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and Administrative Laws
MINISTRY OF JUSTICE



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ASSESSMENT OF THE LEGAL SYSTEM IN VIETNAM IN COMPARISON WITH THE UNITED NATIONS PROTOCOLS ON TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME



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FOREWORD

This legal assessment report has been prepared by a group of legal experts in the Department for Criminal and Administrative laws, Ministry of Justice, in the framework of a UNODC project entitled "Strengthening of the Legal and Law Enforcement Institutions in Preventing and Combating Trafficking in Persons in Viet Nam", FS/VIE/03/R21. The purposes and scope of the research are mainly concentrated on the assessment on the related legal system of Vietnam in comparison with the United Nations Convention against Transnational Organized Crime and its supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in order to evaluate from the legal aspect, the possibility of Viet Nam being a state party of these international legal instruments. For the purpose of making the term "trafficking in persons" more clear, this report has partly dealt with the Protocol against the Smuggling of Migrants by Land, Sea and Air.

It is worth noting that assessments and recommendations made in this report are unofficial and for information only, which need further comments and inputs of other experts, especially, experts from relevant agencies and ministries.

We would like to take this opportunity to express our sincere thanks to the leadership of the Ministry of Justice, The United Nations Office on Drugs and Crime (UNODC) in Viet Nam, United Nations Children's Fund (UNICEF) in Viet Nam, the Project Management Board of UNODC project FS/VIE/03/R21, Ms Shelley Casey, UNICEF consultant, Mr. Troels Vester, Programme Officer, UNODC Vietnam and Mr. Hoang Van Lai, National Project Coordinator, UNODC Vietnam and Ms Julie Bergeron, Officer-in-Charge, Child Protection Section, UNICEF Vietnam for helping us in preparing this report.

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I. INTRODUCTION

The trafficking in human being has become a serious concern for many countries in all parts of the world. Trafficking in persons, including both male and female adults and children, especially for sexual purposes, is by no means a new phenomenon and has been common practice in many societies throughout history. However, in recent decades the trafficking in women and children has become one component of a larger phenomenon of trafficking in persons, assuming different forms and motives. Ethical, moral, political, economic, health and business factors are compounded, and trafficking has been more organized. Human trafficking has become a global business generating lucrative profits for traffickers and organized crime syndicates, whose activities often include other forms of illicit trade such as smuggling of drugs and weapons. Every region of the globe is affected by it, whether as a source of demand or supply.

In order to develop a Report that deeply and comprehensively assesses the Vietnamese legal system in relation to human trafficking and smuggling, it is necessary to achieve a unified understanding of relevant terms, especially the terms “human trafficking” and “smuggling of migrants” according to research of and comparison between these terms from the side of international and domestic law. There are currently no common and completely identical definitions of trafficking in persons and smuggling of migrants among all countries of the world. However, research has shown that there is a significant similarity in the definition of these terms between countries. In this Report, we do not quote the similar terms of different countries, but instead shall take as comparative standards the definitions of the Convention against Transnational Organized Crime (TOC) and the Protocols supplementing this Convention against Trafficking in Persons and Smuggling of Migrants.

According to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children supplementing the United Nations Convention against Transnational Organized Crime, the term of trafficking in persons shall mean:

“The recruitment, transportation, transfer, harboring or receipt of persons, by means of 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 here means “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practice similar to slavery, servitude or the removal of organs”. Notice that, according this definition, exploitation is one of fundamental factors constituting “trafficking”. Meanwhile, the consent of a victim of trafficking shall be irrelevant where any of the above means have been used. Particularly, the Protocol clearly provides that “the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of means mentioned above”.

Trafficking in human beings is distinguished from *smuggling* of migrants. Smuggling refers to services provided to migrants to illegally cross international borders. It facilitates the illegal entry of a person into a country where he or she is not a resident. Human trafficking, by contrast, involves coercion, deception, or abduction with the aim to gain control over another person for the purpose of exploitation. Therefore, while there are similarities, there are also clear differences between trafficking in and smuggling of persons. Whereas smuggling generally involves the consent of the migrant, trafficking victims are often deceived through false promises or coercion. While trafficking victims may initially give their consent to being transported, they often do so under false pretense, and do not consent to the subsequent exploitation. With smuggling, profits are generated from the

fees paid by the migrant for illegal entry, while with trafficking, most of the proceeds come from the subsequent exploitation. During the trafficking process, traffickers violate an extensive array of laws in their treatment of their victims. They subject them to physical, psychological and sexual violence, hold them in captivity and deny them the right to control over their own bodies, fail to provide a safe and healthy working environment, confiscate their wages and travel documents, and generally subject them to inhuman and degrading treatment, forced labor, slavery-like practices or slavery.

The distinction between trafficking and smuggling in human beings is therefore a crucial one that must be clarified in national laws. Identifying trafficked persons as victims and protecting their rights is the first step in taking a human rights based approach towards this complex problem.

The situation of trafficking and smuggling in Vietnam

As noted above, trafficking in persons, especially women and children and the smuggling of migrants are issues of global character and both practices have been increasing in the world, despite the fact that enormous domestic and international efforts have been implemented. Combating human trafficking and smuggling is not limited to one nation or one region, but now involves all countries of the world. Trafficking in women and children, though emerged in Vietnam more than a decade ago, has been afforded significant attention and deep concern by the State and Community because of its complicated and multiform character as well as its serious consequences to victims, families and society. In the past, trafficking in women and children occurred only in some cities and provinces, but nowadays, this phenomenon has been expanding to other regions of the country.

Due to multiform character and secrecy of this type of crime, it is difficult to obtain accurate statistics on trafficked women and children. However authorities estimate that, during the last decade, there have been thousands or even more victims of trafficking. The character of such kind of crime has also changed: while trafficking was in small scale in the past time, it now has the character of organized crime..

The root cause of trafficking in women and children is the active business of the international network of trafficking in women and children and the huge development of the sexual industry in the Region and in the World. On the other side, in the country, negative aspects of the market economy makes "good" conditions for existing and developing of the illegal prostitution business and the trafficking in women and children for prostitution. The lack of education and information, low level of knowledge and difficult economic situation are also causes leading many women and children to become victims of trafficking. In addition, the investigation, prosecution and collection of evidence against criminals has been faced with many difficulties due to the special character, manner of trafficking and its scope of action. Thus, many criminals are not prosecuted or not given appropriate punishments. This is also one of the causes increasing this type of crime.

Smuggling of migrants is also a phenomenon that has been increasing in the entire world, oriented to the smuggling of migrants from countries and regions of poverty, disasters, wars and unstable political, economic situation to the rich countries and regions. Smuggling of migrants has become a business gaining great profits for organized criminal rings. The illegal migrants are usually discovered without identity document, smuggled abroad by land, sea and air. In Vietnam, the crime of organizing and /or coercing other persons to flee abroad or stay abroad illegally has occurred complicatedly in the past years. The main cause of illegal migration is the influence and consequence of the war and weakness of economy. To take advantage of this situation, criminal organizations have promoted and dragged many people into illegal migration. However, illegal migration seems to be decreasing, due to the sound policy of the Party and State of Vietnam as well as the bright economic situation in the recent time.

In recent years, Vietnam has introduced a number of measures to prevent and suppress Trafficking and Smuggling:

1.1. Legislative measures

With respect to legislative activity, Vietnam has been giving special attention to building a legal system for the prevention and suppression of human trafficking and smuggling:

- To build a legal framework for protection of human rights and rights of women and children, the Vietnamese Constitution and Laws prohibit all forms of discrimination, infringement upon dignity or honor of a person, especially women and children.
- To build, amend and supplement the legal documents creating legal basis for dealing with all actions of sexual abuse, infringement upon the rights of women and children, criminalization of trafficking in women and children and smuggling of migrants.

Although Vietnam does not yet have a specific law on combating trafficking in women and children and smuggling of migrants, many Vietnamese legal documents contain provisions against trafficking and smuggling, such as the Ordinance on Dealing of Administrative Violations, the Ordinance on Prevention of Prostitution, the Ordinance on Immigration, the Law on Family and Marriage, the Penal Code and other relevant legal documents providing for the prevention, suppression, and punishment of the crime of trafficking in women and children and the crime of organizing other persons to flee abroad as well as protection and reintegration of victims. The sanctions provided in the Penal Code for the crime of trafficking in women and children are assessed as very severe.

Regarding to the prevention of smuggling of migrants, on the November, 26th, 1996, the Prime Minister passed the Directive No. 882/TTg on prevention of illegal migration, ordering all ministries, branches and local authorities to implement measures to discover and prevent illegal border-crossing and migration with the policy to punish severely snakeheads but give lenience to trafficked and smuggled persons. In general, the Vietnamese legal system has been expressing the determination and no compromise in combating against trafficking in women and children and smuggling of migrants. On the other hand, the legal documents also express clearly the opinion of the State in protection of the dignity and rights of women and children and the protection of victims.

1.2. Law implementation

In the last few years, especially after the passing of Directive No. 766/TTg dated September, 17th, 1997 by the Prime Minister on Assignment of Tasks to implement measures to prevent illegal taking women and children abroad, the National Crime Prevention Program, that underlines the target of combating crime of trafficking in women and children, and Directive No. 882/TTg by Prime Minister dated November, 26th, 1996 on prevention of illegal migration, the implementation of the law against trafficking in women and children and Smuggling of migrants has undergone drastic changes as follows:

- Trafficking in women and children and smuggling of migrants usually take place in border regions or in other words, border regions are place sensitive to such crimes. According to reports of border guard organisations, the cases of transfer and trading in women and children are usually discovered in places of large border exchange, where there are many crossing roads to neighboring countries and to third countries. Therefore, controls in border crossings and border gates by the police, border guard, and local governments have been strengthened in order to timely discover trafficking cases and smuggling of migrants. The Vietnamese border guard forces have been strengthening their cooperation with neighboring countries in going on patrol, and renewing immigration control procedures to enable for bordering exchange on the one hand and to prevent human smuggling and trafficking on the other hand. Therefore, many cases of trafficking in women and children and Smuggling of migrants have been discovered, and a number of criminals complicated nests located along the borders have also been discovered and suppressed.

- To investigate, destroy and suppress big prostitution brothels in the cities and towns, and accordingly discover networks of trafficking in women within the country for the purposes of prostitution. After destroying brothels, more than a thousand prostitutes have been handed over to treatment centers for education, treatment and vocational training and reintegration into society.
- To investigate, prosecute and judge strictly criminals of trafficking in women and children and criminals of organizing and/or coercing other persons to flee abroad. A summary of judicial practice has shown that courts at all levels have applied high penalties to many accused of trafficking in women and children.

1.3. Economic - social measures and information's dissemination

- To strengthen programs for eliminating and decreasing poverty, supporting fund with low profit for poor farmers, creating jobs for them and other people living in poor areas in order to help them to overcome poverty and build a stable life.
- To carry out measures for reintegration of victims of trafficking such as treatment, rehabilitation, lending fund, providing employment opportunities... Providing free of charge legal aid as supplying representative lawyers and giving legal counseling on relevant issues for victims of trafficking.
- Strongly to strengthen propaganda on combating trafficking in women and children and smuggling of migrants. To increase the dissemination of information against trafficking and smuggling in the mass media instruments and at commune levels as well as to strengthen direct measures of dissemination for poor women and children in order to increase their awareness and ability to defend themselves. To launch information and propaganda campaigns raising awareness of all common people about danger and risk of this evil.

1.4. International cooperation

To define prevention and suppression of trafficking in women and children and smuggling of migrants as actions needing close cooperation between nations in the region and of the world, during the last years, Vietnam had undertaken many efforts in cooperation with regional countries and international organizations in this field. Regarding multilateral and international cooperation, Vietnam has been cooperating with international organizations such as UNICEF, UNDP, UNODC, UNHCR, IOM, ECPAT, SEAFILD-Canada, ILO, ASEAN, ASEM...for implementing many projects and programs regarding this issue. Vietnam also has been expanding legal cooperation in the field of prevention and suppression of trafficking in women and children, participating in and signing the Conventions on protection of rights of women and children (CEDAW, CRC, Convention No. 182 concerning the prohibition and immediate action for elimination of the worse forms of child labor) and providing measures for effectively implementing such documents.

-To sign agreements and memorandums with some neighboring countries concerning cooperation in the prevention and suppression of trafficking in women and children and smuggling of illegal migrants.

-Carrying out research on legal conditions for participating the Protocols against trafficking in women and children and smuggling of migrants.

II. INTERNATIONAL LAWS AND EFFORTS ON PREVENTION AND SUPPRESSION TRAFFICKING IN WOMEN AND CHILDREN

Because of the serious and inhuman nature of trafficking in persons, especially in women and children, the international community has throughout history created a set of international law, regulations, and guidelines to prevent and combat against traffickers. There are also numerous

efforts have been made. However, in the frame and to the purposes of this paper, the analysis should be concentrated only on some recent important international laws, regulations and efforts.

2.1. International Law

Trafficking has been defined in many different ways over its history, and largely to accommodate the specific needs of the organisation or body developing the definition. It was thus variously defined, among others, in terms of human rights, criminal activity, irregular migration, labor exploitation and modern slavery.

The complexity of the trafficking problem – involving human rights, border control, law and order, gender, children, mental and physical health, labor, organised crime, migration, and many others mean that a broad variety of expertise is needed to address the problem comprehensively. Experience has shown that there is no single body to deal with all these aspects. Programmes aimed at preventing trafficking will not be singularly successfully. They must operate cooperatively with other agencies and programmes to address the multi-faceted problem of trafficking. Efforts to prevent trafficking should be integrated into the operations of all relevant government agencies including health, education, law enforcement, labor, social welfare and the judiciary.

Therefore, today more than ever, cooperation of all relevant institutions and actors is essential. It is critical that various government departments bring to bear their respective expertise to effectively combat trafficking across and within their borders. Intergovernmental agencies can contribute according to their areas of specialisation and field-office network. Non-governmental organisations can contribute local knowledge, community support and dedication to the well-being of the individuals. The ideal partnership is a constructive and flexible one, in which all parties work in mutual respect, avoid overlapping and competition, establishing cooperative multi-agency programmes including input from all relevant actors.

The most significant global response to date, however, is embedded in the United Nations Convention against Transnational Organized Crime. The convention, adopted by the UN General Assembly in 2000, is the first legally binding UN instrument in the field of crime. It includes two protocols, which focus on measures to combat the smuggling of migrants and measures to combat human trafficking. One of them - the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime is the most significant advance in terms of international political and legal instruments on the topic and a milestone in the struggle to eliminate the trade in human beings. It establishes prevention policies, aims to promote cooperation among signatories and includes an obligation to criminalize trafficking. It also offers tools for law enforcement and border control and for the protection and assistance of victims.

The relationship between the Protocol and the TOC Convention

The Protocol is an important legal instrument supplementing the TOC Convention. Therefore, in its application, the Protocol should be interpreted together with the TOC Convention. The provisions of the TOC Convention shall also apply *mutatis mutandis* to the Protocol, except in cases where the Protocol provides otherwise¹. The criminal acts referred to in article 5 “Obligation to Criminalize” of the trafficking Protocol and article 6 of the migrants Protocol are also considered as criminal offenses established under the TOC Convention. Article 37 of the TOC Convention provides that a state

1 . In the Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the UN Convention against Transnational Organized Crime and the Protocols thereto the term “*mutatis mutandis*” shall be understood as “with such modifications as circumstances require” or “with the necessary modifications”. Provisions of the UN Convention against Transnational organized Crime that are applied to the Protocol under this article would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention. Report of the Ad Hoc Committee, A/55/383/Add.1.

which may become a State Party to this Convention is not necessarily required to be a State Party to one or more protocols supplementing this Convention. However, in order to become a State Party to a protocol, a state or regional economic integrated organization must be a State Party to the TOC Convention. All the Protocols must be interpreted and applied together with the Convention, taking in account the specific purposes of each of the Protocols.

The United Nations Convention against Transnational Organized Crime² was adopted together with its two optional protocols by which countries would undertake in-depth measures to combat smuggling of migrants and the trafficking of women and children.

The Convention recognized that organized crime is a serious and growing problem for all countries. Therefore the Convention aims at promoting international cooperation to prevent and combat transnational organized crime. As the first comprehensive international legal instrument for the fight against organized crime, the Convention, together with its Protocols, provides law enforcement and judicial authorities with unique tools to combat this problem. It is also intended to provide greater co-ordination of national policy, legislative, administrative and enforcement approaches to organized crime.

The Convention standardizes terminology and concepts, creating a common basis for national crime-control frameworks. Such concepts include “organized criminal group”, a definition internationally agreed upon for the first time. The Convention establishes four specific crimes (participation in organized criminal groups, money laundering, corruption and obstruction of justice) to combat areas of criminality, which are commonly used in support of transnational organized crime activities. Under the Convention, members shall criminalize these offences in accordance with the provisions of the Convention.

The Convention contains specific provisions for preventing, investigating and prosecuting these offences as well as serious crimes when they are transnational in nature and involved an organized criminal group.

One of the most important international cooperation components of the Convention is its extradition provision. This provision is vital to ensuring that there are “no safe havens” to which offenders can flee. Under the Convention, fiscal matters should not be a sole ground for refusing extradition.

Mutual legal assistance is another important judicial cooperation tool provided for by the Convention. Under this article, it is highly recommended that assistance be channeled through central authorities to regulate the process. One of its innovative elements is that the Convention allows for electronic transmission of requests for quicker processing. Bank secrecy should not be a ground for refusing assistance. In specific areas, such as law enforcement action, international cooperation could take much more direct and less formal form to enhance its effectiveness.

The nature of transnational organized crime makes the protection of victims and witnesses a matter of such importance that the Convention also requires States Parties to adopt appropriate measures to protect witnesses from potential intimidation or retaliation. This includes physical protection, relocation, and within legal constraints, concealment of identities.

The Convention further calls on States to support the efforts of developing countries to fight transnational organized crime and assist them to implement the Convention through technical cooperation as well as financial and material assistance.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized

² Adopted by the United Nations National Assembly on 15 November 2000, entered into force on 29 September 2003, 147 Signatories, 61 Parties (GAres 55/25).

Crime (Trafficking Protocol)³ establishes the first common international definition of “trafficking in persons”. It is intended to prevent and combat such crime and facilitate international co-operation against it. The Protocol also highlights the problem associated with trafficking in persons that often leads to inhuman, degrading and dangerous exploitation of trafficked persons. As is the case with the parent Convention, the Protocol is expected to standardize terminology, laws and practices of countries.

The Protocol on Trafficking in Persons applies to the prevention, investigation and prosecution of trafficking offences, as well as to the protection of the trafficked persons.

The key definition, “trafficking in persons”, is intended to include a range of cases where human beings are exploited by organized criminal groups, particularly where there is an element of duress involved and a transnational aspect, such as the movement of people across borders. According to the definition, the consent of the victim is irrelevant where illicit means are established, although criminal law defenses are preserved.

The Protocol also highlights the need for an appropriate balance between crime-control measures and measures to support or protect victims, through social support benefits such as counseling, housing, education, medical and psychological assistance and an opportunity for victims to obtain legal status allowing them to remain in the country of the receiving State Party, either temporarily or permanently.

Law enforcement agencies of countries which ratify the Protocol would be required to co-operate with each other in the identification of offenders and trafficked persons; sharing information about the methods of offenders and training investigators, enforcement and victim-support personnel. States Parties would also be required to implement security and border controls to detect and prevent trafficking. This includes strengthening their own border controls, imposing requirements on commercial carriers to check passports and visas, setting standards for the technical quality of passports and other travel documents, and co-operation in establishing the validity of their own documents when used abroad.

The protocol sets forth three purposes:

- To prevent and combat trafficking in persons, paying particular attention to women and children;
- To protect and assist victims of trafficking, with full respect for their human rights; and
- To promote cooperation among States in order to meet these objectives.

The Protocol represents a new approach to the problem in several respects. It defines “trafficking in persons,” a complex and multifaceted problem, particularly considering the involvement of transnational organized criminal groups. It combines traditional crime control measures for investigating and punishing offenders with measures for protecting trafficked persons.

Previous attempts to deal with this issue from a one-sided perspective have not been successful. For example, human rights measures aim to protect victims, but they lack effective law enforcement mechanisms in order to apprehend and prosecute traffickers. The Protocol is an instrument, which will serve as a model for national legislations, detailing provisions on conduct, which should be sanctioned, the severity of punishment and effective measures to combat and prevent trafficking.

The Trafficking Protocol is intended to “prevent and combat” trafficking in persons and to facilitate international cooperation against such trafficking. It provides law enforcement and justice agencies not only with measures to effectively prevent and combat against traffickers, but also with measures

3. Adopted by the United Nations National Assembly on 15 November 2000, entered into force on 25 December 2003, 117 Signatories, 46 Parties (GAres 55/25).

to protect and assist victims. States parties to the protocol are obliged to criminalize a range of trafficking-related offences. In several countries, the provisions of the Convention and the Protocol have already served as a basis for law reform on this field. They also offered a framework for the formulation of regional and national anti-trafficking action plans.

The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Protocol on Smuggling of Migrants)⁴ aims at preventing and combating smuggling, promoting cooperation among States Parties and protecting the rights of smuggled migrants. As in the Convention and the Protocol on Trafficking in Persons, many provisions are intended to ensure that the approaches taken by Member States under their domestic legislative and law-enforcement regimes are as co-coordinated as possible to make collective international measures both efficient and effective.

The Protocol applies to the prevention, investigation and prosecution of the smuggling of migrants as well as to the protection of the rights of persons who have been the object of such offences. States Parties to the Protocol are required to criminalize the basic smuggling of migrants and other forms of activity that support such smuggling on the one hand, and to provide or strengthen specialized training for immigration and other relevant officials in preventing such offences and in the humane treatment of migrants on the other hand (Art. 6 and Art.14 para.1). The Protocol specifies that migrants should not become liable for having been smuggled.

Specific provisions for smuggling by sea are included because of the seriousness and volume of the problem. Under one such provision, States Parties are requested to cooperate to prevent smuggling of migrants by sea and to take necessary measures when it is suspected that a vessel is engaging in the smuggling of migrants. States may board and search vessels believed to be of their own registry. States Parties to the Protocol are also required to strengthen border measures and oblige commercial carriers of passengers to check the travel documents of those passengers.

Another important element of the Protocol is the States' cooperation in the field of public information. States are required to cooperate with each other to raise awareness of the dangers of smuggling to the migrants involved and to raise general awareness of the growing involvement of organized criminal groups.

The return of smuggled migrants to their countries of origin is foreseen. The State of origin is required to accept repatriation when the migrants in question have a right of residence in that State at the time of the return.

In addition to the Trafficking Protocol, there are several other binding international instruments that include explicit reference to trafficking in women or children. The **Convention against the Elimination of All Forms of Discrimination against Women (CEDAW)**, ratified by Vietnam on February 17th, 1982, obligates state parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women". The **Convention on the Rights of the Child (CRC)**, ratified by Vietnam on December 28th, 1990 requires state parties to combat trafficking in children. States obligations in that regard are more fully detailed in the **Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol to the CRC)**, ratified by Viet Nam on December 20th, 2001. In addition, the **ILO Convention No. 182 on the Worst Forms of Child Labor** ratified by Viet Nam on December 19th, 2000 requires state parties to eliminate the worst forms of child labor, which is defined to include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict." These instruments all define "children" as persons under the age of 18.

4. Adopted by the United Nations National Assembly on 15 November 2000, entered into force on 28 January 2004, 112 Signatories, 41 Parties (GAres 55/25).

2.2. International efforts

The issue of trafficking in persons has been addressed in numerous regional and international fora. These fora have developed declarations (containing sets of principles) or plans of action (specifying steps to be undertaken in implementing these principles). Although not legally binding, these soft law⁵ instruments serve multiple purposes. They provide governmental and non-governmental actors with legislative and policy recommendations as well as guidance on how to coordinate their efforts. Some examples of such relevant efforts include:

The World Congress against Commercial Sexual Exploitation of Children was convened in 1996, and its Declaration and an Agenda for Action was adopted by the 122 governments represented in Stockholm, including Vietnam. The Declaration and Agenda build on the Convention on the Rights of the Child. They seek greater political determination, more effective implementation measures and adequate allocation of resources to give effect to the spirit and letter of laws, policies and programs. The need for partnership building was emphasized. Ultimately responsibility rests with the state but also the private sector and civil society have important roles. Furthermore, the Declaration urges criminalization of the commercial sexual exploitation of children as well as the prosecution of offenders. The World Congress Agenda for Action focuses on five areas: coordination and cooperation, prevention, protection, recovery and reintegration and child participation each embracing a set of recommendations. It stipulates that by the year 2000 each state should have developed National Plans of Action and indicators of progress.

Concerning the child trafficking, the Declaration and Agenda for Action of the World Congress against Commercial Sexual Exploitation of Children points out the tasks for all concerned countries to develop and implement national laws, policies and programmes to protect children from being trafficked within or across borders and penalised the traffickers as well as to treat children in cross border situations humanely under national immigration laws, and establish readmission agreements to ensure their safe return to their countries of origin accompanied by supportive services, and share relevant data.

A follow-up to the Stockholm World Congress against Commercial Sexual Exploitation of Children was organised in December 2001 in Yokohama, Japan to review the progress of the states' implementation of the Stockholm Agenda for Action. At this congress, **the Yokohama Global Commitment 2001** was adopted.

In addition, the UN Economic and Social Council has issued a set of Recommended Principles and Guidelines on Human Rights and Human Trafficking, which provide comprehensive guidelines on the prevention and criminalisation of trafficking in a manner that respects the rights of victims.

Also relevant to a State's efforts to effectively combat and prosecute trafficking offences is the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in 1985. The Declaration outlines basic principles for victims of crime regarding access to justice, fair treatment, restitution, compensation and assistance, and seeks to establish a balance between the fundamental rights of suspects and offenders, and the rights and interests of victims.

5. *Declarations, principles, guidelines, standards, rules and recommendations* have no binding legal effects. Nevertheless, these instruments have an undeniable moral force, and provide practical guidance on States in their conducts. The value of such instruments rests on their recognition and acceptance by a large number of States, and, even without binding legal effect, they may be seen as declaratory of broadly accepted principles within the international community.

III. INVESTIGATION AND PROSECUTION OF TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS OFFENCES

3.1. Defining the crimes of trafficking and smuggling

An important starting point for any anti-trafficking measures is a clear definition of the crime, and in particular drawing a clear distinction between trafficking and smuggling. In many countries, criminal laws do not include a distinct offence of trafficking in human beings. Instead, trafficking is prosecuted under existing provisions on smuggling and prostitution-related offences. The limited scope of these crimes generally do not reflect the full scope of activities involved in trafficking, and do not fully reflect the serious nature of trafficking.

3.1.1. International Law

The Trafficking Protocol requires state parties to adopt legislative and other measures as may be necessary to establish trafficking in persons as a criminal offence. Article 3 of the Protocol provides a comprehensive definition of trafficking:

(a) "Trafficking in persons" "shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving of 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.;

(b) The consent of a victim 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, harboring 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.

This definition of trafficking is not limited to women and children, but recognizes that, while not as common, men can also be victims of trafficking. It covers all stages of the trafficking chain, including recruitment, transportation, transfer, harboring and receipt of a person.

Under the Protocol definition, the core elements of trafficking in adults are: 1) act of recruitment , transportation, transfer etc...., 2) by means of the deception, coercion, fraud or abuse of power etc... and 3) the purpose of exploitation. Thus, the definition distinguishes between adults who freely agree to travel and who are fully informed about the type and conditions of work they are expected to perform (smuggling), and adults who did not consent, or whose consent was vitiated by the use of deception, coercion or fraud (trafficking). Clause (b) of the definition clarifies that if any of the improper means set out in the definition (coercion, fraud, deception, etc) have been used, then any alleged consent is irrelevant and cannot be used as a defense by the defendant. Therefore, even if there is evidence that the victim consented to migrate, carry false documents, and work illegally abroad, offenders cannot argue that the victim "consented" to the trafficking if the victim was subjected to force, coercion, fraud, deception, etc about the work and conditions she would be subjected to.

Clause (c) clarifies that children under 18 cannot give a valid consent, and any recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation constitutes trafficking, even if there is no force, coercion, abduction, fraud, etc.

The definition also recognizes trafficking for a variety of purposes and not just sexual exploitation. It focuses on the conditions of forced labor, servitude, slavery-like practices and slavery, all of which are defined in international law. However, the terms “exploitation of the prostitution of others” and “sexual exploitation” were left undefined in the Protocol because, due to the variety of ways in which countries view prostitution, they were unable to come to a common agreement. The Protocol therefore leaves it to the discretion of individual states to define “sexual exploitation” as appropriate. A government may choose to limit its interpretation of these terms to forced participation in the sex industry (prostitution, sexual servitude or the production of pornographic materials), or rather to interpret these terms to apply to any and all participation in the sex industry by a consenting adult. However, pursuant to the CRC and the Optional Protocol to the CRC, the definition of sexual exploitation should clarify that any involvement of persons under 18 in prostitution, sexual servitude or the production of pornographic materials constitutes sexual exploitation, regardless of consent.

The Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organized Crime, there is clarification between “trafficking in persons” and “smuggling of migrants”. According to the Protocol, the Smuggling of migrants is defined as:

The procurement, in order to obtain, directly or indirectly, a finance or other material benefit, of the illegal entry of a person into a State Party of which the person is not national or a permanent resident. Illegal entry shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.

While there are similar components within the crime of trafficking in persons and smuggling of migrants, the two are clearly distinguished by three essential factors:

- **Consent:** the smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.
- **Exploitation:** Smuggling ends with the migrants arrival at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manners to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be affected more severely and in greater need of protection from re-victimization and other forms of further abuse than are smuggled migrants.
- **Transnational:** Finally, smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another country or moved from one place to another within the same country.

3.1.2. Vietnamese Law

In Vietnamese law, the term “trafficking in persons” is rarely used because there have not yet been any reported cases of trafficking in men, the Vietnamese law mainly mentions “trafficking in women and children”.

Although the term “trafficking in women and children” is often used in the legal documents, Vietnam has no official and comprehensive definition of “trafficking/trading in women and children”. Regarding these terms, some are not fully explained, the others are not explained concretely and comprehensively. From the criminal perspective, Articles 119 and 120 of the Penal Code 1999 create the crimes of “trafficking in women” and “trading in children.” However, these two Articles do

not give any definition or explanation of these terms. To date, there is only one legal document providing an interpretation of “trading in children”, that is the Resolution No. 04/HDTP by the Judicial Council of Supreme People’s Court of 29/11/1986 on guidelines for applying a number of provisions of the Penal Code. According to this Resolution, “trading in children” shall mean “ the buying or selling a child for personal profit, even buying a child from the stealer or the parents. The act of buying a child knowing the child is stolen shall be also regarded as crime of “trading in children”. From this interpretation, we could explain the term “trading/trafficking in women” in a similar way. Hence, “trafficking/trading in women and children” shall be understood as a transfer of a woman or child from one person or group of people to another person or group of people for money or other material profits.

In Vietnam the notion of trafficking in persons does not include conveying, passing, concealing and receiving acts. The Vietnam law considers conveying, passing, concealing and receiving person acts are supporting and abetting the trafficking in persons. So, generally speaking, persons carrying out these acts can be punished in accordance with provisions on these concrete violations. In cases where there is proof that violators committed acts of conveying, passing, concealing and receiving persons for the purpose of trafficking then they can be punished for being an accessory to trafficking in persons.

In addition, defining the age at which a person remains a “child” depends on the legal, historical, cultural traditions and economic social conditions in each country. According to the Vietnam law, a child is a person under 16 ages, so that persons from 16 to below the age of 18 are not considered as children, but they are not adult. They also receive special legal protection. In this spirit shall be study to add act “trafficking in minors” (persons under 18 age) to the Penal Code of Vietnam, especially cases of trafficking in minors for conveying abroad or using for inhuman purpose.

In the Vietnamese law, the general term of “smuggling of illegal migrants” is not used, instead we make it in details as an act of “organizing and/or coercing persons to flee abroad or to stay abroad illegally” as provided in the Article 275 of the Penal Code. There is also not yet an interpretation of this term, it may because the term “organizing and/or coercing persons to flee abroad or to stay abroad illegally” seems quite clear about content and character of this crime.

3.1.3. Assessment and Recommendations

Although Vietnam does not have a comprehensive definition of “trafficking in women and children”, according to a number of detailed provisions and general understanding of law implementation, we can see that the term of “trafficking in women and children” in Vietnamese law containing many similar points in comparison with the definition in the Trafficking Protocol. However, the notion of the trafficking in Vietnam also has some different points to the Protocol definition, particularly in the defining concrete acts of trafficking. The Vietnamese definition also does not provide about the manners and purpose of trafficking, while the Protocol is more clear in describing the manners, means and purpose of trafficking.

Although the Penal Code includes the crime of trafficking in women, the constituent elements of the offence are not clearly defined. With respect to children, the Penal Code prohibits the sale of children, but not trafficking per se. While these offences overlap, there is a distinction between the two. The sale of children, as interpreted by the Judicial Council of Supreme People’s Court, focuses on the seller and the end receiver of the child, and requires proof of personal gain on the part of the offender. Those integrally involved in the recruitment or transport are liable only as accessories. By contrast, “trafficking” as defined by the Protocol emphasizes the movement of a person from his or her normal location for some exploitive purpose. The crime of trafficking directly encompasses all those who are in the trafficking chain, including everyone involved in the recruitment, harboring, or transferring of the victim, even if they do not receive direct money in exchange for the victim.

