

An Analysis of Juvenile Justice Reform in Vietnam

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Current Offense-Age-Court Structure

Age	Non-serious	Serious (3 levels)
Under 14	Administrative*	Administrative
14-16	Administrative	Criminal Court – Reduced Sentence
16-18	Criminal Court – Reduced Sentence	Criminal Court – Reduced Sentence
18 and older	Criminal Court	Criminal Court

*Chair of local People's Commune Committee. Incarceration sanction must be confirmed by District People's Court.

Criminal Court Processing

- Judge interrogates defendant in court to determine appropriate penalty
- Charges brought by Procuracy following investigation



Administrative Hearings

- No trial; defendant not present
- No evidentiary challenges
- Police dossier only basis for decision-making
- Primary sanctions are warnings, fines, assignment to education in the commune, and reformatory placement
- People at commune level overwhelmed – no services or training

Juvenile Arrestees

	2002	2006
Offenders Arrested	13,801	16,446
Criminally prosecuted	1,756 13%	4,065 25%
Offense: % Person	19.6	23.3
% Property	50.5	51.78
% Drug	4.6	n.d.

Source: Ministry of Public Safety

Loss of Liberty

- Most cases transferred home or monitored in commune
- Reform schools used frequently for both Administrative and low level criminal cases
- Juveniles tried in criminal court for serious crimes placed in separate sections of adult prisons
- Chronic drug users sentenced to Drug Centers



System Limitations

1. Professionals lack knowledge specific to juveniles
2. Limited family and school participation
3. Many lack legal representation
4. Intimidation – both police and court
5. Dependency on incarceration
6. Absence of community-based resources
7. Lack of data for research or policymaking

Juvenile Justice Reforms

1. Child-friendly Policing: **being implemented**
 - Child-friendly rooms at police stations
 - Police trained in child-friendly interrogation methods
 - Project collaborators: Save the Children Sweden, UNICEF and the People's Police Academy (Vietnam)
2. Family Court: **proposed by Supreme Court**

Rationale for a Family Court

1. Implement UN Convention on the Rights of the Child
2. Acknowledge the central role of the court in reinforcing the structure of society
3. Locate family issues in the court system
4. Foster development of healthy families that, in turn, “educate” their children
5. Locate behavior of the child in the family context
6. Recognize that the most effective treatment programs target strengthening the whole family

Context

Legal and Political

- Inquisitorial judicial system
- No separation of powers
- Administrative and Criminal systems
- Incarceration/fines/ monitoring
- Increasing international visibility; joined WTO in 2007
- Flooded by international donors, policy advisers and trainers

Cultural

- Central role of family in Vietnamese culture
- Principles of restorative justice embedded in culture

Developing a Family Court

- Supreme People's Court initiative
- Proposed: 3rd draft released in 2013
- Underlying values
 - Family-centered
 - Preserve the Republic
- Objectives
 - Focus responses to delinquency on protection, education, family
 - Comply with international laws and conventions
 - Develop specialized judges and services

2013 Family Court Model

- Another division of the People's Court, not a separate, specialized court
- Jurisdiction
 - Criminal cases of persons under 18
 - Administrative law cases if placement is recommended
 - Juvenile victims of adult offenders
 - Conflicts involving family and marriage
- Greater emphasis on diversion and role of family

Current Offense-Age-Court Mandate

Age	Non-serious	Serious
Under 14	Administrative	Administrative
14-16	Administrative	Criminal Court – Reduced Sentence
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Proposed Processing of Juvenile Cases

Age	Non-serious	Serious
Under 14	Administrative	Administrative [#]
14-16	Administrative [#]	Family Court
16-18	Family Court*	Family Court
18 and older	Criminal Court	Criminal Court

[#] If placement is recommended, the case must be heard in Family Court

*Diversion from incarceration likely

Juvenile/Family Court Development

U.S.

1. Social Welfare
Family seen as criminogenic
2. Inquisitorial
Family part of problem
3. Adversarial
Ambivalent toward family
4. Adversarial + Social Welfare
Family as resource

Vietnam

1. Communal or Inquisitorial
Family morally responsible
2. Communal or Inquisitorial + Social Welfare
Family a crucial partner in socializing children

Lessons

1. Initial American juvenile court mission: social welfare
2. Mission creep: offense-oriented/punitive system – then to accountability/rehabilitation system
3. In American, informal social controls still subordinate to formal crime control efforts
4. Proposed Vietnamese Family Court is intended to undergird informal systems of social control
5. Family court approach relatively well-suited to Vietnam's culture

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