



Improving the Treatment of Child Victims and Witnesses of Crime in the Vietnamese Justice System: Unfinished Reforms

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Abstract

Crime victims are forgotten in criminal proceedings. Criminal justice systems tend to treat crime victims quite poorly, but, when they deal with child victims, their frequent failure to respect the child's rights finds no excuse. Law enforcement and criminal justice interventions made in the name of protecting children against violent crime often fail to consider what is truly in the best interests of the child and end up further victimizing the child victims. Vietnam has instituted justice reforms that recognize the need for special measures to protect the rights of child victims and witnesses of crime. This article reviews the progress achieved in implementing these reforms and points at several areas where implementation has been slow or further reforms are needed. Based on a comparative legal analysis, the article exemplifies how legal semiotics can contribute to an understanding of the complexity of policy transfer in the area of justice and human rights.

Keywords Child victims and witnesses · Trauma · Effective assistance · Human rights standards and norms · Legal semiotics · Vietnam

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1 Introduction

Child victims and witnesses of crime, due to their young age and vulnerability, “need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process” [62: 2]. As a party to the Convention on the Rights of the Child (CRC), Vietnam has sought to harmonize its criminal law and criminal justice system with international standards and norms for the protection of child victims and witnesses of crime and their rights. Some general principles enshrined in the CRC, namely the principle of best interests of the child and the child’s right to be heard, have been incorporated into the Vietnamese Criminal Procedure Code 2015 (CPC 2015). Many of these principles as well as the procedural protections recommended in the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Guidelines) are now also transplanted into the CPC 2015 and other related legislation. However, there remain many issues with the way the Vietnamese justice system deals with child victims and witnesses of crime.

The procedural protections the law offers to these children are still limited. From a legislative analysis perspective, there are many provisions that are insufficient to ensure the fair treatment of child victims and witnesses. The children’s early access to legal assistance is not ensured and the provision of other forms of support and assistance is not given adequate consideration. Investigating procedures and practices, such as questioning, inspection of traces across body, or medical examination, are not always child sensitive and existing procedural safeguards in these matters tend to be insufficient. From a legal implementation point of view, Vietnam recently established a system of specialised courts – Family and Juvenile Courts – for dealing with cases involving juvenile defendants and/or child victims. Child witnesses are dealt with in regular courts. Specialised units within the investigating authorities and procuracies have not yet been established. From a policy transfer perspective, specifically the translation of international children’s rights standards and norms into national child justice laws and policies, this reflects the fact that there are many social, cultural and systemic barriers to child justice reforms [10]. From a legal semiotics perspective, there are several limitations and challenges relating to the incorporation of crucial legal terminologies enshrined in international instruments establishing justice for child victims and witnesses of crime into domestic law and the legal interpretation. This results in ambiguous formulations of the legal protection afforded to these children in criminal proceedings and discrepancies in legal interpretation and implementation.

The majority of professionals who are in contact with child victims and witnesses of crime have not received adequate training and information “on specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and witnesses” [62: paragraph 40]. Specialized services for child victims and witnesses of crime do not yet exist. Vietnam does not have an interdisciplinary service for child victims and witnesses of crime. All in all, current laws, policies and practices are still woefully insufficient to ensure that child victims and witnesses of crime are treated with dignity and compassion within the Vietnamese justice system and that their rights are protected at all times.

Vietnam urgently needs to review the treatment of child victims and witnesses of crime, carry out the necessary legal reforms in accordance with international standards and best practices, and build a capacity to offer these children the specialized support and assistance they need. The goal of such reforms is to ensure that child victims and witnesses are “treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity” [62: paragraph 10].

Recent research on juvenile justice in Vietnam has tended to pay more attention to the protection of juvenile offenders and their rights than to the situation of child victims [e.g., [41, 51]]. Very few studies have addressed the question of the protection of child victims of crime and most of them, especially those published in international journals [e.g., [11, 43]], defined the problem in relation to an old legal framework and its poor implementation. Legal semiotics research in general and in the field of justice for child victims and witnesses in particular has not been carried out by Vietnamese legal scholars and experts. The research reported here considers the more recent legislation adopted in Vietnam and the persistent challenges encountered during its implementation. Findings from this research may offer valuable lessons to other countries facing similar challenges in implementing rights-based legislation for the protection of child victims of crime.

The authors adopted a rights-based approach [see 39] and a comparative legal research method, enhanced by a semiotics analysis, to examine potential gaps in Vietnamese national law in relation to generally accepted international standards and norms for the protection of child victims and witnesses of crime. Case study research and a survey of judges and legal aid providers were conducted to examine the present practices and policies of relevant agencies dealing with child victims of crime in Vietnam. Primary sources (case files, reports, statistics, etc.) and secondary sources (previous studies by other scholars) are also utilised.

The paper is divided into six sections. After the introduction, the second section summarises international standards and norms on treatment of child victims and witnesses of crime. The third section briefly presents the Vietnamese justice system for child victims and witnesses of crime. The fourth section analyses the situation of some offences against children in Vietnam. The fifth section addresses limitations in the Vietnamese legal framework and practical treatment of child victims and witnesses of crime. The last section emphasises significant findings of this research and offers recommendations for action.

2 International Terminologies, Standards and Norms on the Treatment of Child Victims and Witnesses of Crime

Legal semiotics is a study of sign systems that underpin legal informational exchanges [56: 96]. It is “a communication system composed of elements called signs, or more familiarly words, which convey a coded message” [13: 96]. Legal language in general, and legal terminologies in international law in particular, is a “distinct sublanguage, a special case of ordinary language that can and often does

baffle non-lawyers” [1: 119]. The semiotics of law should be taken into account in lawmaking because “the legislation contains terms incomprehensible to a wide range of subjects of law, implemented from narrow fields of knowledge, when there is no clear agreement between terms in scope or content, which changes terminological conflicts” [45: 91]. Semiotics may be useful in illuminating some complicated issues encountered in translating international concepts into domestic laws. It certainly also reveals the extent to which the meaning of human rights is dependent on Eurocentric constructions of humanist values, the human, and the child [52].

International instruments on justice for child victims and witnesses of crime impose several crucial definitions which are essentially foreign to the local legal culture but nevertheless play significant roles in precisely transplanting them into national laws. Under Article 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Declaration), the term “victims of crime” is generally defined as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power”. Particularly, Article 2 of the Declaration extends the scope of the term “victim” to cover, “where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”, thus introducing a distinction between direct and indirect victims which is hard to reconcile with some cultural understanding of victimization (e.g., a harm to an individual is a harm to the whole family or kinship).

In terms of the universal treaty, according to Article 1 of the CRC, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. The saving clause included in that article allows for a legal exception, but it cannot hide the fact that the word child, in Vietnam as in many other countries signifies something very different than what is imposed that the CRC. Building on that legal definition of the child, the Guidelines advance the definition of “child victims and witnesses”. as “children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders” [55: Article 9(a)]. The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice subsequently repeats this definition, but only for child victims. Those international instruments use age as an essential element to define a child and then link it to the criminal justice process to form the definition of child victims and witnesses of crime. Unlike justice for accused persons who are under 18 years of age (who are called “juvenile offenders” by Rule 2.2(c) of the Beijing Rules), international instruments dealing with justice in matters involving child victims and witnesses of crime do not use the term “juvenile”, which has fallen into desuetude within international organizations as unnecessarily stigmatizing children, but still conveys a culturally significant meaning in both Vietnamese law and culture.

Examining more carefully the concept of “child victims and witnesses of crime” is transposed into Vietnamese law, it is unclear whether the age used in the definition is the age of the victims and witnesses at the time of the commission of the crime or

at the time of criminal justice proceedings. If a victim is under 18 when the crime was committed but turns 18 in the criminal proceedings, does he or she still enjoy special safeguards designed for a child victim of crime? For a child offender, the answer to this question is perhaps yes. As explained by the Committee on the Rights of the Child, “children at or above the minimum age *at the time of the commission of an offence* but younger than 18 years can be formally charged and subjected to child justice procedures, in full compliance with the Convention” [5: paragraph 20, emphasis added]. Subsequently, it repeated that “[t]he *child justice system* should apply to all children above the minimum age of criminal responsibility but below the age of 18 years *at the time of the commission of the offence*” [5: paragraph 29, emphasis added]. It is unquestionable that the age of a person at the time he or she committed an offence is one of the crucial elements that determines his or her criminal responsibility. By contrast, from a procedural perspective, it may sometimes be inappropriate to apply procedures designed to protect children to adult victims and witnesses of crime simply because they were minors at the time of the offence. The unclear definition of child victims and witnesses of crime in relevant international instruments may result in incorrect transfer into national laws, including Vietnamese criminal procedure law.

