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**Regional Centre for
East Asia and the Pacific**

Needs Assessment for Establishing a National Referral Mechanism in Vietnam



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List of Abbreviations

130 Program	State Program to Prevent and Combat Human Trafficking Crime During 2011-2015
130 Steering Committee	Steering Committee on National Defense and Anti-Trafficking in Persons
AF	Asia Foundation
BGC	Border Guard Command
CID	Criminal Investigation Department
COMMIT	Coordinated Mekong Ministerial Initiative Against Human Trafficking
GMS	Greater Mekong Sub-region
IOM	International Organization for Migration
LPSAHT	Law on Prevention, Suppression Against Human Trafficking in Vietnam
MOD	Ministry of Defense
MOFA	Ministry of Foreign Affairs
MOLISA	Ministry of Labor – Invalids, and Social Affairs
MPS	Ministry of Public Security
NCA	National Competent Authority
NRM	National Referral Mechanism
OSCE	Organization for Security and Co-operation in Europe
Palermo Protocol	United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons
SPC	Supreme People’s Court
TOC	UN Convention against Transnational Organized Crime
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNODC	United Nations Office on Drugs and Crime
WF	World Vision

Executive Summary

This report assesses the situation of trafficking in persons in the Socialist Republic of Vietnam and outlines current responses by key stakeholders, in regards to the identification, referral, assistance, and protection of victims of human trafficking. The overall goal of this report is to determine the feasibility of implementing a National Referral Mechanism (NRM) and to assist Vietnam in strengthening the capacity of current mechanisms to identify victims of human trafficking and refer them to support and protection. The findings of this report are based on the information provided by stakeholders and national actors as well as additional data gained from in-depth research. Relevant legislation and state programs are reviewed, and feedback from UNODC RCEAP in Bangkok on the preliminary findings and proposed recommendations has been incorporated into the report.

An NRM is “a cooperative framework through which actors fulfill their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society.”¹ Implementing an NRM brings myriad benefits, first and foremost being the ability to ensure the human rights of victims while providing an effective way to identify and refer victims to appropriate services.

Vietnam is conducting an extensive overhaul of their anti-trafficking efforts. This is evident through recently enacted legislation such as the LPSAHT and the 130 Program that attempts to enhance anti-trafficking responses. Other good practices are also emerging and ministerial cooperation in the matter is strengthening.

However, the LPSAHT’s new provisions are not properly harmonized with the articles that criminalize human trafficking in the Penal Code. This disconnect and the lack of a clear legal definition of human trafficking together spark major weaknesses within existing responses. Although Vietnam has a standardized referral mechanism in place to identify victims and refer them to care services, there is inconsistency in the initial victim identification process by first responders due to variable understanding and training. In addition, the absence of a standardized method to accurately collect and compile statistics leads to an uncertainty of the scope and nature of the crime.

In this context, implementing an NRM based on Vietnam’s current referral mechanism will preserve existing good practices while alleviating many of the present limitations. With the creation of the National Competent Authority (NCA), victim identification will be consistent, and training can be focused towards the NCA rather than the broad community of first responders. Furthermore, an NRM will streamline data collection and help to more accurately illustrate the scope and nature of the crime in Vietnam. Accurate data can initiate more proactive approaches through the creation of statistical and intelligence reports to target offenders before more victims are impacted.

¹ "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d. Web. 29 Nov 2012.

1. Introduction

The prevention of human trafficking is a global priority within government, civil society, and the private sector. Many states have ratified new anti-trafficking laws or updated old laws in accordance with international standards. Forums including the United Nations General Assembly and INTERPOL's General Assembly have addressed the gravity of the phenomenon and the necessity for action. However, efforts to reduce human trafficking have illustrated its complexity and resiliency. This socio-economic phenomenon is perpetuated by many factors and a holistic approach is required to counter the multi-faceted nature of human trafficking. In particular, it is imperative to not view human trafficking as just another crime but to treat it as one with extensive human-rights implications.²

Victims of human trafficking often experience abuse and neglect even after they are rescued due to a lack of expertise, experience, and policy to properly provide for the special needs of victims.³ Establishing a National Referral Mechanism (NRM) is an important step to ensure the human rights of trafficked persons after their rescue. An NRM is "a cooperative framework through which actors fulfill their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society."⁴ Implementing an NRM brings myriad benefits, first and foremost being the ability to ensure the human rights of victims while providing an effective way to identify and refer victims to appropriate services. Additionally, an NRM can help strengthen policy around victim-related issues, establish state programs, enhance cooperation, and monitor the progress towards major goals.⁵

NRMs are built on the existing capacity of the target country. This allows for an NRM to address the unique context of the country and establish a strong foundation to ensure its sustainability.⁶ Although there is no predesigned universal blueprint to build an NRM, it is important to incorporate a few cardinal principles:

1. Guidance on identifying and assisting trafficked persons while fully respecting their rights.⁷
2. A human-rights-based approach to refer trafficked persons to specialized support agencies including shelter, medical, social, and psychological support; legal services; assistance in obtaining proper identifications and permits; and repatriation assistance.⁸
3. Establishing an appropriate, officially binding mechanism designed to harmonize victim assistance with investigative and prosecutorial efforts.⁹
4. A comprehensive anti-trafficking framework and cross-sector cooperation that appropriately responds to the complexity of human trafficking and monitors and evaluates its progress.¹⁰

² "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d. Web. 29 Nov 2012.

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d. Web. 29 Nov 2012.

NRMs are carefully tailored to fit each country's unique human trafficking issues. Consequently, the conceptualization and implementation of a country's NRM is based on an in-depth assessment of country-specific needs and conditions. The main goal of this report is to assist Vietnam in increasing its capacity to identify, refer, assist, and protect the rights of trafficked persons. The report also provides guidance on how to strengthen existing identification and referral procedures, as well as recommendations on implementing an NRM within Vietnam's current capacity. Appropriately, this report focuses on the areas that work collectively to establish a well functioning NRM: identification, cooperation, support and protection services, repatriation, and social inclusion.¹¹

The methodology used for the research combines both qualitative and quantitative approaches. National legislation, policy documents, and statistics were reviewed and interviews were conducted in order to obtain relevant information from government ministries, NGOs, and international organizations. Interview questions were derived from questionnaires included in OSCE's National Referral Mechanism Handbook. While evaluating awareness campaigns, investigative measures, and offender prosecutions are out of this report's scope, these factors are essential to a comprehensive anti-trafficking plan. Additionally, examples of specific endeavors are described in this report; this is not to highlight best or bad practices but to accurately portray the current anti-trafficking responses of the country.¹²

¹¹ Solkner, Andrea. "Needs Assessment of the National Referral Mechanism for Victims of Trafficking in Human Beings in Ukraine." OSCE Office for Democratic Institutions and Human Rights, n.d. Web.

¹² Ibid

2. Human Trafficking in Vietnam

Vietnam is mainly a source country for human trafficking. Men, women, and children are trafficked from Vietnam for various exploitative purposes. Victims are generally trafficked to countries within the Greater Mekong Sub-region (GMS), in particular, Cambodia and China. The Ministry of Public Security (MPS) recorded 2,935 Vietnamese victims between 2004 and 2009.¹³ In addition, 1,586 human trafficking cases were prosecuted and 2,888 offenders were convicted in Vietnam within those years.¹⁴

Migrant workers are highly vulnerable to human trafficking. With increasing economic integration and globalization, Vietnam has attracted 26 million migrants from the GMS, the Middle East, and countries in Africa.¹⁵ Vietnam is also experiencing a strong migration from rural areas to urban areas with 45% of the country's population projected to live in urban areas by 2020.¹⁶ Although there is no accurate statistic on the number of Vietnamese migrants working abroad, some estimate that it is more than a million in countries such as Taiwan, Japan, South Korea, and Malaysia. Labor export companies and agents play a vital role in pushing both regular and irregular migration.¹⁷ High fees charged by labor export companies cause Vietnamese workers to have some of the highest debt among Asian expatriate workers.¹⁸

According to United Nations Inter-Agency Project on Human Trafficking (UNIAP) there are five major trafficking trends in Vietnam:

1) Vietnamese nationals are trafficked from Northern Vietnam into China for forced marriage, sexual exploitation, or labor exploitation. In particular, ethnic minorities (Hmong) being trafficked into China is an emerging issue.¹⁹ Statistics illustrate that this trafficking route accounts for 70% of the identified women who are trafficked abroad but this may represent law enforcement's focus rather than the actual trend of the crime.²⁰ It is interesting to note that one of the factors fueling forced marriage is the pressure on Chinese males for marriage within China's overwhelmingly uneven male/female ratio.²¹ Additionally, there have been cases where children are abducted for illegal adoptions to Chinese families who desire a son.²²

¹³ United Nations Inter-Agency Project on Human Trafficking. *Mekong Region Country Datasheets Human Trafficking 2010*. Bangkok, Thailand: UNIAP, 2010. Print.

