

# Prominent Judicial Measures Applicable to Combat the Rising Complexity of Juvenile Delinquency in Developing Countries

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## Abstract

Adopting international legal instruments and judicial models is critical for developing countries to better handle the increasing complexity of juvenile delinquency. These instruments and models formulate frameworks to balance the need for public safety with the rights and rehabilitation of juvenile offenders. This qualitative study aimed to exploit the secondary resources by employing a structural approach of comparative law methods and the most-similar and most-different systems design to propose the best strategy for addressing the rising complexity of juvenile delinquency in developing countries, taking Vietnam as a representative example. The results indicate that a hybrid approach prioritizing the Restorative and Welfare models for long-term rehabilitation, supported by Retributive measures in cases where deterrence is necessary, is likely the most practical solution in developing countries. While Restorative justice offers community-led

resolutions and the Welfare model tackles root causes of delinquency, these require long-term investment and systemic support. In contrast, Retributive justice provides immediate responses but fails to resolve the deeper issues that drive juvenile delinquency. The research implications can help policymakers and justice systems in developing countries make informed decisions, considering the cultural, economic, and social context to effectively formulate a juvenile justice system that combats and prevents troublesome juvenile delinquency.

**KEYWORDS** *judicial measures, juvenile delinquency, law enforcement, legal instruments, long-term rehabilitation*

## Introduction

Juvenile delinquency refers to illegal or antisocial behaviour committed by minors who are below the age of 18.<sup>1</sup> However, it should be clarified that juvenile delinquents are not only regarded as young criminals, but they are defined differently from one jurisdiction to another, and are dependable on legal changes over time.<sup>2</sup> Although juvenile delinquency occurs all over the world, its consequences are increasingly severe in developing countries.<sup>3</sup> The existence of socio-economic instability, weak governance structures, and limited access to education and social services exacerbate this problem with young offenders involved in organised crime, drug trafficking, and even terrorist activities in developing countries.<sup>4</sup> The complexity of this tendency poses substantial challenges for law enforcement agencies, which often have limited resources and insufficient means to confront the evolving nature of these crimes effectively. It is critical to address juvenile delinquency to assure the safety and security of communities, as well as the long-term

<sup>1</sup> Liefwaard, Ton. "Juvenile justice from an international children's rights perspective." In W. Vandenhoe, E. Desmet, D. Reynaert, & S. Lembrechts (Eds.), *Routledge International Handbook of Children's Rights Studies* (1<sup>st</sup> ed., pp. 234-253). London, Routledge, 2015; Shen, Anqi. "The age of criminal responsibility and juvenile justice in mainland China: A case study." *Northern Ireland Legal Quarterly* 67, no. 3 (2016), 357-371.

<sup>2</sup> Young, Susan, Ben Greer, and Richard Church. "Juvenile delinquency, welfare, justice and therapeutic interventions: a global perspective." *BJPsych bulletin* 41, no. 1 (2017): 21-29.

<sup>3</sup> Gogineni, Rama Rao, Qari Omar, and Sharma Shridhar. "Juvenile Delinquency around the World: Public Psychiatry." *World Social Psychiatry* 5, no. 2 (2023): 149-152.

<sup>4</sup> Idris, Waheeda Mohd, Yarina Ahmad, and Marni Hj. Ghazali. "Juvenile Delinquency: Why Minors Turn into Monsters?." *International Journal for Studies on Children, Women, Elderly and Disabled* 17 (2022): 48-58; Macfarlane, Alastair. "Gangs and Adolescent Mental Health: A Narrative Review." *Journal of child & adolescent trauma* 12, no. 3, (2018): 411-420; Prasenjit, Aseem, & Ashutesh Anand. "An Overview of International Perspective of Juvenile Delinquency Laws." *International Journal of Creative Research Thoughts* 11, no. 9 (2023): 914-926.

development of third-world countries.<sup>5</sup> If juvenile offenders are not rehabilitated, they are likely to persist in their criminal activities into adulthood, thereby perpetuating a cycle of violence and crime. Effective law enforcement strategies are essential to break this cycle, reduce crime rates, and promote social stability.<sup>6</sup>

Current situation shows that juvenile delinquency is becoming increasingly complex by a variety of factors that are deeply interwoven with socio-economic and technological disparities. As the gap between the rich and the poor widens, children from disadvantaged backgrounds are more likely to engage in criminal activities owing to lack of access to education, healthcare, and other essential services.<sup>7</sup> Another reason as claimed by Singh and Kiran<sup>8</sup> might be the changes in family structures, including the rise of nuclear-family households and domestic violence. Bosick and Fomby<sup>9</sup> opine that children from unstable family environments are more prone to engage in delinquent behavior as a way of coping with emotional and psychological stress. Besides, the negative influence of technology and social media also contributes to the complicity of juvenile delinquency.<sup>10</sup> The internet and social media platforms have created new avenues for juvenile delinquency, such as cyberbullying, online fraud, and exposure to inappropriate content. The anonymity provided by the internet often emboldens young people to engage in illegal activities. It is, thus, vulnerable to pervert the minds of young children to participate in organized-crime gangs.

<sup>5</sup> Homel, Ross Freiberg, Kate Branch Sara, and Le Huong. "Preventing the onset of youth offending: The impact of the Pathways to Prevention Project on child behaviour and wellbeing." *Trends & issues in crime and criminal justice*, 481 (2015); Nguyen, Thu Trang. "Juvenile delinquency: Theory, reality, and reasons in Vietnam." *Indonesia Law Review* 11, no. 2 (2022): 217-227; Yadav, Shashank. "Comprehensive Approaches for Addressing Juvenile Delinquency in India: Causes, Consequences, Preventive Strategies and Legal Framework." *International Journal of Social Science and Human Research* 6, no. 6 (2023): 3854-3863.

<sup>6</sup> Aazami, Aida, Rebecca Valek, Andrea N. Ponce, and Hossein Zare. "Risk and Protective Factors and Interventions for Reducing Juvenile Delinquency: A Systematic Review." *Social Sciences* 12, no. 9 (2023): 474; Schubert, A. Carol., Edward P. Mulvey, and Cristie Glasheen. "Influence of mental health and substance use problems and criminogenic risk on outcomes in serious juvenile offenders." *Journal of the American Academy of Child and Adolescent Psychiatry* 50, no. 9 (2011): 925-937.

<sup>7</sup> Idris, Waheeda Mohd, Yarina Ahmad, and Marni Hj. Ghazali. (2022). See Op. cit. 4; Samsudin, Anam, and Mislawi Yadi Adirasa. "The Importance of the Younger Generation in Combating the Dangers of Juvenile Delinquency: English." *JOEY: Journal of English Ibrahimy* 2, no. 2 (2023): 19-28.

<sup>8</sup> Singh, Archana, and U. V. Kiran. "Effect of single parent family on child delinquency." *International Journal of Science and Research (IJSR)* 3, no. 9 (2014): 866-868.

<sup>9</sup> Bosick, J. Stacey, and Paula Fomby. "Family Instability in Childhood and Criminal Offending During the Transition into Adulthood." *American Behavioral Scientist* 62, no. 11 (2018): 1483-1504.

<sup>10</sup> Abhishek, R., and J. Balamurugan. "Impact of social factors responsible for Juvenile delinquency - A literature review." *Journal of education and health promotion* 13, no. 102 (2024); Li, Junyan. "The Impact of Media Violence on Child and Adolescent Aggression." *Journal of Education, Humanities and Social Sciences* 18 (2023): 70-76.