The Guidelines also include other important definitions such as “professionals”, “justice process” and “child-sensitive”. Among these concepts, the “justice process” emerges as an important one. Under Article 9(c) of the Guidelines, the justice process “encompasses *detection of the crime, making of the complaint*, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice” (emphasis added). This notion, when read in conjunction with other provisions in the Guidelines, aims to establish comprehensive protection for child victims and witnesses of crime during the whole criminal proceedings, starting from crime detection to the post-trial stage, implying that the necessary protections and effective assistance should be provided as early as possible within the process. However, the language of the guidelines despite its attempts to signal that its provisions should apply to all and any legal system nevertheless betrays, through the enumeration of various steps in the criminal justice process, how the guidelines were designed with a particular type of justice system in mind. Similarly, the reference to a “child sensitive” approach, sometimes translated in Vietnam as “child friendly”, is a very broad signifier that is very much subject to various cultural filters.

Vietnam, like other states that are parties to the CRC, has a duty to take appropriate measures to effectively protect children from all forms of violence. Article 19 of the Convention requires it 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”.

The United Nations Committee on the Rights of the Child, in its General comment No. 13 on The Right of the Child to Freedom from all Forms of Violence, referred to institutional and system violations of child rights and explained that:

Authorities at all levels of the State are responsible for the protection of children from all forms of violence may directly and indirectly cause harm by lacking effective means of implementation of obligations under the Convention. Such omissions include the failure to adopt or revise legislation and other provisions, inadequate implementation of laws and other regulations and insufficient provision of material, technical and human resources and capacities to identify, prevent and react to violence against children. It is also an omission when measures and programmes are not equipped with sufficient means to assess, monitor and evaluate progress or shortcomings of the activities to end violence against children [2: paragraph 32].

Article 19 of the Convention refers to the kind of protective measures that should be taken, as appropriate, to protect children against violence. It also refers briefly to the need for effective measures “as appropriate, for judicial involvement” but it otherwise fails to acknowledge the role of the criminal justice system in preventing and responding to violence against children. It has been suggested that, at the time the CRC was adopted, “there still prevailed a deep-rooted scepticism about the willingness, capacity and ability of law enforcement and other criminal justice institutions to intervene competently, sensitively and effectively in the often delicate situations involving violence against children” [7: 48]. Since a lot of the violence occurs in private settings, such as the family, there was and often still is an understandable ambivalence about involving these institutions.

In 2005, the United Nations adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. One of the main purposes of these guidelines is “to assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child” [62: paragraph 3(a)]. Based on the Guidelines, the United Nations Office on Drugs and Crime (UNODC) also produced a Model Law on Justice in Matters Involving Child Victims and Witnesses of Crime (the Model Law) in 2009 which could be used to formulate and propose required legislative changes in Vietnam.

In 2015, the General Assembly adopted the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (the Model Strategies). This tool based on international best practices aimed to improve the overall effectiveness of the criminal justice system in preventing, prohibiting and responding to all forms of violence against children, as well as preventing any violence against children in contact with the justice system itself. The Model Strategies’ main purpose is to offer a comprehensive and practical framework to assist in the review of national laws, procedures and practices to ensure that they effectively prevent and respond to violence against children and fully respect the rights of child victims of violence in accordance with the CRC and other relevant human rights standards. Very importantly, the Model Strategies, like the Guidelines, identify measures which can prevent any further victimization of children, including the secondary victimization of children in contact with the criminal justice as victims or witnesses of crime.

Model Strategy V includes two groups of measures to ensure that the criminal justice system does as much as it can, in collaboration with child protection agencies, to protect child victims of violence against further violence and do so while using child-sensitive approaches. In particular, it refers to the need to ensure that national standards, procedures and protocols are developed and implemented in order to respond with sensitivity to child victims of violence who must be removed from a dangerous context and need temporary protection and care in a safe place pending a full determination of the best interests of the child. It also refers, among many other things, to the need to ensure that the police, courts and other competent authorities have the legal authority to issue and enforce protection measures such as restraining or barring orders in cases of violence against children, including removal of the perpetrator from the domicile and prohibiting further contact with the victim, as well as to impose penalties for breaches of those orders [6].

The Model Strategies were formulated in order to help States address the need for integrated violence prevention and child protection strategies and offer children the protection to which they have an unqualified right. The Model Strategies use the same broad definition of violence against children as that found in Article 19 of the CRC. It includes all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. The Model Strategies are important because they are the first international instrument to fully articulate the responsibility of the police and other criminal justice institutions and agencies to prevent and respond to violence against children [8, 9]. They also emphasize the importance of adopting a comprehensive approach to that task.

Both the Guidelines (paragraph 8) and the Model Strategies reaffirm the fundamental principles that must guide the treatment of child victims of crime strategies in accordance with international human rights law [63: paragraph 7]. These rights-based principles include:

- (a) Protecting the inherent rights of the child to life, survival and development should be protected;
- (b) Respecting every child as a unique and valuable human being and protecting his or her individual dignity, special needs, interests and privacy;
- (c) Protecting the right of the child to have his or her best interests as a primary consideration in all matters involving or affecting him or her should be respected, whether the child is a victim or a perpetrator of violence, as well as in all measures of prevention and protection;
- (d) Protecting every child from all forms of violence and abuse without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;
- (e) Respecting the right of the child (including child victims and witnesses) to be informed of his or her rights in an age-appropriate manner and that the right of the child to be consulted and to express his or her views freely in all matters affecting him or her, should be fully respected;
- (f) Ensuring that all procedures and practices involved in dealing with child victims and preventing and responding to violence against children are designed and

- implemented from a gender perspective and are specifically addressing gender-based violence;
- (g) Ensuring that the specific vulnerabilities of some children and the situations they find themselves in, including children in need of special protection and children committing criminal offences under the age of criminal responsibility, are addressed as part of comprehensive violence prevention strategies and identified as a priority for action; and,
 - (h) Ensuring that all measures to protect child victims of violence are non-coercive and strictly avoid compromising the rights of these children [63: paragraph 7].

It is important to note that all child rights-based instruments prohibit coercive measures for dealing with child victims or witnesses of crime. Abusive protection measures must be avoided. They cannot be justified as they themselves amount to a form of violence against children.

3 Vietnamese Justice System for Child Victims and Witnesses of Crime

3.1 Vietnamese Laws Governing the Treatment of Child Victims and Witnesses of Crime

Under Vietnamese law, there is a distinction between a child and a juvenile. A child is a person under 16 years of age (Law on Children 2016, Article 1) whereas a juvenile is a person under 18 (Civil Code 2015, Article 21(1)). However, in current criminal justice legislation, legislators use specific age groups instead of the terms “child” and “minor/juvenile”.

Vietnam has established a legal framework for the treatment of children in general and children who are victims and witnesses of crime in particular, including, *inter alia*, the Constitution 2013, the Law on Children 2016, the Penal Code 2015 (PC 2015) and the Criminal Procedure Code 2015 (CPC 2015). Each one of them enshrines specific provisions regarding the protection and treatment of children. Article 37(1) of the Constitution 2013 recognises the right of children to enjoy protection, care and education by the State, family and society and to participate in children’s affairs. This article also strictly prohibits the infringement, persecution, maltreatment, abandonment, abuse and exploitation of labour and other forms of violation of children’s rights. The Law on Children 2016 governs matters relating to children’s rights and responsibilities, the principles and measures for the protection of children’s rights, and the duties of agencies, organizations, education facilities, families and individuals with respect to children’s rights and responsibilities (Article 2).

In the criminal justice context, the PC 2015 and the CPC 2015 are two main pillars of the legislative framework. Both of them contain distinct provisions relating to child and juvenile victims of crime. The fact that the victim of a crime is a child and inciting a child to commit a crime are two aggravating factors of criminal liability (PC 2015, Article 52(1)(i), (o)). The Code also stipulates particular offences against children and/or juveniles. In 2019, the Judges Council of the Supreme People’s Court

adopted Resolution No. 06/2019/NQ-HĐTP providing guidelines for the implementation of some sexual-related offences against juveniles stipulated from Article 141 to Article 147 of the PC 2015. In comparison with the old PC 1999 (amended in 2009), the PC 2015 criminalises new acts including abandonment of a new born child, other sexual activities with children, and employment of children for pornographic purposes.