¹⁴ Interview with Mr. Dang Quang Phuong, Standing Deputy Chief Justice, People's Supreme Court

¹⁵ Taylor, William. "Vietnam's Migrant Workers: Greatest Advantage, Challenge." Asia Foundation, 28 2011. Web. <<http://asiafoundation.org/in-asia/2011/09/28/vietnams-26-million-migrant-workers-greatest-advantage-greatest-challenge/>>.

¹⁶ "SIREN Vietnam Human Trafficking Data Sheet." United Nations Inter-Agency Project on Human Trafficking, n.d. Web.

¹⁷ Ministry of Foreign Affairs. Consular Department. *Review of Vietnamese Migration Abroad*. Hanoi, Vietnam: Consular Department, Ministry of Foreign Affairs, 2012. Print.

¹⁸ Department of State. *Trafficking in Persons Report 2012*. Department of State, 2012. Print.

¹⁹ UN Working Group on Human Trafficking Meeting 11/24/2012

²⁰ United Nations Inter-Agency Project on Human Trafficking. *Mekong Region Country Datasheets*

²¹ United Nations Inter-Agency Project on Human Trafficking. *Mekong Region Country Datasheets*

²² United Nations Inter-Agency Project on Human Trafficking. *Human Trafficking Sentinel Surveillance*. 2010. Print.

Victims usually come from northern provinces of Quang Ninh, Lang Son, Cao Bang, Lao Cai, Ha Giang, and Lia Chau.²³ These provinces share a 1,463 km border with China and the victims from these provinces are usually trafficked into Chinese communities of Bang Tuong, Dong Hung, Quang Xi, Nam Ninh, and Ha Khau.²⁴

2) Vietnamese nationals are trafficked from Southern Vietnam to Cambodia, Malaysia, Lao PDR, or Thailand for sexual exploitation. Between 15% and 32% of sex workers in Cambodia are Vietnamese and around 50% of the Vietnamese victims identified in Cambodia come from An Giang province.²⁵ Other documented source provinces include Ho Chi Minh City, Tay Ninh, Kien Giang, and Dong Thap.²⁶

3) Vietnamese women are lured into arranged marriages and flown to Taiwan, South Korea, Singapore, and Malaysia. Victims are lured with promises of receiving up to \$5,000 and a wealthy husband, only to find themselves as domestic slaves.²⁷

4) Vietnamese nationals are trafficked to countries and regions outside of the GMS, including Macau, Hong Kong, Japan, and Europe. Victims are mainly trafficked for the purposes of sexual exploitation. The United States Department of State's 2012 Trafficking in Persons Report recorded men subjected to forced labor and debt bondage aboard fishing vessels in New Zealand waters. In addition, Vietnamese men and children were coerced to work on Marijuana farms in the United Kingdom, trafficked into Angola for sexual exploitation, and trafficked into Cyprus for domestic servitude and labor exploitation in the industrial, construction, and agriculture sectors.²⁸

5) Internal trafficking is prevalent in most provinces in Vietnam. Victims are usually trafficked from rural areas to urban areas for exploitation. A rising trend of child trafficking for sexual exploitation is apparent in urban areas fueled by a culture of sex tourism.²⁹ Children are also trafficked internally for labor exploitation such as forced begging, street hawking, and mining.³⁰ The Vietnamese government recently acknowledged the existence of internal trafficking and labor trafficking and measures are being implemented to address these issues but the scope and extent of the efforts are uncertain.

²³ Ibid

²⁴ "SIREN Vietnam Human Trafficking Data Sheet." United Nations Inter-Agency Project on Human Trafficking, n.d. Web.

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ Department of State. *Trafficking in Persons Report 2012*. Department of State, 2012. Print.

²⁹ Ibid

³⁰ Ibid

3. Legal Framework in the Context of Human Trafficking

3.1 Ideal Legal Requirements for an NRM

The UN Convention against Transnational Organized Crime (TOC) and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) detail basic provisions that are necessary in any comprehensive approach to combat human trafficking. Furthermore, governments are encouraged to go further upon meeting these basic provisions. For an example, the Council of Europe Convention on Actions against Trafficking in Human Beings includes provisions that are not covered in the TOC or Palermo Protocol such as corporate liability and monitoring mechanisms.³¹ The concept and methodology of an NRM are based on the Palermo Protocol's broad definition of human trafficking:

“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.”

The provisions covered by the TOC and Palermo Protocol also contain key legal and practical elements required when creating an ideal NRM, such as including a distinct offence of human trafficking and providing proportional penalties to serve as a deterrent to traffickers.³²

The Palermo Protocol stipulates that victims of human trafficking should not be punished for any offences or crimes that they committed while trafficked.³³ In addition, it is ideal to have provisions that provide compensation to victims and the ability to seize criminal gains or assets. Compensation payments to victims can create a positive effect to help overcome the traumatic experience and reintegrate back into the community.³⁴ A portion of the funds used to compensate victims can be derived from seized criminal gains or assets.³⁵

An effective NRM requires support and protection services to assist with the victim's recovery from the traumatic experience, repatriation back to their home, and reintegration back into the community. These support and protection services should be accessible to all categories of

³¹ Council of Europe. *Convention on Action against Trafficking in Human Beings*. Warsaw, Poland. 2005. Web <<http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>>.

³² United Nations. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. 2000. Print.

³³ Ibid

³⁴ "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d.

³⁵ Ibid

victims and a wide range of different specialized services are critical to address the specific needs of each victim.³⁶ Child victims require special safeguards and care. It is important to define a minor as anyone under 18 years old and to provide appropriate support for the special needs of child victims, including permanent placement, legal guardianship, and education.³⁷

Granting legal residence for foreign victims “is one of the most important elements in securing the safety, compassionate treatment, and rehabilitation of victims.”³⁸ Residence status for victims prevent immediate deportation from the country and overcomes any issues that hinder victims from receiving support services due to illegal residence status. Furthermore, such status allows for a reflection period or a time period where a victim is protected and supported before interacting with the police. This is essential to allow a victim to make a more sound decision on whether to cooperate with the investigation and any subsequent prosecution of the trafficker.³⁹

A well functioning NRM requires data protection laws to safeguard the information entrusted to authorities by victims.⁴⁰ Personal data associated with human trafficking victims should not be shared and should be used only for the purposes for which it was originally compiled.⁴¹ Moreover, legislating confidentiality through data protection legislation can build trust and increase cooperation with victims. Often times, victims are afraid to reveal personal data out of fear of prosecution, stigmatization, or deportation.

Assessing the existing legislation, legal procedures, and practices that relate to human trafficking is necessary to determine whether the aforementioned legal requirements are being met and to construct the NRM on the existing national capacity⁴² In Vietnam, there are several laws, circulars, and decrees that act as the guiding principle of its anti-trafficking efforts and that can be used during the initial establishment of the NRM.

3.2 Law on Prevention, Suppression against Human Trafficking in Vietnam

The Law on Prevention, Suppression against Human Trafficking in Vietnam (LPSAHT) was passed on March 29, 2011 and took effect on January 1, 2012.⁴³ The LPSAHT is Vietnam’s comprehensive response to human trafficking with 58 articles that encompass prevention,

³⁶ "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d.

³⁷ United Nations. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. 2000. Print.

³⁸ Ibid

³⁹ "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d.

⁴⁰ Ibid

⁴¹ Ibid

⁴² "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d. Web. 29 Nov 2012.

⁴³ United Nations. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. New York City: , 2000. Print.

prosecution, protection, and partnership. Pursuant to passing the LPSAHT, Vietnam ratified the TOC in June 2012 and acceded to the Palermo Protocol.⁴⁴

Article 2 (Interpretation of terms) provides the definition of “sexual exploitation, sexual slavery, forced labor, and victim.” Subsequently, article 3 (Prohibited acts) lists the acts that are prohibited under this law. It is noteworthy that this article protects victims from discrimination in clause 9 and ensures their confidentiality under clause 10. Article 6 (Rights and obligations of victims) addresses the need for victims to receive support and compensation.

