

# HUMAN TRAFFICKING AND RESPONSES TO IDENTIFICATION OF AND ASSISTANCE FOR VICTIMS OF HUMAN TRAFFICKING IN VIETNAM

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## I INTRODUCTION

Current Vietnamese policies are ineffective in aiding police to identify and assist victims of human trafficking. Although a victim-centred approach appears prevalent in human trafficking-related policies and programs,<sup>1</sup> it is not implemented in practice and remains largely theoretical in Vietnam. It is argued that victim identification is a key component of a victim-centred approach.<sup>2</sup> Indeed, this is considered to be one of the leading priorities for ending human trafficking,<sup>3</sup> as it allows authorities to better identify the needs of trafficked persons and to protect their rights.<sup>4</sup> A great deal of research on human trafficking has indicated that the identification of

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<sup>1</sup> Jo Goodey, *Victims and Victimology: Research, Policy and Practice* (Pearson Education 2005).

<sup>2</sup> Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).

<sup>3</sup> *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* [2012] OJ C 286/1.

<sup>4</sup> Anne T Gallagher and Paul Holmes, 'Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Front Line' (2008) 18 *International Criminal Justice Review* 318, 320.

trafficking victims is extremely difficult.<sup>5</sup> Indeed, there is a large discrepancy between the estimated number of total victims and the number of those identified.<sup>6</sup> Furthermore, it is not uncommon for trafficking victims to be misidentified as criminals or illegal migrants by police.<sup>7</sup> As a consequence of this, victims go unassisted,<sup>8</sup> and even more seriously, they potentially face punishment from authorities, such as arrest, deportation, and detention.<sup>9</sup> This represents a failure of both the government's policy regarding the identification and assistance of victims of human trafficking, and the police's implementation of it. As a result, it has been recommended that Vietnam should improve its strategies to proactively identify and assist victims of human trafficking, particularly in the context of migrant workers, sex workers, and child labourers.<sup>10</sup>

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<sup>5</sup> See, eg, Phyllis Newton, Timothy Mulcahy and Susan Martin, 'Finding victims of human trafficking' (Research Report, National Opinion Research Center of University of Chicago, September 2008) 3; Jeremy Wilson and Erin Dalton, 'Human Trafficking in the Heartland: Variation in Law Enforcement Awareness and Response', (2008) 24 (3) *Journal of Contemporary Criminal Justice* 296, 296.

<sup>6</sup> Amy Farrell and Stephanie Fahy, 'The Problem of Human Trafficking in the US: Public frames and policy responses' (2009) 37(6) *Journal of Criminal Justice* 617, 623. See also Amy Farrell, Jack McDevitt and Stephanie Fahy, 'Where are all the victims? Understanding the determinants of official identification of human trafficking incidents' (2010) 9 (2) *Criminal Public Policy* 201, 206; Laura Simich et al, 'Improving Human Trafficking Victim Identification — Validation and Dissemination of a Screening Tool' (Final Report, Vera Institute of Justice, June 2014); Andrea Nichols and Erin Heil, 'Challenges to Identifying and Prosecuting Sex Trafficking Cases in the Midwest United States', 2015 10 (1) *Feminist Criminology* 7, 7.

<sup>7</sup> See, eg, Farrell, McDevitt and Fahy, above n 6. See also Erin Heil, *Sex Slaves and Serfs: The Dynamics of Human Trafficking in a Small Florida Town* (First Forum Press, 2012); Jody Raphael, Jessica Ashley Reichert and Mark Powers, 'Pimp Control and Violence: Domestic Sex Trafficking of Chicago Women And Girls' (2010) 20 (1-2) *Women & Criminal Justice* 89.

<sup>8</sup> See USDOS, *2011 Trafficking in Persons Report*, (Washington DC 2011); Gallagher and Holmes, above n 4; Rebecca Surtees, 'After Trafficking: Experiences and Challenges in the (Re) Integration Of Trafficked Persons in the Greater Mekong Sub-Region' (Final Report, UNIAP/NEXUS Institute, October 2013).

<sup>9</sup> Farrell, McDevitt and Fahy, above n 6. See also USDOS, *2013 Trafficking in Persons Report*, Washington DC (2013) <<https://www.state.gov/documents/organization/210742.pdf>>.

<sup>10</sup> USDOS, above n 9. See also USDOS, *2017 Trafficking in Persons* (2017) <<https://www.state.gov/documents/organization/271339.pdf>>.

This article argues that current Vietnamese policies and police operations fail to effectively identify and assist victims of human trafficking. This is supported by the fact that the law is written with a narrow and inconsistent definition of human trafficking, in contrast to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (also referred to as the *Palermo Protocol* or *Trafficking Protocol*),<sup>11</sup> ignoring factors such as debt bondage and other vulnerabilities. This makes victim identification and access to support extremely challenging. Additionally, the lack of regulations on the non-prosecution of victims for unlawful acts undertaken during their trafficking, positions these individuals as criminals rather than trafficking victims. As a result of this, unreliable data contributes to the failure to identify and assist victims of this crime. When it comes to policies, the Vietnamese government tends to focus predominantly on trafficking in women and children for purposes of sexual exploitation (particularly prostitution). However, and notwithstanding the importance of these incidents, trafficking impacts on a greater range of people and occurs in a variety of contexts. For example, the current policies omit other forms of trafficking, such as labour trafficking, which effectively hides this victim population. These limitations stem from organisational and institutional challenges and impede effective police identification of victims.

This article will utilise document analysis to facilitate discussion on victim identification and assistance in the context of Vietnam. Drawing on empirical studies, international and regional reports, the history of the Vietnamese *Penal Code*, *Law on Prevention, Suppression against Human Trafficking* (hereinafter referred to as *Anti-human Trafficking Law*), and domestic counter-trafficking

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<sup>11</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the United Nations Convention against Transnational Organized Crime)*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) ('Trafficking Protocol' or 'Palermo Protocol').

policies,<sup>12</sup> it will explore the barriers to the identification and assistance of victims of human trafficking. This approach permits analysis, comparison, and synthesis of the key themes outlined in this paper.

This article will highlight the counterproductive nature of Vietnam's anti-trafficking polices, particularly those that thwart the police's identification and assistance of victims of human trafficking. To do this, it first describes the human trafficking situation in Vietnam, emphasising that current research has not covered all forms of human trafficking but has focused instead on sex trafficking. Next, this article discusses how the counter-trafficking laws have, in general, shifted historically and explores how these laws have inhibited the proper identification and assistance of trafficking victims. It then explains why a lack of reliable data presents a challenge to the identification and assistance of victims in Vietnam, and explains how the present policies are largely ineffective when it comes to identification and assistance. Finally, this article shows how policing policy and practices in Vietnam fail to identify and assist victims of human trafficking.

## II HUMAN TRAFFICKING IN VIETNAM

Vietnam is a small country with an area of 331,114 square kilometres in the Greater Mekong Sub-region (GMS) of Southeast Asia. Like other countries in the region, Vietnam is impacted by human trafficking. Indeed, the literature on human trafficking in Vietnam has shown that Vietnam experiences both domestic and cross-border trafficking of humans for a broad range of purposes.<sup>13</sup> The majority

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<sup>12</sup> Glenn A Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9 (2) *Qualitative Research Journal* 27, 40.

<sup>13</sup> Ngoc Anh Dang, 'Forced Migration in Vietnam: Historical and Contemporary Perspectives', (2006) 15 *Asian and Pacific Migration Journal* 159, 173. See also Anh Kim Duong, *Engendering the Evaluation of Anti-trafficking Policy: The Vietnamese National Action Programme Against Trafficking in Women and Children 2004-2010* (PhD Thesis, University of Waikato, 2014); USDOS, above n 9; USDOS, *2016 Trafficking in Persons Report* (2016)

of studies focus on the trafficking of women and children for sexual exploitation, mainly prostitution.<sup>14</sup> This contributes to arguments regarding the dominance of sex trafficking in comparison to other forms of trafficking on a global level.<sup>15</sup> Recently, however, the trafficking of men and trafficking for labour exploitation has received greater attention in some reports, although these issues still need to be explored more comprehensively in a Vietnamese context.<sup>16</sup>

### A *Domestic Human Trafficking*

This article argues that the misidentification or under-identification of domestic victims of trafficking is caused by a misunderstanding regarding the relationship between internal human trafficking and sex work. Indeed, reports from the UN Inter-Agency Project on Human Trafficking (UNIAP) conclude that internal trafficking is closely linked to internal movements from rural to urban places where prostitution is prevalent and there are job opportunities for those from rural areas who are unemployed.<sup>17</sup> Nevertheless, this does not mean that all internal movements of sex workers are a result of

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<https://www.state.gov/documents/organization/258876.pdf>>; see also United Nations Inter-Agency Project on Human Trafficking (UNIAP), *SIREN Vietnam Human Trafficking Data Sheet*, Hanoi (2008).

<sup>14</sup> Binh Ngoc Vu, 'Trafficking of Women and Children in Vietnam: Current Issues and Problems', in Karen Beeks and Delina Amir (eds), *Trafficking and the Global Sex Industry* (Lexington Books, 2006).

<sup>15</sup> See, eg, Ronald Weitzer, 'New Directions in Research on Human Trafficking', (2014) 653(1) *Annals of the American Academy of Political and Social Science* 6; Denise Brennan, 'Competing claims of victimhood? Foreign and Domestic Victims of Trafficking in the United States' (2008) 5(4) *Sexuality Research & Social Policy* 45, 61; Alexandra Schultheis Moore and Elizabeth Swanson Goldberg, 'Victims, Perpetrators, and the Limits of Human Rights Discourse in Post-Palermo Fiction about Sex Trafficking', 2015 19(1) *The International Journal of Human Rights* 16, 31.

<sup>16</sup> Huong Thu Le, 'Trafficking in Persons in Vietnam: The Root Causes and State Responses to Human Security' in Jiyoung Song and Alistair D.B Cook (eds), *Irregular Migration and Human Security in East Asia*, (Routledge, 2014) 117. See also UNIAP, *Mekong Region Country Datasheets Human Trafficking* (Bangkok, 2010).