With respect to criminal proceedings, the CPC 2015 reserves a whole chapter, namely Chap. 28, to provide for special procedures for dealing with criminal cases involving accused persons, victims and witnesses of crime who are under 18. Besides general principles stipulated in Article 414, Chap. 28 has a number of concrete provisions that aim to create a judicial process, focusing on the investigation and trial stages, that takes into account the level of psychological, emotional, and cognitive development of child victims and witnesses. At the investigation stage, the law provides that the questioning of child victims and witnesses can only be conducted in the presence of their representative or protector of legitimate rights and benefits (CPC 2015, Article 421(2)). The law stipulates that there can only be at most two sessions of questioning per day and each session must last less than two hours, except in certain complex cases (CPC 2015, Article 421(4)). Confrontations between child victims and the accused can only be carried out when a case cannot be solved without such a confrontation (CPC 2015, Article 421(6)).

The Supreme People's Procuracy, the Supreme People's Court, the Ministry of Public Security, the Ministry of Justice and the Ministry of Labour, War Invalids and Social Affairs adopted Joint Circular No. 06/2018/TTLT-VKSNDTC-TANDTC-BCA-BTP-BLĐT BXH (Joint Circular No. 06/2018/TTLT) on cooperation in implementing some provisions of the CPC 2015 regarding the procedures applicable to cases involving children. In 2022, the Supreme People's Procuracy, the Supreme People's Court, the Ministry of Public Security, the Ministry of National Defence and the Ministry of Labour, War Invalids and Social Affairs promulgated Joint Circular No. 01/2022/TTLT-VKSNDTC-TANDTC-BCA-BQP-BLĐT BXH providing for the cooperation between authorised agencies in receiving, settling denunciations, criminal information and requisitions for institution of criminal proceedings, investigation, prosecution and first-instance trial of cases relating to sexual offences against persons under 18. Additionally, the Ministry of Public Security recently adopted Circular No. 43/2021/TT-BCA providing duties of the People's Police Force in conducting *friendly procedures* in the institution and investigation stages of criminal cases of which the victims are under 18. In 2019, the Supreme People's Procuracy adopted Guideline No. 26/HD-VKSTC on skills of prosecuting and supervising the investigation in child sexual abuse cases. In 2020, the Ministry of Health adopted Decision No. 5609/QĐ-BYT on temporary medical forensic examination process for children who have been or are suspected of having been sexually abused and children who have been mistreated or abused.

During a trial, other special provisions introduced by the CPC 2015 (Article 423) apply to reduce the fear, stress, and potential trauma experienced by child victims and witnesses. In special circumstances, where the victims require protection, the court may decide to conduct trials behind closed door. Questioning and argumentation at trial must be consistent with the child's age and level of development. The courtroom

must be organized in age-sensitive manner. The trial panel must limit the interactions between the child witness, during their testimony, and the defendant.

For a proper implementation of the above-mentioned provisions, the Supreme People's Court adopted several explanatory legislation including Circular No. 01/2017/TT-TANDTC, Circular No. 02/2018/TT-TANDTC and Resolution No. 06/2019/NQ-HĐTP. The first one provides for the organization of the courtroom of Family and Juvenile Courts. The second contains detailed regulations for the trial of criminal cases involving juveniles that fall within the jurisdiction of Family and Juvenile Courts. The third has specific provisions governing the adjudication of sexual-related cases of which the victims are under 18. The Supreme People's Court also issued Official Dispatch No. 68/TANDTC-PC on adjudication of offences of child sexual abuse and violence against children.

It can be seen from the foregoing that, on the face of it, Vietnam has a basic legal framework in place to regulate the treatment of child victims and witnesses of crime during the criminal justice processes.

3.2 Organization of the Vietnamese Justice System for Child Victims and Witnesses of Crime

In Vietnam, there are a number of State agencies and organizations responsible generally for the protection, care and education of children, including the National Assembly's Committee for Culture, Education, Youth, Adolescents and Children, the Ministry of Labor Invalids and Social Affairs, the Ministry of Justice (namely the Bureau of Legal Aid), and the Vietnam Association for Protection of Children's Rights (Children Law 2016, Articles 79(2), 82(1), 83(4), 89(3)).

In the criminal justice context, the investigating authorities, procuracies and courts are the main actors working with child victims and witnesses of crime. Vietnam has yet to establish specialised units within the police and procuracies to deal with criminal cases involving children. The courts, however, have a system of family and juvenile courts in 63 provinces. These specialised courts have jurisdiction over criminal cases where defendants are under 18 or victims are under 18 and have serious psychological wounds or need supports on living and learning conditions due to unhealthy family environment (Circular No. 02/2018/TT-TANDTC, Article 3). In this regard, it is worth noting that family and juvenile courts are not yet established at the district level even if, in practice, the majority of cases involving child victims and witnesses of crime are typically dealt with at that level.

In terms of legal assistance, Vietnam has introduced a system of State legal aid centres in all provinces. These are public non-business units affiliated to the Department of Justice and established by provincial People's Committees (Law on Legal Aid 2017, Article 11(1)). Other organizations also participate in providing legal assistance based on contracts or registration Law on Legal Aid 2017, Article 12(1). Child victims and witnesses of crime may receive legal assistance from these centres and organizations during the criminal justice process.

Psychosocial support for child victims and witnesses of crime may be offered by some local agencies and organizations including the Ministry of Labor Invalids and Social Affairs' agencies, the Youth Union, the Women's Union, or the Associa-

tion for Protection of Children's Rights. However, officials from these agencies and organizations often participate in criminal proceedings as a replacement for a child victims' unidentified or absent parents or guardian. Specialised services for crime victims, including child victims, do not exist in Vietnam. The country has not yet adopted detailed regulations or established concrete assistance schemes for child victims of crime, including medical, psychological and social assistance before, during and after judicial proceedings.

4 Child Victims of Violence in Vietnam

Violent victimization of children can take many forms. But official data on violent crimes against children is very limited in Vietnam. Some data are available from the Supreme People's Procuracy Table 1.

In one decade, from 2014 to 2023, there were more than 17,200 criminal cases involving violent offences against children. As can be seen from the table above, many cases involved serious sexual offences. Engaging in sexual intercourse or other sexual activities with children was the offence most frequently reported (8,511 cases), followed by rape (5,708), obscenity (2,608), forcible sexual intercourse (49), and use of children for pornographic purposes (15). There was a total of 378 cases involving

Table 1 Sexual abuse crimes against children in Vietnam (2014–2023)

Year	Rape of persons under 16	Forcible sexual intercourse with persons aged from 13 to under 16	Engaging in sexual intercourse or other sexual activities with persons aged from 13 to under 16 ¹	Obscenity of persons under 16	Use of persons under 16 for pornographic purposes ²	Trafficking of persons under 16 ³	Abduction of persons under 16
2014	670	06	935	248		55	
2015	548	02	910	191		60	
2016	408	03	728	177		32	
2017	438	03	680	260		24	
2018	414	06	661	213	01	19	08
2019	494	04	791	294	00	43	07
2020	620	04	886	303	02	21	06
2021	621	05	918	292	03	21	05
2022	672	10	895	316	02	32	03
2023	823	06	1,107	314	07	37	05
Total	5,708	49	8,511	2,608	15	344	34

Source The Supreme People's Procuracy

¹ The PC 2015 criminalizes "other sexual activities" with persons aged 13 to under 16

² This is a new offence supplemented in the PC 2015

³ The PC 2015 separates the offence of trading in, fraudulently exchanging or appropriating children (Article 120 of the PC 1999) into three different offences: trafficking of persons under 16, swapping persons under 01 year of age and abduction of persons under 16

child abduction or trafficking. The first half of that decade witnessed a decline in the number of cases involving most of these offences. However, since then, most sexual offences against children have increased, particularly rape and engaging in sexual intercourse or other sexual activities with children, which peaked at 823 and 1,107 cases in 2023. The consequences of such victimization for the children are typically very serious, including death, physical injuries, psychological trauma, pregnancy, and many other serious negative impacts [50].