The LPSAHT acknowledges both internal trafficking and cross-border trafficking but provides two different referral and support measures for victims. According to article 24 (Receipt and verification of domestically trafficked victims), internally trafficked victims are referred to the commune-level People’s Committee where the victim is initially checked for basic information and given a “certificate of victim status” within three days. Subsequently, in coordination with MOLISA, the People’s Committee is required to refer the victim to appropriate care services. It is important to note that children who are victims of human trafficking are specifically assigned to a qualified person for shelter. Victims are given a reflection period between twenty days and two months before the identification process is completed.

In addition, article 25 (Receipt and verification of rescued victims) of the LPSAHT stipulates the general referral process for victims of human trafficking. The process is identical to the action described in article 24 for domestically trafficked victims but a district-level MOLISA division is responsible for managing the process rather than a commune-level People’s Committee.

Vietnamese nationals who were trafficked abroad are addressed in article 26 (Receipt and verification of victims returning from abroad). This article states that an “overseas Vietnam representative agency” is responsible for coordinating with the MPS to provide the victim with appropriate documents and travel arrangements to return home. Once the victim is in Vietnam, MPS or BGC is required to assist the victim in receiving support. Victims returned under a bilateral international agreement or victims who returned to Vietnam through their own terms are also entitled to the stipulations under article 26.

Other relevant articles involved in victim identification and protection include, article 27 (Basis for identifying victims), article 28 (Papers and documents proving victims), article 29 (Rescue and protection of victims), and article 30 (Protection of victims and their relatives).

The LPSAHT contains a number of provisions for victim support. Article 32 (Support beneficiaries and regimes) lists the support services that are available for Vietnamese victims: support to meet essential needs and for travel expenses; medical support; psychological support; legal aid; support in education and vocational training; and initial allowance and loan borrowing. Foreigners who are trafficked into Vietnam are only entitled to medical, psychological, and legal support; funds for travel expenses; support to meet essential needs; and do not receive education, vocational training, or initial allowance. The aforementioned support services are described in more detail in subsequent articles: Article 33 (Support to meet

⁴⁴ Vietnam does not consider itself bound by article 15 clause 2 of the Palermo Protocol. The article allows disputes of the interpretation or application of the protocol between two or more countries to be submitted to arbitration. If a compromise is not reached within 6 months, the dispute may be referred to the International Court of Justice.

essential needs and travel expenses), article 34 (Medical support), article 35 (Psychological support), article 36 (Legal aid), article 37 (Support in education and vocational training), and article 38 (Initial allowance and loan borrowing). It is also noteworthy that under article 37 clause 1, victims who are children are entitled to money for school fees, textbook fees, and school supply expenses for the first year.

Article 40 (Social security and victim support establishments) states that “victim support establishments shall be set up by Vietnamese organizations or individuals.” The victim support establishments are obliged to provide shelter for victims; medical and psychological support; education and vocational training; and assistance to integrate back into society. Despite these critical responsibilities of victim support establishments, the LPSAHT explicitly mentions that developing and operating these establishments are not funded by the state budget.

The LPSAHT refers to data protection in several articles. Clause 10 in article 3 prohibits disclosing information of the victim without their consent and clause 9 prohibits the stigmatization and discrimination of victims. Under article 31, relevant government entities are required to keep data on victims confidential and courts can hold closed court hearings at the request of the victim or their attorney.

In articles 41-52, the goals and responsibilities addressed in the LPSAHT are allocated to relevant ministries. Additionally, the framework to enhance international cooperation to prevent human trafficking is described in articles 53-56.

Due to the relatively new nature of the LPSAHT, it is difficult to gauge the successful interpretation and application of the law. Circulars and decrees that specify the implementation framework at the ground level are currently being drafted.⁴⁵

3.3 Penal Code

Human trafficking is prosecuted under article 119 and 120 in the Penal Code. Article 119 (Trafficking in women) is punishable by imprisonment for 2 to 7 years. The length of incarceration increases to five to twenty years if the crime was committed with one of the following circumstances: trafficking in women for the purpose of prostitution; in an organized manner; in a professional manner; for the purpose of sending them overseas; trafficking more than one person; or trafficking more than once. In 2009, Law No. 37 amended article 119 of the Penal Code and expanded the article from “trafficking in women” to “trafficking in humans.”⁴⁶

Article 120 (Trading in, fraudulently exchanging or appropriating children) explicitly stipulates that the trafficking of children shall be punishable by imprisonment between 3 to 10 years. Similarly to article 119, the punishment increases to 10 to 20 years of imprisonment or a life sentence if it was committed under one of the following circumstances: in an organized manner; in a professional manner; for a despicable motive; trading in, fraudulently exchanging or appropriating more than one child; for the purpose of sending them abroad; for the use of inhumane purposes; prostitution; dangerous recidivism; or causing serious consequences. Both

⁴⁵ Interview with Mr. Ngoc Anh Nguyen, National Project Coordinator, United Nations Inter-Agency Project on Human Trafficking

⁴⁶ Interview with Mr. Dang Quang Phuong, Standing Deputy Chief Justice, People’s Supreme Court

articles 119 and 120 state that the offender may be subject to a fine of 5 million to 50 million dong in conjunction with a probationary period of 1 to 5 years after serving their initial prison term.

Additional articles in the Penal Code that are relevant in the human trafficking context include article 114 (Forcible sexual intercourse with children) that prohibits any sexual relations with a person who is less than 16 years old. Article 254 (Harboring prostitutes) punishes anyone who operates a brothel or entices a woman into prostitution with 1 to 7 years in prison. Under article 255 (Procuring prostitutes), obtaining the services of a prostitute is prohibited and carries a sentence of 6 months to 5 years. It is interesting to note that the punishment for having sexual relations with someone between 13 and 16 is “reeducation without detention for a period of up to 1 year or from 3 months to 3 years in prison.” The definition of reeducation and the justification for a lesser sentence after having sexual relations with a person between 13 and 16 is unclear.

Forced marriage or impeding a voluntary marriage is criminalized under article 146 in the Penal Code. In detail, this article penalizes forced marriage or impeding a voluntary marriage through the means of abuse, maltreatment, psychological intimidation, or demands for material wealth. Bigamy is criminalized in article 147 (The crime of bigamy). Article 145 (Organizing underage marriage, entering into underage marriage) prohibits arranging a marriage or marrying a person who is not of marriage age; the article, however, does not define an age for a person who is not of age for marriage.

Assets can be confiscated under article 41 (Confiscation of objects and money directly related to crimes) of the Penal Code. Article 41 permits the confiscation of tools and means used for the commission of crimes; objects or money acquired through the commission of crime; and objects banned by the state. In addition, principles of compensation for material and moral damages are found in article 42 (Return of property, repair or compensation for damage; or compelling to make public apologies). Article 42 requires the offender to return appropriated property to lawful owners and repair or compensate for material damage. In the case of moral damage, the victim may receive compensation caused by the offense.

The criminalization of human trafficking should encompass attempts to commit the offence, participation as an accomplice, and organizing the crime. Appropriately, article 18 (Incomplete Commission of a Crime) holds offenders who do not complete a crime due to causes beyond the control of the offender to bear full penal liability. Article 20 (Complicity) stipulates that organizers, executors, and instigators are all accomplices of a crime.

The 2012 United States Department of State’s Trafficking in Persons Report found that authorities prosecuted 153 human trafficking cases with 274 convictions in 2010. During 2011, the same numbers of cases were reported but the Vietnamese government estimated 350 convictions.⁴⁷ Most of these cases were prosecuted under articles 119 and 120 of the Penal Code and the annual number of prosecutions and convictions are expected to rise with the application of the LPSAHT.

⁴⁷ Department of State. *Trafficking in Persons Report 2012*. Department of State, 2012. Print.

3.4 Labor Code

A number of articles in the Labor Code of Vietnam are important to mention due to its application in the labor trafficking context. Most notably, article 5 explicitly prohibits ill treatment and forced labor. Clause C of article 37 stipulates that an employee under a labor contract ranging from 1 to 3 years may terminate their contract if the employee is maltreated or forced into labor. Furthermore, Article 120 of the labor code forbids the employment of children below 15 years old except for jobs approved by MOLISA. The approved employment for children below the age of 15 is explicitly on-the-job learning or apprenticeships with close supervision.

Article 133 of the labor code requires foreigners working for a Vietnamese organization to possess a labor permit issued by MOLISA. In the case of violating the provisions of article 133 or dispatching Vietnamese laborers without proper documentation, a fine of 3,000,000 VND is imposed under Article 21 of decree 38.

