and some ethnic languages and widely distributed. Awareness on children's rights has been promoted through a broad range of communication activities, including regular television programmes on children's rights, children's rights clubs, annual meetings between children and senior government officials, and advocacy activities of the Youth Union. The CRC has also been incorporated into the school curriculum.

Poverty reduction has also been a significant emphasis of the Vietnamese government, and strides have been made in ensuring that every child is provided an adequate standard of living. As a result of strategic investments under the National Target Program on Hunger Eradication and Poverty Reduction 2001-2005, the rate of poor households decreased dramatically from 17.2% in 2001 (2.8 million households) to 8.3% in 2004. However, it is estimated that by the end of 2005, there remain 1.1 million poor households in the whole country (less than 7% of the total households all over the country)⁸. Collectively, ethnic minorities have high levels of poverty, and the rate of poverty reduction in ethnic minority areas has been significantly lower than the national average. Poverty reduction strategies have therefore been adjusted and renewed through the National Targeted Programme on Poverty Reduction (2006-2010) (draft). The new draft strategy places priority on creating supportive policies for poor people, poor households and poor communes, including improved access to health care, education, social security, housing, productive land and tools. The slow rate of poverty reduction amongst ethnic minority groups is being addressed through the Programme, Socio-economic Development Programme for Extremely Difficult Communes in Ethnic Minority and Mountainous Areas for 2006-2010⁹.

Although there has been significant investment for child protection, care and education provided by the state budget and other resources, there is no separate and clear national budget for child protection which is integrated with socio-economic development plan. To address this issue, Decree No. 36/2005/ND-CP detailing the Implementation of the Law on the Protection, Care and Education of Children assigns responsibility to the Finance Ministry and the Planning and Investment Ministry to ensure that child protection, care and education plans are incorporated into the annual and long-term socio-economic development plans, and that mechanisms are in place to mobilise funding sources for the work of child protection, care and education. Provision has also been made for the establishment and management of a child support funds, which have been established from the Central to the District level under the management of MOLISA.

Promoting Maternal and Child Health

Under the Law on the Protection, Care and Education of Children (Article 15.2), all children under the age of six are entitled to free primary health care, including free-of-charge medical examinations and treatment, at public medical establishments. The law requires the State to adopt policies to develop the health system, diversify medical examination and treatment services, exempt children from medical examination, treatment and rehabilitation fees or ensure these fees are significantly reduced, and ensure medical examination and treatment services for children under six years of age are adequately funded. In particular, the Law states that the Government shall create separate budgets for the provision of free-of-charge medical examination and treatment services for children under six years of age in the annual plans of the Ministry of Health and the People's Committees of each Province and centrally-administered city, both at the central and local level. This was been implemented right after the introduction of the Law on Protection, Care and Education of Children. Parents or guardians are responsible for ensuring children receive proper health checks, immunisations, medical examinations and treatment (Article 27).

Separate budgets for the provision of free-of-charge medical services for children fewer than 6 years of age have been included in the annual plans of the MOH and PC at all levels, necessary budget has been calculated in the annual State budget projection. In 2005, the National Assembly approved to allocate a projected budget of VND 700 billion (some USD45 million) for the aids from central down to the communal level. However, not the total amount of this projected budget was used in 2005, so the Government allowed localities to use the remainder in procurement of medical equipments for healthcare centers and pediatric wards and hospitals. In 2006, the aid has been provided to cover all real expenses. The Government cover all the real expenses of medical checks and treatments of children fewer than six years of age for all State-run healthcare establishments at all levels. The payment and expenditure of budget for free checks and treatments of children fewer than six has been closely monitored, instructed, managed. (To date, there have been four documents providing regulations on this issue including: Circular 26 by the MOF, Circular 02 by the CPFC, Circular 14 by the MOH and Circular 15/2008/ 15/2008/TTLT-BTC-BYT).

8 National Targeted Programme on Poverty Reduction, 2006-2010

9 Decision No. 07/2006/QD-TTg, dated January 10, 2006

Access to health care services tends to vary depending on income level, geographic location, ethnicity and other factors, and the issue of equitable access to healthcare is becoming a major concern. In order to promote greater access to health care services, Vietnam has introduced a programme of free health care service for poor families wherein families who are below the designated poverty line may be provided with a Medical Insurance Card. The Free Health Card for the Poor scheme was introduced in 2002 as part of the HEPR programme. Under this scheme, the poor are given a fully subsidised health insurance card that covers a comprehensive package of services. The Health care Fund for the Poor is financed from the state budget ensuring a minimum of 75% of the fund total value and the remaining is funded by local budgets and contributions from national and international organisations. Although statistics were not available on the number of children benefiting from this programme, it is estimated that between 2001-2004, 14 million poor people had access to free health care. However, the quality of local-level services and the number of beneficiaries with access to province-level and central-level medical care and treatment were limited. Challenges identified with the programme include complicated procedures or late arrival of health insurance cards or MCT cards, the quality of health care service provided, the fact that the maximum cost for MCT was still low, and inconsistent targeting of beneficiaries¹⁰.

Accessibly, Child-Friendly Schools

Between 1997 and 2004, the share of total public expenditure on education and training rose from 14 to 18.6 per cent,¹¹ demonstrating Viet Nam's continued emphasis on and commitment to education. Children's right to education is guaranteed under the Law on Education, the Law on Universalization of Primary Education, and the Law on Protection, Care and Education of Children. The Law on Protection, Care and Education of Children states that children have the right to study, and are entitled to study at public-education establishments free of charge (Article 16). The State must adopt policies for the development of preschool and general education, as well as policies for the exemption and reduction of school fees, the granting of scholarships and the provision of social support to realise social equity in education (Article 28). Examples include Decree 75/2006/NĐ – CP dated August 2nd, 2006 providing guidelines to the implementation of the Law on Education (Article 3); Decision 82/2006/QĐ – TTg by the Prime Minister on amending Decision 194/2001/QĐ – TTg dated December 21, 2001 by the Prime Minister on school fee reduction for students attending Boarding schools for ethnic students and Pre-university schools for ethnic students; Law on Education 2005 providing regulations on scholarship and tuition reduction for policy-beneficiaries students (Article 89); Decree 75/2006/NĐ – CP on education universalization (Article 2); and the Law on Education (Article 11).

Under the national programme on universalisation of primary education, it is compulsory for all children to attend school up to the completion of primary schooling, and a comprehensive programme has been developed to identify and assist out-of-school children to re-enter schooling either through the general education system or through non-formal "compassion" classes. As of 2005, 100 percent of provinces/cities succeeded in primary education universalization and illiteracy eradication, and 96.8 percent of children enrolled in school in conformity with their age in the school year of 2002-2003¹². However, rates of enrolment remain lower in remote and mountainous areas, and amongst ethnic minority groups. Ethnic minority children, children with disabilities, children affected by HIV/AIDS, and children whose parents have migrated to urban centres are among the most disadvantaged in terms of primary school education access.

Between 2001 and 2005, tuition waiver was provided for more than 3 million poor and ethnic school children, annually. The rate of enrolment in school ages increased by 11%, and even 16.5% in its coverage of households with access to tuition waiver. Education support has been considered to have a positive impact¹³. In addition, a programme on universalisation of secondary education has been developed to promote greater access to secondary education and vocational training¹⁴.

10 National Targeted Programme for Poverty Reduction 2006-2010

11 It should be noted, however, that although per cent expenditures on health may not have risen, absolute expenditures have, since total public expenditure has increased.

12 Vietnam Initial Country Report on the Optional Protocol to the CRC, 2005

13 National Targeted Programme for Poverty Reduction, 2006-2010

14 Circular guiding the implementation of Decision no 62/2005/QĐ-TTg dated on 24 March 2005 by the Prime Minister on policies supporting the generalization of secondary education.

However, access to quality, child-friendly education and to secondary education and vocational training remains a challenge for many children. The cost of school fees, textbooks, and other school costs remain a barrier for children from lower-income families that do not qualify for fee waiver or reduction. Although poor children may be exempt from regular tuition fees at primary level, schools often charge parents an array of indirect fees, including construction costs, class funds, transcript fees, electricity fees, notebooks fees, dormitory bed costs and drinking-water fees. Many poor parents, particularly in ethnic minority areas, cannot afford both the loss of labour when a child is at school and the loss of family income to support that child through school, and thus pull their children out. School retention and completion remain a challenge, with only 89 per cent reaching grade five.¹⁵

The National Targeted Programme for Poverty Reduction 2006-2010 therefore identifies equal access to schooling as a priority. One of its key objectives is to support children of poor households to continue their schooling as equally as other children through : waiver of all school fees (for all grades and levels that require school fees) and contributions to school restoration for pupils who are children of ethnic minority's households and children with disabilities ; reduction of 50% of school fees (for all grades and levels that require school fees) and 50% of contributions to school restoration for pupils who are children of other poor households. ; reduction by 50% of school fees for students who are children of poor households and studying in vocational training schools, colleges and universities ; and provision of text books and notebooks for pupils at all grades who are children of ethnic minority's households living in communes of zone III and staying in boarding schools.

Open Dialogue and Public Awareness

In recent years, Vietnam has taken significant steps towards officially recognizing and promoting open dialogue and awareness on pressing child protection issues. Specific child protection issues have been acknowledged and public dialogue promoted through the following programmes:

- National Programme of Action for Special Protection of Children in Especially Difficult Circumstances 1999-2002 (Prime Minister Government Decision No. 134/1999/QD-TTg)
- National Program of Action for Preventing and Tackling the Issues of Street Children, Sexual Abuse of Children and Child Labour for 2004-2010 (programme #19)
- National Program of Action against Prostitution 2001-2005 (Government Decision No. 151/2000/QD-TTg), and National Programme of Action against Prostitution 2006-2010.
- National Strategic Plan on HIV/AIDS Prevention and Control for period 2001-2010 with a vision to 2020
- National Plan of Action Against Trafficking in Women and Children, 2004-2010 (Government Decision No. 130/2004/QD-TT)
- National Plan on Crime Prevention for 2005-2010.
- National Programme on Community-based Caring for some categories of Children with Specially Difficult Circumstances 2005-2010 (Decision No: 65/2005/QD-TTg)

Each of these programmes identifies public awareness and dissemination of information as a key prevention strategy, and highlights the need to promote behavioural change through increased awareness at the family and community level. The Women's Union, Hochiminh Communist Youth Union, CPFC, local authorities and mass media have cooperated to promote public awareness campaigns on:

- Popularising knowledge of raising healthy children and educating good children,
- Propaganda and education on the Law on Protection, Care and Education of Children.
- The adverse impacts of hard, hazardous child labour and prevention measures;

15 UNESCO Institute of Statistics database for 2001/2002.

- The impacts of child drug abuse, parents' awareness to recognize signs of drug abuse among their children and access to assistance;
- The right of every child to grow up in a safe, happy family environment;
- The harmful effects of physical discipline of children, and alternative, non-violent ways to discipline a child;
- The adverse impacts of commercial sexual exploitation of children and preventative measures;
- Land mine awareness;
- HIV/AIDS prevention, including peer education and youth-specific HIV education;
- Reducing prejudice against children with disabilities

Communication and education about child protection issues have been implemented with frequency, and in various forms. Diverse methods like holding workshops and seminars on relevant legal documents, law learning contests, reportage contests and campaign poster drawing contests are organized together with traditional campaigns in districts and cities on the occasion of "Action Month for the Children" and "Viet Nam's family day". The mass media has paid great attention to reporting on child protection issues. In addition, agencies and mass organizations have also promoted awareness through the production of videos; leaflets and pocket sized books with clear, easy to remember messages and attractive layouts to disseminate directly to families, women and children; organisation of club activities and artistic performances; talks and group meetings to publicize laws along with experiences with a view to raising families' awareness of and responsibility for the protection of women and children; and educating everyone to be aware of criminals' tricks. Disseminated documents are translated into many ethnic minority languages and are available in all areas of the country. Children in many places (even in and outside of schools) are both the subject of publicity and a force participating directly in activities which teach living and HIV/AIDS prevention skills along with ways to avoid being a victim of child trafficking and sexual abuse. These experiences take place in large part through different fora for children such as: "Small Kid Star", "Children communication teams" (with 12,988 teams nation wide), "Child Rights Clubs" (with 654 teams), "Club of Little Reporters" (with over 10 Clubs).¹⁶

Parallel to the activities of communication and education, the government has also promoted movements for building healthy villages, districts and making sure they do not have social problems like heroin addiction and prostitution. In 2003 alone, the nation qualified 2500 villages and wards as healthy residential areas. As a result, in many areas people have understood the risks for their children, have been shown preventive measures to take and have been equipped with knowledge of the law and the policies needed to address and solve the problems of children being abused. A number of children have been taught skills for protecting themselves and to participate in issues concerning their lives as well as to help other children. Leaders at various levels have given timely instructions addressing the issue with a high sense of responsibility.¹⁷

However, despite these efforts, some traditional parenting practices that are harmful to children (such as physical punishment, excessive educational pressures, etc) persist. The national Child Protection Strategy (draft) highlights the need for improved awareness of parents, relevant agencies and sectors and ministries on the importance of preventing children from mental and physical violations or abuses, and notes that some backward traditions and norms that exert negative influences on child protection have not been abolished. Children are not systematically involved in the design and delivery of awareness campaigns and programmes. In addition, education and awareness campaigns tend to focus on specific issues and categories of CSC, rather than addressing more broadly the issue of creating a protective environment for all children.

16 Vietnam Initial Country Report to the CRC on the Optional Protocol to the CRC, 2005

17 Vietnam Initial Country Report to the CRC on the Optional Protocol to the CRC, 2005

Promoting Positive Parenting

Both the Law on Family and Marriages and the Law on Protection, Care and Education of Children include detailed statements of the obligation on parents to care for and promote the healthy development of their children. The Law on Protection, Care and Education of Children also outlines the responsibility of the government, communities and family members to support parents in raising their children. However, programmes and services to promote positive parenting and to provide parenting skills education are limited. Promoting better parenting practices has not been explicitly recognised as a prevention strategy in any of the Programmes or Action Plans on child protection.

The need for greater focus on parenting skills and parenting education has been recognised in the Vietnam Family Strategy, 2005-2010¹⁸ The Strategy outlines the obligation of the government, mass organisations, communities and families to gradually stabilise, consolidate and build wealthy, happy and progressive families. One of the key objectives of the strategy is to improve awareness of the roles and responsibilities of the family, and create significant changes in awareness and action of each family and community on the importance of protection, care and education of children, especially prevent and address negative effects on children. The Strategy calls for regularly implemented family educational activities so as all members of the family at relevant ages can participate in pre-marital education and know how to organise for a civilised family life in accordance with the laws of the Government.

4.3. Analysis and Recommendations

Vietnam has made significant strides in recent years towards promoting the rights of children. Measures taken to improve respect for children's rights, to reduce poverty and inequality, to increase access to education, and to promote general awareness on child rights issues have all contributed to reducing children's vulnerability to violence, abuse and exploitation. However, there are some gaps in existing general prevention strategies that could be improved upon in order to strengthen the protective environment for children, including:

- Establishing an independent body (ombudsman for children or human rights commission) to monitor children's rights
- Allocation of a specific budget for child protection and designation of one focal point for child protection
- Improving access to and quality of general and non-formal education for poor children, children at risk, and children in special circumstances
- Promoting greater dialogue on child protection issues, and in particular addressing cultures, customs and parenting practices that are harmful to children.
- Regularly conducted public awareness campaigns regarding parental responsibilities and the rights of children within family life;
- Parent education programmes to teach parents about positive parenting practices and non-violent discipline techniques
- Incorporating life skills education and parenting skills education in the core secondary school curriculum,
- Promoting education and information campaigns through schools and the mass media that provide children with information on child protection issues and that teach children safety and protection skills.
- Promoting greater participation of children and adolescents in decision-making within the family, school and community, and in the design and implementation of child protection awareness campaigns and programmes.

18 Decision No 106/2005/QĐ-TTg

5. Secondary prevention activities

“Secondary Prevention” refers to activities directed at children and families who have been identified as being vulnerable or at higher risk of falling into special circumstances due to the presence of identified risk factors such as poverty, young maternal age, single-parent household, family dysfunction, developmental disabilities, ethnic minority, etc. The aim of secondary prevention activities is to strengthen parental skills and help parents develop coping mechanisms for dealing with stress and difficulties in their lives.

5.1. CRC, International Standards and Good Models

While the CRC acknowledges the primary responsibility of parents in the raising of children, it also recognises that some parents may require support from the government to fulfil their responsibilities. Article 18 of the CRC requires States parties to provide appropriate assistance to parents and other caregivers in the performance of their child-rearing responsibilities. Article 19 states that measures to prevent child abuse and maltreatment should include the establishment of social programmes to provide necessary support for the child and for those who have the care of the child.

Both the Optional Protocol to the CRC and the Riyadh Guidelines highlight the need to give special attention to children who are particularly vulnerable or at social risk. Providing services and support to children and families who are under stress or experiencing difficulties can help strengthen the capacity of parents to respond to the needs of their children and prevent the child from falling into difficult circumstances. This requires comprehensive secondary prevention strategies, including:

Early Identification of Children and Families at Risk: mechanisms need to be in place to identify and provide appropriate support to parents who may need extra help in bringing up their children due to poverty, early maternal age, family dysfunction, etc. In addition, all professionals working with children, including health workers, teachers, police, local authorities, and community leaders should be equipped with the knowledge, skills and motivation to identify and respond to children who are at risk.

Support to Vulnerable Families: a broad range of extra support and services should be available to vulnerable parents to help build their capacity to provide a nurturing and protective environment for their children, including: social welfare benefits (financial assistance); income generation support; home visiting and befriending/support programmes; family support centres; drug and alcohol addiction treatment; counselling; respite care; peer support groups; and parenting education classes. In particular, families caring for children with disabilities often need additional support in order to reduce family stress and the risk of the child being abused, abandoned or institutionalised. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities recommend measures to support parents so that children with disabilities are able to live with their families, including counselling, respite care, attendant care, and equipment necessary to care for the child.

School Retention and Reintegration: as noted above, education is an important preventative tool, and special emphasis should be placed on supporting disadvantaged and vulnerable children to enrol in school and to attend regularly. This should include a policy on inclusive education for disabled children, non-discrimination against disadvantaged children (including no discrimination due to ethnic background, HIV/AIDS status or because a child has been in conflict with the law), and special scholarships or fee exemptions for vulnerable children and children from disadvantaged families. In addition, strategies should be in place to prevent vulnerable children from dropping out of school, and to support those who have dropped out to be reintegrated into regular schools (e.g. through catch-up classes or other non-formal education) or to gain access to vocational training.

Programmes for Vulnerable Children: The Riyadh Guidelines state that a range of services and helping measures should be provided to deal with the difficulties experienced by children in the transition to adulthood. Schools should extend particular care and attention to children at risk, and serve as resource

and referral centres for the provision of medical, counselling and other services for children experiencing difficulties. Communities should provide a wide range of community-based support measures for children, including services to respond to the special problems of children who are at social risk. This could include, for example, peer or adult mentoring programmes; drop-in centres; recreational programmes targeting children at risk; and life skills programmes to build children's ability to address the practical problems they face in their lives by improving their skills in decision-making, problem solving, and critical thinking.

5.2. VN Law, policies, programmes

Early Identification of Children and Families at Risk

Under Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children, the former CPFC - now MOLISA has recently been designated as the agency primarily responsible for providing measures to prevent children from falling into difficult circumstances¹⁹. However, the Decree does not stipulate in detail what types of preventative measures should be taken, or how to identify children and families who are at risk of falling into difficult circumstances. There are currently no clear mechanisms in place to proactively and systematically identify children and families who are vulnerable or at risk of abuse, abandonment, maltreatment, prostitution, drug use or labour exploitation. Measures for early detection and early intervention to support children with disabilities are also limited²⁰. Health workers, teachers, police, local authorities, and community leaders are not systematically instructed and equipped with the knowledge, skills and motivation to identify and respond to children who are at risk, including early detection of disability, neglect and abuse.

Support to Vulnerable Families and Children

The Law on Protection, Care and Education of Children states that, when encountering difficulties which cannot be overcome without additional assistance, parents and guardians may elicit assistance from concerned agencies and/or organisations to fulfil their responsibility to care for and nurture children (Article 24). However, the roles and responsibilities of the various agencies and organisations in assisting parents has not been clearly defined, and there is no clear mechanism through which families can seek and obtain support services (other than financial support).

As noted above, mechanisms have been put in place to provide financial and other support to families who are poor. In addition, a system of consultation centres has been set up in major cities to provide advice, counselling, and family dispute mediation. Many support clubs and compassion groups have been established for wives and mothers by mass organizations such as the Women's Union, which provide support and encouragement to mothers.

However, there are currently no systems or mechanisms in place to ensure that vulnerable families are systematically identified, professionally assessed and provided the necessary support to prevent their children from falling into special circumstances. Although the network of collaborators under the former CPFC (and now MOLISA) covers the whole country, has knowledge of families in their respective area, and can potentially provide social assistance and support to families and their children with special needs, its main task is limited to collecting basic statistical information of families. The number of families covered by one of the network's collaborator is often as high as 300 (average is 100-150). This makes it almost impossible for these individuals to have regular or more than superficial contacts with these families. In addition, only a few of these individuals have been trained as social worker or have a good understanding of counselling and case management methods.²¹ There are also limited support programmes in schools and the community designed specifically for and targeted to disadvantaged and vulnerable children (for example, mentoring programmes, adolescent counselling services, life skills programs, drop-in centres, recreational activities, etc).

19 Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children, Article 20.4)
20 Situational Analysis of Children with Disabilities in Vietnam, UNICEF and MOLISA, 2004
21 Bergeron, J and Tanaka, S "The Situation of Children in Institutions and Alternative Care Programs in Viet Nam", 2006

In order to address this shortcoming, the Family Strategy, launched with the issuance of Decision 106/2005/QĐ – TTg dated May 16th, 2005 by the Prime Minister calls for the creation of family and community services, including developing and improving the quality of counselling centres and other family support services. The Child Protection Strategy (draft) also calls for the strengthening of secondary prevention services designed to respond to designated at risk groups of children by identifying risk generating characteristics within the group and working to remove these before they create actual harm to children.

School Retention and Reintegration

In recent years, Vietnam has made significant strides in encouraging school attendance (at both the primary and secondary level) and preventing school drop-outs. As noted above, a system has been put in place to identify and provide fee exemptions or reductions for disadvantaged children, including children from poor families, children from ethnic minority groups, and children with disabilities. Children who have left school are supported to re-enter general education, or are assisted to attend non-formal “compassion classes”. However, reintegration into the regular school system is often difficult, and the quality of non-formal education is quite variable.

5.3. Analysis and Recommendations

Vietnam has not yet developed clear mechanism for early identification and intervention to support children and families at risk. It is recommended that this be addressed as a matter of priority, by:

- Professionalizing family support and child protection services. Establish a reporting and referral mechanism through which vulnerable families and children can be identified and seek support. Designate an agency to be responsible, and provide grass-roots level staff with social work training.
- Training teachers, health care professionals, local authorities, and other people working with children on how to detect the early signs of child abuse, neglect, exploitation and disability
- Establish a free “hotline” phone line that is accessible to children. This consulting phone line will be a friendly place where children can share their problems and anxiety without having to say their names and can receive positive, appropriate and practical feedback
- Strengthening programmes to support vulnerable parents, including counselling services, parenting classes, parent support groups/peer groups, and income generation support.
- Developing programmes specifically targeting disadvantaged and vulnerable children, including school-based guidance and counselling, mentoring, life skills programmes, drop-in centres and inclusive culture and recreation activities.
- Improving access to and the quality of non-formal education and vocational training for vulnerable children and children who have dropped out of the formal school system.

6. Tertiary prevention: identification, referral and support services

Tertiary prevention refers to the support and services provided to children when primary or secondary prevention measures have failed and the child has experienced maltreatment, exploitation, abandonment, drug use, criminal activity, etc. The aim of tertiary prevention strategies is to promote the child's recovery and reintegration, and to prevent the child from suffering further harm in the future.

Section 6.1 below looks at the basic components of a system for identification, referral and support services for children in need of protection in general. Sections 6.2 – 6.9 look at special requirements for individual categories of children in special circumstances.

6.1. General provisions for all CSC

Effective tertiary prevention requires a child-friendly system to receive reports of children who are in special circumstances, to conduct investigations and assessments, to provide appropriate support to the child and his/her family, and in serious cases, to prosecute the perpetrators.

6.1.1. CRC, International Standards and Good Models

Article 19 of CRC requires State parties to take all appropriate measures for the identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment, and, as appropriate, for judicial involvement. In addition, Article 39 states that State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim or any form of neglect, exploitation, or abuse. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The UN Committee on the Rights of the Child has emphasised that the State response to child abuse, maltreatment or exploitation must include supportive services for the child and his/her family, not simply coercive measures to sanction unacceptable behaviours. The circumstances requiring intervention to protect a child should be clearly defined in law (e.g. physical abuse, emotional abuse, neglect, sexual abuse, sexual exploitation, abandonment, exploitive or hazardous labour, disability, etc), as well as the procedures for effective, child-centred interventions. These procedures should promote inter-agency cooperation and multi-disciplinary approaches. Various agencies and professionals need to work in partnership with each other to plan comprehensive and co-ordinated child protection services.

Identification and Reporting: The UN Committee on the Rights of the Child has highlighted the need for countries to develop clear, accessible and well-published procedures for children in special circumstances to complain and receive assistance. Reporting procedures should be child-friendly, and should allow children to file complaints in their own right (not just through a parent or legal representative).

In addition, health care officials, teachers, child minders, police, border guards, labour inspectors, staff of institutions caring for children and local authorities should all be alert to the signs of abuse, maltreatment and exploitation, and should be aware of the procedures to report their concerns or suspicions. In some countries, specified categories of professionals are under a mandatory obligation to report any suspected case of child abuse or exploitation.

Investigation and Assessment: Investigation and intervention for CSC requires specialised, trained responses. In many countries, reports of children in special circumstances are primarily received and investigated by the child protection authority (social workers), with the police becoming involved only where a criminal offence has been committed. A protocol or inter-agency agreement guides both agencies in deciding how child protection enquiries should be conducted and, in particular, the circumstances

in which joint investigations are appropriate. While police investigations focus on detecting violations and sanctioning the perpetrator, social worker assessments focus on identifying the child's protection needs. In response to a report or complaint, a trained social worker makes enquiries to decide whether they should take action to safeguard or promote the welfare of the child, including taking emergency measures to protect the child from imminent harm. The social worker conducts an assessment of the child's needs, the parents' capacity to keep the child safe and promote his/her welfare, and of the wider family circumstances. Based on this assessment, an individualised plan of care is developed outlining what support and services should be provided to the child and his/her family.

Recovery and Reintegration: Supporting the rehabilitation and reintegration of children in special circumstances can be complex, and often requires long-term, specialised services and inter-disciplinary cooperation. Interventions are generally directed at both the child and his/her parents and family members, and are designed both to address the child's psycho-social needs, and also to build the protective capacity of the child's parents or other caregivers. Depending on the child's individual circumstances, the support needed may include: medical treatment, counselling, home visits, respite care, drug or alcohol addiction treatment, mentoring, peer support groups, catch-up or non-formal education, support for school re-entry, vocational training, safe housing, family income generation support. These interventions may be provided by a range of different agencies and professionals, including health care workers, counselling centres, drop-in centres, teachers, mass organisations, volunteers, etc. Inter-agency cooperation is therefore essential, as is a trained, dedicated case manager who can coordinate services and monitor the child's progress. Both the child and his/her parents should be actively involved in decision-making about the services to be provided.