In 2023, the Supreme People's Procuracy published a Report on the situation of offenders and victims of crime under the age of 18 in Vietnam in 2021. It shows that in 2021 alone there were 2,437 child victims of all crimes including 821 victims (48.1%) of sexual assault or other sexual offence, 575 victims (33.7%) of rape, and 253 victims (14.8%) of obscenity offence [55: 41–42]. Most crime victims were female (79.9%) and aged from 13 to under 16 (53.3%) [55: 50]. There were 87 dead, 02 suicide, and 197 pregnant victims [55: 53].

The observed increase of sex related offences against children may have been due in part to the criminalisation of new acts in the PC 2015, including other sexual activities with persons aged from 13 to under 16 and use of persons under 16 for pornographic purposes. The adoption of new regulation providing detailed guidance for the implementation of some provisions of the PC 2015 and the CPC 2015 concerning sex related offences against children may also be responsible for the observed increases in the number of reported cases between 2018 and 2023.

However, the above statistics only show “the tip of the iceberg” [16]. In the National Study on Violence against Women in Viet Nam, 4.4% of women indicated that they had experienced sexual abuse as a child [46]. It is generally agreed that a large proportion of sexual offences against children are unreported. These are highly hidden crimes because victims tend to keep silent and cases are confidentially resolved to avoid the spread of sensitive information and negative impacts on the child victims' life [44]. As the reporting of sexual offences against children is improving, more victims are engaged in the criminal justice system, thus emphasizing the need for more effective protection of children and their rights during criminal proceedings.

5 Limitations in the Legal Framework and Practical Treatment of Child Victims and Witnesses of Crime in Vietnam

With respect to the treatment of child victims, UNICEF Vietnam generally evaluated that:

Children who are victims of crimes encountered many obstacles in accessing to justice. Child victims experienced multiple hardship when participating in criminal proceedings, including repeated interviews in open rooms at police stations and having their identity and traumatic experiences exposed to the public by media. Their access to adequate, gender and age-appropriate information or assistance throughout the justice process was very limited [60: 1].

Based on the relevant international norms and standards, one can readily identify major shortcomings in the manner in which the Vietnamese justice system treats child victims and witnesses of crime.

5.1 Limitations and Challenges from Semiotic Perspective

Although Vietnam is a Socialist country and its criminal justice system has been deeply influenced by the former Soviet Union, whose scholars “have made significant contributions to the field of semiotics, especially in the area of secondary modeling systems and the study of the poetic function of language” [56: 123], it has not given adequate consideration to legal semiotics study. The term “legal semiotics” is relatively new for Vietnamese legal scholars, legislators and practitioners. Very few international research pieces essentially related to the semiotics of law have been conducted by Vietnamese scholars. More precisely, most academic articles published in Vietnamese legal science journals focused on critiquing the black letter laws, rather than the meaning they convey or purport to convey. The course on legal reasoning and legal writing, including rules for legal interpretation, has only recently been added to the undergraduate law school curriculum. This is a real shortcoming and a challenge in Vietnam, a country employing written law as a primary legal source. In addition, the Vietnamese language’s vocabulary and grammar are very complex, and it complicates the translation of international legal instruments. Legal semiotics could help address shortcomings and discrepancies in law-making technique, legal interpretation and application in Vietnam.

From a semiotic perspective, the incorporation of international norms, standards and crucial terminologies on justice for child victims and witnesses of crime into the Vietnamese legal framework is still problematic.

First, victims of crime under Vietnamese criminal procedure law are limited in scope compared to relevant UN norms and standards. According to Article 62(1) of the CPC 2015, victims are “natural persons suffering from direct damage to their physical body, mentality and property, or organizations whose property and reputation are impaired or threatened by the crime”. This concept does not include “the immediate family or dependents of the direct victim” as stated in Article 2 of the Declaration. Therefore, the legitimate rights and interests of these “indirect victims of crime” in criminal proceedings are not recognized and protected by the laws.

Secondly, the legal definitions of “child” and “minor/juvenile” under Vietnamese laws are different from those provided by international instruments. The child (“trẻ em”) is a person under 16 years of age, whereas the “minor/juvenile” (“người chưa thành niên”) is a person under 18. From the meaning of the Vietnamese word “người chưa thành niên”, it can be deduced that the majority, according to Vietnamese law, is 18. In this regard, it should be noted that Article 1 of the CRC recognizes an exception to the age level (18 years old) used to identify a child. It may be different if “under the law applicable to the child, *majority* is attained earlier” (emphasis added). Accordingly, the definition of a child under the Vietnamese legal framework is inconsistent with that of the CRC. Although the Committee on the Rights of the Child has urged Vietnam to raise the child age by definition up to the age of 18 in line with the definition provided in the CRC since 2012 [3: paragraph 28], the Vietnamese legal

definition of a child remains unchanged. Moreover, there are major inconsistencies in the terminologies used to refer to children within the whole body of Vietnamese law. Today, the PC 2015, the CPC 2015, the Law on Enforcement of Criminal Judgments 2019 and all their explanatory legislation use the ages of a child and a minor as their names, e.g., “person under 16” and “person under 18”. By contrast, the Civil Code 2015, the Law on Children 2016 and the Draft Law on Juvenile Justice 2024 employ the popular terms “child” and “minor/juvenile”. This obviously causes difficulties and confusion when comparing Vietnamese law with relevant international norms and standards. More importantly, with the definition of a child as in the Law on Children 2016, persons from 16 to under 18 in Vietnam are deprived of the benefits of special child welfare policies.

Thirdly, witnesses of crime in general and child witnesses in particular are “forgotten persons” in the criminal justice process. Vietnamese criminal procedure law makes a clear distinction between victims and witnesses of crime. It narrowly defines a witness as “a person who knows facts relating to the crime and the criminal cases and receive competent procedural authorities’ subpoena to testify” (CPC 2015: Article 66(1)). If international norms and standards are equally applied to both victims and witnesses of crime, Vietnamese criminal procedure law has a major difference in the treatment of these two persons. Only a few provisions in the CPC 2015 have been included to protect child witnesses of crime. As a result, several essential rights have been omitted from the legislation, such as the right to effective assistance and the right to be protected from hardship during the justice process. Other explanatory legislation also pays attention to the protection of child offenders and child victims, but is silent on the protection and support of child witnesses of crime.

5.2 Limited Application of the Juvenile Justice System

According to Article 413 of the CPC 2015, special procedures provided in Chap. 28 are applicable to accused persons, victims and witnesses who are under 18. It is unclear whether a victim who is an adult but was under 18 at the time the offence was committed is effectively protected under the provisions of Chap. 28 of the CPC 2015. As mentioned earlier, this matter is also unsettled by international instruments on justice for child victims and witnesses of crime.

The law still needs clarification in that regard, but one may consider the related question of the law that applies to individuals who are a child or juvenile at the time they committed a crime but turned 18 before a criminal case is instituted. This matter was partly addressed in Resolution No. 03/2004/NQ-HĐTP of the Judges Council of the Supreme People’s Court which clarified that a person who is a juvenile at the time of the commission of an offence who turns 18 at the institution, prosecution or adjudication stages, is not entitled to have a free appointed defence counsel (Resolution No. 03/2004/NQ-HĐTP, Part II, Sect. 3(a)). This interpretation was reaffirmed by Article 6(2)(b) of Joint Circular No. 02/2017/TTLT-VKSNDTC-TANDTC-BCA-BQP on the cooperation of procedure-conducting authorities in implementing some provisions of the CPC 2015 regarding the case files return for additional investigation. This confirmed that the application of special procedures for juveniles depends on the age of the accused person at the time when a specific procedural activity is

being conducted rather than the person's age at the time when an offence was allegedly committed. Similar deduction, therefore, may perhaps be drawn with respect to the procedures that are applicable when a child victim turns 18 in advance of criminal proceedings.

However, according to Article 37(3) of the Law on Legal Aid 2017, when a legal aid-related case is proceeding while the person receiving the legal assistance no longer satisfies the eligibility provisions of Article 7 hereof, the person can continue to receive assistance until the proceedings are concluded. For example, a crime victim was under 18 and had financial difficulties and received legal assistance from the investigation to prosecution stage. At the adjudication stage that person had turned 18 and, according to above mentioned provision of the Law on Legal Aid 2017, could continue to receive legal assistance. In this regard, there is a conflict between the CPC 2015 and the Law on Legal Aid 2017. This has caused difficulties and discrepancies in practical implementation [69] and affected the right to legal assistance of child victims of crime. In other words, under the Vietnamese criminal legal framework, it appears that whenever a child or juvenile accused or a child victim or witness becomes an adult, he/she no longer benefits from the special procedural safeguards afforded individuals under the age of 18.

