

AN ANALYSIS OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION  
IN VIETNAM AND A COMPREHENSIVE APPROACH TO COMBATING  
THE PROBLEM

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## INTRODUCTION

Human trafficking is the phenomenon in which children and adults are bought and sold as goods for the purpose of forced labor or commercial sexual exploitation or often times for both. The practice of human trafficking violates international human rights law and is a crime under international criminal law. It is also a crime under various regional and domestic legal regimes. Trafficking in humans affects nearly every country in the world – either as a source, transit, or destination country. This paper focuses on how Vietnam can improve its efforts to combat sexual exploitation trafficking.

Human trafficking is a complex subject that requires a careful analysis of the operative facts involved in each alleged trafficking situation before an appropriate prosecutorial strategy can be undertaken. One reason for this is that the various stages of the trafficking process may constitute separate crimes. For example, upon leaving one’s home, an individual can voluntarily migrate, be intimidated into migrating, or be physically coerced into migration. Each of these situations may lead to different prosecutorial approaches. Regardless of the method used to induce someone to begin the migration process, once in the pipeline, the underlying premise of the travel may change. Thus, an individual who voluntarily chooses to leave his/her home may, during migration, be tricked or coerced into choosing a different path. Likewise, someone who voluntarily leaves his/her home may, at the destination point, voluntarily elect to become a sex worker, be coerced into

becoming a sex worker, or be physically forced into sex work.<sup>1</sup> Again, each of these possibilities needs to be considered before an effective anti-trafficking strategy can be employed.

In addition, an effective anti-trafficking strategy cannot simply focus on prosecuting traffickers and interdicting the migration pipeline. Human trafficking impacts victims through severe physical and psychological

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† The International Human Rights Law Institute (IHRLI) of DePaul University College of Law is an academically-based institution that designs and implements human rights, governance, institutional capacity-building, and rule of law projects throughout the world. In doing so, and in carrying-out its other academic functions, the Institute links to a diverse inter-disciplinary network of scholars and experts working in a variety of legal, economic, social policy, technological, and local/regional social and culture programs. IHRLI also connects to a diverse inter-disciplinary network of governmental and non-governmental officials from around the world, as well as with practitioners from diverse backgrounds in law, social sciences and policy studies. In this regard, IHRLI recently established an informal cooperative relationship with members of the Vietnam Lawyers' Association and the faculty of the Vietnam National University, Hanoi, School of Law Centre for Criminal Law-Criminology. Pursuant to this relationship, and in keeping with our mission, IHRLI is proud to submit this paper.

<sup>1</sup> The debate on the legalization of prostitution is not discussed in this paper and is outside the scope of the research conducted.

injury, often leading to death. It also destroys the very communities from which it finds its victims or upon which it inflicts its victims. Likewise, areas of heavy trafficking often provide fertile breeding grounds for other criminal activity, and safe havens for organized crime. The complexities of human trafficking should therefore be addressed through a multi-disciplinary approach. Such an approach should not only address the supply side of human trafficking, it should also address social factors, including demand, as well as propose curative social reforms and anti-trafficking legislation initiatives.

The Socialist Republic of Vietnam serves as both a source and a destination country for trafficking victims.<sup>2</sup> Despite existing anti-trafficking efforts in Vietnam and elsewhere in Southeast Asia, human trafficking operations in the region have proliferated. Vietnam has been characterized as a country “whose government . . . do[es] not fully comply with the [Trafficking Victims Protection Act’s] minimum standards, *but [is] making significant efforts to bring [itself] into compliance with those standards.*”<sup>3</sup>

Vietnam has demonstrated its commitment to preventing human trafficking, both within and without its borders. It has done so by amending its domestic laws, ratifying international treaties, and cooperating with regional anti-trafficking initiatives. The authors of this paper, however, contend the government of Vietnam should undertake additional legislative reforms in order to fully comply with all applicable international human rights standards. Thus, in addition to undertaking certain legal reforms, we believe that Vietnam should replicate several international anti-trafficking

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<sup>2</sup> HumanTrafficking.org, Vietnam, <http://www.humantrafficking.org/countries/vietnam> (last visited June 1, 2010).

<sup>3</sup> See U.S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT*, 49 (2009), available at <http://www.state.gov/documents/organization/123357.pdf> [hereafter *TIP REPORT 2009*] (emphasis added). According to the Victims of Trafficking and Violence Protection Act of 2000, the US Secretary of State must submit an annual Trafficking in Persons Report to Congress. The Report categorizes countries into one of four tiers. Tier 1 countries are those “whose governments fully comply with the Trafficking Victims Protection Act’s (TVPA) minimum standards.” Tier 2 countries are those “whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards.” Tier 2 Watch List countries are those “whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND: a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.” Tier 3 countries are those “whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.” Vietnam was categorized as a Tier 2 country. *Id.*

initiatives that have been successfully implemented in other countries in Southeast Asia. We recognize that such initiatives will not serve as a panacea, instantly eliminating all of the problems of human trafficking. However, they will undoubtedly provide the Vietnamese government with enhanced capabilities to impede trafficking, as well as enhanced capabilities to assist victims.

This paper addresses various multi-disciplinary initiatives that could be helpful for the Vietnamese government to reduce human trafficking. Section I of this paper outlines the background of human trafficking in Vietnam, examining demand factors, vulnerability of victims, and the consequences of trafficking to victims and Vietnamese society. Section II analyzes the existing Vietnamese legal framework – nationally and regionally. Section III analyzes the international legal framework concerning human trafficking. Section IV presents the authors’ normative policy prescriptions, including legal recommendations, anti-trafficking initiatives, and victim protection initiatives. Section V concludes with a summary of the recommended anti-trafficking measures.

## I. BACKGROUND INFORMATION

### A. *General Background*

#### 1. Definition of Trafficking

The fundamental requirement of any criminal legal framework is to define the specific elements of particular crimes. Although many conflicting legal definitions of “trafficking in humans” exist under various domestic legal frameworks, for the purposes of this paper, we will define “trafficking” according to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (hereinafter referred to as the “Trafficking Protocol”).<sup>4</sup> Article 3 of the “Trafficking Protocol” defines trafficking as:

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<sup>4</sup> The Authors of this paper believe this Protocol provides the clearest definition of “trafficking” in usage within the international community. See United Nations Convention Against Transnational Organized Crime, art. iv, Nov. 15, 2000, S. TREATY DOC. NO. 108-16 (2004), *reprinted in* 2004-1 C.T.I.A. 949, G.A. Res. 55/25, Annex I, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (Nov. 15, 2000) *available at* <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> [hereafter UNTOC]; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, S. TREATY DOC. NO. 108-16 (2004), *reprinted in* 2004-1 C.T.I.A. 1023, G.A. Res. 55/25, *supra* Annex II [hereafter Trafficking Protocol].

[T]he recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>5</sup>

According to this definition, two types of human trafficking exist: (1) trafficking for labor exploitation and (2) trafficking for sexual exploitation.<sup>6</sup> This paper is solely concerned with trafficking for sexual exploitation. We will limit our discussion to human trafficking that falls within the definition of the Trafficking Protocol – despite the fact that Vietnam has not yet ratified it.<sup>7</sup>

## 2. Scope of the Trafficking Problem

Due to the secretive nature of human trafficking, as well as various inconsistent methods of collecting data, worldwide estimates of the number of trafficking victims vary widely. The International Labor Organization (ILO) estimates there are currently 12.3 million victims of forced labor worldwide, with the largest concentration of victims being from Southeast Asian countries.<sup>8</sup> Of those 12.3 million victims, the ILO estimates that 32% were trafficked for labor exploitation, 43% were trafficked for sexual exploitation, and 25% were trafficked for a mixture of both labor and sexual exploitation.<sup>9</sup> The International Organization for Migration (IOM) estimates that each year approximately 800,000 individuals are trafficked across borders.<sup>10</sup> Reliable statistics regarding the number of victims specifically trafficked in and out of Vietnam are unavailable; however, UNICEF estimates that one third of all trafficking victims are trafficked into or out of

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<sup>5</sup> Trafficking Protocol, *supra* note 4, art. 3, subpara. (a).

<sup>6</sup> TIP REPORT 2009, *supra* note 3, at 6.

<sup>7</sup> Trafficking Protocol, *supra* note 4. Vietnam has signed the Trafficking Protocol but has yet to ratify.

<sup>8</sup> ILO, ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, 3 (2008), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_090356.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf) [hereafter ILO]. This is the most recent report from the ILO on trafficking estimates. The 2009 Department of State TIP report also cites forced labor as the most common form of trafficking in persons. See TIP REPORT 2009, *supra* note 3, at intro.

<sup>9</sup> *Id.*

<sup>10</sup> IMO, Counter-Trafficking, <http://www.iom.int/jahia/page748.html> (last visited June 1, 2010).

Southeast Asia.<sup>11</sup>

As noted, trafficking in humans is a problem in Vietnam and studies indicate that Vietnam is both a source and a destination country for trafficking victims. Studies further indicate that trafficking in Vietnam occurs both internally and across international borders.<sup>12</sup> Domestic (or internal) trafficking mainly begins in rural areas and ends in urban areas.<sup>13</sup> International cross-border trafficking leading out of Vietnam occurs along four main routes: (1) Vietnam to China (for forced marriage, forced labor, sex work and boys for adoption); (2) Vietnam to Cambodia (as part of the sex trade and for panhandling); (3) Vietnam to Lao PDR and Thailand (for sex work); and (4) Vietnam to beyond the Mekong sub region (for forced marriage, sex work and forced labor).<sup>14</sup> Trafficking into Vietnam originates primarily in Cambodia and mostly for the purpose of panhandling in Ho Chi Minh City and other urban areas in southern Vietnam.<sup>15</sup>

## B. *Demand For and Recruitment of Humans*

### 1. Definition of “Demand”

Trafficking transforms humans into commodities. Like any black market commodity, the practice creates a market-driven underground industry.<sup>16</sup> In this regard, “demand” for humans as “economic capital” fuels this market and is the root cause of human trafficking for sexual exploitation purposes. Therefore, a comprehensive analysis of human trafficking encompasses not only the victims on the supply side, but also considers the demand side by examining the *modus operandi* of perpetrators of trafficking and the demand for services in the sex industry.

The concept of combating trafficking by addressing “demand” gained popularity in the year 2000 with the signing of the United Nations Trafficking Protocol. The Protocol requires state signatories to “discourage

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<sup>11</sup> U.N. Children’s Fund, Adolescence, [http://www.unicef.org/eapro/children\\_3711.html](http://www.unicef.org/eapro/children_3711.html) (last visited June 1, 2010).

<sup>12</sup> U.N. INTER-AGENCY PROJECT ON HUM. TRAFFICKING, STRATEGIC INFORMATION RESPONSE NETWORK: HUMAN TRAFFICKING DATA SHEET (Nov. 2008), available at [http://www.no-trafficking.org/reports\\_docs/vietnam/vietnam\\_datasheet\\_eng.pdf](http://www.no-trafficking.org/reports_docs/vietnam/vietnam_datasheet_eng.pdf) [hereafter SIREN].

<sup>13</sup> *Id.* at 2.16.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Polaris Project Action Center, *The Traffickers*, available at <http://www.actioncenter.polarisproject.org/learn/the-traffickers> (last visited June 1, 2010); Julia R. Pennington, A. Dwayne Ball, Ronald Hampton, Julia N. Soulakova, *The Cross-National Market in Human Beings*, 29 J. MACROMARKETING 119, 119-34 (June 2009).

the demand that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking.”<sup>17</sup> Since the Trafficking Protocol entered into force, several additional international instruments and agreements have highlighted the importance of addressing “demand,” including the Recommended Principles and Guidelines on Human Rights and Human Trafficking by the UN Office of the High Commissioner for Human Rights,<sup>18</sup> the Brussels Declaration on Preventing and Combating Trafficking in Human Beings,<sup>19</sup> and the Action Plan to Combat Trafficking in Human Beings (July 2003) from the Organization for Security and Cooperation in Europe (OSCE).<sup>20</sup> Although greater attention has been directed toward “demand” since the inclusion of this provision in the Trafficking Protocol, current international treaties and other legal instruments fail to adequately define “demand.” The authors of this paper contend that defining “demand” for humans should be the next phase in creating an effective legal framework in which to prevent and deter human trafficking.<sup>21</sup>

One of the problems inherent in defining “demand” is that it is often difficult to distinguish between perpetrators and victims due to the complex factual situations and varying degrees of coercion often evident in many trafficking scenarios. In turn, this has impeded the ability of the international community to define “demand.” Despite the lack of a binding legal definition, several international bodies and a number of international legal scholars have posited definitions. An ILO study distinguished three levels of “demand” in the context of human trafficking: (1) “[e]mployer demand (employers, owners, managers or subcontractors);” (2) “[c]onsumer demand (clients (sex industry), corporate buyers (manufacturing), household members (domestic work));” and (3) “[t]hird parties involved in the process (recruiters, agents, transporters and those who participate knowingly in

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<sup>17</sup> Trafficking Protocol, *supra* note 3, at art. 9, subpara. (5).

<sup>18</sup> U.N., *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 11-12, May 20, 2002, available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/caf3deb2b05d4f35c1256bf30051a003/\\$FILE/N0240168.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/caf3deb2b05d4f35c1256bf30051a003/$FILE/N0240168.pdf).