The UN Committee on the Rights of the Child recommends that priority be placed on the recovery and reintegration of children in a family setting, working with the child's whole family, rather than placing the child in an institution (medical treatment centre, rehabilitation centre, etc). The Committee has also emphasised that sanctioning parents, and in particular deprivation of parental rights, is a drastic solution that should not be used in all cases of child mistreatment. Instead, priority should be placed on helping or supportive approaches that work with families to improve their parenting practices. However, where a child's parents cannot be located, or where the child would be at risk of harm in their care, then it may be necessary to remove him/her from parental care. The CRC states that this should be done only through an order of the Court, after due consideration of the child's best interest.

Alternative Care: Where a child in special circumstances cannot be permitted to remain with or return to his/her parents, the State must provide the child with alternative care through foster placement, adoption or if necessary placement in suitable institutions (Article 20 of the CRC). The UN Committee on the Rights of the Child has repeatedly emphasised that placement in institutions should be a measure of last resort, and has been critical of countries that over-emphasise the resort to and use of institutional care for children in special circumstances. Instead, child protection strategies should give priority to supporting the capacity of family members and substitute families to care for and protect children. The Committee recommends that States develop a policy to promote foster care and introduce measures to ensure a standardized approach to recruitment, evaluation and monitoring of foster parents. It has also highlighted the need for countries to establish clear criteria and procedures for admission of children to institutional care.

Where a child has been placed in alternative care, the child has the right to a periodic review of the care and treatment being provided (CRC Article 25), to maintain contact with his/her parents, unless contrary to the child's best interests, and to participate in decision-making. The Committee on the Rights of the Child recommends that States parties review legislation dealing with children in alternative care to ensure that all placement decisions are subject to periodic judicial review, including at the request of children themselves, and have family reunification as the preferred outcome. In addition, standards should be established for all institutions providing care and treatment to children, particularly in the areas of safety, health, protection from abuse, and the number and suitability of their staff. These institutions should be regularly monitored and inspected.

Child-Friendly Investigation and Court Proceedings. Where the child has been subject to serious maltreatment or exploitation, criminal prosecution of the perpetrator may be warranted. In such cases, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the UN Guidelines for Action on Children in the Criminal Justice System, and the Optional Protocol to the CRC and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime all emphasise the need to adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process, and in particular to adapt procedures to recognize the special needs of child victims, including their special needs as witnesses. This should include: child sensitive investigative and questioning techniques for police, prosecutors, and judges; cooperation between police and social workers in interviews and investigations involving children; measures to minimise the number of times the child is interrogated and to ensure that a social worker and parent or other support person is present; provision of free legal representation; witness support programmes to provide advice, assistance and pre-court familiarisation; alternative arrangements for giving testimony such as screens, video-tape and closed circuit television; access to compensation; protection of privacy through closed courtrooms and publication bans; and measures to protect the child's safety, including protection from intimidation and retaliation.

6.1.2. Vietnamese Laws, Policies and Practices

Article 41 of the Law on the Protection, Care and Education of Children states that, in the protection, care and education of children in special circumstances, importance shall be attached to: preventing and stopping these children from falling into special circumstances; promptly handling and alleviating these special circumstances; constantly supporting children in special circumstances through physical and mental rehabilitation and moral education; detecting, preventing and promptly handling acts which force or allow children to fall into special circumstances. Significant progress has been made in recent years in putting programmes and services in place to support children in special circumstances. However, as noted above, Vietnam has not yet perfected a comprehensive child protection system to ensure the systematic identification, reporting, and referral of children in special circumstances. As noted above, social work is a new profession, and designated, trained child protection staff have yet to be appointed from the central down to the grass-roots level. Steps are currently being taken to gradually introduce a more comprehensive system.

Identification and Reporting

Under the existing law of Vietnam, there are no separate complaint procedures for reporting incidents of children in need of protection. Therefore, complaints that a child has been abused, neglected, exploited or abandoned are made in accordance with the general complaints and denunciations procedures in accordance with either the Law on Complaints and Denunciation, or the Penal Procedure Code (if a crime has been committed against the child). The Law on Complaints and denunciations does not contain any restriction in terms of the legal capacity of a denunciator and therefore, in principle, children may become denunciators. However, because there are no special provisions regarding the means of denunciation and procedures for receiving denunciations from children, in practice, it is not easy for children to exercise the right to file a denunciation by themselves²².

In addition to the general complaint procedures, where parents commit illegal violation against their children, the MOLISA, Women's Union as well as other agencies/organizations and individuals can request Court to restrict the rights of parents though the separation of children from their parents.²³ However, this authority is reportedly rarely exercised in practice, and very few cases of children in need of protection are brought to the attention of the court by either CPFC or the Women's Union.²⁴ There is no mandatory reporting obligation on professionals who detect or suspect that a child is in special circumstances, unless the act committed against the child has criminal elements (Article 4 of the Penal Code).

22 Review of Child Abuse Laws and Policies in Vietnam, CPFC and UNICEF, 2006

23 Law on Marriage and Family, Article 42, Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children, Article 17

24 Review of Child Abuse Laws and Policies in Vietnam, CPFC and UNICEF, 2006

Investigation and Assessment

Under the current law of Vietnam, there are no special procedures for the investigation and assessment of children in special circumstances. Therefore, reported or suspected cases of children in special circumstances are resolved in accordance with the standard procedures under the Law on Handling Administrative Violations or the Criminal Procedure Code. There are various agencies that have the competence to receive and deal with denunciations involving children (CPFC; Ministry of Health, Ministry of Education and Training; MOLISA; Ministry of Public Security). These agencies, within their competence and functions, investigate the denunciation, define people responsible for violation of law and impose punishment measures or request other competent agencies to take measures.

Although the former CPFC (and now MOLISA) is a government organisation responsible for inspecting, supervising and dealing with complaints and denunciations on violations of law on children,²⁵ the law does not provide for concrete rights of this Committee to fulfil its functions. When receiving denunciations relating to children, the former CPFC (and now MOLISA) only has the right to clarify the case and then request the police to conduct necessary measures to prevent violations or to take measures to protect children such as limiting the rights of parents, or sending children to other individuals or care institutions.²⁶

Furthermore, while the former CPFC (and now MOLISA) has a separate Inspectorate Division to help the Minister-Chairperson of the Committee to review and clarify the denunciation and make conclusion and recommendations on measures to be taken, clear standards and procedures for investigations and assessment have not yet been developed. At the grass-roots level, there is a shortage of trained, qualified staff capable of conducting proper psycho-social assessments of children. Plans are in place to introduce a comprehensive case management system to assess the needs of individual children in special circumstances and their families and to provide services based on this assessment. However, this has not been fully implemented as yet. Currently, emphasis is largely on the punishment of perpetrators, and the main intervention for any form of abuse or exploitation within the family context is the restriction of parental rights. Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children stipulates very broad grounds for removing a child from parental care²⁷, and does not provide for any other possible interventions aimed at supporting the parents to be better caregivers.

Recovery and Reintegration

The Law on the Protection, Care and Education of Children stipulates that the State shall adopt policies to provide conditions for children in special circumstances to enjoy their rights; support individuals and families that care for and raise children in special circumstances; and encourage organisations and individuals to establish child-support establishments and ensure that all destitute children in special circumstances are cared for and nurtured. The forms of support to be provided to children in special circumstances include: 1. Voluntary contributions, either in kind or in cash; 2. Adoption, sponsorship or the provision of alternative family care for children in special circumstances; 3. Involvement in the care and nurture of children in special circumstances in child-support establishments; 4. The organisation of activities that assist children in special circumstances to minimise negative circumstances, including activities that offer children in special circumstances physical and mental rehabilitation and moral education (Article 43). In addition, the State shall create conditions for children in special circumstances to study at integrated schools or special education centres (Article 41.3).

The National Plan of Action for Children²⁸ also highlights the importance of programmes and services to promote the recovery and reintegration of children in special circumstances. It cites measures such as “to

25 Decree 94/2002/ND-CP dated 11/11/2002 of the Government stipulating functions, duties, powers and structure of the Committee for Population, Family and Children (Decree 94/2004/ND-CP)

26 Review of Child Abuse Laws and Policies in Vietnam, CPFC and UNICEF, 2006

27 Article 17 stipulates that parents shall be ineligible to have their children live with them if committing one of the following acts: torturing, maltreating, humiliating children or causing injury or mental disorder; enticing the child to steal, cause injury to others, use narcotics, or engage in prostitution or other things contrary to law and social ethics; take a decadent lifestyle, letting children fall into an utterly depraved lifestyle; forcing children to work hard or under dangerous conditions.

28 Decision 23/2001/QĐ-TTg of the Prime Minister dated 26 February 2001 on approving the National Action Plan for children, period 2001 – 2010

encourage individuals and organisations in country and abroad to supply basic social services for families and children; to concentrate on advice, consultation, social work and direct encouragement of families and communities to learn the skills to protect, care and educate children". Programmes on specific child protection issues (such as Decision 19/2004/QĐ-ĐTTg dated 12 February 2004 of the Prime Minister on approving the Programme on preventing and dealing with street children, sexually abused children and children working in dangerous and harmful conditions, period 2004-2010), provide for more concrete measures for these categories of children (discussed in more detail below).

The former CPFC has been given primary responsibility for assisting the People's Committees in the task of managing children in special circumstances (Law on Protection, Care and Education of Children, Article 42, Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children, Article 21). However, as noted above, there is no comprehensive child protection system in place as yet to ensure that children in special circumstances are systematically assessed, monitored, and provide appropriate support services. At the grass-roots level, People's Committees lack staff that are trained as social workers and capable of professionally assessing a child's needs and determining what forms of support are necessary to promote the child's rehabilitation and reintegration. As yet, no subsidiary legislation has been drafted to clearly define and specify standards for the types and quality of support services to be provided to children in special circumstances and their families. Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children states only generally that CPFC shall work out plans and guide coordination in the organisation of protection, care and education of disadvantaged children, "ensuring that they enjoy support, have chances to recover physically and spiritually, are morally educated and reintegrated into their families and communities" (Article 21).

Despite this absence of a legal framework, significant steps have been taken in recent years to promote greater access to recovery and reintegration services for children in special circumstances. Consultancy centres have been established in several provinces to provide child victims with legal, psychological and physiological advice and help in social reintegration. Many psychological and physical rehabilitation centres have been built to support sexually abused children in major cities, particularly in Ho Chi Minh City. In addition, many community based support and care schemes have been developed with support from concerned agencies, mass organizations and international organizations. Some children are helped to reintegrate into their families and communities while others are given educational and vocational training so that they can support themselves.²⁹

Alternative Care

While Vietnamese law recognises the primary role of parents in the care and upbringing of their children, it also makes provision for alternative care for children who lack parental care, or who cannot, in their best interest, be permitted to remain in their parents care. Existing forms of alternative care are: 1) kinship care; 2) guardianship; 3) adoption (discussed in more detail under Section 6.2 below); 4) informal fostering; and 5) institutionalisations. No system of publicly regulated fostering exists as yet. Although institutional care was one of the main form of care used for children in need of special protection, this trend has been challenged in recent years through the development of policies favouring family-based alternative care.³⁰ The government has shown over the past years an increased awareness of and commitment to identifying and promoting alternative solutions to institutional care.

Where a child has been orphaned or abandoned, or where both parents have had their parental rights limited by the Court,³¹ the law states that a guardian must be appointed for the child in accordance with the Civil Code of 2005 (Chapter III, Section 4) and the Law on Marriage and Families of 2000 (Chapter IX). Under these provisions, the natural guardian of a minor is his/her eldest adult siblings who are eligible to be a guardian unless his/her siblings have a different agreement. If the child does not have any siblings,

29 Vietnam's Initial Report to the UN Committee on the Rights of the Child on the Optional Protocol to the CRC

30 Situational Analysis of Institutional and Alternative Care Programmes in Vietnam, UNICEF, 2004

31 Under the Family and Marriage Law, the court has the discretion to temporarily limit parental rights to take care, look after and educate their juvenile children "if the parents are accused with intentional trespassing of health, dignity of their children, or if the parents seriously violate their obligations to take care, look after and educate their juvenile children; if the parents infringe their children's properties, have debauched life or push their children to do things against the law and the social morality". The term of this limitation is from 1 to 5 years (Article 41.).

or his/her siblings are not eligible to be a guardian, then the child's maternal or paternal grandparents shall be appointed as the guardian. If no one among those relatives is eligible to be a guardian, then an uncle or aunt shall be the guardian (Article 61 of the Civil Code, Article 83, 84 of Law on Marriage and Families, 2000). In cases where there is no natural guardian as stated above, the relatives of the minor must assign one person among them to be the guardian. In cases where the relatives of the child fail to assign the guardian, the People Committee of commune, ward and township where the child resides shall be responsible for assigning the guardian or requesting an agency to be in charge of guardianship (Article 63 of the Civil Code).

In addition, the Law on Protection, Care and Education of Children states that People's Committees at all levels are responsible for organising the care and nurture of children in special circumstances, or children who have no one to rely on for their care, through placement in alternative families or public or non-public child-support establishments (Article 25, 42). Primacy is placed on the care of children in a family environment, rather than an institution under Article 41.2 of the Law on Protection, Care and Education of Children, which states that the care and nurture of children in special circumstances shall be organised by child-support establishments only in cases where children cannot be cared for by families or alternative families (Article 41.2). CPFC at all levels are responsible for verifying the conditions, circumstances and economic capabilities of the children's relatives and alternative families, in order to propose appropriate alternative care.³²

Formal foster care (temporary placements in non-relative family), is a relatively new concepts in Viet Nam and has not yet been formally introduced. However, informal foster care and kinship care – where a relative of the child or other person agrees to take care of a child in their own home - have a long tradition in Vietnamese society, and remains the prevailing form of alternative care for CSC. At present, that informal alternative is neither regulated nor monitored by any public authority.³³

Children who are not placed in a family environment may be cared for in a child support establishment or social protection centres. Currently, there are institutional care programs for orphans/abandoned children, street children, children with physical and/or mental disabilities, children in conflict with the law (reform schools), rehabilitation of sexually exploited/abused girls, rehabilitation of child and adolescent commercial sex workers (05 Centres) and drug users (06 Centres) and care of HIV/AIDS-infected children. As of January 2004, there were a total of 373 centres providing care to children, of which 40% are government run. According to official statistics, of the 126,309 children deprived of the care of natural parents, 14,574 (11.5%) live in institutions. The majority of these children have at least one parent who is living³⁴.

The Law on Protection, Care and Education of Children has a provision on establishment and operation of the institutions in charge of protecting, caring and educating children in special circumstances. Article 44 stipulates that the institutions supporting children must have the following conditions: 1) material basis and equipment suitable for the purpose of supporting children; 2) personnel with proper expertise to support children; and 3) financial resources sufficient enough to support children. However, detailed regulations on the establishment and management of child support establishments have not yet been developed. Decree No.36/2005/ND-CP states that CPFC shall be responsible for state management of child support establishments. Other specialised establishments for children will remain under the management of the respective agencies: education of disabled children (MET), juvenile delinquents (Ministry of Public Security), detoxification of children addicted to narcotics (MOLISA). An assessment of institutional and alternative care programmes conducted by UNICEF in 2004 highlighted the following main challenges with respect to institutional care:

- There are limited regulations guiding the admission of children to institutional care. Existing regulations mainly concern the assessment of the children's legal eligibility for institutional care, based on whether they belonged to some broad categories (i.e. orphans, children with disabilities, abandoned children, street children and homeless children,), instead of on the basis of their presenting needs.

32 Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Childrem, Article 16

33 Situational Analysis of Institutional and Alternative Care Programmes in Vietnam, UNICEF, 2004; Bergeron, J and Tanaka, S "The Situation of Children in Institutions and Alternative Care Programs in Viet Nam", 2006

34 Situational Analysis of Institutional and Alternative Care Programmes in Vietnam, UNICEF, 2004; Bergeron, J and Tanaka, S "The Situation of Children in Institutions and Alternative Care Programs in Viet Nam", 2006

- At present, there is no process for assessing the needs of children who are admitted into institutional care and therefore no basis upon which to develop and utilise a comprehensive care and protection plan for a child. Social protection centres typically house a broad mix of clients and children with very different needs are often placed together in the same centre, without an effort to adapt programs to the individual circumstances and needs of children
- Only a minority of the institutions adhere to the CRC principle of making periodical reviews of the placement of a child in an institution; where such assessments are performed, the focus of the evaluation is often on material conditions of the child.
- In practice, institutionalisation is not being consistently used only as a measure of last resort. The need for children to complete their studies was a commonly cited as the reason for them to be placed in an institution and to stay in institutional care for long periods
- Children stay for long periods of time in institutional care programs; many children enter the centres as babies and remain there until they reach legal maturity at 18. In more than 50% of the centres, the children stay between 5 and 10 years.
- There is no systematic discrimination against children, but there are examples of maltreatment of certain groups of children for example, children with mental disabilities and children previously involved in commercial sex work.
- In the majority of the cases it is the caregivers who decide the direction of the type of education, vocational training or future occupational career of the children. Although the children are consulted in some cases, the options offered by the centres are often limited and thereby children have no other choice but to comply with the decision of the centre.
- Children attend public schools outside the centres. Due to existing legislation, except for children over 15 years of age, there are no obligatory vocational training programs for children at the centres. However, many of the vocational training programs that are offered at the centres do not really assist them in the development of their skills for improved likelihood to find a job.
- Nearly all the centres focus almost exclusively on the children's education; other aspects of the child's holistic development are largely neglected.
- The standards for the selection and employment of staff pertain to the degree of enthusiasm, love of children, high moral standards (in other words non-verifiable standards) and level of education/training. Nearly 95% of the centres have access to personnel who have gained a college or university education; however around 7% of the institutions operated by the government have staff that lack formal education³⁵

However, in recent years, the government has placed significant emphasis on overcoming these challenges by reducing institutionalisation and promoting alternative family-based care for children in special circumstances. In 2005, the Prime Minister approved Decision No: 65/2005/QĐ-TTg on community-based caring children with especially difficult circumstances 2005-2010. The plan calls for piloting of a small-scale family caring" model of social welfare facility (less than 10 children in each house)³⁶ as well as the transfer of children from institutional care to community based care through the forms of fostering, sponsoring, adopting by family and individual, and caring in the social houses. Many of these activities have been implemented. However, the Decision does not cover all children in institutions since the target group is limited to orphans, displaced children, severely disabled children, children who have suffered from toxic chemicals and HIV/AIDS infected children. It is nevertheless a major step for the Government of Viet Nam to recognize the importance of integrating children in their community and protecting their rights.

The impact of the new policy on community-based care is already noticeable. Local authorities and directors of institutions are gradually accepting the principle that a child should only be institutionalized as a measure of last resort. In addition, smaller, home-like "group home" or "social house" models are being

35 Situational Analysis of Institutional and Alternative Care Programmes in Vietnam, UNICEF 2004

36 Inter-ministerial circular Guidance to the implementation of Decision No.65/2005/QĐ-TTg dated 25/3/2005 by the Prime Minister on approving the National Plan of Action on Community-based care for children in especially difficult circumstances in the period of 2005-2010.

piloted in six areas (Hung Yen, Hai Phong, Thanh Hoa, Vinh Phuc, Ben Tre, and HCMC). These models vary greatly one from the other. Some receive former street children and children from reform schools aged 14 or older; others receive orphans, disabled children of all ages, or other groups of children in need. The government is still seeking to define the concept of social houses/group homes more clearly³⁷.

In order to promote greater family-based care for children, the Prime Minister has also issued Decision No. 38/2004/QĐ-TTg on the policy to provide funding as support for families and individuals that nurture orphans and abandoned children. The Decision states that families who care children who have no caregivers or have caregivers under the Law on Marriage and Family without enough capacity for nurturing must ensure education, health care, equal treatment and guardianship for the child. Families or individuals who agree to do so will be provided funding of 200,000 VND/month/child, or at least 270,000 VND/month/child if the child is less than 18 months. To be eligible for this responsibility, individuals must: be over the age of majority; have good conduct and not been involved in social evils; have a regular income or assets; have a permanent residence; and not have their parental rights restricted or a criminal record which has not expunged; and voluntarily offer foster care.

Currently, there is no systematic monitoring and periodic review of children in all forms of alternative care; however responsibility for this task has recently been assigned under the law. Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children states that CPFC shall be responsible for regularly inspecting living conditions of children separated from their parents after they are handed to surrogate caretakers or nurturers (Article 16), and for inspecting the organisation and operation of a child-support establishments (Article 24).

Child-Friendly Investigation, Prosecution, and Court Proceedings

Where a child in special circumstances has been the victim of a criminal act, s/he may be required to participate in the criminal proceedings as a victim or witness. The 2003 Penal Procedure Code of Vietnam has some special provisions on child victims or witnesses during the legal proceedings:

- In cases where victims are juveniles, their lawful representatives shall replace them to exercise the procedural rights under the penal procedure law (Article 51).
- The summoning of children to take their statements shall be conducted through their parents or lawful representatives (Article 133 and Article 137)
- When taking statements from witnesses aged under 16 years old, their parents, other lawful representatives or their teachers must be invited to attend (Article 135 and Article 137).
- In cases where the child victims has a defence counsel, the defence counsel shall have the right to be present when the procedure conducting agencies are taking statements from the child (Article 59)
- At the court hearings, the lawful representatives of child victims shall have the right to present circumstances of the case which are related to persons who they represent (Article 210).
- The presiding judges may seek the help of the child's parents, sponsors or teachers in questioning (Article 211).
- In special cases where the fine national customs and practices should be preserved, or where the involved parties' secrets must be kept confidential at their legitimate requests, the courts shall conduct closed hearings (Article 18).

However, a recent study on child-sensitive investigative and trial proceedings³⁸ revealed the following shortcomings in the current laws and practices:

37 Discussion paper outlining the new roles and functions of the institutions in Viet Nam, in particular the Social Protection Centres, Penton, 2006 (unpublished); Bergeron, J and Tanaka, S "The Situation of Children in Institutions and Alternative Care Programs in Viet Nam", 2006

38 Investigative and Court Proceedings Involving Children and Juveniles: An Assessment of Child-sensitive Procedures, UNICEF and People's Supreme Court, 2006 (Draft)

- Lack of guidelines or directives on child sensitive interrogation environment and investigative techniques for police, prosecutors, and judges. Child victims were often subjected to numerous, lengthy interrogations by the police, and in many instances children were interviewed without a parent or guardian present.
- In the current laws, there is no requirement that persons conducting legal proceedings in cases involving child victims or witnesses must have necessary understandings about child psychology and interview techniques for children. Police, prosecutors and judges are not sufficiently trained on appropriate child questioning techniques. Social workers or other child specialists are not requested to be present during interrogations or to assist in the questioning of children;
- Lack of clear referral or coordination mechanism to ensure that all child victims reported to the police are referred to appropriate support services to promote their recovery and reintegration;
- Lack of witness support programs to provide information about the criminal process, advice, assistance and pre-court familiarization to children and their parents;
- Most child victims and their parents did not have legal representation or advice during the criminal proceedings;
- The Court environment is very intimidating for children, and there is a lack of alternative arrangements for giving testimony such as screens, video-tape and closed circuit television;
- Not all proceedings involving child victims are closed to the public, and in some instances information about children has been published in the media. This lack of privacy causes trauma and humiliation to children and their families.
- While a compensation order is generally issued by the court, it is difficult to enforce against the perpetrator, particularly where s/he is in prison. There is no State compensation fund to support victims;
- Many child victims suffered significant trauma and distress, particularly those who were victims of sexual violence, but most did not receive any counselling or other support. Parents lacked the knowledge and skills to provide sufficient support to their children to help promote recovery and reintegration.

6.1.3. Analysis and Recommendations

Vietnam does not yet have a comprehensive child protection system in place to ensure the systematic identification, support and monitoring of children in special circumstances. Although mass organisations, local authorities and charitable organisations have made significant efforts to provide care, recovery and reintegration to children in special circumstances, there is a lack of a professionalized system to ensure appropriate response in all cases.

Reporting, Investigation and Assessment

Existing procedures for denunciations are not child-friendly, making it difficult for children to make complaints or seek assistance. There is no specialised, child-centred system for reporting, investigation and assessment of children in special circumstances. Currently, the law provisions focus more on assigning responsibility and punishment of perpetrators, rather than on providing protection and support to the child and his or her family. In cases where abuse, exploitation or neglect occurs within the family, the law does not provide for any other forms of intervention other than separating the child from his or her parents.

In order to overcome these gaps, it is recommended that a comprehensive, child-centred system be developed for receiving, investigating and responding to children in special circumstances. This would require the following:

- Professionalize child protection services;
- Draft a legal normative document providing detailed, child-friendly procedures for receiving, investigating and response to discovered or suspected cases of children in special circumstances.
- Promote a multi-disciplinary approach to investigation and assessment of children in special circumstances, with co-operation amongst the various agencies (police, CPFC, social workers, health care workers, teachers, etc) in resolving cases of children in special circumstances.
- Stipulate more clearly in a legal normative document the powers of the key agency in applying emergency intervention measures to protect children in special circumstances, including the different intervention measures that may be used, as well as criteria and procedures for applying these measures;
- Introduce a case management system so that each child in special circumstances and his/her family is assessed by a trained social worker, has an individualised plan of care developed, is referred to appropriate support services (counselling, parenting education, home supervision visits, income generation support, alternative care, education and vocational training, etc), and is appropriately monitored.

Recovery, Reintegration, and Alternative Care

As noted above, significant efforts have been made by mass organisations, local authorities and charitable organisations to provide recovery, reintegration and alternative care for children in special circumstances. However, these types of services are not under a general scheme and regulation of the state, and are not systematically provided to all children in special circumstances according to their individual needs. While the Law on Protection, Care and Education of Children includes some general provisions with respect to the forms of support to be provided to children in special circumstances, the provisions of the law are general in nature, and need to be further clarified and detailed by a legal normative document. Furthermore, existing laws and decrees focus largely on regulating child care establishments, with limited attention to promoting and regulating other types of support services for children in special circumstances, such as counselling, parental support groups, parenting education, home visitation, respite care and foster care. These types of services are necessary to promote family unity and prevent children from being separated unnecessarily from their parents or other family members.

Another concern is the lack of clear legal guidelines or criteria for determining when a child should be separated from his/her parents due to abuse or neglect, and for selecting the most appropriate alternative family care for that child. Criteria under the Law on Marriages and Family and Decree No. 36/2005/ND-CP for restricting parental rights are quite broad. In cases where abuse, exploitation or neglect occurs within the family, the law does not provide for any other forms of intervention other than separating the child from his or her parents.

Furthermore, the law does not stipulate detailed criteria for selecting and approving alternative families for children who are separated from their parents. Under both the Civil Law and the Law on Protection, Care and Education of Children, the People's Committee may, in certain circumstances, be responsible for organising appropriate alternative care for children in special circumstances. However, there are no detailed criteria or considerations to guide the People's Committee in making this decision, and no requirement that they have special training or expertise in this area. The Civil Law stipulates automatic appointment of guardians on the basis of their relationship to the child, rather than on what is in the child's best interest, and there is no requirement that the child's views be taken into account when making decisions about guardianship or alternative care.