Concerning the application of the child justice system, the Committee on the Rights of the Child recommends that “[c]hild justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process” [5: paragraph 31]. The Committee “commends States parties that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties” [5: paragraph 32].

5.3 Unfair Treatments between Juvenile Accused Persons and Victims

Vietnamese legislators seem to have paid more attention to protecting the rights of juveniles accused of committing a crime than to protecting the rights of child victims and witnesses. Under Article 7(7)(dd) of the Law on Legal Aid 2017, accused persons from 16 to under 18 are eligible to legal aid assistance. By contrast crime victims of the same age group are only eligible to free legal assistance if they are in “financial difficulties”. This amounts perhaps to an unfair treatment of child victims of crime [40]. It can be assumed that this is the financial situation of the parents or family that is being considered when determining eligibility to legal aid. This is very problematic because that may become another reason for families to put pressure on the child victims not to report the crime or refuse to participate in criminal proceedings (or even lie during proceedings). It is also a problem when the person who victimized the juvenile is a family member who may have an interest in preventing the complaint from proceeding through the justice system.

The right of witnesses of crime (adults or juveniles) to legal aid is not recognised in Vietnamese law. This is incompatible with Principle 5 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems which recommends that: “Without prejudice to or inconsistency with the rights of the accused,

States should, where appropriate, provide legal aid to witnesses of crime". The Model Law also recognises the right to legal assistance of a child victim and witness without discrimination [64: Article 10].

Moreover, at trials, defendants are entitled to directly question other participants with the presiding judge's consent (CPC 2015, Article 61(2)(i)). Victims, conversely, are only allowed to request the presiding judge to question defendants and attendees in court (CPC 2015, Article 61(2)(h)). This does not respect and ensure the right to effective participation in criminal proceedings and the right to be heard of child victims which are recognised by the CRC (Article 12) and the Guidelines (Part IX).

The unfair treatment is also reflected through provisions regarding defence counsels and protectors of crime victims' legitimate rights and benefits. If procedure for registration of defence counsel is clearly prescribed in Article 78 of the CPC 2015, such procedure for protector of crime victims is absent. Recently, Article 9 of Circular No. 46/2019/TT-BCA of the Ministry of Public Security supplement procedures for registration of protecting for legitimate rights and benefits of crime victims. This Circular, however, only applies to the people's police force at the institution and investigation stages. The Supreme People's Procuracy and the Supreme People's Court have not yet adopted any guidelines for the participation of protectors of victims at the prosecution and adjudication stages. The rights of crime victims' protectors are limited than those of defence counsels. They are not entitled to collect evidence whereas defence counsels are given this right (CPC 2015, Article 73 (1)(h)).

5.4 Inadequate Consideration on Early Access to Legal Aid and Other Appropriate Assistances for Child Victims of Crime

The earliest time for a defence counsel engages in criminal proceedings is when the arrestee appears in the office of investigation authorities (CPC 2015, Article 74). The Code, however, does not provide such time for the protector of crime victims. Recently, Article 7(1) of Circular No. 46/2019/TT-BCA specifies that the only time when the protector of legitimate rights and benefits of a victim is allowed to participate in the criminal proceedings is when there are sufficient grounds to identify a person as a "victim of crime". Under Article 7(1)(a) of Joint Circular No. 10/2018/TTLT-BTP-BCA-BQP-BTC-TANDTC-VKSNDTC relating to cooperation in the provision of legal aid in criminal proceedings, specifies that authorities have a duty to inform and explain the right to legal aid when taking statements from the crime victim. By contrast, Article 9(3) of Circular No. 02/2018/TT-TANDTC of the Supreme People's Court provides that the protector of victims can engage in criminal proceedings at the time when an accused person is identified. The absence of a specific provision in the CPC 2015 to govern the earliest time when a protector of crime victim is entitled to participate in criminal proceedings and the differences in explanatory legislation obviously lead to challenges in ensuring victims' timely access to legal assistance [58: 49].

It can be understood from the above discussion that, in order to receive legal aid, a person must first be identified as a "victim". Victims, as defined by Article 62(1) of the CPC 2015, "are physical persons suffering from direct damage to physical body, mentality and property, or organizations whose property and reputation are impaired

by crimes". Do [12: 6–7] observed that there are two differing opinions on the definition of victim. First, a crime victim can only appear after the commencement of criminal proceedings. Second, a crime victim may appear before such time. Applying the first definition delays a child victim's access to legal aid. This is because under Vietnamese criminal procedure law, investigation authorities normally have to conduct a number of activities to identify the "criminal nature" of an act or conduct before making a decision to institute a criminal case. The maximum time limit for this stage is four months (CPC 2015, Article 147(1),(2)). At that stage, investigation authorities may initially identify a person as "real victim of crime" or only as a "denouncer" or "informant" and thereby deprive that person access to legal assistance. Under Article 57(1) of the CPC 2015, a denouncer or informant is not entitled to legal assistance. This is contrary to the explanation of the UNODC that "[a]ssistance should be provided as early as possible after the crime has been committed and should continue after the conclusion of the proceedings for as long as the child needs support to fully recover from the injuries and harm and to fully reintegrate into society" [66: 92].

In practice, legal assistance for child victims has normally been provided from the investigation stage [57: 117, 58: 87]. At the stage where criminal cases are instituted, the child victim's right to legal assistance is not guaranteed. This for example, together with other factors, is what led to serious adverse consequences for the victims in the following case.

According to the case file, from June to September 2016, a girl was the victim of obscene behaviour by her neighbour (Mr. Huu B). On 27 September 2016, the girl's mother reported the crime to the Ca Mau provincial people's police. However, in December that year the investigation authority did not institute criminal proceedings due to insufficient grounds. Receiving this information, on 10 February 2017 the girl committed suicide. With the insistence of lawyers and pressure from the press, this case was later initiated. In September 2017, Mr. Huu B was sentenced to seven years of imprisonment following his conviction for the offence of obscenity against a child. He appealed the conviction but the Superior Court upheld the first instance judgment in May 2018.

In this case the victim's mother came to the State legal aid centre to ask for legal and psychological assistance. However, the investigating authority rejected the requisition for participation of the assigned legal aid provider based on the argument that the law did not provide for legal assistance at this stage [12: 19]. To this day, as previously mentioned, the procedure for registering as a protector of legitimate rights and benefits of crime victims in general and child victims in particular, is governed only by an internal Circular of the Ministry of Public Security. Whether or not this registration has legal effect in all stages of criminal proceedings is unclear whereas procuracies and the courts have not yet issued guidelines regarding this procedure.

Moreover, the UNODC and UNDP identified a number of challenges in accessing legal aid in Vietnam, including: "the quality of services provided by legal aid lawyers is uneven; lawyers are paid very little for legal aid work; there is a limited number of lawyers in the country; people may not know where to find legal assistance; poor coordination between legal aid organizations and related agencies in the justice system" [67: 66]. Tran [58: 70] observed that there have only been a few training confer-

ences on the provision of legal assistance for specific groups of persons involved in criminal justice proceedings, including child victims of crime.

To effectively participate in the criminal justice processes, child victims and witnesses of crime need the assistance of well-trained professionals. According to the Guidelines, “[t]his may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s reintegration” [62: paragraph 22]. In that regard, Vietnam apparently gives more attention to legal assistance of child victims and witnesses during criminal proceedings. Beside the support of legal aid providers in prescribed circumstances and child victims’ representatives, Vietnamese laws recognised the assistance of teachers, school representatives, and representatives of Youth Union and other organizations (CPC 2015, Article 420). The development of other essential support services mentioned by the Guidelines has not yet been given adequate consideration in Vietnam. Especially, assistance for child victims and witnesses of crime at the post-trial stage is never provided.

5.5 Drawbacks of Provisions on some Investigating Measures

5.5.1 Questioning

The interview (questioning) of child victims and witnesses is governed by Article 421(2),(4) of the CPC 2015 and other legislation including Joint Circular No. 06/2018/TTLT and Circular No. 28/2020/TT-BCA. Provisions of these statutes are basically compatible with relevant international norms and standards. They cover all aspects relating to the question of child victims and witnesses at the investigation and prosecution stages such as the places, procedures and methods of questioning; persons supporting for victims and witnesses during the process of questioning; special qualifications of investigators and prosecutors who question child victims and witnesses. Nonetheless, some issues regarding investigating measures require careful attention.

