

Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims

IN PREPARATION FOR THE FIFTH THEMATIC CONSULTATION

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**VIET NAM'S PRACTICES and RESPONSES
TO HUMAN TRAFFICKING**

Excellencies Co-facilitators,

Distinguished Guests and Delegates,

Ladies and Gentlemen,

Viet Nam Government strongly supports the recommendations contained in the SRSG's Issue Brief # 5 on smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims.

As a developing country, Viet Nam is a source, transit and destination country for human trafficking whose offenses have become even more complex and sophisticated. Although there remains many socio-economic issues, the Government of Viet Nam attaches great importance to combating human trafficking. Along with the promotion of propaganda & information dissemination, and the improvement of legal system on preventing and combating human trafficking, national action plans and programs have been undertaken to create a positive change of public awareness of and action in the uncompromising fight against human trafficking.

The human trafficking situation in Viet Nam is complex. In the period 2008-2016, 3,897 human trafficking cases were detected with 6,188 individuals and 8,363 victims (according to the annual report of the 138 / CP Steering Committee). Data show that the number of incidents has been on the rise since 2008 and peaked in 2013 with 507 reported incidents. After 2013, the number of cases tends to decrease, but the number of trafficking victims tends to increase. The number of victims detected in 2015 is slightly reduced compared to 2014 but in 2016 this

number increased sharply. The general trend throughout the period was the increase in trafficking victims. A total of 2,390 cases were discovered, of which the sale of people aged 16 or older totaled 2105 cases (accounting for 88.1% of the total number of trafficked persons). The trafficking of children under 16 years old was 177 cases (7.4 %), and the sale of both adults and children was 108 cases (4.5%). There are 2,293 people trafficking abroad and only 97 trafficking in the country. 72% of all human trafficking was to China.

Of the 2,390 cases, 1,392 are for sex work (58.2% of cases), 398 for forced marriages (16.7%), 13 cases for the purpose of forced labor (0.5% of cases) and 587 cases for other purposes (24.6% of cases) (see Steering Committee 138 / CP 2013). According to the Report of the Implementation of the Program of Action on the prevention and combating of human trafficking crimes in 2014 by the Steering Committee 138 / CP of 2014, the estimated crime of trafficking through illegal entry into China about 20% of human trafficking cases are detected; while child and infant kidnapping, child abuse, and offshoring take 13% of total cases (Steering Committee 138 / CP 2014b).

Land border trafficking from Viet Nam to Cambodia was mainly in women for prostitution and forced labour, surrogacy or for forced marriages in a third country. Along the Viet Nam–Lao People’s Democratic Republic border, there was smaller-scale trafficking for prostitution or forced marriage (Steering Committee 138/CP, 2013). Likely, the trafficking for the purpose of prostitution and marriage is the most common form and the main cross-border trafficking route was from Viet Nam to China, as confirmed by Steering Committee 138/CP’s latest reports (Steering Committee 138/CP, 2015a and 2015b) and 138/CP, 2016).

Trafficking in the form of illegal marriage brokering and false marriages to Malaysia, China, Republic of Korea, and Taiwan occurred more often in southern provinces, while cases of child trafficking, substitution and appropriation (including in infants and children) were more prevalent in northern border provinces (Office 138/CP, 2015b).

1. Prosecution

Prosecution is one of the important areas in the fight against human trafficking, reflecting the severity of laws and the deterrence to crimes of this type.

During 2011–2015, the People’s Procuracy prosecuted 1,024 cases with 2,023 traffickers, and the People’s Court conducted hearings on 1,032 human trafficking cases with 2,084 defendants. Among sentences passed, there were three life imprisonments or death penalties, 152 imprisonments for 15–20 years, 667 imprisonments for 7–15 years and 1,050 imprisonments for less than seven years (Office 138/CP, 2015a). While Vietnamese authorities have diligently investigated

and prosecuted trafficking cases, punitive measures are still light compared to the severity of this crime.

In current Vietnamese laws, the Penal Code is the only status law stipulating the crimes and penalties for criminal offences. The other legal documents regulating the specific social relations only stipulate the prohibited activities without defining the penalties. Violations which are severe to the extent of being prosecuted for criminal responsibility will be referred to the related crimes and penalties prescribed in the Penal Code. Though Article 119 and Article 120 of the Penal Code do not include the specific crimes of labor trafficking, forced labor, internal trafficking, etc., the Penal Code has provided the crimes and severe penalties for the offences relating to property fraud and appropriation (Article 139), human smuggling (Article 274), organization and coercion of other people to flee or stay abroad illegally (Article 275), torture of other persons (Article 110) etc., and can be used to prosecute and try offenders relating to human trafficking and forced labor.