The government has made significant strides in recent years in establishing a legislative framework that promotes community-based, rather than institutional care for CSC. At commune level People's Committees and mass organizations such as Women's Union actively support and encourage community members

to support families and children in need e.g. by sponsoring needy children, fostering/adopting etc³⁹. However, while the law promotes family and community care, a recent study,⁴⁰ has found that in practice, there continues to be an over-reliance on institutional care for children in special circumstances, including social protection centres, 05/06 centres, SOS villages and other forms of residential care. Furthermore, rather than limiting the establishment of new institutions (in favour of diverting resources to family-based care) the Law on the Care, Protection and Education of Children seems to encourage the building of new ones, and permits a wide range of authorities to approve new establishments. Greater centralisation of this authority is preferable to facilitate control over and a reduction in the number of new establishments.⁴¹ Residential care placement should be based on an assessment of the needs of the child and guided by clear admission criteria and discharge procedures. In addition, the policy of community-based alternative care for children needs to be widely propagated among the community and related competent agencies to correct the perception that it is best for CSC to live in social institutions, and to promote the idea that families are the best places for CSC to develop physically, mentally and emotionally.

Also of concern is the lack of legal provisions with respect to the regular and consistent monitoring of children in alternative care, particularly children in institutional care and who are placed with alternative families. There is no registration of guardians or alternative families in the local communities, and no protective monitoring systems to ensure that these children are not being further abused and exploited. A recent study⁴² found anecdotal evidence of exploitation, neglect and abuse by relatives who were caretaking, especially through child labour. Furthermore, while Decision No. 38/2004/QĐ-TTg provides support for families caring for children in special circumstances, there are no monitoring provisions ensure that funding support is directed to the child. There are also no regulations for child care establishments or other institutions caring for children, particularly regulations relating safety, health care, protection from abuse, the number and qualification of personnel working in these organisations. There is no requirement that children in alternative care are periodically reviewed, or that child care establishments be regularly inspected at stipulated intervals, and required to periodically renew their licenses.

In order to overcome these gaps, it is recommended that a professional child protection system be developed with trained staff and clear guidelines and procedures governing: assessment and individual case planning (case management system) to determine what type of care and support is necessary to promote the child's recovery and reintegration; the development of a broad range of services to meet the multidimensional needs of children in special circumstances and their families; and clear standards or specific guidelines for these services. This will require the following measures:

- More clearly stipulate powers and duties of the CPFC in planning, managing and coordinating various programmes and services for supporting children in special circumstances and their families;
- Stipulate, in a legal normative document, the different types of interventions and support services that should be provided to children in special circumstances and their families (counselling, parenting education, family monitoring and home visits, respite care, temporary foster care, family income generation support, education and vocational training etc) and under what circumstances these different interventions would be appropriate. Separating a child from his/her parents should be a measure of last resort, where no other alternative intervention would be sufficient to protect the child;
- Develop and/or strengthen a broad range of support services for both children in special circumstances and their families through partnerships with mass organisations, charitable organisations, counselling centres and others.
- Stipulate, in the legal normative document, minimum standards and guiding principles for all such services;
- Improve the quality of and access to non-formal education and vocational training for CSC;

39 Ibid

40 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

41 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

42 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

- Stipulate, in a legal normative document, detailed guidance on implementation of the provisions on limitation of parental rights, in particular clear child-centred standards and procedures for determining when the separation of a child from his/her parents is necessary and in the child's best interests.
- Stipulate, in a legal normative document, detailed procedures and criteria for selecting, approving and appointing guardians, foster parents or alternative family care for a child. The best interest of the child should be the paramount consideration, and authorities should be required to have due regard to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. They should also be required to take the child's views into consideration.
- Strengthen strategies and campaigns to promote foster care and to recruit and prepare alternative families, including families willing to care for children affected by HIV/AIDS.
- Stipulate, in a legal normative document, the criteria for admitting children to institutional care, with an emphasis on ensuring that children are only institutionalised as a last resort. Residential care placement should be based on an assessment of the needs of the child and guided by clear admission criteria and discharge procedures.
- Reform existing and new residential child care establishments, based on small-scale, home-like models of institutional care, and encourage new forms of alternative care to be developed, tried and evaluated
- Stipulate, in a legal normative document, detailed standards for all child care establishments, social houses, 05/06 Centres, etc caring for children in special circumstances. Special focus should be given to standards on quality of care and nurturing, safety, health, protection from abuse, and the number and qualification of children supporting staff.
- Develop a monitoring mechanism for children who are placed in alternative care with a guardian, alternative families, child supporting organizations and social protection centres/social houses. Stipulate procedures and time-lines in a legal normative document for all children in alternative care to be subject to regular, periodic reviews, and to ensure that they have access to a child-friendly complaint mechanism.
- Allocate sufficient funds for the care, recovery and reintegration of children in special circumstances.

Child-Friendly Court Procedures

Vietnam's criminal procedure law has limited special provision for children who are involved in criminal proceedings as victims or witnesses. Existing legal provisions and practice are not sufficient to fully protect and assist child victims or witnesses in criminal cases. In order to overcome the shortcomings outlined above, it is recommended that:

- a) Child-friendly environment for the conduct of police interrogations, including establishment of special child-friendly interview rooms in selected police stations where there are a significant number of child victims.
- b) Child-friendly interview techniques to be followed by the police; including limits on the number of interviews conducted, special questioning techniques, mandatory presence of parents or other support person, and presence of a social worker/victim support person;
- c) The obligation to provide information and advice to children and their parents, including simple explanations of the criminal procedures, what their role will be, and how to obtain legal advice and other assistance for the child;

- d) Coordination and referral mechanism to ensure that child victims and their family are provided appropriate support, counselling, advice, etc, both during and after the criminal proceedings
- e) Mechanism to familiarise child victims with the court process prior to the trial date.
- f) Prioritisation of cases involving children so that they are completed quickly and in less than the stipulated time periods whenever possible.
- g) Measures to be taken to create a child-friendly court environment, including the designation of special trial panels, taking the child's testimony in the Judges' meeting room rather than the court room; minimising the contact between the victim and the defendant in the courtroom, allowing the child to give evidence in a separate room or from behind a screen, and making closed proceedings mandatory in all cases involving child victims.
- h) Appoint Specialised Teams of Investigators, Procuracy, Judges and People's Assessors to hear all criminal cases involving children, and give them specialised training.
- i) Establish a Victim Support programme in larger cities with high numbers of criminal case involving children. Designate a lead agency responsible for appointing and training social workers or counsellors as Victim Support Person to provide child victim/witness with support (e.g. CPFC, Women's Union, etc). The Victim Support person should be responsible for: attending all interviews and interrogations of a child; informing victims and their families of the case progress; familiarising the child with the court surroundings and trial process; attending the court hearings as supporter for the victim; and ensuring that the child is referred to appropriate support services both during and after the criminal proceedings (advocacy, protection, counselling, medical treatment, temporary shelter, social reintegration and physical and psychological recovery services, etc)..⁴³

Promote improved access to and quality of legal representation for child victims through expanded legal consultancy centres and development of tools and handbooks to provide lawyers with specialised skills for representing children.

6.2. Orphaned and Abandoned Children

Under Vietnamese law, orphans are persons under the age of 16 whose both parents are either deceased or have abandoned them and have no relatives to rely on, or persons whose one parent is deceased and the other is either missing or incapable of raising the child.

6.2.1. CRC and International Standards and Good Models

As noted above, Article 20 of the CRC states that a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State. Such care should include foster placement, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

The UN Committee on the Rights of the Child has repeatedly emphasised that the placement of orphaned or abandoned children in an institution (orphanage, shelter, compassion house) should be a measure of last resort, meaning that it should be used only if there are no other options. This is because institutions have been shown to be detrimental to the child's development, and children placed in institutional care are at greater risk of abuse and maltreatment. Drawing on the UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, the Committee proposes the following alternative solutions for children who have been orphaned or abandoned. First, a solution in the child's extended family environment should be sought; i.e. the child should be looked after by relatives or others

43 Investigative and Court Proceedings Involving Children and Juveniles: An Assessment of Child-sensitive Procedures, UNICEF and People's Supreme Court, 2006 (Draft)

who have a close relationship with the child. If that is not possible, then an alternative family environment should be provided, either through fostering or adoption. Lastly, and as a last resort, placement in an institution can be opted for, but if so, the child must be monitored and measures taken to ensure that his/her rights are fully respected. In all matters relating to the placement of a child, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.

Reducing reliance on institutional care for orphaned and abandoned children requires pro-active strategies to develop and promote family-based alternatives, and to limit the establishment of new institutions. This may require measures to challenge family and community perceptions that institutionalisation is in the child's best interest, and to encourage and support relatives to care for orphaned children rather than place them in institutional care. Pro-active measures are also necessary to recruit and prepare foster parents, and to provide them with necessary support. Special attention must be given to identifying appropriate family-based care for children who have been orphaned or abandoned due to HIV/AIDS or because of the child's disability.

Placing an orphaned or abandoned child into the care of a relative or approved foster family can contribute to protection, but as with any family, does not guarantee it. Orphans remain vulnerable to harm at the hands of guardians, with sexual abuse, labour exploitation or discriminatory treatment not uncommon. Mechanisms therefore need to be in place to monitor children in the care of relatives or foster families, and to build the protective capacities of the substitute families. Financial support schemes for families caring for orphaned or abandoned children can help reduce the risk of mistreatment or exploitation by relieving financial stress on the family, and by ensuring adequate resources for the child's basic needs, schooling, medical care, etc.

With respect to adoption, Article 21 of the CRC states that the best interest of the child must be the primary consideration, and States parties must have a system in place to ensure that adoption is authorised by a competent authority; that decisions are made in accordance with applicable law and procedures and on the basis of all pertinent and reliable information; and that persons required to give consent have given their informed consent on the basis of such counselling as may be necessary.

With respect to inter-country adoption, both the CRC and the Hague Convention on Inter-Country Adoptions state that inter-country adoption should be considered as an alternative only if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin. This requires measures to trace the families of lost or abandoned children, and to make every effort to find a national foster or adoptive family before considering international options. Measures should be in place to ensure that inter-country adoptions are State regulated and approved (rather than by individual agreement between adoptive parents and the child's caregiver), and do not result in improper financial gain for those involved. Laws should prohibit contracts between the adoption candidates and the parents or guardians of the child before the authorities have determined the adoptability of the child and the suitability of the adoptive parents.

To ensure that these safeguards are in place, the Hague Convention provides that each Contracting State should establish a national Central Authority, with overall responsibility for protecting children involved in an inter-country adoption. The Central Authority must ensure that competent authorities establish the child's 'adoptability' — that is, legal eligibility and psychological, medical and social suitability for adoption — and that a report is completed before consideration is given to matching the child with any given prospective adoptive family. The report should certify that:

- Birthparents have been clearly informed of the consequences of adoption (and, in particular, that in cases of inter-country adoption, the child will leave the country and that all links with the birth family will be definitively severed) and have been helped with necessary counselling;
- The birthparents, and particularly the birthmother, have given their consent to adoption
- The consent of persons, institutions and authorities responsible for the child has been freely given before adoption and has not been induced by payment or compensation of any kind;

- The child, according to age and degree of maturity, has received counselling and is informed of the consequences of adoption, and his or her opinions and wishes have been taken into consideration.
- An assessment of the adoptive parents' suitability has been conducted by their home country

Where there is no other option available and a child must be placed in institutional care, the UN Committee on the Rights of the Child recommends the establishment of small, home-like centres that approximate family care to the extent possible. Standards of care should be established for all children's institutions, linked with a system of monitoring and regular review of the quality of care being provided to the children.

6.2.2. Vietnamese Laws, Policies and Practices

Under Vietnamese law, children who are orphaned or abandoned may: 1) have a relative or other person assigned as a guardian; 2) be subject to domestic or international adoption, 3) informal kinship care (cared for by relatives with no legal formality), or 3) placed in institutional care. Article 51 of the Law on Protection, Care and Education of Children states that People's Committees shall facilitate the placement of destitute orphans and abandoned children in the care of alternative families or public and non-public child-support establishments. The State shall encourage families and individuals to adopt children in need, and also encourage agencies, organisations and individuals to sponsor destitute orphans and abandoned children and support their care. The State is also required to adopt policies to support families, individuals and non-public child-support establishments to care for and nurture destitute orphans and abandoned children.

As provided by regulations in Decree 67/2007/ND-CP of Prime Minister issued in April 13th 2007 on support policies for social beneficiaries including of orphans of both parents, abandoned children with no primary caregiver, children deprived of one parent and missing the other (as stated in Article 78 of Civil Code) or incapable of care of the child according to the regulation, children having both or one parent serving imprisonment sentence and have no care takers, children infected with HIV/AIDS living in poor household; adolescents aged from full 16 to under 18 who are in schooling or vocational training and having the previously mentioned circumstances, families or individuals providing care for orphans and abandoned children are entitled to subsidies. This Decree also states the specific minimum rate of subsidies provided for each group of beneficiaries in particular context, for example beneficiaries living in community under management of commune, ward; those living in communal social houses under management of commune/ward as well as people living in social protection centers

As noted above, the Civil Law stipulates the natural guardian of a child who has been orphaned or abandoned, with priority placed on relatives. In cases where the relatives of the child fail to assign the guardian, the People Committee of commune, ward and township where the child resides shall be responsible for assigning the guardian or requesting an agency to be in charge of guardianship (Article 63 of the Civil Code). CPFC at all levels are responsible for verifying the conditions, circumstances and economic capabilities of the children's relatives and alternative families, in order to propose appropriate alternative care.⁴⁴ Allowances are provided to foster families in order to encourage families to care for orphans and reduce reliance on institutionalisation.⁴⁵

In addition to guardianship, children may also be subject to domestic or international adoption. The Law on Marriage and Family states that child adoption means the establishment of the parent-child relationship between the adopter and the adoptee, ensuring that the adoptee will be looked after, reared, cared for and brought up in conformity with social morality. The adopter and the adoptee have the rights and obligations of parents and children as prescribed by this Law (Article 67.1). To be eligible for adoption, children must be under the age of 15 years; children over 15 can be adopted only if they are disabled or have lost their civil act capacity. Vietnamese children eligible for adoption are: a) children who are living in nurturing establishments lawfully set up in Vietnam; b) children who are living in families if

⁴⁴ Decree No.36/2005/ND-CP on the Implementation of the Law on Protection, Care and Education of Children, Article 16

⁴⁵ Decree on Fostering

they are orphans, disabled or relatives of the child adopters' (Circular No. 12/1999/TT-BTP of June 25th, 1999 – Guiding the implementation of a number of provisions of the government's decrees on civil status registration. Article 36.1). Adoptive parents must be at least 20 years older than adopted children, must prove themselves moral and well-mannered, and must have sufficient financial affordability to ensure good care, protection and education for their adopted children until they become adults.

The decision-making authority in the case of adoption or guardianship is the People's Committees. Procedures for adoption, both inter-country and in-country, are regulated in detail in several laws and decrees.⁴⁶

Procedures for domestic adoption are governed mainly by Decree 158/2005/NĐ-CP dated Dec 27th, 2005 by the Government issuing Regulations on Birth, Death and Marriage Registration. The Decree requires that domestic adoptions be registered and processed at Communal People's Committee where the adopters live. In cases of abandoned children, the Communal People's Committee where these children were registered as abandoned shall take the authority to consider and ratify adoption applications.⁴⁷ If children to be adopted live in social institutions, the Communal People's Committee where such institutions are located shall consider and ratify adoption applications. To be approved, an adoption agreement must be approved by both natural parents of the adopted children even if they are divorced. In cases when one of their parents died or are legally incompetent, the guardian of these children shall sign in the agreement on behalf of children's parent. For children living in social institutions whose natural parents cannot be contacted, the authorized representatives of those institutions shall sign the agreement. The adoption agreement must also be approved by the adopted children themselves if they are over the age of nine years. If the adopters live in a different locality from the place where the adoption procedure is considered, on the adoption agreement they must be endorsed by the Communal People's Committee as having suitable conditions for adoption as required by the Law on Marriage and Family.

International adoption is governed mainly by Decree No. 68/2002/ND-CP of July 10th, 2002 detailing the implementation of a number of articles of the Marriage and Family Law on the marriage and family relations involving foreign elements. In July 21st 2006, the Government has issued Decree 69/2006/NĐ-CP on the amendment of some regulations in Decree 68/2002/ND-CP issued in July 10th 2002 guiding on the implementation of some provisions in Marriage and Family Law on the marriage and family relations involving foreign elements. Only two types of children are eligible for adoption: 1) children in legally established social institutions; 2) children who are living in families if they are orphans, disabled or have close relations with adopters. For inter-country adoptions the following procedures are required:

- A writing from the child's parents or tutor certifying that they agree to let the child be adopted, or the consent of the head of the child centre if the child is living at a child centre,
- If the child is nine years old and over, the consent of the child in writing
- A certificate from the authorities in the adoption applicant's home country attesting his/her qualification for bringing up an adoptive child;
- A medical certification of the applicant's physical and mental health;
- A 'guarantee on the growth of the child until he/she is 18 years old made in accordance with the set form certifying that every year he/she shall report to the Ministry of Justice and to the provincial People's Committee or the diplomatic consular office which has issued the decision for the adoption of the child. Such report must be verified by authorised agency of the country where the adoptive child resides'

⁴⁶ For example see The Marriage and Family Law, No. 22/2000/QH, 10 of June, 2000; Guiding the implementation of a number of provisions of the government's decree No. 83/1998/ND-CP of October 10th, 1998 on Civil Status Registration; The government's decree No. 68/2002/ND-CP of July 10th, 2002 detailing the implementation of a number of articles of the Marriage and Family Law on the marriage and family relations involving foreign elements; Circular No. 07/2002/TT-BTP of December 16th, 2002, Guiding the implementation of a number of articles of the government's decree No. 68/2002/ND-CP of July 10th, 2002 which details the implementation of a number of articles of the Law on Marriage and Family involving foreign elements; Government decree No. 83/1998/ND-CP dated 10/10/1998 on Civil Status Registration.

⁴⁷ This provision aims to facilitate the supervision and monitoring of adopted children.

- Every six months, the provincial People's Committees must report to the Ministry of Justice on the registration and recognition of adoptions between Vietnamese and foreigners, which in turn must report this to the government

As regulated by Decree 68/CP, the procedures of inter-country adoption in Vietnam are processed basing on the following principles:

- First, it must be secured that inter-country adoption is done for the good causes, in the best interests of the children, and on the basis of children's fundamental rights. This has reconfirmed the Party and State's consistent policies on inter-country adoption to secure the bottom line of finding each of the CSC a happy substitute family. In addition, to secure humane causes of adoption in the best interests of the children, the Resolution bans any action of labour exploitation, sexual abuse, child trafficking and any other profit-directed action under the label of child adoption.
- Second, only applications of foreign adopters who are citizens of countries which share membership of a common International Pack on Adoption with Vietnam will be considered and ratified. This is a new regulation drastically changing the processes and procedures of inter-country adoption stated in Resolution 68/2002/NĐ-CP. So far, Vietnam has signed 11 Agreements on Child Adoption Cooperation with the Republic of France (Feb 1st, 2000), Republic of Denmark (May 26th, 2003), Republic of Italy (Jun 13, 2003), Ireland (Sep 23rd, 2003), Republic of Sweden (Feb 4th, 2004), three language communities in the Kingdom of Belgium (Mar 17th, 2004), the United States of America (Jun 21st, 2005), Canada (Jun 27th, 2005) and Québec Canada (Sep 15th, 2005). In the coming time, Vietnam has projected to sign Switzerland and a number of other countries.

Each of these Agreements has regulations to create a mechanism to secure strict implementation by both signatory countries and their responsible agencies, as well as to ensure that requirements are met by adopters and children to be adopted. All Agreements also allow foreign adoption organizations or authorized organizations to provide support to adopters, technical and financial aids to Vietnamese social institutions for a better living standard of the children who are not adopted.

Children who are not taken in by members of their wider families and are not adopted will be cared for in Social Protection Centres or social houses under localities. These institutions are established, supported, monitored and managed by MOLISA, provincial or district authorities, Red Cross Society or SOS Orphan's Villages. As noted above, Decision No: 65/2005/QĐ-TTg of the prime minister on the approval of plan on Community-based caring children with specially difficult circumstances 2005-2010 calls for the piloting of smaller "family-like" houses for orphans, rather than large institutional establishments, and also states that 1,000 orphans shall be transferred from the social welfare facilities to communities for caring by the way of family or individual fostering, patronage, adoption or social houses. See the section above on Alternative Care for an assessment of the legal framework for institutional care of orphans and other CSC.

6.2.3. Analysis and Recommendations

As discussed above, Vietnam has made significant strides in recent years in promoting greater community-based care for CSC, including orphans. A legal framework and strategic plan has been put in place to encourage and support families to care for orphans, rather than placing them in institutional care. Community-based care of orphaned and abandoned children has been promoted by government and mass organisations at all levels, and strengthened through financial support and encouragement to substitute families. CPFC has been assigned responsibility for verifying the conditions, circumstances and economic capabilities of the children's relatives and alternative families, in order to propose appropriate alternative care. However, there remain some gaps in the legal framework that have not yet been addressed:

- There are no detailed principles or criteria to guide CPFC in its assessment of prospective guardians, foster parents or substitute families for orphans

- There is no framework for the systematic, professional assessment of orphans and abandoned children to determine what type of placement would be in their best interest, and to ensure that they are matched with the most appropriate alternative family;
- Although a Department of Inter-Country Adoption has been established under the Ministry of Justice with the mandate to govern international child adoptions, there is no authorised domestic child adoption organisation. All the tasks of recommending potential children, contacting adopters, clarifying family situations and the origins of the child are undertaken by child care centres, the division of justice, and police agencies. The functioning of these bodies is still limited,⁴⁸
- No clear requirement that decisions about alternative care be based on the child's best interest;
- While children nine years of age or older must consent to adoption, there is no similar requirement that their views be sought when making decisions about guardianship or institutional placement;
- There is no requirement that the views of children under the age of 9 be sought, and given due consideration having regard to their age and maturity;

Significant progress has also been made in perfecting the legal framework for domestic and inter-country adoption. In particular, Resolution 68/CP has created fundamental reforms in the regulation of inter-country adoptions, and has introduced additional restrictions designed to curb abuses through private adoption agreements by foreigners. The obligation to report each year to Vietnamese consular sections or Justice Services until the child turns 18 and the requirement that local authorities verify and attest adoptive parents' reports are important criteria for securing the well-being of children after adoption. However, this control and verification mechanism is missing when it comes to in-country adoptions. Although the legislation stipulates when and why an adoption may be terminated, it does not specify any specific measures for monitoring and controlling in-country adoptions.

- No clear statement in law that international adoptions shall be used only as a last resort, once all options for placement within the country have been considered.
- No systematic procedures for ensuring that all efforts are made to find a suitable domestic family before consideration of international options.
- No requirement that birth parents be given counselling and be clearly informed of the consequences of adoption prior to giving consent.
- Authority for approving inter-country adoptions is not centralised, but has been dispersed to the commune level PC.

In order to address these gaps, it is recommended that:

- Reform existing and new institutions for orphans, based on small-scale home-like models and invest instead in the implementation of alternative care strategies. Promote greater community commitment to caring for orphaned and abandoned children within a family environment.
- Stipulate clearly in a legal normative document the agency responsible for domestic adoptions.
- Introduce a legal normative document providing detailed principles and criteria to guide CPFC in its assessment of prospective guardians, foster parents or substitute parents for orphans. Require CPFC to conduct professional assessments of orphans and abandoned children to determine what type of placement would be in their best interest, and to conduct a detailed home assessment for all prospective foster or adoptive parents. The legal normative document should also state explicitly that the best interest of the child should be the paramount consideration in making decisions about alternative care for the child, and that the child's views should be sought and taken into consideration.

48 National Report on the Implementation of the Optional Protocol to the CRC, 2006

- Amend legal normative documents on both domestic and international adoptions requiring that birth parents be given counselling and advice prior to giving consent to adoption.
- Intensifying the preparation for accession to the Hague Convention 1993 on Inter-country Adoption Cooperation.
- Centralise authority to consider and approve inter-country adoptions.
- Amend Decree 68/CP to stipulate that international adoptions may be considered only after all other options have been explored and the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in Vietnam.
- Introduce mechanism to improve monitoring and regular review of orphans in all forms of alternative care (fostering, guardianship, adoption, institutional care).

6.3. Sexually Abused and Exploited Children

“Sexual abuse” has been defined by the World Health Organisation as “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society.” Commercial sexual exploitation of a child includes involvement of children in prostitution, child pornography, and the sale or trafficking in children.

6.3.1. CRC and International Standards and Good Models

Article 34 of the CRC requires State parties to undertake to protect children from all forms of sexual exploitation and sexual abuse. In particular, it requires States to take all appropriate national bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) The exploitative use of children in pornographic performances and materials. States are also required to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (Article 35).

CRC also states that offences in relation to the sale of children, child prostitution and child pornography shall be punishable “by appropriate penalties that take into account their grave nature”. The Optional Protocol to the CRC requires States parties to take all feasible measures with the aim of ensuring all appropriate assistance to victims of sexual exploitation, including their full social reintegration and their full physical and psychological recovery.

In addition, the sexual exploitation of children is addressed in the First World Congress against Commercial Sexual Exploitation of Children (Stockholm Agenda, 1996), the Second World Congress Against Commercial Sexual Exploitation of Children (Yokohama Declaration, 2002), and through the Regional Commitment and Action Plan of the South East Asia Pacific Regional Against Commercial Sexual Exploitation of Children (Adopted 18 October, 2001), which was endorsed by Vietnam. The following measures have been highlighted in those instruments, and by the UN Committee on the Rights of the Child:

Establish a minimum age of consent, i.e. the age below which children are considered to be too young or immature to consent to sexual activity. The Committee on the Rights of the Child has emphasised that the age limit needs to be judged against overall principles of respect for the child’s evolving capacities, and for his or her best interests, health and maximum development. The Committee has not proposed a particular age but has, for example, commented negatively about the Philippines’ use of 12 as the age of consent, recommending that they give serious consideration to raising it. The Committee has also emphasised that the age of consent to sex should be the same for both boys and girls.

Strategies to Identify Child Victims: feelings of shame or threats by adult perpetrators often make child victims of sexual abuse and sexual exploitation reluctant to speak about their circumstances and to seek help. Children involved in prostitution or who have been trafficked may be especially difficult to

reach, and under very strong pressure to remain in prostitution. They may be fearful of the police or local authorities, and may respond best initially to informal contact from health or youth outreach workers. Special measures are therefore necessary to identify and reach out to child victims. In addition, police, labour inspectors, border guards and others who may come into contact with children who have been sexually exploited or trafficked should be trained to identify child victims, and in particular to undertake appropriate age verification procedures to ensure that anyone under the age of 18 is identified and treated as victim, not subject to arrest or sanction.

Prosecution of Perpetrators: measures should be in place to ensure that anyone involved in the sexual abuse or exploitation of a child is severely prosecuted under penal laws. The Penal Code should be reviewed to ensure that it fully penalises all forms of sexual abuse and sexual exploitation, that the offences of child prostitution, child pornography, and sale and trafficking in children comply with the international definitions⁴⁹ and that the penalties for these crimes adequately reflect their grave nature. In addition to the child-friendly investigation and trial measures outlined above, effective prosecution may require special measures to protect the safety and identity of the child victim (particularly where the exploitation was part of an organised crime ring), and to secure testimony of children who are outside of the territory.

Non Sanctioning of Child Victims: the UN Committee on the Rights of the Child has repeatedly emphasised that children under the age of 18 who are involved in prostitution should be treated as victims, and should not be subject to any form of sanction. Most children involved in the sex trade do not freely choose to become prostitutes, but instead fall prey to either direct or indirect force or coercion of an adult, or are forced by circumstances such as poverty, hunger, and survival. Criminal and administrative laws should be reviewed to ensure that no child under the age of 18 is subject to sanction for any illegal activities associated with his/her sexual exploitation, such as illegal border crossing, false identity papers, etc.

