

Human Trafficking in Vietnam: A Review of Patterns and Legal Framework

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ABSTRACT: *Nowadays, human trafficking is a lucrative crime and has been identified as the fastest growing criminal industry in the world. The total annual revenue for trafficking in persons was estimated to be USD \$32 billion (UN, 2012). In Vietnam, although human trafficking is not as prevalent as some crimes, its effects are devastating not only to its victims but also to Vietnamese society as a whole. 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. In this paper, the author intends to investigate the background and theoretical framework of legal responses to human trafficking in Vietnam.*

I. INTRODUCTION

Vietnam is a member of the Association of South East Asian nations where the issue of trafficking in persons has been on the agenda since the early 1990s (David et al., 2011). Over the past two decades, much more information has become available about the nature and diversity of trafficking in persons in South East Asia. It is now well understood that in this region, women, men, girls and boys are trafficked and exploited in a wide range of industries and settings. Moreover, information about other forms of trafficking, such as trafficking for the purposes of organ removal are now being further investigated (David et al., 2011).

Most recent studies carried out in Vietnam have focused on the general situation and measures of the prevention and investigation. Moreover, most existing studies on trafficking issues focus on commercial sexual exploitation. Very little concrete research has been carried out that would have a clear focus on non-sexual types of trafficking or that would offer a comparative analysis of trafficking in a “non-sex trade” context with trafficking for the purpose of sexual exploitation. The main reason for this is a serious lack of experts on human trafficking in Vietnam. Regardless, a few limited yet valuable contributions have been provided. Vu (2007) focused on trafficking of women in Ho Chi Minh and the Southern provinces from 2002 to 2007, to examine the crime’s causality and conditions. After an extensive review, he proposed a range of interventions to confront the issue. Other projects, such as Do (2006) or Phan (2009) have focused on human trafficking crimes on particular borderlands.

To successfully combat trafficking in persons, a system of comprehensive measures is a strict requirement and policies against trafficking in persons should be considered from multiple approaches, not only from criminal justice approaches, such as preventing, suppressing and punishing trafficking crimes. Section I of this paper outlines the background of human trafficking in Vietnam, examining root causes for the existence of human trafficking. Section II analyzes the existing Vietnamese legal framework - nationally and regionally.

II. THE CURRENT PATTERNS OF HUMAN TRAFFICKING IN VIETNAM

1. The situation of trafficking persons

Vietnamese victims are trafficked for sexual and labour exploitation across the globe, including countries as Taiwan, Malaysia, South Korea, Laos, China, Thailand, Saudi Arabia, Libya, Indonesia, and the United Kingdom and so on. Vietnam is a source country for men and women who migrate abroad for work opportunities. Many of these migrants are processed through state-affiliated and private labour export companies. These companies reportedly coerce migrants to sign contracts in languages they cannot read, and charge fees in excess of those allowed by law, sometimes as much as \$10,000. Furthermore, some Vietnamese women are recruited through fraudulent marriages to move to China, Taiwan, Hong Kong, Macau, and increasingly to South Korea, and are subsequently subjected to conditions of forced labour (including as domestic servants), forced prostitution, or both (Humantrafficking.org, 2012).

According to statistics from the Ministry of Public Security, there were 3,046 cases and 6,628 victims of human trafficking during the period between 2007 and 2014. It is believed the actual number is considerably higher, as programme experience has shown that the majority of trafficked persons return without reporting they have been trafficked, and due to stigma and discrimination, often do not tell their families and friends. As has

been the case with trafficking in many other areas, the number of trafficked persons within and from Vietnam has often been given in the form of estimates whose source or basis have not been established and are thus unreliable. As reported, many different estimates have been given by different stakeholders due to their different methods of estimation. This is the case not only in domestic studies, but also in regional research regarding human trafficking in Vietnam. In general, data on the trafficking issue in Vietnam is affected by the fact, universally agreed upon, that accurate figures are impossible to come by. Reasons popularly given for this dearth of adequate data include 'the unauthorized and clandestine nature of the activities', 'poor data collection', and 'the reluctance of victims' to report trafficking cases. However, another important reason, which seems to be the most important in the situation of trafficking data in Vietnam, is the inadequacy of the compilation and dissemination of trafficking statistics among authorized institutions at both national and regional levels. Remarkably, this inadequate statistics on human trafficking in Vietnam has been attributed to the political sensitivity of the issue and the government's fear of outsiders' political intervention under the guise of concern with human rights if they reveal the real figure on the number of trafficked persons.

