GUIDELINES
FOR GOOD PRACTICE
IN PROVIDING
LEGAL ADVOCACY SERVICES FOR
CHILDREN WHO ARE IN CONFLICT
WITH THE LAW IN VIETNAM

A handbook based on the experiences of
Blue Dragon Children’s Foundation
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These guidelines have been developed by Blue Dragon Children’s Foundation with the financial support of the Australian Agency for Development (AusAID).
What is this document?

Blue Dragon Children's Foundation was established in Vietnam in 2003 to work with disadvantaged children, and the scope of this work soon grew to encompass services to children and young people in conflict with the law. Over time, we have come to recognise the importance of documenting our experiences to share with others.

Through this handbook, we wish to share our “lessons learnt” and document international good practice in providing services to children and young people who are in conflict with the law. We aim to provide tips and guidelines as well as the legal background relevant to working with children.

This handbook should not be regarded as a definitive authority on the issue; rather, we are providing a snapshot of the services that should or could be provided, based on our own experience of assisting children in conflict with the law in Vietnam.

Who is this document for?

This handbook has been written for non-government organisations, government agencies and individuals who work with at-risk youth in Vietnam and are interested in developing a Child Rights Advocacy service.

We hope that it is useful for agencies and individuals in other parts of South East Asia that have social issues and needs similar to those in Vietnam.

For this reason, we make this document available for reproduction by any agency that seeks to promote Child Rights and advocacy for children in conflict with the law, with the proviso that Blue Dragon Children's Foundation is duly given credit for the work contained within.
3 Methodology

This handbook is in part a documentation of the experiences of Blue Dragon Children’s Foundation in the field of Child Rights Advocacy for children in conflict with the law in Vietnam. As such, it documents the organisational memory that has developed over the eight year period from 2003 to 2011.

In writing this handbook, we have supplemented the Blue Dragon experience with evidence of good practice in Vietnam and around the world. With this combination of experience and research, we have aimed to make the handbook a comprehensive resource.

4 Acknowledgements

It would not have been possible to complete this handbook without the openness and cooperation received from staff and volunteers alike. Thanks go to those individuals who spent time providing input, information and editorial suggestions to the author.

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Blue Dragon Children’s Foundation
May 2011
GETTING STARTED
Who are “Children in Conflict with the Law”?

In 2006, UNICEF published “10 stories the world should hear about,” including *Behind bars, beyond justice: An untold story of children in conflict with the law*,¹ in which the term “children in conflict with the law” was defined as follows:

The term ‘children in conflict with the law’ refers to anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence. Most children in conflict with the law have committed petty crimes or such minor offences as vagrancy, truancy, begging or alcohol use. Some of these are known as ‘status offences’ and are not considered criminal when committed by adults.

UNICEF estimates indicate that more that 1 million children worldwide are living in detention as a result of being in conflict with the law.

The majority of children who end up in the criminal justice system are from particularly deprived communities and families, often from discriminated minorities.

Putting children in prison instead of seeking alternatives stigmatizes them as delinquents, robs them of opportunities for jobs and scholarships and exposes them to others who have committed more serious crimes. It also increases the likelihood of children breaking the law once again.

Blue Dragon Children’s Foundation accepts UNICEF’s definition of “children in conflict with the law” and adds two observations that extend and qualify its application.

First, the UNICEF definition places emphasis on children in detention, while a Legal Advocacy Service can (and should) provide services to children and young people who are not in detention: for example, those who have been arrested or are suspects (or victims) of a crime.

Second, in Vietnam, being in “conflict with the law” encompasses the issue of “not having legal registration papers” such as birth certificates and identity papers. While this may appear to be a “soft” interpretation of the term, people without such documentation can find themselves in serious social and legal difficulty and require specialised legal support.

In providing a Legal Advocacy Service, Blue Dragon does not seek to comment on the allegations put forward against a child or young person, and in no way wishes to undermine the justice system that is in place in Vietnam. We are simply focussed on just treatment within the framework of local and international legislation for children who are in conflict with existing laws and regulations, before and during apprehension, during pre-trial detention, during a trial and during post-trial detention.

What is “Child Rights Advocacy”?

In simple terms, “Child Rights Advocacy” refers to a trained lawyer defending the legal rights of a child or young person who is otherwise unable to defend themselves. Each of the components of this definition can be elaborated upon as follows:

- “A trained lawyer”: Child Rights Advocates cannot be done by just anyone, no matter how well meaning they are. Even someone with a great knowledge of the law is not necessarily able to be a legal advocate. Organisations wishing to offer a Legal Advocacy Service must invest in qualified lawyers, and, if necessary, provide them with further training in specific areas such as Child Rights.

- “Defending the legal rights”: When we hear this phrase, we might think of a lawyer defending a client in court. Child Rights Advocates may do that, but they may also do much more. They may provide support to children in custody before and after they have been charged; they may represent young people who believe they have been unfairly treated by police or government agencies; they may help individuals to apply to the government for official documents such as birth certificates; and they may advise families whose children have been denied access to school. A good Child Rights Advocacy service will be able to help in all of these ways, and more.

- “A young person who is otherwise unable to defend themselves”: In the context of this handbook, the recipients of Child Rights Advocacy are assumed to be disadvantaged children and young people (normally 18 years and under) and their families. This may include: young people living in poverty; street kids; families with no legal registration papers; and victims of crimes who lack family support.

Child Rights Advocacy, as envisioned above, is not to be confused with lobbying government for change. In this handbook, we are focused on “grassroots advocacy”, that is, advocating for individuals who need legal support, and doing so strictly within the legal framework of the country. The idea is not to change legislation, but to provide assistance and guidance for children and young people to adhere to and to help them understand the laws that apply to them.