International Cooperation: sexual exploitation of children often includes an international component. Measures should therefore be in place to promote mutual legal assistance between States, to ensure that State laws criminalise the actions of citizens when committed against children in other countries, and to promote extradition and other arrangements to ensure that a person who exploits a child for sexual purposes in another country is prosecuted either in their country of origin or the destination country.

Support to Child Victims: Children subjected to commercial sexual exploitation often require specialist and long-term support to promote their recovery and reintegration and to help them overcome any stigmatisation. Whenever possible, this support should be provided in families and communities, rather than in rehabilitation centres. The child's needs require careful assessment by a trained specialist, and an individualised plan to support both the child and his/her family. This may include emergency short-term shelter care; social, medical and psychological counselling; psycho-social support; placement in schools; skills training and job placement; promotion of alternative means of livelihood for child victims and their families; repatriation to their country of origin; and effective action to prevent and remove social stigmatization. Children who are returned to their families should receive ongoing monitoring and support to ensure their reintegration and to support the parents to create a protective environment. Children who cannot, in their best interest, remain in the care of their parents, it is the State's responsibility to ensure that they are provided alternative care, preferably in a family environment.

49 The Optional protocol to the CRC includes the following definitions:

"**Child prostitution**" is defined to mean "the use of a child in sexual activities for remuneration or any other form of consideration." State parties are required to ensure that offering, obtaining, procuring or providing a child for prostitution is fully covered under criminal law.

"**Child pornography**" is defined as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes." State parties are required to ensure that producing, distributing, disseminating, importing, exporting, offering, or selling child pornography is fully covered under criminal law.

"**Sale of children**" is defined as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration." State party shall ensure that the following acts are fully covered under its criminal or penal law: 1) offering, delivering or accepting a child for the purpose of: a) sexual exploitation of the child; b) transfer of organs of the child for profit; c) engagement of the child in forced labour; and 2) improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption.

6.3.2. Vietnamese Laws, Policies and Practices

Sexual abuse, commercial sexual exploitation and trafficking children are issues of significant concern in Vietnam, and have been the subject of numerous laws, policies, and programmes in recent years. Although illegal and subject to strict penalties, the phenomenon continues to creep steadily and pervasively into the lives of the most vulnerable children in the country. Studies have disclosed that both boys and girls aged less than 12 years and up to 18 years are involved in commercial sexual activity,⁵⁰ and that sexual abuse, particularly in the family context, is a significant concern.⁵¹ Due to the covert nature of children engaged in prostitution, it is impossible to determine through the literature the actual numbers of young people and other actors involved. The incidence of children in prostitution is believed to be steadily increasing. It is estimated that approximately 13% of prostitutes are under the age of 18.⁵² Figures may vary between 5 percent and 20 percent, depending on geographical area, and the problem is said to be more evident in the South than in the North⁵³

As a counter measure, the government has identified child sexual abuse, including child prostitution, as a priority issue under Decision 19/2004/QS-TTg on the approval of the Programme on the Prevention of and Solution to the Situation of Street Children, Sexually Abused Children and Children Working under Heavy or Hazardous Condition 2004 to 2010. On Jan 14, 2005, MOLISA issued Official Correspondence 120/LĐTBXH-PCTNXH providing guidelines for the implementation of the Child sexual abuse Prevention Project under Decision 19. In 2001, the Government of Vietnam ratified the CRC's supplementary protocol on child trafficking, child prostitution and child pornography. A National Plan of Action against Trafficking in Children and Women has also been recently introduced.⁵⁴ In addition, several national laws and subsidiary acts have been introduced to address the issue.

Sexual Abuse and Minimum Age of Consent:

The term "sexual abuse" is not used or clearly defined in Vietnamese law,⁵⁵ however the Law on Protection, Care and Education of Children states that all acts of infringing upon children's rights, causing harms to the normal development of children shall be severely punished by law, including maltreating or raping a child. Under the law, the absolute age of consent to engage in sexual activity is 13; any sex act with a child under that age is considered rape, regardless of whether the child consented (Penal Code, Article 112). Further protection for children between the ages of 13 and 16 is provided under Article 115, which prohibits an adult from having sexual intercourse with a child between the ages of 13 and under 16 (Article 115). In other words, children between the ages of 13 and under 16 may be able to give valid consent to sex with another minor (peer consent), but are protected from being sexually exploited by adults.

Prosecution of Perpetrators

Vietnamese law has quite comprehensive provisions to prosecute and sanction all forms of sexual abuse and sexual exploitation of children. As noted above, the Law on Protection, Care and Education of Children prohibits all acts of infringing upon children's rights, including seducing, deceiving, facilitating, organizing and forcing children into prostitution, maltreating or raping a child. The law states that perpetrators will be sanctioned administratively or under criminal law.

In order to ensure strict handling and sanctioning of sexual crimes committed against children, the government issued a Joint Circular No. 01/1998/TTLT/TANDTC-VKSNDTC-BNV dated January 1, 1998 of the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Interior guiding the application of a number of provisions of the Law reinforcing that the lower the age of the victim is, the more severe penalty is to be imposed on the offender(s). In particular, it instructs Court:

- 50 CSEC study
- 51 Review of Child Abuse Laws and Policies in Vietnam, CPFC and UNICEF, 2006
- 52 The final report on the implementation of prostitution prevention and combat in the period of 2001-2005 and plan of prostitution prevention and combat for the period 2006 – 2010
- 53 Le Bach Duong, Child Prostitution in Hanoi, Hai Phong, Ho Chi Minh City and Can Tho : A Rapid Assessment, ILO, 2002
- 54 Government Decision No. 130/2004/QĐ-TTg
- 55 Review of Child Abuse Laws and Policies in Vietnam, CPFC and UNICEF, 2006

- to sentence the offender(s) to twenty years of imprisonment, if the victim is a child aged between full 6 years and less than 13 years;
- to sentence the offender(s) to life imprisonment, if the victim is a child below the age of 6 years;
- to sentence the offender(s) to life imprisonment or death penalty regardless the fact that the victim is a child aged full 6 years or higher, if there are two or more aggravating circumstances or circumstances determining the penalty bracket.

In addition, general instructions on child sexual abuse trials related to raping, forcing children to have sex, having sex with children under 16 years old, organizing and mediating child prostitution (Official Correspondence 73/TK dated Mar 2nd, 1995 by the Supreme Court) are regulated as follows:

- Powerful sanctions within the sanction framework should be applied along with supplementary measures.
- Child prostitution organizing and mediating crimes should be charged with stricter sanctions compared to those of adult prostitution.
- Trials should be held at the place of violation and made high profile through mass media to boost their preventive values.
- In cases where violators use State-owned facilities (hotels, guesthouses, restaurants, dance clubs) in child prostitution, along with sanctioning directly related sides, measures should be employed to remove possible causes and conditions for violations in these places by their competent managing bodies.

Under the Penal Code, the following acts are prohibited and subject to strict penal sanctions:

Sexual Abuse: The Penal Code 1999 includes several offences relating to the sexual abuse of children. As noted above, any act of sexual intercourse with a child under the age of 13 is considered rape, and severely punished. The Penal Code also includes the offences of rape of a child between the ages of 13 and under 16 (Article 112), forcible sexual intercourse with children between the ages of 13 and under 16 (Article 114),⁵⁶ having sexual intercourse with children between the ages of 13 and under 16 (Article 115), and obscenity against children (Article 116). All acts of child sexual abuse of various forms and degree are subject to strict penalties. For the purposes of sanctioning, the Penal Code divides children who have been the subject of sexual abuse into two groups, each of which is accorded with a distinct protective policy. The first group of subjects includes children under 13 years old; the second group includes children aged between full 13 years and less than 16 years. Sanctions are stricter where the victim is under the age of 13.

Child Prostitution: The Penal Code does not contain a separate crime of “child prostitution.” However, Article 256 of the Penal Code on “sexual intercourse with juveniles” states that those who have paid sexual intercourse with juveniles (i.e. persons aged under 18 years) shall be examined for penal liability, regardless the juveniles’ consent to the act. “Paid sexual intercourse” is defined as an act of the perpetrator who suborns a minor child by material means so that the child gives his/her consent to the sexual intercourse.⁵⁷ Persons who engage in sex with child prostitutes under the age of 13 shall be charged with rape and sanctioned severely. The Penal Code also prohibits harbouring prostitutes (Article 254) and procuring prostitutes (Article 255). Under both offences, aggravated penalties are applied for committing the offence against a child between 16 and under 18, and between 13 and under 15.⁵⁸

56 Forcible sexual intercourse with children” is defined as the employment of trickery to induce children dependent on the offender or children being in dire straits to have sexual intercourse with the offender against their will.

57 Joint Circular No. 01/1998/TTLT/TANDTC-VKSNDTC-BNV dated January 2, 1998 of the Supreme People’s Court, the Supreme People’s Procuracy and the Ministry of Interior guiding the application of a number of provisions of the Law amending a number of articles of the Penal Code.

58 Article 254 – “Harbouring prostitutes”: those who commit the crime of harbouring prostitutes with regard to juveniles aged between full 16 years and less than 18 years shall be sentenced to between five and fifteen years of imprisonment (paragraph 2); if the crime is committed against children aged between full 13 years and less than 16 years, the offenders shall be sentenced to between twelve years and twenty years of imprisonment (paragraph 3). Article 255 “Procuring prostitutes”: those who commit the crime of enticing or procuring prostitutes with regard to juveniles aged between full 16 years and

Prostitution is also addressed under the Ordinance on Prostitution, which prohibits the following behaviours: selling and buying sex, harbouring sexual activities, organization of prostitution, forced selling sex, prostitution intermediary, protection of prostitution activities, prostitution disguised by other businesses, and other prostitution related issues (Article 4). The Ordinance states that people using juvenile sex-workers shall be charged with criminal responsibility (Article 22), and will prostitution facilitators, organizers, people forcing others to sell sex, and woman and child traffickers for commercial prostitution (Article 24).

In order to combat prostitution in general and child prostitution in particular, authorities have launched the supervision and inspection of businesses where prostitution may be occurring, including hotels, guesthouse, restaurants, cafes, karaoke bars and massage parlours. While there have been many successful criminal prosecutions for prostitutes, clients and people harbouring prostitutes, in general punishments imposed on business by competent agencies appears not heavy, only warning or fine at low rate. Few service establishments have been suspended or confiscated business license.⁵⁹

Sale and Trafficking: Article 119 creates the offence of "Trafficking in Women". Article 120 stipulates the crime of trading in, fraudulently exchanging or appropriating children. The penalty is between three and ten years of imprisonment. If the crime is committed in an organised manner, is of professional character, is committed against more than one child, or for despicable motivation or inhumane or prostitution purposes, or for the purpose of sending them abroad, the offenders shall be sentenced to between ten and twenty years of imprisonment or life imprisonment.

Through the efforts of law enforcement agencies, many large-scale and well-organized networks of trafficking in children and women to other countries in the region have been disclosed and handled by the police and border guard agencies. From 1998 to 2002, the People's Courts at all levels prosecuted thousands of criminals committed trafficking in children and women in accordance with the Article 119, 120 of the Criminal Code. Most criminals were sentenced strictly in conformity with the laws. However, it is estimated that the proportion of detected trafficking cases remains very low compared to the actual situation, and investigation remains passive, based on complaints from child victims and their families, rather than proactive policing.⁶⁰ The National Plan against Trafficking 2006-2010 therefore calls for greater focus on prevention, identification, investigation and sanction of trafficking in children and women and women and other related crimes, particularly cross-border trafficking in children and women and internationally organized crimes.

Non-Sanctioning of Child Victims

Under the Vietnamese law, children who are engaged in prostitution are not treated as criminals, however they may be subject to administrative sanction. Article 23 of the Ordinance on Prevention and Fight against Prostitution stipulates that prostitutes, depending on the nature and extent of violations, will be administratively fined, educated at the community, or placed in a rehabilitation institution (05 Centre). Children detected by the police as involved in commercial sex work may be arrested and detained in police stations for up to 24 hours while the administrative violation is being investigated. Decree 178/2004/NĐ-CP dated Oct 15th, 2004 on guidelines for the execution of a number of regulations stated in the Ordinance on Prostitution Prevention states that children who have permanent shelters and are regular sex-workers from 14 years old upwards will receive educating and rehabilitating measures at their own localities; children who are regular sex-sellers from 16 years old upwards and have already received educating and rehabilitating measures or do not have permanent shelters will be sent to rehabilitation centres for between three to eighteen months.

less than 18 years shall be sentenced to between three years and ten years of imprisonment (paragraph 2); if the crime is committed against children aged between full 13 years and less than 16 years, the offenders shall be sentenced to between seven years and fifteen years of imprisonment.

59 The final report on the implementation of prostitution prevention and combat in the period of 2001-2005 and plan of prostitution prevention and combat for the period 2006 – 2010

60 Vietnam National Report on the Implementation of the Optional Protocol to the CRC, 2006; National Plan Against Trafficking and Women and Children, 2004-2010.

Statistics from MOLISA's Department of Social Evils Prevention show that in 2004, 13,000 people - of which 5% were minors - were administratively sanctioned for being involved in prostitution.⁶¹

Support to Child Victims

The Law on the Care, Protection and Education of Children states that sexually abused children shall be assisted by their families, the State and society to recover through counselling and physical and mental rehabilitation, and shall be given conditions to stabilise their lives. (Article 56). However, as yet, no detailed legal normative document has been developed to guide the implementation of these provisions

As noted above, many psychological and physical rehabilitation centres have been built to support sexually abused children in major cities, particularly in Ho Chi Minh City. In addition, consultancy centres have been established in several provinces to provide child victims with legal, psychological and physiological advice and help in social reintegration. The Women's Union is active throughout the country in providing counselling and advice to child victims and support them to enrol in compassion classes or vocational training programmes. However, there is currently no professionalized system in place to ensure that all sexual abuse victims are systematically assessed by a trained social worker and referred to appropriate services to promote their recovery and reintegration. In recent study of children who had had participated in court proceedings as victims and witnesses, none of the child sexual abuse victims interviewed had received any type of counselling or other support for their recovery and reintegration. Most continued to suffer trauma and anxiety.⁶²

Similar concerns about the lack of comprehensive support for returned victims of trafficking were noted in a recent needs assessment in Dong Thap Province. The assessment found that returned victims experienced difficulties in recovering psychologically, and also had difficulty reintegrating into their communities and family due to stigma. Female returnees who had low education levels, or lacked vocational training or income generating opportunities were at risk of returning to the sex industry. Most of the returnees did not want to return to school because they were older than the school age, and many had difficulty obtaining stable jobs or accessing business loans. In general, the assistance provided to returnees lacked coordination and intensity, and local collaborators did not have adequate counselling skills to address the psychological needs of trafficked victims.⁶³

Children who have engaged in sex worker, including child prostitutes and children who have been trafficked for commercial sexual exploitation, are subject to monitored rehabilitation either in the community, or in rehabilitation centres in accordance with the Ordinance on Prevention and Fight against Prostitution and Decree 178/2004/NĐ-CP dated Oct 15th, 2004. Under the Decree, children over the age of 16 who are regular sex-sellers and have already received educating and rehabilitating measures, or who do not have permanent shelters will be sent to rehabilitation or medical treatment centres. However, two recent studies discovered that in some instances, children under the age of 16 are being sent to medical treatment establishments.⁶⁴

The minimum conditions for juvenile sex workers in rehabilitation centres are governed by Decree No 135/2004/ND-CP dated June 10th 2004. The Decree states that juveniles in the centres shall be provided accommodation suitable to their age, nature and seriousness of their offences and their gender (Article 40); shall be provided education in conformity with the curriculum set by the Ministry of Education and Training. (Article 43)⁶⁵, must participate in therapeutic labour, which must not constitute hard, harmful and dangerous works (Article 44); and must receive regular medical examination every six months (Article 46). Juveniles in Rehabilitation Centres shall be provided with financial supports to cover the fees of education, vocational training, treatment, food, personal living necessities and other expenses (Article 46).

61 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004.

62 Investigative and Court Proceedings Involving Children and Juveniles: An Assessment of Child-sensitive Procedures, UNICEF and People's Supreme Court, 2006 (Draft)

63 Report on Needs Assessment of Trafficked Returnees in Dong Thap Province, Save the Children UK, 2005.

64 The Sexual Exploitation of Children in Viet Nam. MOLISA and UNICEF, 2005, Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

65 For juveniles who haven't completed Primary education, studying is compulsory; while for others, study is optional depending on the capacity and conditions of each Rehabilitation-Education-Social Labor Centre

Viet Nam currently has 54 centres that act as rehabilitation centres for sex workers, managed by MOLISA. Of these centres, four are specialised 05 centres (i.e. sex workers only) and 50 are joint 05 and 06 (drug rehabilitation) centres. Of the four specialised 05 centres, two are located in HCMC province, and one each in Hanoi and Haiphong provinces in the country's north. The statistics show that there were a total of 3,575 clients resident at 05 centres for the year 2004, of which 124 (or 3%) were aged less than 18 years. Currently, children under the age of 18 who are sent to rehabilitation centres are accommodated in the same centres as adults, though in some centres they are physically separated. The centres are not prisons, but children sent there are being detained by the authorities and are not allowed to leave. The centres follow a strict routine, and the girls are locked up for several hours per day.⁶⁶ Rehabilitation programs consist mostly of lectures on the danger of drug use, prostitution, and morality, as well as non-formal education and vocational training.⁶⁷ Some centres lacked appropriately trained staff (counsellors, social workers, vocational trainers) and the conditions and care provided to juveniles do not meet international standards. In general, institutions do not have enough resources to invest in HIV prevention, care and support.⁶⁸

Reintegration into society at the end of the rehabilitation period is a significant challenge, and relapse rates are quite high. When a child is released from an 05/06 Centre, the centre contacts the child's home commune, which then works in cooperation with the Women's Union to integrate the child into the community. In some areas, the Women's Union have "after care" clubs.⁶⁹ However, an evaluation of prostitution prevention programmes recently concluded that the quality of education and health treatment for sex workers is limited, just a few sex workers are provided with vocational training and job creation, education programmes are not appropriate or intensive and the rate of reintegrated female sex workers is really low.⁷⁰

The new National Plan for Combating and Preventing Prostitution 2006-2010 (Draft) calls for measures to provide all sex workers with health treatment at health treatment centres or in communities; vocational training, job creation and integration into communities; prevent relapsed sex workers; and to reduce the relapse rate to 30%. It includes plans to improve procedures of integration of sex workers already treated at health treatment centres into communities with supervision and support of local authorities; to improve the capacity of social workers and upgrade facilities of 05 centres in order to improve the quality of services, management, education, vocational training for sex workers; and to mobilize mass organizations, institutions, particularly Women's Unions, to take part in consulting, educating and supporting former female sex workers.

The Plan against Trafficking in Women and Children 2006-2010 also calls for greater support to education, job opportunities, community re-integration for trafficked women and children, as well as funding and construction of receiving centres for returned victims. Currently, trafficked victims may receive assistance and counselling at temporary reception centres at the Vietnam-China and Vietnam-Cambodia border gates. In addition, the Women's Union has established special assistance centres for trafficked women and children in HCMC, Quang Ninh, and Can Tho provinces.⁷¹

International Cooperation

The Viet Nam government has committed to strengthening international cooperation to combat sexual crimes against children that involve international elements, particularly human trafficking.

In general, Vietnam's Penal Code applies only to criminal offences committed in the territory of Vietnam, including offences on board a ship or aircraft registered in Vietnam (Article 5,6 of the Penal Code, Article 172

66 The Sexual Exploitation of Children in Viet Nam. MOLISA and UNICEF, 2005

67 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

68 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004; HIV and Children in Institutions in Vietnam, UNICEF, 2006 (Draft)

69 The Sexual Exploitation of Children in Viet Nam. MOLISA and UNICEF, 2005

70 The final report on the implementation of prostitution prevention and combat in the period of 2001-2005 and plan of prostitution prevention and combat for the period 2006 - 2010

71 Answers to questions set by the Committee on the Rights of the Child and Updated Country Report on Vietnam's Implementation to the Optional Protocol to the CRC, 2006.

of the Penal Procedure Code). The Penal Code applies equally to all foreigners who commit such offences in the territory of Vietnam, except for those with diplomatic immunity. In addition, Vietnamese citizens and stateless persons permanently residing in Vietnam who commit offences outside the territory of the Socialist Republic of Vietnam may be prosecuted in Vietnam according to the Penal Code of Vietnam.

The Vietnamese law contains no provision regarding the jurisdiction over offences on the basis of the victims' nationality. However, if the victims are Vietnamese nationals or stateless persons permanently residing in Vietnam, Vietnam may also have extraterritorial jurisdiction over the offences committed outside the territory of Vietnam. Extraterritorial jurisdiction in must be established in accordance with bilateral mutual legal assistance treaties with other countries or in other international treaties which Vietnam has signed or acceded to.

Extradition is addressed under Chapter 37 of the 2003 Penal Procedure Code. It states Vietnamese agencies competent to carry out legal proceedings may request that a foreign country extradite a criminal for prosecution or sentence execution in Vietnam, in accordance exiting mutual legal assistance or extradition treaties between the States. Vietnamese agencies may also respond positively to a request for extradition made by a foreign country with regard to a foreigner who committed a crime and is present in the territory of Vietnam. Vietnamese agencies may refuse to extradite, if the acts committed by the person are not considered as crimes under Vietnamese law, or the person has been prosecuted in Vietnam for the offence referred to in the request. In addition, a Vietnamese citizen cannot be extradited to a foreign country for prosecution or sentence execution (Article 344).

Vietnam has not yet signed bilateral extradition treaties with other countries, particularly countries of the Mekong River's region. Nevertheless, Vietnam has signed mutual legal assistance treaties with 11 countries, including Russia, Mongolia, Hungary, Bulgaria, Poland, Cuba, China, Lao, etc, that regulate the issue of extradition among other things. In addition, in practice, Vietnam has executed, on case-by-case basis, extradition requests made by a number of countries having no mutual legal assistance treaties concluded with Vietnam.⁷² The Optional Protocol to the CRC, which Vietnam has ratified, may also be used as a legal basis for complying with a request for extradition made by a country which has not signed a bilateral extradition treaty with Vietnam.

Viet Nam has also signed Memoranda of Understanding on Trafficking in the Mekong sub-region with Cambodia, China, Lao PDR, Myanmar and Thailand. Viet Nam has also agreed to participate in the Action Program against Trafficking Women and Children in Mekong Sub-region during 2005-2007.

6.3.3. Analysis and Recommendations

Vietnam has developed a relatively comprehensive legal framework for the prosecution and sanctioning of all forms of sexual abuse and sexual exploitation of children. Recent legal reviews of Vietnam's child abuse legislation and legislation relating to trafficking in women and children highlighted only a few minor gaps that could be strengthened:

- Since the existing Vietnamese laws have no official definition of the term "child sexual abuse", the term is used inconsistently in a number of legislations and regulations. Therefore, the term "child sexual abuse" should be legislatively defined, serving as a basis for proper understanding and consistent use of this term in all legal normative documents.
- Amend the Penal Code to more clearly define the offence of child prostitution in accordance with the Optional Protocol to the CRC, to include all acts of offering, obtaining, procuring or providing a child for prostitution. In addition, the distinction between prostitution-related behaviours to be adjudicated as administrative violations and those to be treated as crimes needs to be more clearly defined. Due to the differences in the nature and severity of child prostitution compared to adult prostitution, any action to organize, facilitate, mediate or supply juvenile sex workers should be considered serious criminal violation and charged with criminal sanctions. The application of administrative sanctions to child prostitution crimes can not fully reflect their severity.

⁷² Trafficking Legal Review; Review of Child Abuse Laws and Policies in Vietnam, CPFC and UNICEF, 2006

- In addition to the crime of “trading in children”, the law should clearly define the separate crime of “trafficking in children” consistent with the definition accepted internationally and in the Protocol. The definition of “trafficking in children” should be broad enough to include not only acts of selling/buying children, but also any act of recruiting, transporting, transferring, delivering, harbouring or receiving a child for the purposes of exploitation, regardless of the means by which they are carried out and the purposes to which they intend. In accordance with international standards, the provision should apply to all children under the age of 18.
- International cooperation should be accelerated for better information sharing, and finding economic and technical supports in order to combat child trafficking, child prostitution, and sex tourism involving child prostitution. Further study should be undertaken to make appropriate proposals to the State towards promoting the negotiation and conclusion of bilateral legal assistance treaties with other countries, especially countries of the Mekong River’s region, with a view to specifying the contents, forms and methods of mutual legal assistance and cooperation in matters relating to criminal extradition in general and extradition with respect to offences against children in particular. The Penal Procedure Code should also be amended to permit the extradition of Vietnamese nationals who have committed crimes of sexual abuse or sexual exploitation against children in foreign countries.

As noted above, significant strides have also been made in supporting the recovery and reintegration of child victims of sexual abuse and sexual exploitation. In this respect, however, the law is less developed than it is in the area of prosecution of perpetrators. The provisions of the Law on Protection, Care and Education of Children with respect to support services for child victims of sexual abuse are general and nature, and require further clarification in a legal normative document.

Another concern is that the law does not clearly stipulate that child prostitutes under the age of 18 should be treated as victims, and not subject to any form of sanction for their actions. According to the CRC and Optional Protocol, child prostitutes should be provided with support for their rehabilitation and reintegration, including, where necessary, temporary shelter and alternative care. However, wherever possible, this care and rehabilitation should be provided in a home setting, not an institution, and should not take the form of forcible deprivation of liberty. The current practice of imposing administrative sanctions on child prostitutes violates international standards on this issue, particularly where the children are placed in rehabilitation centres and detained against their will. In addition, the rehabilitation centres have not proven to be a very effective strategy, since the rate of recidivism of prostitutes who are released after treatment in a 05/06 centre is quite high. The effectiveness of placing child prostitutes in medical treatment establishments should therefore be reconsidered. A less punitive solution needs to be developed that allows for the separation of children from the sexual exploitation environment.

There should be more integrated, community-based measures to promote the child’s recovery and reintegration with their family and community.⁷³

In addition to the general recommendations made under Section 6 above, the following recommendations are proposed in order to improve the recovery and reintegration of children who have been sexually abused or exploited:

- Introduce referral systems to ensure that all cases of child rape and other forms of sexual abuse that are investigated by the police are referred to appropriate agencies so that the child victim can be assessed and provided appropriate support services. Consider introducing a multi-disciplinary team approach to child sexual abuse investigations, at least in major cities.
- Amend laws to prohibit the arrest and administrative sanctioning of children under the age of 18 who are engaged in prostitution. Juvenile sex workers under the age of 18 should not be admitted to 05/06 centres.

73 Analysis and Evaluation of Legislation and Policies on Care and Protection of CEDC, MOLISA, VNCPFC, and UNICEF, 2000; The Sexual Exploitation of Children in Viet Nam. MOLISA and UNICEF, 2005

- Introduce an alternative care approach to promote the recovery and reintegration of children involved in prostitution through community-based recovery and reintegration programmes, rather than 05/06 centres.
- Build a cadre of trained, professional counsellors who can provide specialised counselling to child sexual abuse and sexual exploitation victims to assist them to recover mentally and emotionally from the trauma.