More seriously, gang activity has become a significant aspect of juvenile delinquency, with young people being recruited into gangs at an increasingly early age. These gangs increasingly operate transnationally, making it harder for authorities to decrease the criminal offences.<sup>11</sup> Moreover, the movement of people across borders has constituted new challenges in alleviating juvenile delinquency. Migrant children, especially those who are unaccompanied or from war-torn regions, are at higher risk of getting involved in criminal activities owing to the trauma and instability they experience. Accordingly, societal pressures and the stresses of modern life have negative impacts on juvenile delinquency.<sup>12</sup> Lastly, legal and policy gaps could induce the severe legal loophole of juvenile delinquency. Many countries struggle with outdated juvenile judicial systems that are ill-equipped to handle the modern challenges of juvenile delinquency.<sup>13</sup> Remarkably, Prasenjit and Anand<sup>14</sup> further highlight that there is often a lack of coordination between various sectors, such as education, social services, and law enforcement, making it difficult to deal with the root causes of delinquency effectively.

Due to its serious consequences, juvenile delinquency has long-term societal impacts requiring enhanced law enforcement strategies. As claimed in Homel et al.<sup>15</sup> juvenile delinquency can be a precursor to adult criminal offences, which demands an effective intervention at a young age to disrupt the trajectory that leads from minor offences to more serious criminal activities. Some main sources of juvenile delinquency stem from the fact that delinquents often struggle with lower educational attainment, limited employment opportunities, and higher rates of dependency on social services. Its negative outcomes create a financial burden on the economy, both in terms of the direct costs of law enforcement and the judicial system and the indirect costs associated with lost productivity and social support programs.<sup>16</sup> Furthermore, Young et al.<sup>17</sup> assert that juvenile crimes often have profound impacts on victims, including emotional trauma and financial loss. In a society,

<sup>11</sup> Macfarlane, Alastair. (2018). *See Op. cit.* 4.

<sup>12</sup> Prasenjit, Aseem, & Ashutesh Anand. (2023). *See Op. cit.* 4; Smirnykh, E. Sergey. "International Legal Cooperation in Combating Juvenile and Youth Crime." *Russian Journal of Comparative Law* 7, no. 1 (2020): 47-57.

<sup>13</sup> Gogineni, Rama Rao, Qari Omar, and Sharma Shridhar. (2023). *See Op. cit.* 3; Le, Lan Chi. "Juvenile Victims in Vietnam Criminal Justice: Where to be and Where to go?." *VNU Journal of Science: Legal Studies* 37, no. 2 (2021): 29-41.

<sup>14</sup> Prasenjit, Aseem, & Ashutesh Anand. (2023). *See Op. cit.* 4

<sup>15</sup> Homel, Ross Freiberg, Kate Branch Sara, and Le Huong. (2015). *See Op. cit.* 5

<sup>16</sup> Nguyen, Thu Trang. (2022). *See Op. cit.* 5; Samsudin, Anam, and Mislawi Yadi Adirasa. (2023). *See Op. cit.* 7.

<sup>17</sup> Young, Susan, Ben Greer, and Richard Church. (2017). *See Op. cit.* 2

confronting high rates of juvenile delinquency can undermine social stability and public safety, so communities with prevalent youth crime normally undergo decreased quality of life, as residents may feel unsafe and social cohesion may weaken.<sup>18</sup> Thus, if juvenile delinquency is not properly controlled, the long-term societal impact can be detrimental, and the perpetuation of cycles of poverty, crime, and social instability will not come to an end.<sup>19</sup> Solving this complex issue requires effective law enforcement strategies, which are essential for combating juvenile delinquency, including not just punitive measures but also preventive and rehabilitative approaches. Preventive strategies might involve community policing, youth diversion programs, and collaboration with schools and social services as reported in some studies<sup>20</sup> claiming that law enforcement can help prevent crime rather than merely reacting to it, leading to a greater proactive and constructive role in society.

To illustrate the growing complication of juvenile delinquency in developing countries, this study conducted a case study in Vietnam as a representative example. Similar to other legal regulative provisions, juvenile delinquency, as stipulated in Article 21(1) of the 2015 Civil Code<sup>21</sup> - minors under the age of 18, has become an increasingly complex issue in Vietnam. The rapid socio-economic transformation, coupled with urbanization, has caused significant changes in family structures, education systems, and community dynamics in Vietnam. These changes have contributed to the rise in juvenile delinquency, with more sophisticated crimes such as cybercrime, organized gang activities, and drug-related offenses becoming prevalent.<sup>22</sup> Hence, the traditional view of juvenile delinquency as petty theft or school truancy and bullying has evolved, necessitating a more nuanced approach from law

<sup>18</sup> Whitesell, Mackenzie, Annette Bachand, Jennifer Peel, and Mark Brown. "Familial, social, and individual factors contributing to risk for adolescent substance use." *Journal of Addiction*, (2013): 579310; Bobbio, Antonella, Karin Arbach, and Santiago Redondo Illescas. "Juvenile Delinquency Risk Factors: Individual, Social, Opportunity or All of These Together?" *International Journal of Law, Crime and Justice* 62, 100388 (2020).

<sup>19</sup> Aazami, Aida, Rebecca Valek, Andrea N. Ponce, and Hossein Zare. (2023). See Op. cit. 6.

<sup>20</sup> Kostić, Miomira, and Filip Mirić. "Juvenile Delinquency or Juvenile Crime." *Law and Politics* 13, no. 1 (2015): 45-50; Meeler, Lauren, and Jonathan Todres. "Deprivation of Liberty as a Last Resort: Understanding the Children's Rights Law Mandate for Youth Justice." *Stanford Journal of International Law* 60, no. 1 (2024): 1-27; Farsani, Mohammadi Iman, Mahmoud Malmir, Mahmoud Ashrafi, and Masoud Heydari. "Strategies to prevent delinquency among children and adolescents based on the central role of the school." *Journal of Adolescent and Youth Psychological Studies* 4, no. 6 (2023): 91-102.

<sup>21</sup> Vietnam Civil Code. "The Civil Code, No. 91/2015/QH13. The National Assembly." Archived November 24, 2015 at <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=183188>

<sup>22</sup> Le, Huynh Tan Duy, and Yvon Dandurand. "Alignment of Vietnamese Law on the Treatment of Juvenile Prisoners with International Standards and Norms." *Youth Justice* 22, no. 1 (2022): 3-20; Le, Lan Chi. (2021). See Op. cit. 13; Nguyen, Thu Trang. (2022). See Op. cit. 5

enforcement agencies in Vietnam. The Vietnamese government, recognizing the importance of controlling this issue, has implemented various legal frameworks and policies aimed at curbing juvenile delinquency.<sup>23</sup> Unfortunately, the effectiveness of these measures remains a subject of debate, especially in light of the evolving nature of juvenile crimes.<sup>24</sup> As a result, law enforcement agencies in Vietnam face significant challenges, including limited resources, inadequate training, and the need to balance punitive measures with rehabilitation and prevention strategies.<sup>25</sup> Moreover, the socio-cultural context of Vietnam, with its emphasis on family honor and social harmony, adds another layer of complexity to how juvenile delinquency is perceived and coped with.<sup>26</sup> Currently, combating and preventing juvenile delinquency in Vietnam is crucial because the increasing involvement of juveniles in serious crimes places a significant threat on social stability and public safety. If not given a serious attention, this trend could lead to higher crime rates in the future, with long-term implications for national development. Likewise, juvenile delinquency is often a reflection of deeper socio-economic issues, such as poverty, lack of access to education, and family breakdowns,<sup>27</sup> so law enforcement shall play a critical role in preventing future crimes and promoting social cohesion. Furthermore, Vietnam's position as a developing country, undergoing rapid modernization process, makes it a unique case study for understanding the diversified juvenile delinquency in a transitioning society. The lessons learned from Vietnam's experience will provide valuable insights for other countries confronting similar challenges.<sup>28</sup> This study aimed to explore the complexity of juvenile delinquency in Vietnam and offer practical recommendations for enhancing law enforcement efforts. Specifically, this study sought to shed light on the following questions:

1. What are the main factors contributing to the increasing complexity of juvenile delinquency in developing countries?
2. How effective are current law enforcement instruments in

<sup>23</sup> Nguyen, Duc. "The Development of Four Leading Principles of the Convention on the Rights of the Child in Vietnam's Juvenile Justice." *Bergen Journal of Criminal Law & Criminal Justice* 4, no. 2 (2017): 267-285.