It may be that the experience of grassroots advocacy does provide insightful information which can inform the legislative decision making process, but legislative reform is a separate issue which is not explored in this handbook.

Why Child Rights Advocacy?

Many children and young people who are in conflict with the law do not know their rights and responsibilities. In our early days, staff at Blue Dragon Children’s Foundation quickly came to realise that the most vulnerable of society, namely children from difficult backgrounds, were not given the opportunity to understand legal procedures and did not have the means to access a lawyer.

Our Child Rights Advocates seek to provide understanding to this group, as an extension of the overall work Blue Dragon Children’s Foundation does with disadvantaged children in Vietnam.
CHILD RIGHTS
ADVOCACY
The Legal Advocacy Service of Blue Dragon Children’s Foundation, as it is today, developed organically and in parallel to our other work, which is about providing opportunities, counselling and advice to disadvantaged children and their families.

One of the first staff ever hired by Blue Dragon was a law student who was committed to helping disadvantaged children in Vietnam. He had been volunteering with us even before Blue Dragon was formally registered in Vietnam, and he has been with us ever since.

Many of the disadvantaged children that we encountered in our founding days, back in 2003, had complex backgrounds and circumstances, and many were from poor rural areas outside Hanoi. Most did not have legal registration papers because these documents had never been needed. Some of the children were in conflict with the law simply by virtue of being “street kids”.

Our Child Rights Advocate worked tirelessly to improve the lives of the children we were helping, to register them as citizens, enrol them in schools and provide them with legal advice. Not long after that, another law student joined our team, and we have had two (and at times two and a half) full-time Children’s Foundation ever since.

In the early days of our Child Rights Advocacy Services, we employed our Lawyer as Social Workers. In part this was because we could not afford the luxury of employing Social Workers and Child Rights Advocates; but equally, it was because we were not sure how we would utilise lawyers working full time on advocacy issues. One of our lawyer’s earliest jobs was to help with our Sunday football program – and while that may seem to be a strange job for a lawyer, there were definitely times when we needed his skills to resolve on-field disputes! With hindsight, it is clearly better to employ lawyers only for legal roles; placing a qualified lawyer in a social work position is not an optimal use of resources.

For some years, Blue Dragon’s Child Rights Advocates worked in a reactive manner, dealing with individual cases as they walked in the door. We still do this, and still believe it is very important to offer such a service. However, we have learned to blend this with a more programmatic approach.

We now seek out opportunities to do “preventative” legal work and intervene in cases or situations early, rather than respond only to crises. One example of how we do this is through helping children and families obtain their legal registration papers (see section 9 of this handbook).

How does Child Rights Advocacy link to the Millennium Development Goals?

While children’s rights are not addressed specifically in the Millennium Development Goals, there are some clear connections between the MDGs and Child Rights.

MDG 1: Eradicate extreme poverty and hunger. Failing to take preventative and rehabilitative measures for children who are in conflict with the law increases the likelihood that these children will fall into the poverty cycle trap. Young people in detention only sometimes have access to schooling or training, and it is normally of a low standard, meaning that they will struggle to find a job upon release.

MDG 2: Achieve universal primary education. Not only are children in detention denied quality education, so too are children without proper legal documentation such as birth certificates.

MDG 6: Combat HIV/AIDS and other diseases. Due to the known high levels of transmission in prisons, children in detention are at significantly greater risk of disease and infection than their peers in the general community.
Case Study 1:
The Appeals Process

On average, Blue Dragon’s lawyers work with 10-12 children every year who have been arrested or detained by the police.

A notable achievement in 2010 was our advocacy for a 16 year old boy who was sentenced to 3 years imprisonment in an adult prison for robbery. While the boy had clearly committed a crime, his sentence was extraordinarily harsh. We were deeply concerned about his welfare had he been sent to an adult institution. On appeal, his sentence was reduced to 2 years in reform school. We believe that both the length of sentence and the type of institution were much more appropriate in this case.

Another example of how we do preventative legal work is running workshops for children and young people to learn their rights – and their responsibilities – and to advise children on how to keep within the law. This is particularly helpful for street children, who often do not know the boundaries within which they can safely and legally work and live.

At times, the Blue Dragon Child Rights Advocates have been actively involved in resolving cases of runaway children. At any given time, there are dozens or even hundreds of runaway children in Hanoi, having come to the city from rural areas for a great variety of reasons. These cases are legally complex for us as a drop-in centre, they may conclude that we are somehow involved in their children running away (or staying away) from home.

In a country where child trafficking is rife, parents are sometimes deeply suspicious of our motives for helping their children. On several occasions when we have asked parents to come to our centre to meet their runaway children, they have brought along sinister-looking friends to stand guard on the street outside in case we intended harm. Thus, we have considered it prudent to have our Legal Advocates involved in all runaway cases, to ensure that our organisation follows the law closely.

Now, more commonly, Blue Dragon’s Outreach Workers and Social Workers deal directly with runaways, but keep the Advocates informed and call on them for assistance whenever necessary. The Advocates are in a good position to train and guide Blue Dragon’s Social Work staff, and, as our work with runaways has grown, it has been very helpful to have a larger number of staff equipped to deal with these cases.

Blue Dragon’s Legal Advocates were instrumental in establishing our anti-trafficking program known as Safe And Sound. Back in late 2005, our Child Rights Advocate was directly involved in helping one boy, who had been trafficked from central Vietnam, to escape his traffickers in Ho Chi Minh City and return home. Since learning that trafficking from this particular village and region was a large scale problem, we began arranging regular “rescue trips” to Ho Chi Minh City to retrieve children who have been taken to work on the streets or in garment factories.