With regard to the place where the questioning of child victims and witnesses may be carried out, Article 14(1) of Joint Circular No. 06/2018/TTLT explains that such places may include places of study, work, living or investigating. Investigators are entitled to select an appropriate place to undertake the questioning. Investigators are not required to consult the child victims and witnesses regarding the most appropriate place for the interview. Joint Circular No. 06/2018/TTLT also declares that, in cases where the interview is conducted at the place of investigation, the interview room must be designed in a friendly manner and be psychologically appropriate for persons under 18. In the absence of clear guidelines on this matter, there are wide discrepancies and inconsistencies in local practices.

Article 421(2) of the CPC 2015 stipulates that a child “representative or a protector of legitimate rights and benefits of crime victims or witness must attend the deposition of such persons”. This, unfortunately, is interpreted to mean that only one person, a representative or the protector may be present during the deposition. Thus interpreted, this provision limits the scope of persons who can assist child victims and witnesses in different manners. The representative (normally one of the

child's parents or a guardian) can provide general psychological and emotional support while protector can provide legal assistance. It also introduces confusion among investigators who, in some instances, must decide who can attend when both the representative and the protector wish to attend the deposition.

Moreover, the law does not stipulate the grounds upon which investigators may decide to limit, restrict or exclude the presence of a representative of a child victim or witness. As recommended in the Model Strategies, parents or legal guardians should be excluded, as dictated by the best interests of the child when they are the alleged perpetrator(s) of the offence committed against the child or when it is "deemed not in the best interests of the child to be accompanied by his or her parent(s) or legal guardian, including on the basis of credible concern expressed by the child" [63: paragraph 24(e)]. Keeping in mind that in many instances the perpetrator of violence against children is often a parent or a relative, the law should anticipate these situations and officials should be provided with clear guidance on how to protect child victims in such situations and act on the basis of the principle of the best interests of the child [4]. Presently, the non-abusive parent may be allowed to represent the child victim [see 21, 26]. If the non-abusive parent is intentionally absent or refuses to participate, the competent authorities may request a number of organization, including the Labor Invalids and Social Affairs agencies, Youth Union, Women's Union and Association for Protection of Children's Rights where the crime occurred, to appoint a representative for the child victim (Joint Circular No. 06/2018/TTLT, Article 8(1) (b)). However, the CPC 2015 does not stipulate measures to prevent the perpetrator from further contact with child victim and the non-abusive parent as noted in the Model Strategies [63: paragraph 19(f)].

Article 421(4) of the CPC 2015 prescribes that "[t]here shall be at most, on daily basis, two sessions of deposition of persons under 18. Each session shall be less than 02 hours, unless the case comprises a variety of complex factors". This new provision aims to protect child victims and witnesses of crime against unnecessary stress as a result of excessively long and repeated questioning. Nevertheless, the legislator did not provide for the minimum amount of time that must elapse between two sessions of deposition. Article 421(4) does not prohibit the questioning of child victims and witnesses at the night-time (commences at 10pm and ends at 6am in the next morning (CPC 2015, Article 134(1)) whereas that prohibition applies to interrogation of an accused individual unless otherwise indispensable [49: 43]. There is no provision in the CPC 2015 allowing investigators to conduct interviews via electronic means so as to reduce the number of unnecessary contacts between them and the criminal justice process.

Articles 187 and 188 of the CPC 2015 authorize the audio or video recording of the depositions or testimonies of witnesses and victims. Accordingly, investigating authorities have discretion in deciding whether or not to record the questioning of child victims and witnesses of crime. Relevant authorities adopted Joint Circular No. 03/2018/TTLT-BCA-VKSNDTC-TANDTC-BQP providing guidelines on the procedures for recording the testimonies or depositions of victims and witnesses in general, as well as the usage, preservation and storage of the such records created in the processes of investigation, prosecution and adjudication. This Joint Circular, however, does not specify the circumstances under which the recording of statements

from child victims and witnesses is either required or prohibited. It does not either provide specific guidance for special procedures of recording interview with child victims and witnesses.

Concerning the qualifications of officials dealing with child victims and witnesses, especially investigators, Article 415 of the CPC 2015 requires these officials to have received training and have relevant experience in with individuals under 18 years of age. Additionally, these officials must have basic psychology and education knowledge of children and adolescents. These qualifications are explained by Article 5 of the Joint Circular No. 06/2018/TTLT. However, the law does not require any special qualifications for other professionals working with child victims and witnesses such as advocates and support persons. Training and education for investigators, particularly on age and gender sensitive approaches and trauma-informed interviewing and assessment techniques that minimize the burden and potential detrimental impact of the experience on child victims and witnesses while maximizing the quality of information received from them have not been adequately provided.

Studies have shown that the majority of the interviews of child victims of sexual offences are conducted at the workplaces of investigating authorities and procuracies [57: 78, 59: 7] rather than at the residence of the victims or in child care facilities as prescribed by law. In nearly 40% of cases reviewed in one study (100/265), the child victim interview lasted for more than two hours [59: 8]. There were many cases where the child victims were questioned two times or more. As directly observed by Tran, Ho and Nguyen [57: 116], the interview room is private but dark and hot, and the child victims can easily see that the interview is being recorded by a camcorder connected to a large television screen.

As previously mentioned, in theory, the interview of a child victim can only be carried out in the presence of the child's representative or protector. However, in many cases, when such persons attended the interviews, particularly the parents or guardians, child victims were often kept completely silent because of shame and embarrassment. In such situations, investigating authorities must let the parents or guardians outside the interview room but they signed the minutes of questioning when finished. This presents a dilemma for investigating authorities because the child victim does not desire the presence of his or her parent or guardian whereas without the presence this person the questioning could not be legally conducted. Article 421(2) of the CPC 2015, as being analysed latter in this paper, does not provide for grounds based upon which competent authorities in general and investigating agencies in particular are entitled to exclude the presence of the child victim's parents or guardians. The resolution of investigating authorities in above mentioned circumstances, therefore, violates the law and essentially facilitates their questioning process rather than aims to protect the best interests of the child victim.

Having examined 265 case files of sexual offences against children in Soc Trang and Hau Giang provinces (two provinces in the Southern part of Vietnam) from 2013 to 2016, Tran [59: 32] observed that some interviews of child victims were conducted without the presence of representatives or guardians. Alternatively, there were also instances where different representatives were present in different interviews with the same victim. In other instances, the researcher observed that investigating authorities and procuracies only summoned the child's representative to attend a first interview

with the child and asked the representative to sign in advance the “blank minutes” of subsequent interviews which they did not need to attend. Some representatives and lawyers instructed the investigating authorities and procuracies to interview victims in their absence and agreed to sign the minutes of the interviews later [57: 118, 59: 32].

The majority of the child victims in sexual offences cases were girls. However, there was a lack of female investigators with adequate qualifications to interview child victims [59: 12–13]. Most of investigators did not inform child victims of their rights [59: 13]. Some investigators still used legal terms that children could not understand and were insensitive to the impact on victims of repeated questions about the details, time of occurrence, and number of incidents of sexual abuses [57: 118]. In a few cases, and perhaps predictably, victims and their family members did not cooperate with investigators or gave false statements [59: 13].

5.5.2 Inspection of Trace Across Body, Experimental Investigation and Medical Forensic Examination

Under the CPC 2015, procedures for conducting various investigating measures other than questioning are generally similar whether the victims or witnesses are juveniles or adults. Among these investigating measures, inspection of traces across body, experimental investigation, and medical examination risk causing further trauma to child victims and witnesses. Investigators are allowed to conduct inspection of traces across body and experimental investigation (e.g., reconstituting a crime scene, replaying acts, situations or other facts of a certain event) without the presence of child victims and witnesses’ representatives and/or protectors (CPC 2015, Articles 203–204). Moreover, medical forensic examination of children (persons under 16 years of age) being or suspiciously being sexually abused and children who have been maltreated and/or stricken is temporarily governed by Decision No. 5609/QĐ-BYT. From this, one can assume that procedures for medical forensic examination of persons from 16 to under 18 are identical to those applicable to adult victims.