<sup>19</sup> European Union, Brussels Declaration on Preventing and Combating Trafficking in Human Beings, Nov. 29, 2002, Doc. No. 14981/02, available at [http://ec.europa.eu/justice\\_home/news/information\\_dossiers/conference\\_trafficking/documents/declaration\\_1709.pdf](http://ec.europa.eu/justice_home/news/information_dossiers/conference_trafficking/documents/declaration_1709.pdf).

<sup>20</sup> OSCE, *Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557, art. 3.2 (July 24, 2003), available at [http://www.osce.org/press\\_rel/2003/pdf\\_documents/07-3447-pc1.pdf](http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf).

<sup>21</sup> The Authors of this paper do not attempt to define “demand,” but rather address the methods used by those on the demand side of trafficking in order to determine the best methods to curtail demand for humans.



human trafficking at any stage of the process).”<sup>22</sup> These three levels of demand work in collaboration to create a great need for humans, thus providing a huge economic incentive to traffickers in humans. These perpetrators are driven by low risk and high profits.<sup>23</sup>

## 2. Recruitment Methods

Perpetrators use a diverse array of methods to recruit victims, ranging from deceit to forced abduction. A variety of actors are involved in the recruitment process. The trend is increasing towards organized crime’s involvement in the operation of human trafficking rings.<sup>24</sup> However, traffickers also include “individual opportunists and informal networks.”<sup>25</sup> Regardless of whether they are organized or independent, traffickers have developed similar methods (i.e., *modus operandi*) to “recruit” their victims. These methods primarily involve using deceit, coercion or physical force. More often than not they involve some combination of all three methods.

Clearly, a number of trafficking victims are forcibly kidnapped. However, it is also clear that the vast majority of victims are not physically captured, at least not initially. The U.S. State Department reports that some trafficking victims are “sold by their families as domestic workers or for sexual exploitation.”<sup>26</sup> In fact, some families actually pay traffickers to take their children.<sup>27</sup> These families are often deceived into believing their children will find safe and gainful employment abroad. For example, Vietnamese news reports have described cases of parents agreeing to marry their teenage daughters to older men from Taiwan and China in exchange for money; yet in many cases, these young women are forced into sex work upon arriving in the foreign country.<sup>28</sup> Similarly, in 2009, a trafficking syndicate was uncovered in northern Vietnam in which investigations into the matter revealed that the recruiters were, in many cases, “close relatives of the victims, including grandfathers, uncles or cousins,” many of whom

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<sup>22</sup> ELAINE PEARSON, ILO, THE MEKONG CHALLENGE. HUMAN TRAFFICKING: REDEFINING DEMAND DESTINATION FACTORS IN THE TRAFFICKING OF CHILDREN AND YOUNG WOMEN IN THE MEKONG SUB-REGION 10 (2005), [http://www.humantrafficking.org/uploads/publications/ilo05\\_mchtrddfittocaywitmsr.pdf](http://www.humantrafficking.org/uploads/publications/ilo05_mchtrddfittocaywitmsr.pdf).

<sup>23</sup> Polaris Project Action Center, *The Traffickers*, <http://www.actioncenter.xpolarisproject.org/learn/the-traffickers> (last visited June 1, 2010).

<sup>24</sup> U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2006, <http://www.state.gov/g/drl/rls/hrrpt/2006/78796.htm> [hereafter COUNTRY REPORTS 2006].

<sup>25</sup> *Id.* at intro.

<sup>26</sup> *Id.* at 28.

<sup>27</sup> *Id.*

<sup>28</sup> Tran Dinh Thanh Lam, *Rights-Vietnam: Young Brides Forced Into Sex Work Abroad*, INTERPRESS SERVICE, Sept. 10, 2001.

cited economic desperation as their reason for participating in the trafficking trade.<sup>29</sup>

The U.S. State Department reports other common methods of recruitment such as “[f]alse advertising, debt bondage, confiscation of documents, and threats of deportation.”<sup>30</sup> Likewise, recruitment over the Internet has gained popularity in Vietnam, as has enticing victims into so-called “overseas study programs.”<sup>31</sup> For example, in 2008, in one case of false advertising, police officials in Ho Chi Minh City arrested eight men for running what appeared to be a massage parlor that, in fact, actually served as an underground sex ring.<sup>32</sup> Women being held at the parlor reported that they had begun working at the parlor only after they had been promised training to become a masseuse, and only after they had each signed a contract committing to pay tuition for the program.<sup>33</sup> The women were never trained. Instead, they were forced to engage in sex acts with clients.<sup>34</sup> Schemes such as this are common methods used by perpetrators to deceive victims.

In light of the wide range of methods used by various actors in Vietnam, any new anti-trafficking laws, policies, and initiatives undertaken in Vietnam should attempt to incorporate each potential actor as well as each potential method. Specific methods of doing so will be discussed in Section

### C. *Trafficking Vulnerability Factors*

In order for the human trafficking industry to exist, a steady supply of humans is required to meet the demand. Eager to meet this demand, perpetrators prey on specific segments of the Vietnamese population. A number of factors can make an individual vulnerable to being trafficked. These include: gender, economic status, age, level of awareness of the crime, and ethnicity.<sup>35</sup>

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<sup>29</sup> *Border Guards Smash Child Trafficking Ring*, VIETNAMNET BRIDGE, Apr. 13, 2009, available at <http://english.vietnamnet.vn/social/2009/04/841705/>.

<sup>30</sup> *Id.*

<sup>31</sup> Vietnam Committee on Human Rights, *Violations of the Rights of Women in the Socialist Republic of Vietnam (2007)*, available at [http://www.queme.net/eng/doc/VCHR\\_Alternative\\_Report\\_on\\_CEDAW\\_2007.pdf](http://www.queme.net/eng/doc/VCHR_Alternative_Report_on_CEDAW_2007.pdf) [hereafter VCHR Report].

<sup>32</sup> *Eight Detained in Sex-ring Operation*, VIETNAMNET BRIDGE, Sept. 12, 2008, available at <http://english.vietnamnet.vn/social/2008/12/817734/>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> SIREN, *supra* note 12, at 7.

## 1. Gender

In the context of human trafficking for sexual exploitation, women and girls are substantially more vulnerable to being trafficked than their similarly situated male counterparts.<sup>36</sup> In fact, the ILO estimates that women and girls account for 98% of all persons trafficked for the purposes of sexual exploitation.<sup>37</sup> This is true both globally and in Vietnam. In addition, discriminatory cultural assumptions about gender can greatly exacerbate this situation. For example, in Vietnam the oft-espoused opinion that women are inferior to men has led to discrimination against Vietnamese women. Such discriminatory cultural assumptions likely fuel supply *and* demand for human trafficking in Vietnam. They also hinder efforts to eradicate human trafficking in Vietnam.

Officially, the Socialist Republic of Vietnam guarantees gender equality, both through its adherence to certain international legal obligations as well as implementation of domestic laws. In regards to international legal obligations, Vietnam has ratified several international legal instruments which provide for gender equality, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>38</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>39</sup> and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>40</sup> In regards to domestic laws, the Vietnamese Constitution unequivocally guarantees gender equality<sup>41</sup> and, over the last decade, the Vietnamese National Assembly has adopted a number of laws intended to ensure the equality of women.<sup>42</sup> In particular, in 2008, the National Assembly promulgated the Law on Domestic Violence Prevention and Control, which defines domestic violence and prohibits its practice in addition to implementing a coordinated approach towards prevention.<sup>43</sup>

Despite these efforts, Vietnamese women continue to face significant

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<sup>36</sup> ILO, *supra* note 8, at 6.

<sup>37</sup> *Id.*

<sup>38</sup> Convention on the Elimination of All Forms of Discrimination Against Women art. 27(1), Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 (entered into force Sept. 3, 1981) [hereafter CEDAW].

<sup>39</sup> International Covenant on Civil and Political Rights art. 41, Dec. 16, 1966, 999 U.N.T.S. 171; 1057 U.N.T.S. 407.

<sup>40</sup> International Covenant on Economic, Social and Cultural Rights art. 27, Dec. 19, 1966, 993 U.N.T.S. 3.

<sup>41</sup> Embassy of the Socialist Republic of Vietnam in the United States of America, Constitution of 1992, *available at* [http://www.vietnamembassy-usa.org/learn\\_about\\_vietnam/politics/constitution/chapter\\_five/](http://www.vietnamembassy-usa.org/learn_about_vietnam/politics/constitution/chapter_five/).

<sup>42</sup> VCHR Report, *supra* note 31, at 11.

<sup>43</sup> Law No.2/2007/QH12 of November 21, 2007, *available at* <http://www.na.gov.vn/htx/NNSVNE/?Newid=29679>.

obstacles to obtaining equal treatment. One reason is that “patriarchal Confucian values and practices remain deeply entrenched and women suffer from prejudices in the home as well as the workplace.”<sup>44</sup> In this regard, the Vietnam Committee on Human Rights noted that:

Today, widespread discrimination against women persists in Vietnam. Domestic violence, trafficking of women and girls, prostitution, the growing problem of HIV/AIDS, [and] violations of reproductive rights are serious problems, yet they frequently go unacknowledged or unpunished by the authorities. This discourages women from denouncing abuses, and also sends the message that such forms of discrimination are socially acceptable in Vietnam.<sup>45</sup>

In addition to limiting equal opportunities for women, gender stereotyping and patriarchal attitudes also exacerbate domestic violence in Vietnam. One manifestation of this is that physical violence toward a wife is often considered to be the husband’s prerogative as part of his duty to “educate” the wife. Due to such attitudes and the overall lack of an effective legal response to gender-based violence, Vietnamese women rarely report domestic violence.<sup>46</sup> Thus, violence against Vietnamese women is endemic. In fact, according to the Vietnamese Ministry of Public Security, in the first quarter of 2006, more than thirty percent of all murders in Vietnam were related to domestic violence.<sup>47</sup> Further, estimates conclude that one Vietnamese woman dies every three days from domestic violence.<sup>48</sup> The prevalence of domestic violence in Vietnam contributes to the human trafficking supply because, among other reasons, women who know they are likely to face violence in marriage may be more willing to accept questionable employment offers in an attempt to escape that violence.

Compounding this situation is the fact that women rarely hold high

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<sup>44</sup> VCHR Report, *supra* note 31, at 7.

<sup>45</sup> Vo Van Ai, President of the Vietnam Committee on Human Rights, Statement to the Committee for the Elimination of Discrimination Against Women, Jan. 15, 2007, *available at* [http://www.fidh.org/IMG/pdf/VCHR\\_Oral\\_intervention\\_CEDAW\\_Committee.pdf](http://www.fidh.org/IMG/pdf/VCHR_Oral_intervention_CEDAW_Committee.pdf). *See also* U.N. Human Rights Council, Working Group on the Universal Periodic Review, Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance With Paragraph 15 (B) of the Annex to Human Rights Council Resolution 5/1, U.N. Doc. A/HRC/WG.6/5/VNM/2 (Mar. 16, 2009), *available at* <http://www.unhcr.org/refworld/pdfid/49d20f840.pdf>.

<sup>46</sup> VRHR Report, *supra* note 31, at 28.

<sup>47</sup> *See* Press Release, United Nations Office on Drugs and Crime, UNODC Supports Vietnam in Tackling Domestic Violence (Mar. 9, 2009) *available at* <http://www.unodc.org/unodc/en/frontpage/women-and-men-united-to-end-violence-against-women-and-girls.html>.

<sup>48</sup> *See* Swiss Agency for Development and Cooperation, Domestic Violence in Vietnam, [http://www.sdc.admin.ch/en/Home/Projects/Domestic\\_violence\\_in\\_Vietnam](http://www.sdc.admin.ch/en/Home/Projects/Domestic_violence_in_Vietnam).

political positions in the Vietnamese government and, as a consequence, often lack political power to alter the *status quo*.<sup>49</sup> A permissive attitude toward prostitution generally appears to exist among Vietnamese citizens – despite the fact that the practice is criminalized – and it clearly exists among certain governmental officials. In fact, as noted by one commenter, “[t]he scale of prostitution, the high level of acceptance of some of its aspects and the widespread participation in its activities is overwhelming the resources available and allowing more extreme, and wholly pernicious, activities to flourish largely unchecked.”<sup>50</sup> Similarly, the Vietnam Committee for Human Rights found that “prostitution rings are often run by, or under the ‘umbrella,’ of corrupt Party cadres and local officials, who demand payment from the sex workers in return for their protection.”<sup>51</sup> Further still, according to a 2001 statement by the Vietnamese Ministry of Social Affairs, seventy percent of intercepted prostitution clients were Communist Party cadres and state officials.<sup>52</sup> Thus, although prostitution is officially illegal in Vietnam, the widespread disregard for this law by certain government officials contributes to the perception that it is acceptable.

The bottom line is that these and other sociological factors impede Vietnamese women’s social and political advancement. Vietnamese women’s resultant lack of political and social status reinforces the view that women are second-class citizens and primarily useful as sex objects. Consequentially, this fuels demand for prostitutes and sex workers. Human trafficking is one means of meeting such demands.