3.5 Bi-lateral and Multi-lateral Agreements

Vietnam is a part of several bi and multi-lateral agreements. Multi-lateral agreements that Vietnam participates in includes the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (2004); Treaty on Mutual Legal Assistance on Criminal Matters (2004); COMMIT MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (2005); and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).⁴⁸ As part of the Coordinated Mekong Ministerial Initiative Against Human Trafficking (COMMIT) process, Vietnam is obligated to implement the COMMIT Sub-regional Plans of Action (COMMIT SPA I, 2005–2007; COMMIT SPA II, 2008–2010 and COMMIT SPA III 2011–2013), which provide a framework to strengthen inter-country and regional cooperation and enhance national capacities to prevent human trafficking.⁴⁹

Vietnam participates in bi-lateral agreements with all COMMIT countries with the exception of Myanmar. These agreements include the Agreement with Lao PDR on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking (2010); Agreement with Cambodia on Cooperation to Combat Trafficking in Women and Children (2005); Agreement with Thailand on Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking (2008); Agreement with China on Strengthening Cooperation on Preventing and Combating Human Trafficking (2010); and a cooperation agreement with Cambodia on standard operating procedures on identification and repatriation of trafficked victims (2009). These bi-lateral agreements establish the scope of cooperation, including logistics on repatriation, support services, and social inclusion. For example, Vietnam and China signed an MOU formalizing the cooperation of the two countries' anti-trafficking efforts, including the process for providing assistance, protection, and repatriation.⁵⁰ In addition, the MOU stipulates that victims shall not be considered offenders, prosecuted for illegal entry

⁴⁸"National Laws and Agreements: Vietnam." *United Nations Intern-Agency Project on Human Trafficking*. UNIAP. Web. <http://www.no-trafficking.org/resources_laws_vietnam.html>.

⁴⁹ Ibid

⁵⁰ Re(Integration)Perspectives of Victim Service Agencies on Successes and Challenges in Trafficking Victim (Re)Integration in the Greater Mekong Sub-Region." *COMMIT*. N.p., n.d. Web.

and immigration law, or detained.⁵¹ However, some bi-lateral agreements are unclear on which country shoulders the cost of repatriation and social services.

3.6 Decree 62

Decree 62 came into effect on October 10, 2012 and addresses the issue of victim identification. Before decree 62, authorities required the identification or arrest of the trafficker for an individual to receive victim status and support. Pressure from civil society influenced the development of a broadened method to identify victims. Within the decree, identification of the victim is based on several factors, which include documents and evidence by the agency conducting the proceedings; information and documents issued by the rescued victims; information and documents provided by the Vietnamese representative offices abroad; documents issued by the foreign counterpart; the testimony provided by the victim; and the testimony provided by witnesses.

If the factors mentioned above are not enough to determine whether the individual is a victim, other determinants are provided to help with the identification process. These factors include, if the victim was rescued with other victims; the amount of time that the victims were absent from home; signs of sexual exploitation, forced labor, mistreatment, injury, fear, panic, or depression; and other relevant information that can contribute to the identification.

3.7 Weaknesses

Although the LPSAHT and the articles from other legal codes act as a good normative base, there is room for improvement in Vietnam's legal response to human trafficking. In particular, some key provisions and structures required for a comprehensive anti-trafficking approach and a well functioning NRM are missing.

As previously mentioned, the complexity of human trafficking requires a broad definition of the crime in order to have the ability to adapt to new forms of human trafficking.⁵² The LPSAHT does not contain a definition of trafficking in persons and the understanding of the crime must be derived from article 2 (Interpretation of terms) and article 3 (Prohibited acts). Vietnamese versions of the Penal Code and LPSAHT use the term "buying and selling" rather than human trafficking; this fails to acknowledge the 3 elements that collectively define human trafficking in the Palermo Protocol.⁵³ Article 3 (Prohibited acts) of the LPSAHT mentions all 3 elements but human trafficking offences are prosecuted under articles 119 and 120 of the Penal Code and the LPSAHT only offers guidance on the interpretation of these articles. Although the Penal Code criminalizes some of the acts listed in article 3 (Prohibited acts), it does not encompass all of the listed prohibited acts, resulting in the uncertainty of the application and interpretation of article 3 (Prohibited acts).

⁵¹ Re(Integration)Perspectives of Victim Service Agencies on Successes and Challenges in Trafficking Victim (Re)Integration in the Greater Mekong Sub-Region." *COMMIT*. N.p., n.d. Web.

⁵² United Nations. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. New York City:, 2000. Print.

⁵³ The Palermo Protocol definition of human trafficking consists of three distinct elements: the act, the means, and the purpose.

An explicit provision that protects victims from prosecution is missing. Without victim protection from prosecution, there remains the possibility of victims being prosecuted for crimes committed while they were trafficked. Furthermore, the LPSAHT does not address granting permits, visas, temporary residence, political asylum, or work visas to foreign victims. Under article 36 (Legal aid), victims may receive legal aid to register residence and carry out other legal procedures but this is too ambiguous to conclude that foreign victims could receive temporary residence status or work visas.

Article 6 (Rights and obligations of victims) addresses the need for victims to receive support and compensation. But clauses 4 and 5 under this article also stipulate the victim to comply with requests and provide information relating to the violations of the law. Misapplication of this clause may initiate premature interviews or result in victim care services being conditional to providing investigative support.

Decree 62 is too narrow. The decree acts as the guideline for identifying victims of human trafficking but does not include a detailed list of indicators or determinants that victims can display.

Finally, the LPSAHT contains provisions that are specifically for children but the definition of a minor is anyone under the age of 16. This also creates inconsistencies within bi-lateral agreements. For example, the bi-lateral agreement with Lao PDR contains the Palermo Protocol definition of human trafficking and defines a minor as a person under 18.

4. Current Anti-Trafficking Situation

4.1 NRM at the Operational Level

In many cases, first responders, such as police officers, NGO workers, social workers, and health workers, are the ones that identify victims of human trafficking. However, the size of this community results in varied understanding and training in victim identification, which leads to inconsistent decision making when determining whether somebody is a victim. The NRM addresses this issue through a National Competent Authority (NCA) that consists of a team of specialists trained to determine whether a person is a victim of human trafficking. Having a specialist team to identify victims prevents inconsistent identification and brings other advantages:⁵⁴

1. Creates consistency and standardization in victim identification,
2. Prevents overlap in victim identification and referral efforts,
3. Minimizes misidentification of victims due to a lack of awareness,
4. Training can be administered to the NCA rather than a broad range of actors,

⁵⁴ Project Proposal, NRM Cambodia, 2011

5. Harder for offenders to influence the process,
6. Creates formal cooperation among stakeholders,
7. Creates a single database for victim data and case files and
8. Victims are not criminalized, prosecuted, or deported.

The NRM process starts when victims are referred to the NCA by first responders that are trained to identify *potential* victims of human trafficking.⁵⁵ A basic screening interview is conducted and the NCA refers the *potential* victim to appropriate support services. If the individual is identified as a victim, a reflection period is given for the victim to consider whether to cooperate with the criminal justice system. This reflection period is also critical for the victim to commence their recovery from trauma, fear, and mistrust of authority and greatly enhances the ability to conduct a successful interview.⁵⁶ Finally, an in-depth interview is conducted for a conclusive decision on the status of the victim.

In any referral mechanism, stakeholders must understand both their responsibilities and the responsibilities of other actors to know where and to whom to refer victims for support.⁵⁷ When standards are not consistently applied and stakeholders are not certain of their responsibilities, victims are not immediately identified and do not receive appropriate support. Consequently, victims may be criminalized and prosecuted for violation of immigration laws; working as an undocumented worker; violation of labor laws; or engaging in prostitution.⁵⁸ Subsequently, victims may be arrested and incarcerated or deported and run the risk of being re-trafficked.

There are other major challenges involving victim identification. Victims quite often fear retaliation from their traffickers, stigmatization or rejection by society, and prosecution for one of the above-mentioned violations.⁵⁹ These challenges can deter a victim from seeking help, assisting law enforcement investigations, or assisting in prosecuting traffickers.

In addition to the aforementioned advantages, standardization through an NRM does much to prevent these negative occurrences. With an NRM, the identification and referral of a victim is inseparably connected through a cross-sector approach that involves all key stakeholders and streamlines disjointed approaches into a "broad program of interlinked responses."⁶⁰ Support and protection services would be accessible for all victims of human trafficking and include a wide range of different specialized services for each victim.⁶¹ Finally, the NRM's human-rights-based approach would increase victim cooperation in human trafficking investigations and prosecutions.

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Organization for Security and Co-operation in Europe Mission in Kosovo. Department of Human Rights, Decentralization and Communities. *Assessment for Establishing A Referral Mechanism for Victims of Trafficking in Human Beings in Kosovo*. 2007. Print.