<sup>17</sup> See UNIAP, above n 13.

trafficking, or that all involvement in sex work is involuntary.<sup>18</sup> Research has demonstrated, for example, that some who sell sex in Ho Chi Minh are motivated by money, gifts, and intimacy.<sup>19</sup> Therefore, it is an exaggeration to identify all sex workers, including those who sell sex voluntarily, as victims of trafficking.

The Vietnamese government has also underestimated other forms of domestic human trafficking even though these cases are reported. For example, children and men are subjected to domestic trafficking for labour exploitation in agriculture and construction, as well as begging, selling lottery tickets, polishing shoes in big cities, and working in brick kilns, factories, and gold mines.<sup>20</sup> Meanwhile, some female domestic workers are exploited, working excessive hours, and with no labour security and labour contract.<sup>21</sup> To a lesser extent, Vietnamese children are further targeted for child sex tourism.<sup>22</sup> In other cases, babies are subject to internal trafficking for adoption due to loopholes in the legal system.<sup>23</sup> Nevertheless, these cases of internal trafficking are likely to appear only in reports of public and private sectors rather than being identified in practice. This stems from the tendency for human trafficking research and policies to pay far greater attention to sex trafficking rather than labour

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<sup>18</sup> Kimberly Kay Hoang, 'She's not a low-class dirty girl!': Sex Work in Ho Chi Minh City, Vietnam' (2011) 40(4) *Journal of Contemporary Ethnography* 367, 396.

<sup>19</sup> *Ibid* 373.

<sup>20</sup> See, eg, Child Exploitation and Online Protection Centre (CEOP) and British Embassy (BE), 'The Trafficking of Women and Children from Vietnam' (Unpublished Report, Vietnam, 2011); see also Duong, above n 13; Phuong Thi Tue Hoang, 'Protection for Trafficked Persons in Viet Nam: Another National Security Discourse?' [2015] *International Migration* 1, 1; Sally Cameron, 'Trafficking and Related Labour Exploitation in the ASEAN Region' (Briefing Paper, International Council on Social Welfare (ICSW), November 2007) 171 <<http://www.icsw.org/doc/Trafficking%20Labour%20Exploitation%20in%20ASEAN%2007.pdf>>.

<sup>21</sup> Danièle Bélanger, 'Labor Migration and Trafficking among Vietnamese Migrants in Asia' (2014) *The ANNALS of the American Academy of Political and Social Science* 653 (1) 87, 101.

<sup>22</sup> See United Nations Office on Drugs and Crime (UNODC), *Needs Assessment for Establishing a National Referral Mechanism in Vietnam* (2012).

<sup>23</sup> See CEOP and BE, above n 20.

exploitation.<sup>24</sup> That is to say, the government has neither recognised the close connection between trafficking and migration nor protected citizens in their unplanned movements.<sup>25</sup> Therefore, migrants continue to end up in exploitative labour practice due to this lack of attention.<sup>26</sup>

### B Cross-Border Human Trafficking

International and national reports and studies on trafficking in persons confirm that Vietnam is a major source country of individuals trafficked for sexual exploitation.<sup>27</sup> For example, 70 percent of victims being trafficked for sexual services in China,<sup>28</sup> or about one quarter to one-third of all sex workers in Cambodia originate from Vietnam.<sup>29</sup> These figures do not imply that all victims are trafficked for sexual exploitation in China, Cambodia, Malaysia, or other countries, as reported by UNIAP.<sup>30</sup> Empirical studies indicate that Vietnamese women are also trafficked for forced marriages, and that risk factors for females being trafficked include poverty, low education, coming from a broken family, a need to make money, and a deficit of women in China.<sup>31</sup> These victims are

<sup>24</sup> Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Sub-region* (Routledge, 2012).

<sup>25</sup> Ramona Vijayarasa, 'Stigma, Stereotypes and Brazilian Soap Operas: Road-Blocks to Ending Human Trafficking in Vietnam, Ghana and Ukraine' 2013 20(8) *Gender, Place & Culture* 1015, 1025. See also Veronique Marx and Katherine Fleischer, *Internal Migration – Opportunities and Challenges for Socio-Economic Development in Viet Nam* (United Nations in Vietnam, 2010).

<sup>26</sup> Hoang, above n 20.

<sup>27</sup> See, eg, USDOS above n 9, 12; UNIAP above n 16.

<sup>28</sup> UNIAP, above n 13.

<sup>29</sup> Annuska Derks, 'Diversity in Ethnicity. A Picture of the Vietnamese in Cambodia' (1996) *Center for Advanced Study, Interdisciplinary Research on Ethnic Groups in Cambodia* 251, 276. See also Annuska Derks, 'Trafficking of Vietnamese Women and Children to Cambodia (Research Report No 3, International Organization for Migration and Centre for Advanced Study, March 1998); Annuska Derks, Roger Henne and Ly Vanna, 'Review of a Decade of Research on Trafficking in Persons, Cambodia' (Research Report, Centre for Advanced Study, May 2006).

<sup>30</sup> UNIAP, above n 13.

<sup>31</sup> Danièle Bélanger, Khuất Thu Hồng, Trần Giang Linh, 'Transnational Marriages between Vietnamese Women and Asian Men in Vietnamese Online

often not only forced to work in manufacturing or on farms, but also in domestic servitude to their husbands and his family members who supervise their daily contact and travel.<sup>32</sup> Indeed, the Vietnamese government considers marriages of young Vietnamese women with foreign men as a serious concern,<sup>33</sup> without promulgating any comprehensive policies on this problem. Therefore, these brides are potentially exploited as slaves or domestic helpers in the destination countries with no protection.<sup>34</sup>

Some Vietnamese women have recently been trafficked for forced surrogacy in Cambodia.<sup>35</sup> Children have also been reported to be victims of international trafficking for adoption and forced labour.<sup>36</sup> Little is known, however, about trafficking for surrogacy and child trafficking, which means that the number of trafficking victims has remained hidden due to the lack of policies and research on these

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Media' (2013) 8(2) *Journal of Vietnamese Studies* 81, 114; Danièle Bélanger and Trần Giang Linh, 'The Impact of Transnational Migration on Gender and Marriage in Sending Communities of Vietnam' (2011) 59(1) *Current Sociology* 59, 63; Caroline Grillot, 'Cross-Border Marriages between Vietnamese Women and Chinese Men: The Integration of Otherness and the Impact of Popular Representations' in David W. Haines, Keiko Yamanaka and Shinji Yamashita, *Wind over water: Migration in an East Asian context* (Berghahn Books 2012) 125, 125; Caroline Grillot *The fringes of conjugality: On Fantasies, Tactics and Representations of Sino-Vietnamese Encounters in Borderlands* (PhD thesis, Macquarie University, 2013); Xoan Nguyen and Xuyen Tran, 'Vietnamese – Taiwanese Marriages' in Wen-Shan Yang and Melody Chia-Wen Lu (eds), *Asian Cross-border Marriage Migration: Demographic Patterns and Social Issues* (Amsterdam University Press, 2010) 157, 158, 172; Duong Le, Danièle Belanger and Hong Khuat, 'Transnational Migration, Marriage and Trafficking at the China-Vietnam Border' [2007] *Watering the Neighbor's Garden: The Growing Demographic Female Deficit in Asia. Paris: Committee for International Cooperation in National Research in Demography* 393-425; Yi Wang, 'Trafficking in Women and Children from Vietnam to China: Legal Framework and Government Responses' [2005] *Anti-Human Trafficking Program in Vietnam, Oxfam Quebec*.

<sup>32</sup> UNIAP, above n 13.

<sup>33</sup> Bélanger and Trần, above n 31; Nguyen and Tran, above n 31, 157, 172.

<sup>34</sup> Action Aid International Vietnam, 'Report on Survey of Trafficking of Women and Children for Proposing Suitable Intervention Activities' (Report, October 2008), 15.

<sup>35</sup> See CEOP and BE, above n 20.

<sup>36</sup> *Ibid.*

issues.

Labour trafficking takes place with fraudulent promises from Vietnamese labour export agencies, including private organisations, joint-stock companies, and state-owned bodies.<sup>37</sup> Indeed, it has been reported that Vietnamese nationals are victims of forced labour in manufacturing, construction, mining, fishing, and agriculture in Taiwan, South Korea, the United Arab Emirates, Saudi Arabia, and Japan, as well as some European countries.<sup>38</sup> Unfortunately, the amount of trafficked people has not been explored clearly as trafficking has been conflated with migration for labour, especially in cases where the labour policies are legal and encouraged by the Vietnamese government. Consequently, these labourers face labour exploitation in their companies or farms in the destination countries while the Vietnamese government lacks effective support and protection.

In addition to being a major source country, it should be noted that Vietnam is also becoming a potential destination country with the identification of Cambodian victims of trafficking.<sup>39</sup> Indeed, children from Cambodia have been trafficked into Vietnam for sex services.<sup>40</sup> When it comes to inner country children, they are also victims of trafficking for child sex tourism with offenders often from the US, the UK, Australia, and other European countries.<sup>41</sup> While there has been no academic research on this problem, UNIAP's 2010 report found it is increasing.<sup>42</sup> Specific numbers, however, are not currently available.

In its entirety, the issue of human trafficking in Vietnam is

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<sup>37</sup> See, eg, Bélanger, above n 21; see also USDOS, above n 9, 12.

<sup>38</sup> Ibid.

<sup>39</sup> See, eg, USDOS, above n 12; UNIAP, above n 12.

<sup>40</sup> See, eg, USDOS, *2008 Trafficking in Persons Report 2008* (2008) <<https://www.state.gov/j/tip/rls/tiprpt/2008/105389.htm>>; UNIAP, above n 12.

<sup>41</sup> See USDOS, above n 12.