## 2. Economic Status

An individual’s economic status can make him/her vulnerable to human trafficking. The United Kingdom’s Department for International Development reported that in Vietnam, “[p]overty makes people an easy target for exploitation and traps families in slave-like conditions – often from one generation to the next.”<sup>53</sup> One manifestation of this is that impoverished Vietnamese, particularly those with limited future economic opportunities, are susceptible to deceptive employment offers. Such fraudulent offers are often used as a pretext to induce desperate victims to

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<sup>49</sup> See VCHR Report, *supra* note 31, at 15-16.

<sup>50</sup> U.N.A.I.D.S., S. Doussantousse & L. Tooke, *Women Involved in Prostitution in Viet Nam – a Hanoi Snapshot* (U.N.A.I.D.S., Working Paper, Mar. 2002), available at <http://www.unaids.org.vn/resource/topic/sexwork/cswprostitution.doc>.

<sup>51</sup> VCHR Report, *supra* note 31, at 11-12.

<sup>52</sup> See *id.* at 12.

<sup>53</sup> U.K. Dep’t for Int’l Dev., *Breaking the Chains: Eliminating Slavery, Ending Poverty*, Mar. 23, 2007, <http://www.dfid.gov.uk/Media-Room/News-Stories/2007/Breaking-the-Chains---Eliminating-Slavery-ending-Poverty/>.

leave their homes and enter what ultimately turns out to be a trafficking pipeline. Although the Vietnamese government has made great strides in alleviating poverty, the World Bank reports that due to the recent global economic recession, the number of Vietnamese living in poverty increased in 2008.<sup>54</sup> The U.S. State Department further reports that this has increased the supply of potential trafficking victims.<sup>55</sup>

Poverty is often closely linked to a lack of educational opportunities. Notably, Vietnamese women have significantly fewer educational opportunities than men, and girls are generally obliged to drop out of school earlier than boys. As a consequence, men greatly outnumber women at the secondary and tertiary levels of education.<sup>56</sup> One reason for this is that Vietnamese parents are normally required to pay costly school fees in order for their children to attend a school, which works to the disadvantage of lower-income families.<sup>57</sup> Thus, in keeping with prevalent cultural norms regarding gender, when “obliged to choose, poor parents inevitably withdraw their daughters from school in preference to their sons. In some poor areas, this happens as early as kindergarten.”<sup>58</sup> This is particularly true for women, girls and ethnic minorities living in rural areas of Vietnam.<sup>59</sup>

Likewise, a lack of employment opportunity correlates with poverty. In this regard, Vietnamese women experience numerous gender-based challenges in maximizing equal employment opportunities and, even if employed, often face sexual discrimination in the workplace – particularly with regard to promotions and wages.<sup>60</sup> While it is true that gender pay disparities have declined over the past fifteen years,<sup>61</sup> women in Vietnam

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<sup>54</sup> See Press Release, U.S. Dep’t of State, Financial Crisis and Trafficking in Persons: Office to Monitor and Combat Trafficking in Persons, *available at* <http://www.state.gov/g/tip/rls/tiprpt/2009/124798.htm>; WORLD BANK, TRANSFORMING THE REBOUND INTO RECOVERY: EAST ASIA AND PACIFIC UPDATE (Nov. 2009), [http://siteresources.worldbank.org/INTEAPHALFYEARLYUPDATE/Resources/550192-1257239343493/update\\_nov09\\_fullreport.pdf](http://siteresources.worldbank.org/INTEAPHALFYEARLYUPDATE/Resources/550192-1257239343493/update_nov09_fullreport.pdf).

<sup>55</sup> See U.S. Dep’t of State Press Release, *supra* note 54.

<sup>56</sup> See VCHR Report, *supra* note 31, at 16 (citing Belgian Agency for Cooperation and Development).

<sup>57</sup> In fact, Vietnamese children in the highest socio-economic group are twenty times more likely to attend school than children in the lowest socio-economic group. See Danièle Bélanger & Jianye Liu, *Social Policy Reforms and Daughters’ Schooling in Vietnam*, 24 INT’L J. EDUC. DEV. 23, 34 (2004).

<sup>58</sup> VCHR Report, *supra* note 31, at 17.

<sup>59</sup> For example, twenty percent of young ethnic minority women in Vietnam have never attended school. See U.N. Human Rights Council, Working Group on the Universal Periodic Review 11 (Mar. 16, 2009), *available at* <http://www.unhcr.org/refworld/pdfid/49d20f840.pdf>.

<sup>60</sup> FREEDOM HOUSE, FREEDOM IN THE WORLD 2009 – VIETNAM (2009), <http://www.unhcr.org/refworld/docid/4a64527128.html>.

<sup>61</sup> Thai-Hung Pham & Barry Reilly, *The Gender Pay Gap in Vietnam, 1993-2002*, 18 J.

currently receive only about seventy-two cents for every dollar earned by Vietnamese men – even when they are performing the same kind of work.<sup>62</sup> Aggravating this situation is the fact that many of the legal rights guaranteed to women in Vietnam's Constitution and laws are frequently ignored.<sup>63</sup> For example, under Vietnamese law, land acquired during a marriage belongs to both the husband and the wife, and land certificates must bear both names. However, in actual practice, Vietnamese women are often denied the right to have their name on the certificate or to inherit land.<sup>64</sup> These factors make it difficult for many Vietnamese women to enjoy economic success and leave them vulnerable to being tricked or coerced into being trafficked.

### 3. Age

Another critical vulnerability factor is age. Because children generally lack economic and social power, they are vulnerable to being trafficked.<sup>65</sup> This is particularly true for children from poor families. In such cases, parents facing economic hardship are sometimes forced by their circumstances to give their children to traffickers under the misguided assumption that their children will find gainful employment abroad.<sup>66</sup> Even more distressing are those situations where, because of very limited economic opportunities, parents actually approach traffickers and ask the traffickers to take their children, with the full knowledge that their children will be sexually exploited.<sup>67</sup> In other cases, Southeast Asian parents looking for economic opportunities may find themselves in the trafficking pipeline, along with their children.<sup>68</sup> In other words, entire families may be trafficked. Finally, in cases of forcible kidnapping, because of their lack of power, children are more vulnerable to being trafficked for sexual exploitation than adults. The bottom line is that because of their age,

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ASIAN ECON. 775, 780 (2007).

<sup>62</sup> VCHR Report, *supra* note 31, at 17.

<sup>63</sup> See United Nations Human Rights Council, *Compilation Prepared by the Office of the High Commissioner for Human Rights – Vietnam* (Mar. 16, 2009), available at <http://www.unhcr.org/refworld/pdfid/49d20f840.pdf>.

<sup>64</sup> VCHR Report, *supra* note 31, at 25.

<sup>65</sup> For purposes of this paper, “child” will be defined as it is found in the Convention on the Rights of the Child: “those under the age of 18.” Convention on the Rights of the Child, art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereafter CRC].

<sup>66</sup> COUNTRY REPORTS 2006, *supra* note 29\4.

<sup>67</sup> See ILO, UNITED NATIONS CHILDREN'S FUND [UNICEF] & UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING [UN.GIFT] TRAINING MANUAL TO FIGHT TRAFFICKING IN CHILDREN FOR LABOR, SEXUAL AND OTHER FORMS OF EXPLOITATION, TEXTBOOK 1 – UNDERSTANDING HUMAN TRAFFICKING (2009), [http://www.unicef.org/protection/files/CP\\_Trg\\_Manual\\_Textbook\\_1.pdf](http://www.unicef.org/protection/files/CP_Trg_Manual_Textbook_1.pdf) [hereafter Training Manual].

<sup>68</sup> *Id.* at 27.

children who are trafficked have little choice but to obey their parents or traffickers and suffer the evils of sexual exploitation.

#### 4. Awareness of Trafficking

In conjunction with the other factors noted above, persons who are unaware of the specific risks involved in trafficking are also vulnerable to being trafficked. A recent study revealed that only 56.2% of Vietnamese women and children understood the risk of being coerced into prostitution.<sup>69</sup> The consequences of such ignorance can be seen when desperate and/or naïve young Vietnamese women move to other countries to obtain work, but ultimately become trafficking victims.<sup>70</sup> In such cases, the women involved were simply not in a position to make informed decisions about the risks associated with migrating for economic purposes.<sup>71</sup>

#### 5. Specific Demand for Vietnamese Women and Children

Ethnic stereotypes have increased the demand for Vietnamese women and children. This is mainly attributable to the physical appearance of Vietnamese women and children and the high demand for virgins in the region. For example, some Cambodians reportedly prefer Vietnamese women because of their pale complexions.<sup>72</sup> Similarly, regional demand for virgins has exacerbated human trafficking of Vietnamese children for sexual

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<sup>69</sup> Similarly, only 54.9% recognized the risk of being coerced into working for others without their consent. 55.6% recognized the risk of being sold or exchanged like an item of goods. 74.5% recognized the risk of verbal or physical abuse by employers. 63.4% recognized the risk of being forced to engage in drug abuse or theft. See THE QUALITY OF LIFE PROMOTION CENTER & CHRISTINA CACCIPOPO, THE SITUATION OF MIGRATION AND TRAFFICKING OF CHILDREN AND WOMAN: A RAPID ASSESSMENT (CHRISTINA CACCIPOPO ED., ILO) (2006), <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/vietnam-migration-trafficking.pdf>.

<sup>70</sup> Rosanne Rushing, *Migration and Sexual Exploitation in Vietnam*, 15 ASIAN PAC. MIGRATION J. 471, 478-80 (2006).

<sup>71</sup> One manifestation of this can be seen when young Vietnamese women express the largely uninformed opinion that the possibility of making money supposedly outweighs the risks associated with potentially being trafficked. In this regard, some Vietnamese women express the ill-advised opinion that the risks associated with potentially being trafficked are preferable to the hard realities of agricultural life in Vietnam. The same may be seen among women who claim that they are likely to face domestic violence whether they marry in Vietnam or abroad and, as a result, the financial benefits of marrying abroad are worth the risks involved. Andrew Lam, *In the World of Human Trafficking, Vietnam Remains a "Supply Country"*, PACIFIC NEWS SERVICE, July 19, 2005, available at [http://news.ncmonline.com/news/view\\_article.html?article\\_id=5eb46622209f2d8d0ebca1c116b2c11d](http://news.ncmonline.com/news/view_article.html?article_id=5eb46622209f2d8d0ebca1c116b2c11d).

<sup>72</sup> ANNUSHKA DERKS, TRAFFICKING OF VIETNAMESE WOMEN AND CHILDREN TO CAMBODIA 13 (INTERNATIONAL ORGANIZATION FOR MIGRATION & CENTER FOR ADVANCED STUDY) (1998), [http://www.cascambodia.org/trafficking\\_vietnam.htm](http://www.cascambodia.org/trafficking_vietnam.htm).



exploitation purposes, primarily because they are less likely to be infected with HIV or other sexually transmitted diseases.<sup>73</sup> Cambodia – one of the major destinations of trafficked Vietnamese – has become “the region’s prime destination for purchasing ‘unbroken’ underage girls.”<sup>74</sup> Furthermore, the IOM estimates that ethnic Vietnamese represent about one-third of all virginity sales in Cambodia.<sup>75</sup>

#### D. *The Consequences of Trafficking to the Victim and Society*

##### 1. Physical, Psychological and Social Impact on the Victim

Trafficking victims are routinely exposed to myriad forms of physical and psychological abuse throughout the trafficking process. Even if they manage to escape, trafficking victims face tremendous obstacles when attempting to reintegrate into society.

Due to the high demand for humans, traffickers will often utilize any means necessary to ensure compliance of their victims. As one commenter explained:

The risks and abuses faced by trafficked women are rarely singular in nature. They are often combined in a calculated manner to instill fear and ensure compliance with the demands of the traffickers, pimps and employers. Women are physically beaten to force them to have sex, raped as a psychological tactic to intimidate them into future submission, isolated to disable them psychologically, and economically deprived to create a reliance on traffickers. Women who try to rebel or reclaim portions of their independence are beaten or financially penalised – and sometimes both.<sup>76</sup>

In addition to the immediate consequences of being physically abused by their captors – including grievous bodily harm and death – trafficking victims also routinely suffer other devastating consequences. For example, many trafficking victims are exposed to illegal drugs and become addicted.<sup>77</sup> Additionally, almost all suffer some sort of psychological trauma from being

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<sup>73</sup> SIREN, *supra* note 12, at 1.

<sup>74</sup> *Innocence for Sale; Cambodia’s Vietnamese Minority*, ECONOMIST, Sept. 15, 2007.

<sup>75</sup> Eleanor Brown, *The Ties That Bind: Migration and Trafficking of Women and Girls for Sexual Exploitation in Cambodia*, U.S. Dept. Of State Bureau of Population, Refugees, and Migration and International Organization for Migration (IOM), Aug. 2007, available at [http://www.humantrafficking.org/uploads/publications/IOM\\_trafficking\\_report\\_Aug07.pdf](http://www.humantrafficking.org/uploads/publications/IOM_trafficking_report_Aug07.pdf) [hereafter IOM].

<sup>76</sup> Cathy Zimmerman *et al.*, *The Health Risks and Consequences of Trafficking in Women and Adolescents* 23 (2003), available at <http://www.humantrafficking.org/uploads/publications/traffickingfinal.pdf>.