⁵⁸ Organization for Security and Co-operation in Europe Mission in Kosovo. Department of Human Rights, Decentralization and Communities. *Assessment for Establishing A Referral Mechanism for Victims of Trafficking in Human Beings in Kosovo*. 2007. Print.

⁵⁹ Organization for Security and Co-operation in Europe Mission in Kosovo. Department of Human Rights, Decentralization and Communities. *Assessment for Establishing A Referral Mechanism for Victims of Trafficking in Human Beings in Kosovo*. 2007. Print.

⁶⁰ Project Proposal, NRM Cambodia, 2011

⁶¹ "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d. Web. 29 Nov 2012.

Many actors contribute to Vietnam's anti-trafficking program and an analysis of the current mechanisms and initiatives is necessary to determine their effectiveness and how an NRM can be built upon current efforts.

4.2 State Anti-Trafficking Program

In March 2011, the National Assembly approved the State Program to Prevent and Combat Human Trafficking during 2011-2015 (130 Program).⁶² The 130 Program endeavors to implement the responsibilities set forth by the LPSAHT and to enhance inter-ministerial collaboration to combat human trafficking and provide assistance to victims. The 130 Program's overall objective is divided into five goals:

1. Increase the awareness of human trafficking,
2. Increase the effectiveness of investigation and prosecution of human trafficking cases,
3. Increase the ability to identify victims and provide protection and assistance,
4. Strengthen legislation to properly address human trafficking, and
5. Increase the effectiveness of international cooperation to prevent human trafficking.

The 130 Steering Committee is responsible for managing the overall implementation of the Program and target goals and projects are allocated towards cooperating ministries to utilize their expertise. The responsible entities for putting the 130 Program into practice include MIC, MOJ, VWU, MND, MOLISA, and MPS.

270 billion VND or 13 million USD is allocated from the central budget to fund the 130 Program. Most encouraging is the large portion of the funding allocated to projects that increase victim protection and assistance. A total of 16 billion VND is appropriated to identifying victims and another 64 billion VND is allocated towards creating shelters and providing care and legal services. It is also encouraging that the amount of funds allocated towards local bodies is significantly higher than the amount allocated towards ministerial and central sectors.

Victim assistance efforts exclusively encompass Vietnamese citizens. There is little reference made to the repatriation or social inclusion of victims from other countries. However, the 130 Program includes specific target objectives to enhance international cooperation in preventing human trafficking by implementing international treaties and fostering bilateral cooperation.

The 130 Program includes several target goals to strengthen the co-operation between government institutions, but fails to detail how cooperation between government institutions and civil society should be enhanced. A general need for enhancing inter-disciplinary coordination between government and "social organizations" is mentioned in the implementation process but there is no specific target goal or project associated with this commitment.

Decrees and circulars are being drafted to properly identify what resources are necessary, where the tasks will take place, when they will be performed, and how they will be performed. These include a circular by MOLISA on providing guidelines on the implementation of policies

⁶² The State Program is known as the 130 Program after its decision number.

and supporting returnees; a circular by MPS on providing guidelines on victim identification, reception and support for reintegration; and a circular by MOLISA on guidelines on the establishment of centers for supporting victims.

4.3 The 130 Program at the Local Level

Local steering committees were established to implement the 130 Program at the regional level. Local steering committees are headed by the President of the People's Committee and include 17 officials from relevant sections. Most recently, a preliminary test to measure the understanding of human trafficking was conducted among province level actors, and 75% of the participants did not meet the requirements.⁶³ As a result, 150 training sessions were organized at the local level to increase the understanding and awareness of human trafficking among relevant actors.

4.4 Steering Committee on National Defense and Anti-Trafficking in Persons (130 Steering Committee)

The 130 Steering Committee was set up to oversee the overall implementation of the 130 Program. Headed by the Deputy Prime Minister, 17 officials from relevant ministries meet quarterly to discuss the progress of implementation, share best practices, and discuss new ideas. The 130 Steering Committee works closely with multiple NGOs and international organizations such as IOM, World Vision, UNICEF, and UNIAP. The committee is tasked with increasing the understanding of human trafficking among relevant actors and has overseen the organization of 20 courses at the central level and the creation of a training manual with the support of IOM. Members of the committee entertained the idea of the National Referral Mechanism and welcomed further dialogue on the concept and its implications.

4.5 Ministry of Public Security

MPS oversees all law enforcement issues and administers both the regular police and the public security forces, the latter being a paramilitary force responsible for internal security.⁶⁴ Currently, MPS is tasked with managing state efforts related to human trafficking.⁶⁵

MPS has multiple responsibilities associated with the management of all government related human trafficking efforts, which include: continually assessing and improving the LPSAHT; incorporating the expertise of relevant ministries and agencies in prevention efforts; providing appropriate training to personnel involved in human trafficking matters; compiling statistics and publish best practices; monitoring and evaluating the implementation of the LPSAHT; enhancing international cooperation; and arranging police forces to competently investigate human trafficking and identify victims.⁶⁶

⁶³Interview with Col. Nguyen Kien, Director of Standing Office on Drugs and Crime, Ministry of Public Security

⁶⁴ Interview with Col. Nguyen Kien, Director of Standing Office on Drugs and Crime, Ministry of Public Security

⁶⁵ Ibid

⁶⁶ Ibid

Within MPS, the Immigration Department is in charge of coordinating the referral process for cross-border victims. This entails cooperating with the local police to verify the victim's identity and with MOLISA to provide support services.

4.6 Ministry of National Defense (Border Guard Command)

The Ministry of National Defense directs the Border Guard Command (BGC) to combat human trafficking on the border and islands of Vietnam. The BGC is also responsible for receiving and providing support to victims who were trafficked across borders. Initial interviews are conducted by the BGC to determine whether an individual is a victim of human trafficking and to assess what services are needed. Interviewing skills depend drastically on the particular officer's abilities and training.⁶⁷ For child victims, BGC tries to bring in relatives or a familiar face to increase the level of cooperation from the child.

Circular 03 created victim reception houses operated by the BGC to provide for a temporary place for victims to stay before they return home or are sent to long-term shelters, but only 5 border gates out of more than 200 currently have reception houses due to a lack of funding. Additionally, these reception houses can only accommodate 4 to 6 people and have very few amenities.⁶⁸

Data collected by the BGC on human trafficking victims and arrested traffickers are all in hardcopy case files. According to the BGC, in 2012, there were 209 human trafficking cases, 197 convicted traffickers, 201 rescued victims and 190 self-identified victims.⁶⁹ However, statistics provided by other ministries are not consistent with these numbers.

According to the BGC, most officers at the local level are using the direction on circular 03 to identify and refer victims.⁷⁰ But this circular is out of date and does not incorporate the broadened approach of decree 62. As a result, until new circulars are drafted to detail the implementation and understanding of decree 62, officers are constrained to the limited definition provided by circular 03. The BGC is also restricted from conducting its own investigations. Preliminary investigations are permitted but cases are then transferred to the relevant local police department and usually restarted from the beginning, causing overlap and duplication in the initial investigative stages.

4.7 Ministry of Labor - Invalids and Social Affairs

MOLISA is in charge of providing protection, support services, and assisting with the reintegration of victims. Local MOLISA offices offer vocational training, loans, and job placement assistance for up to 6 months.⁷¹ Additionally, MOLISA created new vocational programs for

⁶⁷ Interview with Col. Ngoc Cu Nguyen, Deputy Director of Border Gates Department, Border Guard Command, Ministry of Defense

⁶⁸ Ibid

⁶⁹ Interview with Col. Ngoc Cu Nguyen, Deputy Director of Border Gates Department, Border Guard Command, Ministry of Defense

⁷⁰ Ibid

⁷¹ Interview with Ms. Le Thi Ha, Director of Social Evil Prevention Department, Ministry of Labor - Invalids, and Social Affairs

victims of human trafficking and it is incorporating victim support measures in its established programs on poverty reduction, vocational training, employment assistance, gender equality, and child protection.⁷²

MOLISA is in the process of developing decrees and circulars that will detail the procedure to support repatriation, establish more centers, and support existing NGO centers. Nevertheless, centers are short staffed and victim support is constrained due to a lack of funding.⁷³ Training and workshops for support services staff are administered with the assistance of UNICEF, UNIAP, AAT, IOM, AF, and World Vision. For instance, the Victim Assistance Manual for Social Workers and Staff Providing Services to Victims of Human Trafficking was created in collaboration with AF. This manual focuses on offering victim-based and victim-centered support approaches and provides minimum standards, case management techniques, and general information on how to offer good support.⁷⁴

4.8 Ministry of Foreign Affairs

MOFA collaborates with MPS to enhance international cooperation to prevent human trafficking, protect Vietnamese citizens who are trafficked abroad, and coordinate their safe return. MOFA is also the focal point for implementing international human rights treaties, represents Vietnam at bilateral and multilateral dialogues on human rights, and coordinates a number of country reports to human rights treaty bodies. New MOFA officials who are assigned to one of the 74 missions abroad are provided with human trafficking courses before departure.