6.4. Street children

“Street children” has been defined in Vietnam to include four groups of children: a) children who have run away from home and live and work on the street, in public areas such as parks, under bridges in cities without their parents/guardians; b) children from migrant families living and working on the street, in public areas with one or both parents/guardians; c) children working on the street who live at home with their parents/guardians; and d) children who have left home for economic reasons and live and work on the street, in public areas such as parks, under bridges in cities without their parents/guardians⁷⁴

6.4.1. CRC and International Standards and Good Models

The CRC does not explicitly address the issue of street children. However, the UN Committee on the Rights of the Child has commented critically on States that sanction street children through vagrancy laws, or subject them to round-ups by the police. Children often end up living and working away from home for a variety of reasons, including abuse by parents or step-parents, neglect, or the need to provide income support to the family. Simply returning the child to this environment may not be in the child’s best interest, particularly where no support is provided to the family.

In many countries, projects offering assistance to street children take a more considered and careful approach, looking both at the children’s need to maintain relationships with their families and communities, and at the children’s own sense of independence and self-reliance. Projects tend to focus on street outreach or drop-in centre approaches, based in the locality of the child’s street existence, providing practical services while supporting the child’s ability to control the pace of change and encouraging rehabilitation with their families or communities.

6.4.2. Vietnamese Laws, Policies and Practices

Street children is a social phenomenon occurring in almost all of the developing countries, including Vietnam. Statistics of the Vietnam’s Committee for Protection and Care of Children shows that the number of street children has been steadily increasing, from 16,000 in 1997 to 21,000 in 2003. Studies on street children have highlighted a number of factors that contribute to the phenomenon, including poverty; inequitable development between rural and urban areas; the increasing gap in respect of living standards; the demand for labourers in cities; poor awareness by local authorities and parents; and ill treatment and discrimination against children which drives them out of their home. Most of these children live and try to earn a living around the marketplaces, bus stations, railway stations, restaurants, pagodas, tourist attractions, and commercial centres. Their span of work ranged from vending, selling newspapers, lottery tickets, shoes polishing, and scavenging.⁷⁵ Some children sleep on the street, but the majority share rented rooms with friends. A very small minority stay with relatives or in a drop-in centre or other charitable organisation. The majority have dropped out of school after primary level.⁷⁶

The issue of Street children has received significant attention in recent years, and the government has issued many legal documents and guidelines to address the problem. The Law on Protection, Care and

74 A study on Street Children In Hanoi and an assessment of UNICEF’s Street children’s project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003)

75 A study on Street Children In Hanoi and an assessment of UNICEF’s Street children’s project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003); Completing the Policy on Prevention, Protection and Care for Street Children, Nguyen Hai Huu and Le Tuyet Nhung, UNICEF/MOLISA 2001; Study on Solutions to Solve the Issue of Street Children in Big Cities, MOLISA and UNICEF

76 A study on Street Children In Hanoi and an assessment of UNICEF’s Street children’s project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003)

Education of Children states that Provincial People's Committees in those provinces where street children are living shall coordinate with provincial People's Committees in those provinces where street children have migrated from to organise and assist street children to return to their families. Street children with no caregivers shall be placed in alternative families or child-support establishments. Street children from poor families shall be given priority support for hunger elimination and poverty reduction. In cases where street children are accompanied by their families on the streets, provincial People's Committees of those provinces in which these children and their families are living are responsible for requesting and creating conditions for these children to enjoy a stable life in accordance with their rights (Article 55).

Street children are also one of the target categories under Decision 19/2004/QĐ-TTg on the approval of the Programme on the Prevention of and Solution to the Situation of Street Children, Sexually Abused Children and Children Working under Heavy or Hazardous Condition 2004 to 2010, which calls for a reduction by 90% the number of street children, of whom 70% shall be provided support to reintegrate with their families. Right after the issuance of Decision 19, CPFC in cooperation with MOLISA established the Steering Committee for Resolution 19 consisting leaders from relevant Ministries, sectors and civil society. Moreover, the vertical collaboration system among the Ministry of Finance, MOLISA, Ministry of Public Security and CPFC as well as the inter-sectoral collaboration has provided effective guidelines for the implementation at grassroots levels.

To date, the main policy of the State has been to gather up street children in urban centres and return them to their families, either voluntarily or by compulsion. Focus has largely been on the return of street children and encouraging families to make commitment with the commune people's committee to take responsibility for their children and keep them at home. Street children are generally identified and picked up by the police, and then taken to a Social Protection Centres for between 7 to 15 days. The State provides a subsidies of VND 5,000 per day for up to 15 days before they are either sent officially to local social protection centres for long-term care or helped to go home. Children whose parents can be traced are returned to their home province, generally with a guarantee from the parents/guardian. Children whose families cannot be traced or who are multiple returnees are admitted to a Social Protection Centre or charitable social house or affectionate house for longer-term care.

Experience has shown that children who are returned home with limited support or follow up tend to return again to the city. However, projects that have promoted cooperation and coordination between local authorities in the origin and destination locations, and that ensure that both the child and his/her family are provided with support (education, vocational training, micro-credit, etc), have had better success at reintegrating children back into their home communities.⁷⁷ In some localities, programmes have been put in place to ease the immediate economic burden of the children's families, and provide unofficial catch-up education to help them reintegrate into schools. Vocational training has also been provided to these children through creative methods including mobilizing local-based businesses to provide vocational training and jobs to local children; developing traditional crafts; and providing poor households with scientific agriculture knowledge. Success stories can be told in Kien Giang, Ha Nam, Hung Yen and Dong Thap.⁷⁸

Increasingly, programmes and services are also being developed to support street children while they are living on the street, with the aim of providing them with improved access to education, counselling, life skills, and vocational training. In the larger cities where street children gather, agencies, organisations and charitable groups have established drop-in centres or open houses, which provide temporary safe residence for street children where they can access services such as boarding, education, vocational training, and entertainment and leisure activities. Educators provide counselling and advice, and either encourage the children to return home or introduce them to charitable or social houses for long-term care. Other models for supporting street children include non-formal "affection" classes, vocational training, and clubs and social groups.⁷⁹ MEST has compiled a training curriculum for alternative classes lasting 100 weeks. The program is flexible so that children can work part-time and still go to school.

77 Completion of policy on Prevention, Protection and Care for Street Children, Nguyen Hai Huu and Le Tuyet Nhung, UNICEF/MOLISA 2001.

78 Decision 19/2004/QĐ-TTg dated Feb 12th, 2004 on the Approval of the Program for Prevention of Street children, Child sexual abuse and Child labour in hard, hazardous and dangerous jobs between 2004-2010

79 Completing the Policy on Prevention, Protection and Care for Street Children, Nguyen Hai Huu and Le Tuyet Nhung, UNICEF/MOLISA 2001

In order to prevent rural-urban migration and stem the flow of street children into urban areas, the State has also focused investment on economic development in disadvantaged areas. Managerial measures have also been deployed to households to realize children's rights and reduce the risk of leaving home among children in provinces of Ca Mau, Kien Giang, Thanh Hoa, Ha Nam, Hung Yen etc. through the combination of propaganda by the former CPFC and the efforts by related sectors and local authorities. Local credit programs for poverty reduction have also been directed to poor households having street children to support them to be financially stable and independent to keep their children at home. Many other supporting measures have also been integrated with these credit programs to boost the roles of families and communities and of children themselves in tackling their own problems.

6.4.3. Analysis and Recommendations

Vietnam has made significant efforts in recent years to prevent children from ending up on the streets, and to reintegrate those who have left home with the families and communities.

Despite these many efforts, there are still some challenges and limitations to addressing the problem of street children:

- Effective outreach and counselling for street children requires motivated, skilled people with whom the children can identify and build a relationship of trust. It is a challenging and skilled job, requiring dedicated staff. However, most street child programmes are staffed by volunteers, for example retired women volunteers from the Women's Union, who have with limited specialised training for the role.⁸⁰
- Family reintegration has not been highly successful, particularly in situations where the child was involuntarily returned.⁸¹
- Due to street children's low education levels and poor quality of vocational training programs, fruitful outcomes of vocational training and job generation have not yet to be seen. Many vocational training programmes do not provide skills that are matched to jobs available in the community.⁸²
- Children surveyed as part of a recent study on Commercial Sexual Exploitation stated that being arrested by the police was a very frightening and confusing experience. The street children in particular reported feeling that their arrest was distressing and unfair.⁸³

The following recommendations are proposed to overcome these challenges:

- It is recommended that the current system of arresting and detaining children who are on the streets be reconsidered. Instead, shift to a social welfare approach to street children management, wherein social workers identify, collect and act as case managers for street children, so that the trauma of the event is reduced.
- Improve models for community-based support and outreach services for street children who do not wish to return home. The network of social workers and street educators should be enlarged and their skills improved so that they can support children on the street to be socialised, avoid delinquency, and learn to be self-sufficient.⁸⁴
- Improve the quality of alternative/part-time education programmes for children on the street. In particular, improve opportunities for street children to study in accordance with the official

80 A study on Street Children In Hanoi and an assessment of UNICEF's Street children's project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003)

81 A study on Street Children In Hanoi and an assessment of UNICEF's Street children's project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003)

82 A study on Street Children In Hanoi and an assessment of UNICEF's Street children's project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003)

83 The Sexual Exploitation of Children in Viet Nam. MOLISA and UNICEF, 2005

84 A study on Street Children In Hanoi and an assessment of UNICEF's Street children's project in Hanoi, Thanh Hoa, & Hung Yen (Bond, 2003)

school curriculum, and provide pathways for them to reintegrate into mainstream education. Flexible education integrated in formal schools is considered a good model and can be given in basic secondary schools. Street children could be permitted to go to school at their convenient time, making them feel equal to other children. These classes can be held in the evenings and provide children with notebooks and basic textbooks.

- Establish selection criteria for volunteers working with street children, and provide them with improved training. Promote child participation and peer to peer strategies through the appointment of former street children as street educators or youth workers.
- Improve support and services provided to disadvantaged families in high risk communities to prevent the migration of children to the cities.

6.5. Children Performing Harmful or Hazardous Labour

The international standards generally draw a distinction between acceptable “child work” and harmful or hazardous “child labour.” “Child work” refers to children performing acceptable jobs including the ones that do not have adverse impacts on their health and development, and that may contribute positively to their development. “Child labour” is used by ILO to refer to the situation where children (people under 18 years old) have to directly or indirectly take part in the performance of any of the hard, hazardous or dangerous jobs which have adverse impacts on their physical, mental, personal, moral and social development; or have to do too much work or have to work when they are too young, which deprives them from the opportunity of education and playing.⁸⁵

6.5.1. CRC, International Standards and Good Models

Article 32 of the CRC requires States parties to recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. The CRC also requires States parties to: (1) provide for a minimum age or minimum ages for admission to employment; (2) provide for appropriate regulation of the hours and conditions of employment; and (3) provide for appropriate penalties or other sanctions to ensure the effective enforcement of these provisions. The ILO Convention 138 concerning Minimum Age for Admission to Employment recommends that States parties set a minimum age for employment that is not less than 15 years of age, and that is the same as the age for completion of compulsory schooling (Article 2). However, this minimum age does not apply to work for the family or for small-scale production in the local community (Article 5). In addition, national laws may permit light work by children as young as 12, provided the work is not likely to be harmful to their health or development, and does not prejudice their attendance at school (Article 7).

What constitutes harmful child labour is more clearly defined in the ILO Convention 182 on the Worst Forms of Child Labour, which defines the worst forms of child labour to include: a) all forms of slavery or practices similar to slavery; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. States parties are required to define, in their national laws, the types of work which are considered to be harmful to the health, safety or morals of children. The ILO Worst Forms of Child Labour Recommendation, 1999 recommends that States define harmful child labour to include:

- a. work which exposes children to physical, psychological or sexual abuse;
- b. work underground, under water, at dangerous heights or in confined spaces;

⁸⁵ Analysis and Evaluation of Legislation and Policies on Care and Protection of Children in Especially Difficult Circumstances, MOLISA, VNCPFC and UNICEF, 2000

- c. work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- d. work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- e. work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Children victims of labour exploitation or engage in hazardous work shall be supported for psycho-physiological recovery and community reintegration. In special cases, they will receive comprehensive supports for themselves and families to keep them from returning to work in hazardous environment. Supports include of health services, regular consultation, schooling, vocational training, family care and family income generation.

6.5.2. Vietnamese Laws, Policies and Practices

In Vietnam, child labour has always received special attention and care from the Party, State and society. This care and attention has been reflected clearly in the development and issuance of a great deal of child labour-related regulations, dating back from 1947 to present. Most recently, the issue of children employed in hard, hazardous and dangerous jobs has been highlighted as a key concern for priority government action in Decision 19/2004/QĐ-TTg dated Feb 12th, 2004 on the Approval of the Program for Prevention of Street children, Child sexual abuse and Child labour in hard, hazardous and dangerous jobs between 2004-2010 (Tackle and prevent the use of children in hard, hazardous and dangerous jobs to reduce the number of such children by 90% by 2010).

The article 54 the Law on Protection, Care and Education of Children states that People's Committees at all levels are responsible for identifying and immediately stopping all forms of child labour, including heavy or dangerous jobs and jobs that expose children to toxic chemicals. People's Committees, in their respective localities, must create conditions for children to participate in vocational training and find suitable work. In addition, parents and guardians whose children are working far from home must maintain regular contact with their children and assist and educate their children. Commune People's Committees in those areas where children working far from their families are residing must create conditions for these children to live in safe environments, be cared for and be able to study and uphold high moral standards (Article 54).

The issue of child labour is further regulated under the Labour Law, 2002. Under the law, employment of children under 15 years old is illegal, except for the jobs stipulated by the MOLISA as allowable (Article 120). In addition, the law also includes additional regulations on the employment of juvenile labourers, defined as a person between the ages of 15 and under 18 (Article 119). Employers using juvenile labourers are required to have separate records documenting their names, date of birth, jobs they are performing, and results of regular medical checks. They must present these records to labour inspectors when requested (Article 119). Working hours applied for juvenile labour shall not exceed seven hours a day or 42 hours a week. Juvenile may be required to work over-time or to work at night only within the jobs predetermined by MOLISA.

In addition, the Labour Law states that juveniles shall be employed only in jobs that are suitable to their health and to their comprehensive physical, mental and personal development (Article 121). Further detail is provided under Inter-ministerial circular 09/TT-LB dated Apr 13th, 1995 by MOLISA and Ministry of Health on the decision of harmful working conditions and the jobs in which using juvenile labour is prohibited. The Circular stipulates 13 working conditions in which using juvenile labour is prohibited including:

- Physical labour which is too hard (consuming more than 4kcal/minute, heartbeat reaching 120/minute);
- Uncomfortable working positions, lack of fresh air;

- Direct exposure to chemical substances which can cause genetic disorder, cancer, bad effects to the cell transformation, reproductive health (reproductive-organ deficiency), occupational diseases and other adverse impacts;
- Exposure to factor causing infectious diseases;
- Exposure to radioactive substances (including devices producing radioactive-ray)
- Too much exposure to electromagnetic field;
- Working environment having noise pollution level that exceeds the allowable standards;
- Working environment having temperatures exceeding 40oC in Summer or 35oC in Winter or highly affected by heat radiation;
- Working places having higher or lower pressures than the air pressure;
- Underground working places;
- Working environment which are not suitable to juvenile labourers' nervous and psychological system;
- Working environments badly affecting children's personality development.

Circular 09/TT-LB also stated 81 jobs in which juvenile labour is prohibited. For children under the age of 15, Circular 21/1999/TT-BLĐTBXH dated Sep 11th, 1999 by MOLISA stipulates the following types of jobs in which they may be employed:

- Performer: dance, music, circus, theatre performer (drama, traditional drama, popular opera, puppet performance etc), actor, actress;
- Traditional crafts: pottery-painting, oyster shell shaping, lacquer painting;
- Fine arts and handicrafts: embroidery, fine-art carpentry;
- Talented athletes: athletes in gymnastics, swimming, track and field (except for hammer throwing), table-tennis, badminton, basket ball, billiards, football, martial arts, shuttle-cock, chess, and Chinese chess;

Employing children less than 15 years old shall strictly observe the following requirements:

- Juvenile labourers must be at least 12 years old. Artistic performers must be at least 8 years old. In special cases, using labourers under 8 years old shall be decided by the Ministry of Culture and Information on the individual basis.
- Juvenile labourers must have sufficient health suitable to the jobs as accredited by the district medical clinic or a general hospital.
- There must be written commitment and agreement on supervision by parents or legal guardians of juvenile labourers.
- There must be curriculum vitae certified by the local authorities to manage juvenile labourers
- Working environment must not adversely affect children's health and psychological development or fail to closely observe current sanitary and hygiene standards set by the Ministry of Health
- Working hours must not exceed four hours a day or 24 hours per week; children must not be employed to work overtime or at night.
- Study time of children must be secured
- Using juvenile labourers must have employment contract.

Employers who violate these juvenile labour law regulations may, depending on the seriousness of the violation, be subject to an administrative fine (Decree No. 113/2004/ND-CP dated April 16th 2004 of

the Government stipulating administrative sanctions against violations of labour legislation) or subject to criminal prosecution under the Penal Code provisions on breaching regulations on employment of child labour (Article 228). There have been cases prosecuted but there have no specific documentations/statistics.

Although the Labour Law has placed prohibition to the use of children in hard, hazardous and dangerous jobs and the ones that expose children to hazardous factors or badly affect their personality evolving, the real situation of children doing these jobs has still remained a prevalent and pressing issue. Studies on child labour have noted that children are currently working in a variety of formal and non-formal sector industries, including handicraft; hired labouring; street vending; shoe shining; service sector (restaurants, food stalls); waste collecting; etc. Some children reported being required to perform work that is physically difficult, and there were also complaints of low income, long working hours, and hot, dusty and noisy work environments. According to the survey done by the CPFC, most children between 14 and 16 years old usually have to work up to ten hours per day but are paid only about VND200,000 per month in average. Those at greatest risk of labour exploitation are children who have migrated from rural to urban areas on their own without parents/guardians.⁸⁶

There has also been an increase in the number of children and juveniles working as hired domestic workers. Since the lives of child domestic workers generally take place behind employers' doors, their living and working conditions are a great concern of their parents, relatives, community and functional authorities. Many are not registered by their employers at the local authorities, which makes monitoring difficult. This undocumented status also makes children more vulnerable to abuse and exploitation, and makes it difficult for them to receive timely help/interventions by the authorities. Studies have found that child domestic workers generally work long hours (13 hours per day, 7 days per week), are closely monitored by their employers, and have very limited free time or opportunities to participate in leisure activities. A recent survey in HCMC found that only 11% of child domestic workers were attending school.⁸⁷

As yet, there have not been any official surveys in Vietnam into the real situation of participation of children into economic activities, which may include children working in hard, hazardous and dangerous environment. The real situation of working children, therefore, can only be assessed through statistics from the surveys on general living standards of Vietnamese people conducted in 1992-1993 and 1997-1998. According to the findings of these surveys, up to 30% of Vietnamese children between 6 and 17 years old participate in economic activities. Among this group, 62.3% of children between 15 and 17 years old are working while the following rates include 36.7% and 7.4% for children from 11 to 14 and from 6 to 10 respectively. In general, the number of female children from 11 years old upward participating in economic activities is higher than that of male children of the same ages. Likewise, the number of working children in rural areas is higher and they also start working earlier than children in urban areas. In addition, the number of working children in less privileged areas especially the Northern central and Northern mountainous areas is much higher than those of other regions and they also start working well earlier in their childhood.

Although most of working children work in their family-based businesses, statistics have revealed that this group has been decreasing very fast in number and the group of children who have to earn their own living and children who are employed by others is growing at a neck-breaking speed. More importantly, 15% of employed children, mostly boys, are doing hard jobs in hazardous and dangerous environments such as ceramic, pottery and construction materials production, mechanical manufacturing, transportation and civil engineering. Also, the intensity and pressure faced by working children are on the rise. Whereas the number of employed children having to work excessive hours (7 hours/day for children from 15-17 and 4 hours/day for children from 11-14) is decreasing, children under 15 working for their own families have to work longer hours. (According to Project: Prevention and fighting against the use of child labour in hard, hazardous and dangerous jobs between 2004 – 2010.)

86 Report on Working Street Children in Nha Trang City; UNICEF/Khanh Hoa WU, July 2002; Report on the Status of Child Labour in Vientam, MOLISA, 2001; Children in Paid Work in HCMC, Vietnam Youth Institute and Radda Barnen, 1997

87 Child Domestic Workers in Ho Chi Minh City, ILO, 2006; Child Domestic Work in Hanoi, Radda Barnen and University of Social Sciences and Humanities of Vietnam National University, 2000.

Common jobs usually performed by children include the following three main types:

- Children helping their parents with specific tasks and housework;
- Children hired as domestic workers house cleaning, clothes washing, dish washing, cooking and/or child minding and cooking;⁸⁸
- Street children doing such jobs as shoes polishing, scavenging, newspaper selling. Statistics show that the number of such children nowadays is around 50,000.
- Children working in the formal labour sector. This group includes: 1) children working in hard, hazardous and dangerous environments which have adverse effects on their health and life (civil construction sites, construction material production, and mineral mining sites where children are severely abused under the extremely bad working conditions, especially in gold mines in Na Ri – Bac Can, Quang Nam - Da Nang, Phu yen); 2) children working in places that are not suitable to their mental and psychological and personal development, such as hotels, restaurants, service centres; 3). Children doing jobs which are not hard, hazardous or dangerous but in prolonged working hours badly affecting their time for education. These jobs include working for family-based craft businesses in fields of tailoring, embroidery, carpentry and other handicrafts.; and 4) children doing jobs suitable to their health, abilities and talents in safe working environments with proper supervision of responsible adults. Statistics show that the number of children classified into Group 1 and 2 is now around 30,000

Despite the many challenges, there have been some successful, multi-agency initiatives to rescue children from hazardous labour and assist them to reintegrate into society. For example, in 2000-1, CPFC coordinated a project to remove and reintegrate 500 children who were working as scavengers at the Dong Thanh Garbage Dump. The goals of the project were to improve health and safety of children; return families to their home provinces; close the dump to all scavengers; enrol the children in primary school; and secure alternative jobs for the scavengers. The project successfully achieved all of these goals, and also mobilised public support around the issue of child labour. Three key strategies that contributed to the project's success included the use of media to mobilize government and public support for intervention; recruiting members from the community to provide outreach to the targeted groups; and securing early participation of all stakeholders at all levels, including government and target groups. Incentive packages were provided to families who agreed to return to their home provinces (free travel home; poverty certificate book; exemption from school-related fees; cash incentives to keep children under 15 in school; free medical care; housing assistance; and job training), and alternative basic education classes were offered to all migrant children to prepare them for formal schooling. Children were then either re-integrated into the formal school system, or provided vocational training. To prevent teacher discrimination, the project pro-actively involved teachers in the project and provided incentives for them to provide extra help for re-entering children.⁸⁹

6.5.3. Analysis and Recommendations

Vietnam has a relatively comprehensive legal framework for the protection of children from hazardous, harmful or hard work, particular for the formal sector. Significant attention has been paid to the issue at all levels, and some successful projects have been implemented to remove children from particularly hazardous work places. However, some gaps remain in the legal framework that should be addressed, including the following:

- Laws and policies do not adequately regulate the non-formal sector, where many children work;
- Inspection and enforcement of labour laws has not been uniformly and rigorously applied, resulting in undetected violations of the Labour Code provisions on juvenile labourers, particularly in the informal sectors;

88 Child Domestic Workers in Ho Chi Minh City, ILO, 2006

89 Evaluation report: Project to Prevent Child Labour at the Dong Thanh Garbage Dump, Patricia Tibbetts and Doan Tam Dan, CPFC and UNICEF, 2001

- There is a lack of coordination mechanisms between law enforcement bodies and child supporting agencies to ensure that children rescued from exploitive labour situations are provided protection and assistance for recovery and reintegration;

In order to address these gaps and strengthen the protection of children from hazardous forms of labour, the following is recommended:

- Develop guidebooks for employers who employ children under 18 and the children themselves to inform them of the rights of juvenile employees, and the duties of those who employ them.
- Strengthen the system of labour inspection by developing regulations on the organization and operation of labour inspectors in juvenile labour-related issues, and through education and training activities provided for labour inspectors.
- Introduce legal normative documents governing the employment of juveniles in agriculture and the informal sector.
- Ensure strict enforcement of the minimum age for working in all sectors, as stipulated in the Labour Law, including informal sectors and hired domestic work. All citizens should be encouraged to identify and report incidences of employing children under 15 and employing juveniles in heavy and hazardous work.
- Review and supplement, as necessary, the list of jobs in which the use of juvenile labour is prohibited so as to keep it up to date with the development of the new jobs and further observe ILO's Conventions 138 and 82 ratified by the Government.
- Introduce a clear coordination mechanism to ensure that children who are removed from harmful or exploitive labour are provided support to promote their recovery and reintegration. In particular, a child's withdrawal from work should be accompanied by a whole range of supportive measures for both the child and his/her family. This may include health services, intensive counselling, school placement, vocational training, alternative family care, and income generation support for the family to reduce their reliance on the child's income. The existing consultation network and other support services (shelters, open houses, vocational establishments, compassion classes, etc) should be expanded to provide counselling and life skills training for children and juveniles removed from harmful or hazardous working conditions.

6.6. Children affected by HIV/AIDS

Children "affected" by HIV/AIDS include children who are HIV-infected; children who are affected by HIV/AIDS because of the loss of a parental caregiver and/or because their families or communities are severely strained by its consequences (orphans and children living in affected families); and children who are most prone to be infected or affected.

6.6.1. CRC, International Standards and Good Models

In response to growing concerns about the spread of HIV/AIDS and its impact on children, the rights of children in the context of the HIV/AIDS epidemic have been established and guidance provided to States under a number of international instruments, including the UNOHCHR International Guidelines on HIV/AIDS and Human Rights, with Revised Guideline 6 on Access to Prevention, Treatment, Care and Support; the UN Committee on the Rights of the Child, Comment No. 3 on HIV/AIDS and the Rights of the Child; and the UNICEF/UNAIDS International Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV/AIDS, 2004.

In addition to HIV/AIDS prevention strategies (outlined above), these instruments highlight the following key strategies to support children who are affected by HIV/AIDS:

Non-Discrimination: States should enact or strengthen anti-discrimination and other protective laws that protect people with HIV/AIDS. Education and training programmes should be designed to change

attitudes of discrimination and stigmatization associated with HIV/AIDS. Laws and policies should guarantee children affected by HIV/AIDS have equal access to education, vocational training, employment, recreation, etc without discrimination or segregation.

Voluntary Counselling and Testing: States parties should ensure access to voluntary, confidential HIV counselling and testing for all children. States parties must refrain from imposing mandatory HIV/AIDS testing of children in all circumstances and ensure protection against it. States must also protect the confidentiality of HIV test results, and information on the HIV status of children may not be disclosed to third parties.

Medical Treatment: States should take measures to ensure the availability and accessibility of goods, services and information for HIV/AIDS treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV/AIDS and related opportunistic infections and conditions.

Family and Community-Based Care: strategies should be developed to build and strengthen family and community capacities to provide a supportive environment for orphans and children infected and affected by HIV/AIDS and to protect them from all forms of abuse, violence, exploitation, discrimination, and loss of inheritance. Care for children affected by HIV/AIDS, including orphaned or abandoned children, should be provided in a family setting (relative, foster parent, adoption) rather than in a hospital or institutional setting.

The international instruments stress that children affected by HIV/AIDS should not be singled out in special programmes because it will add to the stigma they already experience. Instead, support for children affected by HIV/AIDS should be mainstreamed into general programmes to support children in difficult circumstances and their families.