<sup>77</sup> *Id.*

sexually abused.<sup>78</sup> Trafficking victims routinely evince depression, chronic anxiety, loss of trust and difficulty developing relationships. Many commit suicide.<sup>79</sup> In addition, because involuntary sex workers are usually unable to persuade their clients to use condoms,<sup>80</sup> they face the probability of unwanted pregnancies and contracting sexually transmitted diseases, such as HIV/AIDS.<sup>81</sup> In fact, approximately sixteen percent of female sex workers throughout Vietnam are HIV-positive, with even higher rates of infection found in cities such as Hanoi and Ho Chi Minh City.<sup>82</sup> Although some of these sex workers are exposed to HIV by their clients, a significant number become HIV-positive as a result of intravenous drug use.<sup>83</sup>

Health problems of trafficking victims are usually left untreated. Brothel owners and traffickers rarely make their victim's health a priority. Instead, they prefer to replace unhealthy workers with healthy ones. They do so as a matter of economic choice.<sup>84</sup> This creates a number of public health concerns. First and foremost is that the physical and psychological consequences suffered by the immediate victims of trafficking are devastating and constitute a public health menace in their own right. However, these consequences become an even larger public health problem when, for instance, diseases contracted by trafficking victims are left untreated and the victims subsequently transmit these diseases to their clients.<sup>85</sup> A 2005 public health study estimated that, each year, between three and five thousand Vietnamese men contract HIV from sex workers. The report highlighted that, "[w]hile the number of sex workers is small, their infection by male clients and subsequent infection of other clients is an essential link in the chain that leads to many husbands infecting their wives."<sup>86</sup> The study further noted that "clients of sex workers are among the fastest growing populations of HIV-infected people" in Vietnam.<sup>87</sup>

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<sup>78</sup> *Id.* at 25. Women and children are especially susceptible to mental and physical abuse as they are far from support systems and their language and culture. Rosanne Rushing et al., *Living the Reality of Forced Sex Work: Perspectives From Young Migrant Women Sex Workers in Northern Vietnam*, 50 *J. MIDWIFERY & WOMEN'S HEALTH* 41, 41 (2005).

<sup>79</sup> Zimmerman, *supra* note 75.

<sup>80</sup> Rushing, *supra* note 76.

<sup>81</sup> S. Huda, *Sex Trafficking in South Asia*, 94 *INT'L J. GYNECOLOGY & OBSTETRICS* 374, 378 (2006).

<sup>82</sup> Ministry of Health Vietnam, *HIV/AIDS estimates and projections 2005-2010* 65 (2005), [http://www.unaids.org.vn/resource/topic/epidemiology/e%20&%20p\\_english\\_final.pdf](http://www.unaids.org.vn/resource/topic/epidemiology/e%20&%20p_english_final.pdf).

<sup>83</sup> Trung Nam Tran et al., *Drug Use Among Female Sex Workers in Hanoi, Vietnam*, 100 *ADDICTION* 619 (2004).

<sup>84</sup> S. Huda, *Sex Trafficking in South Asia*, 94 *INT'L J. GYNECOLOGY & OBSTETRICS* 374, 378 (2006).

<sup>85</sup> *Id.*

<sup>86</sup> Ministry of Health Vietnam, *supra* note 84, at 62.

<sup>87</sup> *Id.* at 66.

However, this problem does not stop at Vietnam's borders. In fact, a 2008 study of sex trafficking victims in Nepal found that trafficking of Vietnamese women played a major role in the spread of HIV throughout Southeast Asia.<sup>88</sup>

Assuming trafficking victims find ways to escape, impediments to their societal re-integration remain daunting. To begin with, the physical and psychological traumas they suffer are usually time-consuming and are expensive to overcome. Victims rarely have the resources to obtain such support, and often need public resources to address their problems. Such resources are usually scarce, and the problem is compounded by a stigma against helping sex workers. Thus, economic and cultural obstacles often prevent trafficking victims – including Vietnamese trafficking victims – from obtaining the psychological, medical, and vocational support they need to reintegrate into society.<sup>89</sup> In fact, between 2005 and 2007, official governmental records demonstrate that only 1,491 trafficking victims were successfully repatriated to Vietnam, most from China and Cambodia.<sup>90</sup> This number is likely only a small fraction of the number of trafficking victims who actually made their way back to Vietnam during this period.

It is true that the Vietnamese government and other actors *do* provide *some* support for Vietnamese trafficking victims. For example, various NGOs are involved in the Reintegration Network to Support Returned Victims of Trafficking in Vietnam.<sup>91</sup> This network runs rehabilitation centers throughout Vietnam and is involved in a number of efforts to help reintegrate trafficking victims.<sup>92</sup> In addition, Vietnamese government agencies, including the Ministry of Labor, Invalids, and Social Affairs (MOLISA) and the Department of the Family, are involved in reintegration efforts.<sup>93</sup> These efforts include providing limited counseling, temporary shelter, education, and medical care.<sup>94</sup> On May 8, 2008, the Vietnamese government issued an Inter-Ministerial Circular, which imposed mandates

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<sup>88</sup> Jay G. Silverman, et al., *Syphilis and Hepatitis B Co-infection among HIV-Infected Sex-Trafficked Women and Girls, Nepal*, 14(6) EMERGING INFECTIOUS DISEASES 932, (2008).

<sup>89</sup> Press Release, Int'l Org. for Migration, Vietnam: Trafficking Victims Restore Self-Confidence, Overcome Stigma, (Jan. 14, 2008) available at [http://www.un.org.vn/index.php?option=com\\_content&task=view&id=263&Itemid=187](http://www.un.org.vn/index.php?option=com_content&task=view&id=263&Itemid=187).

<sup>90</sup> U.N. Inter-Agency Project on Human Trafficking [UNIAP], Counter-Trafficking Action in Vietnam, [http://www.no-trafficking.org/vietnam\\_action.html](http://www.no-trafficking.org/vietnam_action.html).

<sup>91</sup> Int'l Org. for Migration, Strengthening the Return and Reintegration of Women and Children in Viet Nam, <http://www.iom.int/jahia/Jahia/activities/theme/regulating-migration/counter-trafficking/reintegration-network>.

<sup>92</sup> UNIAP, *supra* note 90.

<sup>93</sup> *See id.*

<sup>94</sup> U.S. DEP'T OF STATE, HUMAN RIGHTS REPORTS: VIETNAM (2008), <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119063.htm>.

on certain governmental agencies to assist trafficking victims upon their return to Vietnam.<sup>95</sup> In addition, in 2008, MOLISA also issued a handbook entitled “Politics and Regulations on Social Assistance Services for Returned Women and Children Victims of Human Trafficking.”<sup>96</sup> The handbook included information about a counseling hotline for victims, as well as an explanation of the benefits available to repatriated trafficking victims and information on shelters and other resources.<sup>97</sup>

Despite these efforts, Vietnamese authorities face continuing internal challenges in reintegrating trafficking victims. For example, Vietnamese trafficking victims often receive harsh treatment by law enforcement officers. One observer noted that, “[p]olice are . . . authorized to arrest and detain people without warrants in Social Protection Centers when they are deemed to be ‘social evils’, including street children, sex workers, trafficking victims, and street peddlers. Such detainees are also subject to physical abuse.”<sup>98</sup>

## II. LEGAL FRAMEWORK

### A. *Background*

In recent years, Vietnam has demonstrated its commitment to the prevention of human trafficking through several legal initiatives, including revising its Penal Code, entering into bilateral agreements with countries in the region, and ratifying or implementing certain international treaties. Although these actions demonstrate Vietnam’s commitment to preventing human trafficking, trafficking continues to constitute a significant problem in Vietnam. Much more could be done to further stem the tide of trafficking in Vietnam and the region. Due to the high degree of complexity involved in this issue, however, no single solution exists. Instead, the solution to such an egregious violation of human rights lies in undertaking a multi-pronged, multi-disciplinary approach. One crucial component of such an approach is continued legal reform.

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<sup>95</sup> MINISTRY OF LABOR, INVALID AND SOCIAL AFFAIRS, POLICIES AND REGULATIONS ON SOCIAL ASSISTANCE SERVICES FOR RETURNED WOMEN AND CHILDREN VICTIMS OF HUMAN TRAFFICKING 19, 21 (2008), *available at* [http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/ct/policies\\_regulations\\_vietnam.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/ct/policies_regulations_vietnam.pdf).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Human Rights Watch, Universal Periodic Review Submission: Vietnam (2009), <http://www.hrw.org/en/news/2009/05/08/universal-periodic-review-submission-vietnam>.

### B. Vietnamese Domestic Law

Vietnamese law currently treats the issue of human trafficking as a strictly criminal problem. Thus, counter-trafficking efforts have focused primarily on criminalization of the practice rather than addressing underlying demand and/or victim protection issues.

The Vietnamese Penal Code expressly criminalizes trafficking, as well as a range of offenses related to trafficking.<sup>99</sup> Specifically, Articles 119 and 120 of the Vietnamese Penal Code expressly criminalize trafficking of humans for commercial sexual exploitation purposes.<sup>100</sup> The range of other related criminal offenses includes: procuring or harboring prostitutes, crimes relating to document fraud, rape, rape against children, organizing underage marriages, sexual intercourse with juveniles, and coercing persons to stay in foreign countries.<sup>101</sup>

On June 6, 2009, during the Fifth session of the XII National Congress, Vietnam revised Article 119 of the Penal Code, thereby demonstrating its continuing commitment to preventing and prosecuting human trafficking. Thereafter, the President signed the revisions for promulgation, which entered into force on January 1, 2010. These revisions have brought Vietnam closer to achieving compliance with international standards. Prior to revision, Article 119 excluded males from the group of potential victims of human trafficking.<sup>102</sup> It did so by simply addressing “trafficking in women,” rather than trafficking of persons or humans.<sup>103</sup> The previous omission of men from the scope of this article stemmed from a mistaken belief that men were rarely victims of trafficking for purposes of sexual exploitation; a view shared by a number of countries.<sup>104</sup> However, according to the United Nations Office on Drugs and Crime (UNODC), many trafficking victims *are*, in fact, male.<sup>105</sup> The National Congress of Vietnam wisely recognized this fact when it amended the term “trafficking in women” to “trafficking in humans,” and when it defined “humans” as being both males and females. Notwithstanding these improvements, the

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<sup>99</sup> See WorldLII, Vietnamese Laws, available at <http://www.worldlii.org/vn/legis/pc66/index.html> (last visited June 1, 2010) [hereafter Vietnamese Laws].

<sup>100</sup> See *id.*

<sup>101</sup> *Id.* U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT (2007), <http://www.unhcr.org/refworld/publisher,USDOS,,VNM,467be3e3c,0.html> [hereafter TIP REPORT 2007].

<sup>102</sup> Vietnamese Laws, *supra* note 99, art. 119.

<sup>103</sup> *Id.*

<sup>104</sup> Assessment of the Legal System in Vietnam in Comparison with the United Nations Protocols on Trafficking in Persons and Smuggling of Migrants, Supplementing the United Nations Convention Against Transnational Organized Crime, Apr. 2004, available at [http://www.unodc.org/pdf/crime/human\\_trafficking/legal\\_system\\_vietnam\\_2004-05.pdf](http://www.unodc.org/pdf/crime/human_trafficking/legal_system_vietnam_2004-05.pdf) [hereafter Assessment of the Legal System].

<sup>105</sup> *Id.*

Penal Code requires further modification. For example, the current version of Article 119 criminalizes “trafficking of humans.” However, this term is not defined in any provision of the Vietnamese Penal Code. We believe this should be rectified.

In addition to Article 119, Article 120 specifically addresses trafficking in children and imposes between three and ten years of imprisonment on convicted offenders.<sup>106</sup> However, rather than using the term “trafficking of children,” Article 120 uses the terms “trading in, fraudulently exchanging or appropriating children.”<sup>107</sup> Similar to the vague nature of Article 119, Article 120 does not define “trading in, fraudulently exchanging or appropriating children.”<sup>108</sup> It is unclear why “trafficking in children” is not specifically addressed within sub-section 2 of Article 119, which lists a number of aggravating trafficking factors, all of which may increase a convicted offender’s sentence.<sup>109</sup>

As noted, subsection 1 of Article 120 imposes criminal liability on any person partaking in “trading in, fraudulently exchanging or appropriating children.” Although the Penal Code does not specifically define child, Vietnam law defines “child” as “Vietnamese citizens aged under 16 years.”<sup>110</sup> As with Article 119, Article 120 also incorporates a list of aggravating factors that may increase an offender’s potential sentence. These include:

[c]ommitting such crimes in one of the following circumstances . . . a) In an organized manner; b) Being of professional character; c) For despicable motivation; d) Trading in, fraudulently exchanging or appropriating more than one child; e) For the purpose of sending them abroad; f) For use for inhumane purposes; g) For use for prostitution purposes; h) Dangerous recidivism; i) Causing serious consequences.<sup>111</sup>

In addition to Articles 119 and 120, the Vietnamese Penal Code also incorporates a range of other offenses that can be applied to perpetrators of trafficking.<sup>112</sup> One of these is the crime of harboring or procuring a

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<sup>106</sup> *Id.* Vietnamese Laws, *supra* note 99, art. 120.

<sup>107</sup> *Id.* art. 120.

<sup>108</sup> *Id.* at subsect. 1 (subsection 1 of Article 120 imposes criminal liability on any person partaking in “trading in, fraudulently exchanging or appropriating children”).