According to MOFA, when potential victims self-identify at Vietnamese embassies or are referred by the country's police, embassy staff are responsible for interviewing the potential victim to obtain basic information and make an initial assessment on whether the individual is a victim. However, the interview questions vary on a case-by-case basis and interviewers do not have a structured list of questions or a list of indicators of human trafficking.⁷⁵ After the initial interview, the information is verified with MPS and the victim is sent home and referred to MOLISA for support services. This process may take up to 30 days, but MOFA coordinates with local authorities to provide accommodation, basic necessities, and support services.⁷⁶

Who takes on the cost of repatriation depends on the coordinating country, but funds are available in the "protecting Vietnamese citizen fund." According to MOFA, the burden of cost to repatriate and support foreign victims who are trafficked into Vietnam is borne by the government of Vietnam. Foreign victims who require time to recover are granted a 6-month permit to stay in the country.⁷⁷

⁷² Ibid

⁷³ Ibid

⁷⁴ Ministry of Labor, Invalids and Social Affairs. Department of Social Evil Prevention. *Victim Assistance Manual for Social Workers and Staff Providing Services to Victims of Human Trafficking*. Hanoi: MOLISA, 2011. Print.

⁷⁵ Interview with Mr. Ly Quoc Tuan, Deputy Director, General Consular Department, Ministry of Foreign Affairs

⁷⁶ Ibid

⁷⁷ Ibid

4.9 Ministry of Justice

MOJ is responsible for formulating and updating legislation related to human trafficking. In addition, MOJ is taking the lead on increasing awareness of LPSAHT, drafting subsequent circulars and decrees, and providing legal aid to victims at provincial-level legal aid departments. These legal aid departments offer legal aid in acquiring permanent residence, living stipend, compensation, and other victim support services.

According to the MOJ, there are several provisions for victim confidentiality and privacy. For example, if a victim consents to being interviewed by the media, the victim is required to use a fake name, a censored image, and an altered voice.

4.10 Vietnam Women's Union

VWU strives for women's development and gender equality in Vietnam. Within the context of human trafficking, VWU is responsible for increasing awareness and providing support to victims through shelters and care services. VWU is heavily involved in assisting victims at the local level. Victims can receive basic necessities, stipends, support services, and vocational training at one of their 6 shelters or at a district or provincial level office. After receiving vocational training, VWU maintains communication and consistently follows up with victims to ensure they are successfully repatriated back into the community.⁷⁸ Victims who were denied services from the state are able to receive short-term care and legal aid to strengthen their chances of receiving state support.

VWU shelters currently consist of rented houses. According to VWU, they are lobbying for the government to provide a block of land and funding to build a shelter structured toward victims.⁷⁹ VWU hosted 2 conferences and 10 training sessions regarding human trafficking at the central level. The number and quality of the administered trainings at the district, commune, and provincial levels have been intermittent and dependent on the amount of resources, but it is noteworthy that proper victim interviewing techniques is a highlighted priority for training courses.⁸⁰

VWU mentioned several challenges, including the limited capacity and awareness of district-level officers in some provinces, especially for technical services such as psychological counseling.⁸¹ Another concern expressed is that their awareness campaigns do not reach those that live in mountainous areas.

4.11 Supreme People's Court

The Supreme People's Court is the country's highest court and oversees the entire court system in Vietnam. The SPC provides methodological assistance to local and provincial municipal courts in the application and understanding of legislation. A new database developed by the SPC now

⁷⁸ Interview with Ms. Duong Thi Xuan, Director of the Policy Department, Vietnam Women's Union

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

allows a search through all cases using a keyword, and the details within the cases are now expanded.⁸² For an example, human trafficking cases contain personal characteristics of the victim such as birth date and physical appearance.

To support the implementation and understanding of the LPSAHT, SPC is organizing a four-day training session for their judges on human trafficking and is introducing a human trafficking course at their judicial training school.⁸³ SPC mentioned the need for better information technology equipment such as faster computers, video equipment, and training software to address the lack of training and understanding of the LPSAHT.⁸⁴ Additionally, SPC hoped to share best practices with other countries, in particular with relation to the growing problem of forced marriages.

⁸² Interview with Mr. Dang Quang Phuong, Standing Deputy Chief Justice, People's Supreme Court

⁸³ Ibid

⁸⁴ Ibid

5. Law Enforcement

40% of the victims identified by the police are discovered through the hotline, while the other 60% come into contact with the police through self-identification at police stations, e-mails sent by the victims, and rescue missions.⁸⁵ In Hanoi and Ho Chi Minh, as well as the provinces of Hai Phong and Lao Cai, police departments have a specialized human trafficking unit.

Training courses were held to introduce decree 62 and its provisions to 45 participants from 5 municipalities.⁸⁶ Further training for front line officers was conducted in 20 provinces but the understanding and application of the decree is still low in many areas. Asia Regional Trafficking in Persons Project (ARTIP), funded by the Australian Agency for International Development (AusAID) and UNIAP, also conducted general human trafficking training sessions for the police.

The Criminal Investigation Department (CID) has strong ties with their Chinese counterparts. Conferences and debrief meetings are held annually with the Chinese police and the CID will occasionally send a specialized team to China for any investigations that require strong collaboration.⁸⁷ According to the CID, assets are confiscated from arrested traffickers, but due to the continued focus on low level offenders (brokers and transporters), the confiscated assets are very meager and do not suffice to provide adequate support to victims.

The CID has attempted to increase its capacity in dealing with child victims. “Children friendly interviewing” techniques are used and if possible, a close relative or a guardian is brought in for assistance. Children-friendly interviewing rooms were created in collaboration with UNICEF in 5 provinces.⁸⁸ But for victims who are not children, interviews are usually conducted in the first room that is available in the building.

Funding is greatly needed for developing software and updating IT equipment. Databases entail hardcopy case files in cabinets with limited analytical capabilities. Every relevant department has their own database; consolidation of data and information involve each department sending their own report for final consolidation.

⁸⁵ Col. Ho Sy Thien, Director of Criminal Police Department (C45), Ministry of Public Security

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

6. Vietnam's Current Referral Mechanism

6.1 Victim Identification

Victim identification in Vietnam is mainly reactive in nature. While some victims are identified through referrals from other countries and rescue missions, self-identification is the most common form of identification. This comes from a large population of victims that escape from their traffickers and return to their homes on their own accord.⁸⁹ But these self-return victims often have little information on how to access support services and in some cases may not know that they were trafficked. The self-return victims that do identify themselves as a victim and seek support were denied assistance until recently due to authorities requiring the identification or arrest of the trafficker in order for individuals to receive victim status and state support.⁹⁰ With the assistance of World Vision and UNIAP, decrees and circulars are being drafted to address this problem. In particular, decree 62, allows for the identification of victims without identifying the trafficker but the effects have yet to be witnessed. The handful of NGO-operated shelters in Vietnam have less stringent requirements to provide support. According to Hagar International, victims are sometimes referred to them because they did not meet the state requirements to receive support.⁹¹ NGO shelters are also more comprehensive in their repatriation and social inclusion efforts with training and support services lasting an average of 1 to 2 years to ensure the victim's full repatriation into their community.⁹²

6.2 Victim Referral Procedures

Vietnam has a referral mechanism in place that involves many parties. At the policy level, the formalized victim referral process is different for internal trafficking and cross-border trafficking. The victim referral process for cross-border trafficking has several steps:

1. The Immigration Department along with MOFA cooperates with the foreign government to obtain documentation about the victim to help verify identity.
 - a. If it involves a Vietnamese victim that was trafficked abroad, MOFA is solely responsible for the identification process, and not the Immigration Department.
2. After receiving the documentation, the Immigration Department sends a request to the local police in Vietnam to verify information about the victim. This process takes up to 20 days.
3. Upon the response of the local police, the Immigration Department completes the identification process within 10 days. If the person is identified as a victim of human trafficking, the victim is referred to support services.
4. MOLISA or an NGO working in the victim's province receives the victim and is responsible for their support services and social inclusion. If it is a foreign victim, services are provided until they are able to return to their country.