Another matter is the right to request for, and/or refuse, an expert examination in general and medical forensic examination in particular. Under Article 62(2)(d), victims and their representatives are only entitled to request for expert examination and the responsible officials are the ones who decide whether or not to accept this request. This is reaffirmed by Article 1(1) of the Law on Amendments and Supplements to Certain Articles of Law on Judicial Expertise 2020. The law, nonetheless, does not stipulate the time limits within which the authorities must inform victims and their representatives of their decision. In that regard, it should be noted that a medical forensic examination in sexual abuse cases without injuries and/or health harms is not prescribed as a mandatory expert examination under Article 206 of the CPC 2015. Hence, whether or not a medical examination is carried out is based totally on the discretionary decision of the procedural authorities.

It is significant that existing official guidance on these matters does not emphasize that, in a child sexual abuse case, a medical forensic examination “should be ordered only where it is absolutely necessary for the investigation of the cases and is in the best interests of the child and it should be minimally intrusive” [65: 17].

On the contrary, child victims may be compelled to undergo such an examination. A forced escort may be imposed on a crime victim who, excluding force majeure or objective obstacles, refuse expert examination ordered postulated by competent procedural authorities (CPC 2015, Article 127(2)(b)). In other words, in order to collect evidence in a criminal case, authorities may disregard the circumstances or vulnerability of victims or their willingness to participate. In the case of children or juvenile victims, the authorities are not specifically required to apply the principle of the best interests of the child. This and other aspects of Vietnamese law mentioned earlier clearly reveal the “crime control” approach of the justice system and the fundamentally undesirable position of crime victims in general and child victims in particular within the criminal justice process.

Moreover, there is no provision limiting the number of medical examinations a child victim may be subjected to in a sexual abuse case. Decision No. 5609/QĐ-BYT only provides for the presence of guardians in general medical examination of child victims. Specific medical examinations on sex organs, anus, rectum, mouth, throat and other organs are conducted without the presence of child victims’ representatives or support persons. Conversely, the law does not provide that the involvement of parents “should be denied where the best interests of the child so require and when the child so decides” [65: 17]. Child victims are not allowed to choose the gender of the medical staff. There is a lack of transparent requirement on the explanation of medical photography procedures to child victims and their guardians as well as the respect of their choice about photography and the protection of the victims’ privacy. The child victim’s post-examination needs are not given any consideration [68: 87–88]. In other words, procedures for conducting medical examinations prescribed in Decision No. 5609/QĐ-BYT are inflexible and intrusive; they are not consistent with child victims’ right to be treated with dignity and compassion and they potentially increase the risk of that the child victim may experience secondary victimization.

It is also worth noting that bone or dental analysis is still frequently used to determine the age of child crime victims in Vietnam, although the Committee on the Rights of the Child suggested that state should refrain from using this medical method because “it is often inaccurate, due to wide margins of error, and can also be traumatic” [5: paragraph 34].

In some instances, requisitions for expert examination of the victim are made late or not at all, with serious impact on the outcomes of the investigation and the situation of victims and their family. For instance, there was an incident on 14 April 2019 in Ward 14, Tan Binh District, Ho Chi Minh City [17]. A mother led her daughter from 4 pm to midnight to find a place for conducting medical examination because of a suspected sexual abuse. They went from the ward police to hospital, forensic centre, district police and back to the ward police. The ward police instructed them to another hospital but their case was still unaccepted and they had to wait until the next morning when Tan Binh District police took the girl for medical forensic examination.

That particular case demonstrates the lack of coordination and communication between police and medical centres. It also reflects the inadequate knowledge and the irresponsibility of police officers and medical staff with respect to child justice in general and child sexual abuse cases in particular. In this regard, Dao and Dandurand

[10: 11] stated that in Vietnam, “guidance and training have tended to focus on the situation of child victims and witnesses of crime rather than on preventing abuse and violence against young offenders”. This is true because child victims are more likely to receive sympathy and compassion from the government and public than juvenile offenders and thereby the need to protect child victims is prioritised. However, guidance and training on justice for child victims have not been provided to all justice officials and relevant professionals in Vietnam [54: 60, 43: 95–96]. This is illustrated by the fact that UNICEF is assisting Vietnam in carrying out the above-mentioned project whose main objective is to provide education and training for law enforcement officers, enhance the support and protection of abused children, woman survivors of gender-based violence, and children in conflict with the law during criminal justice processes, and provide an evidence-based rationale for the establishment of specialised police force to protect children [61].

In some circumstances, the victims of sexual abuse were concerned that their honour, dignity, or reputation or that of their family and were therefore reluctant to report the offence to the authorities, reported it very late, or were unwilling to testify against the offender. This added to the difficulty of gathering evidence in a timely manner through medical forensic examinations [15]. On the other hand, the limited number of medical centres authorised to carry out medical forensic examination makes it difficult for child victims in remote areas to promptly access the service [67: 90]. Discussions with a judge of the family and juvenile court of Bac Lieu province (Mr. Bui Anh Tuan) and a former legal aid provider of Ca Mau province (Ms. Do Cam Lai), suggests that in practice child victims are usually brought to the commune medical centres for a quick check with the presence of local police where an initial statement is sometimes taken. In other cases, the child victims are referred to district medical centres or provincial hospitals for carrying out injury examinations before conducting medical forensic examinations. This also suggests that the initial observations and conclusions of the medical centre or hospital staff sometimes tends to serve as “evidence” rather than those of the medical forensic examination, although the former are not explicitly recognised as evidence by the CPC 2015.

Our own review of 20 randomly selected first-instance and appellate judgments of 15 district and provincial courts (see Table 2 below) from 2019 to 2024 reveals a number of problems relating to child sexual assault forensic examination. In the majority of cases, it took approximately two to three weeks (especially more than one month in two cases) from the date of receiving incident information to get the conclusions of sexual abuse forensic examinations. If based on the date of committing a crime, this time will be longer. These conclusions, therefore, did not provide any inculpatory evidence. Absurdly, in one criminal case in Bac Lieu province, the “injury check” was carried out on a child victim’s private body parts after she gave birth, and the outcomes were useless. Sexual assault forensic examinations were occasionally performed in obscenity cases against children. According to the CPC 2015 (Article 206), medical forensic examination is not required in all sexual abuse cases, in practice, authorized agencies have always requested this examination. It is unclear whether they conduct sexual assault forensic examinations to avoid evidence missing or just to ensure their “occupational safety”. In fact, prosecutors relied heavily on the statements of offenders, victims and witnesses to solve the cases. This

Table 2 Sexual assault forensic examinations (2019–2024)

Order	Judgments	Date of committing crime	Date of receiving incident information	Date of the first body check	Date of issuing conclusion on sexual assault forensic examination
<i>I. Rape against children</i>					
1.	Ho Chi Minh City people's court: Judgment No. 338/2019/HS-ST, dated 12/9/2019	30/12/2018 (the last act)	01/01/2019	N/A	15/01/2019
2.	Thuan Thanh people's court (Bac Ninh province): Judgment No. 63/2019/HS-ST, dated 13/11/2019	05/4/2019	05/4/2019	05/04/2019	- Examination request: 14/5/2019 - Conclusion: 22/5/2019
3.	Chau Thanh people's court (Soc Trang province): Judgment No. 27/2019/HS-ST, dated 18/11/2019	26/6/2019	02/7/2019	N/A	12/7/2019
4.	Na Hang people's court (Tuyen Quang province): Judgment No. 18/2020/HS-ST, dated 13/8/2020	29/02/2020	01/3/2020	N/A	16/3/2020
5.	Nhu Xuan people's court (Thanh Hoa province): Judgment No. 12/2020/HS-ST, dated 17/12/2020	17/9/2020	20/9/2020	N/A	- Examination request: 21/9/2020 - Conclusion: 28/9/2020
6.	Nghe An people's court: Judgment No. 03/2021/HS-PT, dated 05/01/2021	06/5/2020	N/A	N/A	11/5/2020
7.	Bac Lieu people's court: Judgment No. 19/2021/HS-ST, dated 22/9/2021	02/01/2021	03/01/2021	N/A	08/02/2021
8.	Bac Lieu people's court: Judgment No. 15/2022/HS-ST, dated 16/12/2022	02/6/2022	06/6/2022	N/A	14/6/2022
9.	Phu Yen people's court: Judgment No. 01/2023/HS-ST, dated 06/01/2023	22/7/2022	22/7/2022	N/A	03/8/2022
10.	Ho Chi Minh City people's court: Judgment No. 87/2023/HS-ST, dated 16/03/2023	11/2020 (the last act)	30/9/2021	N/A	12/10/2021
11.	Binh Thuan people's court: Judgment No. 84/2023/HS-ST, dated 29/12/2023	20/5/2023	20/5/2023	N/A	23/5/2023
12.	Tay Ninh City people's court: Judgment No. 06/2024/HS-ST, dated 24/01/2024	02/6/2023	03/06/2023	N/A	05/7/2023
13.	Quang Ninh people's court: Judgment No. 23/2024/HS-ST, dated 29/3/2024	21/10/2023	22/10/2023	N/A	24/10/2023
<i>II. Obscenity against children</i>					
14.	Binh Chanh people's court (Ho Chi Minh City): Judgment No. 78/2020/HS-ST, dated 01/7/2020	21/8/2019 (the last act)	19/9/2019	N/A	03/10/2019