As of April 2011, we have rescued and enabled 101 trafficking victims to return home, including 9 girls and young women who were trafficked to China for prostitution.
As with our support for runaways, once we had an established model which was working well, the Advocates were able to train up other staff to carry on with the work from day to day. This approach works well: our Child Rights Advocates is involved with work that seems somehow dangerous or sensitive; over time a safe, proven model of working is developed; and eventually the work is handed over to other staff.

At the time of writing, Blue Dragon's Child Rights Advocates are preparing to draw up plans for some “larger” goals that our organisation wants to achieve. Foremost among these is permanently ending the use of child labour in garment factories in Vietnam, beginning with Ho Chi Minh City. This involves building on the experience we already have, and bringing our work to a logical conclusion. Once the plans have been created, we will need to decide what involvement the Child Rights Advocacy department will have in the day to day implementation. Other work, such as helping runaway children from the countryside, will continue to be ongoing and is unlikely to ever be “concluded”.

Key Lessons from Our History

1. Get the right people into the right positions.

Particularly in Vietnam, where the labour market is still developing, it is extremely difficult to get the right people into the right positions for a budding Child Rights Advocacy program. Blue Dragon has been incredibly fortunate to find the three young lawyers who work on our team; we are aware of other organisations wanting to hire lawyers but who simply cannot fill the positions. This is largely due to the undersupply of qualified lawyers and the very attractive salaries that they can receive in private industry. Our advice: find law students with a passion for Child Rights; recruit them as interns; and build them up over several years. Vietnam simply does not have a supply of Child Rights Advocates waiting for you to advertise and hire.

2. Keep on providing opportunities for staff development.

Law students in Vietnam are unlikely to have studied Child Rights, but occasionally there are workshops and conferences on related topics. To become effective as Advocates, Vietnamese lawyers need opportunities to train locally and visit existing programs around the world.

3. Be responsive to the ongoing, and changing, needs of beneficiaries.

As an NGO, there is usually pressure from donors to show our plan for how many children we will help, or how many workshops we will run and on what topics. But children in conflict with the law in Vietnam, who are often disadvantaged youth or street kids, are not easy to predict. It is impossible for Blue Dragon to accurately forecast how many children will be arrested in coming months and years, or what new issues will arise for the children and young people in our programs. As an example, the prevalence of young people involved in selling heroin on the streets seems to rise and fall depending on several external factors, none of which we can predict. And so, while we must show some plans and set some goals, we cannot exclude children who fall outside those predictions.

4. Everything takes longer than expected.

If you are reading this handbook with the thought of creating your own Child Rights Advocacy Service, we encourage you to be patient and to stay with it for the long run.
5. Experiment. Try things. See what works.

We could hardly have guessed what our own Child Rights Advocacy service would eventually become – or what it will yet achieve. The first time we rescued a child from trafficking, we had no idea that we would eventually be working towards the end of child labour in garment factories, as we are now. Plans are good and helpful, of course, but they must serve you: you do not serve the plans. And don’t be too quick to follow the advice of the experts (who, depending on your opinion, may include Blue Dragon!). Listen to what others have to say, but choose your own path.

Case Study 2:
Reform School

Since Blue Dragon was founded, we have provided advice and support to 12 young people in reform school. Reform school is a form of detention and rehabilitation used in Vietnam to house and punish young criminals, like a juvenile jail. These are teens aged 12-18 who have been detained for various minor crimes, and in most cases they are sent to the institution by a decision made in the local government, rather than as a result of being charged by the police.

Our role is to visit the teens every 1-2 months and make sure they are in good health. On visits, we take gifts (such as comic books, food and clothing). Blue Dragon staff and kids are encouraged to write letters to the children in reform school. At times we provide financial support to parents to travel to the reform school to visit their children.

Importantly, we help those in reform school to plan for their release. For example, during 2009, one young man, aged 17, was released from reform school and moved into the Blue Dragon residence. He has been working and studying, and is doing extremely well. We have found that it is essential for the detainees to have a clear plan in mind before they are released, and not to wait until their release to start thinking about what they will do next.
Case Study 3:

Property Rights

In 2009, the UN acknowledged that “Property rights play a fundamental role, not only in increasing economic productivity, but also in raising the social standing and dignity of those who have them. Strengthening the property rights of poor people can make important contributions to poverty reduction.”(*)

Blue Dragon has been involved in ensuring property rights for orphans and disadvantaged persons. One of our beneficiaries, N, was already in our program when we discovered that his deceased maternal grandmother had owned a plot of land in the family’s home province of Ha Tay. The land had been given to her by the local government. However, N’s mother had not inherited the land.

This was because N and his mother had moved to Hanoi to find work in 1997, and never returned to Ha Tay. Under Vietnamese law, a person who leaves their place of residence for more than 6 months without notifying the local authorities will no longer be considered a resident of that area.

When the grandmother passed away, N’s mother did not have legal registration papers (such as a birth certificate, a residence book or a certificate of land ownership) to prove that she was her mother’s daughter or had been a Ha Tay resident.

Blue Dragon realised that it was important to support N with legal advice in this case. We first ensured that N obtained a birth certificate. We also managed to obtain a birth certificate and an ID card for his mother. To do this, we worked closely with the local authorities in Ha Tay.

Our Advocates met with local officials to clarify the procedures for making a legal claim on the land, which had been reclaimed by the local government. We needed to help N and his mother complete forms and provide proof of their relationship with the grandmother, and obtain statements from the neighbouring landowners. After we had done that, N’s mother received the land which was rightfully hers.

Case Study 4:

Legal Identity Papers

In 2009, Blue Dragon helped the family of a 19 year old girl receive paperwork entitling them to “officially” live in Hanoi – where the family had already lived for over 15 years. This paperwork entitles the family to government benefits, such as health services, and is enormously valuable to Vietnamese citizens.