<sup>24</sup> Le, Lan Chi. (2021). *See Op. cit.* 13

<sup>25</sup> Le, Huynh Tan Duy, and Yvon Dandurand. (2022). *See Op. cit.* 22.

<sup>26</sup> Pham, Thi Thanh Nga. "The establishment of juvenile courts and the fulfilment of Vietnam's obligations under the convention on the rights of the child." *Australian Journal of Asian Law* 14, no. 1 (2014): 1-23.

<sup>27</sup> MOJ and UNICEF. "Analysis Report of the Child Justice Legal Framework and Situation of Minors in Conflict with the Law in Viet Nam." Archived 2019 at <https://www.unicef.org/vietnam/media/4376/file/JJ%20Sitan%20Full%20report.pdf>

<sup>28</sup> Nguyen, Thu Trang. (2022). *See Op. cit.* 5.

addressing emerging trends of juvenile delinquency in developing countries?

3. What innovative models can be adopted to improve law enforcement efforts in combating and preventing juvenile delinquency in developing countries?

## Methods

This qualitative research systematically reviewed and analyzed the secondary sources relating to combating and preventing juvenile delinquency in terms of comparing and contrasting international instruments and national laws of developing countries. The study employed a qualitative structural approach of comparative law research, introduced by Samuel,<sup>29</sup> to gain a comprehensive understanding of how current legislative regulations tackle this matter, especially the impacts of international instruments on rulemaking processes in developing countries. More precisely, this study compared and contrasted statutory normative documents in Vietnam, namely the 2015 Vietnam Criminal Code (amended and supplemented in 2017)<sup>30</sup> and Vietnam Law on Children,<sup>31</sup> with the principles embedded in international documents, such as the Beijing Rules,<sup>32</sup> the Riyadh Guidelines,<sup>33</sup> the Havana Rules,<sup>34</sup> and the UNCRC.<sup>35</sup> This analytical and comparative approach was conducted under the research design of the most-similar and most-different systems proposed by Anckar.<sup>36</sup> Based on the results, some

<sup>29</sup> Samuel, Geoffrey. *An Introduction to Comparative Law Theory and Method* (Vol. 11)". Oxford, Hart Publishing, 2014.

<sup>30</sup> Vietnam Criminal Code (2015, amended 2017). "Law No. 12/2017/QH14 dated June 20, 2017 of the National Assembly on amending the Criminal Code No. 100/2015/QH13. The National Assembly." Archived June 20, 2017 at <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=190507>

<sup>31</sup> Vietnam Law on Children (2016). "Law on Children, No. 102/2016/QH13. The National Assembly." Archived April 5, 2016 at <https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=184566>

<sup>32</sup> UN General Assembly. "United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Archived November 29, 1985 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

<sup>33</sup> UN General Assembly. "United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)." Archived December 14, 1990 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>

<sup>34</sup> UN General Assembly. "United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules)." Archived December 14, 1990 at [https://www.ohchr.org/sites/default/files/res45\\_113.pdf](https://www.ohchr.org/sites/default/files/res45_113.pdf)

<sup>35</sup> UN General Assembly (UNCRC). "UN Convention on the Rights of the Child (UNCRC)." Archived November 20, 1989 at <https://www.unicef.org.uk/wp-content/uploads/2016/08/unicef-convention-rights-child-uncrc.pdf>

<sup>36</sup> Anckar, Carsten. "The most-similar and most-different systems design in comparative policy analysis." In B. G. Peters, & G. Fontaine (Eds.), *Handbook of Research Methods and*

restorative justice models would be proposed to combat and prevent the complexity of juvenile delinquency in developing countries.

## Result & Discussion

The global concern about juvenile delinquency is a multi-faceted task requiring a comprehensive, multi-sectoral approach. It involves considering social, economic, cultural factors as well as legal and criminal aspects. International cooperation, context-sensitive policies, and adequate resources are crucial for developing effective strategies. The most promising approach is prioritising prevention, early intervention, and rehabilitation tailored to each country's needs. This view is achieved by examining international legal instruments and current law enforcement practices in developing countries to choose appropriate models for combating and preventing juvenile delinquency.

### A. Brief Review of Some Crucial International Legal Instruments Concerning Juvenile Justice

There are many principal international instruments regulating juvenile delinquency. One of them is the Beijing Rules<sup>37</sup> which are considered as the first international legal framework to protect the rights of juveniles in the judicial system and provide guidance to member states on how to handle juvenile offenders. The fundamental principles of the Beijing Rules recognize the juvenile's right, as clarified in Rule 7<sup>38</sup> therein. This rule promotes the importance of acknowledging juvenile offenders' human rights and fundamental freedoms, which align with the broader human rights principles enshrined in other international conventions such as A/RES/57/199,<sup>39</sup> A/RES/66/138,<sup>40</sup> UNCRC.<sup>41</sup> In addition, as entailed

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*Applications in Comparative Policy Analysis* (pp. 33-48). Cheltenham, UK: Edward Elgar Publishing, 2020.

<sup>37</sup> UN General Assembly. (1985). *See Op. cit.* 32.

<sup>38</sup> *Ibid.*

<sup>39</sup> UN Office of the High Commissioner for Human Rights. "Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199." Archived December 18, 2002 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

<sup>40</sup> UN Office of the High Commissioner for Human Rights. "Optional Protocol to the Convention on the Rights of the Child on a communications procedure, A/RES/66/138." Archived December 19, 2011 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications>



in Rules 2 and 6,<sup>42</sup> these rules advocate for specialized approaches to juvenile justice in view of young offenders' age, maturity, and specific needs. These provisions specify the establishment of juvenile courts, specialized law enforcement personnel, and tailored legal procedures. Also, the Beijing Rules recommend the minimum age of criminal responsibility, as specified in Rule 4,<sup>43</sup> with the guideline for the States to set a minimum age of criminal responsibility to ascertain minors below a certain age not to be subjected to criminal prosecution. The underlying principle of Rule 4 mandates that the age must be determined in a manner consistent with a child's capacity to understand the consequences of their actions. Furthermore, the Beijing Rules provide diversion and alternatives to formal judicial proceedings, as stated in Rules 11 and 18.<sup>44</sup> These regulations promote the implementation of diversion measures, such as counselling, community service, and other educational or rehabilitative programs, to avoid formal judicial proceedings and incarceration where possible, which concentrates on restorative justice rather than punitive measures. Rules 13 and 21<sup>45</sup> stipulate humane treatment and respect for dignity; that is, juveniles must be treated with respect for their dignity and must not be subjected to torture, cruel or inhumane treatment, or punishment. These rules encompass the prohibition of capital punishment and life imprisonment without the possibility of release for juvenile offences. Regarding the protection of privacy, Rule 8<sup>46</sup> prescribes that the privacy of juvenile offenders must be protected throughout the legal process to avoid stigmatization and negative labelling. Proceedings should be conducted in a way that does not expose juveniles to public scrutiny. The Beijing Rules<sup>47</sup> also underscore the right to fair treatment as regulated in Rules 14 and 15<sup>48</sup> which denote that juveniles are entitled to fair treatment during all stages of the legal process, including the rights to be informed of the charges, the rights to legal representation, and the rights to participate in their defence. Notably, the ultimate goal of juvenile justice, as mentioned in Rules 16 and 25,<sup>49</sup> prioritizes the rehabilitation and reintegration of young offenders into society. These provisions outline the measures to be taken to support their