Table 2 (continued)

Order	Judgments	Date of committing crime	Date of receiving incident information	Date of the first body check	Date of issuing conclusion on sexual assault forensic examination
15.	Ninh Thuan people's court: Judgment No. 03/2022/HS-PT, dated 14/01/2022	03/2021	03/2021	N/A	11/3/2021
16.	Phu Rieng people's court (Binh Phuoc province): Judgment No. 43/2023/HS-ST, dated 19/07/2023	16/1/2023 (the last act)	16/1/2023	N/A	27/01/2023
17.	Hai Chau people's court (Da Nang city): Judgment No. 87/2023/HS-ST, dated 27/07/2023	08/02/2023 (the last act)	08/02/2023	N/A	20/02/2023
<i>III. Rape and obscenity against children</i>					
18.	Bac Lieu people's court: Judgment No. 10/2023/HS-ST, dated 10/8/2023	02/5/2022	N/A	- Victim 1: 11/5/2022 - Victims 2, 3: 19/5/2022	- Victims 1, 2, 3: 08/6/2022
19.	Bac Lieu people's court: Judgment No. 11/2022/HS-ST, dated 20/9/2022	04/04/2022	04/04/2022	N/A	07/4/2022
<i>IV. Rape and having sexual intercourse with children</i>					
20.	Bac Lieu people's court: Judgment No. 07/2021/HS-ST, dated 20/5/2021	04/2020 (the last act)	06/10/2020 (after victim gave birth)	14/10/2020	N/A

practice shows how unnecessary medical forensic examinations can be as if not more traumatic than the experience of victimization itself.

From the foregoing it could be said in all fairness that Vietnam does not have a consistent approach in establishing a legal framework for the treatment of child victims and witnesses of crime. Following the inquisitorial model, the paramount objective of criminal procedure law in Vietnam is to expose and settle all criminal acts. The protection of human rights, including rights of child victims and witnesses during criminal proceedings, is sometimes considered as a barrier to the justice system's operation. Therefore, whenever there is a "clash" between the conveniences of competent authorities and the protection of procedural rights, the first is normally prevailing. The recognition of the child's best interests principle may be mainly derived from the pressure of commitment to international human rights conventions rather than the actual awareness on the value and significance of this principle. This root cause explains for an uncomprehensive and inconsistent legal framework for the treatment of child victims and witnesses of crime and the ineffective legal implementation.

5.5.3 Adjudication of Criminal Cases Involving Child Victims

As previously mentioned, Vietnam has not yet established family and juvenile courts at the district level despite the fact that a number of cases involving child victims

are being tried at that level. Not all of judges in district-level courts are trained on working with child victims. According to interviews conducted by one of the authors, some judges are not even aware of the special measures provided by Article 7 of the Resolution No. 06/2019/HDTP governing the adjudication of sexual offence cases where the victim is under 18.

Interviewing child victims through audio-visual means is relatively new and rarely used. Simplified procedures are infrequently applied because of time constraints. Therefore, it can be assumed that child victims often experience anxiety and stress during criminal proceedings. In some instances, participating in these proceedings can in itself be a traumatic experience for the victims. Finkelhor and his colleagues noted that “[v]ictims of sexual abuse and physical abuse involving injury are more likely to receive medical exams and these exams can be stressful” [14: 96]. However, a study found that such stress is equivalent to “providing testimony in juvenile court and twice as stressful as talking to a social worker, but not nearly as stressful as testimony in criminal court” [53: 96]. Moreover, there is a lack of expert psychological support for child victims at the trial phase.

Another concern is the fact that the identity of child victims (and other private information) may sometimes be disclosed during criminal proceedings. There are, generally speaking, insufficient measures taken to protect the identity and the privacy of child victims. Le [42: 14] observed that journalists on the one hand tend to use abbreviations of child victims’ names, but on the other hand fully published victims’ residential addresses and their father’s names. In practice, to date, no one has ever been punished for disclosing child victims’ personal information.

6 Conclusions and Recommendations

To protect child victims of crime, the forgotten persons in the criminal justice system [47], and to achieve better treatment for them, Vietnamese legislators, law enforcement officials and other relevant professionals must respect fundamental principles recognised by international child rights instruments (e.g., preserving the child’s dignity, non-discrimination, consideration of the best interests of the child, protection against all forms of violence, harmonious development, and the right to participation) [62: paragraph 8]. A child-sensitive approach which “balances the child’s right to protection and that takes into account the child’s individual needs and views” [62: paragraph 9] should be the foundation for legal reform and law enforcement. This often calls for changes in attitudes and general approaches to dealing with children.

Legal reforms are still necessary to fully protect child victims and witnesses of crime. To start with, crucial definitions including “child”, “minor/juvenile” and “victim of crime” under Vietnamese laws should be amended in line with correlative concepts in international instruments. A number of dispositions of the CPC 2015 and related explanatory legislation must be amended to reflect Vietnam’s commitment to uphold the rights of the child and to ensure that all decisions made with respect to child victims and witnesses of crime, throughout the justice process, are truly consistent with the principle of the best interests of the child. Special protections and procedures should be extended to victims and witnesses who were under the age of

18 at the time the crime was committed, and to those who are older than 18 during related criminal justice proceedings. The child victims' right to legal and other form of assistance is particularly important and should be clearly affirmed and protected by law. Various forms of specific guidance and instructions, as well as training, must also be provided to all officials dealing with child victims at any stage of the criminal justice process. This guidance should be informed by the Guiding Principles and in the Model Strategies.

A complete overhaul of investigation practices is overdue, especially a review of investigation procedures and practices, including interviews, inspection of traces across body, experimental investigations and medical forensic examinations, to ensure that they are age and gender sensitive and trauma-informed. Investigative practices must help children give effective testimony while reduce reducing the risk of additional trauma from participating in criminal proceedings [61]. Measures must be taken to ensure the safety, privacy and dignity of child victims and their families at all stages of the criminal justice process, "without prejudice to the ability or willingness of the victim to participate in an investigation or prosecution, and to protect them from intimidation and retaliation" [63: paragraph 24].

Medical forensic examinations, including sexual abuse and age determination, should be carried out based on a principle that all interventions must be "child-focused, victim-centered, and trauma-informed" [48: 23]. These examinations are only conducted when necessary [63: Article 14(2)] and must strictly comply with procedures and methods which minimize traumas to child victims and respect their dignity, voluntariness and privacy. Hence, compelling these victims to undergo medical examinations and the kind of forced escort authorized by Article 127(2)(b) of the CPC 2015 should not be permitted in any circumstances.

Child victims' access to legal assistance must be broaden and the financial eligibility conditions for victims aged 16 and 17 to access legal aid should be removed. The status of the victims during court proceedings and the procedure for the registration of child victims' advocates must be reviewed and aligned with the principle of the best interests of the child and the child's right to be heard.

The implementation of the necessary justice reforms will no doubt take time. As Dao and Dandurand [10] observed, various social, cultural and systemic factors typically hinder the implementation of needed child justice reforms in Vietnam. Some of these barriers have to do with the organizational capacity of the agencies involved. In order to remove these barriers, a comprehensive plan is needed for the implementation of comprehensive child justice reforms, including reforms to better support and assist child victims and witnesses of crime and protect their rights. A coordinating agency will also be needed to fully implement such a plan and monitor progress. Special units or departments dealing with cases involving child victims and witnesses of crime should be established within the investigating agencies and the procuracies. Judicial officials and other relevant professionals will require extensive training on child justice and child victims.

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