<sup>42</sup> UNIAP, above n 13.

complex, involving other countries both in the region and globally.<sup>43</sup> Indeed, Vietnam bears witness to a wide range of trafficking patterns, which in part reflects the prominent features of this nation's geography, history, and economy.<sup>44</sup> These patterns can lead to an array of challenges in identifying and assisting victims of this crime which are exacerbated by a lack of research and policies.<sup>45</sup> In an effort to eliminate human trafficking, the National Assembly of Vietnam has over time made changes to the Penal Code and other criminal policies. These will now be discussed along with the argument that legal limitations present a serious barrier to the successful identification and assistance of victims of human trafficking.<sup>46</sup>

### III LEGAL POLICIES IN RELATION TO HUMAN TRAFFICKING IN VIETNAM

It is vital for governments to make laws to combat the phenomenon of human trafficking. This is a serious commitment made by members of the Trafficking Protocol. The Government of Vietnam decided to sign the *Palermo Protocol* in 2012.<sup>47</sup> Vietnam has also signed the Memorandum of Understanding in the GMS to comprehensively address human trafficking in this area.<sup>48</sup> However, the gaps in Vietnam's anti-human trafficking laws, including the Penal Code and *Laws on Prevention, Suppression against Human*

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<sup>43</sup> See Ha Thi Thuy Nong, Christopher Gan and Betty Kao, 'An Assessment of Non-Governmental Organizations' Roles in Combating Women/Children Trafficking in Vietnam' (2011) 27 *VNU Journal of Science, Economics and Business* 26, 52.

<sup>44</sup> See Kneebone and Debeljak, above n 24.

<sup>45</sup> See Vijayarasa, above n 25.

<sup>46</sup> *Ibid.*

<sup>47</sup> On 8 June 2012, Vietnam officially signed the *Palermo Protocol*. The information is detailed at <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en)>, accessed on 12 August 2017; see also Kneebone and Debeljak, above n 23, 267, 268.

<sup>48</sup> See Coordinated Mekong Ministerial Initiatives on Trafficking (COMMIT), *Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region*, 29 October 2004 ('COMMIT MOU'), [16] <[www.no-trafficking.org/reports\\_docs/commit/commit\\_eng\\_mou.pdf](http://www.no-trafficking.org/reports_docs/commit/commit_eng_mou.pdf)>.

*Trafficking* (hereafter the *Anti-human Trafficking Law*) remain.<sup>49</sup> More specifically, the definition of human trafficking in Vietnam's laws is narrow and inconsistent. This is a hindrance to eliminating human trafficking, especially when it comes to identifying and assisting victims of this crime.<sup>50</sup> The lack of rules regarding the non-prosecution of victims who commit unlawful acts during their trafficking is also a significant problem. These issues are further discussed in the context of the history of Vietnam's legislation, focusing on the relevant versions of the *Penal Code* and the *Anti-human Trafficking law*).

### A *The Penal Code*

Prior to 2011, Vietnam had no comprehensive law against human trafficking. Any operations on the prevention and suppression of trafficking in persons were completely based on related laws, such as the *Penal Code*, *Decrees*, and *Circulars*. Since the early 1880s, the existence of human trafficking in Vietnam has been confirmed with evidence suggesting that Vietnamese women were bought by Singapore Arabs and Chinese people.<sup>51</sup> During the French colonial occupation of Vietnam, more and more cases of trafficking in Vietnamese women and children occurred.<sup>52</sup> Lawmakers did not, however, criminalise the issue of human trafficking until Vietnam began embracing globalisation with its 'open policy' of the 1990s, when individuals had more opportunities to move to other places within and outside of Vietnam's borders.<sup>53</sup> In Vietnam, the *Penal Code* is solely responsible for criminalising offences.

It should be noted that while the National Assembly of Vietnam has changed and amended the *Penal Code*, the country still uses a

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<sup>49</sup> Vijayarasa, above n 25.

<sup>50</sup> Ibid.

<sup>51</sup> Micheline Lessar 2009, "'Cet ignoble trafic": The Kidnapping and Sale of Vietnamese Women and Children in French Colonial Indochina, 1873-1935' (2009) 10 *French Colonial History* 1, 34.

<sup>52</sup> Ibid.

<sup>53</sup> Anh Kim Duong, 'Human Trafficking in a Globalized World: Gender Aspects of the Issue and Anti-trafficking Politics', (2012) 1 *Journal of Research in Gender Studies* 48, 65.

narrow definition of human trafficking in comparison to the *Trafficking Protocol*.<sup>54</sup> As the *Trafficking Protocol* states:

- (a) Trafficking in persons shall mean the 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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) ‘Child’ shall mean any person under eighteen years of age.<sup>55</sup>

As this shows, the *Trafficking Protocol* defines human trafficking according to three components, including the actions committed by the traffickers, the means employed to assist the progress of the

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<sup>54</sup> Vietnam has enacted and amended the *Penal Code* four times. The first version of the *Penal Code* was introduced in 1985 when the offence of ‘Trading in women’ in Article 115, was featured as a ‘crime against the life, health, dignity and honour of human beings’, and the offence of ‘Kidnapping, trading or exchanging fraudulently of children’ in Article 149 was considered ‘a crime against the regulations concerning marriage and family’. The second *Penal Code* enacted in 1999 still included trafficking in women and children, and this continued to be classified as two crimes: ‘Trafficking in women’ (Article 119), and ‘Trading in, fraudulently exchanging or appropriating children’ (Article 120). However, in 2009, the National Assembly amended this *Penal Code* to add the offence of trafficking in men and boys and the removal of organs as a purpose for trafficking. In 2015, a new version of the *Penal Code* was enacted, but it has not been in effect until now. Therefore, the *2009 Amended Penal Code* is in force at present.

<sup>55</sup> *Trafficking Protocol*, art 3.

actions, and the purposes of the committed actions. The Vietnamese *Penal Code*, however, focuses on trade, profit, and illegality to conceptualise human trafficking as the first indicator in its narrow definition.<sup>56</sup> Apart from the *2015 Penal Code*, which has not come into effect due to a series of errors regarding legislative techniques and contents,<sup>57</sup> no versions of the *Penal Code* rely on the actions, the means, and the purposes used by traffickers in its human trafficking definition. For example, the *1999 Penal Code* excluded the offence of trafficking in men and boys, and trafficking for labour exploitation, when criminalising this offence.<sup>58</sup> Consequently, Vietnamese law enforcement agencies have resorted to using an *Inter-Ministerial Circular* to interpret the meaning of trafficking and trafficking-related offenses in accordance with Articles 119 and 120 of the *2009 Penal Code*.<sup>59</sup> Drawing on this *Circular*, notices of trafficking in Vietnam target factors such as trade, illegality and profits. Specifically, trafficking in persons is understood to be the act of one person (or a group of people) who transfers a person to

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<sup>56</sup> Kneebone and Debeljak, above n 23; see also Charles Tucker et al, 'Analysis of Human Trafficking for Sexual Exploitation in Vietnam and a Comprehensive Approach to Combating the Problem' (2010) 16 *Criminal Justice International Law and Policy* 437, 457.

<sup>57</sup> Hong Chuyen, *How Does the Vietnamese Penal Code Define Human Trafficking?* (2016) <<http://infony.vn/luat-hinh-su-viet-nam-quy-dinh-the-nao-ve-toi-buon-ban-nguoi-post216877.info>>.

<sup>58</sup> See *1999 Penal Code* (Vietnam) Law 15/1999/QH10, approved by the National Assembly of Vietnam 10<sup>th</sup> Legislature, 6<sup>th</sup> session on 21 December 1999, entered into force 1 January 2010, amended by the Amendment 2009 <<https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-Luat-hinh-su-1999-15-1999-QH10-46056.aspx>>.

<sup>59</sup> Because the *2009 Amended Penal Code* is now in effect, this article does not focus on the *2015 Penal Code*; see, eg, *Inter-Ministerial Circular 01 On Guidance to Prosecuting Offenders Who Conduct Trafficking Offences; Trading or Exchanging or Appropriating Children Supreme People's Court, Supreme People's Procuratorcy, Ministry of Public Security, Ministry of Defense & Ministry of Justice* (Vietnam) 2013; see also *2015 Penal Code* (Vietnam) Law No 100/2015/QH13, was passed by Vietnamese National Assembly 13<sup>th</sup> Legislature, 10<sup>th</sup> session on 27 November 2015 <<https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-hinh-su-2015-296661.aspx>>; the *Amended 1999 Penal Code* (Vietnam) Law No 37/2009/QH 12, approved by the Vietnamese National Assembly 12<sup>th</sup> Legislature, 5<sup>th</sup> session on 19 June 2009, amended by the Amendment 2009, entered into force 1 January 2010 <<https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-hinh-su-2009-sua-doi-37-2009-QH12-90648.aspx>>.

another person (or another group of people) to earn money, property or other material profits. This includes selling persons to another regardless of the buyer's purpose, buying persons to re-sell to others, using persons as exchange or payment, and buying persons for exploitation, forced labour or other inhuman purposes.<sup>60</sup> These interpretations limit other meanings of trafficking, which are listed in the international definition of trafficking and occur in practice. Therefore, if law enforcement agencies only focus on the guidelines in this *Circular*, they risk missing opportunities to identify victims of human trafficking.

With respect to the means of trafficking, the *Penal Code* has not defined 'the abuse of power or of a position of vulnerability' to help identify victims of human trafficking, as the *Palermo Protocol* does.<sup>61</sup> Indeed, despite a positive correction in the *2015 Penal Code* introducing 'other means' in the human trafficking definition, it is unclear whether 'other means' refer to 'abuses of power' or 'a position of vulnerability', or both. Meanwhile, in Vietnam, and in the GMS more generally, traffickers often prey on those who face poverty, economic difficulties, or other vulnerabilities.<sup>62</sup> Consequently, it is likely that many victims of trafficking go unidentified and unassisted because of these complexities.