Furthermore under Vietnamese law (the Law on protection, care and education of children), the term “children” shall mean persons under 16 years old, while according to the Convention of Children’s Right, “children” shall mean persons under 18 years old. This is also different point between the Vietnamese Law and the Protocol. In addition, while the Protocol states purpose “exploitation” as one of fundamental factors constituted the “trafficking”, according to the Vietnamese criminal law, the motivation, purpose and manner of traffickers are irrelevant, only the transfer of a woman or child for profit is enough to constitute the crime of trafficking in women and children.

In order to effectively implement the United Nations Convention against Transnational Organized Crime and two United Nations Protocols, supplementary to this Convention, it is necessary to continue research into the notion of “trafficking in women” for defining it in the law or legal guidance documents. At the same time improve notion “trafficking in women” and “trafficking in children” in the direction of notion “trafficking in women” and “trafficking in children” embraces buying or selling women, children and following acts, executed by any means and for any purpose: conveying, passing, concealing women, children for selling purpose.

- The Vietnamese law should have a unified definition of “trafficking in women and children”; For consistency with the international law and Protocols, the term of “trafficking” should be generally used instead of term of “trading”⁶. It is recommended that the Penal Code be amended to provide a comprehensive definition of trafficking in persons in accordance with the definition provided in the Protocol. While there have not been any reported case of trafficking in men in Vietnam, they should nevertheless be provided equal protection in case incidents arise in the future.
- The definition should be broad enough to cover all forms of trafficking, including the following elements:
 - acts: recruitment, transportation, transfer, harboring or receipt of a person;
 - means: threats, use of force, coercion, abduction, fraud, deception, or abuse of power or a position of vulnerability;
 - Purpose: sexual exploitation, forced labor or services, slavery, slavery-like practices or servitude, and the removal of organs, to be defined with reference to international conventions.
- The offence should specify that any recruitment, transportation, transfer, harboring or receipt of a person under the age of 18 for the purpose of exploitation constitutes trafficking, even if there is no force, coercion, abduction, or fraud used.
- If the definition of children as persons under 16 years old stipulated in the Law on Protection, Care and Education of children is not amended, a provision on the crime of trafficking in minors (persons from 16 to 18 years old) should be supplemented to the Penal Code in order to criminalize the trafficking in such cases.

3.2. Criminalization of all activities related to trafficking

In many cases, trafficking involves numerous members of an organized group who have varying degrees of involvement in the trafficking process. In order to ensure that all actors involved in the process are prosecuted, provision must be made for the criminalization of aiding, abetting, and instigating trafficking. Furthermore, the criminalization of attempting to commit the crime of trafficking is crucial in order to ensure that traffickers will be prosecuted, even if the trafficking cycle was not

6. In the existing legal system, Vietnam is using both terms “trafficking in women and children” and “trading in women”, “trading in children”.

completed, as, for example, where the victim escapes before reaching the destination or the trafficker has arrested by the police in transit.

In addition to the act of trafficking itself, victims of trafficking are often subjected to a variety of other criminal acts, including rape, forced or compulsory labor, forced marriage, torture, sexual assault, bodily injury, murder, kidnapping, unlawful confinement, labor exploitation, and withholding of identity papers ... In order to provide effective protection to victims, these crimes should also be defined and strictly penalized under national laws.

3.2.1. International Law

Article 5 of the Trafficking Protocol requires State parties to adopt legislative and other measures as may be necessary to criminalize the conducts set forth in Article 3 of the Protocol, when committed intentionally. In addition, the Protocol requires also State parties to adopt legislative and other measures to criminalize attempting to commit trafficking, participating as an accomplice in trafficking, and organizing or directing other persons to commit a trafficking offence.

"Article 5 of the Protocol against trafficking in persons, especially women and children

Criminalization

1. Each State party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

- a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;*
- b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and*
- c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article".*

Article 6 of the smuggling Protocol also requires State parties to adopt legislative and other measures as may be necessary to criminalize the smuggling of migrants and other conducts concerned, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit. In addition, the Protocol requires also State parties to adopt legislative and other measures as may be necessary to establish the circumstances, that endanger or are likely to endanger the lives or safety of the migrants or entail inhuman or degrading treatment as aggravating circumstances to the offence set forth in the Protocol against the smuggling of migrants by land, sea and air .

"Article 6 of the Protocol against the smuggling of migrants by land, sea and air

Criminalization

1. Each State party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

- a) The smuggling of migrants;*
- b) When committed for the purpose of enabling the smuggling of migrants:*
 - (i) Producing a fraudulent travel or identity document;*
 - (ii) Procuring, providing or possessing such a document;*

c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.

2. Each State party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;

c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State party shall also adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:

a) That endanger or are likely to endanger, the lives or safety of the migrants concerned; or

b) That entail inhuman or degrading treatment, including for exploitation of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law".

The TOC Convention requires state parties to penalize corruption, money laundering and participating in a criminal syndicate.

Under the Optional Protocol to the CRC, State parties are required to ensure that the following activities are fully covered under criminal law, whether committed domestically or trans-nationally, or on an individual or organized basis: the sale of children for sexual exploitation, organ transfer and forced labor; improperly inducing consent for adoption of a child in violation of international instruments on adoption; offering, obtaining, procuring or providing a child for prostitution; and producing, distributing, disseminating, importing, exporting, offering, or selling child pornography.

In its Recommended Principles and Guidelines on Human Rights and Human Trafficking, the UN ECOSOC recommends that all practices covered by the definition of trafficking such as debt bondage, forced labor and enforced prostitution should also be criminalized.

3.2.2. Vietnamese Law

The laws of Vietnam penalize many offences that are commonly committed in the course of trafficking, including prostitution, organizing or forcing other persons to run away abroad or illegally stay in foreign countries.

First, to take part in ensuring implementation of citizens' rights in the labor field, the Penal Code of Vietnam has two articles, stipulating for violating labor safety and hygiene conditions (Article 227) and violating provisions on using child labor (Article 228) aimed to take part in guaranteeing labor safety and hygiene conditions, preventing the use of children in hard and dangerous work or work that exposes them to hazardous substances. A list of work and professions that are hard and dangerous or result in exposure to hazardous substances has been promulgated by Decisions of the Minister of labor, invalids and social issues (For instance, Decision No. 1453/LDTBXH-QD dated October, 13rd 1995; Decision No. 915/LDTBXH-QD dated July, 30th 1996; Decision No. 1085/LDTBXH-QD dated September, 6th 1996; Decision No. 1629/LDTBXH-QD dated December,

26th 1996; Decision No. 190/1999/QĐ-BLĐTBXH dated March, 3rd 1999; Decision No. 1580/2000/QĐ-BLĐTBXH dated December, 26th 2000 of the Minister of labor, invalids and social issues provisionally promulgate List of hard, dangerous or contacting with hazardous substances works and professions). In particular, the penal code of Vietnam severely punishes (up to 7 years imprisonment) criminals who repeatedly use children or use several children in hard and hazardous works or work that exposes them to noxious substances. In addition to imprisonment, the criminals may also be subjected to supplemental fine up to 50 million VND for violating labor safety and hygiene conditions or 20 million VND for violating provisions on using children labor as additional penalty. Forced labor is not a criminal offence, but is subject to an administrative sanction of a fine of two millions dong pursuant to Article 11 of the Decree No. 38-CP of the Government on Administrative Sanctions against Violations of Labor Legislation (Jun. 25, 1996). The Labor Code also prohibits all acts of enticement, hollow promise and mendacious advertisement aimed at duping laborers or that misuse a job seeking service to commit illegal acts.

Secondly, to take part in preventing the evil of prostitution, the Penal Code of Vietnam provides for three offences directly relating to prostitution – harboring prostitutes (Article 254), procuring prostitutes (Article 255), and paid sexual intercourse with a minor (Article 256). These are serious offences with punishment of up to 5 or 7 years imprisonment. In cases of organized prostitution, forced prostitution, prostituting repeatedly or several persons, prostituting with children or person under 18, the punishment for the criminals can go up to 15 years imprisonment for sexual intercourse with the minor by payment, 20 years imprisonment for procuring prostitution and 20 years imprisonment or life imprisonment for harboring prostitutes. In addition, the criminals may also be subjected to supplemental fine up to 10 million VND for procuring prostitutes and sexual intercourse with a juvenile by payment. With respect to keeping prostitution, the criminals may also be subjected to supplemental fine up to 100 million VND and have their property confiscated wholly or in part.

The Penal Code also includes extensive provisions with respect to: murder (Article 93); forced suicide (Article 100); inciting or assisting other person to commit suicide (Article 101); threatening to murder (Article 103); intentionally injuring or causing harm to the health of other persons (Article 104); ill-treating other persons (Article 110); rape (Article 111); rape against children (Article 112); forcible sexual intercourse (Article 113) (defined as employing deceit to induce persons dependent on the offender or in dire straits to have sexual intercourses with the offender); forcible sexual intercourse with children (Article 114); sexual intercourse with children 13-16 years old (Article 115); obscenity against children (Article 116); illegal arrest, custody or detention of people (Article 123); and disseminating debauched cultural products (Article 253) (both of which have been interpreted to include offences relating to child pornography and the involvement of children in the production of pornography). The base level penalty for rape is between two and seven years. If committed repeatedly, incestuously, by more than one person, against a child, or causing injury or HIV infection, the penalty is between 7 and 15 years imprisonment. The penalties are even harsher for rape and sexual offences committed against children. Any act of sexual intercourse with a child under 13 has considered rape and carries a penalty of between 12 and 20 years imprisonment.

Forced marriage, organizing a marriage for under-aged persons and illegally registering a marriage are subject to both penal and administrative liability. The penal sanction applies where an administrative penalty has previously imposed and the act has repeated.

The Penal Code of Vietnam sets forth in Article 275 organizing or forcing other persons to run away abroad or illegally to stay in foreign countries. This is a very serious offence violating the state administration order on entry and exit visa. Punishment for this offence can go up to 7 years imprisonment; in case of causing serious consequences punishment can go up to 20 years imprisonment.

The Penal Code of Vietnam also provides for some other offences relating to the offence of "organizing or forcing other persons to run away abroad or illegally to stay in foreign countries," such as illegally amending and using certificates and other documents issued by agencies or organizations (Article 266), falsifying the seals and documents of agencies or organizations (Article 267), appropriating, trading in, destroying seals and/or documents issued by State agencies and/or social organizations (Article 268) and falsifying documents and forging signature made by officials (Article 284). In accordance with the provisions of these offences, illegally amending, causing incorrect content of the passport, visa, civil status certificates and other certificates and documents of the organs, bodies and using these certificates and documents to commit illegal acts as well as falsifying the seals and documents of the organs, bodies or using these seals and documents for deceiving the organs, bodies or citizens shall be punished up to 3 years imprisonment. In case of organized or repeated crimes, the punishment can go up to 5 years imprisonment. Appropriating, trading in, or destroying seals and/or documents issued by State agencies and/or social organizations, including passport, visa or other travel or identification documents shall be punished up to 2 years imprisonment. The punishment can go up to 5 years imprisonment in case of organized crime or causing serious, very serious or particularly serious consequences. As for falsifying the seals or documents of the organs and bodies, causing extremely serious consequences, the criminals shall be punished up to 7 years imprisonment. For acts taking advantage of authority and position for illegally amending, causing incorrect content of documents; making or issuing false document; forging signature of the officials, the punishment shall be up to 5 years imprisonment, or in cases of organized or repeated crimes, or causing serious consequences, the punishment can go up to 10 years imprisonment; if it's caused extremely serious consequences, the criminals shall be punished up to 20 years imprisonment. In addition, the criminals can be subject to a supplemental fine.

Article 251 of the PC prohibits money laundering, defined to include anyone who, through financial and/or banking operations or other transactions, legalizes money and/or property obtained through the commission of a crime or uses such money and/or property to conduct business activities or other economic activities. In addition to the imposition of fines and imprisonment, the offender is subject to confiscation of property. The provision does not place any limitations on the types of crimes from which the money must be obtained and is therefore broad enough to include laundering proceeds from trafficking.

The Penal Code does not contain a distinct offence of taking part in a criminal syndicate. The Penal Code provides for criminal liability only for participation in organizations with intent to overthrow the people's administration (Article 79). However, several criminal offences specified in the Penal Code are subject to heavier punishments if they are committed in an organized manner.

Chapter XXI of the Penal Code includes extensive provisions with respect to abuse of power and corruption by officials, including receiving bribes (Article 279) and offering bribes (Article 289).

The penal code also clearly determines that all criminal organizers, executors, inciters, assistants in committing crimes are partners in crime and every one has criminal liability depending on the nature and level of his/her participation in committing the crime (Articles 20 and 53). In addition, preparing to commit a crime (Article 17), attempt or incomplete crimes (Article 18) also penalized. Generally, person who voluntarily terminate the commission of a crime shall be exempt from penal liability for the attempted crime; if the act actually committed fully consists of elements of another crime, such person shall bear penal liability for such crime (Article 19).

3.2.3. Assessment and Recommendations

The Penal Code of Vietnam includes relatively comprehensive provisions on most of the offences commonly committed in the course of trafficking. Money laundering, corruption by public officials,

falsifying documents, forcible confinement, bodily injury, rape and other sexual offences, forced prostitution and related offences, and child prostitution are all dealt with strongly. Where circumstances warrant, trafficking suspects can be charged with these additional crimes, in addition to the crime of trafficking itself, to secure some form of conviction for their conduct even if all the elements of trafficking could not be proven.

Generally, the Penal Code of Vietnam meets full mandatory requirements with respect to the penalization of the conducts set forth in Article 3 of the Trafficking Protocol and requirements with respect to the penalization of those who aid, abet, or instigate any crime under the Code and attempted or incomplete offences.

However, to perfect continually the Vietnamese criminal law and take part in more effective implementation of the United Nations Convention against transnational organized crime and the supplement protocols against trafficking in persons, especially women and children, and smuggling of migrants after their ratification, it is necessary to study further criminalization of activities related to trafficking and propose suitable amendments and supplements to the criminal law. Such as:

- Consideration should be given to criminalization of trafficking in men.
- Consideration should be given to including offences relating to forced labor in the Penal Code, particularly where the offence is repeated, involves multiple persons, or involves children, with penalties that appropriately reflect the gravity of this crime in a trafficking context.
- Consideration should be given to including provisions in the Penal Code with respect to arranging an illegal adoption and improperly inducing consent for adoption of a child in violation of international instruments on adoption (where improper profit is involved).

3.3. Sanctions relating to trafficking and other offences concerned

In many countries, the sanctions for trafficking in human beings have no deterrent effect upon traffickers because they are too weak. In many instances, the punishment for carrying drugs is much more severe than those for the buying and selling of human beings. This can contribute to the growth of trafficking, since it becomes a very lucrative business with limited risk. Sanctions imposed for trafficking in human beings must be strong enough to have a deterrent effect and to reflect the serious nature of the crime and the human rights violations involved.

3.3.1. International Law

The Trafficking Protocol obliges state parties to establish trafficking in human beings as a criminal offence, but does not provide guidelines for the severity of the sanction to be imposed. Article 11 of the Trafficking Protocol states that State parties shall consider taking measures to deny entry or to revoke the visas of persons implicated in the commission of trafficking.

The Optional Protocol to the CRC states that offences in relation to the sale of children, child prostitution and child pornography shall be punishable “by appropriate penalties that take into account their grave nature”.

The UN ECOSOC Recommended Principles and Guidelines on Human Rights and Human Trafficking state that legislation should provide for additional penalties in aggravating circumstances, including where the trafficking involves children or involves complicity by State officials.

3.3.2. Criminal Sanctions under Vietnamese Law

The Penal Code of 1999 has two articles, stipulating two offences directly related to trafficking in persons - trafficking in women (Article 119) and trafficking in children, fraudulent exchange and kidnapping children (Article 120).

In accordance with provisions of the penal code of Vietnam, trafficking in women and children are determined as extremely serious crimes, violating life, health, reputation and human dignity. Therefore, penalties for these offences are very strict (imprisonment to 7 years for trafficking in women and imprisonment to 10 years for trafficking in children). In cases of trafficking in women and children in an organized or professional manner, trafficking in women and children for prostitution purpose or to convey abroad or trafficking in children to use for inhuman purposes ... the penalties can go up to 20 years imprisonment (for trafficking in women) and 20 years imprisonment or life imprisonment (for trafficking in children).

In addition to imprisonment, the criminals also shall be subject to a supplemental fine from 5 million to 50 million VND.

The criminal policy applied to crimes, including trafficking in persons and other crimes concerned, is given clear expression in article 3 of the penal code of Vietnam, in accordance to which the law punishes severely the instigator, the ringleader, persons taking advantage of their authority and position to commit crimes; organized or professional crime; and crimes causing serious consequences ... The penal code also clearly determines that all criminal organizers, executors, inciters, assistants in committing crimes are partners in crime and every one has criminal liability depending on nature and level of his/her participation in committing crime (Articles 20 and 53 of the Penal Code).

In addition, Article 48 of the Penal Code provides for 13 circumstances that aggravate penal liability, including abusing positions and powers in order to commit crimes and committing crimes against children, pregnant women, aged persons, persons unable to defend themselves or persons dependent on offenders in material and/or moral conditions, work or other ways. These circumstances aggravating the penal liability can be applied to a person committing any crime. Circumstances, which are constituent elements of a crime or determine the penalty bracket shall not be considered aggravating circumstances under this article.

3.3.3. Civil Sanctions under Vietnamese Law

The Vietnam law has no special provisions on responsibility for compensation for damage relating to trafficking in persons and other violations concerned such as prostitution, forced labor, illegal cross the border of a country, organizing or forcing other persons to run away abroad or illegally to stay in foreign countries ... The general principles on responsibility for paying compensation for damage are stipulated for in chapter V of the civil code of Vietnam. Persons who damage the life, health, reputation, human dignity, prestige, property, rights and other legal interests of others, shall indemnify the victim for their loss (Article 609 of the Civil Code).

The Penal Code of Vietnam (Article 42) also provides that criminals must compensate for material and mental damages caused by crimes. In order to ensure the implementation of this provision, the criminal procedural code provides that property inventory shall be applied in cases where the accused must take responsibility for paying compensation for damages (Article 146).

In this spirit any person who commits trafficking in persons or other violations concerned such as prostitution, forced labor, illegal cross the border of a country, organizing or forcing other persons to run away abroad or illegally to stay in foreign countries ... and causes damages to the victim shall bear not only the administrative or criminal punishments but also responsibility for paying compensation to the victim for material and mental damages.

3.3.4. Administrative Sanctions under Vietnamese Law

Administrative sanctions applied to the persons, trafficking in persons and committing other illegal acts concerned, firstly receive clear expression in articles, providing for concrete administrative violations and penalties.

According to the Vietnam law, for trafficking in persons and other illegal acts concerned such as prostitution, forced labor, illegally crossing the border of a country, organizing or forcing other persons to run away abroad or illegally to stay in foreign countries ... which do not attract criminal liability, shall be applied administrative penalties. In accordance with Article 2 of the Ordinance on administrative penalty, competence to provide for concrete administrative violations and penalties belong to the Government. To realize this competence, the Government of Vietnam has enacted many decrees, providing for administrative penalties in concrete fields, including trafficking in persons and other illegal acts concerned. Such as:

The Decree number 88/CP from December 14th, 1995 of the Government on administrative fines in fields of cultural activities and services, and prevention of some social evils provides for administrative fines applied to prostitution intermediation and concealing prostitution acts, where criminal liability is not applicable. In addition, administrative penalties are also applied to prostitution acts provided in article 23 of the Decree number 49/CP from August 15th, 1996 of the Government on administrative fines in fields of public security and order, according to which an administrative fine shall be applied to persons executing prostitution acts, paid sexual intercourse, sexual abuse, hiding or protecting prostitution acts, and conducting prostitution.

The Decree number 49/CP from August 15th 1996 of the Government on administrative fines in fields of public security and order also provides for administrative fines to be applied to illegal entry, exit and transiting acts and other violations concerned, where criminal liability does not apply, such as helping, concealing, hiding, or facilitating other persons to illegally go abroad or stay in foreign countries or to cross the border of a country; falsifying documents for granting passport, visa or other documents replacing visa, certificate of provisional residence, certificate of permanent residence; falsifying passport, visa, certificate of provisional residence, certificate of permanent residence, confirm mark or other documents necessary to entry, exit and transit.

The Labor Code of Vietnam has many articles prohibiting maltreatment of employees, forced labor in all forms (Article 5); abusing juvenile labor (Article 119); discrimination against women and hurting the reputation and dignity of women (Article 111); and using juveniles, women, elderly persons and invalid persons in hard and dangerous works or work that exposes them to noxious substances (Articles 113, 121, 124 and 127). To take part in effective implement of the labor code of Vietnam, on June 25th 1996, the Government of Vietnam enacted Decree number 38/CP providing administrative fines applied to labor violations, including using juveniles, women, elderly persons and invalid persons in hard and dangerous works or work that exposes them to noxious matters (article 9); maltreatment to employees or forced labor, discrimination against women and hurting reputation and dignity of women (article 11); violating provisions on sending Vietnamese abroad for working or receiving foreigners for working in Vietnam (Article 21) ...

Administrative sanctions applied to trafficking in persons and other violations, have also been given expression in policy of administrative penalty, according to which extremely serious violations shall be punished strictly. In accordance with provisions of the article 9 of the Ordinance on administrative penalty, the following administrative violations in general and violations concerning trafficking in persons, forced labor, prostitution and entry or exit procedure in particular shall be strictly punished: inciting juveniles to violate the law, constrain other person, having material or mental dependence on oneself to violate the law; organized violations, several times violations or repeat in the same field; taking advantage of authority and position to violate the law; and continuing administrative violation even if it has required to stop by the competent person.

3.3.5. Assessment and Recommendations

To compare with the provisions on criminalization of trafficking in persons and smuggling of migrants in the United Nations protocols against trafficking in persons, especially women and children, and

smuggling of migrants, the criminal acts relating to the trafficking in persons, smuggling of migrants and other crimes concerned which are mentioned in these two protocols have been criminalized in the Penal Code of Vietnam (Articles 119, 120, 227, 228, 254, 255, 256, 266, 267, 275 and 284) with severe punishments. In addition, the Penal Code provides a relatively comprehensive set of aggravating factors that can result in increased penalties. For the offence of trafficking, for example, the penalty may be increased if the crime is conducted for the purpose of prostitution, in an organized manner, being professional in character, for purpose of sending the victim overseas, involves more than one victim, or is repeated. Especially the Penal Code of Vietnam considers trafficking in women and children as very serious crimes, violating life, health, reputation and human dignity and punishment for these offences are very strict, which can go up to 20 years imprisonment. As for offence of trafficking in children, punishment can go up to life imprisonment. Beside that, the law provides that criminal liability should apply not only to the executors of the crime but also to criminal organizer, inciters, and assistants depending on nature and level of his/her participation in committing the crime (Articles 3 and 53 of the Penal Code). However, to perfect continuously the criminal law and to take part in effective implement of the United Nations Convention against transnational organized crime and supplement protocols, consideration should be given to:

- Studying and supplementing circumstances "trafficking in women to use for inhumane purposes, forced labor or removal of body's organs and etc." to the Penal Code as circumstances aggravating the penal liability for offence of trafficking in women (article 119 of the penal code).

- Studying and supplementing circumstances "trafficking in children to use for forced labor, removal of body's organs and etc." to the Penal Code as circumstances aggravating the penal liability for offence of trafficking in children (article 120 of the penal code).

- Studying and supplementing circumstances "for taking persons abroad or stay abroad illegally" to the Penal Code as circumstances aggravating the penal liability for offences of illegally correcting and using certificates and other documents of the organs, bodies (article 266), falsifying the seals and documents of the organs, bodies ((article 267), appropriating, trading in, destroying seals and/or documents issued by State agencies and/or social organizations (article 268) and falsifying documents and forging signature made by officials (article 284).

3.4. Liability of Legal Entities

Traffickers sometimes act through "legal persons" such as travel agencies, marriage brokers, sex shops, bars, brothels or employment agencies. In such cases, prosecution of the individuals involved may not be sufficient to stop the trafficking, since the business can continue to operate with new people running it. Furthermore, in many case, the profits from trafficking are hold by these "legal persons" rather than by the individuals involved. It is therefore necessary to establish criminal, civil or administrative liability of these entities to ensure that effective sanctions, including the confiscation of proceeds to compensate trafficking victims shall imposed.

3.4.1. International Law

The Trafficking Protocol does not deal specifically with the criminal liability of legal persons. However, the TOC Convention obliges state parties to establish the criminal, civil or administrative liability of legal persons for participation in serious crimes involving an organized criminal group. This liability shall be without prejudice to the criminal liability of natural persons who committed the offences. States are obliged to ensure that legal persons are subjected to effective, proportioned and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Under the Optional Protocol to the CRC, State parties are obliged to take measures, where appropriate, to establish the liability of legal persons for offences under the Protocol. Such liability may be criminal, civil or administrative.

The UN Recommended Principles and Guidelines on Human Rights and Human Trafficking recommend reviewing laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureau, employment agencies, travel agencies, hotels and escort services.

3.4.2. Vietnamese Law

Until now, Vietnamese law does not extend criminal liability to non-natural persons. Although there are no specific civil or administrative provisions dealing with the liability of legal entities for involvement in trafficking, but in accordance with Vietnamese civil and administrative laws, individuals and legal entities shall bear civil or administrative liability for involvement in any law violations, including trafficking.

Article 12 of the Ordinance on administrative penalty provides that for every administrative violation, individuals or legal entities shall be subject to warning or fine. In addition, individuals or legal entities may be subjected to the following supplemental penalties: deprivation of permits or practicing certificates, confiscation of tools and means used for the commission of administrative violations.

In accordance with Articles 622, 623, 624 of the Vietnamese Civil Code, the legal entities (companies, State organs or other legal entities) shall compensate for damages caused by their employees in executing given tasks.

3.5. Investigation powers

In accordance with Vietnamese law, generally investigation agencies of Vietnam have full powers in carrying out investigations of all crimes that occurred in the territory of the Socialist Republic of Vietnam or that have been committed by Vietnamese, among which there are crimes concerning trafficking in persons, prostitution, illegal cross the border of a country, organizing or forcing other persons to run away abroad or illegally stay in foreign countries with some exceptions.

The Criminal Procedural Code of Vietnam provides for investigation powers in Article 110 that investigating agencies in the people's public security forces have power to investigate all crimes except crimes belonging to investigation powers of the investigation agencies in the people's army and the investigation agencies of the Supreme People's Procuracy.

In comparison with provision in article 8 of the Ordinance on organization of criminal investigation, generally investigation agencies of the people's police have power to investigate all crimes of trafficking in persons (Articles 119 and 120 of the Penal Code) and other crimes concerned as violating labor safety and hygiene conditions (Article 227 of the Penal Code); violating provisions on using children labor (Article 228 of the Penal Code); prostitution (Articles 254, 255 and 256 of the Penal Code); organizing or forcing other persons to run away abroad or illegally to stay in foreign countries (Article 275 of the Penal Code); illegally correcting and using certificates and other documents of the organs, bodies (Article 266 of the Penal Code); falsifying the seals and documents of the organs, bodies ((Article 267 of the Penal Code) and falsifying documents and forging signature made by officials (Article 284 of the Penal Code). In case where above - mentioned crimes committed by soldiers or cause damages to the army interests, investigation agencies in the people's army have power to investigate these crimes.

3.6. Seizure of property and proceeds of crime

Trafficking in human beings can be a highly lucrative business, and one of the most effective means of combating this crime is to introduce measures that reduce its profitability and increase the costs of business. This can include seizing and confiscating the proceeds of trafficking or property used in trafficking.

3.6.1. International Law

Article 12 of the TOC Convention requires State parties to adopt measures to enable the confiscation of proceeds of crime derived from offences covered by the Convention, or property the value of which corresponds to those proceeds, as well as property equipment or other instrumentalities used in offences covered by the Convention.

Under the Optional Protocol to the CRC, State parties are obligated to take measures to provide for the seizure and confiscation of goods, assets and other instrumentalities used to commit or facilitate offences under the Protocol. In addition, they must take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

The UN Recommended Principles and Guidelines on Human Rights and Human Trafficking state that, where possible, the legislation should specify that confiscated assets will be used to support and compensate victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking.

3.6.2. Vietnamese Law

Generally, Vietnamese law has comprehensive provisions allowing for the confiscation of property and proceeds from trafficking in accordance with the requirements of the TOC.

Articles 12 and 17 of the Ordinance on administrative penalty provide for confiscation of material evidences and means used for administrative violations as one of the supplemental administrative penalties applied to violators. Confiscation involves putting into public treasury things, money, goods, and means directly concerning administrative violations. In order to ensure the implementation of this provision, article 46 of the Ordinance on administrative penalty provides that the temporary seizure of material evidences and means used for administrative violations shall applied only in case of necessity to verify episodes for applying administrative penalties or preventing administrative violations. If necessary to seal up material evidences and means used for administrative violations, it should be immediately carried out in front of the violator or, if the violator is absent, then in front of his or her family representative, organizational representative, representative of the authorities and eyewitness. In addition, a person who makes a decision on temporary seizure of material evidences and means used for administrative violations has the responsibility to preserve these material evidences and means; if he or she allows these material evidences and means to be lost, damaged or sold, then he or she is responsible for indemnification.

In addition, Article 23 of the decree number 49 from August 15th 1996 of the Government on administrative penalty in the field of the public security and order provides that beside administrative penalties, persons who executes prostitution acts also shall be subject to the confiscation all of money obtained by prostitution acts.

The Penal Code (point b item 1 of Article 41) stipulates for confiscating tools and means used for committing crimes, things or money obtained by crimes, and things forbidden for circulation by the State. Money or goods confiscated under this provision should be place in the public treasury. In order to ensure implementation of this provision, the Criminal Procedural Code (Article 145) provides that in carrying out search of a house or location, investigators shall be able to seize all things, being material evidences and documents directly related to criminal case; other things belonging to category of the forbidden storage and circulation shall be seized and immediately given to the competent organs. Where it is necessary to seal up material evidences and documents directly related to a criminal case, it must be carried out immediately in front of the owner or his family representative, representative of the authorities and eyewitness.

In addition, in accordance with Penal Code (Articles 28 and 40), confiscation of property is one of the supplemental penalties, which can be applied to the criminals. In order to ensure implementation of this penalty, the criminal procedural code (Article 146) provides for property inventory. According to this provision, property inventory can be applied only to the person who has accused of an offense to

which confiscation of property may apply pursuant to the Penal Code and only inventory a part of property corresponding to the possible confiscated level.

In the legal documents stipulating for temporary seizure of property used as tools or means for law violations as well as money or other proceeds, obtained by law violations, there are close and concrete provisions on procedure and competence of the temporary seizure of property.

In accordance with Vietnamese law, confiscated property or proceeds of crime must be putting into public treasury. Further use of these property and proceeds will be executed in accordance with the budget and financial laws. Nowadays, in Vietnam some funds were established such as the fund for crime prevention, and the fund for drug prevention ... one of the sources of which is taken out from the State budget. The fund for crime prevention could be also used to support and compensate victims of trafficking.

3.7. Extraterritorial Jurisdiction

In many cases, trafficking in human beings extends beyond national borders. Therefore, extraterritorial jurisdiction (i.e. the ability of a state to prosecute and try alleged offences that did not take place within its territory) is necessary in order to prevent offenders from escaping prosecution by moving to another country.

3.7.1. International Law

The TOC Convention obliges each state party to establish jurisdiction when an offence under the Convention is committed in its territory. In addition, the TOC recommends that State parties may also establish jurisdiction over offences not committed in their territory when the offence is:

- committed against a national of that state party;
- committed by a national of that state party;
- a serious crime involving an organized criminal group, committed outside its territory with the view to the commission of a serious crime within its territory;
- participation in or attempt to laundering of proceeds of a crime committed outside its territory, with a view to the commission of laundering of proceeds of crime within its territory.

The Optional Protocol to the CRC urges State parties to take measures to establish jurisdiction over offences related to the sale of children, child prostitution, and child pornography when the offender is a national or habitual resident of the State, or when the victim is a national of that State.

3.7.2. Vietnamese Law

Articles 5 and 6 of the Penal Code provides that the Penal Code of Vietnam shall be applied to all criminal acts occurred in the territory of Vietnam whether they were committed by Vietnamese or foreigners, except foreigners having diplomatic privileges or consular preferential and immunity rights according to the Vietnam laws, international treaties which Vietnam has signed or acceded to or the international customs whose criminal liabilities shall be settled through diplomatic channels. Vietnamese citizens or stateless persons, permanently residing in Vietnam, who commit offences outside the territory of Vietnam, may be examined for penal liability in Vietnam according to the Vietnamese Penal Code.