2. Root causes for the existence of human trafficking

There is a wide-ranging agreement about causes of human trafficking. For example, sexual exploitation is caused by range of factors including inequality between men and women, poverty, lack of education, lack of awareness of trafficking (Bernat and Winkeller, 2010). Others include globalization, lack of employment opportunities, economic imbalances and conflicts among regions, decline of border controls, globalized corruption, rural to urban migration (Shelley, 2010). In Vietnam, many people who are trafficked - especially women - originally come from rural areas where poverty is experienced more severely than in urban areas (Derks, 1998). The economic reform in Vietnam - known as Doi Moi- starting in the late 1980s has opened up the country for the global market. In some ways, it has benefited national economic development as well as many people in the country, but in other ways, inequality still occurs between the rich and the poor and between urban and rural areas (Derks, 1998). The declining role of agriculture in rural economy also has pressured many families to try to find a strategy to improve their economic situation by sending family member(s) to earn money elsewhere, and beyond agriculture (Rigg, 1997). Particularly, rural women are severely affected by poverty and when they search for work out of rural areas they mostly get involved in simple, non-skilled and low wage work in the cities (Tran and Le, 2000). The demands from factories, domestic work, and sex industry also continuously push female out-migration from rural areas (Rushing and Watts, 2005).

III. VIETNAMESE LEGAL FRAMEWORK ON HUMAN TRAFFICKING

1. The International Definition of Trafficking in Persons

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the UN Convention against Transnational Organised Crime presents one of the most recent steps towards a global consensus on the definition of trafficking. 'Trafficking in persons', as set out in Article 3(a) of the *Trafficking Protocol*, means:

[T]he recruitment, transportation, transfer, harbouring 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs[.]

Accordingly, the trafficking definition is comprised of three basic interlinked elements, namely: the 'action', including 'the recruitment, transportation, transfer, harbouring or receipt of a person'; the 'means' by which the action has been secured, including 'threat or use of force or other forms of coercion, of abduction, of fraud, of reception, 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'; and the 'end purpose', including, at a minimum 'the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.

While these three elements are all needed for an instance of trafficking in adults to be established, it should be noted that the *means* is not needed to be present in a situation of trafficking in children. In other words, where a child is subjected to any of the listed acts for the purpose of exploitation, the crime of trafficking in children will be made out regardless of the *means* used. In practical terms, this makes it easier to identify a case of child trafficking, and also easier to identify victims and prosecute traffickers in comparison with a case of trafficking in adults. However, the situation is not straightforward, even in a typical case of trafficking in persons, as most of the listed constituents of these broader elements remain undefined or ambiguously defined under the Protocol's framework.

2. Vietnamese Law

The very early legal document regulating trafficking is a penal code. Articles 115 and 149 of 1985 Penal Code defined trafficking/trading in women and children and set a punishment of five to 20 years of imprisonment. Furthermore, the code defined provisions regarding the prohibition of sexual exploitation of children and the prevention and punishment of prostitution. The way of perceiving trafficking in women and children at this stage appears quite primitive with the consideration of trafficking in women and children as domestic crimes.

Within the provisions of Vietnam's *Penal Code 1999*, there are two main articles that refer to trafficking offences (and some further provisions on other offences which are assumed to be related to trafficking). Articles 119 and 120 of the *Penal Code 1999* provide respectively for the criminalization of the offences of 'trafficking in women' and 'trading, fraudulently exchanging or appropriating children' without defining the term 'trafficking'. Accordingly, the basic offence of 'trafficking in women', punishable by between two and seven years' imprisonment, was supplemented by an aggravated offence, committed where the trafficking is for the purpose of prostitution or for the purpose of sending the victim overseas. The increased penalty also applies where the trafficking is organized, professional, of more than one victim or there are multiple counts. Meanwhile, the offence of 'trading, fraudulently exchanging or appropriating children' in Article 120, which refers to practices similar to slavery, is punishable by between three and ten years' imprisonment. The aggravated offence in this provision applies where such trade, exchange or appropriation is committed 'in an organized manner', 'for despicable motive', on more than one victim, for the purpose of sending the victim abroad, for 'use for inhumane purposes', for 'use for prostitution purposes', in cases of 'dangerous recidivism', or where it causes 'serious consequences'. These simple trafficking offence provisions are clearly different from the model of the trafficking definition as introduced by the *Trafficking Protocol*, at least in terms of its three-component structure of acts, means and purpose. Furthermore, they seem to be mainly focused on practices similar to slavery in which women and children are treated as commodities, rather than on the broader concept of trafficking that is internationally accepted.

Although the 2009 Amendments to the *Penal Code 1999* expanded the ambit of trafficking offences to cover 'trafficking in persons' and added the end purpose of 'removal of organs', the provisions of both Articles 119 and 120 create a definition of trafficking that is relatively narrow in comparison with that of the *Trafficking Protocol*. The offences were not expanded to cover some other trafficking practices such as forced labour or labour exploitation.