It is also difficult to distinguish human trafficking, particularly domestic human trafficking, from the offences of harbouring and procuring prostitution in the *Penal Code*. Noticeably, in the case of Vietnam, the vast majority of trafficked women and children face sexual exploitation, such as sex work.<sup>63</sup> The purpose of these criminal policies is to combat prostitution through prosecuting the managers or owners of brothels, and those procuring sexual services, as well as fining sex workers.<sup>64</sup> Therefore, if evidence of coercion, force, or exploitation is not clear in these cases, victims of trafficking may be misidentified as sex workers. In other cases, victims can be

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<sup>60</sup> *Ibid.*

<sup>61</sup> *Trafficking Protocol*, art 3.

<sup>62</sup> Kneebone and Debeljak, above n 24.

<sup>63</sup> Tucker et al, above n 56.

<sup>64</sup> *2015 Penal Code*, arts 327, 328, and 329.

misidentified as victims of illegal detention via the *Penal Code* rather than victims of trafficking.<sup>65</sup> This means that trafficking victims are possibly misrecognised as victims of other crimes or sex workers due to these blurred boundaries in the current *Penal Code*.

While labour trafficking was often ignored in the past versions of the *Penal Code*, the *2015 Penal Code* does include forced labour as an independent crime, defining it as ‘the use of violence, coercion, or other methods against one person by another person to force them into working’.<sup>66</sup> It is unclear, however, whether this conflicts with the trafficking-related Articles or whether it is considered as a form of human trafficking. Accordingly, it is unsurprising that a number of trafficked people continue to be hidden as a consequence of this confusion.

Another aspect of the narrow definition of trafficking is that, although the Vietnamese *Penal Code* does not define a ‘child’ as featured in the *Palermo Protocol*, Vietnam law considers the age of a child to be less than 16 years.<sup>67</sup> This is distinct from the *Palermo Protocol*, which views a ‘child’ as being aged under 18 years. In some cases, this age discrepancy confuses law enforcement agencies when identifying victims of human trafficking; for example, when a victim is aged from 16 to just under 18 years and consents to sell sex or voluntarily participates in labour exploitation. As a result, these trafficked people often go unidentified by the authorities in Vietnam.

In addition to a narrow definition of human trafficking, the *Penal Code* has historically lacked the principle of non-punishment for trafficked people who commit unlawful acts during their trafficking,

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<sup>65</sup> *2015 Penal Code*, art 157.

<sup>66</sup> *2015 Penal Code*, art 297.

<sup>67</sup> *Law on Child* (Vietnam) Law No 102/2016/QH13, approved by the Vietnamese National Assembly 13<sup>th</sup> Legislature, 11<sup>th</sup> session on 05 April 2016, entered into force from 01 June 2017, art 1 <<https://i.vietnamdoc.net/pdf/viewer.html?file=%2Fdata%2Ffile%2F2016%2F04%2F29%2F1uat-tre-em-so-102-2016-qh13.pdf>>.

as international instruments promulgate.<sup>68</sup> Indeed, according to the *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*, states must ensure that victims of human trafficking are not punished or prosecuted for offences committed by them as a direct consequence of being trafficked.<sup>69</sup> The *Penal Code*, however, has never mentioned this even though Vietnam has signed and ratified some bilateral agreements with other governments.<sup>70</sup> In fact, there are some provisions in the *Penal Code* that may facilitate the prosecution of trafficked people for their involvement in unlawful acts. For example, women and children trafficked for prostitution can possibly be treated as sex workers who deserve so-called ‘administrative handling measures’, such as a fine. Trafficked people using fraudulent personal documents, such as a visa, ID, or passport, could also be fined or prosecuted according to Article 341 of the *2015 Penal Code*.<sup>71</sup> Additionally, trafficked people who have undertaken illegal exit and/or entry in the context of Vietnam

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<sup>68</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, UN ESCOR, UN Doc E/2002/68/Add 1 (20 May 2002) (*Recommended Principles and Guidelines*).

<sup>69</sup> *Ibid.*

<sup>70</sup> See, eg, *Agreement between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking*, signed 24 March 2008 (*Thailand-Vietnam Agreement*) <[www.no-trafficking.org/report\\_docs/legal/thai\\_vn\\_coop\\_elim\\_ti\\_p\\_en.pdf](http://www.no-trafficking.org/report_docs/legal/thai_vn_coop_elim_ti_p_en.pdf)>; see also *Memorandum of Understanding between the People’s Republic of China and the Socialist Republic of Vietnam on Cooperation Agreement on Prevention and Control of Human Trafficking* (2010) (*China-Vietnam Agreement*); *Agreement between the Royal Government of Cambodia and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking*, 10 October 2005, art 5 (*Cambodia-Vietnam Agreement*) <[http://www.no-trafficking.org/reports\\_docs/legal/vietnam/mou\\_vn\\_cb\\_eliminate\\_tips.pdf](http://www.no-trafficking.org/reports_docs/legal/vietnam/mou_vn_cb_eliminate_tips.pdf)>; *Agreement between the Government of the Lao People’s Democratic Republic and the Government of the Socialist Republic of Vietnam on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking*, 3 November 2010, art 4(a) (*Laos-Vietnam Agreement*) <[www.no-trafficking.org/reports\\_docs/legal/lao\\_viet\\_ht\\_mou\\_en.pdf](http://www.no-trafficking.org/reports_docs/legal/lao_viet_ht_mou_en.pdf)>.

<sup>71</sup> *2015 Penal Code*, art 341 ‘On the offence of forging seals/documents of agencies/organisations; and using false seals/documents of agencies/organisations’.

possibly face administrative or criminal liability.<sup>72</sup> These provisions in the *Penal Code* contradict the non-prosecution principles regarding victims, which greatly impacts the rights and interests of victims of trafficking.<sup>73</sup> More specifically, it inhibits the proper identification of trafficking victims, which is needed to accurately provide services for them.

In summary, the narrow definition of human trafficking and the lack of provisions regarding the non-prosecution of victims has a significant influence on the operations of agencies that need to apply clear protocols nationwide. This certainly contributes to the difficulties regarding the identification of trafficking victims and their invisibility to Vietnamese authorities.

### *B Law on Prevention and Suppression against Human Trafficking*

Unlike the *Penal Code*, the *2011 Anti-trafficking Law* has at least partly adapted to the international definition of trafficking in the *Palermo Protocol* by including as prohibited acts under Article 3, the ‘transfer or receipt of persons for sexual exploitation, forced labour, the removal of organs, or for other inhuman purposes’, and the ‘recruitment, transportation, harbouring of persons for sexual exploitation, forced labour, the removal of organs or for other inhuman purposes’.<sup>74</sup> In addition, the *2011 Anti-trafficking Law* describes the means of trafficking, as well as broadens the purposes of exploitation in the areas of general and sexual exploitation. For instance, Article 2 considers sexual exploitation to be the coercion of persons into prostitution, pornography, or sex slavery, and forced labour to be the use of force, the threat of the use of force, or other

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<sup>72</sup> *2015 Penal Code*, art 347 ‘On the offence of illegally leaving or entering the country; and illegally staying in Vietnam’.

<sup>73</sup> Gallagher, above n 2, 280.

<sup>74</sup> *Law on Prevention, Suppression against Human Trafficking 2011* (Vietnam) Law No 66/2011/QH12, passed by Vietnamese National Assembly 12th Legislature, 9th session on 29 March 2011 and entered into force 1 January 2012 (*2011 Anti-Trafficking Law*).

means to coerce persons to work unwillingly.<sup>75</sup>

These appear to be positive changes to the international instrument, which Vietnam has acceded and signed to eradicate the crime of human trafficking.<sup>76</sup> However, it is argued that the *2011 Anti-trafficking Law* does not provide a comprehensive definition of trafficking as constituted by the *Trafficking Protocol*.<sup>77</sup> Indeed, this law only explains the terms ‘sexual exploitation’, ‘sexual slave’, ‘forced labour’ and ‘victims of trafficking’ rather than defining the term ‘human trafficking’ and giving it nationwide application. By way of illustration, Article 2 of this law explains ‘forced labour’ to include the use of violence, the threat to use violence, and other techniques to force individuals to work against their will.<sup>78</sup> This understanding excludes some patterns of labour exploitation, ‘such as excessively long days or working weeks’.<sup>79</sup> Consequently, a standard definition of trafficking has not yet been formulated under the legal system.<sup>80</sup>

Secondly, the *2011 Anti-trafficking Law* still fails to include ‘the abuse of power or of a position of vulnerability’, and ‘debt bondage’, as other means of trafficking, which are defined in the *Palermo Protocol*.<sup>81</sup> These are the most prevalent means traffickers use to control their victims in locations in the GMS, including Vietnam.<sup>82</sup> Reference to the abuse of power is particularly necessary to prevent law enforcement agencies from prosecuting victims if their trafficking cases involve them violating any laws. Reference to debt bondage is also needed to reflect the actual practice of trafficking in Vietnam, including instances where voluntary migration turns into trafficking. Indeed, the *2011 Anti-trafficking Law* does not mention

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<sup>75</sup> Ibid.

<sup>76</sup> See, eg, *Trafficking Protocol*. See also COMMIT MOU, above n 48; Kneebone and Debeljak, above n 24.

<sup>77</sup> Hoang, above n 20; Kneebone and Debeljak, above n 23; see also Vijayarasa, above n 25, 1017.

<sup>78</sup> *2011 Anti-trafficking Law*, art 2(5).

<sup>79</sup> Vijayarasa, above n 25, 1017.

<sup>80</sup> Hoang, above n 20. See also Tucker et al, above n 56.

<sup>81</sup> See Kneebone and Debeljak, above n 23.

<sup>82</sup> Ibid.

consent during the trafficking journey, which may be present in the migration to Vietnam itself.<sup>83</sup> The *2011 Anti-trafficking Law* does not make clear whether its provisions will supplement or replace the contemporary provisions of the *1999 Penal Code* or its 2009 amendments.<sup>84</sup>

It is worth noting that although Vietnam concurrently implements the *Penal Code* and *2011 Anti-human Trafficking Law*, the nexus between them is unclear. In Vietnam, the appearance of a new law does not simply repeal a previous one,<sup>85</sup> and only the *Penal Code* has the authority to criminalise an act.<sup>86</sup> The *2015 Penal Code* has not come into force yet, and the *2009 Amended Penal Code* only criminalises some of the acts in Article 3 of the *2011 Anti-Trafficking Law*. This occurs in Articles 119 and 120 of the *2009 Amended Penal Code*, which are used for investigation and prosecution. Consequently, the regulations in the *2011 Anti-Trafficking Law* are quite similar to the international definition of human trafficking in the *Palermo Protocol*. However, law enforcement agencies do not apply them to trafficking cases because prosecution can only occur under the *Penal Code*. This results in inconsistency regarding the application and interpretation of the trafficking definition in these two laws.<sup>87</sup> This may contribute to difficulties in identifying and supporting victims of human trafficking in Vietnam.