In addition, the Penal Code (Clause 2 of Article 6) provides that foreigners who commit offences outside the Vietnamese territory may examined for penal liability according to the penal code of Vietnam in circumstances provided for in the international treaties to which Vietnam has signed or acceded to. In the spirit of this provision, extraterritorial jurisdiction may extend to criminal offences committed by foreigners outside Vietnamese territory: if the victim is a Vietnamese national or habitual resident; if it is a serious crime involving an organized criminal group, committed outside

Vietnamese territory with the view to the commission of a serious crime within Vietnamese territory; or if it involves participation in or attempt to laundering of proceeds of a crime committed outside Vietnamese territory, with a view to the commission of laundering of proceeds of crime within Vietnamese territory.

3.7.3. Assessment and Recommendations

Concrete extraterritorial jurisdiction in accordance with this provision should be determined through bilateral agreements on mutual legal assistance with other countries or other international treaties, to which Vietnam has signed or acceded.

3.8. Extradition

Due to the transnational nature of the crime, the prosecution of trafficking cases can be difficult because in many cases, suspects may be within the jurisdiction of a foreign country. In such cases, extradition is necessary to avoid the possibility that traffickers will escape prosecution by fleeing to a foreign country, and operate with impunity by moving their activities to other countries.

3.8.1. International Law

Article 16 of the TOC Convention states that offences covered by the Convention shall be deemed to be include in any existing extradition treaty between state parties and shall also be included as extraditable offences in any future extradition treaties between state parties. State parties that make extradition conditional on the existence of an extradition treaty and receive a request from a state with which they have no extradition treaty may consider the Convention as legal basis for extradition. If they declare their intention not to consider the Convention as a legal basis for extradition, they shall seek to conclude treaties with other State Parties to this Convention in order to implement this Article. State parties that do not make extradition conditional on the existence of an extradition treaty shall recognize the offences covered as extraditable offences between themselves.

The Convention also deals with the extradition of a state's own nationals. If states do not extradite an alleged offender solely because she/he is one of their nationals, they shall, upon request of the party seeking extradition, begin an immediate investigation for the purpose of prosecution. In this situation, state parties shall co-operate in particular on procedural and evidentiary aspects to ensure the efficiency of the prosecution. Before a state party refuses a request for extradition, it shall in appropriate cases consult with the requesting state party and provide it with opportunity to present its opinions and to provide relevant information. The *travaux préparatoires* stress that this provision is to be interpreted "in the spirit of full co-operation" and should not affect the obligatory nature of the paragraph.

The Convention further obliges state parties to expedite extradition procedures and to simplify evidentiary requirements, and states that parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

The Optional Protocol to the CRC contains similar provisions with respect to the offences covered under that instrument.

3.8.2. Vietnamese Law

Vietnam has no specific law on mutual legal assistance in criminal matters generally and extradition law particularly, but provisions related to extradition have been stipulated in chapter 37 of the Criminal Procedural Code⁷. In accordance with provisions of article 343 of the Criminal Procedural Code, Vietnamese agencies having investigating, prosecuting, and judicial power based on international treaties which Vietnam has signed or acceded to or on the principle of mutual benefit,

7 . Adopted by the National Assembly on 26 November 2003 and will take effect on July 1st, 2004.

may request correlative competent agencies of a foreign country to extradite a person who has committed a crime or has been convicted by a judgment of the Vietnamese Court that has already taken legal effect to examine that person for penal liability or to execute judgments. Article 343 also provides for the extradition of foreigners present in Vietnam who have committed a crime or who have been convicted by a judgment having already taken legal effect to the requesting State Party for penal liability examination or execution of judgments. In the spirit of this provision, where a request for extradition is received from a country that has no extradition treaty, the international treaties can be used as a legal basis for extradition. In addition, Article 344 of the Criminal Procedural Code stipulates four cases in which extradition shall be refused as follows:

- The person who is the subject of the request for extradition is a Vietnamese national;
- According to Vietnamese law, a person who is the subject of the request for extradition could not be examined for penal liability or executed judgment because due to the expiry of the statute of limitation or other legal reasons;
- The person who is the subject of the request for extradition to examine for penal liability had already been convicted of a crime, stipulated in the request for extradition by a judgment of the Vietnamese court having already taken legal effect, or a criminal case had been suspended according to the Vietnamese criminal procedure code;
- The person who is the subject of the request for extradition has resided in Vietnam because he or she may be subjected to discrimination on the basis of race, religion, nationality, national, social classes or political opinion in the State requesting for extradition.

In addition, Vietnamese agencies having investigating, prosecuting and judicial power may also refuse extradition in the two cases: according to the Vietnamese criminal law, the act which was committed by the person who is the subject of the request for extradition is not a crime, and the person who is the subject of the request for extradition has been examined for penal liability in Vietnam for the crime stipulated in request for extradition.

Although Vietnam currently has no distinct bilateral agreements on mutual legal assistance in extradition with any countries, especially countries in the Mekong region, Vietnam has entered into bilateral legal assistance agreements with several countries such as Russia, Mongolia, Hungary, Bulgaria, Poland, Cuba, China, Laos ... which contain provisions related to extradition. In addition, Vietnam has executed requests for extradition made by countries, which have not yet bilateral agreements on mutual legal assistance with Vietnam, on a case by case basis.

In accordance with the recommendations of the TOC, Vietnam has designated Supreme People's Procuratorate as a central authority responsible for transmitting and receiving extradition requests.

3.8.3. Assessment and Recommendations

In accordance with the Vietnamese law, request for extradition or execution of extradition generally should be based on the international treaties, which Vietnam has signed or acceded to. However, it is not a unique basis for co-operation in extradition. In case where between Vietnam and requesting States there are no extradition treaty or other related international treaties, extradition may be executed in concrete circumstances according to the principle of mutual benefit. In this spirit, the international treaties, which Vietnam has signed or acceded to, including Convention against Transnational Organized Crimes and bilateral agreements on mutual legal assistance between Vietnam and other countries, are legal bases for extradition.

However, to create more facilitation to de facto extradition, consideration should be given to developing bilateral agreements on mutual legal assistance with other countries, especially countries in the Mekong Region in order to concretize contents of co-operation in extradition generally and extradition in cases of trafficking in human beings particularly.

IV. PROTECTION AND SUPPORT FOR TRAFFICKING VICTIMS AND WITNESSES

The most effective and comprehensive anti-trafficking policies are those that focus not just on the prosecution of perpetrators, but also on respecting, protecting and restoring the rights of trafficked persons. Trafficking constitutes a serious violation of the fundamental rights and freedoms of its victims, and policies should be in place to address the harm done to victims, and to prevent further traumatising or re-victimisation through the criminal justice system.

Furthermore, experience suggests that, in order to successfully prosecute traffickers, States must implement victim-sensitive policies and laws to allay the fears of trafficked victims and to ensure their safety. The effective prosecution of traffickers generally depends on the cooperation of victims. However, due to their illegal status and fear of reprisals from the perpetrators, trafficked persons are often reluctant to report to or cooperate with the police. Addressing this issue involves a broad range of interrelated measures, including measures to protect their physical safety and privacy; provision of information, advice, translation services and legal representation free of charge; victim-sensitive methods for investigation and interrogation; and access to civil compensation. In destination countries, victims generally require exemption from deportation, temporary residence status and emergency shelter so that they can participate in the investigation and prosecution of the case. Protective measures such as witness protection programmes should be in place so that victims of trafficking are not intimidated by the perpetrators, particularly where a professional criminal network or syndicate is involved.

In addition, the particular physical and psychological harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult traffickers. In keeping with the CRC, the best interest of the child must be a primary consideration in all actions concerning trafficked children, and full account must be taken of their special rights and needs.

4.1. Non-penalisation of Trafficked Persons

Trafficked persons are often treated as criminals rather than as victims, both in countries of destination and origin. In the destination country, they may be prosecuted and detained as illegal immigrants or because they engaged in criminal activities such as prostitution. Many are subjected to deportation due to their status as illegal migrants. Trafficked persons returning to their country of origin may also be subjected to prosecution for using false documents, leaving the country illegally, or for having worked in the sex industry.

Prosecuting victims of trafficking not only prevents them from receiving justice and enjoying their basic human rights, but can also impair a State's ability to prosecute perpetrators. Victims who face prosecution for their own actions may be afraid to report trafficking to the police, or may refuse to cooperate with authorities. This decreases the chance that the real perpetrators will be successfully prosecuted, and drives the sex industry underground into the hands of organized crime.

4.1.1. International Law

Neither the UN Trafficking Protocol nor the Transnational Organized Crime Convention includes an explicit obligation to refrain from criminalising trafficked persons. However non-criminalisation is in keeping with the spirit of the Protocol, and in particular its emphasis on protecting and assisting victims of trafficking.

The Smuggling of Migrants Protocol states that migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

In addition, the General Assembly Resolution on Beijing+5 recommended that states consider taking measures to prevent trafficked persons from being prosecuted for their illegal entry or residence.

The ECOSOC Recommended Principles and Guidelines on Human Rights and Human Trafficking state that anti-trafficking measures shall not adversely affect the human rights and dignity of those who have been trafficked. Furthermore, trafficked persons should not be prosecuted for violations of immigration laws or for any illegal activities that they are involved in as a direct consequence of their situation as trafficked persons. They should not, under any circumstances, be held in detention or other forms of custody.

4.1.2. Vietnamese Law

Trafficked persons are generally treated as victims rather than criminals under Vietnamese law. Persons who are involved in some violations as a direct consequence of their situation as trafficked persons, such as engaging in prostitution, leaving the country without authorization, holding false travel documents, may be subject to certain liabilities, however, the handling of those people is mainly for the purpose of supporting them to reintegrate into the society rather than to punish them. Particulars are as follows:

- Persons who engage in prostitution are not prosecuted since they are considered victims of social evils rather than criminals under Vietnamese criminal law, which targets at those who organize and control sexual and trafficking business. Instead, trafficked victims shall be subjected to administrative handling measures that aim to support their reintegration into the society. According to the Ordinance on Handling Administrative Violations, victims who engaged in prostitution shall be sent to medical treatment institution for between three and eighteen months (Article 26 of the Ordinance on Handling Administrative Violations). At these institutions, victims shall be provided with education, vocational training and medical treatment with some subsidy from the State (Joint Circular No. 12/TTLB/LDTBXH-TC dated Jun. 7, 1996 of the Ministry of Labor, Invalid and Social Affairs and the Ministry of Finance giving guidance for State subsidize for people who are sent to Medical Treatment Institutions according to Decree No. 20/CP dated Apr. 13, 1996 of the Government on promulgation of Regulation of Medical Treatment Institutions established under the Ordinance on Handling Administrative Violations). This measure shall not be applied to children under the age of 16. (See section 5.1.2. below for more details).
- With regards to persons who illegally exit or enter the country, although the Penal Code (hereinafter, the PC) of Vietnam stipulates the offense of illegally leaving or entering the country, illegally staying abroad or in Vietnam (Article 274 of the PC), this offense is not targeted at trafficked victims who committed the violation under fraud, deception, or coercion, but those who intentionally leave or enter the country without authorization while have already been administratively sanctioned for a similar act. Joint circular No.01/TTLN dated Feb. 17, 1991 of the Ministry of Home Affairs (currently, the Ministry of Public Security) (hereinafter, Joint circular No. 101/TTLN of 1991), the Supreme People's Procuracy, and the Supreme People's Court giving guidance for handling persons, who fled abroad, voluntarily return, clearly states that any person who illegally exited or entered the country shall not be prosecuted if he/she fled abroad for the first time and voluntarily returned (section 1). However, they may be subjected to administrative liability according to the Ordinance on Handling Administrative Violations and Decree No. 49/CP dated Aug. 15, 1996 of the Government on administrative punishment against violations in the field of social security and order, although in fact, the punishment is very rare.
- In general, the labor law of Vietnam does not include a provision on working permission (except for doing business in special fields or engaging in special professions that require business license or professional practicing license). Therefore, in general,

victims of trafficking are subjected to neither administrative nor criminal liability for working without authorization. However, foreigners who are trafficked to Vietnam may be subjected to administrative liability for illegally working or conducting activities other than those permitted in their visa in Vietnam (Decree 49/CP, Article 21 section 2 point 3) although in practice the punishment is rather rare.

- Trafficked victims are not subjected to criminal liability for holding false travel documents, such as passport, visa. Although the PC provides for the offense of amending certificates/papers issued by agencies/organizations and using such papers (Article 266), and the offense of forging seals/documents of agencies/organizations (Article 267), these offenses target persons who amended the above mentioned documents and committed illegal act by using them, causing serious consequence, or persons knowingly used forged documents for the purpose of cheating agencies/organizations, rather than trafficked victims who used false documents as direct consequence of their situation. However, trafficked victims may be subjected to administrative liability according to the Ordinance on Handling Administrative Violations and Decree No. 49/CP dated Aug. 15, 1996 of the Government on administrative punishment against violations in the field of social security and order, although in fact, the punishment is very rare.

With regards to smuggled migrants, they shall not be prosecuted for the first time fled abroad according to Article 274 of the PC and section 1 of Joint circular No.01/TTLN of 1991 as introduced above. They shall not, however, be exempted from liability for committing other offenses, such as the offense of amending certificates/papers issued by agencies/organizations and using such papers (Article 266 of the PC), and the offense of forging seals/documents of agencies/organizations (Article 267) (Joint circular No. 01/TTLN of 1991, section 4).

4.1.3. Assessment and Recommendations

In general, trafficked persons are treated as victims rather than criminals under Vietnamese law. Persons who are involved in some violations as a direct consequence of their situation as trafficked persons may be subjected to certain kinds of liability. However, the handling of those people is mainly for the purpose of supporting them to reintegrate into the society rather than punishing. Although the law provides for administrative sanctions against persons who illegally leave or enter the country, or hold false travel documents, and against foreigners who illegally work or conduct activities other than those permitted in their visa, those sanctions are rarely applied to punish trafficked victims. However, in the future, for a unified handling of trafficked victims, an explicit exclusion for those who are involved in an illegal act as a direct consequence of their situation from administrative sanctions should be inserted in a legislation, such as a directive of the Prime Minister on handling trafficked victims.

The case is, however, a little bit different with regards to illegal migrants. The law only grants lenient treatment for the first time illegal immigrant, and lenient treatment is not extended to the commission of other offenses. One of the reasons is because while trafficked persons have either never consented to the illegal immigrant, or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the trafficker, on the other hand, migrants have consented to the smuggling. Other reason is that the smuggled migrants are not totally passive but somehow contribute to the current situation of illegal immigration because there would be no supply without demand. Therefore, the protection given to smuggled migrants is considerably lower than the protection given to trafficked victims.

4.2 Protection of Physical Security

In many cases, victims of trafficking are often at risk of being intimidated and threatened by traffickers, and do not have a safe place to live. This can result in victims being afraid to report the crime to the police, being intimidated into dropping charges, or not showing up to testify. It is important that victims are protected from these threats and have free access to the justice system if they so choose. Therefore, measures guaranteeing their physical security and the protection of their family members before, during and after the criminal proceedings are of crucial importance.

4.2.1. International Law

Article 6 of the Trafficking Protocol requires State parties to endeavor to provide for the physical safety of victims of trafficking while they are within its territory. This requirement extends to all victims of trafficking, whether or not they are witnesses in criminal proceedings.

Article 16 sections 2 and 3 of the Smuggling of Migrants Protocol requires State parties to take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, and afford appropriate assistance to migrants whose lives or safety are endangered, and to protect their right to life and the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment.

Art 24 of the TOC Convention obliges state parties to take appropriate steps to protect witnesses and their relatives and other persons close to them, from potential retaliation or intimidation. These measures include the establishment of procedures for the witness' physical protection, such as: relocating the witness; permitting the non-disclosure or limited disclosure of information concerning her/his identity and whereabouts; or providing evidentiary rules to permit witness testimony to be given in a manner that ensures his or her safety, such as the use of communications technologies like video links. In order to ensure the relocation of witnesses, state parties should consider entering into agreements with other states.

In addition to this protection for witnesses, Article 25 of the TOC Convention requires State parties to provide assistance and protection to victims of offences covered by the Convention, in particular in case of threat of retaliation or intimidation. According to this wording, provisions should be in place to protect victims, even if they are not witnesses in criminal proceedings.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends that measures be taken to ensure the safety of victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.

The ECOSOC Recommended Principles and Guidelines on Human Rights and Human Trafficking state that States should ensure that safe and adequate shelter is made available for victims of trafficking. They should not be held in immigration detention centers or other forms of custody. In addition, the provision of shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings.

4.2.2. Vietnamese Law

Trafficked victims, smuggled migrants, and their relatives are protected under Vietnamese law on protection of individual life, health, honor, and dignity (Article 69 of the Constitution, Article 7 of the Penal Procedure Code (hereinafter, the PPC)). Where a trafficked victim's, smuggled migrant's, or their relatives' life, health, honor, or dignity is under danger, he/she should immediately inform investigating body, procuracy, court, or other agencies/organizations about such danger and request their assistance and protection. An agency or organization other than investigating body, shall immediately inform investigating body upon receiving such information (Article 101 of the PPC).

Any person who infringes upon the life, health, honor, or dignity of trafficked victims/smuggled migrants shall be punished according to the criminal law of Vietnam for offenses of infringing individual life, health, honor, or dignity. To be concrete, any person committing murder may be

sentenced from seven to fifteen years of imprisonment; in case of murdering more than one person, murdering woman knowing that she is pregnant; murdering a child; committing murder after or before committing a very serious crime or extremely serious crime; for the commission of or hiding another crime, etc., the offender may be sentenced from twelve to twenty years of imprisonment, life imprisonment, or death penalty (Article 93 of the Penal Code of Vietnam-the PC). Any person who threatens to murder another and the victim has proper reason to believe that the threat will come true, shall be sentenced up to three years of imprisonment. The maximum penalty shall be seven years of imprisonment in case of threatening more than one person or threatening for hiding or evading the commission of another crime (Article 103 of the PC). Any person causing injury to another person shall be sentenced up to life imprisonment depending on the gravity of the injury or the nature and level of seriousness of the criminal act (Article 104 of the PC). Any person who bribes or coerces a trafficked victim/smuggled migrant to make false statement or supply untrue documents shall be punished according to Article 309 of the PC up to seven years of imprisonment.

When participating in criminal proceedings as an injured person or witness, trafficked victims, smuggled migrants, and their relatives, are protected according to criminal procedure law on protection of injured persons, witnesses, and their relatives. Article 7 section 3 of the PPC laws of Vietnam stipulates the responsibility of bodies conducting criminal proceedings for the application of necessary measures according to law to protect injured persons, witnesses, and their relatives in case their life, health, honor, and dignity, are in danger. Article 55, section 3 of the PPC also provides for the right of a witness to require the body that summoned them to ensure their life, health, honor, dignity, and property safety. At court hearing, the collegiate bench shall, if it deems necessary, decide to apply protective measures as provided for by law to protect witnesses and their relatives (Article 211 of the PPC).

The Constitution and the PPC also ensure the inviolability of the persons under investigation, prosecution or trial (Article 71 of the Constitution, Article 6 of the PPC). According to Article 6 of the PPC, no one can be arrested without warrant issued by a competent body conducting criminal proceedings. Arrest and detention shall be carried out in full observance of the PPC. Any person who illegally arrest, detain, applying corporal punishment, or forcing testimony, shall be severely punished according to the PC (articles 123, 298, 299, 303 of the PC).

4.2.3. Assessments and Recommendations

As introduced above, Vietnamese law guarantees the safety of trafficked victims, smuggled migrants, witnesses, and their relatives. The PC of Vietnam provides for severe punishments against offenders who infringe upon the life or health of trafficked victims, smuggled migrants, witnesses, or their relatives.

The PPC also recognizes the right of individual to be ensured safety of life, health, honor, and dignity. PPC of 2003 has introduced supplementary provisions on the responsibilities of bodies conducting criminal proceedings for the protection of injured persons, witnesses, other persons participating in criminal proceedings, and their relatives. It also provides for the right of witnesses to request protection, and protection of witnesses and their relatives at court hearing. These supplementations are considered as a big progress in the penal procedural legislative making of Vietnam. The penal procedural law of Vietnam, however, still inheres some deficiencies that create difficulties for the adequate protection of persons participating in criminal proceedings, including trafficked persons, smuggled migrants, witnesses, and their relatives. Firstly, the above-mentioned provisions are general principles rather than concrete rules. They, therefore, are difficult to be enforced without regulations giving guidance and stipulating in detail issues such as the subjects to be protected (including an explanation regarding victim/witness's relatives), protective measures (exchange and/or nondisclosure/limitation of disclosure of their identity, address, and etc; special procedure for collecting evidence, such as video links), procedure to require protection, financial

issues for implementation of these provisions, etc. In addition, these provisions inhere an inconsistency where Article 7, paragraph 3 stipulates that subjects to be protected include witness and their relatives, meanwhile, Article 55, section 3, provides for the right of witness to require protection from responsible bodies only in case he/she him/herself in danger. Thirdly, the injured persons, including trafficked victims, and their relatives, are not subject to adequate protection because the PPC does not recognize their right to request protection from competent bodies when their life, health, honor, and dignity are in danger. The law does not provide for protection of those persons at court hearing either. And fourthly, as analyzed at section 4.5. below, the law does not pay enough attention on protection of sensitive victims and witnesses, such as children.

In order to ensure adequate protection of trafficked victims, smuggled migrants, witnesses, and their relatives, in the coming time, the above-mentioned deficiencies must be overcome as follows:

Firstly, it is necessary to issue an inter-agency circular(s) providing for in detail the issue of protecting injured persons, smuggled migrants, witnesses, other persons participating in criminal proceedings, and their relatives. This document should concretely stipulate the following issues: persons to be protected (who are to be considered as witness and his/her relative(s)), measures of protection (measures that may be taken immediately including providing safe shelter on voluntary basis, on an emergency basis and on a long-term basis as necessary; relocating protected persons; prohibiting the disclosure of information concerning protected persons' identity and whereabouts; providing protected persons with new identities; other measures that cannot be applied in a short term for financial reasons or because they require amendment of related legislations, but should be taken into account for application in the future, including evidentiary rules to allow the testimony of protected persons to be given via video-tape or video link, notifying protected persons when the offender is released from detention or prison, etc.), procedure for obtaining protection services, financial issues, etc. This circular should provide for responsibilities of competent officials for informing trafficked persons and witnesses of their rights to protection, of the services that are available to them, and of the procedures for obtaining this assistance. The next step should be recognizing the right of injured persons, including trafficked victims, to request protection, and revising Article 55 paragraph 3 of the Penal Procedure Code in order to stipulate the rights of the witness to ask for protecting the life, the legitimate rights and interests of his/her own and his/her relatives.

4.3. Protection of Privacy

The protection of a victim's privacy is often essential to ensure that he or she is not subjected to threats and reprisals from the perpetrators. In addition, trafficking victims are often subjected to degrading and humiliating treatment, and may be forced to engage in socially unacceptable activities such as prostitution. Having to testify about these activities in a public hearing may cause further embarrassment and humiliation, may inhibit the victim from giving a full account of what happened, and may impair their rehabilitation and reintegration by causing them to be stigmatized or rejected by their families and communities. For children, the very presence of other people in the courtroom may be intimidating or frightening, causing them to be unable to testify effectively.

4.3.1. International Law

Article 6 of the Trafficking Protocol states that, in appropriate cases and to the extent possible, State parties shall protect the privacy and identity of victims of trafficking, including by making legal proceedings confidential.

4.3.2. Vietnamese Law

According to Article 124 of the PPC, in case it is necessary to maintain the confidentiality of an investigation, the Investigator/Prosecutor shall inform the persons participating in criminal proceedings and eyewitness in advance and require them to keep the investigating confidential. This

provision, however, is not effective enough to protect victim privacy and identity for the following reasons. Firstly, protection of privacy and identity of child victims and victims of some sensitive crimes are necessary and should not be limited in cases falling under confidential category. Secondly, the law does not recognize the right of the victims to require investigating bodies to protect their privacy and identity.

In trial phase, according to Article 18 of the PPC, “in special cases, ... to protect privacy of interested persons in criminal case according to their proper requirement, closed hearings shall be permitted, provided that, the verdict shall be pronounced in public.” That means trafficked victims, as injured persons, may require the court to conduct a closed hearing. However, whether this requirement is accepted or not depends on the court’s justification of its propriety. In addition, even in case of a closed hearing, the verdict is still pronounced in public, therefore, it is impossible to absolutely protect their privacy and identity.

4.3.3. Assessment and Recommendations

Although the Penal Procedure Code contains several provisions on protecting privacy and identity of the concerned individuals, including trafficked victims, these provisions are inadequate to protect the concerned individual's privacy and identity. Meanwhile, the protection of the privacy and identity of a victim is of great importance to his/her safety. With regards to a number of crimes, such as rape, forced rape, human trafficking, etc., the protection of the privacy and identity of victims in the process of the legal proceedings is a measure of great importance to helping them return into the community and to start their new life. Therefore, in our view, in the future, the Penal Procedure Code should be revised to strengthen the legal protection of the privacy and identity of crime victims, including trafficked victims in the legal proceedings. The amendments should state explicitly that the protection of a victim’s privacy and identity is mandatory in all cases where he/she is a child. The publication of the victim’s name, or any information that may lead to the discovery of the victim should be strictly prohibited in all cases of trafficking, rape and sexual violence, and where children are involved. In the future, a regulation guiding the implementation of the Code should be issued, thereby the Code's Article 18 should be construed so that the court shall conduct closed hearings if the victims of certain kinds of crimes, including trafficked victims, and victims who are children, so require. If the verdict and sentence are pronounced in public, measure to protect the privacy and identity of the victims shall be applied, such as only the beginning and ending parts of the judgment are to be read. It is also necessary to stipulate measures to protect the privacy and identity of the victims in the process of investigation and indictment, such as nondisclosure of identity data of the victim in the investigative protocols, application of measures ensuring the safety of the victim when he/she must identify the accused, etc.

4.4. Participation of Victims in Criminal Proceedings

4.4.1. International Law

The TOC Convention obliges states, subject to their domestic law, to enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings (Article 25 para. 3).

Article 6 para. 2(b) of the Trafficking Protocol requires State parties to ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking, in appropriate cases assistance to enable their views and concerns to be presented and considered at appropriate states of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense. Under the Optional Protocol to the CRC, State parties are obligated to adopt measures to ensure that child victims are informed of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases. States must also allow the views, needs and

concerns of child victims to be presented and considered in the proceedings in a manner consistent with the procedural rules of national law.

4.4.2.. Vietnamese Law

Under the PPC, trafficked victims, as injured person, are parties to the criminal proceedings. When participating in criminal proceedings, they have the rights to (1) present materials, objects, and make requests; (2) be informed of the results of the investigation; (3) make requests for the alteration of officers conducting the criminal proceedings, experts and/or interpreter; (4) make suggestions regarding the level of compensation and measure to ensure compensation; (5) participate in the court hearing, present opinions, and argue to protect their legitimate rights and interests; (6) file complaints against decisions/actions of bodies/officers conducting criminal proceedings; file appeal against parts of a court judgment/decisions related to compensation and the sentence imposed on the defendant (Article 51 section 2 of the PPC). With regards to juvenile victims or victims who are mentally or physically defected, their legal representative shall exercise these rights on their behalf.

In addition to this provision, the PPC provided for the following provisions to ensure that trafficked victims, as injured persons, can fully exercise their rights during criminal proceedings:

At the investigation stage, victims shall be summoned by an investigating body to give testimony (Article 137 of the PPC). Their testimony on the facts of the case, the relationship between them and the defendant, and other matters, obtained in compliance with order and procedure provided by the PPC, is a source of evidence (Article 64, Article 68 of the PPC). The investigating body shall require them to attend confrontation in case there exists any conflict in their testimony and those given by another (Article 138 of the PPC). In case of necessity, investigator may require them to identify a person or object/photo (Article 139). As an injured person, they may attend the inspection of a criminal scene and/or investigating experiment (articles 150, 153 of the PPC). The investigator may examine their body to discover traces of crime or other traces that are useful for handling the case (Article 152 of the PPC). When attending the above-mentioned activities, trafficked victims are entitled to read the investigating minutes, give comments on and require revisions to the minutes. Their comments shall be recorded in the minutes (Article 125 of the PPC).

In case it is necessary to determine the nature and gravity of the injury to the health or working capacity of the trafficked victims, or to determine their age, the investigating body or procuracy shall request an expert examination (Article 155 of the PPC). The victims are entitled to require the agency that requested the expert examination to inform them of the examination results, to give comments on the results, and to require re-examination or make additional examination. Their comments/requests shall be recorded in the minutes (Article 158 of the PPC).

According to Article 52 of the PPC, trafficked victims have the right to make requests. In order to ensure their exercise of this right, Article 122 stipulates the responsibilities of bodies conducting criminal proceedings for settling requests of the victims and informing them of the result within their scope of authorization. Should a requests be rejected, the investigating body or procuracy shall inform the victims who made the request of the reason for the rejection. If the victims do not agree with the viewpoint of the investigating body or procuracy, they may file a complaint to a competent body.

With regards to the responsibility of competent bodies for informing the victims of the results of an investigation, Article 160 stipulates that in case of the provisional suspension of an investigation, the investigating body that made the provisional suspension decision shall deliver this decision to the victims. In case of provisional suspension of a case or suspension of a case made by the court, these decisions shall be delivered to the victims too (Article 182 of the PPC).

At trial stage, the victims shall be summoned to attend the court hearing according to a judge's decision (Article 183 of the PPC). The appearance of the victims at the court hearing is of very

importance since the court shall directly determine the facts of the case through interrogating and listening to the defendant, the victim, and other persons participating in criminal proceedings (Article 184 of the PPC). Should the victim or his/her legal representative be absent, depending on the particular case, the Collegiate bench decides whether to postpone the hearing or not. If the Collegiate bench deems that his/her absence only causes obstacle to settlement of claim for damages, it may rule that the damages be solved separately according to civil procedure (Article 191 of the PPC).

At the beginning of the court hearing, the victim may make request for the alteration of the judge, the people's assessors, prosecutor, expert, interpreter, and/or court secretary (Art. 202 of the PPC). He/she also has the right to request that more witnesses be summoned or more material evidence and documents be examined. If any of the persons participating in criminal proceedings are absent, he/she may request that the hearing be postponed (Article 205 of the PPC). The victim has the right to attend interrogation and argument at the court hearing. At the court hearing, he/she may present the facts of the case that are related to him/her (Article 210 of the PPC), and propose the presiding judge make further questions to other persons participating in the court hearing regarding the issues that he/she would like to make clear (Article 207 of the PPC). The victim is eligible to present his/her comments on material evidences that are examined at the hearing (Article 212 of the PPC), on the criminal scene or other places related to the case (Article 213 of the PPC), on documents, reports of state agencies/organizations that are presented at the hearing (Article 214 of the PPC), on expert examination results and make further questions on issues that are unclear or in conflict of the results (Art. 215 of the PPC). At the argument session of the hearing, the victim has the right to present his opinions in order to protect his/her rights and interests. Should he/her have a defense counsel, this person may add comments (Article 217 of the PPC). The victim may present his opinions on the accusation given by the prosecutor, present his suggestions, and answer other persons' opinions (Article 218 of the PPC). In case the prosecutor withdraws all the indictment, the victim has the right to comment on this decision (Art. 221 of the PPC). After the pronouncement of judgment the victim is eligible to request the court to provide an excerpt or copy of the judgment (Article 229). He/she has the right to file an appeal against the judgment or decision of the first instance (Article 231 of the PPC). The victim shall be informed in writing by the court of the first instance on the appeal, contest made by others and he/she may send written comments on the appeal/contest to the appellate court. His/her comments shall be included in the case dossier (Article 236). Before the commencement of the appellate hearing, the victim who made the appeal may supplement or alter the content of the appeal, provided that, such a supplementation or alteration shall not worsen the situation of the defendant, withdraw the appeal in whole or in part (Article 239 of the PPC).

The victim shall be summoned to attend the appellate hearing if he/she is the appellant or person of related interests/obligations. In case of his/her absence with proper reason, the collegiate bench may conduct the hearing without him/her, it, however, is prohibited from pronouncing verdict in disadvantage to the victim. Otherwise, the collegiate bench shall postpone the hearing (Article 245 of the PPC). At the appellate hearing, the victim has the right to supplement documents/objects to be examined by the court (Article 246 of the PPC). He/she may participate in interrogating and arguing session at the appellate hearing just like at the hearing of the first instance (Article 247 of the PPC). Within ten day since the date of judgment pronouncement, the appellate court shall deliver the judgment/decision to the victim who is the appellant or person of related interests/obligations. The victim who is not the appellant or person of related interests/obligations, has the right to request the court to deliver transcription or copy of judgment (Article 254 of the PPC).

(With regards to legislative measure to provide trafficked victims with assistance to enable their views and concerns to be presented and considered at appropriate states of criminal proceedings, see section 4.5. below).

4.4.3. Assessment and Recommendations

Generally speaking, Vietnam criminal procedure law is rather adequate to ensure the participation of trafficked victims in criminal proceedings. It, however, inheres a number of deficiencies. For example, although according to Article 52 section 2 of the PPC as introduced above, victims have the right to be informed with investigating results, the concrete provisions on investigating activities stipulate, however, only deliverance of a decision on the provisional suspension of investigation to the victim (Article 160 of the PPC); there is no provision on informing the victim of the results of an investigation in case of suggestion of prosecution or suspension of investigation (Article 162 of the PPC). In addition, as analyzed above, some provisions of the PPC on protection of physical security of victims and witnesses are not concrete; other provisions on protection of victim's privacy and identity are not adequate. These deficiencies may inhibit victims from effectively participating in criminal proceedings. In order to overcome these deficiencies to ensure full participation of trafficked victims in criminal proceedings, in the coming time, it is necessary to issue a circular guiding the implementation of the Penal Procedure Code that should stipulate, among other things, the sending of copies of decisions suspending the investigation/case to the injured. Provisions on protection of physical security and privacy of victims and witnesses also need to be concretized and improved (for more details, see sections 4.1.3. and 4.3.3. above).