She is one of the 371 individuals we have, to date, helped to obtain legal registration papers. Most of these cases involve people who normally could not receive their paperwork because of a lack of evidence: for example, they have moved far from their original birthplace and there is no legal record of where they have been living. It is only with a concerted effort on the part of our lawyers that such people are able to qualify for identification papers.

The number of people we have helped in this way is more than we initially envisaged when we started doing this work. The main reason for this is that we have developed a good working relationship with the Hue government in central Vietnam. This work is normally quite slow and time consuming, but working alongside government officials has enabled us to work on a larger scale, rather than working case by case. A detailed guide on how to obtain legal registration papers is set out in section 9 of this handbook.

Case Study 5:

Victims of Crime

Blue Dragon works with victims of crimes, including victims of human trafficking.

In 2010, our Child Rights Advocates led a rescue trip to China to locate and repatriate a girl and two young women (aged 14, 20 and 21 at the time) who had been trafficked to work in a brothel.

The oldest, H, was born in 1988, and lived with her mother, as her father had left when she was only 1 year old. They are very poor, and when she failed the university entry exams, she found work in a clothing shop.

Through her work, she met a woman who suggested that she should go to China to work in a clothes shop there, where she would be paid more than she was in Vietnam. H agreed to go. However, when she arrived in China, she was taken to a brothel.

Two other Vietnamese girls had been abducted at the same time, and all three managed to escape and call their families in Vietnam, who in turn contacted the police. Blue Dragon staff and Vietnamese police travelled together to China, where they found the three girls and brought them home.

Since her return, Blue Dragon has been supporting H to study a computer course and an aqua-farming production course. She is doing very well, and often gets in touch with us.

As of early 2011, Blue Dragon has rescued a total of 9 girls and young women from sex trafficking to China and 92 children from domestic labour trafficking.
An Advocacy Organisation? Or Program? Or Department?

Blue Dragon’s Child Rights Advocates ostensibly belong to one program, but in fact work more like a department, offering services across all programs and aspects of the organisation.

Anyone thinking about establishing a Child Rights Advocacy Service needs to consider where it will fit within their own organisation. There are various ways to do this – it depends on your organisation’s goals, capacity and plans, and, perhaps more importantly, on your resources, both in terms of funding and staff.

An Advocacy Organisation?

Do you want to create an organisation that exclusively defends Child Rights?

- **Advantages:** highly focused, allowing for greater specialisation and concentration of resources.
- **Disadvantages:** need to rely on other organisations to provide additional services (such as accommodation or medical help).

An Advocacy Program?

Do you want to establish a separate program within your organisation to offer advocacy services to children and young people?

- **Advantages:** your organisation can offer other services (i.e. a comprehensive approach).
- **Disadvantages:** it may mean that your advocacy service is limited to a specific geographical area and/or timeframe, as is typical of programs in Vietnam.

An Advocacy Department?

Do you want to establish a department within a larger program, or across more than one program (in the same way that an organisation’s accountants offer a service across an entire organisation)?

- **Advantages:** you will be able to offer your advocacy service to a broader group of beneficiaries.
- **Disadvantages:** your advocates’ work may be spread far and wide, with less focus.
Towards Child Rights Advocacy: Our Experiences

The following section lays out our suggested initiatives for organisations wishing to become involved in Child Rights Advocacy. The suggestions are by no means exhaustive. Organisations engaged in other types of legal advocacy work for children are invited to contact Blue Dragon to share their ideas and experiences.

a) Ensuring Accessibility to Child Rights Advocacy

It is essential that Child Rights Advocacy Services are not only available, but that the most vulnerable children in society and their families know about the services and can access them. According to the Hague Justice Portal, “Two thirds of the world’s population, or around four billion people, have limited or no access to legal rights.”

With limited services available in Vietnam for disadvantaged children, Blue Dragon aims to help all children and young people who come to us, and we also have an outreach program to actively seek vulnerable kids in Hanoi. Our Child Rights Advocacy staff work in the office headquarters during regular working hours but are often called upon in the evenings and on weekends. Children already in our programs know that they can come and speak to our Advocates whenever they have a need for legal advice.

Blue Dragon’s Advocates work from the same office as the Social Workers and other staff, and share supervision duties in our Drop in Centre with other staff. In these ways, we aim to “normalise” children's contact with our Lawyers, eliminating the stigma that might otherwise be associated with going to speak to them.

Our Advocates work closely with the local and district police to ensure that the authorities are fully aware of the services we offer. Over time, we have established a good relationship with the courts in Hanoi, and work well with the court-appointed legal counsels.

For the children, we offer workshops on their rights and responsibilities, and we provide documents in clear and simple language that children can understand, including street slang. We also run workshops for parents to attend, as we recognise that they equally seek further knowledge on legal issues.

In 2010 and 2011, we ran information sessions for children and parents on topics such as Reform School, Obtaining Legal Registration Papers, and the Consequences of Heroin. We conducted a workshop for our local partners and counterparts on the legal rights of children under Vietnamese law.

Blue Dragon’s Advocates often travel to the rural sites where Blue Dragon runs programs as there is a great need in these places for assistance to obtain registration papers, marriage booklets, birth certificates and other legal documents.

Organisations offering a Legal Advocacy Service should ensure that their offices are easily accessible by children and their families. This includes client friendly office hours enabling children and their families to

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Did you know?

In 2006, there were 1 million children in detention around the world. (UNICEF, 2006)
either come by appointment or drop in to obtain legal advice. Blue Dragon’s philosophy is to offer discreet services – we would not recommend the opening of an office with a sign outside reading “Services for children in conflict with the law”.