On July 23rd 2013, the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, The Ministry of Defense and the Ministry of Justice have issued the Joint Circular 01/2013/TTLT/TANDTC-VKSNDTC-BCA-BQP-BTP guiding the examination for penal liability to the offenses of trafficking in persons and trading in, fraudulently exchanging or appropriating children according to Article 119 and Article 120 of the Penal Code.

2. Protection

Protection of the trafficked victims has been one of the concerns of the Vietnamese Government. Protecting and supporting the victims to reintegrate into their communities have been one of objectives of the action plans and programs. The Government of Vietnam has promulgated many legal documents stipulating the protection of trafficked victims, namely:

- Decision 17/QD-TTg of 29-01-2007 on approval of the Regulations on reception, reintegration of trafficked women, children returning from abroad.

- Inter-ministerial Circular 116/LB-TC-TBXH of 27-9-2007 providing the spending extent for verification, reception and support of trafficked victims returning from abroad.

- Decision 119/QD-TTg of 25-7-2007 signed by the Prime Minister on setting up the Fund for protection of Vietnamese citizens and legal entities overseas, amounting to VND 20 billion (around 880 thousand US dollars) to be spent on protection activities, including trafficked victims.

- On August 13th 2012, the Prime Minister issued the Decree No 62/2012/NĐ-

CP providing the grounds defining trafficked victims and safety protection for victims and their relatives.

- On January 11th 2013, The Prime Minister issued the Decree No 09/2013/NĐ-CP detailing the implementation of a number of articles of the Law on Preventing and combating human trafficking on issuance, reissuance, amendment, supplement, extension of the License of the victim support establishments; the organization, operation and the support regimes, and the procedures for providing supports to victims.

The Ministry of Labour - Invalids and Social Affairs (MOLISA) is now drafting the Circular regulating the conditions for setting up victims support establishments, the organization and operation of victims support establishments; the procedures and standards for providing supports to victims.

The MOLISA is cooperating with the Ministry of Finance to develop an Inter ministerial Circular regulating the use and the rate of the payment for the work of providing support to victims and the payment for the support to the victims.

In 2012, the MOLISA coordinated with relevant Ministries, agencies to research, develop and complete a Set of Minimum Standards for the Support and Protection for the victims of human trafficking; conducted surveys to review the current situation of the social security and victim support establishments; cooperated with the Vietnam Women's Union (VWU) and the People's Committee of Cao Bang, Thua Thien – Hue, Hau Giang Provinces to set up three Centers for Receiving and Assisting Victims of Human trafficking, and to review the models of assistance for the reintegration of the victims.

The Department of Social Evils Prevention (MOLISA) organized an inter-agency team to examine and review the work of preventing and combating human trafficking in the first 06 months of 2012 in the provinces of Yen Bai, Lao Cai, Ha Giang and Phu Tho for the purpose of mastering the situation and addressing the provinces' problems arisen from the implementation of the reception and support for the victims of human trafficking.

3. Prevention

Under the principle of "Prevention is better than cure" with the prevention being the fundamental, the Government of Vietnam pays much attention to developing and improving the legal system on prevention of and combat against human trafficking; promoting the information dissemination and propaganda to raise the community awareness of this crime.

- The Constitution, the Law on Marriage and Family, the Penal Code, the Criminal Procedure Code, the Law on Gender Equality, the Law on Preventing and

Combating Family Violence, the Ordinance on Administrative Penalty, the Ordinance on Preventing and Combating Prostitution, the Ordinance on Entry and Exit, etc. are the important legal documents of preventing and punishing human trafficking crimes.

- The Law on Preventing and Combating Human Trafficking (effective from January 1, 2012) adopted by Vietnamese National Assembly on March 29, 2011 comprising 58 Articles have stipulated the prohibited activities; principles of preventing and combating human trafficking; State policies on preventing and combating human trafficking; rights and obligations of victims.

- On July 18, 2011, the Prime Minister signed the Decision 1173/QĐ-TTg on approval of the plan to implement the Law on preventing and combating human trafficking, in which assignment is given to:

+ Ministry of Public Security (MPS) to, as a responsible agency, coordinate with other Ministries, agencies in developing the Government's Decree on verification of trafficked victims and protection of the victims and their relatives; and the Inter-ministerial circular between the MPS, Ministry of Defense (MOD), MOLISA, Ministry of Foreign Affairs (MOFA) providing the instructions on reception, verification of trafficked victims.