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<sup>83</sup> See Hoang, above n 19.

<sup>84</sup> Currently the 2009 amended Penal Code is applied to prosecute and investigate human trafficking cases. Meanwhile, the 2011 Anti-Trafficking law is used for the prevention and detection, of human trafficking offences; the receipt, identification, protection and assistance for victims; and international co-operation in the prevention and suppression of human trafficking; see also Kneebone and Debeljak, above n 23.

<sup>85</sup> See *Law on the Promulgation of Legal Documents 2015* (Vietnam) No 80/2015/QH13, was passed by the Vietnamese National Assembly 13th Legislature, 9th session on 22 June 2015 and entered into force on 1 July 2016) [Ministry of Justice trans] <[http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=30521](http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=30521)>.

<sup>86</sup> Article 2 (1) of the *2015 Penal Code* states that: ‘[o]nly those individuals who have committed crimes regulated in the *Penal Code* shall bear the penal liabilities’.

<sup>87</sup> UNODC, above n 21.

In summary, while Vietnam has developed its anti-trafficking related laws, it is crucial to ensure the consistency of application and implementation of them on a national scale.<sup>88</sup> The new version of the *Penal Code* does not comprehensively address the loopholes, and the *Inter-Ministerial Circular* does not interpret the definition of human trafficking clearly. These weaknesses may hinder law enforcement agencies from appropriately identifying and assisting victims of human trafficking who can be misidentified as illegal migrants, criminals, or sex workers.<sup>89</sup> This impacts greatly on policies surrounding human trafficking, including data collection, and strategies for the identification and assistance of victims of this crime.

#### IV DATA PROBLEMS ON HUMAN TRAFFICKING

More recent attention has focused on difficulties in properly responding to human trafficking-related problems when there is no accuracy in assessing the nature and depth of this problem.<sup>90</sup> In other words, the failure for a solution regarding human trafficking may be caused by unreliable or absent data.<sup>91</sup> In the case of Vietnam, the landscape of human trafficking has not been completely mapped out

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<sup>88</sup> Mark D. Raschke, 'The Need to communicate: Fighting Human Trafficking in Vietnam' (Research Report, the US Naval War College, June 2014) 2, 9.

<sup>89</sup> See Ramona Vijayarasa 'Hidden Data, Hidden Victims: Trafficking in the Context of Globalisation and Labour Exploitation - The Case of Vietnam', in Mary C. Rawlinson, Wim Vandekerckhove, Ronald M. S. Commers & TR Johnston (eds), *Labor and Global Justice: Essays on the Ethics of Labor Practices under Globalization* (Lexington Books 2014) 141,164.

<sup>90</sup> Habib Mohammad Ali, 'Data Collection on Victims of Human Trafficking: An Analysis of Various Sources' 2010 6(1) *Journal of Human Security* 55, 69; Jacqueline Joudo Larsen and Lauren Renshaw, 'People Trafficking in Australia' 441 *Trends and issues in crime and criminal justice* 1, 6.

<sup>91</sup> Tracey Kyckelhahn, Allen J. Beck and Thomas H. Cohen, 'Characteristics of Suspected Human Trafficking Incidents, 2007-08' (Bureau of Justice Statistics, January 2009).

due to shortcomings in systematic and scientific data.<sup>92</sup> Indeed, as a result of the inconsistent and narrow definition of human trafficking, data on human trafficking, including figures relating to trafficked people, identified victims, male victims, and assisted victims, has been insufficient and lacked credibility.<sup>93</sup> Like other countries both regionally and globally, inadequate and inconsistent data on human trafficking may be due to the purposes for data collection and/or different recording methods.<sup>94</sup>

When it comes to the purposes for collecting data, each of the relevant governmental agencies in Vietnam collects data on trafficking differently based on their assigned functions. For example, the Ministry of Public Security (MPS) only focuses on trafficking cases where offenders have been identified, investigated, arrested and prosecuted, and only includes figures relating to victims in these cases.<sup>95</sup> Meanwhile, the Border Guard records the population of trafficked people who return from abroad through border gates, and the Ministry of Labour, Invalids and Social Affairs (MOLISA) is concerned with victims and their (re)integration into the community.<sup>96</sup> While the MPS figures for victims of trafficking were 2,935 for the period 2004 to 2009,<sup>97</sup> the Steering Committee 130 reported 3,598 victims for the period 2005 to 2009.<sup>98</sup> This

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<sup>92</sup> Christopher Gan et al, 'Assessment of the Role of Nongovernment Organisations in Combating Trafficking of Women and Children in Cambodia and Vietnam' (2014) 6 *Journal of GMS Development Studies* 71, 91.

<sup>93</sup> See, eg, Gan et al, above n 95; Kneebone and Debeljak, above n 24; Le, above n 16; see also Vu, above n 14; see also Vijayarasa, above n 92.

<sup>94</sup> Dang, above n 13. See also Tuan Anh Do and Thanh Thi Dang, 'Human Trafficking in Vietnam: Difficulties and Solutions', in Caroline S. Taylor, Daniel Joseph Torpy & Dilip K. Das (eds), *Policing Global Movement: Tourism, Migration, Human Trafficking, and Terrorism* (CRC Press, 2013); Jerrold Huguet and Varamon Ramangkura, *The Long Road Home: Analysis of Regional and National Processes for the Return and Reintegration of Victims of Trafficking in the Greater Mekong Sub-Region* (International Organization for Migration, Regional Office 2007); Vu, above n 13; Vijayarasa, above n 92.

<sup>95</sup> See Dang, above n 12.

<sup>96</sup> Ibid.

<sup>97</sup> See UNIAP, above n 15.

<sup>98</sup> See The Asia Foundation, 'Anti-human Trafficking Activities Supported by the Asia Foundation (2004 – 2009) – Report to UNIAP for 5 year review of

demonstrates how data related to human trafficking in Vietnam can be unreliable.<sup>99</sup>

In terms of methods, there has never been an official system to collect statistics in these areas nationwide. This results in a huge variance between the estimated numbers of trafficking victims, the number of successful prosecutions, and the number of returnees via official channels in the GMS.<sup>100</sup> Indeed, the unnoticed and hidden nature of trafficking, the inconsistent definitions of trafficking, the application of these definitions in practice, the need for the cooperation of trafficked people, and the compilation and dissemination of trafficking data among authorised institutions all contribute to the unreliability of statistics on trafficking in Vietnam.<sup>101</sup> For instance, awareness and knowledge about gender differences have generated discrepancies in definition and application of human trafficking.<sup>102</sup> Indeed, women and children are often the main subjects of trafficking for sexual exploitation, while boys and men are generally sold for labour exploitation.<sup>103</sup> Furthermore, the perfect image of a trafficking victim is a vulnerable, young, and innocent female from an ethnic minority. This impedes the statistics of other trafficked people.<sup>104</sup> This has caused variations in figures on human trafficking over the years; as a result, the efforts of governments, organisations, and individuals to combat human trafficking, especially in terms of identifying and assisting victims are likely to be meaningless if credible data is lacking.<sup>105</sup>

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Program 130' (Unpublished Report, copy on file with author – supplied by UNIAP Vietnam, 2009).

<sup>99</sup> See Dang, above n 12.

<sup>100</sup> See Huguet and Ramangkura, above n 97.

<sup>101</sup> See, eg, Huguet and Ramangkura, above n 97; see also Vijayarasa, above n 92.

<sup>102</sup> See Kneebone & Debeljak, above n 23.

<sup>103</sup> Ibid.

<sup>104</sup> Vijayarasa, above n 92.

<sup>105</sup> Kneebone and Debeljak, above n 24.

## V NATIONAL RESPONSES TO HUMAN TRAFFICKING IN VIETNAM

Based on the current legal system, the Government of Vietnam has implemented national strategies to comprehensively eradicate human trafficking. On the basis of this legal framework, anti-human trafficking sectors are responsible for addressing varying problems related to this crime. In this section, the paper will shed light on the existing policies and argue that they are ineffective in identifying and assisting victims of human trafficking. Specific attention will be paid to the role of the police force in implementing these policies.

### A *Nation Plan of Action against Trafficking in Persons*

The presence of the *Nation Plan of Action against Trafficking in Persons* (also known as Programme 130 or Steering Committee 138) demonstrates the importance of a timely governmental strategy in response to the phenomenon of human trafficking, which has turned into a pressing problem in Vietnam. This strategy is considered to be ‘the Vietnamese government’s cross-cutting response to human trafficking’.<sup>106</sup> To date, the Vietnamese government has issued three versions of the Nation Plan of Action (NPA), which have reflected its priorities in efforts to eradicate human trafficking in Vietnam in different periods, including NPA 2004-2010, NPA 2011-2015, and NPA 2016-2020.<sup>107</sup>

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<sup>106</sup> See CEOP and BE, above n 20.