Any written information should be produced in a variety of formats and in a language that will be understood by the target group. Legal documents that are written for lawyers should use a different language and style than educational documents for children, young people and their families.

b) Providing Training for Child Rights Advocates

Child Rights Advocates need to have appropriate qualifications and be familiar with the laws of the country they are operating in. In Vietnam as in many developing countries, very little formal education focuses on children and their rights. Therefore, many of the skills needed to fulfil the Advocacy role may have to be learnt on the job.

Blue Dragon supports our Child Rights Advocates to access opportunities for ongoing learning by, for example, enabling them to study related courses overseas. SIDA, an arm of the Swedish government, has been one valuable source of training, and other useful courses can be found through a simple Internet search. Building and supporting our legal team means that in 2011 we have one part time and two full time Lawyers who devote their work to the rights of children of Vietnam.

We normally seek to have at least one legal assistant on staff. Similar to an internship, the main purpose of this role is to transfer the learning and knowledge of our Advocates to law students and new graduates, and to increase the knowledge base of working with children in conflict with the law in Vietnam. Facilitating the transfer of skills and knowledge from our Child Rights Advocates to students and new graduates hopefully means that the legal services available to children and young people will continue to increase and diversify.

Blue Dragon Children’s Foundation recognises that information sharing is essential if we are to improve services for children and young people. Part of this commitment to information sharing is the production of this handbook and its availability as a widely distributed resource. To coincide with the release of the handbook, Blue Dragon is also facilitating a seminar designed to educate government officials, NGO workers, and other interested parties on rights for children in conflict with the law.

c) Ensuring Inclusion of Child Rights Advocacy in Initiatives

Lack of social inclusion on a bureaucratic level (such as not being able to obtain legal registration papers) is closely linked with poverty. For example, if a child does not obtain a birth certificate when born, that child will have considerable difficulty enrolling at school in later years. Once a child is excluded from education, there is little hope of breaking the poverty cycle.

Similarly, the consequences of petty crime such as pick pocketing are closely linked to social exclusion and poverty. Ensuring that children and young people involved in petty crime receive the right type of support and that their rights are protected is an important component (along with other support such as counselling and welfare) of efforts towards breaking the cycle of crime.
d) Recognising the Importance of Registering Children

Lack of proper birth registration is a problem throughout Asia. As pointed out in a recent article, an estimated 51 million births in 2007 (more than 40% of total births across the globe) were not registered. It is suspected that about two thirds of those unregistered births were in Asia.

Registration is one of the means of proving a legal recognition of existence. You can only claim the rights accorded to you if you are legally recognised as a person. UNICEF points out that most unregistered births are the children of the poor and marginalised. The lack of registration “exacerbates their poverty and underscores their marginalization.”

In Vietnam, being registered is essential to gaining access to public services, such as education and health care, and access to employment. Registration can often be made difficult and cumbersome due to bureaucratic procedures, the expectation of bribes, and even the lack of knowledge of how to obtain registration. Thus, providing a registration service for disadvantaged children and their families has been a huge success for our Lawyers. Through in-depth knowledge of the legal requirements, including the correct fees and refusing to pay bribes, we have already helped hundreds of young people and their family members register legally with the government.

Child Rights Advocacy Services should ensure that children are provided with the proper means of registration, so that they can obtain education and better their lives. The Lawyers at Blue Dragon have so far obtained registration papers for 421 individuals, but there are many more who need this assistance. In theory, it is a simple task, but in practice the procedure can vary from area to area.

The Registration Process in Vietnam

Article 5 of the Vietnamese law on Protection, Care and Education of Children (2004) states that every child has the right to be registered. This right is also declared in the Vietnam Civil Code, one of the most important legal documents in Vietnam.

Governmental Decree 158/2005/ND-CP, dated 27 December 2005, on Civil Registration and Management, was announced to help simplify and speed up the process of birth registration. As a result of the decree, birth registration systems and procedures have been reformed. In reality, there are many problems with the implementation of these laws. For example, Thanh Nien newspaper recently reported examples of young people with Down’s Syndrome being refused permission to receive ID cards on the grounds of their impaired cognitive abilities.

Blue Dragon’s step by step guide on obtaining legal registration papers was initially documented in the Blue Dragon document “To Be or Not to Be,” which was written by our Advocates in 2007. We have updated that information and included it in the steps below.

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3 Emmons, K. (July-September 2010) Invisible Asia, Development Asia, pages 52-57
4 UNICEF (2002) Birth Registration Right from the Start, page 1
7 Blue Dragon Children’s Foundation (2007) To Be or Not to Be: Assistance for providing birth certificates for disadvantaged children in Vietnam
Phase 1: Information collection
The goal of Phase 1 is to collect background information about the child.

- Identify the children in a family who do not have a birth certificate;
- Ask for written parental consent to obtain legal registration.

Upon obtaining this consent:

- Interview the family to find out their personal information (e.g. address, legal documents and any government papers they already possess);
- Assist parents to collect sufficient evidence to prove their child’s birth (this may mean documentation from the birth hospital);
- Create an individual file for each child.

Phase 2: Action
The goal of Phase 2 is to obtain the birth certificate for the child.

For children who have clear evidence of their birth:

- Provide legal advice and guidance to parents so they can go through the registration process themselves.

For cases with insufficient documentary evidence:

- Represent the case, and negotiate with the local People’s Committee on the parents’ behalf.

In some extremely difficult cases, we have had to approach the Ministry of Justice to solicit further help.

These procedures equally apply to cases where children have had their paperwork but have lost it.