4.5. Access to Information, Advice and Assistance

4.5.1. International Law

Article 6 of the Trafficking Protocol states that State parties shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking, in appropriate cases:

- (a) information on relevant court and administrative proceedings;
- (b) assistance to enable their views and concerns to be presented and considered at appropriate states of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: informing victims of their role and the scope, timing and progress of the proceedings; allowing the views and concerns of victims to be presented and considered at appropriate states of the proceedings; providing proper assistance to victims throughout the legal process.

4.5.2. Vietnamese Law

Assistance to trafficked victims in criminal proceedings is carried out according to general provisions of the PPC on protection of rights and interests of interested persons in criminal cases. Article 110 of the PPC states that an investigator must, before obtaining testimony, inform the witnesses of their rights and obligation. According to Article 59 section 1 of the PPC, trafficked victims, as injured persons, "have the right to retain lawyer, the people's advocate, or other person accepted by investigating bodies, procuracy, or court to protect their rights and interests." The victim's defense counsel is responsible for applying all legitimate means to contribute to find the truth of the case, and at the same time, assist the victim on legal matters to protect his/her rights and interests (Article 59 section 4 of the PPC). When protecting the legitimate rights and interest of victim, defense counsel has the rights to present materials and objects, and to make requests during criminal proceedings; after completion of investigation, to read, write down, and copy dossier documents related to the protection of the victim; participate in interrogating and arguing sessions in court hearing; look at court hearing minutes; and make complaints against decisions/actions of bodies/officers conducting criminal proceedings. Defense counsel of a victim who is a juvenile or who suffers from physical/mental defects, has the right to attend when the bodies conducting criminal proceedings

interrogate the victim and to file an appeal against the part of the judgment related to the rights or obligations of the victim (Article 59 section 3 of the PPC). Article 24 of the PPC gives persons participating in criminal proceedings the right to use their own language. In such cases, an interpreter will be provided to translate.

Furthermore, there is a legal aid system for poor people and peoples enjoying preferential policy (including people who have rendered great service to the revolutions and minority people) (Joint circular No. 52/TTLT/TP-TC-TCCP-LDTBXH dated January 14, 1998 of the Ministry of Justice, Ministry of Finance, Committee for Government Organization and Personnel and Ministry of Labor, Invalids and Social Affairs guiding the implementation of Decision No. 734/TTg dated September 6, 1997 of the Prime Minister on the Establishment of Organization Providing Legal Aid to the Poor and People Enjoying Preferential Policies). Although trafficked victims are not expressly included in the subjects eligible for free legal aid, in fact, in order to promote fighting to trafficking-in-person, especially trafficking in women and children, related crimes, The Department for Legal Aid of the Ministry of Justice, directed to provincial Legal Aid Center to provide them free legal aid. Therefore, those persons may require provincial level Legal Aid Centers to answer legal questions, giving guidance regarding necessary proceedings, directing them to competent agency, providing legal information, directly defending or invite defense counsel to protect their rights and interests at court hearing.

4.5.3. Assessment and Recommendations

As above mentioned, trafficked victim is a category of persons to be given free legal aid at Legal Aid Centers. However, due to the fact that this issue has not yet been stipulated in any legal normative document, there could be cases that trafficked victims, who do not have enough financial resources to hire a lawyer to protect their legitimate rights and interests in legal proceedings, are not aware of their right to free legal aid. This reduces the chance of trafficked victims to be legally protected. Therefore, in order to provide better support to trafficked victims, it is necessary to revise Joint circular No. 52/TTLT/TP-TC-TCCP-LDTBXH dated January 14, 1998 of the Ministry of Justice, Ministry of Finance, Committee for Government Organization and Personnel and Ministry of Labor, Invalids and Social Affairs guiding the implementation of Decision No. 734/TTg dated September 6, 1997 of the Prime Minister on the Establishment of Organization Providing Legal Aid to the Poor and People Enjoying Preferential Policies to include trafficked victim as a category of persons to be given free legal aid. The Ministry of Justice that is the body in charge of legal aid affairs should issue a circular on providing legal aid for trafficked victims so that they may be provided with the following information: contact information for support organizations; information about the type of support they can obtain (shelter, counseling, physical protection, etc.); information about measures to protect their privacy and ensure their safety; their role in connection with criminal proceedings, especially their rights and duties; procedures for obtaining protection, right to compensation etc.

For a better protection and participation of trafficked victims in criminal proceedings, it should be clarified through a circular that law enforcement officials have an obligation to provide victims with information and assistance at the earliest available opportunity, and to refer them immediately to a government or community agencies that can provide assistance.

4.6. Victim-sensitive Investigation and Trial Procedures

In recent years, there has been growing international recognition that, for sensitive crimes such as trafficking, sexual violence, and crimes against children, special investigation and trial procedures are required to ensure that victims are given adequate access to justice, while at the same time minimizing the secondary trauma associated with criminal trials. Victims of trafficking have often suffered both physical and mental abuse and can find the criminal justice system to be both harsh and intimidating. Having to give statements to authorities and testify publicly about their experiences

can cause humiliation and additional trauma. Without adequate protections for their safety, privacy and dignity, victims may be unwilling or unable to give effective testimony, thereby undermining the State's ability to effectively prosecute these serious crimes. As a result, many countries have introduced special criminal procedures for conducting investigations and trials in these types of cases.

In addition, child victims and witnesses are particularly vulnerable, and require special protection appropriate to their age, level of maturity and individual needs. In most countries, the criminal process was designed with adults in mind, and maintains an adult culture.. Having to provide a detailed account of very embarrassing and frightful incidents of abuse to the police and in open court can be very intimidating for children, particularly where they must confront their abuser. Officials are generally unaccustomed to dealing with children, and prosecutions for crimes against children can fail if police, prosecutors and judges are not sufficiently trained in child-sensitive techniques. Trial procedures need to be examined to ensure that they take into account children's age and abilities, and so that children are able to give reliable evidence with minimal stress and secondary victimization from the court process.

However, any measures introduced must balance the right of the accused to a fair trial and to fully test the evidence against him, against society's need to protect victims from further victimization at the hands of the justice system.

4.6.1. International Law

The TOC Convention obliges states, subject to their domestic legislation, to enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings. It also provides for testimony to be given by video link in order to protect witnesses from retaliation or intimidation.

The Optional Protocol to the CRC obliges State parties to ensure that the best interest of the child shall be the primary consideration in the treatment by the criminal justice system of child victims. State parties are required to adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process, in particular by recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, providing appropriate support services to child victims throughout the legal process, and avoiding unnecessary delay in the disposition of cases and the execution of orders granting compensation to child victims.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that victims should be treated with compassion and respect for their dignity. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: informing victims of their role and the scope, timing and progress of the proceedings; allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings; providing proper assistance to victims throughout the legal process; taking measures to minimize the inconvenience to victims, protect their privacy, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; avoiding unnecessary delay in the disposition of cases.

The UN Guidelines for Action on Children in the Criminal Justice System (UN Economic and Social Council, Resolution 1997/30, July 31, 1997) state that child witnesses need assistance in the judicial and administrative processes. States should review, evaluate and improve, as necessary, the situation of children as witnesses of crime in their evidential and procedural laws to ensure that their rights are fully protected. Direct contact between the offender and the child victim during the investigation, prosecution and trial should be avoided as much as possible.

The UN Guidelines for Action on Children in the Criminal Justice System outline some specific strategies for improving the management of crimes against children:

- Police, lawyers the judiciary and other court personnel should receive training in dealing with cases where children are victims.
- States should consider establishing specialized offices and units to deal with cases involving offences against children.
- States should establish a code of practice for proper management of cases involving children.
- States should consider amending their criminal procedure codes to allow for the videotaping of children's testimony and for its presentation in court as an official piece of evidence
- Police, prosecutors and judges should apply more child-friendly practices, for example in the interview of child witnesses
- States should encourage the development of witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal proceedings

Similarly, the Model Guidelines for the Effective Prosecution of Crimes Against Children developed by the International Association of Prosecutors state that prosecutors must recognize that children are particularly vulnerable and therefore should do all that is in their power to ensure that child victims or witnesses are treated in a caring and sensitive manner throughout the prosecution process, taking into account age level and maturity. In particular, the Guidelines recommend that special procedures such as screens, video-taped evidence, support persons, and intermediaries be used, when appropriate, to reduce the trauma of testifying and improve the quality of children's testimony.

4.6.2.. Vietnamese Law

According to the PPC, where a trafficked victim is a juvenile or is mentally or physically defected, his/her legal representative shall exercise his/her rights on his/her behalf (Article 51 section 2 of the PPC). A writ of summons upon a victim of less than 16 years of age shall be delivered to his/her parents or other legal representative (Article 137, Article 133 section 3 of the PPC). The interrogation of such a victim shall not be conducted without the attendance of his/her parents, other legal representative, or teacher (Article 137, Article 135 section 5 of the PPC). The testimony of a witness may be obtained at the place where the investigation is being conducted or at the witness' home (Article 110). Apart from these provisions, there are no other special provisions due to victim genders of injured persons in general and trafficked victims in particular.

Article 113 of the PPC allows investigators to conduct confrontations between witness where their evidence conflicts. There are no limitations on exposing children to confrontations.

4.6.3. Assessment and Recommendations

As introduced above, taking into account the vulnerability and limitation of awareness of juveniles, criminal procedure law of Vietnam contains a number of provisions stipulating special procedures in case victims are juveniles. Article 18 of the PPC may be applied to hold closed hearings when so requested by juvenile victims or victims of sensitive crimes, such as crimes of trafficking in women and children, sexual crimes, although this is not explicitly stipulated. These provisions, however, are inadequate to fully protect juvenile victims and victims of a number sensitive crimes in criminal proceedings. In the future, when issuing regulations giving guidance to the PPC, this matter should be taken into full account in order to strengthen protection of juvenile victims and victims of sensitive crimes. First of all, it is necessary to give guidance for the implementation of Article 18 of the PPC to clearly provide that among other circumstances, the court shall allow a closed hearing if so requested by juvenile victims (or their parents or legal representative) or victims of some sensitive crimes, including the crime of trafficking in women and children, and sexual crimes. Secondly,

Article 7 section 3 of the PPC regarding protection of victims should be given guidance for implementation so that protective measures shall be provided for in detail to include measures such as the separation of victims and defendant/accused person at police station as well as the court hearing; when a victim must identify the accused, facilities, such as two-way mirrors, should be in place so that the victim is not seen by or having to confront the accused; at the court hearing, victims should be provided the option of providing testimony by special audio or video facilities and without being personally confronted by the accused etc.

In the future, it is also necessary to amend the PPC to strengthen protection of sensitive victims. The current PPC includes a chapter that provides for special procedures applicable in case defendant/accused person is juvenile, for example officials conducting criminal proceedings in such case must be equipped with necessary knowledge of psychology and educational science; representative of defendant/family, school, social organization has the right and obligation to attend criminal proceedings and court hearing etc. (Chapter XXXII of the PPC). From our point of view, similar procedures should be developed based on a full consideration of the vulnerability of sensitive victims. Promotion of guidelines, education, and training of investigating officials, prosecutors, judges who deal with juvenile subjects is also needed.

Furthermore, consideration should be given to establishing a Victim Support Program to assist juvenile victims and adult victims of sensitive crimes such as crime of trafficking in women and children, sexual crimes etc. at all stage of criminal proceedings. Victim Support Programs are generally staffed by personnel trained as social workers or psychologists. They assist police and prosecutors with many of the witness preparation and consultation functions outlined above. The role of Victim Support Services is to keep victims informed about the progress of their case, familiarize witnesses with the courtroom and the trial process, arrange pre-trial court visits and meetings with the prosecutor, attend the hearing as the victim's support person, and de-brief the victims after his or her testimony. They generally also provide referrals to counseling services, shelters or other support services before and after the trial. In many countries, Victim Support Programs are operated in cooperation with NGOs with experience working with children and women in difficult circumstances.

4.7. Right to Compensation

4.7.1. International Law

Article 6 of the Trafficking Protocol obliges State parties to ensure that its domestic legal system contains measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered. The Protocol further requires states to provide trafficked persons with "information on relevant court and administrative proceedings". This provision may be interpreted to include information and assistance with respect to obtaining compensation through criminal or civil proceedings.

According to the Declaration of Basic Principles, compensation should include the return of property or payment for the harm or loss suffered, the reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. It further recommends states to encourage the establishment, strengthening and expansion of national funds for compensation to victims of crime.

The Optional to the CRC requires State Parties to ensure that all child victims of offences under the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

4.7.2. Vietnamese Law

According to civil law of Vietnam, any person who intentionally or negligently infringes upon the life, health, honor, dignity, reputation, property, or other legitimate rights/interests of another, causing

damage(s) shall have to compensate to the victim (Article 609 of the Civil Code). Therefore, the trafficker who infringes upon life, health, honor, dignity etc. of the trafficked victims shall have to compensate to the victims for the damages suffered, including physical injury, mental injury, and property damage (articles 612-615 of the Civil Code). Usually, compensation for a trafficked victim is settled at the same time with the settlement of the criminal case against the trafficker. If it is difficult to settle the compensation together with the settlement of the criminal case, it shall be settled separately according to civil procedure, provided that, the separation shall not impact the settlement of the criminal case (Article 28 of the PPC).

Criminal procedure law also contains provisions according to which trafficked victims as injured persons may participate in criminal proceedings to protect their rights/interests (see section 4.1.3. above). After the entry into force of the judgment/decision, the court shall deliver to both the judgment creditor and the judgment debtor a copy of the judgment/decision with a remark of “for execution”. Upon delivering the copy, the court shall inform the judgment creditor of his/her right to file a requirement for the execution of judgment (Article 18 of the Ordinance on Enforcement of Civil Judgment, hereinafter, the Ordinance). The judgment creditor based on the copy of the judgment/decision has the right to request the judgment debtor to pay the compensation. If the judgment debtor refuses to pay, the judgment creditor may file a requirement of judgment execution to a competent enforcement agency to request execution. The requirement letter must include an attached copy of the judgment/decision. Within ten days of the date of reception of the requirement letter, the enforcement agency shall issue enforcement decision (Article 19 of the Ordinance). After receiving the enforcement decision, the enforcement officer in charge shall determine duration of no more than 30 days within which the judgment debtor must pay the compensation. Upon expiration of that duration, the enforcement officer shall issue decision of mandatory enforcement to adopt mandatory measures provided for in Chapter IV of the Ordinance. In case it is necessary to prevent the judgment debtor from destroying or hiding property, the enforcement officer shall decide to attach his/her property (Article 22 of the Ordinance).

4.7.3. Assessment and Recommendations

In general, the law on enforcement of civil judgment is rather adequate to ensure the right to compensation of trafficked victims. Recently, the Ordinance on Civil Judgment Execution has been thoroughly amended to overcome deficiencies that used to inhibit the judgment creditors, including trafficked victims, from enjoying their right to compensation. Major amendments include: clearly stipulating issues of local state management with regard to judgment execution work, the competence of the people's committees of all levels with regard to judgment execution work; secondly, reforming the procedures of judgment execution; providing for judgment execution fees; revising the provisions relating to taking the initiative of issuing the decision of judgment execution and issuing the decision of judgment execution on application as well as to the prescription of judgment execution; supplementing provisions on the adjournment, suspension and temporary suspension of judgment execution, the termination of execution, and the transfer of the judgment-execution rights and obligations; thirdly, measures of forced judgment execution, which the executors are entitled to apply in the process of execution, are clearly stipulated.

However, in practice, there are cases where offenders who are judgment debtors are not able to fulfill their obligations of compensating to victims who are judgment creditors. In the future, consideration should be given to setting up a special victims fund to provide compensation for victims where restitution cannot be obtained from the perpetrators. This fund could be supported through property confiscated as proceeds of crimes. It could also be used to assist the State to provide programs and services for victims, including trafficked victims.

4.8. Status of Trafficked Victims in Vietnam

4.8.1. International Law

Article 7 of the Trafficking Protocol obliges each party to consider adopting legislative or other appropriate measures that permit foreign trafficked persons to remain in its territory, temporarily or permanently, in appropriate cases.

4.8.2. Vietnamese Law

Foreigners who illegally enter Vietnam may be subjected to deportation according to the Ordinance on Handling of Administrative Violations, Decree No. 49/CP dated Aug. 15, 1996 of the Government on punishment of administrative violations in the field of social security and order, and the Ordinance on Existing and Entering the Country. However, the deportation may be postponed by the head of Immigration Department of the Ministry of Public Security (in case of postponement of not more than 24 hours) or the Minister of Public Security (in case of postponement of more than 24 hours) upon request of an investigating agency, procuracy, or court (Article 19 of Decree No. 21/2001/ND-CP dated May 28, 2001 of the Government providing in detail the Ordinance on Existing and Entering the Country). Therefore, trafficked victims may remain in Vietnam temporarily in order to participate in the investigation and prosecution of the perpetrators.

4.8.3. Assessment and Recommendations

Vietnam already has legislation according to that deportation of trafficked victims may be postponed so that trafficked victims may remain in Vietnam temporarily in order to participate in the investigation and prosecution of the perpetrators.

V. REPATRIATION AND REINTEGRATION

In many countries, victims of trafficking are denied legal residence status and may be subject to deportation, in some cases before they have the opportunity to participate in criminal proceedings or seek compensation. Often, they have no travel or identity documents and therefore face complications in transit and may be unable to re-enter their countries of origin. If left to travel alone, they are especially vulnerable to being re-captured by traffickers.

In addition, most trafficking victims are heavily traumatized due to the physical, psychological and/or sexual violence to which they were subjected and require medical treatment and psychological counseling. Many have no place to stay or means of support upon their return to their home country and may be stigmatized and rejected by their families. They are generally in need of accommodation, financial assistance, education and vocational training programmes, as well as assistance with finding employment. Without this support, victims are vulnerable to being re-trafficked.

5.1. Right of return and repatriation

5.1.1. International Law

Article 7 Trafficking Protocol obliges each party to consider adopting legislative or other appropriate measures that permit trafficked persons to remain in its territory, temporarily or permanently, in appropriate cases. When considering whether to provide lawful status, states shall give appropriate consideration to humanitarian and compassionate factors.

Article 8 of the Trafficking Protocol requires that the State Party of which the victim is a national or permanent resident shall facilitate and accept, with due regard for the safety of that person, the return of the victim without undue or unreasonable delay. The State party returning the victim must have due regard for the safety of the victim and for the status of any legal proceedings relating to the trafficking. In order to facilitate the return of victims who are without proper documentation, State parties shall agree to issue such travel documents or other authorization as may be necessary to enable the victim to travel and re-enter its territory.

The Trafficking Protocol also obliges state parties to co-operate in the course of the return procedure. Upon request of the receiving state, states of origin shall verify whether the trafficked person is a national or had the right to permanent residence at the time of entering the receiving state and, if the person has no proper documentation, issue the necessary travel or other documents to enable the person to travel and to re-enter its territory.

5.1.2. Vietnamese Law

From the practice of prevention and suppression of trafficking in woman and children and smuggling of migrants during the last years, we can see that victims of trafficking and smuggled persons are usually discovered in disadvantaged status and facing difficulties, many of them living in brothels, bad working places or refugee camps, without identity documents and in illegal residence. The victims of trafficking and smuggled persons need to be helped by relevant authorities of the “departing” and “receiving” country for repatriation and reintegration. According to the research on the Vietnamese legal system on repatriation and reintegration of victims of trafficking and smuggled persons, we can release following remarks:

The opinion of Vietnamese Government is clearly to differentiate between criminals and victims, therefore, trafficked persons are regarded as victims. Although there are not yet statements or provisions excluding trafficked persons from liability for illegal exit and entry to the country, in practice, the victims of the trafficking in women and children are not dealt with as illegal migration criminals or subject to an administrative fine for illegal immigration. On the return, many of them are brought into treatment and rehabilitation centers. These centers are established in cities and provinces, under the management of the labor, invalid and social affairs branches, and are authorized in treatment, vocational training and rehabilitation for prostitutes and helping them in reintegration. This placing of trafficked victims in treatment centers is compulsory in cases of victims engaged in prostitution, however, by its nature, the compulsory treatment is not punitive, but rather is a supportive and rehabilitative measure. The persons, who are placed in such treatment centers receive health care and treatment with STDs. These centers also provide treatment and prevention from diseases relating to HIV/AIDS.

Regarding illegal migrants, paragraph 1 of the inter-branch Circular No. 01/TTLN dated February, 17th, 1991 between the Ministry of Interior, the Supreme People's Procuracy and the Supreme People's Court stipulates as follows: “there is no prosecution for illegal migration crime stipulated in the Article 89 of the Penal Code⁸ against the person, who first time fled abroad and voluntarily returns”.

Vietnam does not have specific provisions concerning procedures for repatriation of trafficked victims. To date, there is only one legal document providing a repatriation of Vietnamese citizens, who illegally migrated and not permitted for residence by foreign countries, that is the Directive No. 747/TTg of 15/11/1995 by the Prime Minister. According to this document then the repatriation is for *“the purpose of protection of rights and legitimate interests of Vietnamese citizens as well as protection of national security and social order and safety”*. The conditions to receive back Vietnamese citizens who had illegally entered into a foreign country but are not permitted for residence or compelled to return are follows:

- a) the persons who have Vietnamese nationality and do not have another country's nationality, and previously had permanent residence in Vietnam and are guaranteed by a social or economic organization or individual having permanent residence in Vietnam (except some special cases because of humanity reason);

8 . It mentions the Article 89 of the Penal Code 1985. According to the Penal Code 1999, it relates to Article 274

- b) the principles of order and safety shall be guaranteed and the dignity of returnees must be respected;
- c) There should be a financial assistance by international organizations or the relevant foreign country for repatriation and reintegration after return;
- d) There should be an agreement between Vietnam and the relevant foreign country.

The Directive No. 747/TTg of the Prime Minister dated November, 15th, 1995 on receiving back persons, who are not permitted for residence by foreign countries stipulates that, after having a treaty or agreement with the relevant country (if there are many returnees) or having negotiation for cooperation with the relevant country (if there is a less of returnees), the Vietnamese authorities concerned shall have responsibility to ascertain personnel information and response to the relevant country as soon as possible. If the required conditions for receiving back are met, the Vietnamese consuls or diplomatic representative organs in the foreign country shall grant necessary documents for returnees and coordinate with the relevant domestic and foreign authorities in handing over and receiving back the returnees.

5.1.3. Assessment and Recommendations

In general, the Vietnamese legal provisions regarding repatriation of victims of trafficking and smuggled persons are consistent with the relevant provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime (the Article 8 “repatriation of victims of trafficking”) and the Protocol against smuggling of migrants by land, sea and air supplementing the United Nations convention against transnational organized crime (the Article 18 “the return of illegal migrants”) upon following basic attitudes:

- to regard trafficked persons as victims and give lenience to the illegal migrants, do not prosecute persons who for the first time flee abroad for illegal migration crime (it is in compliance with Article 5 of the Protocol against human Smuggling and the paragraph 2, Article 8 of the Protocol against human Trafficking). Notice that here is an exception: criminal prosecution shall be applied in case a person illegally migrates many times for the purpose of receiving the repatriation finance⁹.
- the accept of return is considered with safety and respect of dignity of persons (it is in compliance with the paragraph 2, Article 8 of the Protocol against human Trafficking; paragraph 5, Article 18 of the Protocol against human Smuggling);
- Based on the request of the State having agreement or negotiation for cooperation, promptly to ascertain if a person is a Vietnamese citizen or not (it is in compliance with the paragraph 3, Article 8 of the Protocol against human Trafficking; paragraph 3, Article 18 of the Protocol against human Smuggling)
- To grant necessary documents to returnees for re-entry (it is in compliance with the paragraph 4, Article 8 of the Protocol against human Trafficking; paragraph 4, Article 18 of the Protocol against human Smuggling).
- To cooperate with relevant international organizations for repatriation of illegal migrants (it is in compliance with paragraph 6, Article 18 of the Protocol against human Smuggling).

Some differences between the Vietnamese legal provisions and the Protocols regarding repatriation:

⁹ According to paragraph 1 of the inter-branch Circular No. 01/TTLN dated February, 17th, 1991 between the Ministry of Interior, the Supreme People's Procuracy and the Supreme People's Court on guideline of handling illegal migrants who voluntarily returned.

- According to *the Directive No. 747/TTg*, the illegal migrants shall be received back are persons who maintain Vietnamese nationality and do not have another country's nationality, and had permanent residence in Vietnam before. Meanwhile, the Protocols provide as follows:

In case of victims of trafficking, the state parties are obliged to accept the return of any person who is national or had the right of permanent residence at the time of entering the destination State (Article 8 para.1 of the Protocol of Trafficking). In the case of smuggled migrants, the obligation is only to accept those who are national or have the right of permanent residence at the time of the return (article 18 para.1), however, State parties are also required to consider the possibility of accepting the return of migrants who had permanent residency rights at the time of entry into the destination state in accordance with domestic law (Article 18, para. 2 of the Protocol of Smuggling).

Thus, regarding this issue, the Vietnamese provision containing a point narrower than the Protocols provision.

- The Directive No. 747/TTg stipulates that there should be financial assistance for repatriation of victims by the relevant country or international organization in order to guarantee the return and reintegration, however the Protocols is silent on this.

So that it is recommended:

- To review, amend and supplement *The Directive No. 747/TTg by the Prime Minister of 15/11/1995 on receiving back Vietnamese citizens illegally migrated, not permitted for residence by foreign countries* upon following orientation: to supplement detailed provisions on documentary administrative procedures, especially guidelines on circumstances when victims having no identity documents (by losing, mislaid or keeping by traffickers) in order to accept promptly the return of victims. The State shall consider providing necessary finance for the repatriation.

- The Directive No. 747/TTg is applied generally for all cases of Vietnamese citizens who illegally migrated, and are not permitted for residence by foreign countries. However, under the Protocol, victims of trafficking should not be considered as regular illegal migrants because of the force or coercion involved in their border crossing and their special status as victims of gross human rights violations. Therefore a separate directive or circular on trafficking victims could be developed or supplemented to provide detailed provisions on the procedures for the repatriation of trafficked victims, in accordance with the recommendations outlined above. Procedures should be in place to issue the necessary travel or other documents to enable the person to travel and to re-enter its territory in a timely and efficient manner. Provision should also be made for the appropriate accompaniment and support for returning child victims to protect them from being re-trafficked in transit. In addition, the Directive should clarify that trafficked victims should not be subject to prosecution for illegally leaving the country, even if their return was not strictly voluntary, but resulted from a deportation order by the destination country.

- It needs also reviewing the provision of the Directive 747/TTg stipulates that the return "shall be guaranteed by a social or economic organization or individual having permanent residence in Vietnam" as one of conditions of accepting the return", because in some cases, the returnee may have difficulties to meet this condition.

- The right to return of trafficking victims who are Vietnamese nationals, or who were permanent residents at the time of their departure, should be defined, for consistency with the Protocol. The repatriation of the foreign-born children of trafficked victims, even if the child has foreign nationality should be considered upon humanitarian grounds.

- It is also recommended that Vietnam continue in its efforts to develop bi-lateral agreements with countries of destination in the Mekong region. These agreements, can be used to develop a system for financing the return of victims and a contribution towards their reintegration.

5.2. Reintegration and Rehabilitation Assistance

Most victims of trafficking require assistance to reintegrate into their communities and recover from the trauma they experienced. Providing services such as housing, counseling, and vocational training not only facilitates their reintegration but also prevents them from being at risk of re-trafficking or falling into the sex industry. In most cases, these services are being offered by specialized NGOs. Since many rescued trafficked women and children are suffering from sexually transmitted diseases (including HIV/AIDS) and/or are addicted to narcotics, provision of free, quality medical services and rehabilitation to these trafficked victims is also essential to smooth their reintegration process. Children who are victims of trafficking are particularly vulnerable and require special programs and services to ensure their proper care and rehabilitation.

5.2.1. International Law

Article 6 of the Trafficking Protocol requires State parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking, including, in appropriate cases, in cooperation with NGOs and other relevant agencies and members of civil society. In particular, these measures should include: appropriate housing; counseling and information in a language that the victim can understand; medical, psychological and material assistance; and employment, educational and training opportunities. In applying these provisions, State parties shall take into account the age, gender, and special needs of the victims, in particular the special needs of children, including appropriate housing, education and care.

The UN Declaration of Basic Principles state that victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, and community-based means. In addition, victims should be informed of the availability of health and social services and other relevant assistance.

The Optional Protocol to the CRC requires State Parties to take all feasible measures to ensure appropriate assistance to victims of offences under the Protocol, including their full social reintegration and their full physical and psychological recovery.

ILO Convention 182 requires State parties to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor (which is defined to include trafficked children) and for their rehabilitation and social reintegration. States shall ensure access to free basic education, and, wherever possible and appropriate, vocational training for all children removed from the worst forms of child labor.

5.2.2. Vietnamese Law

Although there is no specific legal document for the reintegration of victims of trafficking, this issue is also provided for in following documents of the Vietnamese legal system:

- The Decision No 134/1999/QĐ-TTg dated May, 31st, 1999 by Prime Minister on approval of the Action Plan for protection of children in special circumstances for the period 1999-2002 stipulates that one of the actions for the protection of children in special circumstances is to educate, treat and reintegrate children who had been sexually infringed.
- The Program to prevent children from dignity, honor and sexual infringement, especially for commercial purposes, in accordance with the Decision No. 1101/2000/QĐ/BLĐTBXH dated October, 25th, 2000 by the Ministry of Labor, Invalid and Social affairs provides that one of the activities of the Program is to establish reintegration program for child victims of sexual

infringement : “to put reintegration plan along with job’s and economic programs as well as with the program of eliminating and decreasing poverty. Setting up and implementing policy and mechanism on financial support by the State for job creation...To enlarge different forms of vocational training suitable for child victims...To create jobs, provide financial support to child victims and give them conditions to reintegrate in the society...To establish and supplement the policy of medical and health care for victims of dignity and sexual infringement. To strengthen the system of social establishments managed by the labor, invalid and social branch. To receive for treatment the victims of prostitution and trafficking in children for prostitution. Providing counseling on social, psychological and other matters for child victims”.

- The Decision No. 151/QĐ/TTg dated December, 28th, 2000 by the Prime Minister on Approval of the action plan for prevention and suppression of prostitution for the period 2001-2005 stipulates : “ the people’s committees of all levels shall have responsibility...to establish and manage centers for the treatment, education, job’s creation and rehabilitation of prostitutes”.
- The Directive No. 766 dated 17/9/1997 by the Prime Minister on Assignments of Tasks to implement measures to prevent the illegal taking of women and children abroad provides the responsibility of the Ministry of Labor, Invalid and Social affairs to establish a Program on vocational training and job creation for returned women and children of trafficking; and taking victims of sexual diseases into educational and treatment centers. The Ministry of Planning and Investment and Ministry of Finance shall have responsibility to provide the budget for the rehabilitation of these persons into society.
- The Law on People’s Health Protection imposes obligations on the State to provide public health services to its citizens, which services include care for women and children, disease prevention and rehabilitation for disabled persons. In particular, it provides for compulsory treatment for patients with sexually transmitted diseases, drug addiction, and HIV/AIDS.
- According to the law on the Protection of Children, children under six years of age and poor disabled children shall receive primary health care, medical examinations and treatment free of charge at State medical units.
- The Proposed Law on the Protection, Care and Education of Children (submitted by the Government in January 2004 for review and comment by the National Assembly Commission for Culture, Education, Youth and Children before submission for adoption by the National Assembly in May 2004) includes even greater protections for the care and reintegration of children who are victims of trafficking. The new law introduces the concept of “children in especially difficult circumstances”, which is defined to include children who are sexually abused and trafficked victims. The Act states that children who have been sexually abused or trafficked shall be assisted with counseling, medical treatment, spiritual rehabilitation and support for their reintegration.

Implementing the above legal provision, the state organizations and social organizations (especially the Vietnamese Women Union), and local governments at all levels have been carrying out various measures of reintegration of victims of trafficking such as taking women and children who have worked as prostitutes into treatment centers for medical care, education and vocational training; and providing loans for manufacturing and creating a new life. According to the primary summary by the Labor, Invalid and Social affairs branch, from 1997 to 2002, a thousand turns of prostitutes have been educated and treated at treatment centers and in the community, a number of whom are victims of trafficking and vocational training and jobs have been provided for about 45% of educated and treated persons. Many of victims of trafficking have been given low-interest loans and free legal aid.