6.6.2. Vietnamese Laws, Policies, and Practices

Currently, it is estimated that Vietnam has around 60,000 people living with HIV/AIDS, including adults and children. Certainly, this is just the visible part of the iceberg, which, by the estimation of the World Health Organization, is representing only about 20% of the real-life figure. A study commissioned by UNICEF in 2003 estimated that, as of 2001, the number of HIV/AIDS affected children was 283,697. This included 18,303 HIV-positive children, 263,394 children living with HIV-positive parents, and 2,000 HIV/AIDS orphans.⁹⁰

In response to growing global concerns about the spread of HIV/AIDS, Vietnam has taken significant steps towards perfecting the legal framework for addressing the issue of HIV/Aids in general, and children affected by HIV/AIDS in particular. In 2000, Vietnam established the National Committee for AIDS, Drug and Prostitution Prevention by merging the Steering committee for social evil control and the National committee for AIDS prevention (Decision 61/2000/QĐ-TTg). The first legal document to establish the responsibility of the society and a State mechanism to control HIV/AIDS was the Ordinance on HIV/AIDS Prevention, 1995. Since then, there have been 29 legal documents providing guidelines on the implementation of this Ordinance in fields of organization and policy, including Decree No.34-CP Guiding the Implementation of the Ordinance on Prevention and Control of HIV-AIDS.

The Law on Protection, Care and Education of Children also includes a specific provision on HIV/AIDS, stating that children infected with HIV/AIDS shall not be discriminated against; shall be given favourable conditions for medical treatment; and shall be raised by families or in child-support centres (Article 53). However, there is no clear statement of preference for care in a family environment, rather than in an institutional setting.

Most recently, a National HIV/AIDS Strategy to 2010 and Vision 2020 was adopted in 2004 (Decision 36/2004/QĐ-TTg dated Mar 17th, 2004 by the Prime Minister). The main contents of that Decision are as follows:

⁹⁰ The Situation of Families and Children Affected by HIV/AIDS in Vietnam – A National Overview, UNICEF – 2003; Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

- Confirmation of the determination against discrimination and stigma in HIV/AIDS prevention. HIV/AIDS will no longer be treated as a “social evil”
- Strengthening programs for management, treatment and prevention from central to grassroots levels
- Priorities in harm-reduction, treatment and consulting measures
- Integration of HIV/AIDS prevention into socio-economic programs
- Importance attached to the role of community
- Access to antiretroviral treatments
- Provision of solutions to prevent mother-to-child transmission
- Ban on discrimination of people with HIV/AIDS
- strengthening communication and information dissemination
- Appeals for the establishment of networks and clubs of People living with HIV/AIDS which have close linkage with local health workers and the at-risk communities.

The Decision also called for the gradual completion of the Ordinance on HIV/AIDS prevention and the introduction of new policies on gender equity focusing on specific target groups, especially children infected or affected by HIV/AIDS. Specific Programs include:

- Community-based care: Communities will be assisted in managing and monitoring preventive and harm-reduction measures. District authorities will play the main role in supporting people having HIV/AIDS. Charitable supports to HIV/AIDS treating institutions will be encouraged.
- Voluntary HIV counselling and testing: Access to voluntary HIV counselling and testing will be enhanced. However, mandatory testing will still be applied to some certain selective groups including children using drug, child prostitutes and criminals.
- Rehabilitation and other institutions: Access to HIV/AIDS infected people in rehabilitation institutions like Centre 05/06 and other vocational training centres for testing, counselling and providing healthcare services will be secured.

In addition, a new Law on HIV/AIDS Prevention and Control was passed in 2006. The law provides for HIV/AIDS prevention and control measures, as well as care, treatment and support for HIV-infected people. The Law guarantees HIV/AIDS infected people the right to live in integration with the community, to enjoy medical treatment, employment and education, and to have their privacy respected (Article 4). Discriminating against an HIV/AIDS infected person, abandoning an HIV-infected child, disclosing information about a person's HIV/AIDS status, and refusing medical treatment to an HIV-infected person are strictly prohibited (Article 8). The Law highlights the need for information and education campaigns on HIV/AIDS, with a particular focus on high-risk groups (Articles 9,11). The Ministry of Education must incorporate HIV/AIDS education into the national curriculum (Article 12.4, 15). Education establishments are prohibited from discriminating against HIV-infected students, and in particular are prohibited from requesting students to undergo HIV/AIDS testing and refusing to admit students, disciplining or expelling students, or limiting students' participating in school activities due to their HIV/AIDS status (Article 15). Compulsory testing is prohibited, except in accordance with a decision from an investigating body, procuracy or court, and everyone has the right to have access to voluntary testing (Article 27, 28). Children over the age of 16 may consent to testing; children under the age of 16 may only be tested with their parent's consent (Article 27). The law also includes measures to prevent mother-to-child transmission, including free HIV/AIDS tests for pregnant women and counselling for HIV-infected women who are pregnant or breast feeding (Article 35).

Some steps have already been taken to put the new HIV/AIDS strategy into practice. A new comprehensive HIV/AIDS law is in the process of being drafted. In February 2003, the Government opened the fifth

Voluntary HIV/AIDS counselling and testing centre in Hanoi as a part of the program to multiply this model in 35 provinces across the country. The Government also made a strong commitment that all the HIV-positive mothers and infants would be treated starting from December 2003 though little progress had been made to the prevention of mother-to-child transmission. The Government also pledged that 70% of the infected people would have access to healthcare services and all the blood in transfusion would be tested. As one attempt to promote HIV/AIDS treatment, the Government decided to allow low-cost local-made medicines to be used in local healthcare centres. In June 2003, the Ministry of Health established the Board for preparation of the community-based fast medicine distribution plan.

A recent study on HIV/AIDS vulnerability of children in institutions (01, 05, 06 Centres and Reform Schools) found that, while the HIV/AIDS knowledge of the children in institutions was generally quite good, institutions are not investing enough in HIV prevention, care and support education. Fear-based teaching of HIV/AIDS remains prevalent across Vietnamese institutions, despite evidence that instilling fear in people does not help them towards decreasing risk behaviours or reducing vulnerability. Despite recent changes in the law, many children in institutions continue to be subject to compulsory HIV testing, and are not advised of their status.⁹¹

6.6.3. Analysis and Recommendations

Over the last 12 years, Vietnam has made significant progress in developing and revising its legal framework for addressing HIV/AIDS. The new National HIV/AIDS Strategy and Law on HIV/AIDS Prevention and Control provide a comprehensive, strategic approach to tackling the pandemic. Recent policy shifts that promote non-stigmatisation and that emphasise voluntary counselling and testing have ensured greater compliance with international standards and best practices. A number of gaps and inconsistencies in the legal framework that were noted in previous studies have been rectified under the new Law on HIV/AIDS, including:

- The introduction of a broad guarantee of non-discrimination against HIV-infected people;
- Guarantee of access to voluntary counselling and testing;
- Stronger limitations on compulsory testing,
- Requirement that persons subject to HIV testing be informed of their test results
- Prohibition against discrimination in employment
- Specific provisions prohibiting education establishments from discriminating against students or candidates on the basis of their HIV status
- Measures to prevent mother-to-child transmission

However, a number of issues specifically relating to children that were identified in a recent study⁹² have not been fully addressed in the new HIV/AIDS law. The following recommendations were made to strengthen the conformity of Vietnam's laws to international guidelines and standards, and to ensure a special focus on the rights and interests of children affected by HIV/AIDS

- **Special Provisions for Children:** The new Law on HIV/AIDS does not have a separate chapter or section on children affected by HIV/AIDS. There is a need for a special focus on the rights of children affected by HIV/AIDS, including a clear definition of "children affected by HIV/AIDS" in accordance with international standards. This definition extends beyond children "infected" with HIV and includes: children who are HIV-infected; children who are affected by HIV/AIDS because of the loss of a parental caregiver and/or because their families or communities are severely strained by its consequences (orphans and children living in affected families); and children who are most prone to be infected or affected.
- **Treatment and Medical Care:** the new law does not include specific provisions promoting or regulating the establishment of adolescent-friendly health care services, including access to

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HIV/AIDS Vulnerability and Ways to Improve Prevention in Selected Institutions, UNICEF, 2006
HIV/AIDS Legal Review Report, UNICEF 2004

voluntary testing and counselling, confidential sexual and reproductive health services, access to antiretroviral and other medicines, provisions of condoms and clean injecting equipment, and quality medical, palliative and psycho-social care for all children affected by HIV/AIDS.

- **Care and Nurturing of Children Affected by HIV/AIDS:** Normative legal documents governing the implementation of the Law on Care, Protection and Education of Children should ensure that a comprehensive system of care and support is in place for children orphaned, abandoned or made vulnerable by HIV/Aids. However, care must be taken to ensure that programs do not single out children affected or infected by HIV/AIDS from other vulnerable children because this furthers their stigmatization, promotes their separation from other children, and increases discrimination against them and their families. Both the National HIV/Aids Strategy and the Law on Care, Protection and Education of Children place undue emphasis on institutional care for children orphaned or abandoned due to HIV-Aids, contrary to the CRC and international guidelines. It is recommended that greater emphasis be placed on creating a comprehensive regulatory framework to promote and monitor family-based alternative care for all orphaned and abandoned children, including HIV-affected children.
- **Access to information:** In the past, reproductive health and life skill education for children and adolescents was not given due importance within the National Action Program due to anxiety around promoting sex amongst young people. Under Decree No. 34, education of children on HIV/AIDS focused mainly on school children, without a clear focus on out-of-school adolescents and children in high risk groups. While the new Law on HIV/AIDS emphasises the need for advocacy and education on HIV/AIDS, it does not include specific provisions for education and awareness targeted at children and adolescents. The focus remains on school-based measures for children, and out-of-school adolescents have not been included as one of the targeted groups. A new legal normative document regulating HIV/AIDS awareness and education is necessary, which should include a separate part to regulate education and communication activities for behavioural change among children and adolescents. Education and awareness should be targeted at both in-school and out-of-school children, as well as children in institutions (05/06 centres, reform schools). Children should be actively involved in the design and delivery of information and awareness.

6.7. Children who Misuse Drugs

6.7.1. CRC, International Standards and Good Models

Article 33 of the CRC requires States Parties to take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs, and to prevent the use of children in the illicit production and trafficking of such substances. However, the UN Committee on the Rights of the Child has noted that article 33 is concerned with the “protection” of children from the misuse of drugs, and that placing harsh custodial penalties or other forms of sanction on children for drug use is not an ineffective form of protection. The Committee recommends that it is more constructive to vest legal powers to intervene in cases of child drug abuse in social workers, rather than in the criminal justice offices of government. In other words, children who misuse drugs should be treated as victims and offered treatment and support, rather than treated as criminals or subject to sanctions.

Article 39 of the CRC requires States parties to develop rehabilitative programs for children who are addicted to drugs. This should include counselling, detoxification and other support services within the family or community setting. The UN Committee on the Rights of the Child has highlighted the need for rehabilitative services tailored specifically for children, and for treatment through community-based, rather than institutional programs. While placing children in compulsory rehabilitation centre may remove children from temptation in the short term, it cannot teach them how to cope with the temptation once back on the streets. The Committee recommends that it is more constructive to vest legal powers to intervene in cases of child drug abuse in social workers, rather than in the criminal justice offices of government. The Committee also stresses the necessity to have tailored recovery services for children; and community-based treatment rather than the institutional programs. Therefore, programs should be designed to provide treatment, recovery, and reintegration to children while they are living

with their families or in the community, and that address the factors in their environment contributing to their drug use. Children should be permitted to express their views and to be involved in all decisions about the treatment they receive. Children who are placed in institutions for treatment are entitled to a regular review of their placement.

6.7.2. Vietnamese Laws, Policies and Practices

Combating the sale and use of illegal drugs has been a significant focus of the Vietnamese government in recent years. A National Committee on Drug Control was established in 2000;⁹³ and numerous legal normative documents, programmes and movements have been launched to combat the problem. The Prime Minister has approved the Master Plan for Prevention and Fight against Narcotics 1996-2000; Program of Action against Narcotics in periods of 1998-2000 and 2001-2005; and the Master Plan for Prevention and Fight against Narcotics to 2010. All of these programs pay special attention to the issue of preventing drug use amongst children and adolescents.

Education/Awareness on Drug Use

Education and awareness has been one of the main strategies used to combat drug use. Direction 06/CT-TW dated Nov 30th, 1996 by the Central Committee of the Communist Party of Vietnam highlighted the need to conduct communications to all the social strata, especially among the youth, pupils, students, teachers and parents about the severe consequences of drug abuse to the users, their families and society. It also called for the integration of anti-narcotics education into the schooling curriculum.

The Law on Prevention and Fight against Narcotics 2000 stipulates the responsibility of family members, Fatherland Front and its member organizations for educating people about the harmful effects of narcotics and monitoring to prevent possible drug use (Articles 6). In addition, schools and other educational facilities have the responsibility for organizing and implementing anti-narcotics education programs; disseminating legal regulations on narcotics prevention, promoting a healthy lifestyle among students; practicing close supervision on their students and learners to protect them from narcotics; and cooperating with the local authorities, students' families and competent agencies in organizing testing when necessary to identify addicted students (Article 10). The Ministry of Education is required to issue and implement education program for narcotics fight and prevention; develop and organize anti-narcotics education projects to be applied in schools and other educational facilities (Article 42).

The Ministry of Education and Training has gradually incorporated drug use prevention into the curriculum of all levels of school education as well as tertiary education to raise the awareness and understanding amongst students about the risks, consequences and preventive skills regarding drug use. The Ministry has also held annual intensive prevention campaigns mobilizing over 20 million students of all the schools across the country with diverse activities ranging from signing commitments for drug-free classes and schools to anti-narcotics painting and propaganda contest. These activities have helped to create a robust movement against narcotics positively contributing to the prevention.

In order to promote concerted and coordination implementation of these legal provisions from the central to grassroots levels, the government has initiated a widespread social movement to prevent drug use, with the stress in school environment. On Jun 15th, 2006, six bodies including the Ministry of Education and Training, Ministry of Public Security, MOLISA, Ministry of Health, Central Committee of the Ho Chi Minh Communist Youth Union and the Women' Union of Vietnam signed the Inter-sectoral Plan 1413/KHLN on cooperation for the Prevention and Fight against drug use among students and the youth. Within this movement, the collective participation of different Ministries, sectors, civil society and the whole nation has been mobilized and channelled into the fight and prevention of illegal drug use. All of the provinces and cities have established the Steering Boards for the implementation of the Inter-sectoral Plan 1413/LN with emphasis on communication and education against narcotics; organized intensive programs of actions, meetings, parades; established billboards, posters, mottos, hoardings in

93 Decision No. 686/TTg on Establishment of National Committee on Drug Control

public places; and promoted artistic performances including theatres, cinemas, music shows for the sake of anti-narcotic communication among pupils, students and the youth.

In many localities, with the strong and effective leadership and direction of provincial authorities, Party Committees and People's Committees, the prevention, fight and communication programs against narcotics among pupils, students and the youth have been effectively implemented in many practical and diverse forms. Within the hamlets, villages, and resident wards, Party cells, communal People's committees and other grassroots organizations have spent a lot of efforts on the communication and education against narcotics. Local Security forces, Youth Union and the Veterans' organization have played the core role in the mobilizing the participation of each household, resident ward, street, hamlet and family to narcotic-free commitments; identified the responsibility of each family in managing and educating their children against drug use; provided necessary supports and encouragements to families whose children are undertaking family and community-based detoxification. Volunteer teams and youth clubs have also cooperated well with the civil society, schools and culture-governing agencies to attract children and adolescents to participate in this communication and education programs and raise their awareness of the issue.

In addition, the Central Committee of the Ho Chi Minh Communist Youth Union in cooperation with The Association of Youth, Pupils and Students and the Central Committee of the Young Pioneer Detachment has been one of the most active forces in the Prevention and Fight against drug use among children, adolescents, and students. It has integrated anti-narcotic education into its activities, with special attention to the distribution and typical features of each group of its members. On such occasions as the Youth Union's Anniversary, International Day against Drugs, etc, the Youth Union has held a great number of propaganda activities like meetings, parades, camps, workshops, contests, and artistic performances against narcotics communicating outstanding messages of "The Youth leading healthy lifestyle staying away from narcotics", "Sports for fighting narcotics", "Don't keep, don't try, don't use narcotics" to tens of millions of Youth Union's members. Provincial, Municipal Committees of the Youth Union have also organized local activities including the anti-drug writing, speaking, painting, drama, newspaper-making contests for children and adolescents; implemented the "youth-against-drug" and peer-education models in their communities; and organized and run volunteer "red-star" teams and community-based anti-drug clubs. Within the schools, the Youth Union has also organized drug-understanding contests, signing of commitments against drug use as well as established peer-educator groups, self-help groups, propagandist teams, denouncing letter-boxes to facilitate the fight and prevention of drug use among pupils and students.

In addition, CPFC has developed a special child-protection action program with stresses on communication and education for family and communities about the responsibility for protecting children from narcotics through the program named "adults set example, children take care". The Women's Union has also been active in raising awareness on drug prevention, and in particular educating women about the dangers of drug use by their children.

Sanctions against Adults who Involve Children in Drug Use/Trade

In order to deter adults involving children in the drug trade, Vietnamese law provides for very strict sanctions against the selling of drugs to children, or involving children in the sale or delivery of drugs. Illegal drug use is addressed comprehensively under the Penal Code, 1999 which includes specific prohibitions and higher sanctions on those who involve children in drugs: organizing illegal use of drugs under any form for juveniles from 13 years old upwards shall be subject to sanction of from seven to 15 years in prison; for children under 13 years old, the penalty is 15 to 20 years in prison (Article 197); concealing illicit use of drug: Individuals providing shelter for illegal drug use of children are subject to a sanctioned from seven to 15 years in prison (Article 198); Forcing or enticing others to illicit drug using: Individuals face the penalty of from seven to 15 years in prison for forcing or enticing juveniles from 13 years old upwards to illicit drug use; and from 15 to 20 years in prison for forcing or enticing juveniles under 13 (Article 200). In addition, Vietnam's law strictly bans all the actions of selling any addictive substances to children (and adults) without the prescription and guidance of doctors.

Treatment and Rehabilitation of Children who Use Drugs

Article 29 of the Law on Protection and Care of People's Health provides for the mandatory treatment to drug users and a number of other infectious diseases which can be harmful to the society. Healthcare facilities shall perform mandatory treatment on people who have for specific diseases, including drug addiction.

The issue of treatment for people who use drugs is addressed more comprehensively under the Law on Prevention and Fight against Narcotics, 2000. The Law states that the State shall have encouraging policies to promote self-detoxification; to apply detoxification; to organize institutionalized detoxification; to support detoxification activities done by individuals, families, organizations and communities; and to mobilize and facilitate support from local and international organization in this field. MOLISA has overall responsibility for developing and organizing the implementation of detoxification strategies, advocacies, policies and plans; and directing the detoxification processes and managing post-detoxification matters (Article 39). The Law also stipulates the responsibility of family members, Fatherland Front and its member organizations for participating in the institutional and community-based detoxification processes, and supervising and supporting detoxified people in their reintegration and prevention against recidivism (Article 9).

Under the Law on Prevention and Fight against Narcotics, people addicted to drugs are required to report their dependent status to their responsible bodies or local authorities and register for a detoxification programme (Article 26). Families are also responsible for reporting an addicted family member to local authorities and either assisting in family-based detoxification according to the guidance and supervision of healthcare workers and local authorities, or cooperating with competent agencies to conduct institutionalized detoxification and pay detoxification fees as regulated by the law (Article 26).

The Law on Prevention and Fight against Narcotics provides for both community-based and institutional detoxification and drug treatment.

Community-based Detoxification:

Article 27 states that community-based detoxification can be applied to drug users, and that local agencies and organizations should take the responsibility to assist, supervise and inspect these community-based detoxification programs. The Government shall provide concrete regulations regarding family and community-based detoxification. Local authorities at different levels where there are narcotics users shall develop plans for family and community-based detoxification and recidivism prevention; assign the security, education, healthcare agencies and other relevant organizations to cooperate with the Labour, invalid and social affair sector to organize detoxification, supervision and education programs for drug users and former drug users; and provide support and facilitation to reintegrate people having undergone detoxification into the community (Article 35).

Decree 56/2002/NĐ-CP dated May 15th, 2002 on the organization of family and community-based detoxification defines family and community-based detoxification as the implementation of medical, psychological and social activities to support drug users to recover their health, dignity and independence from narcotics which implemented at the drug users' families, communes, wards, districts (Article 3). For juvenile drug users, the expense of family and community-based detoxification shall be covered by the juvenile's parents or guardians (Article 8), but their contribution may be exempt if they are in extremely difficult circumstances or without any relatives to rely on. Drug users participating in community rehabilitation must register for the programme (Article 9), voluntarily report on their drug use, and commit to detoxification (Article 17). The drug user's family and guardians must take care of, manage, supervise, and prevent the drug users from taking drugs, and must report to the People's Committee about the status of drug users in their family (Article 18). The Commune People's Committee must counsel, support, educate and monitor drug users undergoing family and community-based detoxification; facilitate and organize clubs, cultural, artistic, and sports activities to help drug users to recover and reintegrate into the community; facilitate drug user's demand for vocational training, credits, jobs and access to commercial,

social and medical services for the prevention of returning to drug; and mobilize the participation of individuals and organizations into supporting and reintegrating drug users (Article 19). MOLISA has made significant progress in promoting effective detoxification models, effective measures to build drug-free communes, wards and schools; and effective post-detoxification advocacies, policies, regulations among pupils, students and the youth. Due to concrete leadership and direction, many effective models have been multiplied contributing to the reduction of drug use in many localities. Since 1994, there have been over 240,000 participations of different detoxification programs of which a large proportion are children.

However, a study with injection drug users (IDUs) in Quang Ninh Province highlighted some of the main challenges faced by drug addicts attempting self detoxification and rehabilitation in the community. Most of the respondents who participated in the study had tried to quit drug use several times, mostly unsuccessfully. Most users tried to quit at home, sometimes with the assistance of medication or herbal remedies, but often without other support. Those who tried to withdraw at home rarely consulted with health care providers, relying instead on informal and often inaccurate sources of advice. The cost of quitting ranges between 600,000 and 3,000,000 VND, depending on what methods and medications were used, and this cost presents an obstacle to many addicts. Users reported the influence of their drug friends, living in environments with many other addicts, and/or difficult life circumstances as the reasons behind their inability to remain off drugs. Many addicts did want to quit but expressed concerns about the cost, negative health consequences, the fear that it is impossible to quit, lack of family support because of failure during a previous attempt, and lack of confidence in currently available methods. The vast majority of IDUs reported significant discrimination and isolation, both community- and self-imposed. The families of long-term addicts, particularly those who had failed multiple withdrawal attempts, tended to be less supportive. There were, however, some IDUs who reported receiving sympathy and support from some community members.⁹⁴

Institution-based Detoxification:

The law also provides for both voluntary and mandatory institution-based drug treatment through a system of detoxification centres (06 centres) managed by MOLISA. Drug users registering for institutionalized detoxification themselves are not classified as being administratively sanctioned (Article 28.3). In addition, the Chairman of the People's Committee at District level may decide to mandatory place drug users in institutionalised detoxification under specified circumstances (Ordinance on Handling of Administrative Violations). The Law on Prevention and Fight against Narcotics states that drug users between the ages of 12 and under 18 may be subject to compulsory institutional drug treatment if they have received family and community-based detoxification or repeated education programs in their localities yet are still addicted, or if they have no permanent accommodation (Article 29). However, they shall not be considered to have been administratively sanctioned (Article 29). Decree 135/2004/NĐ-CP dated Jun 10th, 2004⁹⁵ similarly states that the sanction of placement into detoxification centres will not be applied to drug users under the age of 18 (Article 3). However, centres can receive juvenile drug users between 12 and 18 year old who voluntarily register for rehabilitation or detoxification (Article 43). In addition, the Chair of the District People's Committee may place a juvenile drug users into a rehabilitation centre for compulsory detoxification if: 1) the juvenile has undergone family and community-based detoxification yet still addicted; 2) the juvenile has received repeated Education at communes, wards or district towns yet still addicted; or 3) the juvenile has no permanent accommodation (Article 24).

Juveniles subject to institutional detoxification are to be placed in special institutions established for them (29.2), or in a separate section from other drug users (Law on Prevention and Fight against Narcotics, Articles 29 and 32). The time frame for placement of a juvenile in a rehabilitation or detoxification centre shall be between one to two years (Ordinance on Handling of Administrative Violations, Article 26 and Decree 135/2004/NĐ-CP, Article 24). The minimum conditions for juveniles in medical treatment and

94 "I Want to Quit but Can't": Drug Addiction, Risks and HIV/AIDS in Hai Phong and Cam Pha, Hanoi Institute of Sociology and Family Health International

95 Regulating the application of compulsory institutionalized rehabilitation, the organization and operation of the detoxification institutions according to the Ordinance on Handling of Administrative Violations and the treatment to juvenile and voluntary patients of these institutions

detoxification centres are governed by Decree No 135/2004/ND-CP dated June 10th 2004. The Decree states that juveniles in the centres shall be provided accommodation suitable to their age, nature and seriousness of their offences and their gender (Article 40); shall be provided education in conformity with the curriculum set by the Ministry of Education and Training. (Article 43)⁹⁶; must participate in therapeutic labour, which must not constitute hard, harmful and dangerous works(Article 44); and must receive regular medical examination every six months (Article 46). Juveniles in Detoxification Centres shall be provided with financial supports to cover the fees of education, vocational training, treatment, food, personal living necessities and other expenses (Article 46).

Although the law requires that juveniles who are subject to mandatory institutional detoxification be placed in special centres for them, in practice this provision has not yet been fully implemented. Due to lack of separate detoxification facilities, juveniles are often placed together with adults in 05/06 centres. Of the country's 122,000 registered drug addicts and estimated 55,000 sex workers (16,000 of whom are documented), some 10% are estimated by experts to be children under the age of 18.⁹⁷ Drug users surveyed in Hai Phong and Cam Pha reported very difficult conditions in the 06 centres, including violence, and in some cases, drug trafficking. Most users had little trust in the methods or results of these centres, and relapse rates for addicts released from the 06 centres were reportedly high.⁹⁸ Some centres lacked appropriately trained staff counsellors, social workers, vocational trainers) and the conditions and care provided to juveniles do not meet international standards. In general, institutions do not have enough resources to invest in HIV prevention, care and support.⁹⁹

Former drug addicts are sometimes stigmatised by the community, which can make it difficult for them to find jobs. Pilot projects have been set up in many localities to provide vocational training for former drug addicts. The government has also recently issued a new Decision designed to promote greater job opportunities for former drug addicts. Decision No. 212/2006/QĐ-TTĐ states that family businesses and enterprises that employ former drug addicts will be eligible for special lower interest loans from the government bank. As stated in Article 1 of the Decision, the preferential credit mechanism for businesses and employers employing detoxified former addicts is regulated as follows:

1. The Bank for Social Policy shall mobilize capital from the public or provincial budgets to provide credits to businesses and employers using detoxified former drug addicts in cities and provinces where the pilot project entitled "Supervising, vocational training and job generating for detoxified former drug addicts" is implemented under the approval of the Prime Minister and the Resolution 16/2003/QĐ11 of June 17th, 2003 by the National Assembly of Vietnam.
2. Provincial budgets of provinces and cities selected for the pilot project "Supervising, vocational training and job generating for detoxified former drug addicts" shall provide capital, compensation for interest deficit and management costs to the Banks for Social Policy in their credit programs for businesses using detoxified drug addicts.