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<sup>41</sup> UN General Assembly (UNCRC). (1989). *See Op. cit.* 35.

<sup>42</sup> UN General Assembly. (1985). *See Op. cit.* 32.

<sup>43</sup> UN General Assembly. (1985). *See Op. cit.* 32.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

development and prevent recidivism instead of applying strict legal punitive sanctions. The Beijing Rules, numbered 12, 22, and 30,<sup>50</sup> are purposeful enhance the accountability and liability of individuals involved in juvenile justice. They encourage professional training and research to improve practices and policies. In general, the Beijing Rules have significantly influenced the development of juvenile justice systems worldwide, guiding the creation of more humane and effective juvenile justice policies. They laid the groundwork for international standards like the UNCRC<sup>51</sup> and Riyadh Guidelines.<sup>52</sup> Although not legally binding, the Beijing Rules represent a global consensus on minimum standards for juvenile justice provisions and serve as a resourceful reference point for policymakers and practitioners all over the world.

The second legislative document is the Riyadh Guidelines<sup>53</sup> aiming to prevent juvenile delinquency by attending to its root causes through social, educational, and community-based measures. Their primary objective is to resolve underlying factors leading to such behavior and promoting the well-being of young people, as outlined in Rules 1 and 2.<sup>54</sup> For the subjects involved, the guidelines apply to all minors, not just those already involved in delinquency, and impose proactive measures rather than punitive responses (see Rules 3 and 4<sup>55</sup>). Basically, the guidelines underscore a child-centred approach, holistic development, and respect for human rights, as provided in Rule 5,<sup>56</sup> in which the child-centred approach considers minors as active societal participants with rights and responsibilities. Holistic development stresses the overall well-being, encompassing physical, mental, emotional, and social aspects. Respect for human rights ensures that all interventions and measures respect the human rights of young people, as recognized by international standards. The Riyadh Guidelines<sup>57</sup> also specify the successful process of socialization and integration of minors through the roles of family, education, and community. Under the family influence, Rules 11-19<sup>58</sup> highlight the importance of supportive and stable family environments in preventing delinquency. Rules 20-31<sup>59</sup> underline the critical roles of education systems in promoting

<sup>50</sup> UN General Assembly. (1985). *See Op. cit.* 32.

<sup>51</sup> UN General Assembly (UNCRC). (1989). *See Op. cit.* 35.

<sup>52</sup> UN General Assembly. (1990). *See Op. cit.* 33.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

personal development, critical thinking, and social responsibility. For the community role, Rules 32-39<sup>60</sup> stress the importance of community involvement in providing a supportive environment for minors. Rules 45-51<sup>61</sup> regulate social policies, promoting inclusive guidelines for all youth, especially those at risk of marginalization or exclusion, and support services like counseling, healthcare, and recreation to prevent delinquency. As far as the legislation and juvenile justice administration are concerned, Rules 52-59<sup>62</sup> pivot the two notions that states should enforce non-criminalizing policies for minors' behaviours subject to part of normal adolescence and conduct alternative measures to formal judicial proceedings, such as diversion programs. The last part of the guidelines concentrates on the implementation strategies, as outlined in Rules 60 to 66<sup>63</sup> thereof. The rules stress the necessity of collaboration among government, civil society, and private sectors to effectively implement guidelines against juvenile delinquency. Hence, they recommend continuous monitoring and evaluation of programs and policies to encourage international cooperation and exchange the best practices for juvenile delinquency. Overall, the Riyadh Guidelines<sup>64</sup> are a proactive approach to juvenile delinquency, emphasizing the need for comprehensive and inclusive social policies. They are part of the UN's broader effort to promote children's rights and protect them from negative influences resulting in delinquency.

The Havana Rules<sup>65</sup> are guidelines for handling underage individuals in confinement or incarceration, ensuring dignity, respect, and consideration for their needs. They prioritize separation from adults, guaranteeing education and vocational training, allowing family communication, and promoting the overall physical, mental health of incarcerated juveniles. The Rules cover 5 sections including 87 rules, within which many fundamental principles reflect important concepts thereof. In particular, juveniles should be separated from adults unless it is in their best interest not to be. This is to prevent the negative influences and potential abuse that might arise from interaction with adult prisoners, as seen in Rules 17, 18, and 29.<sup>66</sup> In case of the detention of juveniles, the environment in which juveniles are confined should be humane, and

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<sup>60</sup> UN General Assembly. (1990). *See Op. cit.* 33.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> UN Havana Rules. (1990). *See Op. cit.* 34.

<sup>66</sup> *Ibid.*

their dignity should be respected, as stipulated from Rules 21-26.<sup>67</sup> Specially, overcrowding and poor conditions should be avoided, as regulated from Rules 31-37.<sup>68</sup> Although juveniles are detained, they still have right to education and vocational training programs that cater to their developmental needs, as prescribed from Rules 38-46.<sup>69</sup> During the detention period, Rules 49-58<sup>70</sup> regulate that the physical and mental health of juveniles should be a priority, with adequate medical care provided. In addition, juveniles have the right to legal representation and regular reviews of their detention, as set forth in Rules 66-78.<sup>71</sup> For the juveniles' contacts with the wider community, Rules 59-62<sup>72</sup> state that efforts should be made to certify that juveniles maintain contact with their families, friends and other persons or representatives of reputable outside organizations through visits, correspondence, and other means. Lastly, the ultimate goal should be the rehabilitation and reintegration of juveniles into society, with a focus on their social and vocational development, as detailed in Rules 79-87.<sup>73</sup> It is concluded that the Havana Rules<sup>74</sup> were created to provide a framework for the humane treatment of juveniles and to encourage their development into responsible and productive members of society. These rules are part of a broader effort by the international community to promote and protect the rights of children and young people, particularly those in vulnerable situations.