<sup>107</sup> See generally *Decision No 130/2004 / QD-TTg, approving the Nation Plan of Action on the Prevention and Fighting of Crime of Trafficking of Women and Children from 2004 to 2010* (Vietnam) (14 July 2004) (‘*Government Decision 130/2004*’) < <https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Quyetchinh-130-2004-QD-TTg-Chuong-trinh-hanh-dong-phong-chong-toi-phambuon-ban-phu-nu-tre-em-tu-2004-den-2010-52227.aspx>>; see also *Decision No. 1427 / QD-TTg, Approving the Program of Action to Prevent and Combat the Human Trafficking Crime During 2011-2015* (Vietnam) 18 August 2011 (‘*Government Decision 1427/2007*’) < <https://thuvienphapluat.vn/van-ban/EN/Trach-nhiem-hinh-su/Decision-No-1427-QD-TTg-approving-the-program-of-action-to-prevent-and-combat/130690/tieng-anh.aspx>>; *Decision No. 2546 / QD-TTg, Granting Approval for Human Trafficking Prevention and Fighting Program in 2016-2020 Period* (Vietnam) 31 December 2015 (‘*Government Decision 2546/2015*’) <<https://thuvienphapluat.vn/van->

The first version, NPA 2004-2010, was promulgated when Vietnam started witnessing the societal and economic success brought about by the Renovation in 1986. Negative consequences of this rapid change included an increase in the instances and seriousness of trafficking in women and children in Vietnam.<sup>108</sup> Consequently, this NPA gave priority to protecting women and children from traffickers without mentioning men as potential victims of this crime. In this strategy, there were two separate periods with specific objectives: the first phase from 2004 to 2006, and the second from 2007 to 2010. The first phase aimed to raise awareness regarding the trafficking of women and children, the methods of traffickers, the consequences of trafficking, and anti-trafficking laws. It also aimed to consolidate efforts by law enforcement and other government agencies to decrease the crime of trafficking women and children by 20 percent. The phase from 2007 to 2010 then focused on comprehensive prevention and solutions aiming to reduce this crime by more than 50 percent, as well as the effective reintegration of victims into the community.

Noticeably, this NPA was deployed nationwide under the supervision of a Steering Committee. At a national level, this Steering Committee was chaired by the Deputy Prime Minister of MPS who was Vice Chairperson, and other important members from MOLISA, MOJ, and MOD. At a provincial level, the components of the provincial steering committee were established accordingly. Importantly, the NPA identified trafficking in women and children as a major social problem in Vietnam because it is frequently linked with prostitution.<sup>109</sup> However, there were some limitations in this

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ban/EN/Trach-nhiem-hinh-su/Decision-2546-QD-TTg-granting-approval-for-human-trafficking-prevention-fighting-program-2016-2020/323918/tieng-anh.aspx>.

<sup>108</sup> Decision 130/2004, above n 107.

<sup>109</sup> See, eg, Hoang, above n 20; Ramona Vijayarasa, 'The State, the Family and Language of 'Social Evils': Re-stigmatising Victims of Trafficking in Vietnam' (2010) 12 *Culture, health & sexuality* 89-102; Nadine Voelkner, 'Affective Economies in the Governance of Trafficking and Sex Work in Vietnam' (2014) 28 *Global Society* 375-390.

program. While it adopted a strong victim-centred approach, its focus was still on trafficking in women and children for prostitution, child adoptions, and marriage rather than trafficking in men and trafficking for other purposes.<sup>110</sup> In addition, the target of decreasing trafficking in women and children by 50 per cent was hard to assess as an official system for measuring this crime had not been established in Vietnam.<sup>111</sup> Therefore, the effectiveness of this NPA is still unclear.<sup>112</sup>

The second NPA, from 2011 to 2015, changed some of its predecessor's priorities in an effort to end human trafficking in Vietnam.<sup>113</sup> Firstly, men were added as potential trafficking victims rather than just women and children. Secondly, this NPA paid attention to the significant role of the Vietnam Women's Union (VWU), which is a mass organisation that strongly supports victims of trafficking at a local level. Due to the consideration of gender in human trafficking in Vietnam, the VWU plays a key role in approaching and supporting victims of trafficking because a large majority of them are women and girls. More importantly, the government also confirmed the phenomenon of domestic trafficking in Vietnam in the second NPA, instead of only admitting cross-border trafficking. Finally, the NPA in this period tended to improve international cooperation within the anti-human trafficking strategies as a program had not been established under the former NPA. According to this NPA, MPS retained its core responsibilities in the anti-trafficking framework, namely being in charge of investigations and prosecutions, as well as reception and identification of victims of trafficking, and the development of international cooperation. It is also significant that a key point of the NPA 2011-2015 was aiming to prevent human trafficking in Vietnam.

The Vietnamese government has already approved the third version of the NPA for the period of 2016 to 2020.<sup>114</sup> Basically, this

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<sup>110</sup> See, eg, Duong, above n 13; Hoang, above n 20.

<sup>111</sup> Duong, above n 13.

<sup>112</sup> Ibid.

<sup>113</sup> See Government Decision 1427/2007, above n 107.

<sup>114</sup> See Government Decision 2546/2015, above n 107.

NPA continues and maintains the programs of the 2011 to 2015 NPA. However, this new NPA focuses more on cooperation with neighbouring countries - like Cambodia, Laos, and China - in investigations, prosecutions, rescues and the identification of trafficking victims. The second priority of this current NPA is to promulgate protocols for human trafficking-related laws, which have been fixed, such as the *Penal Code* and the *Anti-human Trafficking Law*. More noticeably, the Vietnamese government is also considering its ability to accede to the *Protocol against the Smuggling Migrants by Land, Sea, and Air* (PMLSE). It is hoped that Vietnamese authorities will recognise fundamental connections between human trafficking and labour migration in counter-trafficking strategies in the future.

Over time, appropriate alterations have occurred to the NPAs, allowing them to adapt to variations in human trafficking. However, the NPAs have not paid much attention to domestic trafficking, even if they consider this to be a large-scale internal movement.<sup>115</sup> Similarly, the NPAs have not included labour trafficking (or trafficking for labour exploitation) in their national projects, apart from the consideration of PMLSE ratification. This suggests they do not intend to ensure the rights of trafficked people for labour and migration workers.<sup>116</sup> As a result, this may diminish support when it comes to identification and assistance of victims of trafficking within counter-trafficking policies and the operation of law enforcement agencies, as will now be shown.

### *B Policies on Identification and Assistance of Victims of Trafficking in Vietnam*

The Vietnamese government considers the identification and assistance of victims of trafficking to be vital strategies for eliminating this crime. Indeed, Vietnam has organised a program targeting the identification and assistance of victims of this crime in

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<sup>115</sup> Veronique Marx and Katherine Fleischer, *Internal Migration: Opportunities and Challenges for Socio-economic Development in Viet Nam* United Nations Viet Nam.

<sup>116</sup> Vijayarasa, above n 92.

the NPAs. Based on this program, there are specific regulations in the NPA identifying and assisting victims of human trafficking.

It has been argued, however, these regulations are likely to only attempt to verify information pertaining to the identities of trafficked people rather than the factors surrounding their trafficking as well.<sup>117</sup> The *2011 Anti-trafficking Law* stipulates that a person can be classified as a victim of human trafficking in cases where that person has been convinced to be ‘bought, sold, transferred, received, recruited, transported, or harboured for sexual exploitation, forced labour, removal of organs, or other inhumane purposes’.<sup>118</sup> Accordingly, evidence which supports victim identification is collected by district level police agencies, rescuing agencies (police, border guards, and marine police), investigating agencies, the People’s Procuracy, the People’s Court and/or foreign agencies. The *2011 Anti-trafficking Law* includes five procedures for verifying trafficked people in Vietnam. These are outlined in the table below.

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<sup>117</sup> See Hoang, above n 19.

<sup>118</sup> See *2011 Anti-trafficking Law*, above n 74.

**Table 1: Procedures for verifying trafficked people in Vietnam**

	<b>Situations of trafficked people</b>	<b>Agencies relating to verification</b>	<b>Responsibilities</b>	<b>Time</b>	<b>Articles in the Anti-Trafficking Law 2011</b>
1	Domestic victims of trafficking	The People's Committees at commune level	- Report to the Division on Labor, War Invalids and Social Affairs (DOLISA) at district level - Provide necessary services for victims	- Immediately report and maximum three days	Article 24
		DOLISA at district level	- Support victims - Cooperate with Public Security Agencies at district level to verify the initial information about victims	- 03 days until 02 months	Article 24
		Public Security Agencies at district level	- Verify information about victims	- 20 days, and maximum 02 months in special cases	Article 24
2	Rescued victims of trafficking	Public Security Agencies, Border Military or Marine Police	- Provide services for victims - Give victims to DOLISA at district level - Issue certification for victims	- As soon as possible	Article 25
		DOLISA at district level	- Support victims by necessary services	- 20 days until 02 months in special cases	Article 25
		Public Security Agencies at district level	- Verify the initial information about victims	- 20 days until 02 months in special cases	Article 25
3	Victims are officially returned from abroad	Vietnamese Representative Agencies abroad	- Respond to information and documents about victims - Cooperate with Ministry of Public Security to verify personal information of victims - Issue necessary documents for their return	- No provisions	Article 26

		Ministry of Public Security	- Receive victims - Assist with travelling tickets, food, accommodation and other benefits	- No provisions	Article 26
		Ministry of Defense	- Receive victims - Assist with travelling tickets, food, accommodation and other benefits	No provisions	Article 26
4	Victims return home from abroad by themselves	Procedures regarding domestic victims of trafficking completed			Articles 24 and 26
5	Victims are returned officially via bilateral agreements	Depends on each bilateral instrument	Obey the provisions of bilateral instruments	According to that bilateral instrument	Article 26

As Table 1 shows, these regulations are similar to those formulating a definition of human trafficking rather than simply creating a victim identification procedure. It is, however, impossible for police at the district level to effectively verify the information of trafficked people at the ward level in which they must register as permanent residents under this law. This is because many trafficked people do not register as temporary or permanent residents. Consequently, the police may not store data on this information at the ward level. As a result, it is claimed that many trafficked people do not provide enough evidence of trafficking to be categorised as victims of trafficking under this law.<sup>119</sup> In many cases, the verification conducted by police regarding these victims may create a misunderstanding that police only intend to prosecute traffickers rather than protect victims.<sup>120</sup> Indeed, it is the understanding of many victims that trafficked people are only categorised as victims and protected if police charge the traffickers. Furthermore, the *2011 Anti-trafficking Law* only mentions international cooperation in preventing and fighting against human trafficking rather than showing how to deal with foreign victims of trafficking who may be

<sup>119</sup> Hoang, above n 20.