5.2.3. Assessment and Recommendations regarding to reintegration

In general, the policy of Vietnam regarding reintegration of victims of trafficking are consistent with the spirit of the Protocol, especially with provisions of the Protocol requiring State parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking, and providing them with information and guideline, medical , psychological and material assistance, employment, educational and training opportunities (point a, b, c paragraph 3 and paragraph 4, Article 6 of the Protocol against human trafficking). However, Vietnam does not have yet a specific legal document or comprehensive system of provisions regarding this issue, there is only some scattered provisions, which are put even into legal documents of other fields. Such provisions also remain as policy and opinion, lacking in concrete guidelines, and therefore the implementation of measures of reintegration of victims still depends on possibility, condition and concern of each branch and local governments. That is, not all victims have access to the rehabilitation assistance. On the other hand, financial possibility and job opportunities in Vietnam are still limited, due to the developing economy. These are also difficulties for Vietnam in rehabilitation of victims. Besides, the point a, paragraph 3, Article 6 of the Protocol against Trafficking provides that each state party shall consider the provision of appropriate housing for victims, however, Vietnam does not have yet such kind of provision.

Along with putting the measures of reintegration of victims into programs, plans, projects as has been done in the recent times, there is a need to introduce a legal document such as a Directive or Decision by the Prime Minister providing concrete measures of reintegration. These provisions should define what services should be provided, subject to available resources, and delineate the responsibilities of various government and non-government agencies. Rehabilitation and reintegration services should be considered including: housing, counseling, medical and psychological care, material assistance, vocational training and job counseling . Meanwhile, it is necessary to classify victims for appropriate measures of rehabilitation of each group, paying special attention to woman and child victims, and to approve detailed provisions on medical care for psychological and material recovery of victims on return as well as financial support and job opportunities for them to build a stable life. To assign main responsibility for implementing reintegration of victims to the Labor, Invalid and Social Affairs organs and local governments at all levels (in cooperation with relevant authorities and social organizations). In addition, separate provisions are necessary to address the special needs of child victims. Children, because of their vulnerability and inability to care for themselves, require additional assistance. Where family reintegration is not possible or is not in the child's best interest, then long-term arrangements must be made for the child's care and guardianship, medical, sexual and psychological health care, financial support, accommodation and education. The proposed amendments to the Law on Protection, Care and Education of Children provide much more comprehensive provisions with respect to services for child trafficked victims, and it is recommended that these provisions be enacted and fully implemented. To ensure consistency with the CRC, Trafficking Protocol and Optional Protocol to the CRC, "child" should be re-defined to include all persons under the age of 18.

VI. INTERNATIONAL AND REGIONAL COOPERATION

Because of the trans-national nature of trafficking, the prosecution of traffickers cannot take place solely at the national level, but requires bi- and multilateral co-operation among relevant national law enforcement authorities. Law enforcement co-operation covers several issues, including information exchange, training of law enforcement authorities, joint investigations, and mutual legal assistance in the collection of evidence, taking of statements, and sharing of documents. These activities are generally based on multilateral or bilateral treaties.

6.1. International Law

Article 10 of the Trafficking Protocol states that law enforcement, immigration and other relevant authorities shall, as appropriate, cooperate with one another by exchanging information about the

identification of offenders and victims of trafficking, and the means and methods used by organized criminal groups to traffic human beings, including recruitment, transportation, and routes. Article 11 obliges State parties to strengthen, to the extent possible and without prejudice to international commitments in relation to free movement of people, border controls and to consider strengthening cooperation among border control agencies by establishing and maintaining direct channels of communication. Countries are also required to strengthen border controls to detect and prevent trafficking, including imposing requirements on commercial carriers to check passports and visas, setting standards for the technical quality of passports and other travel documents, and cooperating with other States in establishing the validity of their own documents when used abroad. The same requirements applied to State Party of the Migrants Protocol.

The TOC Convention also provides for mutual legal assistance among State parties. Mutual legal assistance is defined broadly to include the taking of evidence and statements, the serving of judicial documents, and the carrying out of searches, seizures and freezing of assets. Under this article, it is highly recommended that assistance be channeled through central authorities to regulate the process. One of its innovative elements is that the Convention allows for electronic transmission of requests for quicker processing. Bank secrecy should not be a ground for refusing assistance. In specific areas, such as law enforcement action, international cooperation could take much more direct and less formal form to enhance its effectiveness.

Besides, the Optional Protocol to the CRC, to which Viet Nam is State Party, requires State parties to take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detention, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

6.2. Efforts of Viet Nam on international and regional Cooperation¹⁰

The Party and State of Vietnam pay special attention to this problem and have made enormous efforts to prevent and eliminate trafficking in women and children. Among these efforts, adoption of policies and promulgation of laws and regulations, including participating in related international instruments, to create material conditions and a legal basis for dealing with this problem is essential. With respect to participating in or ratifications of international instrument Viet Nam is the State party to the following: Convention on the Elimination of All Forms of Discrimination against Women (ratified 17/2/1982)); Convention on the Rights of the Child (ratified 28/9/1990); Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (ratified 20/12/2001); Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts (ratified 20/12/2001); ILO Convention No.182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ratified 19/12/2000). Viet Nam has also signed the United Nations Convention Against Transnational Organized Crime on December 13th, 2000, but not yet ratified.

In addition, Vietnam has entered into bilateral Legal Assistance Agreements with several countries. They are: Republic of Cuba 1984, People Republic of Hungary 1985, Republic of Bulgaria 1986, Republic of Poland 1993, People Democratic Republic Laos 1998, Russian Federation 1998, People Republic of China 1998, Republic of France 1999, the Ukraine 2000, Mongolia 2000, and Republic of Belarussia 2000. Those bilateral Legal Assistance Agreements are the important legal basis for international cooperation in preventing and combating certain crimes including illegal immigration and trafficking in women and children.

10 . Some information in this part are taken from the comparative study on laws on trafficking in persons in countries in the Mekong Sub-region by Edda Ivan-Smith, Consultant for the International Save the Children Alliance Southeast Asia, East Asia and Pacific Region.

Further more, Vietnam has entered into bilateral agreements with each of China¹¹ and Australia¹² concerning cooperation in combating certain crimes including illegal immigration and trafficking in women and children. Under Chapter IV (1) of the Vietnam-China Agreement, both countries agree to cooperate in preventing and fighting illegal entry and exit and trafficking in women and children.¹³ A further agreement between Vietnam and China signed on October 19, 1988 pledges bilateral legal assistance on civil and criminal matters. Such assistance is to be provided by, *inter alia*, transmission of documents, investigation and the collection of evidence.¹⁴ On February 1, 2001 Vietnam entered into a bilateral agreement on adoption with France that requires the competent authorities of each country to apply all measures to prevent illegal adoption.¹⁵

Under their Joint Statement in Support of Mutual Cooperation in Combating Illegal Immigration and Trafficking in Women and Children,¹⁶ the Governments of Vietnam and Australia jointly:

- (i) commit themselves to combating illegal immigration and putting an end to people smuggling;¹⁷
- (ii) reaffirm the Bangkok Declaration on Irregular Migration of April 1999 which committed governments to take steps which include the criminalization of people smuggling and trafficking in women and children;¹⁸
- (iii) recognize that it is in the international and their respective national interests to identify, present and punish illegal activities relating to movement of people, including smuggling, trafficking in women and children and fraud;¹⁹
- (iv) commit to investigate, and where practical prosecute, perpetrators of people smuggling, including those involved in importation, fabrication or sale of fraudulent travel or identify documents, organizers of smuggling rings, and escorts of illegal immigrants;²⁰
- (v) commit to the proper treatment of illegal immigrants and trafficked women and children on the basis of respect for their human dignity, human rights and interests;²¹
- (vi) commit to the orderly return of illegal immigrants as soon as reasonably practical to their countries of nationality or to any other countries that will authorize them to enter and reside;²² and
- (vii) agree to work cooperatively with international organizations to resolve the problems of people smuggling and trafficking in women and children.²³

11 Provisional Agreement on Solving Affairs in Border Area, Nov. 7, 1991, The Socialist Republic of Vietnam – The People's Republic of China.

12 Joint Statement in Support of Mutual Cooperation in Combating Illegal Immigration and Trafficking in Women and Children, Sep. 14, 2000, The Socialist Republic of Vietnam – Australia.

13 Provisional Agreement on Solving Affairs in Border Area, Nov. 7, 1991, The Socialist Republic of Vietnam – The People's Republic of China, Chap. IV(1).

14 Agreement on Legal Assistance on Civil and Criminal Matters, Oct. 19, 1998, The Socialist Republic of Vietnam – The People's Republic of China.

15 Agreement on Adoption, Feb. 1, 2001, The Socialist Republic of Vietnam - France, art. 4.

16 Joint Statement in Support of Mutual Cooperation in Combating Illegal Immigration and Trafficking in Women and Children, Sep. 14, 2000, The Socialist Republic of Vietnam – Australia.

17 *Id.* para. 4.

18 *Id.* para. 5.

19 *Id.* para. 6.

20 *Id.* para. 7(a).

21 *Id.* para. 7(d).

22 *Id.* para. 7(e).

23 *Id.* para. 7(f).

At present, Vietnam is participating in regional initiatives to stop trafficking in women and children. The Ministry of Labor, Invalid and Social Affairs has been assigned by the Government to act as the national central authority of Vietnam to participate in the two projects of the Mekong Sub-region on prevention of trafficking in women and children sponsored by ILO//PEC and UNDP (Project RAS/98/H01). In Vietnam, these projects will be implemented with the cooperation by the Ministry of Labor, Invalid and Social Affairs, Vietnam's Women Association, Ministry of Public Security, Border Patrol Forces, Committee for Protection and Care of Children (now the Committee of Population, Family and Children) and other concerned agencies.

The development of mutual exchanges among countries, labor export markets and migration plus globalization trend, prostitution has changed some countries into suppliers of prostitutes to international customers. There have been established internal and external links of transnational criminal groups in the forms such as employment services or tourism firms etc. They have come to some countries to recruit women whose body is deemed by the criminals as a kind of goods that could produce huge profits.

Due to transnational nature, this crime has become a global problem. International organizations have adopted various programs and projects on prevention and suppression trafficking in women and children. Vietnam has participated actively in international cooperation in this area through participation in the implementation of projects, such as "Assessments and Recommendations on Amendment of Policies, Plans and Strategies on Prevention and Suppression of Acts of Encroaching upon Sexual Inviolability of the Child for the Period 2001-2010"; "Completion of Policies and Laws on Prevention and Suppression of Acts of Encroaching Upon Sexual Inviolability of the Child" sponsored by UNICEF; Project "Prevention of Sexual Abuse or Exploitation against Young People" sponsored by ESCAP etc.

Now, Vietnam is implementing a regional project on prevention and suppression trafficking in women and children:

Project RAS/98/H01: Prevention and Suppression of Trafficking in Women and Children in Mekong Sub-region" sponsored by the UN Inter-Agency Project:

This project has the following three objectives:

1. To strengthen dialogue, coordination of actions and mutual assistance among national and regional agencies in prevention and suppression of trafficking in women and children.
2. To support, develop and implement basic initiatives concerning detection, protection and rehabilitation of trafficked women and children.
3. To promote national and regional cooperation in areas of law, policy and law enforcement in prevention and suppression of trafficking in women and children.

Project H01 is carried on in the four chosen pilot provinces, namely: Lang Son, Bac Giang, Ha Giang and Bac Lieu.

Project: Prevention and Suppression of Trafficking in Women and Children in Mekong Sub-region" sponsored by ILO/IPEC:

Overall objectives: To contribute to eliminating exploitation of labor of women and children in Mekong Sub-region, including Vietnam.

Immediate objectives: To reduce trafficking in women and children for exploitation of labor through developing, implementing and monitoring overall national and sub-regional programs, projects and plans.

In order to achieve the said objectives, three intervention measures will be taken, namely: Capacity building; Awareness enhancement and direct activities. Through these interventions, ILO and GENPROM wish to determine working mechanisms and best working methods to expand project activities in Vietnam.

Specific intervention activities in Ho Chi Minh City, Quang Ninh and Thanh Hoa are:

In Quang Ninh:

- Improve knowledge and skills;
- Develop a project on prevention and suppression trafficking in women and children at the provincial level;
- Launch information dissemination operations;
- Set up groups for prevention and suppression of trafficking in women and children in residential quarters in cities;
- Support vocational training of women and children in need and jobs recommendation;
- Work out sustainable saving credit programs;
- Support mutual groups in communities and culture clubs.

The total funding of the support project is US\$ 53,139.

These two projects focus on dissemination of information, enhancement of awareness; investigation and assessment of current situation, reasons thereof; development of intervention models; vocational training, creation of jobs, integration into society of the victims. This aims at preventing and reducing the development of trafficking in women and children and minimize its consequences.

Together with implementation of the said project, the Bureau for Prevention and Suppression of Social Evils has carried out a pilot project named as “Strengthening of Community Capacity in Prevention and Suppression of Acts Encroaching Upon Sexual Inviolability of the Child” in Dong Thap and Ba Ria - Vung Tau provinces with budget taken from the funding for the program on prevention and suppression of prostitution. This project, after one year of its implementation, achieved encouraging results, assisting many children to come back their schools, many others get vocational training and jobs. The awareness of the people living in communities on the prevention and suppression of sexual offenses has been enhanced remarkably (knowledge of the child legislation has been increased by 60%). The number of children violating the law has been reduced by 50%. No child has been victim of sexual offenses. We project to expand this model in other localities in the future. .

The implementation of these projects will give countries in the region a good opportunity to prevent and suppress this evil. Based on the determined objectives of the project and current situation in Vietnam, it is necessary to strengthen coordination activities among neighboring and regional countries in establishing a network for exchange of information, organizing forums for exchange of data, building national data bases, organizing workshops between two neighboring countries and among areas where trafficking in women and children is committed frequently (such as Vietnam – China and Vietnam - Cambodia).

6.3. Assessment and Recommendations

Vietnam’s response to trafficking has signified its commitment to addressing the problem through multilateral cooperation. The bi-lateral agreements that Vietnam has entered into with China and Australia are important tools in the effective prevention, detection, investigation, prosecution and punishment of those who traffic in human beings. It is recommended that Vietnam pursue similar bi-lateral agreements on mutual legal assistance with other countries in the Mekong region. These

agreements should include commitments to cooperate with one another in the sharing of information, the taking of evidence and statements, the serving of judicial documents, and the carrying out of searches, seizures and freezing of assets. It is highly recommended that this assistance be channeled through a central authority in order to regulate and facilitate the process.

VII. PREVENTION ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

The contents of this part aims to introduce organization and assignment of concerned agencies in prevention, suppression of trafficking in person, generally legal provisions on strengthening in the protection of human rights, legal provisions in normative legal documents (laws, ordinances, resolutions, decrees, decisions, directions, circulars, inter-circulars, ...)related to issues of education, labor, social securities, children protection, health community, family and marriage to prevent and eliminate reasons of trafficking in persons, especially women and children.

These above- contents will be reviewed and assessed that correspond with contents of Article 9 of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Article 15 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air; Article of 31 of the United Nation Convention Against Transnational Organized Crime - **See Appendix 5.**

7.1. Overall

It can be said that organization and assignment of concerned agencies in prevention and suppression of trafficking in persons are firstly based on functions and obligations of each State agency stipulated by the Constitution 1992 and normative legal documents on apparatus of the State. According to this assignment, Ministry of Police is in charge of investigations of criminal cases related to trafficking in persons. People's procuracy is responsible for prosecution of crimes related to trafficking in persons. People's Court is in charge of trial for cases related to trading in women; trading, appropriating children; forced organization for escaping to abroad or illegal stay abroad and other illegal activities related to trafficking in persons stipulated in the Penal Code 1999. Beside this, responsibilities of other related agencies, such as: Ministry of Foreign Affairs, Ministry of Labor, Invalids and Social Issues, Ministry of Health, Ministry of Justice, Ministry of Culture and Information, People's Committees of Provinces and Cities under Government...have been also assigned clearly in order to improve effectiveness of prevention and suppression of trafficking in persons, especially women and children.

It can also be generally said that the legal system of Vietnam basically ensures and strengthens the legal protection of human rights. Almost all of the human rights in international legal conventions that Vietnam has signed or joined in, especially The International Bill of Human Rights, are expressed fully and comprehensively in the legal system of Vietnam in general and in the legal system related to women and children in particular.

With respect to guidelines and policies, the viewpoints of The Communist Party of Vietnam clearly proclaimed are *" looking after people, protecting rights and legal interests of everybody; respecting and carrying out all international Conventions that have been signed or joined in by Vietnam."* ²⁴ Although this is official declaration of " force in controlling and managing the State and society" – the Vietnamese Communist Party- in the Political Report- this standpoint has been expressed in the Constitution of Vietnam since 1992 and other laws. The Constitution 1992 is a basic law of the State. Basic human rights on civil and political issues, human rights in economic, social and cultural issues... and other human rights have been stipulated in the Constitution 1992 under the articles related to basic rights of citizens.(Chapter V of the Constitution 1992 that has been amended, supplied by the Solution 51/2001/NQ-QH10 of December, 25th2001).- **See Appendix 5.** Provisions in articles and paragraphs of the Constitution 1992 on basic rights of citizens that their main contents

²⁴ The Political Report at The IX National Congress of Vietnamese Communist Party.

are human rights to be legalized have been created legal basic grounds for carrying out these rights in reality, especially women and children who need to be protected carefully and comprehensively; preventing from and eliminating reasons and conditions for trafficking in persons that correspond with the United Nation Convention and protocols. Below is a systematic overview and assessment of the current legal system of Vietnam related to the protection of human rights in civil law, labor law, law of education, law on social security, law on children protection, law on health care community, family and marriage law...

7.2. Organization of apparatus for prevention and suppression of trafficking in persons, especially women and children

Apart from legal provisions in the Constitution 1992 (amended) and some laws related to organization of the State apparatus, such as Law on Organization of the National Assembly, Law on Organization of Government, Law on People's Courts, Law on Organization of People's Procuracies...the Directive No. 766/TTg dated 17 September, 1997 on assignment of responsibilities in carrying out preventive measures for taking illegally women and children to abroad is main direct legal ground of organization for prevention and suppression of trafficking in persons, especially women and children.²⁵

According to legal ground mentioned above, responsibilities of some related ministries and provincial People's committees have been determined as follows:

Ministry of Public Security : Coordinating with concerned ministries and branches to update situation and reckon up data of women and children illegally forced going abroad; determining sensitive locations to improve professional measures for discovering, preventing and razing organised crimes in taking illegally forced women and children to abroad; checking and canceling survive centers of marriage go-between; punishing service centers for tourism breaking laws; quick check and serious punishment to organs and individuals taking women and children to abroad for prostitution or forced marriage, especially instigators and ringleaders; intensifying check measures in border crossing; coordinating with INTERPOL and polices of neighbor countries for discover, prevention and suppression of organised crimes in trafficking, especially China and Cambodia; coordinating with concerned ministries and branches in drafting project of prevention from organised crimes relating to trading women and children, illegally taking them to abroad , bringing them who return home, enter in community; coordinating with the Government Office to submit a plan on organization of apparatus concerning trafficking to the Prime Minister and a project on prevention and suppression of organised crimes related to trafficking to 2010; coordinating with Ministry of Labor, Invalids and Social Issues in supervising and speeding up implementation of this Directive.

Ministry of Labor, Invalids and Social Issues: coordinating with other concerned ministries(Ministry of Health, Ministry of Police, Committee of Population, Family and Children, Central Women's Union of Vietnam, People's Committees at all levels...) to carry out project on training vocation and providing jobs to women and children returning home from abroad who are trafficked victims and taking women and children who are getting STDs disease to medical treatment centers; coordinating with Ministry of Police in supervising and speeding up implementation of the Directive.

Ministry of Foreign Affairs: coordinating with Ministry of Police in cooperation with foreign countries for prevention and suppression of this organised crimes; preparing policies to negotiate with international organizations and concerned countries in eliminating situation of women and

²⁵ In HoChi Minh city, a conference on measures for overcoming situation of trafficked women and children to abroad was organised on 8th September, 2003. Vice -Prime Minister participated in the conference and made a conclusion at the end of the conference in which some contents related to issues of organization, management and guidance of prevention from women and children to be trafficked to abroad. (Official letter No. 159/TP-VPCP dated on 22nd September, 2003 issued by the Government Office to inform Vice-Prime Minister's conclusion of the conference).

children to be trafficked to abroad; coordinating with political and social organizations in mobilizing international non-government organizations to support.

Ministry of Justice: Coordinating with concerned agencies(Ministry of Police, Supreme People's Procuracy, Supreme People's Court,..) to carry out review and systemization of related normative legal documents for amendment and supplement so that legal grounds of prevention and suppression of trafficking in persons shall be more effective; legal provisions related to adoption, marriage with international factor and legal aids for Vietnamese women and children to be harmed in abroad must be more proper; joining in related international conventions ; paying more attention to improve bilateral relations with Newburgh countries who share border crossing; coordinating with Ministry of Foreign Affairs to sign Bilateral Legal Cooperation Agreements with neighbor countries.

Ministry of Trade, General Department of Tourism: Coordinating with concerned ministries and branches, Provincial People's Committees in closely governing activities of tourism, entry and exit for discovery and prevention from domestic offenders getting in touch with international offenders for illegally taking women and children to abroad; coordinating with Ministry of Police to check and seriously punish organs who take women and children to abroad for prostitution or trade, in form of going abroad for tourism.

Ministry of Culture and Information: Coordinating with concerned ministries, branches (Committee of Population, Family and Children, Vietnamese Fatherland Front, Vietnamese Central Women Union and other social organizations..) and press, broadcasting stations, television stations for organizing activities of propaganda, information related to trafficking so that people are vigilant over and denouncement and strongly condemnation of trafficked offenders, especially remote and mountainous areas .

Ministry of Planning and Investment, Ministry of Finance: Responsible for providing budget with activities of prevention and against organised offenders related to trading women and children to abroad for prostitution and activities of re-integration of them to community.

Chairmen of Provincial People's Committees and cities under government: improving guidance and providing local polices and other concerned branches with familiar conditions in coordinating border control, closely managing population and actively preventing from trafficking in persons, especially women and children; providing Departments of Labor, Invalids and Social Issues, Department of Health with direction in drafting and carrying out projects on consolidation and close management of medical treatment centers, collecting and receiving trafficked women for training revocation; closely checking for issuing licenses to activities of go-between service for marriage, service of providing children for adoption.

7.3. Legal provisions in Civil law

Corresponding to the contents of the United Nation Convention on Civil and Political Rights 1966, legal provisions in the current legal system of Vietnam, especially the Civil Code 1985 and normative legal documents for instruction of its implementation stipulate concretely and comprehensively citizens civil rights, such as: to the women, the Civil Code stipulates the rights of right of residence, right of registration of birth, marriage and death, rights of women to protection of their life, health, honor and dignity, property and other legal interest... right of inheritance, and so on.

With respect to children, their rights are fully provided in the Civil Code: from basic principles (For examples: " Principle of respecting good tradition and morality") to the issues of ability of civil law, ability of civil law of juvenile individual 26, rights of registration of birth, marriage, death; guardian,;

26 Article 20 of the current Civil Code stipulates that juveniles are persons under 18 of age.

issue of representative, property and proprietorship related to juveniles; issue of inheritance (including general provisions, inheritance in testament, inheritance in law, payment and detachability of inherited property) - **See Appendix 5.**

7.4. Legal provisions in Labor law

The main legal document in the field of labor law is the Labor Code, which has been amended, supplies by the Law on amendment and supplement of the Labor Code of April 2nd, 2002 and its normative legal documents of implementation. Many legal provisions in this Code and its normative legal documents of implementation directly relate to ensuing the rights of women and children in this field. Specifically, labor issues related to children are stipulated in various chapters : general provisions, occupations, apprentice, social insurance. Especially, there are two chapters in the Labor Code: Chapter XI provides specifically issue of juvenile labor and other types of labor, Chapter X stipulates on women labor. Considerable, Chapter X also has some articles and paragraphs related to children. For example: Article 116 of the Code stipulates that : “ *Where many women labor force are in used, employers have responsibility to support in organizing kindergartens or to assistant sum of expenditure to women who have child at ages of kindergarten*”.

To implement legal provisions in the Labor Code , the Government, Ministries, and agencies such as ministerial bodies also issue many normative legal documents to stipulate concretely and instruct. For example, the Government issued Decree No. 90/CP of December, 15th 1995 to provide concretely and instruct on the implementation of some articles in the Code on vocational training and apprenticeship.. Circular No. 09/TT/LD of August, 29th 1986, which was issued by the MOLISA, stipulates types of work in which it is forbidden to use women. These legal provisions have created a legal system in the labor field that protects and ensures the rights of employees and employers. It also provides conditions to eliminate reasons and social conditions for the appearance of social evils such as the trafficking in persons, especially women and children. To ensure implementation of the Labor Code in legal aspect, there are some crimes related to this field stipulated in the Penal Code 1999. The Government also issued Decree No. 38/CP of June, 25th 1996, which provides administrative punishment on administrative violations in the labor field so that the state management could be in good order. **See Appendix 5.**

One important issue that influences directly the prevention of trafficking in persons, especially women and children is the eradication of hunger and the alleviation of poverty. In the past years, Vietnam has achieved very big success in its poverty-alleviation movement that has been highly appreciated by the international community. One of the factors that plays an important role is the legal system of Vietnam in the field of the elimination of hunger and the reduction of poverty. Apart from the Instruction No. 23/CP of November, 29th 1997 that was issued by the Central Secretariat of the Communist Party on eradication of hunger and alleviation of poverty, the State also issued “ National Program and objectives of elimination of hunger and alleviation of poverty and employments in period of 2001-2001”. Inter- Solutions on supporting women living in rural areas to develop production and improve quality of their life between politic – social organization and ministries were promulgated. During the time of implementation, many normative legal documents, such as decisions, directions, official letters... from the Prime Minister, Ministries, agencies such as ministerial bodies, were also timely issued to carry out effectively the eradication of hunger and the alleviation of poverty. To make a huge change in the poverty alleviation movement, apart from policies of jobs and support for developing production, many different measures have been carried out comprehensively by the State , such as medical support, accommodation, land, credit...A series of normative legal documents related directly to these issues have also been gradually promulgated over the years to respond to the requirements of development in reality. It can be said that the legal system in this field fully and comprehensively provides for the rights of women and children in conformity with the United Nations Convention and Protocols related to trafficking in

persons. The legal provisions in this field provide women and children with favorable legal conditions to improve their awareness and enjoy their rights, encourage them to overcome poverty and hunger and help them avoid becoming victims of trafficking in persons. **See Appendix 5.**

7.5. Legal provisions in law on education

Legal provisions with respect to the law on education are mainly stipulated in the Law on education of December, 2nd 1998. This Law has been in force since January, 1st 1999. In addition, the Law on protection, care and education of children and the Law on compulsory primary education also play an important role in legal system of education. Two of these laws have been in force since August, 12th 1991. To implement the three above-mentioned laws, the Government, ministries, agencies as ministerial bodies have promulgated many normative legal documents to stipulate concretely and instruct them. As the Law on education has affirmed at its preface that : “ *Education is the first national policy, is career of the State and people. In order to improve intellectual standards of people , to train labor force, to cultivate talents; to serve industrialization and modernization of the country , to respond to requirements of construction and protection of the country for objectives of rich people, powerful country, society of fairness, democracy, civilization.*” Accordingly, the objective of education is to educate human being of Vietnam in developing comprehensiveness who are moral, aware, healthy, aesthetic and occupation...taking form of individuality, ability, virtue of citizen, responding to requirements of development and the protection of the Mother Land. The Law on protection, care and education of children and the Law on compulsory education at primary level are also in the same spirit but concentrating on children. All of the contents of these laws provide issues directly related to children : they are rights and obligations of children; issue of protection and care, education of children; affirming compulsory primary education is a basic condition to improve the intellectual standards of people, is important initial background to train children to become good citizens of the country, is the backbone of the national educational system. The Law on education basically contributes considerably to primary education for almost children in Vietnam, provides women with favorable conditions to better themselves on way of knowledge. The issue of equality of the sexes has also been carried out easier because of the good condition in improving education.

7.6. Legal provisions in law on medical care and health community

The main legal normative document in this filed is the Law on protection of community health dated June 30 rd, 1989. It can be said that this is a very important law because the law is the main legal grounds to deploy activities for the protection of a healthy society, and to satisfy the requirements of medical examinations and treatment. . With affirming words: “ *health care protection is carrier of all people*”²⁷ and “ *citizens have rights to be protected their health, relaxation, entertainment, taking physical exercise, to be ensured sanitation in working, nutrition, life environment and to be served medical service*”.²⁸ In order to implement this Law, since 1989 up to now, the State of Vietnam has promulgated a large number of normative legal documents to stipulate and instruct (**See Appendix 5**). Decree No. 147/2003/ND-CP on providing compulsory rehabilitation centers with conditions and procedure for issuing licenses and their management by the Government, and Decision No. 222/2003/QĐ-TTg on approving a national policy of traditional medical treatment to 2010 which were issued by the Prime Minister, are typical normative legal documents in this field issued to ensure citizen's rights in reality.

Apart from the Law on protection of community health and legal documents for its implementation, many normative legal documents directly concerned with medical care and community health have also been promulgated.. A typical one is the Ordinance on prevention and control of HIV/AIDS

²⁷ Article 2 of the Law on Protection of health community 1989;

²⁸ Article 1 of the Law on Protection of health community 1989.

infection dated on May 31st, 1995. Another is the Ordinance on private of examination and medical treatment dated on February 25th, 2003; the Decree No. 41/1998/ND-CP of December, 6th 1998 on issuing the Regulation of medical quarantine through out borders of SRV. These legal documents directly provide for issues related to community health and are in legal force. For example, the preface of the Regulation of medical quarantine through out borders of SRV clearly states: “...to prevent dangerous infected diseases to human being from foreign countries to Vietnam and infect on territory of SRV or from Vietnam to other countries, this Regulation stipulate on quarantine at borders”. The preface of the Ordinance on prevention and control of HIV/AIDS also affirms that : “...To prevent and against HIV/AIDS infection, protect health community and preserve race...this Ordinance provides on prevention and control of HIV/AIDS.” So, protection and care of community health are also to ensure citizen's basic rights.

Normative legal documents on medical care and healthy community also consists of legal documents on the manufacture and use of products for substitution of mother's milk, on disabled people, elderly people, on victims of chemical poisons, social subsidization. Besides, some legal provisions on punishment of administrative violations in medical field (Such as: sanitation, examinations and medical treatment , control of epidemic, prevention and against HIV/AIDS, manufacture and use of produce of substitution of mother's milk, manufacture and use of cosmetics. ..) and impute criminal responsibility to persons who violate the Penal Code related to legal violations in medical care and community health are also issued to ensure implementation of the normative legal system on state management in this field.

Generally, the legal system in the field of medical care and community health are quite comprehensive. However, they are mainly separate. Many legal provisions in this field are scattered in different legal documents. Therefore, the systemization, amendment, and supplementation of those legal documents is a very urgent and necessary issue.

7.7. Legal provisions in law on social security and law on protection of women and children from social evils as prostitution and drugs

Issues of protection of human rights and ensuring of citizen's rights in the field of social security, prevention and against social evils play an very important role with respect to carrying out human rights in general. The essential normative legal documents in this field mainly stipulate state regulation on social order, civilized ways of life, community activities (eating, drink, transportation, activity of cultural community, community services, tourism...). The main objectives of the legal provisions in this field are to guarantee that everybody enjoys a safe life in social society. The safe life eliminate all dangerous or threatening issues from social community. Furthermore, every citizen , especially women and children, are not threatened to be victims of social evils.

The legal system in this field can be divided in to three groups as follows:

- Normative legal documents on state management of social order and security;- Normative legal documents on the prevention and suppression of social evils, prevention women and children from social evils and to become victims;

- Normative legal documents on the punishment of legal violations in this field

(See Part of III of the Report).

It can be said that citizens' basic rights, and the rights of women and children as defined by the Constitution are concretized by legal provisions in the field of social security and the prevention and suppression of social evils. Although most legal norms in this field do not indicate directly and concretely the rights of women and children, these legal norms provide rules for the management of social activities (on social order, sanitation, urban civilized lifestyle, conditions for social security in community services...) and provide rules on the punishment of legal violations that facilitate the

realization of women and children's rights in reality. In addition to this, there are many legal norms directly related to women and children, that ensure that their basic rights are respected and protected when they have violated the law. For example, some provisions in the Law on prevention and against drugs 2000 (Article 28, 29, 30, 31...) or some legal provisions in the Ordinance on administrative punishment 2002 (Article 7 on punishment of violators who are juvenile; Article 24 on taking violators who are juvenile to compulsory school centers. ..)

7.8. Legal provisions in law on marriage and family

A large number of normative legal documents in field of marriage and family have been amended or promulgated in some recent years. The Law on family and marriage issued in 2000 is a basic law in this field. It can be said that most issues mentioned in the United Nation Convention and Supplemented Protocols on trafficking in persons, especially women and children are directly related to legal provisions in law on family and marriage. These issues are marriage, adoption; adoption related to international factors; maintenance for children or spouse; registration of birth, marriage and death; application of law on family and marriage to ethnic people; administrative and criminal penalties to legal violator who break the law on family and marriage and so on. All of these issues have been stipulated in basic laws, such as : the Law on family and marriage; the Civil Code; the Penal Code; the Ordinance on administrative penalties...legal provisions in those laws and ordinance have also been stipulated concretely by separate normative documents from the Government, Ministries, Ministerial agencies corresponding with their authorized competent. They are basic legal ground for implementing the basic citizen's rights of women and children in the field of the law on marriage and family.