<sup>109</sup> *Id.* art. 119.

<sup>110</sup> *Law on Child Protection, Care and Education*, June 15, 2004, art. 1, available at [www.hsph.harvard.edu/population/trafficking/vietnam.child.04.doc](http://www.hsph.harvard.edu/population/trafficking/vietnam.child.04.doc). The CRC defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” CRC, *supra* note 64, art. 1.

<sup>111</sup> Vietnamese Laws, *supra* note 99, art. 120.

<sup>112</sup> *Id.*

prostitute. As noted above, the majority of women and children trafficked for sexual exploitation are used as prostitutes and sex workers. Therefore, one means of curbing trafficking is by prosecuting persons operating brothels or paying for sexual services, instead of prosecuting sex workers. Vietnam has adopted this approach.<sup>113</sup> Article 254 and Article 255 of the Vietnamese Penal Code specifically fight prostitution through the prohibition of “harboring” and/or “procuring” prostitutes.<sup>114</sup>

In addition to criminalizing the “harboring” and/or “procuring” of prostitutes, the Vietnamese Ordinance on the Prevention and Suppression of Prostitution, which came into force in July of 2003, requires that “civil servants, military and police personnel found to have purchased sexual services would be passed on to their superiors.”<sup>115</sup> The ordinance imposes

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<sup>113</sup> *Id.* at art. 254-55.

<sup>114</sup> *Id.* Article 254 in its entirety states:

“1. Those who harbor prostitutes shall be sentenced to between one and seven years of imprisonment. 2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and fifteen years of imprisonment: a) In an organized manner; b) Coercing other persons into prostitution; c) Committing the crime more than once; d) Against juveniles aged between full 16 years and under 18 years; e) Causing serious consequences; f) Constituting a case of dangerous recidivism. 3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve years and twenty years of imprisonment: a) Against children aged between full 13 years and under 16 years; b) Causing very serious consequences. 4. Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to twenty years of imprisonment or life imprisonment. 5. The offenders may also be subject to a fine of between five million dong and one hundred million dong, the confiscation of part or whole of property, probation for one to five years.”

Article 255 in its entirety states:

“1. Those who entice or procure prostitutes shall be sentenced to between six months and five years of imprisonment. 2. Committing the offenses in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment: a) Against juveniles aged between full 16 years and under 18 years; b) In an organized manner; c) Being of professional character; d) Committing the offense more than once; e) Constituting a case of dangerous recidivism; f) Against more than one person; g) Causing other serious consequences. 3. Committing the offense in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment: a) Against children aged between full 13 years and under 16 years; b) Causing very serious consequences. 4. Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to between twelve and twenty years of imprisonment. 5. The offenders may also be subject to a fine of between one million and ten million dong.”

<sup>115</sup> VVCHR Report, *supra* note 31, at 12.

finer on those found to have “used their authority to protect prostitution.”<sup>116</sup> These ordinances could – *if more routinely applied* – help alleviate official governmental corruption. In addition, they could serve as another means of prosecuting perpetrators without specifically charging them with the crime of trafficking.

In addition to the above, trafficking perpetrators may also be charged with commission of the following crimes: crimes relating to document fraud, rape, rape against children, organizing underage marriages, sexual intercourse with juveniles, and coercing persons to stay in foreign countries.<sup>117</sup> We believe that if more people were charged with these crimes, this could help stem trafficking.

### C. Vietnamese Criminal Investigations

The process of initiating “trafficking in humans” cases in Vietnam begins with a police investigation, usually conducted through a specialized counter-trafficking police unit under the General Police Department.<sup>118</sup> In 2008, this specialized anti-trafficking unit only consisted of thirty full-time officers.<sup>119</sup> Such limited resources have had an impact on the number of investigations initiated and convictions obtained. In 2007, for example, only 681 people were *investigated* for trafficking in women and children; 606 people were *arrested* for trafficking in women and children; 310 people were *prosecuted* for the crime; and 297 people were *convicted*.<sup>120</sup> Official statistics on the numbers of prosecutions for related offenses are unavailable. Notwithstanding this fact, UNICEF estimates that the total number of convictions for trafficking and trafficking-related offenses represents only a very small proportion of those actually engaged in the practice.<sup>121</sup>

The Vietnamese government has responded to such observations by implementing the “National Plan of Action against Trafficking of Women and Children during the time period of 2004-2010.”<sup>122</sup> This National Plan of

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<sup>116</sup> *Id.*

<sup>117</sup> Vietnamese Laws, *supra* note 199. See TIP REPORT 2007, *supra* note 101.

<sup>118</sup> SIREN, *supra* note 12.

<sup>119</sup> U.N. OFFICE ON DRUGS AND CRIME [UNODC], GLOBAL REPORT ON TRAFFICKING IN PERSONS 188 (Feb. 2009), available at <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>. (select “Full Report English” hyperlink).

<sup>120</sup> *Id.*

<sup>121</sup> UNICEF/MOLISA, *Creating a Protective Environment for Children in Vietnam: an Assessment of Child Protection Laws and Policies, Especially Children in Special Circumstances in Vietnam* 49 (2009), [http://www.unicef.org/vietnam/legal\\_review\\_on\\_cp.pdf](http://www.unicef.org/vietnam/legal_review_on_cp.pdf).

<sup>122</sup> Decision of the Prime Minister, Socialist Republic of Vietnam, The National Plan of Action against Trafficking of Women and Children during the time period of 2004 – 2010 (July 14, 2004), [http://www.mfa.go.th/fhpworkshop/doc/bestpractices/Vietnam\\_NationalPlanofactiononhumanTrafficking.pdf](http://www.mfa.go.th/fhpworkshop/doc/bestpractices/Vietnam_NationalPlanofactiononhumanTrafficking.pdf).



Action highlights the “constraints in combating trafficking in women and children,” which include a “general lack of information; personnel and support” for prevention and prosecution.<sup>123</sup> The plan obligates the Vietnamese government to “[i]mprove the respect and implementation of laws on prevention and combating of trafficking” through the “[d]evelop[ment] and strengthen[ing of] law enforcement agencies.”<sup>124</sup> Although this National Plan of Action signifies a strong official commitment to preventing and combating the trafficking of women and children, we believe the plan’s overall objectives are unjustifiably vague and overly broad. As a result, they will have little practical impact on stemming trafficking.<sup>125</sup> Therefore, we believe more should be done to ensure adequate resources for the specialized counter-trafficking police unit of the General Police Department.

Vietnam has a sufficient basic legal framework and investigative structure (albeit not the resources) to successfully combat commercial sexual exploitation trafficking. Recent revisions to the Penal Code were a positive step towards compliance with international standards. We believe that additional legislative reforms and increased investigative resources would provide Vietnam with powerful means of combating trafficking in humans for commercial sexual exploitation.

#### *D. Regional Law and Cooperation*

Human trafficking plagues nearly every country in the world. However, it is particularly prevalent within Southeast Asia. In recent decades, regional efforts to combat the problem have increased and Vietnam *has* participated in these efforts. Furthermore, Vietnam continues to work with countries in the region to prevent trafficking. However, more should be done to strengthen the regional regime to combat trafficking.

One of the first regional efforts to combat trafficking occurred in 1997 with the drafting of the Association of Southeast Asian Nations (ASEAN) Declaration on Transnational Crime, which Vietnam signed.<sup>126</sup> The declaration provided that State Parties would “take firm and stern measures to combat transnational crime such as drug trafficking and trafficking of

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<sup>123</sup> *Id.* at 5.

<sup>124</sup> *Id.* at 6.

<sup>125</sup> In addition to the implementation of the National Plan of Action, the Vietnamese government has also been collaborating with various international organizations and foreign countries, including the UNDOC, the French Embassy, the United States Agency for International Development (USAID), and other international NGOs in order to increase enforcement. We believe such cooperation should be expanded. *See SIREN, supra* note 12.

<sup>126</sup> ASEAN DECLARATION ON TRANSNATIONAL CRIME, signed in Manila on Dec. 20, 1997 available at [www.aseansec.org/5640.htm](http://www.aseansec.org/5640.htm) (last visited June 1, 2010).

women and children, as well as other transnational crime.”<sup>127</sup> The inclusion of trafficking of women and children in the declaration sent an important message to the rest of the world about the ASEAN countries’ commitment to combating human trafficking.

The next major regional step towards preventing human trafficking was the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime of 2002.<sup>128</sup> This conference served as the catalyst for an ongoing initiative known as the Bali Process, a collaborative effort of over fifty countries and NGOs in which participants “work on practical measures to help combat people smuggling, trafficking in persons and related transnational crimes in the Asia-Pacific region and beyond.”<sup>129</sup> Vietnam participated in the conference and is also currently a participant in the Bali Process.<sup>130</sup> In addition, in 2004, Cambodia, China, Lao PDR, Myanmar, Thailand, and Vietnam entered into a Memorandum of Understanding (MOU) against Trafficking in Persons.<sup>131</sup> This MOU committed the state parties to work with international organizations and NGOs to meet international standards to combat human trafficking.<sup>132</sup> The MOU also created the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT Process).<sup>133</sup> Through the COMMIT Process, Vietnam signed MOUs with Cambodia in 2004, the People’s Republic of China in 2006, and Thailand in 2008.<sup>134</sup> Each MOU provides specific guidelines and national plans of action, as well as ways in which the governments will bi-laterally collaborate to address the specific causes of trafficking.<sup>135</sup>

We believe that due to the number of trafficking victims originating from Southeast Asia, continued regional cooperation will be crucial in successfully combating trafficking for commercial sexual exploitation. Thus, we believe that Vietnam must continue to participate in these regional efforts in order to bring about greater uniformity in addressing the problem.

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<sup>127</sup> *Id.*

<sup>128</sup> Bali Process, <http://www.baliprocess.net/> (last visited June 1, 2010).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> UNIAP, Mekong Ministerial Initiative Against Trafficking, <http://www.no-trafficking.org/commit.html> [hereafter UNIAP].

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Thi Tue Phuong Hoang, *Legislating to Combat Trafficking in Vietnam* 6 (July 2008), available at <http://arts.monash.edu.au/mai/asaa/hoangthituephuong.pdf>.

<sup>135</sup> UNIAP, *supra* note 131.

### III. INTERNATIONAL LAW AND COOPERATION

#### A. *Background*

In addition to the domestic and regional efforts outlined above, Vietnam has demonstrated its commitment to preventing human trafficking by ratifying a number of multi-lateral human rights treaties. For example, it has ratified the Convention on the Rights of the Child (CRC), the international community's most widely accepted human rights legal instrument.<sup>136</sup> The CRC<sup>137</sup> expressly prohibits the trafficking of children.<sup>138</sup> In addition, in 2001 Vietnam ratified the CRC's Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography<sup>139</sup> that obligates Vietnam and other State Parties to take necessary actions to prevent child trafficking.<sup>140</sup> Likewise, it ratified the International Labor Organization's (ILO) Worst Forms of Child Labor Convention, which included the trafficking of children in the term "worst forms of child labor."<sup>141</sup> And in 1982, it ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which addresses the trafficking of women.<sup>142</sup>

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<sup>136</sup> CRC, *supra* note 64. Vietnam ratified the CRC in February of 1990. See United Nations Treaty Collection, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV11&chapter=4&lang=en).

<sup>137</sup> *Id.*

<sup>138</sup> CRC, *supra* note 65, art. 34-35. Specifically, Articles 34, 35 and 36 of the CRC address counter-trafficking measures. For example, Article 34 states:

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials."

Likewise, Article 35 of the CRC notes that States must take, all "measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form." And, Article 36 requires State Parties to, "protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."

<sup>139</sup> United Nations Treaty Collection, *supra* note 136.

<sup>140</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. Doc. A/RES/54/263 (May 25, 2000), available at <http://www.un-documents.net/a54r263.htm>.

<sup>141</sup> ILO, Worst Forms of Child Labor (No. 182), art 3 (entered into force Nov. 19, 2000).

<sup>142</sup> See CEDAW, *supra* note 38. The Convention also required State Parties to "suppress all forms of traffic in women and exploitation of prostitution of women. *Id.* art. 6.

B. *United Nations Convention against Transnational Organized Crime (UNTOC)*

Vietnam should continue to strive to meet international legal standards. In particular, Vietnam should work to make necessary legal changes in order to ratify the United Nations Convention against Transnational Organized Crime (UNTOC) and its protocols, which Vietnam has thus far only signed.<sup>143</sup> In the UNTOC, Former Secretary-General of the United Nations Kofi Annan highlighted the increasing prevalence and severity of trafficking, stating: “the trafficking of persons, particularly women and children, for forced and exploitative labor, including for sexual exploitation, is one of the most egregious violations of human rights that the United Nations now confronts. It is widespread and growing.”<sup>144</sup> As the most recent and directly relevant instruments of international law aimed at preventing human trafficking, the UNTOC and its protocols are particularly important in Vietnam because they take a substantially more progressive approach than current Vietnamese domestic law and therefore provide a useful update in Vietnam’s fight against trafficking to combat this surge.