The UNCRC<sup>75</sup> is a comprehensive human rights treaty that sets out children's civil, political, economic, social, and cultural rights, structured in 3 parts with 54 articles. It is one of the most widely ratified human rights treaties in history, with 196 countries being parties to it. Part I of the Convention includes critical provisions with 41 articles in which some typical articles characterize milestones for minors. For example, Article 1<sup>76</sup> defines a child as anyone under the age of 18, unless under the law applicable to the child, the majority is attained earlier. Similarly, Article 2<sup>77</sup> therein states that all rights must be respected and executed without discrimination of any kind, irrespective of the child's race, colour, sex, language, religion,

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<sup>67</sup> UN Havana Rules. (1990). *See Op. cit.* 34.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> UN General Assembly (UNCRC). (1989). *See Op. cit.* 35.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

political or other opinions, national, ethnic, or social origin, property, disability, birth, or other status. In addition, the Convention states that the child's best interests must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, as stipulated in Article 3<sup>78</sup> thereof. Remarkably, the Convention, as articulated in Article 6,<sup>79</sup> indicates that every child has the inherent right to life, so States Parties must assure, to the maximum extent possible, the survival and development of the child. Also, Article 12<sup>80</sup> regulates that children have the right to express their views freely in all matters affecting them, and those views must be given due weight in accordance with the age and maturity of the child. Part II comprises four articles concentrating on key areas of rights in which these regulations specify the detailed competence of individuals concerned. As regulated in Articles 42-44,<sup>81</sup> countries that ratify the UNCRC<sup>82</sup> shall take all appropriate legislative, administrative, and other measures to implement the rights recognized in the Convention. Part III focuses on the accountability of the Committee on the Rights of the Child, as particularized in Articles 46-51.<sup>83</sup> This body monitors the implementation of the UNCRC<sup>84</sup> by its States Parties, which are required to submit regular reports to the Committee to request its recommendations. This part has been a catalyst for global change, influencing national laws, policies, and practices concerning children's rights. It has inspired other international instruments and frameworks to protect children's rights and well-being. In summary, the UNCRC<sup>85</sup> is a landmark international agreement that has profoundly influenced global standards for children's rights. While challenges remain in its implementation, the Convention continues to serve as a fundamental guide for advancing the well-being and rights of children worldwide.

The aforementioned international legal instruments have a great impact on the formation and promulgation of juvenile delinquency all over the world, especially the under-developing and developing countries.

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<sup>78</sup> UN General Assembly (UNCRC). (1989). *See Op. cit.* 35.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

## B. Current Law Enforcement Approaches on Addressing Juvenile Delinquency in Vietnam

Vietnam has enacted some legislative documents regarding the matter of juvenile delinquency regulated in the 2015 Vietnam Criminal Code (amended and supplemented in 2017),<sup>86</sup> Vietnam Law on Children (2016),<sup>87</sup> and other legal normative documents. The 2015 Vietnam Criminal Code,<sup>88</sup> however, prescribes comprehensively provisions on how to take actions against juvenile delinquency. The following brief will cover the most significant takeaways of the rules regarding the juvenile justice in the 2015 Vietnam Criminal Code.<sup>89</sup>

The 2015 Vietnam Criminal Code<sup>90</sup> incorporates a comprehensive framework for imposing penalties against juvenile delinquency, reflecting the country's commitment to protecting the rights of minors while maintaining social order. The Code<sup>91</sup> incorporates several key provisions that are designed to treat juveniles differently from adults within the criminal justice system, focusing on rehabilitation and reintegration rather than punitive measures. A minor committing a crime is, at the time of committing a socially dangerous act, not yet 18 years old. Article 12<sup>92</sup> stipulates that a person aged 16 or older shall bear criminal responsibility for all crimes except for crimes otherwise prescribed by this Code.<sup>93</sup> Furthermore, a juvenile aged 14 or older but under 16 years old shall be only considered criminally responsible for the murder, intentional injury or harm to the health of another person, rape, rape of a person under 16 years old, rape of a person from 13 to under 16 years old, robbery, kidnapping for the purpose of appropriating property. Juvenile offenders are also accountable for very serious crimes, especially serious crimes as prescribed. Hence, it can be determined that juvenile crimes are dangerous acts to society, as stated in Article 12,<sup>94</sup> these criminal offences are committed by minors from 14 to under 18 years old, who take full criminal capacity for violating social relationships protected by criminal law and must bear criminal responsibility for their lawbreaking. According to Article

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<sup>86</sup> Vietnam Criminal Code (2015, amended 2017). *See Op. cit.* 30.

<sup>87</sup> Vietnam Law on Children (2016). *See Op. cit.* 31.

<sup>88</sup> Vietnam Criminal Code (2015, amended 2017). *See Op. cit.* 30.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

12,<sup>95</sup> people from 14 years old to under 16 years old must assume criminal responsibility for very serious crimes, especially serious crimes specified in one of the following articles, namely Chapter XIV. Offences against the person and reputation<sup>96</sup> (Articles: 123, 134, 141, 142, 143, 144, 150, 151), Chapter XVI. Offences against rights of property<sup>97</sup> (Articles: 168, 169, 170, 171, 173, 178), Chapter XX. Drug-related offences<sup>98</sup> (Articles: 248, 249, 250, 251, 252), Chapter XXI. Offences against public order and public safety<sup>99</sup> (Articles: 265, 266, 286, 287, 289, 290, 299, 303, 304). Minors aged 16 to 18 are required to take criminal responsibility for all criminal offences except for those otherwise provided by this Code.

Rules for taking actions against juvenile offenders, as stipulated in Article 91,<sup>100</sup> ensure the minors' best interests and are mainly for educational purposes, helping them rectify their wrongdoing, develop healthily, and become useful citizens. Sanctions against juvenile offenders must be based on their age, ability to perceive the social danger of their criminal acts, and causes and conditions leading to the crime. Article 91<sup>101</sup> thereof stipulates seven rules for dealing with juvenile offenders, including general rules, rules for exemption from criminal liability, and rules for determining punishment.

a) Rules for taking steps against juvenile offenders must maintain their best interests, mainly for the purpose of education, so the legal penalties are designed to help them rectify their wrongdoing, develop healthily, and become helpful citizens, as stipulated in Article 91(1).<sup>102</sup> Accordingly, the application of sentences to juvenile offenders must help them correct their misconduct, not punish them. Notably, right from the time of prosecution and investigation, the investigating authority must not only apply the most beneficial legal measures but also thoroughly understand the spirit that if it is not necessary to arrest, detain, or temporarily detain juvenile offenders, these legal punishments must not be applied to them. On the other hand, it is necessary to reserve the rights of juvenile delinquents, such as having a defense attorney right from the time of arrest as prescribed by the 2015 Criminal

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<sup>95</sup> Vietnam Criminal Code (2015, amended 2017). *See Op. cit.* 30.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

Procedure Code<sup>103</sup> only when the detention is enforceable to prevent the danger to society of juvenile delinquents' criminal offences. In this case, bail must be granted after the capture if there is a guarantor or the commitment of the criminal offence no longer poses a threat to society.

b) The rule prescribes that a juvenile offender committing a criminal offence in any of the following cases and having more than one mitigating factor, voluntarily repairing the most part of the damage caused may be exempt from criminal responsibility and implemented compulsory educational measures specified in Section 2, Chapter XII (Art. 91(2)),<sup>104</sup> provided it is not the case mentioned in Article 29<sup>105</sup> hereof. Article 29<sup>106</sup> regulates the cases for anyone who is exempted or feasible for the exemption from criminal liability, regardless of whether the person is under or over 18 years old. However, regarding juvenile delinquents, in addition to the provisions of Article 29,<sup>107</sup> the prosecuting agency itself is pursuant to the provisions of Article 91(2)<sup>108</sup> for taking actions against juvenile offenders.

c) Criminal prosecution against a juvenile offender shall be implemented in necessary cases and must be based on their personal characteristics, the danger to society of his/her offence, and the requirements of crime prevention (Art. 91(3)).<sup>109</sup> Juvenile criminal prosecution might have a far-reaching consequence on minors' maturity and development, which possibly leads to the feasibility of becoming either a good citizen or a criminal. This requires the investigating authority to carefully examine the case before deciding whether to initiate to implement measures against juvenile offenders or not.