+ MOLISA to, as a responsible agency, coordinate with other Ministries, agencies in developing the Decree on supporting facilities and procedures on assisting trafficked victims; review 5-year implementation of the Decree 126/NĐ-CP providing the instructions on implementing some articles of the Law on Vietnamese working abroad under contracts.

+ Supreme People's Court to coordinate with the MPS, MOD, Ministry of Justice and the Supreme People's Procuracy in developing the Circular providing the instructions on handling human trafficking crime.

+ MOD to develop the Circular giving the concrete provisions on the measures taken by the people's army to prevent and combat human trafficking and other related violations.

- On August 18th 2011, the Prime Minister issued Decision 1427/QĐ-TTg approving the National Program (entitled to the financial mechanism of national target programs) on preventing and combating human trafficking for the 2011-2015 period. This Program was up-graded from the Program 130/CP on preventing and combating trafficking in women and children for the period of 2004-2009. Compared with the program 130/CP, the 2011-2015 program includes new features which benefit not only the women and children, but also all other Vietnamese citizens & foreigners residing in Vietnam and are applicable to both overseas and

internal human trafficking.

In 2012 and 2013, the MPS, MOLISA, Ministry of Information and Communication have issued the Decisions on the approval and implementation of 05 projects of the NPA 2011-2015.

Information dissemination and propaganda to raise the community awareness were conducted carefully in localities with the participation of many Ministries and relevant authorities such as the VWU, the Border Guard Command at different levels, Ministry of Culture, Sports and Tourism, and the local authorities, sectors...

Decision No. 623 / QD-TTg dated 14/04/2016 of the Prime Minister approving the National Strategy on crime prevention and control for 2016-2025 and orientations to 2030 and Decision No. 793 / QD-TTg dated 10/05/2016 by the Prime Minister on the July 30 every year as the day the whole people prevent trafficking.

The national strategy includes 5 major projects:

+ Project on "Promoting information dissemination, propaganda, proliferation of legal education, raising awareness and skills to prevent and fight human trafficking throughout society", in which the Ministry of Information and Communication is the responsible agency.

+ Project on "Raising the effectiveness in combating human trafficking crime", in which MPS is the responsible agency.

+ Project on "Receiving, verifying, protecting and supporting victims" with the MOLISA as the responsible agency.

+ Project on "Building up, improving the system of legal documents and supervising the implementation of laws on preventing and combating human trafficking" undertaken by the MPS.

+ Project on "promoting international cooperation in preventing and combating human trafficking", in which MPS is the responsible agency.

4. International Cooperation

Human trafficking relates to transnational crimes and no country can solve human trafficking itself. The Government of Viet Nam attaches great importance to international cooperation in the field of preventing and combating human trafficking. International cooperation is essential to gather common efforts of concerned countries and international community in the fight against human trafficking.

At the end of 2011, Vietnam ratified the UN Convention against

Transnational Organized crimes and acceded to the Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children.

Vietnam had successfully hosted the 8th Senior Officials' Meeting and the Third Inter - Ministerial Meeting of the COMMIT process (Coordinated Mekong Ministerial Initiative Against Trafficking) in February 2012.

Vietnam is an active and responsible member of the regional and international processes and initiatives in the area of migration management in general, and the prevention of and combat against illegal migration and human trafficking in particular like APC, Bali, Colombo, Asia-Europe Migration Dialogue, COMMIT... as well as an active partner in promoting the effective cooperation with international organizations, non-governmental organizations, such as IOM, UNODC, UNIAP, UNHCR, ASIA FOUNDATION, etc., and implementing the projects on building capacity to manage migration, prevent and combat crimes of different types.

The Government of Vietnam has signed bi-lateral Agreements on preventing and combating human trafficking and protecting victims with Cambodia (2005), Thailand (2008), Laos (2010), China (2010), and Malaysia (2015). Vietnam has up till now negotiated and signed 17 Agreements on labor cooperation with other countries, more than 30 Agreements on legal assistance (of which, 26 have come into effects and 04 have been waiting for ratification) and been a signatory to the Framework Agreement amid ASEAN countries on legal assistance in the criminal matters. The signing of and the accession to the above-mentioned international Conventions and bilateral Agreements have created the legal basis for closer cooperation between Vietnam and other countries in the fight against human trafficking.

Thank you for your attention./.