The Vietnamese Penal Code should adopt a broad and inclusive definition of trafficking like the Trafficking Protocol requires state parties to do.<sup>145</sup> The current absence of a definition of “trafficking” in the Vietnamese Penal Code allows for wide variances in interpretation and official inaction in the face of obvious trafficking cases.<sup>146</sup> One manifestation of this is when public officials limit the application of Articles 119 and 120 to *just* those cases where physical force has been utilized. In contrast, the Trafficking Protocol’s requirement that state parties adopt a broad and inclusive definition of trafficking would avoid this excessively limited use of the term.<sup>147</sup> For example, the definition established in the Trafficking Protocol expressly includes those persons who were forced into trafficking through means other than physical force.<sup>148</sup> Recognition of the multiple methods implemented by offenders to entice victims is critical to preventing trafficking.

In addition to a comprehensive definition of trafficking, current Vietnamese domestic law also lacks important statements regarding consent.

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<sup>143</sup> UNTOC, *supra* note 4. Protocol Against the Smuggling of Migrants by Land, Air, and Sea, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, S. Treaty Doc. No. 108-16 (2004), reprinted in 2004-1 C.T.I.A. 1033, G.A. Resolution 25, Annex III, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (2000).

<sup>144</sup> *Id.* at 9.

<sup>145</sup> See discussion of Article 3(a) definition *supra* Part I.A.1.

<sup>146</sup> Vietnamese Laws, *supra* note 99.

<sup>147</sup> UNTOC, *supra* note 4.

<sup>148</sup> *Id.*

Article 3 of the Trafficking Protocol expressly states that “[t]he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”<sup>149</sup> This prevents a defense of “consent” when the victim may have complied due to coercion, fraud or deception. Such recognition is critical in the prevention of trafficking since many victims initially consent due to deception, fraud, or coercion. Furthermore, subsection (d) of Article 3 clarifies that children under the age of eighteen can never give valid consent, even in the absence of force, coercion, or fraud.<sup>150</sup> These protections that are absent from Vietnamese domestic law need to be incorporated in order for Vietnam to comply with the UNTOC.

#### IV. NORMATIVE POLICY PRESCRIPTIONS & LEGAL RECOMMENDATIONS

##### A. *Ratify the UNTOC*

Due to the complexity of the problem of human trafficking, we believe a multi-disciplinary approach is the most appropriate way to combat the problem. A crucial component of such an approach is legislative reform. Vietnam has taken the initial steps to combat human trafficking both within and without its borders through legislation. However, the Vietnamese government must take further legislative action in order to continue to fight this human rights violation of epidemic proportions. Vietnam should make the necessary legislative changes in order to ratify the UNTOC and its Protocols to bring Vietnam into full compliance with international standards and to aid in greater prevention and prosecution.

##### B. *Amend the Penal Code to Specifically Define “Trafficking”*

Although the Vietnamese Penal Code criminalizes “trafficking in humans” and “trading in children,” it does not define either term.<sup>151</sup> In an attempt to alleviate some of the problems this has caused, on November 29, 1986, the Judicial Council of Supreme People’s Court issued guidelines for applying provisions of the Penal Code.<sup>152</sup> In these guidelines, the Court defined “trading in children” as “buying or selling a child for personal profit, even buying a child from the stealer or the parents. The act of buying a child knowing the child is stolen shall also be regarded as the crime of ‘trading in

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<sup>149</sup> Trafficking Protocol, *supra* note 5, art. 3.

<sup>150</sup> *Id.*

<sup>151</sup> Vietnamese Laws, *supra* note 99.

<sup>152</sup> Assessment of the Legal System, *supra* note 104.

children.”<sup>153</sup> The Vietnamese government should work to adopt a codified definition of “trafficking” because these clarifications are imprecise. Such a definition could either be patterned after the Trafficking Protocol, or Vietnam could elect to adopt its own definition. If Vietnam chooses the latter, it will have to make several changes, discussed in greater detail below, in order to comply with the UNTOC.

First, as previously mentioned, the Penal Code should be amended to criminalize both physical and non-physical methods of trafficking. Under current law and as the definition is applied in practice, in order to be found guilty of trafficking, the methods the offender uses must be physical in nature. In reality, many persons engaging in the practice of trafficking use any methods available to commit the crime, including non-physical methods. Therefore, the Penal Code should criminalize all of these trafficking methods, including threats, coercion, abduction, fraud, deception, and abuse of power.<sup>154</sup> Such a definition, incorporating all of these means and methods, would allow for greater prosecutorial discretion and enhanced trafficking prevention.

Second, the National Assembly of Vietnam should broaden the definition of “trafficking” to include trafficking for a variety of purposes, beyond simply trafficking for prostitution. Women, men, and children are trafficked in and out of Vietnam for a multitude of reasons but the current Vietnamese Penal Code focuses solely on trafficking for the purpose of prostitution. To this end, we recommend that the definition incorporate trafficking for the purposes of “sexual exploitation, forced labor or services, slavery, slavery like practices or servitude, and the removal of organs.”<sup>155</sup>

Third, in addition to expanding the definition to include both a wider range of methods and a wider range of purposes, the definition should also be extended to include a wider range of perpetrators. Currently, the Vietnamese Penal Code applies direct liability, and consequently the most severe penalties apply to the seller and the receiver, meanwhile transporters and recruiters are merely liable as accessories to the crime of trafficking.<sup>156</sup> Article 20 of the Vietnamese Penal Code imposes liability on “organizers, executors, instigators and helpers.”<sup>157</sup> Article 20 goes on to define each of these terms:

The executors are those who actually carry out the crimes. The organizers are those who master-mind, lead and direct the execution of crimes. The instigators are those who incite,

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 13.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 12.

<sup>157</sup> Vietnamese Laws, *supra* note 99.

induce and encourage other persons to commit crimes. The helpers are those who create spiritual or material conditions for the commission of crimes.<sup>158</sup>

Transporting and recruiting are vital components of the trafficking process, yet those responsible for these integral roles are only held liable as accessories. This obviously reduces the deterrence effect criminalization of such acts may have. In contrast, the Trafficking Protocol expressly addresses this diminished culpability by introducing a broader definition. Article 3 of the Trafficking Protocol expressly encompasses “the recruitment, transportation, transfer, [and] harboring” of victims in the definition of trafficking.<sup>159</sup> The National Assembly of Vietnam should amend the Penal Code to impose direct liability on those persons engaged in transporting, recruiting, and/or harboring traffickers. It could do so by adopting language similar to that found in Article 3 of the Trafficking Protocol. Such an amendment would prevent those persons playing a critical role in the commission of a trafficking operation from escaping more severe penalty solely because of a narrow definition of trafficking.

### C. Amend Penal Code to Introduce New Provisions

#### 1. Provisions Regarding Age

Currently, Vietnamese law defines children as persons under the age of sixteen.<sup>160</sup> Adults are defined as persons eighteen years old and older.<sup>161</sup> This creates a legal gap for persons aged sixteen and seventeen. Furthermore, the code’s current definition conflicts with the definition of children found in the CRC, as well as in the Trafficking Protocol, both of which define children as persons under the age of eighteen.<sup>162</sup> Changing the Vietnamese legal definition of children to include all those persons under eighteen would alleviate this problem. However, each country defines age in a different way based on many factors including cultural, historical, and social traditions, so a more sensitive response might be one similar to what the UNODC has done. The UNODC recommended the adoption of a law criminalizing “trafficking of minors,”<sup>163</sup> in which minors are defined as persons between the ages of sixteen and eighteen.<sup>164</sup> Inclusion of such a

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<sup>158</sup> *Id.*

<sup>159</sup> Trafficking Protocol, *supra* note 4, art. 3.

<sup>160</sup> *Law on Child Protection, Care and Education*, *supra* note 110, art. 1.

<sup>161</sup> Assessment of the Legal System, *supra* note 104, at 12.

<sup>162</sup> CRC, *supra* note 65.

<sup>163</sup> Assessment of the Legal System, *supra* note 104, at 12.

<sup>164</sup> *Id.*

provision in the Penal Code would allow the Vietnamese government to maintain the cultural and social tradition underlying the current definition while simultaneously providing adequate protection to trafficking victims between the ages of sixteen and eighteen years of age.

## 2. Aiding and Abetting Liability

The UNODC maintains that “trafficking involves numerous members of an organized group who have varying degrees of involvement in the trafficking process.”<sup>165</sup> It is important for Vietnam to implement and enforce strict accomplice liability and liability for aiding and abetting laws to encompass varying degrees of involvement in the crime of trafficking as well as failed attempts at trafficking, which nonetheless constitute crimes. Article 5 of the Trafficking Protocol requires State Parties to “adopt legislative and other measures as may be necessary to establish as criminal offenses the conduct set forth in Article 3 of this Protocol, when committed intentionally.”<sup>166</sup> Vietnam should consider revising the Penal Code to criminalize aiding and abetting in trafficking, as well as attempted trafficking.<sup>167</sup>

### a. Attempt Liability

The current Vietnamese Penal Code does not explicitly address “attempt” *vis-à-vis* the crime of trafficking nor, in this context, accomplice liability<sup>168</sup> or organizing or directing others to commit the crime.<sup>169</sup> Instead, it utilizes the Penal Code’s general attempt and accomplice provisions.<sup>170</sup> Article 18 of the Penal Code generally addresses criminal liability for the “[i]ncompleted commission of a crime.” It also places liability on persons

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<sup>165</sup> *Id.* at 13.

<sup>166</sup> Trafficking Protocol, *supra* note 4, art. 5.

<sup>167</sup> Article 5 of the Trafficking Protocol requires each state party to:

“adopt such legislative and other measures as may be necessary to establish as criminal offenses a) . . . *attempting to commit* an offense established in accordance with paragraph 1 of this article; b) participating as an *accomplice* in an offense established in accordance with paragraph 1 of this article; and c) *organizing or directing other persons to commit* an offense established in accordance with paragraph 1 of this article.”

*See* Trafficking Protocol, *supra* note 4, art. 5 [emphasis added].

<sup>168</sup> Although there is no express provision of the Penal Code addressing accomplice liability, those persons participating in recruitment, transporting, or harboring victims are prosecuted as accomplices.

<sup>169</sup> Vietnamese Laws, *supra* note 99.

<sup>170</sup> *Id.*



who “commit incompleting crimes.”<sup>171</sup> “Incompleting commission” is defined as “an intentional commission of a crime which cannot be carried out to the end due to causes beyond the control of the offender.”<sup>172</sup> Although this provision can be applied in conjunction with either Article 119 or Article 120, because the current definition of human trafficking is vague, holding offenders criminally liable for attempted trafficking under Article 18 is difficult. Thus, in addition to developing a clearer definition of trafficking, we believe the National Congress should adopt a provision of the Penal Code specifically delineating liability for attempted trafficking.

*b. Accomplice Liability*

Article 20 of the Penal Code addresses accomplice liability using similarly broad language. Article 20 imposes criminal liability on those “complicit” in the commission of a crime.<sup>173</sup> Complicity is defined as “two or more persons intentionally commit[ing] a crime.”<sup>174</sup> Article 20 holds “organizers, executors, instigators and helpers” criminally liable as accomplices.<sup>175</sup> The creation of accomplice liability through Article 20 is a positive step toward greater prosecution of the crime of trafficking. However, in order to emphasize Vietnam’s commitment to combating trafficking, we believe the National Congress should amend the Penal Code to add an article explicitly addressing accomplice liability *vis-à-vis* the crime of trafficking. Simply put, we do not believe the general accomplice liability provision is adequate to combat trafficking, particularly given the complexities involved.

*D. Law Enforcement Incentives*

In addition to amending the Penal Code, the Vietnamese government should undertake institutional reforms within its police and law enforcement agencies to bring about greater prosecution rates. Police and other law enforcement officers are crucial actors in the fight against trafficking. However, in many countries, including Vietnam, police do not consistently investigate trafficking or adequately enforce trafficking laws. Several possible explanations for this exist: police may view trafficking as a minor crime, police forces may be understaffed, corruption may be a factor, or police may not be familiar with the anti-trafficking laws.

While it is true that the Vietnamese government has increased law

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

enforcement efforts to combat trafficking,<sup>176</sup> large amounts of trafficking continue to be ignored. In 2008, for example, Vietnamese police investigated only 330 cases of suspected trafficking and convicted only 424 individuals.<sup>177</sup> Although reliable statistics are difficult to obtain, this number of prosecuted cases is likely only a small fraction of the total number of trafficking cases actually taking place in Vietnam.

### 1. Policing Incentives

Incentives could help make enforcement of human trafficking laws a higher priority among Vietnamese law enforcement officials. In fact, one report has noted the challenge posed by:

[T]he lack of real incentives for police to respond effectively to human trafficking . . . . In comparison, other police specializations such as narcotics suppression are held in higher regard, due to the rewards and status they receive by achieving successful, sometimes high-profile convictions. The relatively low prestige in anti-human trafficking policing, and lack of anti-corruption accountability, may contribute to the difficulty in achieving successful convictions of human traffickers.<sup>178</sup>

Various countries have experimented with the use of financial incentives, such as bonuses or extra vacation time, to encourage police officers to accomplish certain goals. Further, promotions and performance appraisals have sometimes been tied to specific performance indicators. For example, members of the police force of Gwent, United Kingdom, receive bonuses based on performance for work “above the normal requirements of the role being performed by the officer.”<sup>179</sup> Similarly, in South Yorkshire, police officers receive bonuses, called “competence related threshold payments” for “demonstrating high professional competence, achieving good results, showing a commitment to the job, developing good relations with the public and colleagues, showing a willingness to learn, and showing an ability to adjust to new circumstances.”<sup>180</sup>

An innovative program in Andhra Pradesh, India, links law

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<sup>176</sup> TIP Report 2009, *supra* note 3.