d) Rules for juvenile hearing courts stipulate that the court only imposes a sentence upon a juvenile offender if it is considered that the exemption of criminal responsibility and application of any of the measures specified in Section 2<sup>110</sup> or compulsory education in a correctional institution specified in Section 3<sup>111</sup> does not have sufficient educational and deterrent effects (Art. 91(4)).<sup>112</sup> The

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<sup>103</sup> Vietnam Criminal Code (2015, amended 2017). See Op. cit. 30.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.



content of this rule requires the court to only apply punishment to a delinquent if it considers that exemption from criminal liability or application of one of the educational measures at a reformatory school is ineffective. Thus, before applying any sentence to a juvenile offender, the court must first apply restorative measures other than punitive sanctions. However, in practice, the court only considers and examines the nature and extent of the crime, the seriousness of juvenile delinquents' personalities, and the aggravating and mitigating factors of juvenile offenders' criminal responsibility to decide whether to impose punishment or not. If it is deemed unnecessary to apply the capture, juvenile offenders shall be forced to take compulsory educational measures in a correctional institution.

e) The rule of not imposing life imprisonment or the death penalty on juvenile delinquents (Art. 91(5))<sup>113</sup> serves as the basis for deciding the actions against the Juvenile Crime Commission, which is also stipulated in the 1985 Criminal Code and reiterated in the 1999 Criminal Code, and the 2015 Criminal Code.<sup>114</sup> This legislative human right demonstrates the commitment of the Vietnamese State to definitely not apply the death penalty and life imprisonment to juvenile offenders, and it is in compliance with the standard international regulations on juvenile delinquency.

f) Article 91(6)<sup>115</sup> states that the court shall only impose imprisonment upon a juvenile offender if it is considered that other punishments and educational measures do not have sufficient deterrent effects. Where imprisonment is necessary, it shall be as short as reasonable and more lenient than applied to a person aged 18 and above who commits a similar crime. Additional punishments shall not be imposed upon a juvenile offender. This is the principle for taking actions against juvenile crimes and serves as the basis for deciding on the sentence modes for juvenile offenders. The content of this principle is similar to those stipulated in Article 91(4).<sup>116</sup> However, this is the basis for applying imprisonment to a person under 18 years of age who is committing crimes. In addition, the 2015 Criminal Code<sup>117</sup> not only restricts the application of imprisonment but also stipulates that additional punishments are not imposed on juvenile offenders.

g) The rule regulates that a sentence imposed upon an offender

<sup>113</sup> Vietnam Criminal Code (2015, amended 2017). See Op. cit. 30.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

aged under 16 shall not be used as the basis for determination of recidivism or dangerous recidivism (Art. 91(7)).<sup>118</sup> The fact that there is no provision for children under 16 years old to be considered recidivists or dangerous recidivists demonstrates the principle of not imposing punishment as the purpose for offenders aged under 16, not being prejudiced against them, and creating conditions for them to develop normally in their immediate and long-term lives, because juvenile offenders still have a whole future ahead of them.

In general, in all cases, the taking actions against juvenile offenders is based on the principles of education, deterrence, guidance, and helping minors aware of their wrongdoing, develop healthily, and become a helpful citizen.

### **C. The Impact of International Legislative Instruments on the Development of Juvenile Delinquency in Vietnam**

The impact of international legislative instruments on developing policies addressing juvenile delinquency in Vietnam is significant. These instruments influence the formulation and implementation of national policies in various ways, primarily by reshaping the legal framework, guiding principles, and operational mechanisms. Vietnam ratified the UNCRC<sup>119</sup> in 1990, which has profoundly influenced the country's juvenile justice policies. The UNCRC<sup>120</sup> underlines children's rights, particularly those in conflict with the law, to be treated in a manner consistent with their dignity and worth. Vietnam now implements measures that align with the objectives of the UNCRC,<sup>121</sup> which include guaranteeing that detention is only used as a last resort and for the shortest possible time. Furthermore, the Beijing Rules<sup>122</sup> provide guidelines for taking actions against juvenile offenders with an emphasis on rehabilitation rather than punishment. Vietnam has incorporated elements of the Beijing Rules<sup>123</sup> into its juvenile justice system, including the implementation of specific regulations for handling

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<sup>118</sup> Vietnam Criminal Code (2015, amended 2017). *See Op. cit.* 30.

<sup>119</sup> UN General Assembly (UNCRC). (1989). *See Op. cit.* 35.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> UN General Assembly. (1985). *See Op. cit.* 32.

<sup>123</sup> *Ibid.*

juvenile cases and the establishment of dedicated courts and institutions within the system.<sup>124</sup> Indeed, international legislative instruments have influenced Vietnam to initiate legal reforms to enhance the protection of adolescent rights. The amendments made to the 2015 Criminal Code,<sup>125</sup> the 2019 Vietnam Law on Execution of Criminal Judgments, and the 2012 Law on Handling Administrative Violations<sup>126</sup> aim to better conform to international norms by prioritizing rehabilitation, education, and social reintegration rather than punitive measures. Consequently, Vietnam has increasingly embraced diversion programs and alternative measures for incarcerating juvenile offenders. This complies with recommendations stipulated by the UNCRC,<sup>127</sup> the resolution 1997/30,<sup>128</sup> and the Beijing Rules, which promote community sentence wherever feasible. Vietnam is required, as a signatory to many international agreements, to provide reports on its progress in reforming juvenile justice policies to international organizations like the United Nations Committee on the Rights of the Child<sup>129</sup>. This international organ has encouraged Vietnam to improve its rules and procedures concerning juvenile justice consistently. In addition, international legal instruments have empowered non-governmental organizations (NGOs), such as saigonchildren,<sup>130</sup> MSD,<sup>131</sup> VACR,<sup>132</sup> or CSWC,<sup>133</sup> and international agencies operating in Vietnam (e.g., UNICEF Viet Nam<sup>134</sup>) to advocate for more robust juvenile protection.

<sup>124</sup> Vu, Thi Thu Quyen. "Law on the rights of juveniles in criminal proceedings: International and Vietnamese perspectives." In *Asian constitutional law recent developments and trends: Vietnam*, Hanoi, 6th and 7th December 2019. Volume 1. [https://repository.vnu.edu.vn/bitstream/VNU\\_123/94787/1/KY-0022.pdf](https://repository.vnu.edu.vn/bitstream/VNU_123/94787/1/KY-0022.pdf)

<sup>125</sup> Vietnam Criminal Code (2015, amended 2017). See Op. cit. 30.

<sup>126</sup> The Office of the Vietnam National Assembly. "*The consolidated text No. 67/2020/QH14 of the Law on Handling of Administrative Violations*." Archived December 29, 2022 at <https://quochoi.vn/pages/tim-kiem.aspx?ItemID=72878>

<sup>127</sup> UN General Assembly (UNCRC). (1989). See Op. cit. 35.