⁸⁹ UN Working Group on Human Trafficking Meeting 11/26/2012

⁹⁰ Interview with Mrs. Vu Thi Du, End Trafficking in Persons Programme Manager, World Vision

⁹¹ Interview with Ms. Vu Huyen Trang, Vietnam Team Leader, Individualized Care Program, Hagar International

⁹² Interview with Ms. Vu Huyen Trang, Vietnam Team Leader, Individualized Care Program, Hagar International

Victims who are internally trafficked face a similar process but with different actors:

1. A representative of the People's Committees in the victim's source province begins the identification
2. The People's Committee requests the provincial office of MOLISA to certify the victim's identification and requests further verification from the provincial police agency.
3. The provincial police returns the verification results within 20 days
4. Upon the response of the local police, the People's Committee completes the identification process within 10 days. If the person is classified as a victim of human trafficking, the victim is returned home with the required paper work.
5. MOLISA or an NGO working in the victim's province receives the victim and is responsible for their support services and social inclusion.

Within these referral procedures, the Immigration Department, MOFA, or the People's Committee are tasked with managing the process. According to MOLISA, victims are provided with accommodation, basic necessities, support services, and vocational training during the entire process. However, there have been some cases where the victim experienced gaps in support while being referred from one ministry to another.⁹³

6.3 Support Services

There are 9 government operated shelters and can be divided into 5 long-term and 4 short-term shelters. The long-term shelters are located in Ho Chi Minh City, Hanoi, and the provinces of Can Tho, An Giang, and Lao Cai.⁹⁴ Short-term centers are in Lao Cai, Lang Son, An Giang, and Quang Ninh.⁹⁵ Short-term centers are usually operated by the VWU or MOLISA with NGO support and provide accommodation, basic necessities, health care, and initial counseling for up to 15 days.⁹⁶ Long-term shelters are also run by the VWU or MOLISA with technical and financial support from IOM. Victims may stay as long as 2 years and services cover basic education, vocational training, legal assistance, healthcare, job assistance, and counseling.⁹⁷

In 2009, UNIAP organized these 9 shelters into a coalition with common standards and guidelines. Workshops are held to discuss issues, share experiences, and strengthen the network.⁹⁸ The effects of training are becoming evident. The quality of the facilities and the support services have improved and "shelters now have greater technical capacity to provide victims with more effective and ethical case management, and to apply victim-centered support methodology, based entirely on the victim's own needs."⁹⁹ Shelter staff have developed a customer service-oriented mindset towards victims and are more educated on their needs and vulnerabilities. But with UNIAP's down scale to a UNDP project, the sustainability and

⁹³ Interview with Ms. Phuong Thanh Nguyen, National Project Coordinator, United Nations Office on Drugs and Crime

⁹⁴ Interview with Mr. Ngoc Anh Nguyen, National Project Coordinator, United Nations Inter-Agency Project on Human Trafficking

⁹⁵ Ibid

⁹⁶ Re(Integration) Perspectives of Victim Service Agencies on Successes and Challenges in Trafficking Victim (Re)Integration in the Greater Mekong Sub-Region." *COMMIT*. N.p., n.d. Web.

⁹⁷ Ibid

⁹⁸ Interview with Mr. Ngoc Anh Nguyen, National Project Coordinator, United Nations Inter-Agency Project on Human Trafficking

⁹⁹ Ibid



continuation of the coalition is uncertain. Data is still compiled in separate disconnected databases and the shelters only cater to women and children. Shelter staffs in urban areas also have a better understanding of human trafficking compared to their counterparts in less populated areas.¹⁰⁰ In addition, the infrastructure of some shelters is depreciating with an increasing need to improve hygiene and medical conditions.

6.4 Cooperation

The strong collaboration amongst government ministries is evident when examining inter-ministerial responses. At the grassroots level, provincial and district level government entities usually cooperate closely with NGOs in areas where anti-trafficking NGOs work. Roles and responsibilities of the partnerships are formalized through MOUs and directives.¹⁰¹ For an example, MOLISA cooperates closely with UNICEF, UNIAP, IOM, Alliance Anti Traffic, and WV to provide support services and training.

The One UN Initiative in Vietnam requires the UN country team to work in coordination to support Vietnam. There are three program coordination groups under the One UN Initiative, which entail supporting the government to achieve inclusive, equitable and sustainable growth; improve access to quality essential services and social protection; and encourage enhanced governance and participation.¹⁰² The UN Working Group on Human Trafficking is located under the social protection group. The working group helps to ensure coordination of the implementation of human trafficking activities and has convening power over the Counter Trafficking Network, which is the anti-trafficking NGO network in Vietnam.¹⁰³ Similarly, the working group has convening power over the Intermission Working Group on Human Trafficking that includes donor embassies.¹⁰⁴

6.5 Weaknesses

Ministry initiatives, participation in COMMIT, and the ratification of the international conventions show that identifying victims and providing support is an important priority in

¹⁰⁰ Re(Integration) Perspectives of Victim Service Agencies on Successes and Challenges in Trafficking Victim (Re)Integration in the Greater Mekong Sub-Region." *COMMIT*. N.p., n.d.

¹⁰¹ Interview with Mrs. Vu Thi Du, End Trafficking in Persons Programme Manager, World Vision

¹⁰² "The UN Country Team in Vietnam." . N.p., n.d. Web. <<http://www.un.org.vn/>>.

¹⁰³ UN Working Group Meeting 11/26/2012

¹⁰⁴ Ibid

Vietnam's comprehensive approach. These signs of good practices are undoubtedly on the rise but there are still major weaknesses in present responses.

The lack of a clear definition of human trafficking is the root cause of these major weaknesses. As previously mentioned, the LPSAHT does not contain a definition of human trafficking and the LPSAHT and articles relating to human trafficking in the Penal Code are not properly harmonized. This creates confusion over the interpretation and application of the law and ignites multiple issues.

Another factor that perpetuates this inability to effectively identify victims is the lack of a functional standardized procedure. First responders possess the power of deciding whether an individual is a victim. The size of this community creates variable training and understanding in victim identification and leads to inconsistent decision making when identifying victims. This is also exacerbated by the lack of a clear definition of human trafficking, the disparity in interviewing skills among first responders, and an absence of structured interview questions and a list of indicators that human trafficking victims can portray.¹⁰⁵ Case in point, MOFA shared a case where a Vietnamese woman in Malaysia tricked authorities into believing that she was a victim of human trafficking and received a free flight home.¹⁰⁶ Through a subsequent follow-up interview by a different official, it was discovered that she was committing fraud.¹⁰⁷

Additionally, UNIAP's 2010 Sentinel report also illustrated the inability of government authorities to identify victims of human trafficking from a group of non-exploited Vietnamese migrant workers who were deported from China.¹⁰⁸ The authors of the report interviewed 93 deportees and concluded that 24 of them were victims of human trafficking who were not identified upon their receipt by the BGC or the Immigration Department. Out of these 24 victims, 4 were sexually exploited, 5 faced labor exploitation, and 9 experienced forced marriage.¹⁰⁹ Furthermore, any efforts to identify victims are focused solely on Vietnamese nationals. Foreign victims in Vietnam are never identified and referred to assistance.

The environment where the victim is initially interviewed plays an important role not only in the identification phase but also in protecting the victim's overall safety and safeguarding the victim's privacy.¹¹⁰ Currently, victims are interviewed in office spaces within the police stations, often the same office space where criminal suspects are interrogated.

Administering more training is the most intuitive policy approach to increase the actors' capacity to identify victims. This is apparent in the significant amount of conferences and training courses organized by the Vietnamese government. But training in both international

¹⁰⁵ Interview with Col. Ngoc Cu Nguyen, Deputy Director of Border Gates Department, Border Guard Command, Ministry of Defense

¹⁰⁶ Interview with Mr. Ly Quoc Tuan, Deputy Director, General Consular Department, Ministry of Foreign Affairs

¹⁰⁷ Ibid

¹⁰⁸ Re(Integration) Perspectives of Victim Service Agencies on Successes and Challenges in Trafficking Victim (Re)Integration in the Greater Mekong Sub-Region." *COMMIT*. N.p., n.d. Web.

¹⁰⁹ United Nations Inter-Agency Project on Human Trafficking. Human Trafficking Sentinel Surveillance. 2010. Print.

¹¹⁰ "National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook." OSCE Office for Democratic Institutions and Human Rights, n.d. Web. 29 Nov 2012.

and national standards of victim identification to a community as diverse as the first responders involved in this process is highly difficult, if not impossible. This also brings into question the efficient allocation of resources. According to most actors, funding for anti-trafficking efforts is greatly lacking. Using resources for training is important but in order to properly allocate scarce resources, the expected impact of the training needs to be properly assessed.