Trafficking practices related to forced labour are referred to within the provisions of the first specific anti-trafficking law of Vietnam approved in March 2011. Articles 3(2) and 3(3) of this Law, under its terms of 'prohibited acts', add to the acts of trafficking in persons stipulated in Articles 119 and 120 of the *Penal Code 1999*, the acts of 'transfer or receipt of persons for sexual exploitation, forced labor, the removal of organs, or for other inhuman [sic] purposes' and 'recruitment, transportation, harboring of persons for sexual exploitation, forced labor, the removal of organs or for other inhuman [sic] purposes'. From these described acts of trafficking, it can be seen that the 'action' and 'end purpose' components of trafficking offences under Vietnamese law are somewhat in compliance with the definition of trafficking introduced by the *Trafficking Protocol*. However, there is no definition of trafficking in children under this anti-trafficking law of Vietnam. In the meantime, it should be noted that the 'prohibited acts' under the Vietnamese anti-trafficking law is not consistent with the 'means' element of trafficking offences under the *Trafficking Protocol*.

3. National Plan of Action (NPA)

The Vietnamese Government has taken active measures to address the matter and support victims through various national policies and procedures. An NPA was developed and enacted to ensure that prevention, protection and prosecution activities, and support are implemented nationally.

The first *NPA 2004 - 2010* (the Prime Minister issued the Decision 130/CP dated July 14, 2005 to approve the National Plan of Action against Crime of Trafficking in Women and Children during the period of 2004- 2010) focused explicitly on trafficking in women and children for prostitution, both internally and transnationally, and recognized the existence of trafficking under the guises of brokerage marriages and illegal adoptions. The *NPA* identified the (objective) causes of trafficking (in women and children) as the social disparity between the rich and the poor, 'unemployment status', 'poor living conditions', 'low level of education' with the emphasis on the 'influence[s] of bad factors such as unhealthy cultural flow and social evils including prostitution and drugs within the country and the region'. There are four main components with five major tasks assigned to ministries, agencies. Particularly, the Central Vietnamese Women's Union is in charge of raising awareness, the Ministry of Public Security with the duty of investigation and prosecution, the Border Commander (under the Ministry of Defense) is responsible for receiving victims at the border gates, the Ministry of Labour, War Invalids and Social Affairs with reintegration and recovery, and the Ministry of Justice

with reviewing related laws and legal documents and provide inputs for amendments and fresh legislation. Especially, mass organizations such as the Vietnam Youth Union (VYU) also participate in the programme.

A new *NPA* for the period of 2011 – 2015 has a significant shift in the focus of anti-trafficking policies away from trafficking only in women and children to ‘trafficking in persons’. However, the link between trafficking and labour migration discourses has not been recognized in this new *NPA*. The MPS remains the central agency in the anti-trafficking framework, being responsible for the majority of anti-trafficking measures, including investigation and prosecution, reception and identification of victims, enhancing policy and improving international cooperation.

4. International and regional cooperation

The Vietnamese government works with international organizations, non-governmental organisations (‘NGOs’) and foreign donors on the issue of human trafficking. Vietnam has signed and ratified the following international treaties: Convention on the elimination of all forms of discrimination against women; Convention on the rights of the child; Optional Protocol on the sale of children, child prostitution and child pornography; The United Nations convention against transnational organized crime and its Protocol; and Convention No 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

Vietnam has entered into forty agreements including Memorandum of Understanding with the Ministry of Public Security and the Ministry of Interior, as well as agreements with police forces of countries in the world and region. In addition, Vietnam also signed: 17 Mutual Legal Assistant Treaties to criminal matters and extradition with 16 countries and signed 01 Multilateral Legal Assistant Treaty with ASEAN. These agreements specify the focus on enhancing mutual cooperation in law enforcement and criminal procedures between the two related parties in suppressing the crime of trafficking in human; and given the regulations in the Trafficking in Persons as the only guideline on terminological issues. The cooperation in protection and assistance victims of trafficking, however, takes a humble place in agenda.

These national efforts help Vietnam to strengthen bilateral international cooperation in prevention and combat against transnational crimes in general and human trafficking crime in particular. In addition, International agreements and law can also help to shape future law reform and policy in Vietnam in relation to this issue. Conversely, given the non-binding nature of many international law instruments, Vietnam’s involvement may have only a limited impact on human trafficking (David et al., 2011).

IV. CONCLUSION

Generally speaking, Vietnam currently has an anti-trafficking law that looks good on paper, with its protection regime for trafficked persons quite close to the requirements of international standards. However, there are some progressive provisions in bilateral commitments which are not reflected in national law. Moreover, the practice of applying these ‘good-looking’ provisions to trafficking victims is a different story. Under Vietnamese law, even though trafficked persons are considered to be victims of crime as well as victims of human rights abuses, the prerequisite on protection the right of victims of trafficking, especially the principle of non-criminalization for trafficked persons are not to be regarded appropriately. Vietnam should also be recommended to pay more attention to migration issue as a feeding source of trafficking rather than just focus on criminal justice response.

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