<sup>128</sup> UN General Assembly. "*Guidelines for Action on Children in the Criminal Justice System* (The resolution 1997/30)." Archived July 21, 1997 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-action-children-criminal-justice-system>

<sup>129</sup> The Committee on the Rights of the Child (CRC). Accessed June 8, 2024. <https://www.ohchr.org/en/treaty-bodies/crc>

<sup>130</sup> *Saigon Children's Charity*. Accessed June 8, 2024. <https://www.saigonchildren.com>

<sup>131</sup> *Management and Sustainable Development Institute*. Accessed June 8, 2024. <https://msdvietnam.org/en/about-us/about-msd/>

<sup>132</sup> *Vietnam Association for Protection of Child's Rights*. Accessed June 8, 2024. <https://ngorecruitment.org/>

<sup>133</sup> *The Centre for Promoting Development for Women and Children*. Accessed June 8, 2024. <https://dwc.vn>

<sup>134</sup> *UNICEF Viet Nam*. Accessed June 8, 2024. <https://www.unicef.org/vietnam/about-unicef>

These entities often collaborate with the Vietnamese government to execute programs and policies that conform to international human rights standards, thereby influencing policy formulation and execution. Despite the influence of international instruments, challenges still need to be overcome in the implementation of juvenile justice policies in Vietnam. There are often gaps between policy and practice, particularly in rural areas with limited resources. Ensuring that international standards are uniformly applied across the country remains a significant challenge.

Although there is socially widespread praise for restorative justice's emphasis on rehabilitation and community healing, restorative justice faces significant criticisms regarding revictimization, power imbalances, and the issue of state accountability. One of the fundamental concerns blames for the revictimization, where victims feel compelled to forgive offenders or engage in reconciliation processes before they have the emotional strength to do so. This action can lead to retraumatization, particularly in cases involving more severe crimes, where the victim's trauma remains unresolved. Power imbalances pose challenges in restorative justice practices, as offenders may dominate the process, and victims, especially in cases involving intimate partner violence or family-related crimes, may feel intimidated or coerced into making decisions. Restorative justice is also criticized for being conceptually challenging as the liability is instead being shifted from the criminal justice system itself to the community or victims, which undermines the state in holding accountability for the criminal wrongdoing that has occurred. While this can be empowering in certain contexts, it might also absolve the state of its duty to redress justice, and to bring criminals to the rule of law. Besides, legal challenges arise in aligning restorative justice with existing legal frameworks, particularly regarding the rights of the accused and the victims. In order to solve these problematic issues, restorative justice programs need to have more stringent safeguards such as professional facilitation, informed consent, and transparent legal oversight that would ensure fairness, consistency, and respect by all parties involved.

## D. Solutions to Implement Potential Restorative Models for Addressing Juvenile Delinquency Effectively in Developing Countries like Vietnam

Recently, juvenile crime in Vietnam has increased in number and level of complexity. More seriously, the upward trend of younger individuals committing grave juvenile crimes has alerted the whole society to join hands to restrain the alarming rate of juvenile delinquency because the essence of juvenile offences is becoming extremely aggressive and inhumane.<sup>135</sup> Currently, juvenile criminality is likely to be more dangerous, namely robbery, murder, teenage gang, drug trafficking, drug addiction, high-tech crimes, and invasions of the national security. Severely, juvenile delinquents do not simply originate from a lack of understanding, but they have a detailed and careful plan with determined goals and plots to commit crimes in a manner of dangerous, toxic, and inhumane wrongdoings.<sup>136</sup> The growing trend of younger juvenile delinquents not only affects directly the future of each individual and the stability of families but also severely the health, life, and property of those around them, which causes social insecurity and harmful activities in the community. Besides, the phenomenon of younger juvenile delinquents poses an alarming situation, raising many issues relating to the care, education and management of juveniles.<sup>137</sup> Psychologically, adolescents quickly undergo physical changes but they often have instability, rebellion, lack of emotional control skills, and are prone to impulsive actions,<sup>138</sup> and they have to confront many troubles during and after the period of the imprisonment.<sup>139</sup> Presently, Vietnam has comprehensive legal normative documents for regulating juvenile matters, but some provisions lack deterrence, or their content has many overlapping elements, leading to ineffective application. Actually, many cases causing fatal consequences for society cannot prosecute lawbreakers as the offenders are children under 16 years old.<sup>140</sup> Vietnam's juvenile sanctions, to some extent, has changed into a more indulgent and

<sup>135</sup> Le, Huynh Tan Duy, and Yvon Dandurand. (2022). *See Op. cit.* 22.; Nguyen, Thu Trang. (2022). *See Op. cit.* 5.

<sup>136</sup> Le, Lan Chi. (2021). *See Op. cit.* 13.

<sup>137</sup> MOJ and UNICEF. (2019). *See Op. cit.* 27.

<sup>138</sup> Macfarlane, Alastair. (2018). *See Op. cit.* 4.

<sup>139</sup> Moore, Elizabeth, Claire Gaskin, and Devon Indig. "Childhood maltreatment and post-traumatic stress disorder among incarcerated young offenders." *Child Abuse & Neglect* 37, no. 10 (2013): 861-870, <https://doi.org/10.1016/j.chiabu.2013.07.012>

<sup>140</sup> Vietnam Law on Children (2016). *See Op. cit.* 31.

humane tendency, creating possibilities for juvenile offenders to redress their wrongdoings.<sup>141</sup> Accordingly, the nature of this policy complies with international legislative instruments to catch up with the socio-economic development and ensure human rights. However, many juvenile offenders might see this lenient policy as a loophole to abuse to commit illegal acts. Another reason is justified that although many state agencies and socio-economic organizations jointly monitor children's rights, they sometimes overlap and disregard their management and coordination. To solve this problem, Vietnam is obliged to enhance the application of educational measures, gradually introducing diversity and quality of education and rehabilitation programs in the community with the proactive collaboration of families, schools and society. Based on the practical results of juvenile rehabilitation programs worldwide, developing countries like Vietnam can flexibly adopt the widely recognized restorative models to grapple with the current complicated rise in juvenile crime rates effectively.

The first proposed framework in combating and preventing juvenile delinquency is the Welfare Model which emphasizes care, rehabilitation, and social support for young offenders, viewing them not simply as criminals but as individuals in need of guidance and help. This model intends to address the root causes of delinquent activities, such as poverty, neglect, trauma, or family dysfunction, through intervention and support rather than punitive measures. It reflects a belief that children and adolescents are still developing, and with proper care, they can be redirected toward positive manners. The primary goal of the welfare model comprises three elements: prevention, rehabilitation, and protection. The prevention feature is to prevent future delinquent behaviour by mitigating the social and psychological issues that may lead to offending. Rehabilitation refers to the availability of support and skills necessary for young offenders to become productive members of society. The protection aims to safeguard the rights and well-being of juveniles, recognizing their status as minors needing guidance and care. However, this approach has been criticized for sometimes failing to force young offenders fully to take criminal responsibility for their actions, which could undermine community safety or underplay the need for accountability and deterrence. Some studies<sup>142</sup> argue that this approach could lead to unequal treatment,

<sup>141</sup> MOJ and UNICEF. (2019). *See Op. cit.* 27.

<sup>142</sup> Badasa, Gamachu Gishe, Abdurehman Gameda, Burash Elemo Gaduda, and Bezabih Wondimu. "Juvenile Delinquency: A Need to Multiple Explanations and Interventions." *Open Access Library Journal* 6: e5904 (2019), <https://doi.org/10.4236/oalib.1105904>; Jianguo, Xu,

where some offenders might receive more favourable outcomes than others. Overall, the Welfare Model in juvenile justice views delinquency as a symptom of more significant social and personal issues and seeks to rehabilitate young offenders through compassionate and supportive measures. It contrasts with more punitive measures such as the successive Retributive Model intensifying punishment and retribution.