Human trafficking data presented by the ministries is inconsistent and sometimes conflicting. The BGC mentioned that human trafficking has declined in Vietnam due to increased anti-trafficking efforts.¹¹¹ However, the conviction statistics presented by the SPC shows a rising increase in convicted traffickers.¹¹² It is unclear if the capacity of law enforcement to arrest traffickers is increasing or the crime itself is increasing, but nevertheless, this lack of a uniform understanding of the nature and scale of the crime can be attributed to disconnected data collection and poor harmonization of data. Actors possess their own databases and the consolidation of the data becomes difficult with different standards and variables.

Anti-trafficking efforts need input and output indicators that measure the effectiveness of these approaches. Relevant ministries are drafting circulars that detail the implementation of current approaches but the effectiveness of these current responses is unknown. Adjustments to increase efficiency and the proper allocation of resources cannot be made without assessing current responses and monitoring implementation.

Most victim identification efforts are reactive in nature and proactive approaches are rare. Reactive approaches cannot identify the high population of self-return victims mentioned earlier as these victims are often not aware of the services they can receive or even that they were trafficked.¹¹³ But proactive approaches require a firm understanding of the scale and nature of the crime as well as accurate and reliable criminal intelligence. With current disjointed data collection methods and the inability to identify victims and obtain valuable information on their experience, such intelligence reports cannot be created.

¹¹¹ Interview with Col. Ngoc Cu Nguyen, Deputy Director of Border Gates Department, Border Guard Command, Ministry of Defense

¹¹² Interview with Mr. Dang Quang Phuong, Standing Deputy Chief Justice, People's Supreme Court

¹¹³ UN Working Group on Human Trafficking Meeting 11/26/2012

7. Recommendations

Vietnam is in the midst of implementing an extensive overhaul to their anti-trafficking endeavors. At the policy level, Vietnam has demonstrated increased efforts in combating human trafficking. Major milestones include enacting the LPSAHT, ratifying the TOC, and addressing any issues related to the LPSAHT through the release of timely decrees and circulars. Additionally, the strong coordination between relevant actors is evident through 130 Program.

Good practices are also emerging at the grassroots level. For instance, UNIAP reported positive feedback from victims on the treatment they received by Vietnamese authorities. Border guards and Lang Son shelter workers were praised for their hospitality and support services.¹¹⁴ Nevertheless, current responses still face many obstacles and limitations.

Building an NRM upon Vietnam's current referral mechanism will preserve the existing good practices and alleviate many of the limitations of the existing referral mechanism. Strengthening the existing referral mechanism is also strongly advocated by the international community. At the Vietnam National Practitioners Forums on Reintegration of Victims of Human trafficking in the Greater Mekong Sub-region, relevant actors came together to discuss the strengths and weaknesses of Vietnam's anti-trafficking response. A consensus amongst the participants was the need for a mechanism to identify and provide follow-up support both to victims who return by themselves and to victims who return by themselves without having been identified as victims of trafficking in the destination country.¹¹⁵

The following recommendations are based on the findings of the assessment and address strengthening Vietnam's referral mechanism and enhancing the capacity of relevant actors within the referral procedure.

Recommendations for strengthening referral procedures

- Strengthen the current referral mechanism by implementing an NRM. This will create an NCA to inherit the responsibility of identifying victims and managing the referral process. The expertise of the specialist team will resolve the previously highlighted inability of first responders to consistently determine whether an individual is a victim of human trafficking. Furthermore, effective identification will allow victims to receive immediate support and protection from being re-trafficked or deported.
- Distribute a list of indicators of human trafficking and a basic screening form to increase the capacity of first responders to identify *potential* victims. With the implementation of an NRM, the ultimate decision of concluding whether somebody is a victim of human trafficking is done by the NCA. First responders must forward information to the NCA about *potential* victims, as well as notify the NCA on cases where the individual was not deemed as a *potential* victim. This allows the NCA to monitor all decisions and ensure that proper assessments are made. Previous sections have demonstrated the disparity in

¹¹⁴ United Nations Inter-Agency Project on Human Trafficking. *Human Trafficking Sentinel Surveillance*. 2010. Print.

¹¹⁵ (2010). *Report on Vietnam National Practitioners forums on (Re)integration of Victims of Human Trafficking in the General Mekong Sub-Region*. Ho Chi Minh City:

interviewing skills and the inability to recognize the symptoms that victims of human trafficking can display. Distributing a list of indicators that a victim of human trafficking can display and a basic screening form will enhance the ability of first responders to identify *potential* victims and collect the necessary information for the NCA.

- Administer advanced training to the NCA rather than the broad community of first responders. The only necessary training in regards to victim identification for first responders is an overview on how to use the list of indicators, basic screening form, and basic training on the NRM process. This saves authorities from the impossible task of raising the capacity of all first responders to meet minimum standards. Training for the difficult task to determine whether somebody is a victim of human trafficking can be administered solely to the NCA. The size of the NCA allows for training courses to be easily administered and built upon an established understanding of international and national standards. Furthermore, this cuts down the amount of training courses that are currently administered, which saves valuable resources that can be allocated towards other anti-trafficking efforts
- Create a single database for victim data. Currently, there are multiple databases within multiple ministries. As a result, aforementioned examples have shown the lack of understanding of the scope and nature of the crime in Vietnam. With the NCA, the raw data associated with victims is handled by a single entity. This streamlines data collection and produces accurate, reliable data. Consequently, analysis for trends and patterns becomes easier and it heightens the national understanding of the nature and scope of the crime.
- Draft criminal intelligence reports to strengthen proactive approaches. With efficient data collection and the production of reliable data through a single database, criminal intelligence reports can be created to help proactive approaches, such as outreach campaigns and proactive investigations.
- Implement more measures that allow easier self-identification of victims, such as a hotline or increased outreach work. A few disjointed hotlines exist but the reliability and awareness of these hotlines are dubious. Current approaches are reactive and cannot effectively identify the high population of self-return victims who sometimes are unaware that they were trafficked or ignorant of the support services that they can receive.
- Train police on proactive and disruptive investigative techniques. Police investigations are reactive and centered around victim testimony. By creating a single database to store victim data, the criminal intelligence needed for proactive and disruptive investigations will be available.

General Recommendations

- Specify indicators that measure the implementation of anti-trafficking efforts. Circulars must detail input indicators, output indicators, and outcome indicators of anti-trafficking efforts to gauge the effectiveness of current responses, better monitor the implementation progress and make proper adjustments.

- Increase efforts to identify and assist foreign victims. Efforts to identify foreign victims are nonexistent and it dramatically increases their chances of being deported and subsequently re trafficked.
- Provide a private interview room at airports, seaports, and border entries for victims. Currently, victims are interviewed in office spaces within the police stations, often the same office space where the suspects are interrogated. The confidentiality and privacy of victims is important to ensure their human rights and to enhance their cooperation.
- Open shelters not only for females and children but for males as well. The Government of Vietnam has recently acknowledged the prevalence of labor trafficking. As men are more victimized by labor trafficking than other forms of trafficking, it is safe to expect a rise in male victims, especially with the implementation of an NRM.
- Identify new funding opportunities and increase resources to support services. The sustainability and quality of support, repatriation, and social inclusion services are currently difficult due to the lack of funding.
- Increase IT capabilities for relevant actors. Particularly, law enforcement bodies have inadequate IT to store data, conduct analysis, and strengthen investigations.

Legislative Recommendations

- Adopt the Palermo Protocol definition of human trafficking. Currently, the definition of human trafficking must be derived from multiple articles in the LPSAHT. The Palermo Protocol's broad definition encompasses all aspects of the complexity surrounding human trafficking.
- Harmonize the Penal Code with the LPSAHT. The Penal Code does not criminalize all of the prohibited acts under article 3 (Prohibited acts) of the LPSAHT. Most notably, the 3 elements of human trafficking defined in the Palermo Protocol is covered under article 3 (Prohibited acts) but is not recognized in articles 119 and 120 of the Penal Code. This creates an inconsistent legal definition of human trafficking and uncertainty of the application and interpretation of the prohibited acts under article 3 (Prohibited acts).
- Include provisions in the LPSAHT that protect victims from prosecution. This ensures that victims are not prosecuted for crimes that they were forced to commit while trafficked, such as prostitution, immigration violations, and labor violations
- Develop legislation on electronic data protection according to international standards and best practices. This becomes more necessary after creating a single database for victim data. Protecting the victim's information and confidentiality is necessary to ensure their privacy, human rights, and safety.
- Change the definition of a minor to less than 18 years of age to adhere to international standards.

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