7.9. Assessment and recommendations

In present, organization of apparatus related to prevention and suppression of trafficking in persons is based on stable legal ground of State organization mechanism in which concrete functions of each system to activities of investigation, procuracy, judgment are clearly determined. Beside this, normative legal documents stipulated concretely responsibilities of main State agencies related to prevention and suppression of trafficking in persons, especially women and children have been issued, too.

Generally speaking, on legal provisions in current legal system for protection of human rights and prevention from reasons and conditions arising evils of trafficking in persons, especially women and children, it can be said that Vietnam has a strong legal framework for the promotion of human rights and for addressing the major risk factors that contribute to the growth of trafficking. Vietnamese Law include relatively comprehensive provisions guaranteeing equality and non- discrimination, equality in employment for women, free primary education, provisions of social security, spousal maintenance obligation on parents to care for and support their children, and stringent regulations on adoption. However, there is a gap between legal provisions on papers and implementation in reality. Therefore, full enforcement and implementation of these provisions, particularly with respect to targeted policies and services for women and children who are at risk of being trafficked (For example, women and girls from rural areas and poor families) could help strengthen the preventative influence of these laws and policies.

Concretely, in the near future, Vietnamese current legal system as mentioned above should be taken into account for amendment and supplements so that they are more responsible to articles of the TOC Convention and three Protocols supplements. Some provisions of the Constitution 1992 need to be stipulated by normative legal documents under laws. Some laws should be considered for amendments and supplements, such as: Civil Code 1985; Law on Protection of Health Community 1989; Law on Education 2001; Law on Protection, Care and Education of Children 1991... Taking the Law on protection of health community 1989 for instance: many legal provisions of this Law are

inadequate and insufficient after over 10 years of implementation, so, they must be amended and supplied. A lot of provisions in this Law are in the form of principles, therefore, they need to be guided by a big number of normative legal instructive documents. Also, many provisions in the Law can only be applied after referring to many other normative legal documents. Beside this, amendments, supplements and promulgation of normative legal documents drafted by inter-ministries have been carried out slowly, hence, they do not satisfy factual requirements: fees, charges, medical insurance. Many legal provisions of other laws are overlapping and contradictory to the Law on protection of health community, therefore, they can not be applied. For example, Article 31 of the law on protection of health community and Article 32 paragraph 5 of the Civil Code.)

Beside this, works of review and systemization of related normative legal documents also have to be commonly carried out. For example, in the field of laws on labor, especially group of normative legal documents related to the issue of elimination of hunger and alleviation of poverty or group of normative legal documents in instruction of implementation of the Labor Code...

An important issue is Vietnam should be faster to carry out negotiation and signature of bilateral and multi-bilateral agreements related to cooperation between parties in the prevention and combating of trafficking in persons, especially women and children – **See part VI of the Report.**

VIII. CONCLUSIONS AND RECOMMENDATIONS

1. Trafficking in persons, including both male and female adults and children, especially for sexual purposes has been a common practice in many societies throughout history. However, in recent decades the trafficking in women and children is one component of a larger phenomenon of trafficking in persons, assuming different forms and motives. Ethical, moral, political, economic, health and business factors are compounded, and trafficking has been more organized. Every region of the globe is affected by it, whether as a source of demand or supply.
2. Because of the serious and inhuman nature of trafficking in persons, especially in women and children, the international community has throughout history created a set of international law, regulations, and guidelines to prevent and combat against traffickers. There are also numerous efforts have been made. The most significant global response to date, however, is embedded in the United Nations Convention against Transnational Organized Crime. The convention is the first legally binding UN instrument in the field of crime. It includes two protocols, which focus on measures to combat the smuggling of migrants and measures to combat human trafficking. One of them - the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime is the most significant advance in terms of international political and legal instruments on the topic and a milestone in the struggle to eliminate the trade in human beings.
3. Summarily, the Trafficking Protocol and the TOC Convention are important international legal instruments containing comprehensive provisions on combating and cooperation for the purpose of prevention and suppression of transnational organized crimes in the world, including trafficking in persons, women and children cross international borders. These two instruments are a great contribution to the process of codification of and progressive development of international criminal law in general and the legal provisions on combating trafficking in persons in particular. In our view, the participation, by means of ratification and effective implementation, in the Protocol and the TOC Convention would be an important step for Viet Nam to integrate into the international community and promote cooperation with other countries to combat more effectively crimes, especially transnational organized crimes, including trafficking in persons, especially women and children.
4. Overall, Vietnamese Law and policies are consistent with the provisions of the TOC Convention and the Trafficking Protocol. However, a detailed comparison between the two reveals some

gaps in the Vietnamese legislative framework, and some areas that could benefit from greater force and clarity in order to make the Vietnamese legal framework fully respond to the requirements of such international instruments. It is not only necessary to ensure the implementation of the duties of a State Party, but also very important to strengthen the capacity of the Nation in effectively preventing and combating against such social evils, namely the trafficking in human beings, especially in women and children.

5. The analysis has clearly shown that, only suppression and strict punishment of the traffickers is not enough in order to effectively prevent and combat against such social evils. Moreover, there is a need for a comprehensive system of legal instruments as well as social, economic measures and common efforts of society to prevent the potential for and eliminate the root causes of the trafficking phenomenon and to create safe conditions for the victims. In addition, because of the trans-national nature of trafficking, the prosecution of traffickers cannot take place solely at national level, but requires bilateral and multilateral co-operation among relevant national law enforcement authorities. Therefore, there is a greater need of harmonizing between relevant domestic laws and other regional and international legal basis to create conditions for regional and international cooperation in this matter.
 6. Thus, in addition to the ratification of the TOC Convention and its Protocols, it is recommended that consideration should be given to certain amendments in some legal documents as already discussed in part 3, 4, 5, 7 of this report, such as harmonizing the legal definition of trafficking with the definition in the Protocol, and strengthening protections and services for victims of trafficking, particularly children. It is however, worth noting that such recommendations, namely, the recommendations discussed in part 3, 4, 5, 7 of this report, should be understood as a package for both purposes: ratification of the TOC and its Protocols on the one hand, and further perfection of the relevant domestic legal framework as a whole on the other hand. The former should be limited to those, which are necessary to meet the requirements of the TOC and its Protocols and should be done in a short term, whereas the latter should be considered on a long term basis.
 7. Furthermore, it is also recommended that Viet Nam should continue in its efforts to develop bilateral agreements with countries in the Mekong region. These agreements can be used to develop a system for financing the return of victims and a contribution towards their reintegration.
 8. Finally, this Report has been prepared only by a group of experts. So that, shortcomings and insufficiencies may, nonetheless, remain. Therefore, further assessment, comments and inputs by other experts, especially, experts from relevant Vietnamese agencies and organization, are certainly needed. Thus, a workshop on this issue should be a proper one in order to make the result of the study more objective.
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ANNEX

TT	Provisions of the International Law	The current provisions of the Vietnamese Law	Assessment and Recommendations
3	Investigation and Prosecution of Trafficking in persons and Smuggling of migrants offences		
3.1	<i>Defining the crimes of trafficking and smuggling</i>		
	<p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 3. Use of terms</p> <p>For the purposes of this Protocol:</p> <p>a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving of the 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 minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or</p>	<p>The Resolution No. 04/HDTP dated 29/11/1986 by the Judicial Council of Supreme People's Court on guidelines for applying a number of provisions of the Penal Code interprets:</p> <p>Trading in children shall mean the buying or selling a child for personal gain, even buying a child from the stealer or the parents. The act of buying a child knowingly the child is stolen shall be also regarded as crime of "trading in children.</p> <ul style="list-style-type: none"> - No interpretation on "trading in women". - The Vietnamese law does not use the term "smuggling of migrants", instead, it mentions the term "organizing and/or coercing persons to flee abroad or to stay abroad illegally". <p>Law on Protection, Care and Education of children</p>	<ul style="list-style-type: none"> - It is recommended that, in the Penal Code and all other legal documents, the term " trafficking in women and children" should be used instead of the term "trading in women and children" for consistence to the international law and Protocols. - The Vietnamese law should have an unified interpretation about "trafficking in women and children". While there have not been any reported case of trafficking in men, they should nevertheless provided equal protection in case incidents arise in the future. The definition in Vietnamese law should be cover all forms of trafficking, in consistency to the Protocol. - It should have an interpretation of the "organizing" and "coercing" of this

	<p>services, slavery or practices similar to slavery, servitude or the removal of organs;</p> <p>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;</p> <p>c) The recruitment, transportation, transfer, harboring 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;</p> <p>d) "child" shall mean any person under eighteen years of age.</p> <p>Protocol against the smuggling of migrants by land, sea and air</p> <p>Article 3.</p> <p>Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.</p>	<p>Article 1.</p> <p>In this law, "child" shall be any Vietnamese citizen under sixteen years of age.</p>	<p>crime for unified applying the law</p>
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3.2	<i>Criminalization of all activities related to trafficking</i>		
	<p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 5. <i>Criminalization</i></p> <p>1. Each State party shall adopt such legislative and other measures as may-be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.</p> <p>2. Each State party shall also adopt such legislative and other measures as may-be necessary to establish as criminal offences:</p> <p>a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;</p> <p>b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and</p> <p>c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.</p> <p>Protocol against the smuggling of</p>	<p>The Penal Code</p> <p>- <i>Trafficking in persons:</i></p> <p>Article 119. <i>Trafficking in women</i></p> <p>1. Those who traffic in women shall be sentenced to between two and seven years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and twenty years of imprisonment:</p> <p>a) Trading in women for the purpose of prostitution;;</p> <p>b) In an organized manner;</p> <p>c) Being of professional characters;</p> <p>d) For the purpose of sending them overseas;</p> <p>e) Trafficking in more than one person;</p> <p>f) Trafficking more than once.</p> <p>3. The offenders may also be subject to a fine of between five million and fifty million dong, to probation or residence ban for one to five years.</p> <p>Article 120. <i>Trading in, fraudulently</i></p>	<p>The Penal Code of Vietnam includes relatively comprehensive provisions on most of the offences commonly committed in the course of trafficking. Money laundering, corruption by public officials, falsifying documents, forcible confinement, bodily injury, rape and other sexual offences, forced prostitution and related offences, and child prostitution are all dealt with strongly. Where circumstances warrant, trafficking suspects can be charged with these additional crimes, in addition to the crime of trafficking itself, to secure some form of conviction for their conduct even if all the elements of trafficking could not be proven.</p> <p>Generally, the Penal Code of Vietnam meets full mandatory requirements with respect to the penalization of the conducts set forth in Article 3 of the Trafficking Protocol and requirements with respect to the penalization of those who aid, abet, or instigate any crime under the Code and attempted</p>

	<p>migrants by land, sea and air</p> <p>Article 6. <i>Criminalization</i></p> <p>1. Each State party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:</p> <ul style="list-style-type: none"> a) The smuggling of migrants; b) When committed for the purpose of enabling the smuggling of migrants: <ul style="list-style-type: none"> (i) Producing a fraudulent travel or identity document; (ii) Procuring, providing or possessing such a document; c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means. <p>2. Each State party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:</p>	<p><i>exchanging or appropriating children</i></p> <p>1. Those who trade in, fraudulently exchange or appropriate children in any form shall be sentenced to between three and ten years of imprisonment.</p> <p>2. Committing such crimes in one of the following circumstances, the offenders shall be sentenced to between ten and twenty years of imprisonment or life imprisonment:</p> <ul style="list-style-type: none"> a) In an organized manner; b) Being of professional characters; c) For despicable motivation; d) Trading in, fraudulently exchanging or appropriating more than one child; <p>For the purpose of sending them overseas;</p> <ul style="list-style-type: none"> e) For the purpose of sending them abroad; f) For use for inhumane purposes; g) For use for prostitution purposes; h) Dangerous recidivism; i) Causing serious consequences. <p>3. The offenders may also be subject to a fine of between five million and fifty million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for</p>	<p>or incomplete offences.</p> <p>However, to perfect continually the Vietnamese criminal law and take part in more effective implementation of the United Nations Convention against transnational organized crime and the supplement protocols against trafficking in persons, especially women and children, and smuggling of migrants after their ratification, it is necessary to study further criminalization of activities related to trafficking and propose suitable amendments and supplements to the criminal law. Such as:</p> <ul style="list-style-type: none"> - Consideration should be given to criminalization of trafficking in men. - Consideration should be given to including offences relating to forced labor in the Penal Code, particularly where the offence is repeated, involves multiple persons, or involves children, with penalties that appropriately reflect the gravity of this crime in a trafficking context. - Consideration should be given to including provisions in the Penal Code with respect to arranging an illegal
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	<p>a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;</p> <p>b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;</p> <p>c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.</p> <p>3. Each State party shall also adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:</p> <p>a) That endanger or are likely to endanger, the lives or safety of the migrants</p>	<p>one to five years or subject to probation for one to five years.</p> <p>- Others offences concerned:</p> <p>Article 93. <i>Murder</i></p> <p>1. Those who commit murder in one of the following cases shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment:</p> <p>a) Murder of more than one person;</p> <p>b) Murder of women who are known by the offender to be pregnant;</p> <p>c) Murder of children;</p> <p>d) Murder of persons being on public duties or for reason of the victims' public duties;</p> <p>e) Murder of one's grand father, grand mother, father, mother, fosterer, and/or teachers;</p> <p>f) Murder of people just before or after which a very serious crime or a particularly serious crime is committed by the offender;</p> <p>g) Murder of people in order to carry out or conceal other crimes;</p> <p>h) Murder of people in order to take organs from the victims' bodies;</p> <p>i) Committing crimes in a barbarous manner;</p>	<p>adoption and improperly inducing consent for adoption of a child in violation of international instruments on adoption (where improper profit is involved).</p>
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	<p>concerned; or</p> <p>b) That entail inhuman or degrading treatment, including for exploitation of such migrants.</p> <p>4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.</p>	<p>j) Committing crimes by abusing their profession;</p> <p>k) Committing crimes by methods, which may cause death to more than one person;</p> <p>l) Hiring murderers or murdering person for hiring;</p> <p>m) Committing crimes in a hooligan manner;</p> <p>n) Committing crimes in an organized manner;</p> <p>o) Committing dangerous recidivism;</p> <p>p) Murder of people for despicable motivation.</p> <p>2. Those committing crimes which do not fall into those cases stipulated in Clause 1 of this Article, shall be sentenced to between seven and fifteen years of imprisonment.</p> <p>3. Offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for between one and five years, subject to probation or residence ban for between one and five years.</p> <p>Article 100. <i>Forced suicide</i></p> <p>1. Any person who cruelly treats, constantly intimidates, ill-treats or humiliates a person dependent on him/her, inducing the latter to commit suicide, shall be sentenced to between one and seven years of imprisonment.</p>	
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		<p>2. Any person who commits the crime of compelling more than one person to commit suicide shall be sentenced to between one and seven years of imprisonment.</p> <p>Article 101. <i>Inciting or assisting other person to commit suicide</i></p> <p>1. Any person who incites another person to commit suicide or assists another person to commit suicide shall be sentenced to between six months and three years of imprisonment.</p> <p>2. Any person who commits the crime of assisting or inciting more than one person to commit suicide, shall be sentenced to between two and seven years of imprisonment.</p> <p>Article 103. <i>Threatening to murder</i></p> <p>1. Those who threaten to kill other persons, in circumstances such as to make the latter believe that such threat shall be realized, shall be subject to non-custodial reform for up to two years or sentenced to between three months and three years of imprisonment.</p> <p>2. Any person who commits such crime in one of the following circumstances shall be sentenced to between two and seven years of imprisonment:</p> <p>a) Against more than one person;</p>	
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		<p>b) Against persons who are performing their official duties or for reasons related to the victims' official duties;</p> <p>c) Against children;</p> <p>d) To conceal or shirk the handling of another crime.</p> <p>Article 104. <i>Intentionally inflicting injury or causing harm to the health of other persons</i></p> <p>1. Those who intentionally injure or causes harm to the health of other persons with an infirmity rate of between 11% and 30%, or under 11% but in one of the following circumstances, shall be sentenced to non-custodial reform for up to three years or between six months and three years of imprisonment:</p> <p>a) Using dangerous weapons or tricks, causing harm to more than one person;</p> <p>b) Causing minor permanent maim to the victims;</p> <p>c) Committing the crime more than one against the same person or against more than one person;</p> <p>d) Committing the crime against children, pregnant women, old and weak or sick persons or other persons incapable of self-defense;</p>	
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		<p>e) Committing the crime against their own grand fathers, grand mothers, fathers, mothers, fosterers, teachers;</p> <p>f) Committing the crime in an organized manner;</p> <p>g) Committing the crime during time of custody, detention or whilst resident at re-education establishments;</p> <p>h) Hiring other persons to cause injury or being hired to cause injury;</p> <p>i) Being of hooligan character or dangerous recidivism;</p> <p>j) In order to obstruct the person performing official duty or for the reason of the victim's official duty.</p> <p>2. Committing the crimes of inflicting injury on or causing harm to the health of other persons with an infirmity rate of between 31% and 60%, or 11% and 30% but in one of the cases defined at points from a to j clause 1 of this Article, the offenders shall be sentenced to between two and seven years of imprisonment.</p> <p>3. Committing the crimes of injuring or causing harm to the health of other persons with an infirmity rate of 61% or higher or leading to human death, or from 31% to 60% but in one of the cases defined at points from a to j clause</p>	
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		<p>1 of this Article, the offenders shall be sentenced to between five and fifteen years of imprisonment.</p> <p>4. Committing the crimes, thus leading to the death of more than one person or in other particularly of serious cases, the offenders shall be sentenced to between ten and twenty years of imprisonment or life imprisonment.</p> <p>Article 110. <i>Ill-treating other persons</i></p> <p>1. Those who cruelly treat persons dependent on them shall be subject to warning, non-custodial reform for up to one year or between three months and two years of imprisonment</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between one year and three years of imprisonment:</p> <p>a) Against aged persons, children, pregnant women or disabled persons;</p> <p>b) Against more than one person.</p> <p>Article 111. <i>Rape</i></p> <p>1. Those who uses violence, threaten to use violence or take advantage of the victim's state of being unable for self-defense or resort to other tricks in order to have sexual intercourse with the victims against the latter's will, shall be</p>	
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		<p>sentenced to between two and seven years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:</p> <ul style="list-style-type: none"> a) In an organized manner; b) Against a person whom the offender has the responsibility to look after, educate and/or medically treat; c) More than one person rapes a person; d) Committing the crime more than once; e) Against more than one person; f) Being of an incestuous nature; g) Making the victim pregnant; h) Causing harm to the health of the victim with an infirmity rate of between 31% and 60%; i) Dangerous recidivism. <p>3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment:</p> <ul style="list-style-type: none"> a) Causing harm to the health of the victim with 	
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		<p>an infirmity rate of 61% or higher;</p> <p>b) Committing the crime even though the offenders know that they are infected with HIV;</p> <p>c) Causing death to the victim or causing the victim to commit suicide.</p> <p>4. Committing rape against a juvenile aged between full 16 and under 18 years old, the offenders shall be sentenced to between five and ten years of imprisonment.</p> <p>Committing the crime in one of the circumstances, stipulated in Clause 2 or Clause 3 of this Article, the offenders shall be subject to the penalties specified in such clauses.</p> <p>5. The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.</p> <p>Article 112. <i>Rape against children</i></p> <p>1. Those who rape children aged between full 13 years and under 16 years shall be sentenced to between seven and fifteen years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve and twenty years</p>	
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		<p>of imprisonment:</p> <ul style="list-style-type: none"> a) Being of an incestuous nature; b) Making the victim pregnant; c) Causing harm to the victim's health with an infirmity rate of between 31% and 60%; d) Against a person whom the offender has the responsibility to look after, educate and/or medically treat; e) Dangerous recidivism. <p>3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment:</p> <ul style="list-style-type: none"> a) In an organized manner; b) More than one person rapes a person; c) Committing the crime more than once; d) Committing the crime against more than one person; e) Causing harm to the victim's health with an infirmity rate of 61% or higher; f) Committing the crime even though the offenders know that they are infected with HIV; g) Causing death to the victim or causing the victim to commit suicide. 	
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		<p>4. All cases of having sexual intercourse with children under 13 years old are considered rape against children and the offenders shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment.</p> <p>5. The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.</p> <p>Article 113. <i>Forcible sexual intercourse</i></p> <p>1. Those who employ trickery to induce persons dependent on them or persons being in dire straits to have sexual intercourse with them against their will shall be sentenced to between six months and five years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:</p> <p>a) Many persons compel one person to have sexual intercourse with them;</p> <p>b) Committing forcible sexual intercourse more than once;</p> <p>c) Committing forcible sexual intercourse</p>	
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		<p>against more than one person;</p> <p>d) Being of incestuous nature;</p> <p>e) Making the victim pregnant;</p> <p>f) Causing harm to the victim's health with an infirmity rate of between 31% and 60%;</p> <p>g) Dangerous recidivism.</p> <p>3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and eighteen years of imprisonment:</p> <p>a) Causing harm to the victim's health with an infirmity rate of 61% or higher;</p> <p>b) Committing the crime even though the offenders know that they are infected with HIV;</p> <p>c) Causing death to the victim or causing the victim to commit suicide.</p> <p>4. Committing forcible sexual intercourses against juveniles aged over 16 years and under 18 years old, the offenders shall be sentenced to between two and seven years of imprisonment.</p> <p>Committing the crime in one of the circumstances stipulated in Clause 2 or Clause 3 of this Article, the offenders shall be subject to the penalties specified in such clauses.</p>	
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		<p>5. The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.</p> <p>Article 114. <i>Forcible sexual intercourse with children</i></p> <p>1. Those who have sexual intercourse with children aged from full 13 years to under 16 years shall be sentenced to between five and ten years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:</p> <ul style="list-style-type: none"> a) Incest; b) Making the victim pregnant; c) Causing harm to the victim's health with an infirmity rate of between 31% and 60%; d) Dangerous recidivism. <p>3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve and twenty years of imprisonment or life imprisonment:</p> <ul style="list-style-type: none"> a) More than one person commits forcible sexual intercourse against one person; 	
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		<p>b) Committing the crime more than once;</p> <p>c) Committing the crime against more than one person;</p> <p>d) Causing harm to the victim's health with an infirmity rate of 61% or higher;</p> <p>e) Committing the crime even though the offenders know that they are infected with HIV;</p> <p>f) Causing death to the victim or causing the victim to commit suicide.</p> <p>4. The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.</p> <p>Article 115. <i>Having sexual intercourse with children</i></p> <p>1. Any adults having sexual intercourse with children aged from full 13 years to under 16 years shall be sentenced to between one and five years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:</p> <p>a) Committing the crime more than once;</p> <p>b) Committing the crime against more than one</p>	
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		<p>person;</p> <p>c) Being of incestuous nature;</p> <p>d) Making the victim pregnant;</p> <p>e) Causing harm to the victim's health with an infirmity rate of between 31% and 60%.</p> <p>3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:</p> <p>a) Causing harm to the victim's health with an infirmity rate of 61% or higher;</p> <p>b) Committing the crime even though the offenders know that they are infected with HIV.</p> <p>Article 116. <i>Obscenity against children</i></p> <p>1. Those adults who commit obscene acts against children shall be sentenced to between six months and three years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and seven years of imprisonment:</p> <p>a) Committing the crime more than once;</p> <p>b) Committing the crime against more than one child;</p> <p>c) Against a child whom the offender has the</p>	
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		<p>responsibility to look after, educate and/or medically treat;</p> <p>d) Causing serious consequences;</p> <p>e) Serious recidivism.</p> <p>3. Committing the crime with serious consequences or particularly serious consequences, the offenders shall be sentence to between seven and twelve years of imprisonment.</p> <p>4. The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.</p> <p>Article 123. <i>Illegal arrest, custody or detention of people</i></p> <p>1. Those who illegally arrest, hold in custody or detain other persons shall be subject to warning, non-custodial reform for up to two years or a prison term of between three months and two years.</p> <p>2. Committing the crimes in on of the following circumstances, the offenders shall be sentenced to between one and five years of imprisonment:</p> <p>a) In an organized manner;</p> <p>b) Abusing their positions and/or powers;</p>	
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		<p>c) Against persons who are performing their official duties;</p> <p>d) Committing the crime more than once;</p> <p>e) Against more than one person.</p> <p>3. Committing the crimes and causing serious consequences, the offenders shall be sentenced to between three and ten years of imprisonment.</p> <p>4. The offenders may also be banned from holding certain posts for one to five years.</p> <p>Article 228. Breaching regulations on employment of child labor</p> <p>1. Those who employ children to perform jobs which are heavy, dangerous or in contact with hazardous substances on the list prescribed by the State, causing serious consequences, or who have already been administratively sanctioned for this act but continue to commit it, shall be subject to a fine of between five million dong and fifty million dong, non-custodial reform for up to two years or a prison term of between three month and two years.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between two and seven years of imprisonment:</p>	
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		<p>a) Committing the crime more than once;</p> <p>b) Against more than one children;</p> <p>c) Causing very serious or particularly serious consequences.</p> <p>3. The offenders may also be subject to a fine of between two million dong and twenty million dong.</p> <p>Article 253. <i>Disseminating debauched cultural products</i></p> <p>1. Those who make, duplicate, circulate, transport, sell or purchase, stockpile decadent books, newspapers, pictures, photographs, films, music or other objects for the purpose of dissemination thereof, or commit other acts of disseminating debauched cultural products in one of the following circumstances, shall be sentenced to a fine of between five million dong and fifty million dong, to non-custodial reform for up to three years or to between six months and three years of imprisonment:</p> <p>a) The offense involves a large quantity of cultural products;</p> <p>b) The cultural products are disseminated to more than one person;</p> <p>c) The offenders have already been administratively sanctioned for such act or</p>	
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		<p>have already been sentenced for such offense, not yet entitled to criminal record remission but continue to commit it.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:</p> <ul style="list-style-type: none"> a) In an organized manner; b) Objects involved in the offense are in very great quantity; c) Against juveniles; d) Causing serious consequences; e) Constituting a case of dangerous recidivism. <p>3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:</p> <ul style="list-style-type: none"> a) The objects involved in the offense are in particularly great quantity; b) Very serious or particularly serious consequences are caused. <p>4. The offenders may also be subject to a fine of between three million dong and thirty million dong.</p> <p>Article 254. <i>Harboring prostitutes</i></p>	
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		<p>1. Those who harbor prostitutes shall be sentenced to between one and seven years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and fifteen years of imprisonment:</p> <ul style="list-style-type: none"> a) In an organized manner; b) Coercing other persons into prostitution; c) Committing the crime more than once; d) Against juveniles aged between full 16 years and under 18 years; e) Causing serious consequences; f) Constituting a case of dangerous recidivism. <p>3. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve years and twenty years of imprisonment:</p> <ul style="list-style-type: none"> a) Against children aged between full 13 years and under 16 years; b) Causing very serious consequences; <p>4. Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to twenty years of imprisonment or life imprisonment.</p>	
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		<p>5. The offenders may also be subject to a fine of between five million dong and one hundred million dong, the confiscation of part or whole of property, probation for one to five years.</p> <p>Article 255. <i>Procuring prostitutes</i></p> <p>1. Those who entice or procure prostitutes shall be sentenced to between six months and five years of imprisonment.</p> <p>2. Committing the offenses in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:</p> <ul style="list-style-type: none"> a) Against juveniles aged between full 16 years and under 18 years; b) In an organized manner; c) Being of professional character; d) Committing the offense more than once; e) Constituting a case of dangerous recidivism; f) Against more than one person; g) Causing other serious consequences. <p>Coercing other persons into prostitution;</p> <p>3. Committing the offense in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years</p>	
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		<p>of imprisonment:</p> <p>a) Against children aged between full 13 years and under 16 years;</p> <p>b) Causing very serious consequences;</p> <p>4. Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to between twelve and twenty years of imprisonment.</p> <p>5. The offenders may also be subject to a fine of between one million and ten million dong.</p> <p>Article 256. <i>Sexual intercourse with juveniles</i></p> <p>1. Those who have paid sexual intercourse with juveniles aged between full 16 years and under 18 years shall be sentenced to between one and five years of imprisonment.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and eight years of imprisonment:</p> <p>a) Committing the offense more than once;</p> <p>b) Having paid sexual intercourse with children aged between full 13 years and under 16 years;</p> <p>c) Causing harm to the victims' health with an</p>	
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		<p>infirmity rate of between 31% and 60%.</p> <p>3. Committing the offense in one of the following circumstances, the offenders shall be sentenced to between seven and fifteen years of imprisonment:</p> <p>a) The offense is committed more than once against children aged between full 13 years and under 16 years;</p> <p>b) The offense is committed even though the offenders know that they have been infected with HIV;</p> <p>c) Harms are caused to the health of the victim with an infirmity rate of 61% or higher.</p> <p>4. The offenders shall also be subject to a fine of between five million dong and ten million dong.</p> <p>Article 275. <i>Organizing and/or coercing other persons to flee abroad or stay abroad illegally</i></p> <p>1. Those who organize and/or coerce other persons to flee abroad or stay abroad in cases other than those stipulated in Article 91 of this Code shall be sentenced to between two years and seven years of imprisonment.</p> <p>2. If the offense is committed more than once or causes serious or very serious</p>	
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		<p>consequences, the offenders shall be sentenced to between five and twelve years of imprisonment.</p> <p>3. If particularly serious consequences are caused, the offenders shall be sentenced to between twelve and twenty years of imprisonment.</p> <p>Article 266. <i>Amending and/or using certificates and papers issued by agencies and/or organizations</i></p> <p>1. Those who amend, falsify the contents of passports, visas, household registration, civil status registration or various kinds of certificates and other documents of agencies and/or organizations and use such papers to commit illegal acts, causing serious consequences, or have already been administratively sanctioned for such acts but continue to commit them, shall be subject to warning, a fine of between one million dong and ten million dong, non-custodial reform for up to three years or a prison term of between six months and three years.</p> <p>2. Committing the offenses in one of the following circumstances, the offenders shall be sentenced to between two and five years of imprisonment:</p>	
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		<p>a) In an organized manner;</p> <p>b) Committing the crime more than once;</p> <p>c) Causing very serious or particularly serious consequences.</p> <p>3. The offenders may also be subject to a fine of between one million dong and five million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.</p> <p>Article 267. <i>Forging seals and/or documents of agencies and/or organizations</i></p> <p>1. Those who forge seals, documents or papers to deceive agencies, organizations and/or citizens, shall be subject to a fine of between five million dong and fifty million dong or a prison term of between six months and three years.</p> <p>2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between two and five years of imprisonment:</p> <p>a) In an organized manner;</p> <p>b) Committing the offense more than once;</p> <p>c) Causing serious consequences;</p>	
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		<p>d) Constituting a case of dangerous recidivism.</p> <p>3. Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between four and seven years of imprisonment.</p> <p>4. The offenders may also be subject to a fine of between five million dong and fifty million dong.</p> <p>Article 268. <i>Appropriating, trading in, destroying seals and/or documents issued by State agencies and/or social organizations</i></p> <p>1. Those who appropriating, trading in and/or destroying seals and/or documents of State agencies and/or social organizations, which are not classified as State secrets or work secrets, shall be subject to a fine of between one million dong and ten million dong, non-custodial reform for up to two years or a prison term of between three months and two years.</p> <p>2. Committing the offense in one of the following circumstances, the offenders shall be sentenced to between one and five years of imprisonment:</p> <p>a) In an organized manner;</p> <p>b) Causing serious, very serious or particularly</p>	
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		<p>serious consequences;</p> <p>c) Constituting a case of dangerous recidivism.</p> <p>3. The offenders may also be subject to a fine of between one million dong and five million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.</p> <p>Article 284. <i>Forgery in the course of employment</i></p> <p>1. Those who, for self-seeking or other personal motivation, abuse their positions and/or powers to commit one of the following acts, shall be sentenced to between one and five years of imprisonment:</p> <p>a) Amending or falsifying contents of papers, documents;</p> <p>b) Making and/or granting counterfeit papers;</p> <p>c) Forging signatures of persons with positions and powers.</p> <p>2. Committing the offense in one of the following circumstances, the offenders shall be sentenced to between three and ten years of imprisonment:</p> <p>a) In an organized manner;</p> <p>b) The offenders are persons responsible for making or granting the papers and/or</p>	
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		<p>documents;</p> <p>c) Committing the offense more than once;</p> <p>d) Causing serious consequences.</p> <p>3. Committing the crime and causing very serious consequences, the offenders shall be sentenced to between seven and fifteen years of imprisonment.</p> <p>4. Committing the crime and causing particularly serious consequences, the offenders shall be sentenced to between twelve and twenty years of imprisonment.</p> <p>5. The offenders shall also be banned from holding certain posts or doing certain jobs for one to five years, may be subject to a fine of between three million dong and thirty million dong.</p>	
3.3.	<i>Sanctions relating to trafficking and other offences concerned</i>		
	<p>United Nations Convention against Transnational Organized Crime</p> <p>Article 11</p> <p>1. Each State party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that</p>	<p><i>Criminal sanctions</i></p> <p>The Penal Code</p> <p><i>Article 48. Circumstances aggravating the penal liability</i></p> <p>1. Only the following circumstances are considered circumstances aggravating the penal liability:</p>	<p>To compare with the provisions on criminalization of trafficking in persons and smuggling of migrants in the United Nations protocols against trafficking in persons, especially women and children, and smuggling of migrants, the criminal acts relating to the trafficking in persons, smuggling of migrants and other crimes concerned</p>