Phase 3: Evaluation and report
It is essential that organisations keep track of their work to evaluate success and improve any shortcomings. Blue Dragon routinely evaluates cases to determine whether we were successful, encountered difficulties, or were not able to obtain the certificate, and therefore need to work further on the case.

So far, we have not failed to resolve a case, even though some have been quite time consuming.

There are some issues that we have encountered in our work which are worth mentioning.

As to the Decree on Civil Registration and Management, even though it is in force, it contains some ambiguities:

- Paragraph 2, article 13, states that “If the place of residence of the parents is not ascertainable, then the ward people’s committee of the place where the child is actually living shall register the birth.” However, the local People’s Committees rarely execute this law, and most local People’s Committees do not have official statistics of how many children in their area are without birth certificates.
- There is no common mechanism for birth certificate registration, so the procedures rely on the cooperation and the knowledge of the local People’s Committee, which might vary from area to area.
• The law does not specify what happens with those people who cannot identify their birthplace. A child who was abandoned at an early age may not know where they were born.

• The Decree does not stipulate how long it should take for a birth certificate application to be processed. This sometimes leads to a very long waiting time and may tempt applicants to pay non-proscribed money (bribes) to hasten the process. As an NGO, we are strongly opposed to making such payments and urge others to also refrain from doing so.

• Finally, and perhaps most problematically for Blue Dragon, the procedures to obtain birth certificates according to the decree rely heavily on papers which almost all of the children and young people in our programs do not possess in the first place.

Many of the parents of the children and young people in our programs left their hometowns a long time prior to encountering Blue Dragon Children's Foundation. As a consequence, they are not recognised in either their new or old places of residence. This prevents their children from registering in their original birthplace or their present location.

Blue Dragon's role in such situations is to help the parents or guardians obtain the necessary papers, complete the forms, and to go through the sometimes lengthy process of obtaining birth certificates.

e) Educating the Community on Child Rights

Levels of understanding about Child Rights in Vietnam are still fairly low. The more that children, authorities, parents, and NGOs are aware of and know about Child Rights, the more likely these rights will be upheld. Workshops, seminars, information sharing sessions and publications all contribute to educating and spreading the word on the rights of children in conflict with the law.

In our experience, organisations that work directly with young people and are actively involved in Advocacy on a regular basis are best placed to offer such workshops.

f) Letting Children Have a Say

“Child participation” is a common theme in many NGOs, and is equally important for organisations working in the Advocacy field.

Simply consulting children in matters concerning them is in itself highly effective in teaching children about their rights.

Children should be encouraged to have input through various means, including through formal strategies (workshops and surveys) and, of at least equal importance, informal strategies (conversations in informal settings).
LEGAL CONTEXT
There have been estimates of as many as 21,000 children living and working on the streets of Vietnam’s cities; however, it is difficult to determine exactly how many street children there really are and no truly comprehensive survey has been conducted.

In terms of children and young people who are in conflict with the law, according to figures published by the Vietnamese Ministry of Labour, Invalids and Social Affairs, in 2007 there were 1,558 children (under 18 years old) in prison.

Additionally, there were 2,137 children in reform school.

Blue Dragon Facts
Between January 2007 and May 2011, Blue Dragon assisted 41 children who were detained by police. Of these:
- 12 went to reform school;
- 2 were imprisoned;
- 4 were fined;
- 2 received suspended sentences;
- 3 were sent to detention centres;
- 14 received no punishment or were let off with a warning;
- 3 cases are pending;
- 1 ran away.

11 International Conventions Ratified by Vietnam

The United Nations Convention of the Rights of the Child

The Convention of the Rights of the Child (CRC) is an international convention that sets out children’s rights, acknowledging the four principles of non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child. Vietnam showed its positive intent towards the CRC by becoming the second country in the world to ratify it on 28 February 1990. The CRC thus forms the basis for Child Rights in Vietnam.

Before discussing the CRC and the obligations Vietnam has signed up to, it is worthwhile considering some of the criticisms of the Convention, many of which were made by Rachel Burr in "Vietnam’s Children in a Changing World."

The ideals and the goals of the CRC are laudable, however, it should not be regarded as infallible. The CRC has been criticised by some in Vietnam for being unrealistic on several levels. For example, the CRC has been largely written by reference to the values of “Western” countries, ignoring the Vietnamese values of family and paternal hierarchy.

Whether one agrees (as an NGO or an individual) with these Confucius ideals or not, they are a fact of life in Vietnam. Elders are traditionally respected (or at least obeyed), and this is one of the subtle social practices embedded in the complex framework of personal pronouns of the language. To speak about the rights of an individual (be it an adult or a child) in a nation which has, culturally and historically, little concept of individualism is a larger hurdle than many NGOs understand.

In particular, one of the most disputed (or misunderstood, interpreted and discussed) items of the CRC is

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that children should have the right to be involved in decisions pertaining to them. This can be seen to go directly against the cultural expectation that children will follow the direction of their elders. To consult a child on matters concerning them takes power away from parents, which is a foreign concept altogether both in Vietnam, and elsewhere in South East Asia.

Furthermore, the ideals of the CRC cannot actually always be implemented on the ground. A starving family cannot afford to educate their children until their social and economic status is improved.

The drafters of the CRC, however, purposefully wrote the document in vague terms, and a signatory state is only required to “do all it can” to implement it. This means that for many countries with limited budgets, little progress may be made although the government still nominally adheres to the Convention.

The CRC directly refers to the treatment of Children in Conflict with the Law in two articles: Article 37 on Torture and Deprivation of Liberty, and Article 40 on the Administration of Juvenile Justice (as reproduced below).