<sup>177</sup> *Id.*

<sup>178</sup> Strategic Information Response Network, *Raids, Rescues, and Resolutions 5* (Sept. 22, 2006) available at [http://www.no-trafficking.org/reports\\_docs/siren/GMS-06%20SIREN%20raids%20rescues%20resolution%20FINAL.pdf](http://www.no-trafficking.org/reports_docs/siren/GMS-06%20SIREN%20raids%20rescues%20resolution%20FINAL.pdf).

<sup>179</sup> Gwent Police Bonus Payment Scheme, <http://www.gwentpa.police.uk/pa/agendaarchive/diversityhr121205item4dbonuspayment3.pdf>.

<sup>180</sup> Claire Lewis, *Police £18m Bonus Outcry*, STAR (Sheffield, UK), Nov. 11, 2009, available at <http://www.thestar.co.uk/news/Police-18m-bonus-outcry.5813232.jp>.

enforcement officers' performance appraisals to their efforts to apprehend and investigate human traffickers.<sup>181</sup> The U.S. State Department has cited this program as a sustainable and replicable "best practice" in the fight against trafficking.<sup>182</sup> We believe a similar program could be implemented in Vietnam and that it would have a significant impact on the enforcement of anti-trafficking laws. It could also provide a competing incentive to thwart the temptations of corruption. Because the prevalence of domestic violence in Vietnam contributes to the supply of trafficking victims, as discussed above in Section I.C.1, we also recommend performance incentives to encourage the investigation and prosecution of domestic violence cases.

## 2. Anti-Corruption Incentives

In some cases, ineffective implementation of anti-trafficking programs may be related to police corruption, as reports have indicated that police corruption in Vietnam negatively impacts human trafficking investigations. For example, according to the Global Report on Trafficking in Persons, "[t]rafficking-related corruption occurred at the local level, where officials at border crossings and checkpoints take bribes to look the other way, though the government did not report any investigations or prosecutions of officials for trafficking-related complicity."<sup>183</sup>

Inadequate police salaries in Vietnam exacerbate corruption. The Asia Sentinel reported that, "[t]he official salaries of Vietnam's public officials are notoriously low. In October [2006] minimum salaries for state employees were raised by nearly 30 percent – but the minimum is still only 28 dollars per month. As a result, many workers on the government payroll resort to getting money any way they can."<sup>184</sup> Given these circumstances, some Vietnamese police officers have little incentive to adequately investigate human trafficking cases and, in some cases, have financial incentives to look the other way. Linking efforts to investigate trafficking with financial incentives, performance appraisals, or promotions, would make law enforcement officials more likely to prioritize the policing of trafficking.

In order to fund an incentives project, the Vietnamese government could increase fines on illegal brothels<sup>185</sup> and impose heavy criminal fines,

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<sup>181</sup> U.S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT 19-20* (2003), <http://www.state.gov/documents/organization/21555.pdf> [hereafter TIP REPORT 2003].

<sup>182</sup> *Id.*

<sup>183</sup> TIP REPORT 2009, *supra* note 3, at 300.

<sup>184</sup> Patrick Tan, *Not in My House: Corruption in Vietnam*, ASIA SENTINEL (Hong Kong), June 25, 2007, available at [http://www.asiasentinel.com/index.php?option=com\\_content&task=view&id=550&Itemid=31](http://www.asiasentinel.com/index.php?option=com_content&task=view&id=550&Itemid=31).

<sup>185</sup> U.S. DEP'T OF STATE, 2008 HUMAN RIGHTS REPORTS: VIETNAM, PROSTITUTION IS

in addition to jail time, on individuals convicted of trafficking offenses. By collecting these fines, the police incentives program would further deter trafficking without having to divert resources away from other areas of crime fighting.

## V. SOCIAL INSTITUTION REFORMS

### A. Addressing Supply – Recommended Victim Prevention Initiatives

#### 1. School-Based Anti-Trafficking Awareness Campaigns

Lack of awareness increases an individual's vulnerability to becoming a victim of trafficking. Thus, we believe greater attention should be paid to preventative campaigns. One tactic typically utilized by traffickers is deceiving victims into thinking they are being recruited for legitimate jobs, and then forcing them into trafficking. Many Vietnamese are ill-informed about the dangers of accepting unverified offers of employment. To combat such problems, several countries, including Thailand and Slovenia, have implemented school curricula reforms designed to educate their children about the dangers of human trafficking.<sup>186</sup> If such programs were adopted in Vietnam, they would equip vulnerable children with knowledge that could help prevent them from becoming trafficking victims. Such school programs would also be expected to have a multiplier effect by spreading trafficking awareness from the children to their families and communities.

Primary education in Vietnam is compulsory for children ages six to fourteen.<sup>187</sup> By introducing a curriculum that could take as little as one day each school year, the government could provide children with information about trafficking, and do so without taking significant time away from other subjects. We believe that a successful curriculum should emphasize child safety and involve small group discussions as well as guest speakers, such as former trafficking victims. If appropriately implemented, such a program would have the potential to raise young people's awareness of human trafficking in general, as well as encourage potential victims or family members of victims to seek assistance from the authorities. For older, high school age students, the curriculum could frame trafficking from a human rights perspective. In addition, distributing informational brochures and literature would allow the children to share the anti-trafficking information with their families.

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ILLEGAL IN VIETNAM , <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119063.htm>.

<sup>186</sup> TIP REPORT 2009, *supra* note 8.

<sup>187</sup> Dr. Trinh Quoc Thai, *Vietnam Primary Education*, Vietnam Ministry of Education and Training, Dec. 10, 2006, available at <http://en.moet.gov.vn/?page=6.7&view=4401>.

Such programs are not unprecedented in Vietnam. In early 2009, for example, the Vietnamese Social Evil Prevention Department (SEPD) committed itself to “intensifying information campaigns and improving [the] capacity of the community to prevent trafficking in women and children.”<sup>188</sup> However, we believe such awareness campaigns should be institutionalized in the official school curriculum, fully funded, and universally implemented. In particular, we believe that trial educational awareness campaigns should be implemented immediately, with the primary focus on the education of rural peoples and minorities.

## 2. Public Anti-Trafficking Awareness Campaigns

Although internationally-implemented anti-trafficking campaigns have usually focused on educating law enforcement officials, other governmental officials, and non-governmental organizations, a few countries have had success with training non-traditional actors to help combat trafficking. Public awareness campaigns have the potential to reduce both trafficking and domestic violence, which contributes to trafficking.

In Cambodia, for example, an NGO called Childsafe International implemented an anti-trafficking initiative to educate mototaxi drivers and guesthouse workers in resort towns to identify and protect children who were at risk of commercial sexual exploitation. The program also trained them to identify and report suspicious behavior by tourists.<sup>189</sup> The results of the program have been impressive.<sup>190</sup> In part, this is because the programs not only protect potential victims, but because they also help to discourage sex tourism. Discouraging sex tourism helps to minimize economic incentives to engage in the trafficking of humans for commercial sexual exploitation. These programs are also sustainable because taxi drivers and hotel workers are motivated, in part, by the desire to discourage sex tourism so as to increase more lucrative legitimate tourism.<sup>191</sup> ChildSafe has proven to be a successful means of minimizing sex tourism. As one article noted,

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<sup>188</sup> See *New Measures to Support Human Trafficking Victims Adopted*, VIETNAMNET BRIDGE, Feb. 2, 2009, available at <http://english.vietnamnet.vn/social/2009/02/830887/>.

<sup>189</sup> TIP REPORT 2007, *supra* note 106, at 39.

<sup>190</sup> For example, in June 2008, ChildSafe was informed about “a foreigner who looked like he wanted to have sex with a 12 year-old boy who he had met at a local market.” After receiving the information, the ChildSafe support team went to the market to monitor the situation. Upon realizing the ChildSafe staff was at the market, the foreigner left and the child was interviewed and returned to his home. A few days later, the ChildSafe team was informed the foreigner had taken the child to his home. The staff immediately reported the situation to anti-trafficking unit of the Cambodian police, the child was retrieved and the perpetrator was arrested. *Id.*

<sup>191</sup> Humantrafficking.org, *Taxi Drivers in Cambodia on the Look Out for Abuse*, Oct. 26, 2006, available at <http://www.humantrafficking.org/updates/437>.

“[w]ith [moto taxi] drivers protecting children at risk, it is like having a community worker on every street corner.”<sup>192</sup> This type of program could be replicated in the urban centers of Vietnam in a similar manner.

Another public awareness program that helped reduce victimization and demand was implemented in Nigeria through the work of the Women Trafficking and Child Labour Eradication Foundation, a national NGO that used transportation workers in the fight against child trafficking for labor. This program involved a workshop with executive members of the Nigerian Union of Road Transport Workers in which they were encouraged to place stickers on buses informing bus drivers and riders about the illegality of child labor trafficking.<sup>193</sup>

The U.S. Department of Justice recommends the use of taxi drivers as confidential informants in human trafficking situations. The Department has reported that

[L]aw enforcement has identified numerous sex trafficking cases based on information provided by confidential informants, such as taxi drivers, johns, bar patrons and others who have contact with commercial sex operations. Because offers of commercial sex are not made to outsiders, such as someone with a different Mexican dialect, traditional ‘sting’ or undercover operations often do not work in these environments. Instead, officers must identify and recruit people who operate at the fringes of these sex trafficking ventures.<sup>194</sup>

The report went on to recall the story of one taxi driver who “reported that he was receiving calls to pick up very young women from a particular address and deliver them to hotel rooms. Law enforcement worked with this informant to identify a network of houses where victims were held by pimps and other taxi drivers who were prostituting juvenile girls.”<sup>195</sup> The report concluded that “the success of this approach hinges, of course, on an agency’s ability to identify potential confidential informants.”<sup>196</sup>

Vietnamese transportation workers should be trained to recognize and anonymously report trafficking in at least two broad situations: commercial sexual exploitation of children by sex tourists and transportation of trafficking victims within Vietnam. Because taxis and public transportation are widely used in Vietnam by local nationals and tourists, the authors

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<sup>192</sup> *Id.*

<sup>193</sup> Communication Initiative Network, *Women Trafficking and Child Labour Eradication Foundation*, June 3, 2008, available at <http://www.comminet.com/en/node/268423/36>.

<sup>194</sup> U.S. Dept. of Justice, *Sex Trafficking: Identifying Cases and Victims*, Mar. 9, 2009, available at <http://www.ojp.usdoj.gov/nij/journals/262/sex-trafficking.htm>.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

believe such an anti-trafficking awareness program would have an immediate impact on reducing sex tourism, in addition to a longer-ranging impact on reducing sexual exploitation of children by local nationals.<sup>197</sup> A successful program involving taxi drivers would need to provide reporting incentives. The program could combine two strategies. First, training should emphasize that sex tourism harms the reputation of a region, drives away legitimate tourists, and increases the presence of organized and petty crime, thereby emphasizing that reporting will strengthen the tourist industry upon which the taxi drivers are, in part, dependent. Second, the program should consider providing financial incentives, which would reward taxi drivers for information leading to a conviction for trafficking or sexual exploitation of a child. Funding for the program could come from increased revenues received through conviction fines.

Vietnamese bus drivers could also be trained to recognize and report trafficking, particularly with regard to victims being transported within Vietnam and across its borders. Signs posted in transportation hubs could inform the public of the presence of these trained transportation workers. The combination of such training and a comprehensive anti-trafficking public awareness campaign in bus and train terminals would have a two-fold effect: observers could recognize and assist trafficking victims and trafficking victims themselves would be encouraged and empowered to seek assistance from trained transportation workers.

### 3. Addressing Victim Protection – Recommended Actions

Police and other law enforcement officers play a crucial role in investigating alleged trafficking abuses. However, they can also be trained to become more victim-oriented. Police officers are often unaware of the rights of trafficking victims – particularly children – and may mistakenly view them as prostitutes. The creation of Victim Protection Units (VPUs) within police stations could help alleviate this situation in a number of ways. First, personnel assigned to VPUs could help educate other law enforcement officials about the law and rights of victims, particularly children. Second, VPU personnel could provide temporary safe havens for victims who escape

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<sup>197</sup> Sex tourism is a significant problem in Vietnam. According to the State Department, “Vietnam is increasingly a destination for child sex tourism, with perpetrators from Japan, the Republic of Korea, the P.R.C., Taiwan, the U.K., Australia, Europe, and the U.S. In 2007, an Australian NGO uncovered 80 cases of commercial sexual exploitation of children by foreign tourists in the Sapa tourist area of Vietnam alone.” According to the Global Report on Trafficking in Persons, significant numbers of Cambodian children are trafficked from Cambodia to urban areas of Vietnam for forced labor or sexual exploitation. In addition, “Vietnam has a significant internal trafficking problem with women and children from rural areas trafficked to urban centers.” TIP REPORT 2003, *supra* note 188.

from traffickers. Third, they could prevent police from returning victims to traffickers by instead re-directing victims to social welfare agencies.