<sup>120</sup> Ibid.

found in Vietnam. It is claimed that except for the bilateral instruments, the identification of foreign victims of trafficking in Vietnam has been a 'grey area' that should be clarified.

In addition to the 2011 *Anti-trafficking Law*, the Government of Vietnam has promulgated a *Decree on Identification and Protection Safety of Victims of Trafficking and Their Beloved* (hereinafter referred to Decree 62).<sup>121</sup> This Decree tries to fill the gaps in victim identification mentioned regarding the 2011 *Anti-trafficking Law* by providing additional grounds. Unfortunately, guidelines on the procedures for identifying victims of trafficking have not been issued with this Decree.<sup>122</sup> Furthermore, although this Decree enables trafficking victims to be identified without identifying the traffickers, there has been no evidence regarding its effectiveness in practice.<sup>123</sup> More specifically, victim identification can now be based on the fact that trafficked people were detected or rescued together with other victims; trafficked people have lived with other victims at the same detention, management, or exploitation sites, and were treated like the other victims; individuals have moral and/or physical indicators consistent with trafficking (for example, being sexually exploited or physical injured); their family members reported them missing or the subject of trafficking; and other legal documents enable them to be determined as victims of trafficking.<sup>124</sup> These supplementary indicators reflect the real nature and context of trafficked people in Vietnam, which improves victim identification. Based on these regulations, it can be said that many trafficked people may remain unnoticed or misidentified in Vietnam.<sup>125</sup> For example, those who are involved in trafficking for prostitution may remain invisible or misidentified to Vietnamese authorities.<sup>126</sup> Indeed, as mentioned above, human trafficking is considered to be a social problem and

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<sup>121</sup> See *Government Decree 62/2012/ND-CP on the Grounds for the Identification of Trafficked Victims and Protection of the Safety for Victims and their Relatives* (Vietnam) 13 August 2012, entered into force 10 October 2012 [Vietnamese version] ('Decree 62') <[http://moj.gov.vn/vbqp/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=27864](http://moj.gov.vn/vbqp/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=27864)>.

<sup>122</sup> UNODC, above n 22.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> Hoang, above n 20.

<sup>126</sup> *Ibid.*

trafficking for prostitution is common in Vietnam.<sup>127</sup> Unfortunately, this renders people (especially women and girls) who are trafficked for sexual exploitation (prostitution) similar to sex workers. Simply put, this approach pushes trafficked people further into sex work, and prostitution is prohibited in Vietnam.<sup>128</sup> Therefore, victims and their family members experience stigma in their society and want to keep the trafficking secret rather than report it to authorities.<sup>129</sup> This contributes to the ineffective identification and assistance of victims of human trafficking.

Another group of potentially hidden or misidentified victims comes from those who consent to move within Vietnam or across its border.<sup>130</sup> As discussed previously, trafficked migrants can be charged for illegally exiting the country if they violate this law twice.<sup>131</sup> The narrow definition of trafficking in the Vietnamese laws reduces protections for victims who are vulnerable to trafficking due to poverty, or low education.<sup>132</sup> As a result, these people may be identified as criminals regardless of their victim status. This problem is partly caused by the weak cooperation between trafficking-related countries.<sup>133</sup>

To address the loopholes in the *2011 Anti-trafficking Law* and Decree 62,<sup>134</sup> an *Inter-Ministerial Circular* was issued in 2014.<sup>135</sup> This *Circular* focuses on identification rather than verification of trafficked people. Indeed, this latest document continues to echo the

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<sup>127</sup> Government Decision 130/2004, above n 107.

<sup>128</sup> Vijayarasa, above n 25.

<sup>129</sup> *Ibid.*

<sup>130</sup> Hoang, above n 20.

<sup>131</sup> See, eg, *1999 Penal Code; 2009 Amended Penal Code*, n 59.

<sup>132</sup> Tucker et al, above n 56.

<sup>133</sup> Huguet and Ramangkura, above n 97. See also Wang, above n 30.

<sup>134</sup> See Decree 62, above n 127.

<sup>135</sup> *Inter-ministerial Circular No 01/2014/TTLT-MPS, MOD, MOLISA, MOFA Guidelines on Process and Procedure of Identification, Reception, and Return of Trafficked People* (Vietnam) 10 February 2014 ('*Inter-ministerial Circular No 01/2014*') <<https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Thong-tu-lien-tich-01-2014-TTLT-BCA-BQP-BLDTBXH-BNG-nan-nhan-bi-mua-ban-221808.aspx>>.

backgrounds of trafficking victims; a positive sign for more success in identifying and assisting victims of trafficking in Vietnam, where reactive approaches cannot identify the high rate of victims who return of their own accord. The *Circular* outlines the full procedures regarding the reception and identification of trafficking victims. The following table briefly summarises these procedures.

**Table 2: Protocols for identifying victims of trafficking in Vietnam<sup>136</sup>**

No	Situations of trafficked people	Agencies are relevant to identification	Responsibility	Articles in the Inter-ministerial Circular 01
1	Victims of cross-border trafficking who still stay abroad	Vietnamese Representative Agencies at foreign countries	- Cooperate with foreign agencies to rescue victims - Check, verify, and collect documents relating to victims - Guide victims to complete the form for trafficked people - Support victims	Article 4
		Immigration Department	- Verify and identify victims as requested	Article 4
		Criminal Department - Public Security Agencies	- Verify, identify and receive victims - Take statement of victims	Article 4
		Public Security Agencies at provincial level	- Receive victims	Article 4
		Border Guard Station	- Compare information about victims - Guide victims to complete the form for trafficked people - Receive victims before returning them to Immigration Department at provincial level	Article 4
		DOLISA at provincial level	- Support victims	Article 4
2	Victims return home from abroad by themselves	Border Guard Station or Marine Police	- Arrange temporary accommodation - Support necessary services - Make statements of victims - Check documents relating to victims - Take victims to the nearest commune-level People' Committee	Article 5

<sup>136</sup> Ibid.

		- Commune-level People' Committee	- Guide victims to fill the form for trafficked people - Support victims necessary services	Article 5 and 6
		- DOLISA at district level	- Provide accommodation and other services	Article 5 and 6
		- Public Security Agencies at district level	- Verify and identify victims - Issue certification for victims - In special cases, cooperate with higher level police agencies to identify	Article 5 and 6
3	Victims of domestic trafficking	- Commune-level People' Committee	The same as No.2	Article 6
		- DOLISA at district level	The same as No.2	Article 6
		- Public Security Agencies at district level	The same as No.2	Article 6
4	Rescued victims of trafficking	- Police Agencies, Border Guards, and Marine Police	- Support necessary services - Issue certification for victims - Give victims to the local DOLISA	Article 7
		- DOLISA at local level	- Ask local police to rescue victims - Support victims	Article 7
		- Public Security Agencies at district level	- Verify, identify victims	Article 6 and 7
5	Foreign victims of trafficking	- Public Security Agencies at provincial level	- Rescue victims	Article 8
		- Police Agencies, Border Guard Stations, and Marine Police	- Support essential service - Give victims to DOLISA at district level	Article 8
		- DOLISA at district level	- Provide accommodation - Report to the provincial level DOLISA, Immigration Department and Department of Foreign Affairs	Article 8
		- Provincial Level Immigration Department	- Check documents and immigration of foreign victims - Make statements of victims - Take pictures of victims - Guide victims to fill the form for victims - Report to Immigration Department at Ministerial Level	Article 8
		- Immigration Department at Ministerial Level	- Report to Consular Department of Ministry of Foreign Affairs	Article 8
		- Consular Department	- Contact embassy of foreign victims to protect rights and interests of victims	Article 8

In terms of assistance for victims of trafficking, the *2011 Anti-trafficking Law* classifies short-term and long-term support after identification. When it comes to short-term support, victims can receive necessary services such as food, clothes, temporary housing and other items, as well as travelling costs, medical examination, and legal advice. Long-term support includes educational and/or vocational training opportunities, a temporary allowance for initial difficulties, and a bank loan with a low-interest rate.<sup>137</sup> It should be noted that foreign victims of trafficking can also receive short-term support before returning to their home country.<sup>138</sup> It is argued, however, these services are more likely to be in accordance with the *Palermo Protocol* and bilateral agreements rather than being useful to the practical demands of victims of trafficking in Vietnam. For example, the *Laos-Vietnam Agreement* shows that authorities in both states guarantee victims of trafficking will receive psychological support, health services, and other necessary services. However, it does not say that those victims can stay in other countries legally if they want. In other words, it does not say whether Vietnam or Laos can grant a working visa for victims to live and work in the country that they select.<sup>139</sup>

In practice, assistance for victims is linked to the victim identification process. Indeed, in some cases, victims of trafficking can be supported before even completing victim identification. To illustrate, the *Cambodia-Vietnam Agreement* states that both parties will take victims to the nearest centre and provide psychological assistance, health services, food, and housing until verification and identification have been concluded.<sup>140</sup> Normally, victims can obtain services from authorities during the process of reception and re-integration under Vietnamese law. Indeed, it is not only the bilateral agreements that require specific support for victims but the domestic laws as well. For example, the *Thailand-Vietnam Agreement* requires both governments to supply ongoing social aid, health services, psychological advice, and other necessary services to victims of

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<sup>137</sup> *2011 Anti-trafficking Law*.

<sup>138</sup> *Ibid*.

<sup>139</sup> See *Laos-Vietnam Agreement*, above n 70.