	<p>offence.</p> <p>2. Each State party shall endeavor to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.</p> <p>3. In the cases of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defense, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.</p> <p>4. Each State party shall ensure that its court or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such</p>	<p>a) Committing crimes in an organized manner;</p> <p>b) Committing crimes in a professional manner;</p> <p>c) <i>Abusing positions and powers in order to commit crimes</i>;</p> <p>d) Committing crimes in a hooligan manner;</p> <p>e) Committing crimes with despicable motivation;</p> <p>f) Intentionally carrying out crimes to the end;</p> <p>g) Re-offending, recidivism, dangerous recidivism;</p> <p>h) Committing crimes against children, pregnant women, aged persons, persons unable to defend themselves or persons dependent on offenders in material and/or moral conditions, work or other ways;</p> <p>i) Infringing upon the State's property;</p> <p>k) Taking advantage of war conditions, emergency situations, natural calamities, epidemics or other special difficulties of society in order to commit crimes;</p> <p>l) Using treachery or cruel tricks to commit crimes and/or using means capable of causing harm to many persons;</p> <p>m) Inciting juveniles to commit crimes;</p>	<p>which are mentioned in these two protocols have been criminalized in the Penal Code of Vietnam (Articles 119, 120, 227, 228, 254, 255, 256, 266, 267, 275 and 284) with severe punishments. In addition, the Penal Code provides a relatively comprehensive set of aggravating factors that can result in increased penalties. For the offence of trafficking, for example, the penalty may be increased if the crime is conducted for the purpose of prostitution, in an organized manner, being professional in character, for purpose of sending the victim overseas, involves more than one victim, or is repeated. Especially the Penal Code of Vietnam considers trafficking in women and children as very serious crimes, violating life, health, reputation and human dignity and punishment for these offences are very strict, which can go up to 20 years imprisonment. As for offence of trafficking in children, punishment can go up to life imprisonment. Beside that, the law provides that criminal liability should apply not only to the executors of the</p>
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	<p>offences.</p> <p>5. Each State party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p>6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defenses or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.</p> <p>Protocol against the smuggling of migrants by land, sea and air</p> <p>Article 6. Criminalization</p> <p>1.</p> <p>2.</p> <p>3. Each State party shall also adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established</p>	<p>n) Committing treacherous and/or violent acts in order to shirk or conceal crimes.</p> <p>2. Circumstances which are constituents of a crime or determine the penalty bracket shall not be considered aggravating circumstances.</p> <p>Article 119. Trafficking in women (See section 3.2. above)</p> <p>Article 120. Trading in, fraudulently exchanging or appropriating children (See section 3.2. above)</p> <p>Article 275. Organizing and/or coercing other persons to flee abroad or stay abroad illegally (See section 3.2. above)</p> <p>Article 266. Amending and/or using certificates and papers issued by agencies and/or organizations (See section 3.2. above)</p> <p>Article 267. Forging seals and/or documents of agencies and/or organizations (See section 3.2. above)</p> <p>Article 268. Appropriating, trading in, destroying seals and/or documents issued by State agencies and/or social</p>	<p>crime but also to criminal organizer, inciters, and assistants depending on nature and level of his/her participation in committing the crime (Articles 3 and 53 of the Penal Code). However, to perfect continually the criminal law and to take part in effective implement of the United Nations Convention against transnational organized crime and supplement protocols, consideration should be given to:</p> <ul style="list-style-type: none"> - Studying and supplementing circumstances "trafficking in women to use for inhumane purposes, forced labor or removal of body's organs and etc." to the Penal Code as circumstances aggravating the penal liability for offence of trafficking in women (article 119 of the penal code). - Studying and supplementing circumstances "trafficking in children to use for forced labor, removal of body's organs and etc." to the Penal Code as circumstances aggravating the penal liability for offence of trafficking in children (article 120 of the penal code). - Studying and supplementing circumstances "for taking persons
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	<p>in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:</p> <p>a) That endanger or are likely to endanger, the lives or safety of the migrants concerned; or</p> <p>b) That entail inhuman or degrading treatment, including for exploitation of such migrants.</p> <p>4. ...</p>	<p>organizations</p> <p>(See section 3.2. above)</p> <p>Article 284. <i>Forgery in the course of employment</i></p> <p>(See section 3.2. above)</p>	<p>abroad or stay abroad illegally" to the Penal Code as circumstances aggravating the penal liability for offences of illegally correcting and using certificates and other documents of the organs, bodies (article 266), falsifying the seals and documents of the organs, bodies ((article 267), appropriating, trading in, destroying seals and/or documents issued by State agencies and/or social organizations (article 268) and falsifying documents and forging signature made by officials (article 284).</p>
3.6.	<p><i>Confiscation and seizure of property and proceeds of crime</i></p>		
	<p>United Nations Convention against Transnational Organized Crime</p> <p>Article 12. <i>Confiscation and seizure</i></p> <p>1. State party shall adopt, to the greatest extent possible within their domestic legal system, such measures as may be necessary to enable confiscation of:</p> <p>(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to</p>	<p>- The Penal Code</p> <p>Article 28. <i>Penalties</i></p> <p>Penalties include principal penalties and additional penalties.</p> <p>1. The principal penalties include:</p> <p>a) Warning;</p> <p>b) Fine;</p> <p>c) Non-custodial reform;</p> <p>d) Expulsion;</p>	<p>Generally, Vietnamese law has comprehensive provisions allowing for the confiscation of property and proceeds from trafficking in accordance with the requirements of the TOC.</p> <p>In accordance with Vietnamese law, confiscated property or proceeds of crime must be putting into public treasury. Further use of these property and proceeds will be executed in</p>

	<p>that of such proceeds;</p> <p>(b) Property, equipment or other instrumentalities used in or destined for use in offenses covered by this Convention.</p> <p>2. State party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.</p> <p>3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.</p> <p>4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p>5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property</p>	<p>e) Termed imprisonment;</p> <p>f) Life imprisonment;</p> <p>g) Death penalty.</p> <p>2. The additional penalties include:</p> <p>a) Ban from holding certain posts, practicing certain occupations or doing certain jobs;</p> <p>b) Ban on residence;</p> <p>c) Probation;</p> <p>d) Deprivation of some civic rights;</p> <p>e) Confiscation of property;</p> <p>f) Fine, when it is not applied as a principal penalty</p> <p>g) Expulsion, when it is not applied as a principal penalty</p> <p>3. For each offense, the offenders shall be subject to only one principal penalty and may be subject to one or more additional penalties.</p> <p>Article 40. Confiscation of property</p> <p>Confiscation of property means to confiscate part or whole of the sentenced person's property for remittance into the State's fund. The property confiscation shall apply only to persons sentenced for serious crimes, very serious crimes or particularly serious crimes</p>	<p>accordance with the budget and financial laws. Nowadays, in Vietnam some funds were established such as the fund for crime prevention, and the fund for drug prevention ... one of the sources of which is taken out from the State budget. The fund for crime prevention could be also used to support and compensate victims of trafficking.</p>
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	<p>with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.</p> <p>6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.</p> <p>7. State Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.</p> <p>8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.</p> <p>9. Nothing contained in this article shall affect the principle that the measures to</p>	<p>prescribed by this Code.</p> <p>When all their property is confiscated, the sentenced persons and their families shall be left with conditions to live.</p> <p>Article 41. Confiscation of objects and money directly related to crimes</p> <p>1. The property confiscation for State funds shall apply to:</p> <ul style="list-style-type: none"> a) Tools and means used for the commission of crime; b) Objects or money acquired through the commission of crime or the trading or exchange of such things; c) Objects banned from circulation by the State. <p>2. Things and/or money illegally seized or used by offenders shall not be confiscated but returned to their lawful owners or managers.</p> <p>3. Things and/or money of other persons, if these persons are at fault in letting offenders use them in the commission of crimes, may be confiscated for State funds.</p> <p>- The Criminal Procedural Code</p> <p>Article 145. Precarious keeping material evidences and documents in carrying out search provide that in carrying out search of a</p>	
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	<p>which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.</p>	<p>house or location, investigator shall be able to keep precariously all things, being material evidences and documents directly related to criminal case; other things belonging to category of the forbidden storage and circulation shall be seized and immediately given to the competent organs. In case of necessary to seal up material evidences and documents directly related to criminal case, it should be immediately carried out in front of the owner or his family representative, representative of the authorities and eyewitness.</p> <p>Article 146. Property inventory</p> <p>Property inventory shall be applied to the person, who is accused of only offense, to which by penal code can apply confiscation of property and only inventory a part of property corresponding to the possible confiscated level.</p>	
3.8.	<i>Extradition</i>		
	<p>United Nations Convention against Transnational Organized Crime</p> <p>Article 16. <i>Extradition</i></p>	<p>The Criminal Procedural Code</p> <p>Article 343. <i>Extradition for penal liability examination or execution of judgments</i></p> <p>According to international treaties which the Socialist Republic of Vietnam has signed or</p>	<p>In accordance with the Vietnamese law, request for extradition or execution of extradition generally should be based on the international</p>

		<p>acceded to or on principle of mutual benefit, the Vietnamese organs having investigating, prosecuting and judicial power may:</p> <ol style="list-style-type: none"> 1. Request correlative competent organ of foreign country to extradite a person, who committed a crime or has convicted by a judgment of the Vietnamese Court having already taken legal effect to examine for penal liability or execute judgments; 2. Execute extradition of foreigners, who committed a crime or has convicted by a judgment having already taken legal effect and has been located in the territory of the Socialist Republic of Vietnam to the requesting State Party for penal liability examination or execution of judgments <p>Article 344. <i>Refusal of Extradition</i></p> <ol style="list-style-type: none"> 1. The Vietnamese organs having investigating, prosecuting and judicial power shall refuse extradition, if it belongs to one of the following circumstances: <ol style="list-style-type: none"> a) Person, who is the subject of the request for extradition is Vietnamese national; b) According to the Vietnamese law, a person who is the subject of the request for extradition could not be examined for penal liability or executed judgment because of expiring statute 	<p>treaties, which Vietnam has signed or acceded to. However, it is not a unique basis for co-operation in extradition. In case where between Vietnam and requesting States there are no extradition treaty or other related international treaties, extradition may be executed in concrete circumstances according to the principle of mutual benefit. In this spirit, the international treaties, which Vietnam has signed or acceded to, including Convention against Transnational Organized Crimes and bilateral agreements on mutual legal assistance between Vietnam and other countries, are legal bases for extradition.</p> <p>However, to create more facilitation to de facto extradition, consideration should be given to developing bilateral agreements on mutual legal assistance with other countries, especially countries in the Mekong Region in order to concretize contents of co-operation in extradition generally and extradition in cases of trafficking in human beings particularly.</p>
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		<p>of limitation or other legal reasons;</p> <p>c) Person who is the subject of the request for extradition to examine for penal liability had been convicted of a crime, mentioned in request for extradition by a judgment of the Vietnamese court having already taken legal effect or criminal case had been suspended according to the criminal procedure code of Vietnam;</p> <p>d) Person who is the subject of the request for extradition has resided in Vietnam because of possibly being cornered in the State, requesting for extradition by discrimination of race, religion, nationality, national, social classes or political opinion.</p> <p>2. The Vietnamese organs having investigating, prosecuting and judicial power can refuse extradition, if it belongs to one of the following circumstances:</p> <p>a) According to the Vietnamese criminal law, act, which committed by person who is the subject of the request for extradition is not a crime;</p> <p>b) Person who is the subject of the request for extradition has been examined for penal liability in Vietnam for a crime mentioned in request for extradition.</p>	
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		3. The Vietnamese organs having investigating, prosecuting and judicial power, who has refused extradition in accordance with provisions of paragraphs 1 and 2 of this article, have responsibility to inform the correlative organs having investigating, prosecuting and judicial power of the State, sending the request for extradition	
4	Protection and Support for Trafficking Victims and Witnesses		
4.1.	<i>Non-penalisation of Trafficked Persons</i>		
	<p>Protocol against the Smuggling of Migrants by Land, Sea and Air</p> <p>Article 5. <i>Criminal Liability of Migrants</i></p> <p>Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.</p>	<p>- Ordinance on Handling of Administrative Violations</p> <p>Article 26. <i>Sending to medical treatment institutions</i></p> <p>1. The sending of persons who have committed violations prescribed in clause 2 of this Article to medical treatment institution to labor, have their general education, job learning and medical treatment under the medical treatment institution shall be decided by the district-level People's Committee presidents.</p> <p>...</p> <p>The time limits for application of measure of sending to medical treatment institution shall</p>	<p>In general, trafficked persons are treated as victims rather than criminals under Vietnamese law. Persons who are involved in some violations as a direct consequence of their situation as trafficked persons may be subjected to certain kinds of liability. However, the handling of those people is mainly for the purpose of supporting them to reintegrate into the society rather than punishing. Although the law provides for administrative sanctions against persons who illegally leave or enter the country, or hold false travel documents, and against foreigners who illegally work or conduct activities other than those permitted in their visa,</p>

		<p>range from ... three months to eighteen months for prostitutes.</p> <p>2. Subjects to whom the measure of sending to medical treatment institutions shall apply include:</p> <p>...</p> <p>Regular prostitutes aged full 16 or older, who have been subject to the application of measure of education at communes, wards or district towns or have not yet been subject to the application of this measure but have no given residence places.</p> <p>Prostitute of under 16 or over 55 shall not be sent to medical treatment institutions.</p> <p>- Decree No. 49/CP dated Aug. 15, 1996 of the Government on administrative punishment against violations in the field of social security and order</p> <p>Article 21. <i>Violations of regulations on existing, entering, transiting the country</i></p> <p>...</p> <p>2. A fine with an amount ranging from VND 2,000,000,000.00 to 10,000,000.00 shall be imposed on any person committing one of the following violations:</p> <p>...</p>	<p>those sanctions are rarely applied to punish trafficked victims. However, in the future, for a unified handling of trafficked victims, an explicit exclusion for those who are involved in an illegal act as a direct consequence of their situation from administrative sanctions should be inserted in a legislation, such as a directive of the Prime Minister on handling trafficked victims.</p> <p>The case is, however, a little bit different with regards to illegal migrants. The law only grants lenient treatment for the first time illegal immigrant, and lenient treatment is not extended to the commission of other offenses. One of the reasons is because while trafficked persons have either never consented to the illegal immigrant, or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the trafficked, on the other hand, migrants have consented to the smuggling. Other reason is that the smuggled migrants are not totally passive but somehow contribute to the current situation of illegal immigration because</p>
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		<p>a) A alteration or modification of the form or content of a passport, visa, or giving fall information in application form for a passport, visa, certificate of temporary residence or permanent residence; using expired passport or visa to exit or enter the country;</p> <p>b) Existing or entering the country without a passport, visa or other similar document as required by law;</p> <p>...</p> <p>d) Staying abroad by a Vietnamese citizen beyond the permitted time;</p> <p>e) Hiding in transportation means for illegally existing or entering the country.</p> <p>...</p> <p>3. A fine with an amount ranging from VND 10,000,000,000.00 to 20,000,000.00 shall be imposed on any person committing one of the following violations:</p> <p>...</p> <p>b) Practicing occupations or conducting other activities inconsistent with the purpose of entry stated in their visa committed by foreigners or Vietnamese nationals permanently residing abroad, who enter or provisionally reside in Vietnam;</p>	<p>there would be no supply without demand. Therefore, the protection given to smuggled migrants is considerably lower than the protection given to trafficked victims.</p>
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		<p>Foreigners in Vietnam.</p> <p>- The Penal Code</p> <p>Article 266. <i>Amending certificates and issued by agencies and/or organizations and using such papers</i></p> <p>(See section 3.2. above)</p> <p>Article 267. <i>Forging seals and/or documents of agencies and/or organizations</i></p> <p>(See section 3.2. above)</p> <p>Article 274. <i>Illegally leaving or entering the country; illegally staying abroad or in Vietnam</i></p> <p>Any person who illegally leaves or enters the country or stays abroad or in Vietnam, has already been administratively sanctioned for such act but continuing the violation, shall be subjected to a fine of between five million dong and fifty million dong or imprisonment of between three months and two years.</p> <p>- Joint circular No.01/TTLN dated Feb. 17, 1991 of the Ministry of Interior</p> <p>...</p> <p>Persons who fled abroad for the first time and voluntarily returned shall not be prosecuted for the offense of illegally leaving or entering the</p>	
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		<p>country under Article 89 of the Penal Code.</p> <p>...</p> <p>4. If in addition to the act of illegally leaving the country, the repatriated person committed other offenses, he/she shall be exempted from criminal liability for the offense of illegally leaving or entering the country, but shall be prosecuted for other offenses.</p>	
4.2.	<i>Protection of Physical Security</i>		
	<p>United Nations Convention against Transnational Organized Crime</p> <p>Article 24. <i>Protection of Witness</i></p> <p>1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witness in criminal proceedings who give testimony concerning offenses covered by this Convention and, as appropriate, for their relatives and other persons close to them.</p> <p>2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:</p> <p>(a) Establishing procedures for the</p>	<p>- The Constitution</p> <p>Article 71.</p> <p>The citizen shall enjoy inviolability of the person. And the protection of the law with regard to his life, health, honor and dignity.</p> <p>No one can be arrested in the absence of a ruling by the People's court, a ruling or sanction of the People's procuracy, except for cases of flagrant offenses. Taking a person into, or holding him in, custody shall be done with full observance of the law.</p> <p>Applying corporal punishment, forcing testimony, and infringing upon citizen's honor and dignity, of any sort are strictly forbidden.</p> <p>- The Criminal Procedure Code</p> <p>Article 6. <i>Ensuring the right to security of</i></p>	<p>Vietnamese law guarantees the safety of trafficked victims, smuggled migrants, witnesses, and their relatives. The PC of Vietnam provides for severe punishments against offenders who infringe upon the life or health of trafficked victims, smuggled migrants, witnesses, or their relatives.</p> <p>The PPC also recognizes the right of individual to be ensured safety of life, health, honor, and dignity. PPC of 2003 has introduced supplementary provisions on the responsibilities of bodies conducting criminal proceedings for the protection of injured persons, witnesses, other</p>

	<p>physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;</p> <p>(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.</p> <p>3. State Parties shall consider entering into agreements or arrangement with other States for the relocation of persons referred to in paragraph 1 of this article.</p> <p>4. The provisions of this article shall also apply to victims insofar as they are witnesses.</p> <p>Article 25. Assistance to and protection of victims</p> <p>1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offenses covered by this Convention, in</p>	<p><i>person of citizen</i></p> <p>No one can be arrested in the absence of a ruling by the People's court, a ruling or sanction of the People's procuracy, except for cases of flagrant offenses. Taking a person into, or holding him in, custody shall be done with full observance of the law.</p> <p>Applying corporal punishment, forcing testimony, and infringing upon citizen's honor and dignity, of any sort are strictly forbidden.</p> <p>Article 7. Protection of Life, Health, Honor, Dignity, and Property of Citizen</p> <p>...</p> <p>Should the life, health, honor, dignity, or property of any injured person, witness, other persons participating in criminal proceedings, or their relatives, be in danger, the body conducting criminal proceedings shall apply necessary measures to protect them according to law.</p> <p>Article 55. Witnesses</p> <p>...</p> <p>3. Witnesses have the rights to:</p> <p>a) request the body that summoned them to protect their life, health, honor, dignity, property, and other legitimate rights and</p>	<p>persons participating in criminal proceedings, and their relatives. It also provides for the right of witnesses to request protection, and protection of witnesses and their relatives at court hearing. These supplementations are considered as a big progress in the penal procedural legislative making of Vietnam. The penal procedural law of Vietnam, however, still inheres some deficiencies that create difficulties for the adequate protection of persons participating in criminal proceedings, including trafficked persons, smuggled migrants, witnesses, and their relatives. Firstly, the above-mentioned provisions are general principles rather than concrete rules. They, therefore, are difficult to be enforced without regulations giving guidance and stipulating in detail issues such as the subjects to be protected (including an explanation regarding victim/witness's relatives), protective measures (exchange and/or nondisclosure/limitation of disclosure of their identity, address, and etc; special procedure for collecting evidence, such as video links),</p>
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	<p>particular in cases of threat of retaliation or intimidation.</p> <p>...</p> <p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 6. <i>Assistance to and Protection of Victims of Trafficking in Persons</i></p> <p>...</p> <p>5. Each State Party shall endeavor to provide for the physical safety of trafficking in persons while they are within its territory.</p> <p>Protocol against the Smuggling of Migrants by Land, Sea and Air</p> <p>Article 16. <i>Protection and Assistance Measures</i></p> <p>1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to</p>	<p>interests when participating in criminal proceedings.</p> <p>...</p> <p>Article 101. <i>Disclosure and information of crime</i></p> <p>Citizen may disclose an offense and inform thereof to investigating body, procuracy, court, or other institutions, organizations. The receiving body shall make minutes on oral disclosure/information with the signature of the person who disclosed or provided information of the offense.</p> <p>An institution or organization shall, when find out or receive disclosure by citizen, promptly send a written notice thereof to investigating body.</p> <p>Article 211. <i>Questioning witnesses</i></p> <p>...</p> <p>5. In case it is necessary to ensure security of witnesses or their relatives, the collegiate bench shall decide to apply protective measures according to law.</p> <p>- The Penal Code</p> <p>Article 93. <i>Murder</i></p> <p>(See section 3.2. above)</p>	<p>procedure to require protection, financial issues for implementation of these provisions, etc. In addition, these provisions inhere an inconsistency where Article 7, paragraph 3 stipulates that subjects to be protected include witness and their relatives, meanwhile, Article 55, section 3, provides for the right of witness to require protection from responsible bodies only in case he/she him/herself in danger. Thirdly, the injured persons, including trafficked victims, and their relatives, are not subject to adequate protection because the PPC does not recognize their right to request protection from competent bodies when their life, health, honor, and dignity are in danger. The law does not provide for protection of those persons at court hearing either. And fourthly, as analyzed at section 4.5. below, the law does not pay enough attention on protection of sensitive victims and witnesses, such as children.</p> <p>In order to ensure adequate protection of trafficked victims, smuggled migrants, witnesses, and their</p>
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	<p>torture or other cruel inhuman or degrading treatment or punishment.</p> <p>2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being object of conduct set forth in article 6 of this Protocol.</p> <p>3. Each State Party shall afford appropriate assistance to migrant who lives or safety are endangered by reason of being object of conduct set forth in article 6 of this Protocol.</p>	<p>Article 103. <i>Threatening to murder</i> (See section 3.2. above)</p> <p>Article 104. <i>Intentionally inflicting injury on or causing harm to the health of other persons</i> (See section 3.2. above)</p> <p>Article 123. <i>Illegal arrest, custody or detention of people</i> (See section 3.2. above)</p> <p>Article 298. <i>Applying corporal punishment</i></p> <p>1. Any person who applies corporal punishment in investigating, prosecuting, adjudicating and/or judgment-executing activities shall be sentenced to between six months and three years of imprisonment.</p> <p>2. Committing crime and causing serious consequences, the offenders shall be sentenced to between two years and seven years of imprisonment.</p> <p>3. Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between five and twelve years of imprisonment.</p> <p>4. The offenders shall also be banned from holding certain posts for one to five years.</p>	<p>relatives, in the coming time, the above-mentioned deficiencies must be overcome as follows:</p> <p>Firstly, it is necessary to issue an inter-agency circular(s) providing for in detail the issue of protecting injured persons, smuggled migrants, witnesses, other persons participating in criminal proceedings, and their relatives. This document should concretely stipulate the following issues: persons to be protected (who are to be considered as witness and his/her relative(s)), measures of protection (measures that may be taken immediately including providing safe shelter on voluntary basis, on an emergency basis and on a long-term basis as necessary; relocating protected persons; prohibiting the disclosure of information concerning protected persons' identity and whereabouts; providing protected persons with new identities; other measures that cannot be applied in a short term for financial reasons or because they require amendment of related legislations, but should be taken into account for application in the</p>
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		<p>consequences, the offenders shall be sentenced to between two years and seven years of imprisonment.</p> <p>3. Committing the crime and causing very serious or particularly serious consequences, the offenders shall be sentenced to between five years and ten years of imprisonment.</p> <p>4. The offenders shall also be banned from holding certain posts for one to five years.</p>	
4.3.	<i>Protection of Privacy and Identity</i>		
	<p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 6. <i>Assistance to and Protection of Victims of Trafficking in Persons</i></p> <p>1. In appropriate cases and to the extent possible under its domestic law, each State Parties shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.</p>	<p>The Criminal Procedure Code</p> <p>Article 18. <i>Public Hearing</i></p> <p>Cases in court shall be heard in public, everybody shall have the right to attend such hearing, except for cases as provided for by this Code.</p> <p>In case it is necessary to protect confidentiality of state secrecy, to reserve good social moral, or to protect privacy of interested persons, close hearing shall be permitted, provided that verdict shall be pronounced in public.</p> <p>Article 124. <i>Prohibition from disclosure of investigating confidentiality</i></p> <p>In case it is necessary to protect investigating</p>	<p>Although the Penal Procedure Code contains several provisions on protecting privacy and identity of the concerned individuals, including trafficked victims, these provisions are inadequate to protect the concerned individual's privacy and identity. Meanwhile, the protection of the privacy and identity of a victim is of great importance to his/her safety. With regards to a number of crimes, such as rape, forced rape, human trafficking, etc., the protection of the privacy and identity of victims in the process of the legal proceedings is a measure of great importance to helping them return into the community</p>

		<p>confidentiality, investigator/prosecutor shall inform the persons participating in criminal proceedings and eyewitnesses in advance, and requires them not to disclose investigating confidentiality. This informing shall be recorded in the minutes.</p> <p>Any investigator/prosecutor, persons participating in criminal proceedings, or eyewitnesses discloses investigating confidentiality shall, depending on particular circumstances, be criminally responsible according to Article 263, 264, 268, 327, or 328 of the Penal Code.</p>	<p>and to start their new life. Therefore, in our view, in the future, the Penal Procedure Code should be revised to strengthen the legal protection of the privacy and identity of crime victims, including trafficked victims in the legal proceedings. The amendments should state explicitly that the protection of a victim's privacy and identity is mandatory in all cases where he/she is a child. The publication of the victim's name, or any information that may lead to the discovery of the victim should be strictly prohibited in all cases of trafficking, rape and sexual violence, and where children are involved. In the future, a regulation guiding the implementation of the Code should be issued, thereby the Code's Article 18 should be construed so that the court shall conduct closed hearings if the victims of certain kinds of crimes, including trafficked victims, and victims who are children, so require. If the verdict and sentence are pronounced in public, measure to protect the privacy and identity of the victims shall be applied, such as only the beginning and ending parts of the judgment are</p>
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			to be read. It is also necessary to stipulate measures to protect the privacy and identity of the victims in the process of investigation and indictment, such as nondisclosure of identity data of the victim in the investigative protocols, application of measures ensuring the safety of the victim when he/she must identify the accused, etc.
4.4.	<i>Participation of Victims in Criminal Proceedings</i>		
	<p>United Nations Convention against Transnational Organized Crime</p> <p>Article 25. <i>Assistance to and protection of victims</i></p> <p>...</p> <p>3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense.</p>	<p>The Criminal Procedure Code</p> <p>Article 51. <i>Injured Persons</i></p> <p>...</p> <p>2. Injured persons or their legal representative have the rights to:</p> <p>a) present materials, objects, and make requests;</p> <p>b) be informed with investigating results;</p> <p>c) make request for alteration of officers conducting criminal proceedings, expert and/or interpreter;</p> <p>d) make suggestions regarding the level of compensation and measure to ensure compensation;</p>	<p>Generally speaking, Vietnam criminal procedure law is rather adequate to ensure the participation of trafficked/smuggled victims in criminal proceedings. It, however, inhere some deficiencies, for example, although according to Article 52 section 2 of the PPC as introduced above, victims have the right to be informed with investigating results. The concrete provisions on investigating activities stipulate, however, only deliverance of decision of provisional suspension of investigation to the victim (Article 160 of the PPC); there is no provision on informing investigating result to the victim in case of suggestion of</p>