Generally speaking, after nearly seven years of implementation of the Inter-sectoral Plan on prevention of drug use among pupils, students and the youth, the rampancy of drug use in school environment has been virtually halted on the national level. In some localities, remarkable results of reduction and eradication of illicit drug use among pupils, students can be seen. Hanoi has reduced from 588 cases to 310 cases; Ba Ria – Vung Tau has secured effective detoxification for 53/57 cases (the other four cases are now under treatment); Quang Ninh has provided detoxification programs to hundreds of cases who are pupils and children of officials, workers working in the coal industry; the transport and communication sector has hosted dozens of cases who are workers and children of its staff in its own detoxification centre; Tuyen Quang has been effectively running the Rehabilitation Centre 06 detoxifying and rehabilitating tens of pupils paving their way towards reintegration into the community. Some of the provinces in the

96 For juveniles who haven't completed Primary education, studying is compulsory; while for others, study is optional depending on the capacity and conditions of each Rehabilitation-Education-Social Labor Center

97 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

98 "I Want to Quit but Can't": Drug Addiction, Risks and HIV/AIDS in Hai Phong and Cam Pha, Hanoi Institute of Sociology and Family Health International

99 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004; HIV and Children in Institutions in Vietnam, UNICEF, 2006 (Draft)

Central region including Quang Tri, Thua Thien Hue, Da Nang, Quang Nam, Phu Yen... have successfully eradicated illegal drug use from their schools and are sparing no efforts to maintain their sound, "clean" and narcotic-free school environment.

If the statistics of students using drugs in 1998 is 3,000, the current number is more than 1,000 in nation wide. These students are receiving active supports from MOET, MOLISA, MOH for voluntary drug detoxification and enable them to return to school post-drug rehabilitation.

6.7.3. Analysis and Recommendations

Vietnam has developed an extensive and comprehensive legal framework for tackling the issue of adolescent drug use, with a significant focus on prevention through advocacy, awareness and education. In order to deter adults from involving children in drugs, strict penalties are applied to anyone who sells drugs to children, entices children to use drugs, or involves children in the sale or trafficking in drugs. The law also makes provision for both community-based and institutional rehabilitation and detoxification of juvenile drug users. The collective effect of these provisions has paved the way for drug prevention in general, and child drug use in particular.

Despite these many efforts, illegal drug use remains a pressing problem in Vietnam, especially amongst children and youth. The following measures are therefore recommended:

- Continue promoting education and awareness about drug abuse prevention. Ensure that children are actively involved in the design and delivery of drug use prevention campaigns. Develop materials and information campaigns specifically targeting high risk groups, including out-of-school children, street children and other marginalised groups of children.
- Use role models and peer leaders from within the drug-using community: Research has found that Drug use is heavily promoted by peer networks and pressure among youth and its reduction will best use similar strategies. The most effective way to reduce drug use must take advantage of the power of peer influences to keep individuals away from drugs and – for those who are already using – to seek help to discontinue. Role models and peer leaders from within drug-using communities can be effectively used to promote relapse prevention, life-skills counselling, and drug dependence treatment. Such services will be particularly attractive to drug users if they are offered in "safe spaces" where individuals do not fear law enforcement or incarceration;¹⁰⁰
- Diversify the types of voluntary drug rehabilitation programmes and support groups available to juveniles in the community and public health institutions. Promote the development of non-punitive, community-based rehabilitation programmes specifically designed for adolescents. Program interventions should offer drug withdrawal and drug relapse prevention options such as methadone substitution therapy; provide vocational skills training and job placement ; and provide counselling through drop-in centres and other locations for those attempting to quit and their families;
- Limit the use of institutional detoxification for children under 18, and ensure that all children in institutions are completely separated from adults at all times. As noted above, a recent study on institutional care programmes in Vietnam found that children are often kept together with adults in 05/06 centres; that in many case the quality of the education and rehabilitation programmes was low; and that relapse rates for those released from the centres are high. This calls into question whether institution-based rehabilitation is an effective strategy.;¹⁰¹
- Introduce detailed procedures and criteria for the voluntary admission of children to detoxification centres by their parents, to ensure that institutionalisation is used only as a measure of last resort.
- The current duration of compulsory institutional detoxification (1-2 years) is excessive and contrary to the principles of the CRC, which state that institutionalisation should be a measure

100 "I Want to Quit but Can't": Drug Addiction, Risks and HIV/AIDS in Hai Phong and Cam Pha, Hanoi Institute of Sociology and Family Health International

101 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

of last resort and for the shortest possible duration. It is recommended that this set time period be replaced with a more flexible approach, allowing shorter-term periods of detoxification combined with regular, periodic reviews to assess the child's progress and to determine if continued institutionalisation is necessary.

- Promote greater support for children leaving institutional rehabilitation programmes to reintegrate successfully into the community, and to prevent relapse.

6.8. Juveniles in Conflict with the Law

Juveniles in conflict with the law includes all persons under the age of 18 who are alleged or accused of committing a law violation, either administrative or criminal..

6.8.1. CRC, International Standards and Good Models

Article 40 of the CRC requires State parties to establish special laws, procedures, authorities and institutions specifically applicable to juveniles in conflict with the law. These special laws and procedures must ensure that every juvenile alleged as, accused of, or recognised as having infringed the penal law has the right to be treated in a manner consistent with the promotion of the juvenile's sense of dignity and worth, which reinforces the juvenile's respect for the human rights and fundamental freedoms of others, and which takes into account the juvenile's age and the desirability of promoting his or her reintegration into society. State parties must also establish a minimum age below which children are presumed not to have the capacity to commit a crime.

In addition, the UN General Assembly has adopted three sets of rules to provide guidance and recommendations to member States on the establishment of a juvenile justice system. They are: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)¹⁰²; (1) the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)¹⁰³; (2) and the United Nations Rules for the Protection of Juvenile Deprived of their Liberty (JDLs)¹⁰⁴; (3) The key protective measures promoted by those guidelines are summarised below:

Informal Measures: The CRC and Beijing Rules requires State parties to promote the establishment of measures for dealing with juveniles in conflict with the law without resorting to formal proceedings. This may include measures to resolve minor law violations in the community through mediation or some other informal measure, rather than imposing a formal administrative or criminal sanction.

Arrest and Investigation: The CRC states that the arrest and detention of juveniles must be used only as a measure of last resort and for the shortest appropriate period of time (Article 37). No juvenile shall be subject to torture or other cruel, inhuman or degrading treatment or punishment, and their right not to be compelled to give testimony or to confess guilt must be guaranteed (Article 37, 40). Furthermore, the Beijing Rules state that when a juvenile is arrested or detained, his or her parents must be notified immediately, or within the shortest possible period of time. In addition, any contacts between law enforcement agencies and a juvenile must be managed in such a way as to respect the legal status of the juvenile, promote his or her well-being and avoid harm to the juvenile. Whenever possible, alternatives to pre-trial detention such as close supervision, placement with a family or in an educational or home setting should be used.

Prosecution and Court Proceedings: The CRC states that juveniles alleged or accused of a crime have the right to have the matter determined without delay by a competent, independent and impartial authority in a fair hearing. Throughout the proceedings, juveniles have the right to have a parent present, and to have appropriate legal or other assistance. Juveniles shall not be compelled to give testimony or to confess guilt, and shall have the right to examine adverse witnesses and to obtain the participation and examination of witnesses on their behalf under conditions of equality. Juveniles also have the right

102 Adopted by General Assembly resolution of 29/11/1985

103 Adopted by General Assembly resolution of 14/12/1990

104 Adopted by General Assembly resolution of 14/12/1990

to free assistance of an interpreter if he/she cannot understand or speak the language used (Article 40). The CRC also requires that juveniles be provided to opportunity to express their views and to be heard in any judicial or administrative proceedings affecting the child. The views of the juvenile must be given due consideration, having regard to the juveniles age and level of maturity (Article 12.2). The Beijing Rules emphasise that court proceedings must be conducive to the best interests of the juvenile and should be conducted in an atmosphere of understanding which allows the juvenile to participate fully and to express herself or himself freely.

In addition, both the CRC (Article 12) and the Beijing Rules require that juveniles' right to privacy be respected at all stages of the criminal proceedings in order to avoid harm being caused to them through publicity or by the process of labelling. The publication of any information that may lead to the identification of a juvenile should be prohibited.

Sanctions: The CRC and UN Guidelines emphasise that sanctions imposed on juveniles must take into account their diminished capacity to understand the consequences of their actions, as well as their increased potential for rehabilitation. To this end, the CRC states that a variety of dispositions, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to deprivation of liberty should be available to ensure that juveniles are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence (Article 40.4). Deprivation of liberty (reform school or detention centre) must be used only as a measure of last resort, for the shortest appropriate period of time (CRC Article 37(b)), and only for juveniles who commit serious acts involving violence or persist in committing other serious offences (Beijing Rules). Juveniles who do not commit serious crimes of violence should benefit from a community-based sanction, and should have the benefit of programmes and services to promote their recovery and reintegration. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18 (Article 37(a)).

Juveniles in institutions: The CRC requires that every juvenile deprived of liberty must be treated with humanity and respect for their inherent dignity, and in a manner which takes into account the needs of persons of his or her age. Juveniles must be separated from adults unless it is not in their best interest to do so (Article 37(c)). In addition, the UN JDLs set out a complete code for the care and treatment of juveniles deprived of their liberty, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of institutionalization and to fostering their re-integration into society.

Reintegration after Release: The JDLs state that all juveniles in institutions should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. The Beijing Rules recommend that States provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other appropriate arrangements that may assist juveniles in their proper reintegration into society. The Rules emphasise the need for a diverse range of facilities and services designed to meet the different needs of juveniles re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

6.8.2. Vietnamese Laws, Policies and Practices

Vietnam has two distinct systems for dealing with juveniles in conflict with the law: 1) the administrative system, governed by the Ordinance on Handling of Administrative Violations, 2002; and 2) the criminal system, which addresses more serious law violations that are sanctioned under the Penal Code, in accordance with the Penal Procedure Code.

Under the Administrative system, juveniles between 14 and 16 years old shall be imposed administrative sanctions for their intentional administrative violations, and juveniles from 16 years old upwards shall be imposed administrative sanctions for any administrative violations they committed. Under the criminal system, juveniles between the ages of 14 and 16 are only liable for very serious crimes committed intentionally or particularly serious crimes. Juveniles 16 years of age or older are liable for all crimes. In

handling criminal juvenile offenders, the aim is mainly to educate them, and help them to redress their wrongs and to develop healthily and become productive citizens (Article 69 of the Penal Code).¹⁰⁵

Informal Measures

Vietnam does not have a formal diversion system, however there are several informal measures that are used to address minor law violations committed by juveniles without using administrative or criminal sanctions, and without formally preparing a dossier on the juvenile. Informal measures include police warnings; family pledges to supervise and educate the juvenile; self-criticism; resolution by the Family Line; report to the school to manage and educate the juvenile; and mediation in accordance with the Ordinance on Organisation and Operation of Mediation at the Grass-root Level, Government's Decree N^o 160/1999/ND-CP dated October 18th 1999.

Arrest and Investigation:

Juveniles in conflict with the law may be arrested and investigated under both the administrative and criminal system. Under the administrative system, juveniles alleged to have committed administrative violations may be taken into custody in cases where it is necessary to prevent or immediately stop acts of causing public disturbance or causing injury to other persons, or where necessary to gather and/or verify circumstances of the violation. In general, custody must not exceed 12 hours, but may be extended to 24 hours. Where juveniles are held in custody at night or for more than six hours, their parents must be notified (Article 44 of Ordinance on Sanctions of Administrative Violations).

Under the Penal Procedure Code, a person between full 14 years and under 16 may only be arrested, held in custody or temporary detention where they intentionally commit very serious offences or they commit especially serious offences. Juveniles between full 16 years and under 18 years may be subject to arrest, custody or temporary detention only in cases where they intentionally commit serious offences or commit very serious or especially serious offences (Article 303). If a juvenile is arrested, his/her parents must be notified immediately, and the juvenile's family, teacher, and Youth Union representative have the right and obligation to participate in the investigation procedure. Where a juvenile is between full 14 and under 16 years of age, a family representative must be present during the taking of a statement and interrogation, unless the family representative is deliberately absent without plausible reason (Article 306). There are currently no special guidelines or procedures for police governing the use of force and special interrogation techniques.

Adjudication and Court Proceedings:

Administrative sanctions may be imposed on juveniles by specified authorities, including the Chair of the People's Committee, without formal court proceedings (as prescribed in Article 1 of the Ordinance on handling Administrative Violations, 2002). Pursuant to Decree No. 142 of 2002, the decision to refer a juvenile offender to reform school is made by the presidents of People's Committees of urban districts, rural districts, towns and the provincial capitals, in consultation with an Advisory Council.

Where criminal proceedings have been initiated against a juvenile, the trial panel must include a person who is either a teacher or a representative of the Youth Union (PPC, Article 306). In addition, a representative of the juvenile's family, a representative of the school or of social organisations must be present at court hearings (PPC, Article 306), and it is obligatory to have a defence counsel present. However, Vietnam does not currently have any special courts or special court procedures governing the conduct of cases involving juvenile defendants.

Sanctions

Under the administrative system, a juvenile may be subject to a warning; fine; commune level education; placement in a rehabilitation centre or medical detoxification centre; or placement in reform school for

¹⁰⁵ For a full assessment of Vietnam's juvenile justice system, see Juvenile Justice Situational Analysis, UNICEF; Institute of Law Research, 2005

two years, depending on the nature of the violation, the juvenile's age categorization, and the juvenile's circumstances. Decree No. 163/2003/ND-C promulgating regulations on education at communes, wards and townships states that, when a juvenile is placed on commune-level education, an agency shall be assigned to manage and educate the juvenile. That agency must assign an individual to work with the juvenile, to develop a plan of action, and to assist the juvenile to find a job or seek the assistance of the People's Committee find jobs for them. The sponsor should help the juvenile to make self-criticism and a written commitment to correct his or her errors, as well as monitor the implementation of education

Under the criminal system, the Penal Code stipulates that juveniles may be subject to judicial measures of an educative and preventative nature (education at the commune, placement in reform school) or sanctions (warning, fine, non-custodial reform and termed imprisonment). The maximum term of imprisonment applicable to juveniles in conflict with the law is shorter than that to adult offenders of the similar crimes. In addition, when imposing imprisonment of less than three years, if deeming that it is not necessary to impose termed imprisonment, the court may suspended the sentence and assign probation from one to five years (Article ?). Life imprisonment and death sentence should not apply to juveniles in conflict with the law (Article 74).

Juveniles in Institutions:

Reform schools for juveniles are under the management of MPS, governed in accordance with Decree 142/2003. The MPS manages reform schools in co-operation with the Ministry of Education and Training, the Ministry of Labour, Invalids and Social Affairs, CPFC, and relevant agencies. Students in reformatory schools participate in compulsory basic education and also receive some vocational training.

Article 308 of the Penal Procedure Code states that juvenile offenders serving a penalty of termed imprisonment must be kept separate from adults, and must be provided with job training or general education. The Ordinance on Execution of Imprisonment of 1993, Decree No. 60/CP dated September 18th 1993 "Promulgating the Regulations on Detention Centres", and Decree No. 60/2001/ND-CP dated September 4th 2001 on amendments to Article 3 of the Regulations on Detention Centres state that juvenile prisoners are separated by age and gender under the regime on management, education, labour, study and daily activities (Article 10, 13 of the Ordinance on Execution of Imprisonment. Primary education and vocational training for juveniles is mandatory.

Reintegration

The Law on Protection, Care and Education of Children states that children in conflict with the law who have been handled through administrative and/or criminal systems and separated from their communities for a certain duration shall, when returning to their families, be given favourable conditions and assisted by commune People's Committees and concerned agencies and organisations to continue their schooling and take part in vocation training and find work (Article 58). In addition, the Ordinance on Execution of Imprisonment Sentence (Article 33) and the Decree NO 52/2001/ND-CP guiding the implementation of the placement in reform schools (Articles 28, 29, 31) both stipulate that, where a juveniles has completed imprisonment or a term in reform schools, the administration of the facility is responsible, in conjunction with social organisations, assisting juveniles to make the transition to normal life. Article 308 of the Penal Procedure Code states, where a juvenile has completely served his/her imprisonment penalty, the supervisory board of the detention centre shall coordinate with the administrations and social organisations at the commune, ward or township to help the juvenile to lead a normal life in society.

6.8.3. Analysis and Recommendations

Vietnam's policy towards juveniles in conflict with the law emphasises the need to promote education and reintegration, rather than merely punitive punishments,. However, as yet there is no comprehensive juvenile justice system in place. In its concluding observations on Viet Nam's country report under the CRC, the UN Committee on the Rights of the Child CRC made several recommendations to improve the juvenile justice system, the adoption of a separate legal code for juvenile justice; improving conditions in

juvenile detention centres and ensure that deprivation of liberty is used only as a last resort; expediting the development of a system for the provision of appropriate rehabilitation and reintegration services and increase the number of professional social workers providing such services to juvenile offenders; and ensuring that all children accused of having violated the law have legal counsel or other appropriate assistance. In addition, recent national studies have highlight some shortcomings in the current juvenile justice system, including the following:¹⁰⁶

- **Specialisation and Training:** Although the Criminal Procedure Law states that investigators, procuracy and judges carrying out criminal procedures involving juveniles must possess necessary knowledge about the psychology and education of juveniles, in practice there is limited specialised training available. It is recommended that selected police, prosecutors, lawyers and judges, social workers be selected to form specialised juvenile teams. These juvenile specialists should be provided with additional training and skills for handling juvenile case. Guidelines and manuals could be developed for each agency to promote more child-friendly approaches, and to ensure a consistent and coordinated approach at each stage of the proceedings. In particular, there should be special guidelines or practice directives with rules for conducting juvenile court proceedings that promote an informal and child-friendly atmosphere, that require all juvenile court hearings be closed to the public, and that ban the publication of juveniles' identities.
- **Promote Restorative Justice and Informal Resolution of Juvenile Violations:**
Currently, informal measures such as family pledges and mediation are used to resolve some minor juvenile violations without imposing administrative or criminal sanctions. However these measures do not fully reflect restorative justice principles, particularly with respect to involving the juvenile and victim in the decision-making, holding juveniles accountable, and providing appropriate psycho-social support to juveniles to prevent re-offending. It is therefore recommended that diversion programmes be piloted and promoted. The practice of public self-criticism should be discontinued as it may increase stigmatisation and labelling. Finally, in order to promote wider use of diversion and informal measures, the police, prosecutors and judges should be given greater discretion to refer juveniles to mediation or some other informal resolution instead of imposing administrative or criminal sanctions.
- **Improve Support for Juveniles being Managed in the Community:**
While juveniles being managed and educated in the family or community receive some support and advice from representatives of mass organisations, this support is not systematic or intensive. In some cases, local authorities and mass organisation provide advice, counselling and material support, but they lack specialised skills and programmes to provide the support needed by juveniles, particularly those with more complicated problems. It is therefore recommended that an intensive case management model be piloted to provide psycho-social support to juveniles at risk, juveniles subject to informal sanction, and juveniles on commune-level education. As part of this pilot, programmes could be developed or strengthened to help juveniles and their families address risk factors and improve social competencies (drug/gambling addiction counselling, life skills course, anger management, peer mentoring, empathy clubs for parents, etc).
- **Improve Conditions for Juveniles who are serving their sentence in reform schools and detention centres:** In general, reform schools and detention centres meet the basic requirements of the CRC and UN Guidelines. However, some concerns should be addressed as a matter of priority. Juveniles must be separated from adults in all institutions, including custody houses and temporary detention centres. In addition, existing education and vocational training programmes at reform schools and detention centres should be improved. In particular, the types of vocational training offered to juveniles should be designed to provide them with marketable skills that will assist them to find work upon their release. At the same time, new programmes are needed to help juveniles in detention centres and reform schools to build social competencies and start addressing their offending behaviours. The practice of imposing mandatory HIV testing

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See Situational Analysis of Juvenile Justice in Vietnam, MOJ/UNICEF, 2005; Assessment of Juvenile Justice IN Hai Phong, UNICEF/CPFC, 2006

on juveniles and not disclosing their status to them should be discontinued. Instead, juveniles should be provided voluntary testing, counselling, treatment, and prevention information.

- **Improve Recovery and Reintegration:** The CRC and UN guidelines require that juveniles released from detention be provided with support and assistance to help them reintegrate into the community. While Vietnamese laws require support for reintegration of juvenile offenders, in practice existing measures are not consistently or effectively applied. It is recommended that a comprehensive case management system be introduced to provide ongoing support to juveniles released from reform schools and detention centres. This will require a clear coordinating mechanism and defined responsibilities at the local level, as well as capacity building for local authorities and agency representatives working with juveniles.
- **Legislative Reform:** With respect to the administrative system, it is recommended that legal documents be amended to require that juveniles, their parents and the victim are directly involved in the decision-making process to impose commune-level education or reform school. In particular, the Advisory Councils for referral to reform school should be required to meet directly with the juvenile and the juvenile's family prior to making its decision. It is also recommended that, in order to ensure consistency with the Penal Procedure Code, the Ordinance on Administrative Sanctioning should be amended to prohibit the arrest and custody of juveniles for administrative violations. It is also recommended that consideration be given to eliminating the use of reform school as an administrative sanction. The CRC and UN guidelines require that any form of deprivation of liberty, including placement in reform school, should be used only as a last resort, for serious criminal offences, and must be imposed by a competent authority having due regard for the juvenile's due process rights.

With respect to the criminal system, it is recommended that the Penal Procedure Code be amended to provide police, prosecutors and judges with greater authority to refer juveniles to mediation or some other informal resolution instead of imposing criminal sanctions. In addition, new provisions for child-friendly investigation and court proceedings should be introduced to ensure protection of the rights of juveniles at all stages of the proceedings, and to ensure that their right to privacy is respected at all times. In order to promote diversion and reduce the imposition of prison sentences on juveniles, it is recommended that the Penal Code be amended to extend the scope for applying judicial measure and suspended sentences to juveniles. The court should be given wider discretion to impose the sanction most appropriate for the individual juvenile.

6.9. Children with Disabilities

"Children with disabilities" includes children with physical and mental disabilities, and applies equally to children who were born with disabilities, or children affected by injury, illness, landmines/UXO or exposure to chemical substances.

6.9.1. CRC, International Standards and Good Models

Article 23 of the CRC guarantees mentally and physically disabled children the right to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. To this end, States Parties are required to recognize the right of disabled children to special care. States must, subject to available resources, provide eligible children and those responsible for their care with assistance appropriate to the child's condition. This assistance should be provided free of charge whenever possible, taking into account the financial resources of the parents, and should be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

The UN Committee on the Rights of the Child Measures recommends that an effective system be put in place to evaluate the situation of disabled children, including the development of a system of identification

and tracking of disabled children, monitoring mechanisms, and measures to assess the child's progress and difficulties encountered. Measures should also be taken to ensure adequate training, including specialized training, for those responsible for the care of disabled children, including at the family and community levels and within relevant institutions.

The Committee has also repeatedly emphasized that children with disabilities should be cared for in their families and communities, not placed in institutions. States should develop policies of de-institutionalization to reduce the number of children in institutional care, and should have programmes in place to provide financial and other support to families caring for a disabled child. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities require States to make every effort to provide assistance for children with disabilities and support services for their families, to the maximum extent possible on an out-patient or community basis, thereby avoiding removal of children with disabilities from their families for placement in institutions. Counselling, respite-care and attendant-care services should be made available to families which include a person with disabilities, and States should remove all unnecessary obstacles to persons who want to foster or adopt a child with disabilities.

The Committee has also placed particular emphasis on the importance of integrating children with disabilities in the mainstream education system, rather than placing them in specialised schools or institutions.

6.9.2. Vietnamese Laws, Policies, and Practices

The National Statistics Data Collection estimates that Vietnam now has as many as 5.131.265 disabled people, accounting for 6,34% of the country's population.¹⁰⁷ Of the figure, 2,37% or 661.603 are children aged less than 18 years old. However, these figures result from an estimation based on data from 1995, and are low compared to prevalence rates found in other studies. Shortly after the establishment of the Democratic Republic of Vietnam, the Party and State formulated many policies on the protection of children with disabilities, providing them with more access to health services, education and jobs.

The Law on Protection, Care and Education of Children states that disabled children and child victims of toxic contamination shall be supported, cared for and given favourable conditions by families, the State and society as regards: the early detection of disabilities and diseases; treatment and functional rehabilitation; admission to inclusive or exclusive schools; and assistance through general education, vocational training and participation in social activities (Article 52).

Issues relating to people with disabilities are addressed comprehensively under the Ordinance on the Disabled, 1998, Decree No 55/ 1999/NŞ-CP of July 10, 1999 on Guidelines for the Implementation of the Ordinance on the Disabled, Circular No 13/ 2000/ LŞTBXH of May 12, 2000 by the Ministry of Labour, War Invalids and Social Affairs on Guidelines for the Implementation of Decree No 55/1999/NŞ-CP, and numerous other legal normative documents.

The Ordinance states that disabled persons will be assisted by the State and society in healthcare and functional rehabilitation, and in the procurement of suitable jobs. In particular, disabled children and persons affected by the consequences of dioxin during the war shall receive special protection and care by the State and society. The parents, other members in the family and the tutor of the disabled person have the duty to raise, care for and assist the disabled person to recover his/her functions, to study, work and take part in social life. Seriously disabled persons without any source of income and without support shall be assisted, cared for and raised by the State and society at their place of residence or at social establishments of the State and social organizations. . Each year, the State shall set aside a budget fund and campaign among society to assist disabled persons in getting health checks and treatment, in functional rehabilitation, education, job training and procurement in order to stabilize their life. Discrimination against or maltreatment of disabled persons is strictly prohibited.

107 The number of children with disabilities: (according to the 2003 survey by the National Coordinating Council on Disability)

Health Care and Rehabilitation Services:

The Ordinance on Disabled Persons states that disabled persons are entitled to disease prevention, health care and functional rehabilitation; health examinations and treatment at medical establishments. Seriously disabled persons without income and support and poor disabled persons are assured medical examinations and treatment free of charge. Poor disabled persons shall be also be provided with necessary functional rehabilitation and orthopaedic services free of charge or supplied part of the cost or shall be guided to make ordinary aids in functional rehabilitation.

Children with disabilities may be provided with health care free of charge under Decree No. 139/2002/QĐTTG of October 15, 2002 by the PM on providing healthcare to the poor, including the disabled. The Decree states that children with disabilities are entitled to free health care. According to the estimates by the MOLISA, 50.35% of the households of disabled people across the country have enjoyed medical support policies, of which 38.17% have accessed free health checkups and treatment, 45.43% have received health insurance cards.