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

   (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

   (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

      (i) To be presumed innocent until proven guilty according to law;
      (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
      (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
      (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
      (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
      (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
      (vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

   (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

   (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.
Other International Obligations

In 1995, the Committee on the Rights of the Child (a committee of the UN Office of the Commission for Human Rights) held a General Day of Discussion on Article 40 and the Administration of Juvenile Justice. The report published after the discussion recommended that nations adopt a

“child-oriented system, that recognizes the child as a subject of fundamental rights and freedoms and stresses the need for all actions concerning children to be guided by the best interests of the child as a primary consideration.”11

The Committee also adopted the view that “on admission, all juveniles shall be given […] a written description of their rights and obligations in a language that they can understand.” Paired with this handbook, Blue Dragon Children’s Foundation has developed a document which, in comic book format, deals with the rights and obligations of children in conflict with the law. Our target audience is the children who are in conflict with the law themselves, as well as a larger community of peers who are either at risk of coming into conflict with the law, or have friends and family who are at risk.

This comic book, entitled Slippery Slide, written in the Vietnamese language, is available to download for free from our website.12 We invite any organisation in Vietnam to utilise the book to educate children about their rights and responsibilities. We encourage organisations in the region or elsewhere to use the book as a template for a resource relevant to their own setting.

The UN Guidelines for the Prevention of Juvenile Delinquency (1990), also called the Riyadh Guidelines, is another useful resource. It discusses the measures that governments and communities can take to lower the incidence of juvenile delinquency.13

12 Vietnamese Local Law

Child Rights Advocates should familiarise themselves with the local laws in their countries. Vietnamese national law deals extensively with Child Rights and their application. Specifically regarding children who are in conflict with the law, there are the following laws:

- Youth Law (2005)
- Criminal Code (amended and supplemented in 2009)

Various other laws deal with children’s rights, such as:

- Law on Marriage and Family (2000)
- Civil Code (2005)

12 www.streetkidsinvietnam.com
Labour Code (amended and supplemented in 2007)
Child adoption Law (2010)
Anti-trafficking Law (2011)

Furthermore, there are the following government Decisions, Decrees and Circulars:

- Joint Circular 05/2003/TTLT-BCA-BTC-BYT guiding the management, care, treatment, and counselling of detainees infected with HIV/ AIDS at detention camps, prisons and re-education establishments and reform schools.
- Regulation Decree 33/ND-CP/1997 concerning reform schools.
- Decree 142/2004/ND-CP stipulating administrative measures taken in reform schools.
- Decree 49/2010/ND-CP on school fee exemptions, support mechanisms for learning and fees for the national education system from 2010 to 2015.
- Decision of the Prime Minister 38/2004/QD-TTg on policies to support funding for families and individuals adopting orphans and abandoned children.
- Decree 114/2006/ND-CP regarding administrative violations in the population, including children.

## Gaps in Child Rights Advocacy in Vietnam

Legislation on Child Rights is strong in Vietnam, and on paper, children are afforded many rights. The government has been supportive of the principle of Child Rights, which is one of the reasons Vietnam was quick to ratify the Convention on the Rights of the Child.

However, enforcement of the legislation is not always consistent. Our experience over the years has led us to make the following suggestions and observations:

- There is a need for additional policy guidelines to be developed to assist local government in the implementation of Child Rights legislation.
- There is a need for better education of people in the executive and judicial arms of government on Child Rights and how to improve them.
- There is a need to raise the professional qualifications of staff on the ground in detention facilities and other professions where people work directly with children who are in conflict with the law, preferably right down to the ward level.
- There is very little awareness among children, young people and families about the rights of children.
- There are not enough services available for children in conflict with the law. This could be
improved with greater focus on the development of more Child Rights Advocates, both within the government system as well as in NGOs.

Participation of children in the development of services for children is minimal, and youth are rarely consulted on policy matters that concern them.

Ideally, there should be more centres that provide free legal aid to children who are in conflict with the law. Children and families in legal trouble do not know what to do and where they can seek help.

There should be an emphasis on the appropriate prosecution of minors, with a pilot project of “friendly” courts for minors. This will help those involved to understand child psychology, and facilitate the process of investigation. Obtaining testimony, for example, would be more effective, as children and young people respond to a less formal environment by being more open.

14 Legal Aid in Vietnam

The Government of Vietnam has a legal aid service\textsuperscript{14} which provides legal advice to disadvantaged people of all walks of life.

This legal aid service is organised according to two Vietnamese legal documents: the \textit{Law on Legal Aid}\textsuperscript{15} and a 2007 Decree\textsuperscript{16} which details and guides the implementation of a number of articles of the \textit{Law on Legal Aid}. According to these documents,\textsuperscript{17} legal aid services are structured as follows:

- The Legal Aid Department of the Ministry of Justice is responsible for governing legal aid and issuing related policies.
- At the province level, the Legal Aid office of the Justice Department will coordinate the legal aid services.
- The Lawyer’s Association, law offices and lawyers may participate in providing legal aid.

These legal documents stipulate that the beneficiaries of legal aid are disadvantaged people, people with disabilities, the elderly and children.\textsuperscript{18} Furthermore, legal aid cases must be related to legitimate rights and interests of legal aid beneficiaries and must not fall into business or commercial domains.