The next model concerns the Justice Model, also known as the Control Model or Retributive Model, which is an approach in juvenile justice that comprises accountability, responsibility, and penalty for young offenders to deter future criminal offences. Unlike the Welfare Model, which characterizes rehabilitation and care, the Justice Model prioritizes punishment proportionate to the offence and petitions to hold young offenders responsible for their criminal mischief. In its essence, the critical goals of the Justice Model are to concentrate on reprimand, deterrence, and community sentence. Hence, the sentence is applicable for juvenile offenders in a way that is proportionate to the harm caused by their transgressions. Deterrence is implemented to prevent both the individual and society from engaging in further criminal behaviour through the threat of incarceration. Public safety is reserved for protecting society by incapacitating offenders, particularly serious or repeat offenders, through incarceration or strict sanctions. Compared with the Welfare Model, the Justice Model emphasizes punishment, while the Welfare Model is in favor of rehabilitating juvenile delinquents. Furthermore, while the Justice Model institutes formal legal proceedings, the Welfare Model often adopts more informal approaches, such as rehabilitation programs. Lastly, the Justice Model centres on the criminal offence itself, but the Welfare Model reviews the broader social and personal context of the offender's life. The Justice Model, however, receives some criticism because this model may rely too heavily on punishment at the expense of rehabilitation, particularly for young offenders who are still developing and may be more responsive to reform. In addition, the retributive nature of the model may lead to harsh penalties for juveniles, including incarceration, which can have long-term negative effects on their development and reintegration into society. Also, the model does not control the underlying social, economic, or

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Miao He. "Prevention and Countermeasures of Juvenile Delinquency." *Studies in Social Science & Humanities* 1, no. 1 (2022): 101-104. <https://doi.org/10.56397/SSSH.2022.08.12>; Vooren, Melvin, Iryna Rud, Ilja Cornelisz, Chris Van Klaveren, Wim Groot, and Henriëtte Maassen van den Brink. "The effects of a restorative justice programme (Halt) on educational outcomes and recidivism of young people." *Journal of Experimental Criminology* 19, (2023): 691-711.

psychological factors contributing to juvenile delinquency, which could limit its effectiveness in preventing future offending. As such, the Justice or Control Model is based on the belief that juveniles, like adults, should be held accountable for their actions and be served with any conviction proportionate to their offences. It prioritizes deterrence, retribution, and fairness in sentencing but has been critiqued for its potential to overlook the rehabilitation needs of young offenders.

The final model is the Restorative Model in juvenile justice and delinquency, which prefers to repair the harm caused by juvenile offenders rather than merely punish their lawbreaking. The core principle is to restore the detriment caused by juvenile offences via providing restitution to the victim, making efforts to improve relationships, and rebuilding trust within the community. The model involves all stakeholders affected by the crime, including the victim, the offender, and the community. Through processes such as victim-offender mediation or community conferencing, each party has the opportunity to express their feelings, needs, and expectations to reach acceptable solutions. This model awakens juvenile offenders to be liable for their actions and understand the severe impact of their demeanor on others. This Restorative Model assumes that taking responsibility and make amends play crucial roles in the rehabilitation process, as the spiritual notion of this model is to promote healing for both victims and offenders. Victims may receive emotional closure and support, while delinquents have the chance to make amends and reintegrate into society with a sense of responsibility, and the role of the community in the justice process is highly valued. Communities are considered as active participants in supporting victims, holding juvenile offenders accountable, and fostering a supportive environment for rehabilitation. Remarkably, restorative justice practices generally offer alternatives to traditional court proceedings, such as diversion programs, restorative circles, or community service. These alternative options are designed to address the offence in a way that supports healing rather than punitive punishments. Thanks to resolving the root causes of delinquent actions and involving the community in the justice process, the Restorative Model endeavors to prevent future offences by encouraging positive manners and social support systems to reduce the likelihood of reoffending. Specially, Restorative Practices comprise three typical approaches: Victim-Offender Mediation, Family Group Conferencing, and Restorative Circles. In particular, Victim-Offender Mediation characterizes a facilitated dialogue between the victim and the offender to discuss



the impact of the crime and agree on how to make amends. Family Group Conferencing refers to a process that includes the offender's family, the victim, and community members to develop a plan for restitution and support. Restorative Circles indicate meetings involving all stakeholders to discuss the crime and its impact and collectively decide on appropriate responses and reparations. Thus, the Restorative Model represents a shift from a purely punitive approach to one that enquires to improve relationships and support the well-being of all involved, promoting a more inclusive and compassionate approach to justice.

## Conclusion

The current situation of juvenile delinquency in developing countries is inclined to accelerate the alarming rate of violent crime, drug trafficking, and cybercrime, fueled by poverty, family breakdown, and lack of access to education. Rapid urbanization, weak law enforcement, and underfunded juvenile justice systems further complicate efforts to tackle the issue. Otherwise, social media, substance abuse, and cross-cultural exchanges also contribute to the growing complexity of the juvenile delinquent problems. In Vietnam, like many other developing countries, the landscape of juvenile crime is shifting, presenting new challenges for traditional law enforcement methods. Understanding these emerging trends is crucial for developing effective strategies to combat and prevent juvenile delinquency. The research results reveal that the increasing complexity of juvenile delinquency in developing countries can be attributed to a combination of social, economic, cultural, technological, familial, weak legal, or urbanized and migrated factors. A multi-pronged approach that includes education, family support, economic reforms, effective law enforcement, and rehabilitation programs is essential to address these challenges. Accordingly, developing countries are expected to tackle the root causes of delinquency to combat and prevent juvenile offenders from falling into cycles of crime and build safer communities only by improving economic conditions, strengthening families, enhancing education, and reforming legal and social systems. The current situation of law enforcement instruments in developing countries like Vietnam has been revised their legal frameworks to align with international standards and conventions to better address juvenile delinquency, but there are still significant challenges. Community-based programs, specialized units, and juvenile justice reforms have shown positive results, but limitations in resources, socio-economic conditions, and administrative issues

need to be addressed to enhance overall effectiveness. Efforts to integrate innovative approaches and strengthen partnerships can contribute to more effective prevention and intervention strategies for juvenile delinquency. Implementing restorative approaches instead of punitive punishments in addressing juvenile delinquency has gained significant attention because of its potential to be more effective in rehabilitating young offenders, reducing recidivism, and promoting healing within communities. Although restorative justice may require an initial investment in infrastructure and training, its long-term benefits in terms of reduced recidivism, healed communities, and rehabilitated juveniles make it a more effective and humane approach to addressing juvenile delinquency. Based on juvenile criminal offences, it is advisable to choose one of the humane options in regard to juvenile delinquency instead of imposing imprisonment according to the rule by law. Three typical models have been overviewed to propose the best method of solving the increasing complexity of juvenile offenders in developing countries such as Vietnam. Among these suggestive models, the Restorative Model seems the most promising for addressing juvenile delinquency in developing countries due to its adaptability to local cultural practices, focus on community healing, and cost-effectiveness. However, successful implementation requires building supportive infrastructures, raising public awareness, and ensuring the justice system operates equitably. The Welfare Model, while potentially effective, faces challenges related to resource availability and institutional capacity. The Retributive Model may provide short-term deterrence but risks failing to address the root causes of delinquency and reinforcing social inequities. An optimal approach might blend aspects of these models, with restorative principles taking the lead, supported by elements of the Welfare Model where resources permit, and retributive measures reserved only for the most serious offenses.

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