In addition, treatment and rehabilitation clinics for people with disabilities have been established by the Ministry of Health.¹⁰⁸ The Ministry of Health considers community-based rehabilitation to be the main strategy to support people with disabilities. Circular 12/1993/TT promulgated in 1993 states that community-based rehabilitation activities should be gradually expanded following the guidelines of WHO. The circular directs all provinces to implement rehabilitation programmes under the management of the People's Committee at all levels, with integrated activities of the education sector and DOLISA. The activities should involve home exercise, job creation, and stimulation of children with disabilities to attend school. However, implementation of this policy is not yet sufficient, and many children with disabilities, especially in remote areas, do not have access to rehabilitation.¹⁰⁹

There are currently a total of ten rehabilitation centres (day-care centres) for the care of disabled children in the communities located in seven of the country's 61 provinces.¹¹⁰ Community-based rehabilitation treatment has been conducted in 46 out of 64 cities and provinces nationwide, covering 215 districts and 2,420 communes. Benefits from community-based rehabilitation treatment have been felt by 74.1% of the disabled people in these communes. In addition, most district hospitals have set up their own rehabilitation clinics. However, it is estimated that only 4.62 % of people with disabilities are receiving assistance for rehabilitation treatment, which is too low. Therefore, Decision No: 65/2005/QĐ-TTg of the prime minister on the approval of plan on community-based caring children with specially difficult circumstances 2005-2010 calls for an increase in the number of the severely disabled children to be provided with orthopaedics and rehabilitation from 40% to 70%

According to the MoH, around 63% of the disabled in the country have gained access to health services. So far, more than 150,000 disabled people have been provided with orthopaedic and rehabilitation treatment. Over 10,000 people have been presented with special aids such as wheelchairs, walkers, false legs and arms. Free orthopaedic surgeries and rehabilitation treatment were performed for thousands of children with disabilities.

However, surveys have shown that access to appropriate health care and rehabilitative services remains limited, and awareness of local rehabilitation services has been found to be very low among families of children with disabilities. About one-third of families of disabled children living in communities had never sought treatment for their family member's disability. Rates of seeking treatment for child disabilities varied by region and rural-urban residence, with 90 per cent living in urban areas of the Red River Delta region having sought rehabilitation, compared to 29 per cent living in rural areas of the Central Highlands. Only about one-fifth of children with disabilities were found to be using rehabilitative aids and devices such as prosthetics, orthotics, hearing and vision aids, and wheelchairs. Less than ten per cent of

108 Decision No 963/1999/QĐ-BYT on functions, mandate and organization of treatment and rehabilitation clinics under the aegis of the Ministry; Circular No. 10/1999/TT-BYT of June 9, 1999 by the Ministry of Health on functions, mandate and organization of treatment and rehabilitation clinics under the aegis of the Ministry

109 Situational Analysis of Children with Disabilities in Vietnam, UNICEF and MOLISA, 2004

110 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

children with movement disabilities and 2 per cent of children with hearing disabilities used any kind of rehabilitative aid or device.¹¹¹

Education:

With respect to education for children with disabilities, the Ordinance on Persons with Disabilities states that education for disabled children shall be organized and carried out in the forms of integration schooling at general schools or specialized schools for the disabled, nursing homes for the disabled and at the family (Art 16). Students who are disabled shall be considered by the schools for reduction or exemption of school fees and other contributions to the school, shall receive social allowances and shall be considered for the granting of scholarships according to State regulations (Art 15). In addition, the Law on Education states that the Government shall encourage organizations and individuals to open special schools and classes for the disabled in order to help these people rehabilitate, acquire knowledge, vocational training and integrate into the community. It also states that priority will be given to providing State-run schools and classes for the disabled with staff, facilities, schooling aids and budget; and issue preferential policies to be applied for schools and classes for the disabled established and run by organizations and individuals. In addition, the Law on Universalisation of Primary Education states that children with disabilities are to be assisted and facilitated to achieve primary education (Article 11). Disabled children of war invalids and martyrs receive allowances, scholarships and other priorities under Decree 28/CP of April 29, 1995. Children with disabilities may also be entitled to school fee exemption or fee reduction under Decree No 88/ 2001/ NS- CP of November 22, 2001 by the Government on reduction of school fee and contributions to school upgrade, social allowance and encouragement scholarships for students with disabilities or under difficult circumstances.

The Ministry of Education and Training has also established educational and training establishments for children with disabilities as part of the national educational system.¹¹² In total, there are 29 special schools and 17 special classes for children with disabilities throughout the country. The majority of these special schools target visually and hearing impaired students; only nine accommodate intellectually disabled children.

In 2001, the Prime Minister ratified a new Strategy on Education and Training for Children with Disabilities (Decision No 201/2001/QŞ-TTG of December 28, 2001). In addition, the Education Development Strategic Plan for 2001-2010 sets the target of having 50% of all children with disabilities included in the education system by 2005, and 70% by 2010. The main policy of the Ministry of Education and Training is to promote inclusive education for children with disabilities.

Despite these legal protections, the education level of children with disabilities is reported to be generally very low. A Situational Analysis of Children with Disabilities conducted in 2004 found that 52% of children with disabilities participating in the study did not have access to education, with rates of non-enrolment and illiteracy being significantly higher amongst girls. Surveys have shown that 33.9% of the disabled children in Vietnam are illiterate; The Central Highlands see the highest illiteracy rate among disabled children of 46.1%, followed by the northeastern and northwestern mountainous provinces with 41%. Most disabled children (93.4%) aged 16 years upward have not accessed vocational training, (of which 73% are male), 6.5% hold job training certificates and 2.7% have graduated from specialized high schools¹¹³

Non-attendance at school and dropping out of school were reported to be caused by family poverty, lack of education programmes and support for children with disabilities, inaccessibility of schools to children with disabilities, and embarrassment or lack of confidence of children because of their disability.¹¹⁴ Other studies have cited other factors affecting non-attendance and drop out, the most significant of which

111 MOLISA and UNICEF; Vietnam Child Disability Survey 1998: Final Report; Hanoi; January 2000; Situational Analysis of Children with Disabilities in Vietnam, UNICEF and MOLISA, 2004.

112 Decree No 26/CP of July 17, 1995 of the Government on the transfer of education of disabled children from the MOLISA to the Ministry of Education and Training; Circular No 20ŞST of October 11, 1995 by the MoET on guidelines and definition of responsibilities for educational and training establishments for children with disabilities as part of the national educational system

113 MOLISA and UNICEF: A Study into Handicapped Children in Vietnam 1998; Final Report, Hanoi January 2000; An Analysis of Handicapped Children in Vietnam

114 Situational Analysis on Children with Disabilities in Viet Nam, 2004, UNICEF

are lack of teacher training and information related to children with disabilities, and discrimination and prejudice against them.¹¹⁵

The Situational Analysis also found that, while the general policy of MET promotes inclusive education, structural implementation is lacking and in practice only localities that receive technical and financial support from INGOs or donor agencies are actually implementing inclusive education. This is mainly caused by the lack of guidelines on implementation and lack of expertise and vision in the provincial Departments of Education and Training on how to implement inclusive education.¹¹⁶

Support for Families and Social Allowances

The key means of support for families with children with disabilities is social subsidies. The social subsidies for children with disabilities was previously regulated in various legal documents including Decree 07/2000/NĐ-CP issued in March 09th 2000 of the Government on social relief policies, Decree 168/2004/NĐ-CP issued in September 20th 2004 of the Government on the amendment and inclusion of some provisions in Decree 07/2000/NĐ-CP on social relief policies, Decree 55/1999/NĐ-CP issued in July 10th 1999 of the Government guiding on the implementation of some articles in the Ordinance on People with Disabilities, Decision 16/2004/QĐ-TTg issued in February 5th 2004 of Prime Minister on assistance for families with more than two family members incapable of self-serving as consequences of chemical toxins used by United States in Vietnam's war. However, in April 13rd 2007, the Government has issued Decree 67/2007/NĐ-CP on social assistance policies for social beneficiaries which regulates on the agreed rate of these subsidies including subsidy for non-working person with disabilities and persons who are not looked after.

However, there remain some disabled people and children who do not access their legitimate social allowances. A recent survey revealed that only 30% of children with disabilities who participated in the study received some form of support from the government, such as subsidized education, free access to health care, or a monthly allowance.¹¹⁷

Alternative Care

Children with disabilities who are in difficult circumstances may be cared for in Social Assistance Centres, and they are entitled to a monthly social allowances under the Ordinance on Allowances for the Handicapped. Currently, more than 300 welfare centres across the country are accommodating over 97,000 people and children with disabilities with a monthly allowance ranging from 140,000-210,000 per person. Some localities have tried to raise the levels of allowance for the disabled higher than the minimum levels required by the State, but some others do extract small amounts from the state allowance for the disabled. Children with very different needs are often placed together in the same social protection centre, without an effort to adapt programs to the individual circumstances and needs of children. Concern is therefore often expressed about children with physical or mental disabilities, whose special needs are typically not taken into account. For instance, children with a hearing impairment are placed together with others and provided with the same services.¹¹⁸

In order to reduce the institutionalisation of children with disabilities, Decision No. 65/2005/QĐ-TTg of the prime minister on the approval of plan on community-based caring children with specially difficult circumstances 2005-2010 calls for severely disabled children to be transferred from social welfare facilities to communities for caring by the way of family or individual fostering, patronage, adoption or social houses. The government will encourage families to care for disabled children in the community by providing allowances to families caring for disabled children and child victims of Agent Orange (Decree 67/2007/NĐ-CP of Prime Minister on the policies of subsidies for families and caregivers of orphans and abandoned children)

115 Lindskog, Eva and Nguyen Xuan Hai; *On the Road to Education for All: Lessons Learnt from Inclusive Education in Viet Nam 1991-2002*; funded by Save the Children Sweden; National Political Publisher; 2002.

116 Situational Analysis on Children with Disabilities in Viet Nam, 2004, MOLISA and UNICEF,

117 Situational Analysis on Children with Disabilities in Viet Nam, 2004, UNICEF

118 Situational Analysis of Institutional and Alternative Care Programmes in Vietnam, UNICEF, 2004; Bergeron, J and Tanaka, S "The Situation of Children in Institutions and Alternative Care Programs in Viet Nam", 2006

Vocational Training and Employment:

MOLISA is responsible for promoting vocational training and job opportunities for people with disabilities, including juveniles. In order to promote greater access to job training for people with disabilities, the Ordinance on Disabled Persons provides financial incentives, such as exemption from tax or tax reduction, budget for construction, procurement of equipment for teachers' training, etc for job training centres that accept people with disabilities. In addition, businesses which employ disabled people are exempted from tax, given concessional loans, and capital assistance.

According to the statistics by the MOLISA, there are over 400 production establishments run by disabled people, providing jobs to more than 15,000 people with disabilities, of which 3,000 are under the aegis of the Association for the Blind. These establishments are provided special duty exemptions¹¹⁹. The National Fund for Employment has provided production facilities of the disabled with 30 billion VND, 23 billion of which has come to the Association for the Blind. However, the capital source has not been available to many disabled people.

However, both household and the institution-based surveys revealed that vocational training and employment opportunities for juveniles with disabilities are limited. Only 5 of the children between the ages of 16 and 18 with disabilities reported having ever been involved in vocational training activities. In many regions inadequate attention and resources have been allocated to appropriate vocational training and job creation programs to meet the needs of the vast majority of disabled children with employment aspirations and potential.¹²⁰

Participation in Cultural, Leisure and Sporting activities:

The Ordinance on the Disabled highlights the need to facilitate the participation of disabled people in social activities, including cultural activities, sports and recreation, and social organisations (Article 5) and requires the State and society to create favourable conditions for disabled persons to develop their creative potentials in literature, art, sport, science and technique; to take part in creation, performance and competitions in the country and international events and other cultural and sport activities compatible with their capabilities and health (Art 24).

A legal framework has also been developed to promote accessible public transport works and public places for people with disabilities.¹²¹ However, the disabled, particularly disabled children still have difficulty in approaching and using public facilities. Ho Chi Minh City is the first and still the only place to put disabled-friendly buses into use. The Department for Science and Technology under the MoC is working with the Architecture Research Institute to design and build on a pilot basis 6 public projects in Hanoi and HCM City including train stations, culture halls and post offices. However, there are some buildings and facilities that meet the construction specifications and standards that ensure user-friendliness for the disabled, among them Hanoi International Airport, My Dinh Sports Complex, Hanoi-based Museum of Ethnicity, Trang Tien Trade Centre, ancient streets in central Hoi An city, some streets in Hanoi and HCM City.

6.9.3. Analysis and Recommendations

A quite comprehensive system of legal documents concerning people with disabilities has been created, ranging from law to series of decrees, circulars, and decisions on care and support for children

119 Circular No TC/TCT dated April 26, 1996 by the MoF on duty exemption for production establishments of the disabled. Official gazette No. 4892/2000/TC-TCT by the MoF on reduction of value added tax for production establishments of the disabled.

120 Situational Analysis on Children with Disabilities in Viet Nam, 2004, UNICEF,

121 Decisions No. 08/2005/QSBGTVT and No. 09/2005/QSBGTVT by the Ministry of Transport (MoT) on creating favourable conditions for the disabled to access public transport works; Construction Specification 01-2002, the Specification 264- 2002 on regulations for houses and buildings that are 'disabled friendly'; the Specification No. 265-2002 on regulations for the construction of roads and sidewalks that are 'disabled friendly'; Specification No. 266-2002 on guidelines for the construction of houses that are 'disabled friendly'; Directive 58/CT-T; in October 17, 2000 on speeding up the application and development of information and communication technology for the national cause of modernization and industrialization, facilitating the use and application of modern information and communication technology among all social classes, particularly disabled and disadvantaged people.

with disabilities. There has been a legal framework for the protection of the right to citizenship, and to participating in socio-political and cultural activities. In general, society's awareness of disability issues and the need to support children with disabilities to integrate into society has been promoted. Despite financial constraints, the State and local authorities have tried to provide social allowance to poor, disabled and uncared-for people and children. International NGOs and donor agencies have actively provided technical and financial support to many projects and programs on care for disabled people and children.

While Vietnamese laws have established the right of children with disabilities to equal access to education, health services and job opportunities, full implementation of existing laws and decrees remains a challenge. The following main gaps have been identified:

- There is no comprehensive, strategic framework for promoting the rights of disabled children which clearly stipulates objectives, activities, targets and resource requirements;
- There is a lack of guidelines and subsidiary acts to guide the implementation of programmes and activities for children with disabilities, such as community-based rehabilitation and inclusive education.
- Many services and programmes are available for children with disabilities, but they are not linked to each other, leading to fragmented support
- The classification and description of disability types and levels, collecting facts and figures of disabled people according to disability types, levels and causes of disabilities (Bullet point 2, Article 27 of the Ordinance) have not been conducted, causing difficulties to determine the real number of disabled people and children, to decide appropriate supportive measures. For example, there are 3 different figures indicating the number of disabled children aged less than 18 years in 2003 nationwide. Statistics from the National Coordinating Council on Disability, the figure is 661,603, whereas the figures released by the MOLISA and the MoET are 1.2 million and 1 million consecutively.
- Guideline documents have yet to pay due attention to early detection of disabilities and timely intervention to prevent disabilities among children, reducing the effectiveness of rehabilitation measures. Medical practitioners at communes and wards have not been professionally trained in early detection of disabilities.
- There is a lack of supervisory and inspection mechanism to monitor and check the implementation of law provisions concerning the disabled. The issuance of some legal documents takes too long time. Authorities of some localities do not pay due attention to giving implementation guidelines for decisions.
- Paragraph 2, item 2, article 3 of the Ordinance clearly states that the State and society extend particular attention and protection to children with disabilities. However, legal guideline documents have yet to define how "special" the treatment should be.
- The discovery of disabilities, early intervention and rehabilitation treatment has not been conducted in a systematic and coordinated manner. There is a lack of coordination among relevant agencies from the health, education sectors and between these agencies with programs by international NGOs. For example, different communes of the same district receive support from different programs; one commune benefits from a rehabilitation program but does not receive training in reintegration education, and the other communes vice versa.
- Discrimination against people with disabilities still remains among a small segment of society. For example, some schools, in-service and distance education centres do not accept blind students. Parents of children without disabilities show little support to integration education for children with disabilities in fear of negative impacts on their children when they are in the same class with disabled children. Students sometimes poke fun at their classmates with disabilities, destroying their self-confidence. Some people donate money because of their inner feelings of compassion and pity towards disabled people but not because of their full awareness about the rights of the disabled.

- Access to quality, integrated education remains a challenge. A recent study found that disabled children have only limited access to integrated education, with only 20% attending public schools.¹²²
- A lack of human and financial resources has delayed the enhancement of care and support for disabled people and children. There has not been a plan as stipulated in Article 29 of the Ordinance, based on which relevant agencies at all levels can estimate the total cost of rehabilitation treatment and integration education for each disabled person, as well as expenses for anti-discrimination education and information campaigns, early intervention to prevent disabilities and construction of user-friendly construction facilities for the disabled. Therefore, it is difficult for these agencies to make a detailed plan to call for domestic and foreign aid.
- The National Coordinating Council on Disability has not worked effectively enough to ensure smooth implementation and synchronous combination of programs in support of the disabled. The council has not yet established an information-exchange mechanism among relevant agencies so that they can cooperate more closely with each other. Model of self-help groups has not been largely duplicated across the country due to financial limitations and cumbersome establishment procedures. Support programs for the disabled have been conducted without basing on the involvement and consultation with the disabled and their families.

The following recommendations are therefore proposed in order to promote the rights of children with disabilities:

- Develop a comprehensive, 5-year strategic national plan of action to guide the implementation of the rights of people with disabilities, including children, which clearly stipulates objectives, activities, targets and resource requirements. It should identify areas for priority action to create an inclusive, barrier-free and rights-based society for persons with disabilities.
- Develop a monitoring mechanism to follow progress and quality of implementation
- Introduce detailed guidance on implementation of programmes for children with disabilities, in particular guidance on implementing community-based rehabilitation and inclusive education policies.
- Conduct a national survey on persons with disabilities, with a focus on the situation of children with disabilities;
- Develop a database system and standardised methods for data collection on children with disabilities. Statistical documents and reports from communes and wards must provide accurate, consistent data of the number of disabled children. These data must be complemented every year. Statistics from relevant state managing agencies, and local authorities should be consistent with each other in order to take appropriate measures to support the disabled people.
- Setting up a mechanism for the State to estimate the budget for supporting the disabled and to supervise and evaluate the implementation of programs as well as involving all relevant agencies in the drive for the disabled.
- Improve early identification and early intervention activities. At the commune level, organize training sessions and providing them with guidelines on necessary skills for disease discovery, early intervention, community-based rehabilitation, integration education and preparation of timely, exact reports.
- Improve cooperation among relevant agencies, particularly between the health and education sectors
- Raising people and society's awareness of disability issues, including the rights of the disabled people and children and the need to use rights-based approach in the disability field rather than compassion-based one.

- Increasing the dissemination of good examples of successful efforts by disabled children who have made good study or working performance, confidently integrating into society.
- Establish support groups and respite care programmes for parents caring for children with disabilities. Raise the awareness of parents of disabled children about their responsibilities for raising their children. Create favourable conditions and facilities for groups of disabled children's parents for mutual help and information exchange
- Improve the effectiveness of the National Coordinating Council of Disability, improving the combination and coordination of efforts by relevant agencies, enhancing dialogues for disabled people and improving the link between disabled people and domestic and international donor agencies.¹²³

123 Situational Analysis of Institutional and Alternative Care Programs in Vietnam, UNICEF, 2004

7. Conclusions and key recommendations

In recent years, the Party and State of Vietnam have gradually developed and improved Vietnam's legal system for the protection children. Many legal normative documents, programmes and initiatives have been introduced to address various aspects of child protection, and to target specific categories of children in special circumstances. Basic principles and roles and responsibilities for the child protection system have been defined in the Law on the Protection, Care and Education of Children and its implementation Decrees, passed by the National Assembly of Vietnam in 1991 and amended in 2004.

Vietnam is in the process of gradually developing a system of child protection organizations from the central to grassroots level. However, the country does not as yet have a comprehensive, integrated system in place to ensure the systematic identification, support and monitoring of children in special circumstances and children at risk. Contingents of specialised staff at all levels working with children, families, and communities remain insufficient in quantity and quality, and social work has not been fully developed as a profession.

Social welfare policy in general and child protection approaches in particular are characterised by a "charitable" rather than rights-based approach, and the provision of social services to vulnerable groups relies largely on voluntary efforts and non-profit organisations, rather than trained, paid professionals. Although mass organisations, local authorities and charitable organisations have made significant efforts to provide care, recovery and reintegration to children in special circumstances, there is a lack of a professionalized system to ensure appropriate response in all cases.

In order to improve the legal framework for child protection, and in particular to promote better quality care and support services for children at risk and children who are in special circumstances, the following general recommendations are proposed:

Recommendations Relating to Systems Building and Policy Development

- Develop a comprehensive child protection system to ensure the systematic identification, reporting, and referral of children in special circumstances
- Professionalize child protection services through the creation of a Child Protection Department and/or appointment of child protection officer(s) at all levels. These officers should be provided basic social worker training, and should be primary responsible for identifying, assessing and supporting children in special circumstances and children at risk;
- Introduce a case management system so that each child in special circumstances and his/her family is assessed by a trained social worker, has an individualised plan of care developed, is referred to appropriate support services (counselling, parenting education, home supervision visits, income generation support, alternative care, education and vocational training, etc), and is appropriately monitored
- Promote a multi-disciplinary approach to investigation and assessment of children in special circumstances, with co-operation amongst the various agencies (police, CPFC, social workers, health care workers, teachers, etc) in resolving cases of children in special circumstances.
- Appoint Specialised Teams of Investigators, Procuracy, Judges and People's Assessors to hear all criminal cases involving children and juveniles, and give them specialised training. Establish a Victim Support programme in larger cities with high numbers of criminal case involving children.
- Develop and/or strengthen a broad range of support services for both children in special circumstances and their families through partnerships with mass organisations, charitable organisations, counselling centres and others (counselling, parenting education, family

monitoring and home visits, respite care, temporary foster care, family income generation support, education and vocational training, etc).

- Promote community-based forms of alternative care for all categories of children in special circumstances, and gradually replace existing Social Protection Centres with small, family-like homes (to be used as a last resort only). Strengthen strategies and campaigns to promote foster care and to recruit and prepare alternative families, including families willing to care for children with disabilities and children affected by HIV/AIDS.
- Shift from institution-based (05/06 Centres) to community-based programmes to support the recovery and reintegration of street children, child prostitutes and child drug users. Diversify the types of community-based support programmes and support groups available to these children. Promote the development of non-punitive, community-based drug rehabilitation programmes specifically designed for adolescents.
- Build a cadre of trained, professional counsellors who can provide specialised, intensive counselling to child sexual abuse and sexual exploitation victims to assist them to recover mentally and emotionally from the trauma.
- Develop programmes specifically targeting disadvantaged and vulnerable children, including school-based guidance and counselling, mentoring, life skills programmes, drop-in centres and inclusive culture and recreation activities.
- Improve access to and the quality of non-formal education and vocational training for vulnerable children and children who have dropped out of the formal school system, including flexible education for street and working children.
- Promote greater dialogue on child protection issues, and in particular addressing cultures, customs and parenting practices that are harmful to children.
- Introduce parent education programmes to teach parents about positive parenting practices and non-violent discipline techniques. Incorporate life skills education and parenting skills education in the core secondary school curriculum.
- Promote greater participation of children in special circumstances in decision-making about their care, and in the design and implementation of programmes and information campaigns for CSC.
- Promote international cooperation in combating violations against children, through the negotiation and conclusion of bilateral legal assistance treaties with other countries, especially countries of the Mekong River's region.

Recommendations Relating to Laws and Subsidiary Acts

Amend a decree or decrees under the Law on Protection, Care and Education of Children addressing the following issues:

- Provide detailed, child-friendly procedures for receiving, investigating and response to discovered or suspected cases of children in special circumstances.
- Stipulate more clearly the powers of key agency in applying emergency intervention measures to protect children in special circumstances, including the different intervention measures that may be used, as well as criteria and procedures for applying these measures;
- Stipulate more clearly the powers and duties of the MOLISA in planning, managing and coordinating various programmes and services for supporting children in special circumstances and their families;
- Stipulate the different types of interventions and support services that should be provided to children in special circumstances and their families (counselling, parenting education, family

monitoring and home visits, respite care, temporary foster care, deprivation of parental rights, etc) and under what circumstances these different interventions would be appropriate.

- Stipulate detailed guidance on the limitation of parental rights, in particular clear child-centred standards and procedures for determining when the separation of a child from his/her parents is necessary and in the child's best interests. Separating a child from his/her parents should be a measure of last resort, where no other alternative intervention would be sufficient to protect the child;
- Stipulate detailed procedures and criteria for selecting, approving and appointing guardians, foster parents, and adoptive parents for a child. The best interest of the child should be the paramount consideration, and authorities should be required to have due regard to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. They should also be required to take the child's views into consideration.
- Stipulate detailed standards of care for all child care establishments, social houses, 05/06 Centres, etc caring for children in special circumstances. Special focus should be given to standards on quality of care and nurturing, safety, health, protection from abuse, and the number and qualification of children supporting staff.
- Develop a monitoring mechanism for children who are placed in alternative care with a guardian, alternative families, child supporting organizations and social protection centres/social houses. Stipulate procedures and time-lines for all children in alternative care to be subject to regular, periodic reviews, and to ensure that they have access to a child-friendly complaints mechanism.

Penal Code, Penal Procedure Code, and Ordinance on Administrative Violations:

- Amend the Penal Code to more clearly define the offence of child prostitution in accordance with the Optional Protocol to the CRC
- Amend the Penal Code to define the separate crime of "trafficking in children" consistent with the definition accepted internationally and in the Protocol.
- Amend laws to prohibit the arrest and administrative sanctioning of children under the age of 18 who are engaged in prostitution.
- Amend the Penal Procedure Code to provide police, prosecutors and judges with greater authority to refer juveniles to mediation or some other informal resolution instead of imposing criminal sanctions.
- Introduce new provisions under the Penal Procedure Code for child-friendly investigation and court proceedings to ensure protection of the rights of child victims and juveniles in conflict with the law at all stages of the proceedings.
- Amend the Penal Code to extend the scope for applying judicial measure and suspended sentences to juveniles, and to expand the types of non-custodial sanctions available for juvenile defendants. The court should be given wider discretion to impose the sanction most appropriate for the individual juvenile defendant.
- Amend the Ordinance on Administrative Sanctioning to prohibit the arrest and custody of juveniles for administrative violations, and to require that juveniles, their parents and the victim are directly involved in the decision-making process to impose commune-level education or reform school. It is also recommended that consideration be given to eliminating the use of reform school as an administrative sanction
- Draft an Inter-Agency Circular on the Conduct of Criminal Proceedings involving Child Victims/ Witnesses and Juveniles in Conflict with the Law.

- Amend the Penal Procedure Code to permit the extradition of Vietnamese nationals who have committed crimes of sexual abuse or sexual exploitation against children in foreign countries.

Other/Miscellaneous legal provisions:

- Strengthen the system of labour inspection by developing regulations on the organization and operation of labour inspectors in juvenile labour-related issues, and through education and training activities provided for labour inspectors.
- Review and supplement, as necessary, the list of jobs in which the use of juvenile labour is prohibited so as to keep it up to date with the development of the new jobs and further observe ILO Convention 138 and 82. Introduce legal normative documents governing the employment of juveniles in agriculture and the informal sector.
- Introduce detailed procedures and criteria for the voluntary admission of children to detoxification centres by their parents, to ensure that institutionalisation is used only as a measure of last resort.
- Amend legal normative documents on medical treatment establishments to reduce the duration of institutional rehabilitation for child prostitutes and children who use drugs. The current duration of compulsory institutional rehabilitation is excessive and contrary to the principles of the CRC. The set time periods should be replaced with a more flexible approach, allowing shorter-term periods of institutional care and regular, periodic reviews to assess the child's progress and to determine if continued institutionalisation is necessary.
- Update legal normative documents on HIV/AIDS to better reflect the new policies of the National HIV/AIDS strategy, and to include greater specific focus on children affected by HIV/AIDS (see Section 6.6 for detailed recommendations).