Ideally, this means that the poorest in society have a voice and access to legal aid. In practice, this service works on a very limited budget and so has little capacity. In 2008, a Legal Aid Fund was established,\textsuperscript{19} with the announcement that the Vietnamese Government will provide funding for legal aid activities. However, the government also encourages legal aid centres to raise additional funding from individuals or organisations (such as NGOs and the UN).

\begin{itemize}
\item \textsuperscript{14}The Legal Aid Department, Ministry of Justice, available online in Vietnamese at http://www.nlaa.gov.vn/Default.aspx?tabid=169
\item \textsuperscript{15}Law on Legal Aid (June 29, 2006) 69/2006/QH11
\item \textsuperscript{16}Decree of Government (January 12, 2007) 07/2007/ND-CP
\item \textsuperscript{17}Law on Legal Aid, (June 29, 2006) 69/2006/QH11, Article 6, available online at: http://www.thuvienphapluat.vn/archive/Luat/Law-No-69-2006-QH11-of-June-29-2006-on-legal-aid-vb80646t10.aspx
\item \textsuperscript{18}Ibid, Article 10
\item \textsuperscript{19}Decision (June 30, 2008) 84/2008/QD-TTg, establishing Vietnam legal aid fund
\end{itemize}
By February 2010, (three years after implementing the Law on Legal Aid) the Ministry of Justice had already provided legal aid in 305,959 cases for 312,520 persons. Of these, legal aid was provided to:

- 93,277 poor people;
- 74,000 people from ethnic minorities;
- 16,959 children.

The limitations of legal aid as currently provided in Vietnam are similar to the limitations experienced in other parts of the world, such as a lack of resources. In terms of human resources, there is a lack of trained, talented lawyers who can provide legal aid services. Funding is always a problem, as governments typically have insufficient resources at their disposal.

A further limitation is the lack of cooperation between agencies in implementing the Law on Legal Aid. For example, in many criminal cases, the investigative bodies do not grant certificates for legal aid, or restrict legal aid from being involved in the prosecution process.

According to the Vietnam Bar Association, 90% of legal aid cases are consultations only. There are few cases in which the lawyers help in the investigation, negotiation, and litigation of a case.

Additionally, legal aid staff are not permanent employees of the legal aid centre and receive low wages compared to what they would receive for regular legal work.

15 Child Rights Advocacy in the Region

Cambodia

Cambodia has a legal aid service, Legal Aid of Cambodia, which was established in 1995. The number of people it has helped since it was established has grown rapidly. Legal Aid of Cambodia also runs a child orientated service, called the Child Justice Program. This specifically works with children in conflict with the law, and provides legal advice and advocacy to them.

In 2009, Legal Aid of Cambodia printed 3,500 posters on the rights of children in conflict with the law, and distributed these to authorities, parents, children and stakeholders working with children’s issues. They held workshops and training for government officials, provided education to children at risk of or already in conflict with the law, provided vocational training to detained youth, and organised community based prevention, diversion, rehabilitation and reintegration services.

Cambodia has other child rights organisations, focussing mainly on Child Rights in general, but many also deal with Children in Conflict with the Law in particular (this is not an exhaustive list):

- Cambodian Children Against Starvation and Violence Association is an organisation that works with and for children throughout Cambodia.

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22 www.lac.org.kh/english
23 www.ccasva.org
• Cambodian Defenders Project\textsuperscript{24} is a legal aid service project of the International Human Rights Law Group.

**Lao**

The Lao Bar Association\textsuperscript{25} has a legal aid component that provides services to poor and disenfranchised people in Lao. They do not have a specific child focus, although in 2009 they held a conference focusing on “Women, children and the law in Lao PDR.”

The concept note for the workshop stated: “As women and children face unique disadvantages, and because the LBA’s legal aid program specifically attempt to assist these categories of citizens, it is fitting that focus should be given to lifting the legal profile of such groups.”\textsuperscript{26}

**Philippines**

In 2005, the Philippines passed the *Juvenile Justice and Welfare Act* (Republic Act 9344). A simple Google search reveals that the Act has created a lot of interest. There are many resources online discussing this legislation and its implementation.\textsuperscript{27}

**China**

The Beijing Children’s Legal Aid & Research Center (BCLARC)\textsuperscript{28} was founded in 1999 as China’s first NGO specialising in children’s rights. The centre has established 16 “satellite” offices in the provinces.

According to their website: “BCLARC plays a leading role in encouraging and guiding lawyers throughout China in juvenile protection work. It aims to encourage Chinese lawyers to participate in child welfare protection, to establish an integrated network of professionals, organizations, and government departments in the field of child protection, and to enhance child law research and legislation. BCLARC created its own model of operation, providing direct legal services, while also pursuing research and legal reform advocacy.”

Many other Chinese organisations also focus on Child Rights in general.

\textsuperscript{24}www.cdpcambodia.org  
\textsuperscript{25}www.laobar.org/legal.php  
\textsuperscript{26}Lao Bar Association (2009) Concept Note. Available online at:  
\url{http://lepknowledgebank.ning.com/forum/attachment/download?id=3151266%3AUploadedFile%3A784}  
\textsuperscript{27}For one such report, please see: \url{http://vac.wvasiapacific.org/downloads/SAVE5.pdf}  
\textsuperscript{28}\url{https://sites.google.com/a/chinapilaw.org/bclarc/about-us}
USEFUL RESOURCES ABOUT
CHILD RIGHTS ADVOCACY

Blue Dragon Children’s Foundation
Website: www.streetkidsinvietai.com
Blog: www.vietnamstreets.blogspot.com

Burr, Rachel
Rutgers University Press, New Brunswick

Child Rights Information Network
Useful dissemination of resources from all over the world on Child Rights
www.crin.org

Emmons, Karen
Invisible Asia, Development Asia, July-September issue 2010, pages 52-57
Article on the lack of birth registration in Asia

United Nations Convention on the Rights of the Child
Ratified by Vietnam in 1990
www2.ohchr.org/english/law/crc.htm

United Nations Guidelines on Preventing Juvenile Delinquency (Riyadh Guidelines)
Guidelines on how governments can actively prevent juvenile delinquency
http://www2.ohchr.org/english/law/juvenile.htm

Vietnam National Legal Aid Agency