<sup>140</sup> See *Cambodia- Vietnam Agreement*, above n 70.

trafficking who reintegrate into their society.<sup>141</sup> This is a way to protect victims from social discrimination and stigmatisation, particularly victims of sex trafficking. In contrast, the *2011 Anti-trafficking Law* does not mention support for victims of trafficking to overcome discrimination and stigmatisation.<sup>142</sup>

As has been shown, many trafficking victims who are not identified by Vietnamese authorities cannot access services from authorities because they are considered illegal migrants. This does not comply with some bilateral agreements. For example, agreements between Thailand and Vietnam, Cambodia and Vietnam, and Laos and Vietnam confirm that victims of trafficking should not be prosecuted for illegal entry and do not deserve any punishment. Even trafficked people confirmed as victims who also face challenges in receiving support in practice. Indeed, they face a lack of facilities in supporting institutions and shelters, and no room for male victims.<sup>143</sup> Consequently, victims of trafficking go unassisted by the authorities due to these reasons.<sup>144</sup> This includes the police force, as will now be discussed.

### *C The Responsibility of Police in the Identification and Assistance of Victims of Human Trafficking in Vietnam*

All versions of the NPA confirm that the police force is to play a core role in interventions regarding human trafficking in Vietnam. Indeed, the police force is assigned to oversee the NPA both centrally and locally. In terms of national responses to human trafficking, the Vietnamese government authorises the police to be the leading force on the one sub-program relating to the identification of trafficking victims in Vietnam, as well as have cooperative roles in projects involving support for victims of this

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<sup>141</sup> See Thailand-Vietnam Agreement, above n 70.

<sup>142</sup> Hoang, above n 20.

<sup>143</sup> UNODC, above n 22.

<sup>144</sup> Rebecca Surtees, 'After trafficking: Experiences and Challenges in the (Re) Integration of Trafficked Persons in the Greater Mekong Sub-Region' (Research Report, UNIAP/NEXUS Institute, Bangkok, 2013).

crime.<sup>145</sup>

Victim identification is also one of the investigative tasks police are responsible for in accordance with the *2015 Criminal Procedure Code*. Moreover, this operation remains essential to determining whether or not human trafficking occurs in practice. In other words, it plays a significant role in prosecuting traffickers for their crimes.<sup>146</sup>

The police face many challenges in identifying and supporting victims of human trafficking. In terms of organisation, there is inconsistency regarding the establishment of Task Forces. At the ministerial level, a specialised team is completely responsible for addressing human trafficking. At the provincial level, only the Ha Noi Police Department has a Task Force. The rest of the provinces and cities, however, have mixed units where police have responsibility for dealing with human trafficking and prostitution-related crimes. This inconsistent structure has a great impact on the strategies for eliminating human trafficking, especially identifying and assisting victims because it impedes effective training, contact, report, and cooperation.<sup>147</sup>

Turning to legal obstacles, the police force are hierarchised from ministerial level to district level.<sup>148</sup> Theoretically, police at the provincial and ministerial levels are in charge of investigating human trafficking.<sup>149</sup> However, the facts show that district-level police and even police at a commune level encounter trafficked people who

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<sup>145</sup> Ibid.

<sup>146</sup> See, eg, Hoang, above n 19; see also Phuong Thi Tue Hoang 'Legislating to Combat Trafficking in Vietnam' (Paper presented in 17th Biennial Conference of the Asian Studies Association of Australia, Melbourne, 2008).

<sup>147</sup> *Annual Report on Prevention and Suppression against Human Trafficking in Vietnam of Ministry of Public Security (Vietnam) 2014* ('*Annual report 2014*').

<sup>148</sup> *2015 Criminal Procedure Code (Vietnam) Law No 101/2015/QH*, approved by the Nation Assembly of Vietnam 13<sup>th</sup> Legislative, 10<sup>th</sup> session on 27 November 2015, which has not come into effect < <https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-296884.aspx>>.

<sup>149</sup> Ibid.

return home without reporting that they have been trafficked.<sup>150</sup> The criminal departments at the district level have no authority to investigate human trafficking, but they are in charge of receiving information and victims of trafficking before sending them to a provincial level criminal department.<sup>151</sup> Consequently, the Vietnamese police's response to human trafficking is inconsistent and limited.<sup>152</sup> This may have a negative influence on the effectiveness of identification and assistance of victims of trafficking in Vietnam if the district police do not collect enough evidence before sending victims to the provincial police.<sup>153</sup>

According to the existing provisions of the *Penal Code, 2011 Anti-human Trafficking Law*, and *Inter-Ministerial Circular*, several agencies in the police system are tasked with identifying and assisting victims of human trafficking, particularly when it comes to verifying and receiving trafficked people.<sup>154</sup> More specifically, Immigration Departments at ministerial and provincial levels are responsible for receiving documentation about victims either from agencies in foreign countries or Vietnamese foreign agencies. However, the fact that these agencies cannot verify information about potential trafficked people means they must send these cases to an anti-trafficking unit at the same level for identity verification. This consumes much time and resources. Therefore, many trafficked people feel disappointed and stop cooperating with police.<sup>155</sup>

Ultimately, the police force is reactive when it comes to identifying victims of human trafficking.<sup>156</sup> Indeed, it has been reported that police identify 40 percent of trafficking victims via calls to a hot-line, whilst 60 percent of them are recognised by the police when the victims themselves email their trafficking report, they or their family members report at police stations, or they are

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<sup>150</sup> UNODC, above n 22.

<sup>151</sup> See *2015 Penal Code*, above n 59.

<sup>152</sup> See UNODC, above n 22.

<sup>153</sup> Annual report 2014, above n 147.

<sup>154</sup> See Inter-ministerial Circular No 01/2014, above n 135.

<sup>155</sup> See Annual report 2014, above n 147.

<sup>156</sup> *Ibid.*

rescued by police.<sup>157</sup> This means that either victims do not report their cases, or traffickers develop new techniques of trafficking to impede the police's identification of victims because they become used to these traditional strategies.<sup>158</sup> However, despite these reports, police do actively conduct professional operations to find trafficking victims. They have informants; patrol areas; crackdown on brothels; investigate other crimes, such as prostitution-related crimes and people smuggling; and conduct extra investigations into other cases of human trafficking.<sup>159</sup> Nevertheless, they lack funds, resources, knowledge, and training to employ these proactive approaches in order to uncover victims in Vietnam effectively.<sup>160</sup> Therefore, the large numbers of victims of trafficking remain hidden in Vietnam.

There is also a stereotype employed by police in identifying victims of human trafficking, namely that of a young, innocent, and vulnerable female.<sup>161</sup> This means that men or women without these features are likely to be ignored. Consequently, police neglect other forms of human trafficking, apart from trafficking for sexual exploitation.<sup>162</sup> That is why the hidden population of victims remains a serious problem in Vietnam where human trafficking is inconsistent in both definition and interpretation.<sup>163</sup>

When it comes to assistance, Vietnamese police only provide initial or emergency support for victims of trafficking. As shown in the current laws, police can supply food, accommodation, clothes, and other necessary items. If victims of trafficking want to go home, police can also cover travelling tickets. In terms of long-term support, police are responsible for cooperating with other agencies, such as MOLISA, non-governmental organisations, and VWU to assist victims. Targeted services for victims include legal consultation, psychological aid, and health examination, as well as

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<sup>157</sup> Ibid.

<sup>158</sup> Annual report 2014, above n 147.

<sup>159</sup> See Annual report 2014, above n 155.

<sup>160</sup> Ibid.

<sup>161</sup> Vijayarasa, above n 92.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

opportunities for education and vocational training, and jobs. It should be noted that police play a cooperative role here to assist victims as much as possible. While this has been investigated on paper, it has not been researched in practice. Therefore, further examination of the effectiveness of police assistance for victims of human trafficking is needed.

## VI CONCLUSION

It is undeniable that the phenomenon of human trafficking in Vietnam has been influenced by elements of this country's geography, history, population, culture and economy.<sup>164</sup> These factors have facilitated the spread of human trafficking in Vietnam. While the Government of Vietnam has implemented counter-trafficking policies, law enforcement agencies face serious challenges relating to trafficking. First, while the category of potential victims and types of trafficking has been increased (for example, men have been added as subjects of trafficking), the anti-trafficking policies still focus predominantly on trafficking in women and children for sexual exploitation (essentially prostitution). As a result of this, Vietnamese policies consistently fail to identify other trafficked victims. Moreover, human trafficking is regarded as a social problem in the anti-trafficking policies. Consequently, many trafficked people may be placed into the legal category of sex workers rather than victims. To a lesser extent, their victimisation may be hidden due to this legal category.

Secondly, trafficking in people for forced labour has been overshadowed in the Vietnamese anti-trafficking program. It is argued that Vietnamese policymakers have not recognised the link between human trafficking and migration. When it comes to the methods used by traffickers, not all victims of trafficking are completely forced, deceived or coerced. Indeed, some of them voluntarily agree to go abroad to sell their labour or work other jobs because of poverty, low education, or limited awareness. The

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<sup>164</sup> See Le, above n 16.

definition of trafficking in Vietnam omits debt bondage and vulnerability (the most common forms of trafficking in Vietnam). This means that the perception of trafficked people as passive victims in Vietnamese counter-trafficking laws does not reflect the practice of human trafficking. Additionally, there is no explicit provision that stops victims from being prosecuted if their acts violate the criminal law while they are being trafficked. In other words, the Vietnamese laws are theoretical in nature but translate poorly into practice.

Thirdly, although Vietnam has signed and ratified the *Palermo Protocol*, the regional *Memorandum of Understanding*, and other bilateral agreements, this does not ensure the successful identification and assistance of trafficked people. The legal framework has focused on trade, profit and illegality rather than concentrating on coercion, exploitation and means of trafficking. That is, victims of trafficking are limited according to Vietnamese laws when they are compared to the *Trafficking Protocol*. Consequently, law enforcement agencies like the police face inconsistency when interpreting the *Anti-trafficking Laws* to identify and assist victims of human trafficking. The police force also seems to be reactive in identifying and supporting victims of trafficking. Trafficked people remain invisible or misidentified, and victims cannot access the services they deserve. Therefore, the effectiveness of police in these respects has been limited under these current policies. In addition, data problems contribute to challenges in identifying and assisting victims of trafficking. It is crucial that empirical studies on identification and assistance of victims of human trafficking are now conducted. These studies will shed light on the reasons for the gaps in current Vietnamese policies before suggesting practical recommendations for improvement.