One Child Protection Unit (CPU) success story is from Ethiopia, where an NGO called Forum for Street Children collaborated with international NGOs in addition to both local and regional law enforcement to create CPUs in police stations in Addis Ababa and several other towns. Through the CPUs, Forum for Street Children educates law enforcement officials on children's rights and provides assistance to child victims of trafficking and exploitation. Since 2000, the program has reunited over one thousand trafficked and exploited street children with their families.<sup>198</sup> In addition, Forum for Street Children awareness programs targeted the transportation sector and trained workers at the Addis Ababa central bus terminal to report possible child trafficking cases to the CPU.<sup>199</sup> The CPU located in the bus terminal is dedicated exclusively to identifying trafficked children, and in 2008 that CPU alone "identified 899 trafficked children, 75 percent of whom were girls. It referred 93 trafficked children to NGO shelters for care and family tracing and reunified 720 children with parents or relatives in Addis Ababa and in outlying regions."<sup>200</sup>

The U.S. government and UNICEF have also successfully implemented an anti-trafficking initiative in Lesotho that includes child protection units. The project, entitled "Protection of Children and Women from Trafficking through Establishment of Child Protection Units in the Police Service Description," was aimed at the creation of specialized units within police departments at both the national and local level. These units were trained in methods to best identify trafficked persons and treat victims.<sup>201</sup>

The establishment of Victim Protection Units in Vietnamese police stations would add an important tool to Vietnamese anti-trafficking efforts. For example, women, children and adolescent victims would be more willing to risk escaping dangerous situations if they were confident that police would not treat them as criminals or simply return them to the streets or the brothels. Further, police who are trained in women's and children's rights, as well as the laws regarding sexual exploitation of children, would be more likely to fully investigate child trafficking cases, and the VPUs would provide resources and an organized framework to support such investigations.

As noted above, similar programs have proven effective in other

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<sup>198</sup> U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 38* (2008), <http://www.state.gov/documents/organization/105501.pdf> [hereafter TIP REPORT 2008].

<sup>199</sup> *Id.*

<sup>200</sup> TIP REPORT 2009, *supra* note 8.

<sup>201</sup> U.S. Department of State, *The U.S. Government's International Anti-Trafficking Programs* (2003), available at <http://www.state.gov/g/tip/rls/rpt/34182.htm>.



countries and would be readily replicable in the Vietnamese context. Furthermore, these programs' record of success suggests the Vietnamese government could likely obtain partial funding from NGOs, the United Nations, and other sources.

*B. Addressing Supply – Recommended Victim Protection Initiatives*

In addition to addressing demand and legal reform, a comprehensive anti-trafficking initiative in Vietnam should also include initiatives aimed at minimizing the supply of potential victims. Public awareness and educational campaigns, victim centers, and vocational training to former victims can help to minimize the supply of potential victims. Because a lack of awareness among the general public and potential victims allows the practice of human trafficking to thrive, public awareness campaigns and educational programs are crucial in the fight against trafficking. Additionally, as discussed in Section II, former victims face extreme obstacles in reintegrating back into society, which often leads to them falling victim to further trafficking. Increased availability of victim centers and vocational training will provide former victims with viable economic alternatives to re-entering sex work.

1. Public Awareness Campaigns and Educational Programs

The Vietnamese government, with the assistance of NGOs, has portrayed a strong commitment to the prevention of trafficking through several public awareness campaigns, but more still needs to be done.<sup>202</sup> In addition to the Vietnamese government's efforts, NGOs have provided trainings to governmental officials,<sup>203</sup> and the Vietnam Women's Union and the Vietnam Youth Union collaborated to produce public awareness campaigns.<sup>204</sup> Despite these past efforts, however, the underground and highly complex nature of human trafficking contributes to a continuing general lack of awareness of the problem, as well as a lack of awareness regarding the severity of the problem in Vietnam. This lack of awareness, to some degree, reaches nearly all segments of the population. In fact, the Vietnamese government acknowledged a lack of awareness amongst high-ranking governmental officials in the National Plan of Action against Trafficking in Women and Children, stating that "awareness of the seriousness, and responsibilities for the prevention and combating of trafficking in women and children is still limited amongst certain Party Committees, authorities, agencies and mass organizations, at different

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<sup>202</sup> TIP REPORT 2008, *supra* note 198.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

levels.”<sup>205</sup> This general ignorance allows perpetrators to operate with little risk of detection or apprehension. Greater awareness would better enable Vietnamese people to prevent and combat human trafficking. Any public awareness campaign should be aimed at educating the greatest possible number of people.

A public awareness program, campaign, or training to prevent and combat human trafficking should attempt to convey four overarching messages: 1) the prevalence of human trafficking in Vietnam and specific methods perpetrators utilize; 2) that human trafficking is illegal under both international and domestic law; 3) that anyone suspicious of the possible commission of the crime should report it to the authorities; and 4) that those who have been trafficked are victims and information is available about victim support. These four messages should provide both victims and the greater community with adequate information to further combat human trafficking.

In order to reach the greatest possible number of people, a public awareness campaign launched in Vietnam should use multiple forms of media, including television, radio, and print to convey the four key messages outlined above. According to BBC, although Vietnam has hundreds of newspapers and magazines, television is the dominant medium.<sup>206</sup> Vietnam Television is the national broadcaster in Vietnam and is the only nationwide television channel in the country.<sup>207</sup> In order to achieve uniformity in the conveyed message, a nationwide campaign would be best aired on Vietnam Television. Similar campaigns have been launched in Vietnam in the past. For instance, the 2008 Trafficking in Persons Report states that, “Vietnam Television occasionally addresses trafficking in a popular home economics program by featuring returnees who discuss their experiences and how to avoid trafficking.”<sup>208</sup> Programs like this one should be continued, but the message and the audience should be expanded to reach a wider audience. A home economics program likely targets women, but as previously discussed, it is extremely important to target all segments of the Vietnamese population, not just women. Additionally, the message should be broadened from how to avoid trafficking to include the other important messages outlined above previously mentioned in this paper.

In 2007 MTV, in collaboration with United States Agency for International Development (USAID), aired an anti-trafficking documentary

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<sup>205</sup> The National Plan of Action against Trafficking of Women and Children during the time period of 2004-2010, *supra* note 127, at 3.

<sup>206</sup> BBC, Country profile: Vietnam, [http://news.bbc.co.uk/2/hi/asiapacific/country\\_profiles/1243338.stm](http://news.bbc.co.uk/2/hi/asiapacific/country_profiles/1243338.stm).

<sup>207</sup> Vietnam Television, Overall, <http://www.vtv.org.vn/en/>.

<sup>208</sup> TIP REPORT 2008, *supra* note 198, at 262.

to raise awareness on Vietnam Television.<sup>209</sup> Although documentaries provide an opportunity to educate a particular audience, people must choose to watch them. Vietnamese citizens who do not believe that trafficking affects them, such as men, might not choose to view such programs. To address such attitudes, in November 2009 the UNODC created a soap opera entitled “Breaking the Silence” which incorporated many aspects of domestic violence “including showing the normality and prevalence of abuse of women by their husbands as well as emphasizing the current ignorance of the law enforcement and justice sector.”<sup>210</sup> “Breaking the Silence” consisted of several episodes, each of which highlighted a different aspect of domestic violence. Due to the great popularity of soap operas in Vietnam, efforts similar to the production and airing of “Breaking the Silence” could be replicated in Vietnam for human trafficking. Such a program would allow the greatest amount of people to receive the educational material without initially selecting an “anti-trafficking educational program.”

The increasing trend of trafficking people from rural areas suggests another reason why launching public awareness campaigns through multiple media outlets is incredibly important. A program similar to the UNODC’s domestic violence campaign could be simultaneously launched both on television and radio. Voice of Vietnam is the national radio broadcast and is broadcast across the entire country.<sup>211</sup> A public awareness campaign developed into a soap opera should also be aired on Voice of Vietnam in addition to Vietnam Television.

While public awareness campaigns should be directed at the community at large, educational programs and trainings can also be specifically tailored to particular audiences. Incorporating educational programs about trafficking into school curriculum offers one of the greatest opportunities to increase national awareness. As previously discussed, traffickers often deceive victims with false promises of legitimate work, and many victims believe these promises because they are ill-informed about the dangers of accepting unverified offers of employment. To combat this problem, several countries, including Thailand and Slovenia, have developed and implemented school curricula to educate children on the dangers of human trafficking.<sup>212</sup> A similar approach in Vietnam would give Vietnamese children crucial knowledge that would, at a minimum, make them more aware of the methods traffickers utilize.

In Vietnam, primary education is compulsory for children aged six to

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<sup>209</sup> *Id.* at 203.

<sup>210</sup> UNODC, Viet Nam: TV Series on Preventing on Domestic Violence, Nov. 3, 2009, <http://www.unodc.org/eastasiaandpacific/en/2009/11/Vietnam-Tv-Series/story.html>.

<sup>211</sup> Voice of Vietnam, VOV News, <http://english.vovnews.vn/Home/culture.vov>.

<sup>212</sup> *Id.*

fourteen.<sup>213</sup> As stated above, by introducing a curriculum that could take as little as one day each school year, the government could provide children with an understanding and information about trafficking without taking significant time away from other subjects. A successful curriculum would emphasize child safety, and could involve small group discussions and guest speakers such as former trafficking victims. It would also raise young people's awareness of human trafficking in general and encourage potential victims or family members of victims to seek assistance from the authorities. Again, for older high school students, the curriculum could include more in-depth information in addition to legal information. Furthermore, as discussed, distributing informational brochures and literature would allow the children to share the anti-trafficking information with their families.

Public awareness campaigns and educational programs are ways of minimizing supply, another key component of a comprehensive strategy to combat human trafficking. As with the other components of a comprehensive strategy, together they have the greatest impact.

### *C. Victim Centers and Vocational Training for Former Victims*

In addition to public awareness campaigns, another method of minimizing supply is by preventing former victims from being repeat victims of trafficking. Increasing the availability of victim centers is an important part of this. Additionally, the range of services these centers provide should be broadened, including offering vocational training.

Currently, Vietnam has a very limited number of victim protection centers, with limited resources. The Vietnam Women's Union (VWU), with the assistance of certain NGOs, is currently running four shelters in Vietnam.<sup>214</sup> A limited number of other shelters are also scattered across the country. The shelters are often understaffed, under-funded, and therefore unable to provide adequate services to former victims. Former victims fortunate enough to receive assistance from the shelters are only provided with care and services for a very short period of time before they must quickly find economic means to support themselves and their families on their own. Out of financial desperation many victims once again become vulnerable to false promises of legitimate work, or return to sex work.

Increased availability and funding of victim centers would allow the centers to offer more services as well as a longer stay to victims. In addition to providing basic necessities – food, water, shelter – the centers should place a greater emphasis on providing vocational training. Vocational

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<sup>213</sup> Vietnam Ministry of Education and Training, Vietnam Primary Education, Dec. 10, 2006, <http://en.moet.gov.vn/?page=6.7&view=4401>.

<sup>214</sup> TIP REPORT 2009, *supra* note 8.

training would provide new skills to victims, making them less vulnerable to deceptive ploys and limited options. In addition to vocational training, victim centers should attempt to collaborate with a wide range of service providers including legal professionals, health care workers, mental health professionals, and social workers. Through this wide range of services, victims would be more capable of successfully reintegrating into daily life.

In order to increase the availability of rehabilitation centers and to broaden the range of available services, the Vietnamese government, international organizations, foreign governments, and NGOs must collaborate, pooling funding and support. In October 2009, USAID and the Asia Foundation committed to improving rehabilitation services for former trafficking victims throughout Vietnam by increasing funding for these services.<sup>215</sup> In addition to increased funding, the Asia Foundation is collaborating with the Vietnam Ministry of Labor, Invalids, and Social Affairs, law enforcement officials, legal professionals, social workers, and health care workers to create a definition of a victim's rights and an outline of best practices for rehabilitating victims.<sup>216</sup> The Asia Foundation recently worked to draft such a document in Cambodia.<sup>217</sup> Efforts like these should be continued in order to further combat human trafficking.

#### CONCLUSION

Human trafficking for sexual exploitation is a violation of international human rights law and Vietnamese criminal law. Despite the illegality of the practice and efforts by the Vietnamese government to curb the practice, human trafficking for sexual exploitation continues to occur throughout Vietnam, as both a source and destination country for trafficking victims.

Vietnamese human trafficking for sexual exploitation is a complex problem necessitating a comprehensive approach that addresses both supply and demand. In order to successfully address supply and demand, legal and policy reforms must continue, innovative anti-trafficking initiatives should be implemented, and greater emphasis should be placed on rehabilitation services. A comprehensive approach is most likely to succeed in combating human trafficking.

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<sup>215</sup> PR Newswire, *USAID and The Asia Foundation Expand Counter-Trafficking Program in Vietnam's Mekong Delta*, Oct. 5, 2009, available at <http://www.prnewswire.com/news-releases/usaid-and-the-asia-foundation-expand-counter-trafficking-program-in-vietnams-mekong-delta-63572472.html>.

<sup>216</sup> *Id.*

<sup>217</sup> Louise Rose, The Asia Foundation, *The Next Step in the Fight Against Human Trafficking in Cambodia*, Sept. 30, 2009, available at <http://asiafoundation.org/in-asia/2009/09/30/the-next-step-in-the-fight-against-human-trafficking-in-cambodia/>.