		<p>e) participate in court hearing, present opinions and argue to protect their legitimate rights and interests;</p> <p>f) file complains against decisions/actions of bodies/officers conducting criminal proceedings; file appeal against parts of court judgment/decisions related to compensation and sentence imposed on defendant.</p> <p>Article 64. <i>Evidence</i></p> <p>...</p> <p>2. Evidences are determined by:</p> <p>...</p> <p>b) Testimony of witnesses, injured persons ...</p> <p>Article 68. <i>Testimony of injured persons</i></p> <p>1. Injured persons testify about the fact of the case, the relationship between them and arrested person, person under provisional custody, defendant, or accused person, and answer questions ...</p> <p>Article 122. <i>Settling requests of persons participating in criminal proceedings</i></p> <p>Should there exist any request by any person participating in criminal proceedings related to the case, investigating body, procuracy, within scope of their duty, shall settle their requests and inform them the result. Should a requests</p>	<p>prosecution or suspension of investigation (Article 162 of the PPC). In addition, as analyzed above, some provisions of the PPC on protection of physical security of victims and witnesses are not concrete; other provisions on protection of victim's privacy and identity are not adequate. These deficiencies may inhibit victims from effectively participating in criminal proceedings. In order to overcome these deficiencies to ensure full participation of trafficked victims in criminal proceedings, in the coming time, it is necessary to issue a circular guiding the implementation of the Penal Procedure Code that should stipulate, among other things, the sending of copies of decisions suspending the investigation/case to the injured. Provisions on protection of physical security and privacy of victims and witnesses also need to be concretized and improved (for more details, see sections 4.1. and 4.3. above).</p>
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		<p>is rejected, investigating body/procuracy shall inform the victims who made the request reason of rejection.</p> <p>If the persons participating in criminal proceedings do not agree with the viewpoint of investigating body/ procuracy, they may file complains. Their complains shall be settled according to Chapter XXXV of this Code.</p> <p>Article 125. <i>Investigating minutes</i></p> <p>1....</p> <p>Investigator who made the minutes shall read it aloud to persons participate in criminal proceedings, advice them of their rights to make any supplementations or comments on the minutes. Such comments shall be recorded in the minutes. The persons participating in criminal proceedings and the investigator shall sign the minute conjointly...</p> <p>Article 137. <i>Summons, obtaining testimony by injured persons...</i></p> <p>Summons and obtaining testimony by injured persons ... shall be conducted according to articles 133, 135, and 136 of this Code.</p> <p>Article 138. <i>Confrontation</i></p> <p>In case there exists any conflict in testimony given by two or more persons, investigator</p>	
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		<p>shall conduct confrontation.</p> <p>If the witness or injured person attend the confrontation, the investigator shall first inform them of their liability in case they refuse, avoid to testify or intentionally give false information</p> <p>...</p> <p>Article 139. <i>Identification</i></p> <p>1. When necessary, investigator may invite person or present objects, photos to be identified by witness, injured person or defendant...</p> <p>Article 150. <i>Inspection of criminal scene</i></p> <p>...</p> <p>2.... Eyewitnesses shall be caused to present at the inspection; the defendant, injured person, witness may be allowed or experts may be invited to attend the inspection. ...</p> <p>Article 152. <i>Examination of traces of crime on person</i></p> <p>1. Investigator shall examine body of arrested person, person under provisional custody, defendant, injured person, and witness to discover traces or crime or other traces that are important to the case. If necessary, forensic medicine shall be held.</p> <p>...</p>	
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		<p>Article 158. <i>Right of defendant and other persons participating in criminal proceedings against a conclusion of expert examination.</i></p> <p>1. Upon completion of expert examination, the body that requested expert examination shall inform the defendant and/or persons participating in criminal proceedings of the conclusion of expert examination if these persons so requested.</p> <p>Defendant and other persons participating in criminal proceedings have the right to give comments on the conclusion of expert examination, request additional examination or re-examination. Such comments and/or requests shall be recorded in the minutes.</p> <p>2. Should any request of the defendant and/or persons participating in criminal proceedings is rejected by investigating body/procuracy, investigating body/procuracy shall inform them of the reason.</p> <p>Article 160. <i>Provisional suspension of investigation</i></p> <p>...</p> <p>2. Investigating body that decides to provisionally suspend investigation shall deliver order of provisional suspension of investigation</p>	
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		<p>to procuracy of the same level, defendant, and injured person.</p> <p>Article 182. <i>Delivery of court decisions</i></p> <p>...</p> <p>2. Decision of provisional suspension of investigation/decision of suspension of investigation issued by the court shall be delivered to ... injured person...</p> <p>Article 184. <i>Direct, oral, and uninterrupted hearing</i></p> <p>1. The court shall directly define the facts of the case by interrogating and listening to testimony of accused person, injured person ...</p> <p>Article 191. <i>Present of injured person ... or his/her legal representative</i></p> <p>1. In case of absence of injured person ... or his/her legal representative, the collegiate bench shall decide to resume or postpone hearing.</p> <p>2. Should the collegiate bench deems that his/her absence merely causes obstacle to settlement of claim for damages, it may rule that the damages be solved separately according to civil procedure.</p> <p>Article 200. <i>Court minutes</i></p>	
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		<p>in criminal proceedings, presiding judge shall ask whether any person requests for postponement of hearing. In case such request is so made, the collegiate bench shall consider and decide the question.</p> <p>Article 207. <i>Order of interrogation</i></p> <p>...</p> <p>2.... Persons participating in court hearing may request presiding judge to raise further questions on the facts that according to them need to be clarified.</p> <p>Article 210. <i>Interrogating injured person ... or his/her legal representative ...</i></p> <p>Injured person ...or his/her legal representative ... presents the fact of the case related to him/her. Thereafter, the collegiate bench, prosecutor, defense counsel, and defense counsel of interested persons, shall make further questions concerning insufficient or contradict statements.</p> <p>Article 212. <i>Examination of material evidences</i></p> <p>...</p> <p>2. Prosecutor, defense counsel, and other persons participating in the hearing have the right to give opinions on examined material</p>	
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		<p>evidences...</p> <p>Article 213. <i>Spot examination</i></p> <p>... Prosecutor, defense counsel, and persons participating in the hearing have the right to present opinions on the place of offense or other places related to the case...</p> <p>Article 214. <i>Presentation, pronouncement of documents of the case, comments, reports made by institutions, organizations</i></p> <p>... Prosecutor, accused person, defense counsel, and other persons participating in the hearing have the right to comment on examined documents and raise questions on concerning issues.</p> <p>Article 215. <i>Questioning expert</i></p> <p>...</p> <p>4. Prosecutor, defense counsel, and other persons participating in the hearing have the right to comment on the conclusion of expert examination and raise questions on unclear or contradict contents of the conclusion.</p> <p>Article 216. <i>Conclusion of interrogation</i></p> <p>The presiding judge shall, when he considers that all the facts of the case have been fully examined, ask the prosecutor, defense counsel, and other persons participating in the</p>	
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		<p>hearing whether they request any further examination or interrogation. If there is any request the presiding judge shall, if he deems necessary, decide to resume interrogation.</p> <p>Article 217. <i>Order of making statements in arguing phase of court hearing</i></p> <p>3. Injured person ... or his/her representative has the right to present his/her opinions to protect his/her rights and interests; should he/she has a counsel, the counsel may give additional opinions or comments.</p> <p>...</p> <p>Article 218. <i>Retorting</i></p> <p>Accused person, defense counsel, and other persons participating in criminal proceedings have the right to comment on accusation made by prosecutor and give recommendations. The prosecutor shall respond to each comment/opinion.</p> <p>Persons participating in oral argument have the right to respond to statements made by other persons. Presiding judge shall not limit the time for oral argument, and shall facilitate them to present all of their opinions...</p> <p>Presiding judge has the right to request prosecutor to respond to opinions related to the case given by defense counsel and other</p>	
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		<p>persons participating in oral argument and that have not been responded to by prosecutor.</p> <p>Article 221. <i>Consideration of withdrawal of prosecution or prosecution of less severe crime</i></p> <p>...</p> <p>2. In case of withdrawal by the prosecutor of the whole prosecuting decision, the collegiate bench shall, before rendering of judgment, request the persons participating in the hearing to make statement on the withdrawal.</p> <p>Article 222. <i>Making judgment</i></p> <p>...</p> <p>3. In making judgment, the collegiate bench shall base only on evidences and documents that have been examined at the hearing, taking into full account evidences and statements given by prosecutor, accused person, defense counsel, and other persons participating in the hearing.</p> <p>Article 229. <i>Service of judgment</i></p> <p>...</p> <p>Injured person ... or his/her legal representative has the right to request the court to provide them excerpt of the judgment or a copy thereof.</p>	
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		<p>Article 231. <i>Persons having the right to appeal</i></p> <p>... Injured persons, his/her legal representative ... have the right to appeal against a judgment/decision made by the court of the first instance.</p> <p>Article 249. <i>Modification of judgment of the first instance</i></p> <p>.....</p> <p>3. The court of appeal may, upon request of ... or injured person lodging appeal, increase the amount of compensation for damages.</p>	
4.5.	<i>Access to Information, Advice and Assistance</i>		
	<p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 6. <i>Assistance to and Protection of Victims of Trafficking in Persons</i></p> <p>...</p> <p>2. Each State Parties shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:</p> <p>(a) In formation on relevant court and</p>	<p>- Joint Circular No. 52/TTLT/TP-TC-TCCP-LĐTBXH dated Jan.14, 1998 of the Ministry of Justice, the Ministry of Finance, the Commission of Organization and Personnel of the Government, the Ministry of Labor, Invalids and Social Affairs giving guidance for the implementation of Decision No. 734/TTg dated Sep. 6, 1997 of the Prime Minister on the Establishment of legal aid centers for poor people and peoples enjoying preferential policy:</p> <p><i>1. Subjects eligible for free legal aid</i></p>	<p>Trafficked victim is a category of persons to be given free legal aid at Legal Aid Centers. However, due to the fact that this issue has not yet been stipulated in any legal normative document, there could be cases that trafficked victims, who do not have enough financial resources to hire a lawyer to protect their legitimate rights and interests in legal proceedings, are not aware of their right to free legal aid. This reduces the chance of trafficked victims to be legally protected.</p>

	<p>administrative proceedings;</p> <p>(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.</p>	<p>The following persons are eligible for free legal aid:</p> <p>a) Poor people ...</p> <p>b) peoples enjoying preferential policy including:</p> <ul style="list-style-type: none"> -people who have rendered great service to the revolutions... - minority people -Persons who are exempted from paying court fee <p><i>III. Scope and mode of legal aid</i></p> <p><i>Legal Aid Scope:</i></p> <ul style="list-style-type: none"> - answering legal questions; - giving guidance for drafting, and/or giving comments on, documents regarding citizen rights and interests; -giving guidance regarding necessary proceedings, directing to competent agency, providing legal information, ... - directly defending or invite defense counsel to protect their rights and interests at court hearing... 	<p>Therefore, in order to provide better support to trafficked victims, it is necessary to revise Joint circular No. 52/TTLT/TP-TC-TCCP-LDTBXH dated January 14, 1998 of the Ministry of Justice, Ministry of Finance, Committee for Government Organization and Personnel and Ministry of Labor, Invalids and Social Affairs guiding the implementation of Decision No. 734/TTg dated September 6, 1997 of the Prime Minister on the Establishment of Organization Providing Legal Aid to the Poor and People Enjoying Preferential Policies to include the trafficked victim as a category of persons to be given free legal aid. The Ministry of Justice that is the body in charge of legal aid affairs should issue a circular on providing legal aid for trafficked victims so that they may be provided with the following information: contact information for support organizations; information about the type of support they can obtain (shelter, counseling, physical protection, etc.); information about measures to protect their privacy and ensure their safety; their role in</p>
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		<p>- The Criminal Procedure Code</p> <p><i>Article 24. Spoken and written language used in criminal proceedings</i></p> <p>Spoken and written language used in criminal proceedings is Vietnamese. Persons conducting and participating in criminal proceedings shall have the right to use spoken and written language of their nation. In this case, an interpreter shall be caused to interpreter or translate.</p> <p><i>Article 59. Defense counsel of interested person.</i></p> <p>1. The injured person ... shall have the right to retain lawyer, peoples advocate or other person accepted by the investigating bodies, procuracy, or court to protect their rights and interests.</p> <p>2. Defense counsel of the interested party may participate in proceedings from the time at which the case has been instituted against the defendant.</p> <p>3. Defense counsel of the interested party shall have the right to:</p> <p>a) Present materials and objects; make requests</p> <p>b) Read, write down, and copy dossier</p>	<p>connection with criminal proceedings, especially their rights and duties; procedures for obtaining protection, right to compensation etc.</p> <p>For a better protection and participation of trafficked victims in criminal proceedings, it should be clarified through a circular that law enforcement officials have an obligation to provide victims with information and assistance at the earliest available opportunity, and to refer them immediately to a government or community agencies that can provide assistance.</p>
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		<p>documents related to the protection of the interested persons after completion of investigation according to law;</p> <p>c) Participate in interrogating and arguing sessions in court hearing; look at court hearing minutes;</p> <p>d) Make complaints against decisions/actions of bodies/officers conducting criminal proceedings. Defense counsel of the injured person... shall have the right to request for alteration of persons conducting proceedings, expert, interpreter according to provisions of this Code.</p> <p>With regard to interested persons who are juveniles or person who suffered from physical or mental defects, their defense counsel shall have the right to appear when investigating body obtain statements of the person whom the counsel represents; file an appeal against a part of the judgment related to the rights or obligations of the person whom the counsel represents.</p> <p>4. Defense counsel of the interested persons shall have duty to:</p> <p>a) Applying all legitimate means to contribute to find the truth of the case;</p> <p>b) Assist the interested persons on legal</p>	
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		matters to protect his/her rights and interests.	
4.6.	<i>Victim-sensitive Investigation and Trial</i>		
	<p>United Nations Convention against Transnational Organized Crime</p> <p>Article 24. <i>Protection of Witness</i></p> <p>...</p> <p>2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:</p> <p>...</p> <p>(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.</p> <p>Article 25. <i>Assistance to and protection of victims</i></p> <p>...</p> <p>3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered</p>	<p>The Penal Procedure Code</p> <p>Article 18. <i>Public hearing</i></p> <p>(See section 4.3. above)</p> <p>Article 51. <i>Injured person</i></p> <p>(See session 4.4. above)</p> <p>Article 133. <i>Summons of witness</i></p> <p>.....</p> <p>3. A writ of summons of a witness who is under sixteen years of age shall be delivered to his/her parents or legal representative.</p> <p>Article 135. <i>Obtaining testimony by witness</i></p> <p>.....</p> <p>5. When obtaining testimony of a witness under sixteen years of age, his/her parents, legal representative or teacher shall be invited to attend.</p> <p>Article 137. <i>Summons, obtaining testimony by injured persons ...</i></p> <p>(See section 4.4. above)</p>	<p>Taking into account the vulnerability and limitation of awareness of juveniles, criminal procedure law of Vietnam contains a number of provisions stipulating special procedures in case victims are juveniles. Article 18 of the PPC may be applied to hold close hearing when so requested by juvenile victims or victims of sensitive crimes, such as crimes of trafficking in women and children, sexual crimes, although this is not explicitly stipulated. These provisions, however, are inadequate to fully protect juvenile victims and victims of a number sensitive crimes in criminal proceedings. In the coming time, when issuing regulations giving guidance to the PPC, this matter should be taken into full account in order to strengthen protection of juvenile victims and victims of sensitive crimes. First of all, it is necessary to give guidance for the implementation of Article 18 of the PPC to clearly provide that among other</p>

	<p>at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense.</p>		<p>circumstances, court shall allow close hearing if so requested by juvenile victims (or their parents or legal representative) or victims of some sensitive crimes, including crime of trafficking in women and children, sexual crimes. Secondly, Article 7 section 3 of the PPC regarding protection of victims should be given guidance for implementation so that protective measures shall be provided for in detail to include measures such as separation of victims and defendant/accused person at police station as well as court hearing; when a victim must identify the accused, facilities, such as two-way mirrors, should be in place so that the victim is not seen by or having to confront the accused; at court hearing, victims should be provided the option of providing testimony by special audio or video facilities and without being personally confronted by the accused etc.</p> <p>In the future, it is also necessary to amend the PPC to strengthen protection of sensitive victims. The current PPC provides for special</p>
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			<p>procedures applicable in case defendant/accused person is juvenile, for example officials conducting criminal proceedings in such case must be equipped with necessary knowledge of psychology and educational science; representative of defendant/family, school, social organization has the right and obligation to attend criminal proceedings and court hearing etc. (Chapter XXXII of the PPC). From our point of view, similar procedures should be developed based on a full consideration of the vulnerability of sensitive victims. Promotion of educating and training of investigating officials, prosecutors, judges who deal with juvenile subjects is also needed.</p> <p>Furthermore, consideration should be given to establishing a Victim Support Program to assist juvenile victims and adult victims of sensitive crimes such as crime of trafficking in women and children, sexual crimes etc. at all stage of criminal proceedings. Victim Support Programs are generally staffed by personnel trained as social workers or psychologists. They assist</p>
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			<p>police and prosecutors with many of the witness preparation and consultation functions outlined above. The role of Victim Support Services is to keep victims informed about the progress of their case, familiarize witnesses with the courtroom and the trial process, arrange pre-trial court visits and meetings with the prosecutor, attend the hearing as the victim's support person, and de-brief the victims after his or her testimony. They generally also provide referrals to counseling services, shelters or other support services before and after the trial. In many countries, Victim Support Programs are operated in cooperation with NGOs with experience working with children and women in difficult circumstances.</p>
4.7.	<i>Right to compensation</i>		
	<p>United Nations Convention against Transnational Organized Crime</p> <p>Article 25. <i>Assistance to and protection of victims</i></p> <p>...</p> <p>2. Each State Party shall establish</p>	<p>- The Civil Code</p> <p>Article 609. <i>Liability for compensation of damages</i></p> <p>Any person who intentionally or negligently infringing upon life, health, honor, dignity, reputation, property, other legitimate rights and</p>	<p>In general, the law on enforcement of civil judgment is rather adequate to ensure the right to compensation of trafficked victims. Recently, the Ordinance on Civil Judgment Execution has been thoroughly amended to overcome deficiencies</p>

	<p>appropriate procedures to provide access to compensation and restitution for victims of offenses covered by this Convention.</p> <p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 6. Assistance to and Protection of Victims of Trafficking in Persons</p> <p>...</p> <p>6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.</p>	<p>interests of an individual; infringing honor, reputation, property of a legal entity or other subjects, shall pay compensation for the damages caused by his/her action.</p> <p>Article 612. Compensation for damage caused to property</p> <p>In case where a property has been encroach upon and thereby damage or lost, the compensation thereof shall cover the loss, destruction or damage of the property, and all the benefits relating to the use or exploitation of the property, and the reasonable expenses needed to prevent, to limit, or to rectify the damage.</p> <p>Article 613. Compensation for damage resulting from health injury</p> <p>Damage to be compensated for health injuries shall include:</p> <ol style="list-style-type: none"> 1. Necessary and reasonable expenses incurred to treat, to improve, and restore the injured's health and lost or reduced capacity; 2. The injured loss or decrease of actual income; where injured's actual income fluctuates or cannot be precisely determined, then his/her income shall be calculated on the basis of average income earned by the worker of the same profession, in the same position of 	<p>that used to inhibit the judgment creditors, including trafficked victims, from enjoying their right to compensation. Major amendments include: clearly stipulating issues of local state management with regard to judgment execution work, the competence of the people's committees of all levels with regard to judgment execution work; Secondly, reforming the procedures of judgment execution; providing for judgment execution fees; revising the provisions relating to taking the initiative of issuing the decision of judgment execution and issuing the decision of judgment execution on application as well as to the prescription of judgment execution; supplementing provisions on the adjournment, suspension and temporary suspension of judgment execution, the termination of execution, and the transfer of the judgment-execution rights and obligations; Thirdly, measures of forced judgment execution, which the executors are entitled to apply in the process of execution, are clearly stipulated.</p>
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		<p>those of the injured;</p> <p>3. Necessary and reasonable expenses and loss of the actual income of the person who takes care of the injured during the time of treatment; in case the injured has completely lost the working capacity and therefore needs regular nursing, the damage shall also include the expenses incurred by such nursing, and aliment payment to those persons whom the injured has to make;</p> <p>4. Subject to each specific case the court shall compel a person who commits an act against health of another to pay the injured certain amount of money for mental sufferings the injured has to bear.</p> <p>Article 614. <i>Compensation for damage resulting from death</i></p> <p>Damage to be indemnified in case of the death resulted from health injury shall include:</p> <p>1. Necessary and reasonable costs for treatment and improvement of, and taking care of the decrease before his death;</p> <p>2. Necessary and reasonable funeral costs;</p> <p>3. Aliment payments to the persons who the deceased has to make if he/she is alive.</p> <p>4. Subject to each specific case, the court shall</p>	<p>However, in practice, there are cases where offenders who are judgment debtors are not able to fulfill their obligations of compensating to victims who are judgment creditors. In the future, consideration should be given to setting up a special victims fund to provide compensation for victims where restitution cannot be obtained from the perpetrators. This fund could be supported through property confiscated as proceeds of crimes. It could also be used to assist the State to provide programs and services for victims, including trafficked victims.</p>
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		<p>compel the person who commits an act against the life of another to pay damage certain amount of money to the closest relatives of the deceased for their mental sufferings.</p> <p>Article 615. <i>Compensation of damage caused by the infringement of honor, prestige and dignity</i></p> <p>Damage resulting from infringing upon an individual's honor, prestige and dignity or damage resulting from infringing upon the honor of a legal entity and other subjects shall include:</p> <ol style="list-style-type: none"> 1. Necessary and reasonable costs in order to reduce or to rectify the damage; 2. Loss or decrease of the actual income. 3. Subject to each specific case, in addition to being compelled to cease the infringements, to make public excuses and/or rectification, the court shall compel the person who caused damage by infringing upon the honor, prestige and human dignity to pay the injured certain amount of money for his/her mental sufferings. <p>- The Criminal Procedure Code</p> <p>Article 28. <i>Settlement of civil matter within criminal case</i></p> <p>Settlement of civil matters within criminal case</p>	
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		<p>shall be conducted together with the settlement of the criminal case. In case it is difficult to settle compensating/returning matters at the time of settling criminal case, such issues shall be settled separately according to civil procedure, provided that, such separation shall not affect the settlement of the criminal case.</p> <p>Article 210. <i>Interrogating injured person ... or his/her legal representative ..</i></p> <p>(See session 4.4. above)</p> <p>Article 217. <i>Order of making statements in argument phase of court hearing</i></p> <p>(See section 4.4. above)</p> <p>Article 229. <i>Service of judgment</i></p> <p>(See section 4.4. above)</p> <p>Article 231. <i>Persons having the right to appeal</i></p> <p>(See section 4.4. above)</p> <p>Article 249. <i>Modification of judgment of the first instance</i></p> <p>(See section 4.4. above)</p> <p>- Ordinance on Execution of Civil Judgment</p> <p>Article 18. <i>Service of copy of judgment/decision</i></p>	
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		<p>execution, executor shall fix a time limit of no more than thirty days within which judgment debtor shall voluntarily execute the judgment.</p> <p>Upon the expiry of such time limit, should the judgment debtor does not voluntarily execute the judgment, the executor shall issue decision to apply a mandatory measure provided for in Chapter IV of this Ordinance.</p> <p>2. In case it is necessary prevent the judgment debtor from hiding or destroying his/her property, the executor shall decide to attach the judgment debtor's property.</p> <p>...</p>	
4.8.	<i>Status of Trafficked Victims in Vietnam</i>		
	<p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 7. <i>Status of Victims of Trafficking in Persons in Receiving States</i></p> <p>1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in</p>	<p>- Decree No. 49/CP dated Aug. 15, 1996 of the Government on administrative punishment against violations in the field of social security and order</p> <p>Article 21. <i>Violations of regulations on existing, entering, transiting the country</i></p> <p>(See section 4.1. above).</p> <p>- Ordinance on Entering, Existing the Country, Residing and Traveling in Vietnam by Foreigners</p> <p>Article 16</p>	<p>Vietnam already has legislation according to that deportation of trafficked victims may be postponed so that trafficked victims may remain in Vietnam temporarily in order to participate in the investigation and prosecution of the perpetrators.</p>

	appropriate cases.	<p>1. Foreigners shall be deported from Vietnam in one of the following circumstances:</p> <p>a) Persons who are sentenced to deportation by a competent court of Vietnam;</p> <p>b) Persons who are deported according a decision of deportation issued by the Minister of Public Security.</p> <p>...</p> <p>- Decree No. 21/2001/ND-CP dated May 28, 2001 of the Government providing in detail the Ordinance on Entering, Existing the Country, Residing and Traveling in Vietnam by Foreigners</p> <p>Article 17.</p> <p>The Minister of Public Security has the competence of issuing decision to deport foreigners in the following circumstances:</p> <p>1. Persons who are administratively punished for seriously violating Vietnamese law;</p> <p>2. Persons who commit crimes but are exempted from criminal liability;</p> <p>3. For the reason of protecting the national security and social order and safety.</p> <p>Article 19.</p> <p>The head of the Immigration Department of the</p>	
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5	Repatriation and reintegration		
5.1.	<i>Right of return and repatriation</i>		
	<p><i>The subjects shall be repatriated.</i></p> <p>Protocol against the smuggling of migrants by land, sea and air</p> <p>Article 18.</p> <p>1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in Article 6 of this Protocol and who is</p>	<p>- Circular No. 747/TTg</p> <p>The conditions to accept the return of the Vietnamese nationals, who had illegal entry to a foreign country but is not permitted for residence by that country is the persons, who are having Vietnamese nationality and not having any other nationality at the same time and before had domicile in Vietnam and has been guaranteed by a social or economic organizations or a person in Vietnam (except</p>	<p>- The subjects of return stipulating by the Protocols are wider than stipulating by Vietnamese provisions, even including the person who had the right of permanent residence in the “departing” country at the time of the entry into the receiving country”.</p> <p>- The Vietnamese provisions stipulate that the returnee shall be guaranteed by a social or economic organizations</p>

	<p>its national or who has the right of permanent residence in its territory at the time of return.</p> <p>2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who ... has the right of permanent residence in its territory at the time of the entry into receiving State in accordance with its domestic law.</p> <p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 8.</p> <p>1. The State Party of which a victim of trafficking in person is national or in which the person had the right of permanent residence at the time of the entry into the territory of receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person ...</p> <p><i>Verifying the record of returnees.</i></p> <p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 8.</p>	<p>the cases of humanity reasons).</p> <p>There is a sponsor by an international organization or the relevant country to guarantee the receiving and reintegrating of the returnee.</p> <p>- Directive 747/TTg (<i>Point b Paragraph 1 Section 1</i>) provides that, when the two countries are cooperated in the matter so “ the</p>	<p>or a person in Vietnam (except the cases of humanity reasons) and the repatriation should be sponsored by an international organization or the relevant country while the Protocols do not stipulate such conditions.</p> <p>- Suitable to respective provision of the Protocol, but more detail provisions are still needed</p>
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	3. At the request of a receiving State Party, a requested party shall without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence at the time of entry into the territory of the receiving State Party.	foreign country send the request attached with necessary personnel information, we verify the record and response to them... The Ministry of Interior shall have the responsibility to verify personnel record of the requested and inform to the Ministry of Foreign Affairs as soon as possible about the result (accept or not accept the return)	
5.2.	<i>Reintegration and Rehabilitation Assistance</i>		
	<i>Issuing travel document for repatriation.</i> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Article 8. 4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party such travel documents or other authorization as may	- Directive No. 747/TTg <i>Section I.</i> 1. ... 2. The Vietnamese consuls or diplomatic representative organs in the foreign country shall issue necessary documents for accepted returnees.	- Suitable to respective provision of the Protocol, but more detail provisions are still needed.

	<p>be necessary to enable the person to travel to and re-enter its territory.</p> <p><i>Reintegration of victims:</i></p> <p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</p> <p>Article 6.</p> <p>3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons...in particular, the provision of :</p> <p>a) Appropriate housing;</p> <p>b) Counseling and information, in particular as regards their legal rights ...</p> <p>c) Medical, psychological and material assistance and</p> <p>d) Employment, educational and training opportunity.</p> <p>4. Each State Party shall take into account, in applying the provisions of this article, the age, gender ... and special needs of children</p>	<p>- Directive No. 766/TTg dated 17/9/11997 by the Prime Minister on Assignments of Tasks to implements measures to prevent illegal taking women and children abroad</p> <p>3. The Ministry of Labor, Invalid and Social affairs shall have responsibility to establish a Program on vocational training and job providing for returned women and children of trafficking; taking victims of sexual diseases into educational and treatment centers.</p> <p>4. The Ministry of Planning and Investment and Ministry of Finance shall have responsibility to provide budget for rehabilitation of these persons to the society.</p> <p>- Decision No. 151/QĐ/TTg dated 28/12/ 2000 by the Prime Minister on Approval of the action plan for prevention and suppression of prostitution for the period 2001-2005 stipulates: “the people’s committees of all levels shall have responsibility ... to establish and manage the centers of treatment, education, job’s creation and rehabilitation of prostitutes”.</p> <p>- Program to prevent children from dignity, honor and sexual infringement, especially</p>	<p>- Vietnamese policy on reintegration is suitable to the spirit of the Protocols, however, there is a lack of addressed provisions.</p> <p>- The Protocol against the Trafficking in persons recommends the State Parties shall consider the provision of appropriate housing for victims, but Vietnamese laws are keeping silent about this.</p>
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		<p>for commercial purpose passing along with the Decision No. 1101/2000/QĐ/BLĐTBXH dated October, 25th, 2000 by the Ministry of Labor, Invalid and Social affairs provides one of activities of the Program is to establish reintegration program for children's victims of sexual infringement : "to put reintegration plan along with job's and economic programs as well as with the program of eliminating and decreasing poverty. Setting up and implementing policy and mechanism on financial support by the State for job's creating...To enlarge different forms of vocational training suitable for child victims...To create jobs, financial supporting to child victims and giving them conditions to reintegrate in the society...To establish and supplement the policy of medical and health care for victims of dignity and sexual infringement. To strengthen the system of social establishments managed by the labor, invalid and social branch. To receive for treatment the victims of prostitution and trafficking in children for prostitution. Providing counseling on social, psychological and other matters for child victims".</p>	
7	prevention on trafficking in persons, especially women and children		

7.1.	<i>Overall</i>		
	<p>- United Nations Convention against Transnational Organized Crime</p> <p>Article 31. <i>Prevention</i></p> <p>1. States Parties shall endeavor to develop and evaluate national projects and to establish and promote best practices and policies aims at the prevention of transnational organized crime.</p> <p>5. States Parties shall endeavor to promote public awareness regarding the existence. causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.</p> <p>- Protocol against smuggling of migrants by land, sea and air:</p> <p>Article 15</p> <p>1. Each State party shall take measures to ensure that it provides or strengthens information programs to increase public awareness of the fact that the conduct set forth in Article 6 of this Protocol is a</p>	<p>- General provisions:</p> <p>The Constitution 1992 (amended in 2001 by the Solution No. 51-2001-QH10 dated 25 December, 2001):</p> <p>+ <i>General provisions:</i> Article 35, 36 (education development); Article 40 (Protection and care of mothers and children).</p> <p>+ <i>Basic rights of citizens:</i> Article 52 (equality before law); 55 (labor and occupation); 56(policies and regulation of labor insurance); 57 (freedom of business); 58(legal personal ownership); 59 (right of study); 61 (right of enjoining medical treatment); 62, 73 (rights of accommodation, imprescriptibly rights of accommodation, post, telephone); 63 (equal gender); 64(marriage and family); 65(protection, look after and education); 66 (policies to youth); 67 (social supports, policies of priorities to awaraders); 68(rights of travel, resident); 69(rights of freedom of speech, press, information, meeting, protest, forming association); 70(right of freedom of religion); 71(imprescriptibly rights of body, life, health, dignity and honor); 74(right of denunciation and complaint); ...</p> <p>- Legal provisions on Apparatus of</p>	<p>The Constitution 1992 provide comprehensively and fully on human rights in correspond with international laws and meet requirements of TOC Convention and three supplement protocols. However, concretization of these provisions in the Constitution 1992 into a system of normative legal documents that satisfy united and synchronous requirements in becoming a really issue.</p>

	<p>criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.</p> <p>3. Each State Party shall promote or strengthen, as appropriate, development programs and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as property and underdevelopment.</p> <p>- Protocol to prevent, suppress and punish trafficking in persons, especially women and children</p> <p>Article 9.</p> <p>4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking such as poverty, underdevelopment and lack of equal opportunity.</p>	<p>agencies for prevention and suppression of trafficking in persons</p> <ul style="list-style-type: none"> + Constitution 1992 (amended); + Law on Organization of the National Assembly + Law on Organization of Government; + Law on People's Courts; + Law on Organization of People's Procuracies + Directive No. 766/TTg dated 17 September, 1997. 	
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	5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation to discourage the demand that foster all forms of exploitation of persons, especially women and children that leads to trafficking.		
7.2.		<i>Legal provisions in Civil law</i>	
		<p>The Civil Code 1985</p> <p>- To women:</p> <p>+ Rights of personal profile : Chapter II section 2 of Civil Code from Article 26 to 47.</p> <p>+ Resident, birth dead and marriage: Chapter II section 3, 4 of Civil Code from Article 48 to 53 and from Article 54 to 66.</p> <p>+ Guardian: Chapter II Section 5 of the Civil Code, from Article 67 to 83.</p> <p>+ Role of women in household: Chapter IV section 1 from Article 116 to 119.</p> <p>+ Women's ownership: Part II chapter IV section 4 from Article 220 to 222; section 7 Article 233 on spouse's ownership.</p> <p>+ Role of women in contractive relations: From Article 394 to 403; from Article 324 to 331; from</p>	<p>The Civil Code 1985 has been taken into account for amendment and supplements. Up to now, many provisions of the Civil Code are not suitable to socio-economic conditions. Some provisions in the Code are contradictory and overlapped to other laws. For example: Law on land; Law on protection of health community; Law on marriage and family. In addition to this, some provisions themselves in the Civil Code are not enough concrete to apply in reality.</p>

		<p>Article 363 to 367; from Article 376 to 379; from Article 308 to 314.</p> <p>+ Protection of women' interests in case their life, health, dignity, honor, reputation, properties and other legal interests to be harmed: from Article 609 to 624.</p> <p>+Right of Inheritance: Part IV chapter I Article 635 on equal right of personal inheritance, Articles of 680, 681, 682, 683.</p> <p>+ Rights of intellectual property: from Article 745 to 747; from Article 750 to 760; from Article 762 to 766; from Article 780 to 781; from Article 788 to 793; from Article 796 to 800.</p> <p>- To the children:</p> <p>+ Basic principles: Article 4</p> <p>+ Legal Civil Ability and Legal civil ability of actions by juvenile: from Article 16 to 23.</p> <p>+ Rights of personal profile: from Article 26 to 50.</p> <p>+ Birth, dead and marriage: from Article 54 to 66.</p> <p>+ Guardian: from Article 67 to 83.</p> <p>+ Civil transactions taken by juvenile: Article 140.</p> <p>+ Issue of representative: Article 150, 152.</p>	
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		<p>+ Property and ownership related to juvenile: Article 611, 616, 625.</p> <p>+ Inheritance: (Including general provisions, inheritance on will, legal inheritance, payment and partition of inherit property. Article 638, 650, 655, 672, 679, 680, 681, 682, 688.</p>	
7.3.		<i>Legal provisions in Labor law</i>	
		<p>- General policies on labor: Labor Code 1994 and the Law on amendment, supplement of some articles of the Labour Code and its normative legal documents for instructive implementation.</p> <p>- Training and vocational education: + Decree No. 90/CP dated on 15th December, 1995 on training, vocational education.</p> <p>- Works, employment, dismissal, salary: + Circular No. 09/TT/LB dated on 29th August, 1986 on list of forbidden works to use women labor force.</p> <p>- Elimination of hunger and alleviation of poverty: + Instructive No 23/CP dated on 29th November, 1997 on implementing elimination of hunger and alleviation of poverty;</p>	<p>Many provisions in laws related to education need to be considered for amendment and supplements. In fact, the Law on education and the law on protection, care and education of children have been considering for amendments and supplements so that they can be suitable to socio-economic conditions in present period and more suitable to international laws in tendency of integrating into international community.</p>

		<p>+ Decision No. 143/2001/QD-TTg dated on 27th September, 2001 entitled “<i>National Programme and Objectives on elimination of hunger and alleviation of poverty and jobs in period of 2001-2005</i>”;</p> <p>+ Inter- Solution between Central United Women Organization and Ministry of Agriculture and Rural Development No. 47/2000/NQLT/LHPNVN/BNN dated on 25th April, 2000 on supporting women in rural area to develop their production and improve their quality of life.</p> <p>+ Decision No. 186/2001/QD-TTg dated on 7th December, 2001 on socio-economic development in 6 special difficult provinces of Northern mountainous areas in period of 2001-2005;</p> <p>+ Decision No. 132/QD-TTg dated on 24th November, 2001 on some encouraging policies for development of rural vocation.</p> <p>+ Directive No. 24/2001/CT-TTg dated on 4th October, 2001 on speeding up mobilization of “Day for the poor”.</p> <p>+ Decision No. 71/2001/QD-TTg dated on 4th May, 2001 on National Programs and Objectives in period of 2001-2005.</p>	
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7.4.		<i>Legal provisions in law on education</i>	
		<ul style="list-style-type: none"> - Law on education dated on 2nd August, 1998; - Law on protection, care and education of children dated on 12th August, 1991; - Decree No. 374/HDBT dated on 14th November, 1991; - Law on compulsory primary level dated on 12th August, 1991; - Decree No. 338/HDBT dated 26 October, 1991. 	<p>Laws on labor strictly relate to rights of labourers, especially women and children, they also really concerned with issues of prevention setting out in the TOC Convention and three supplements Protocols. Generally, this legal system in the field is quite various and comprehensive but rather separate . Therefore, it need to be systemize for application easier.</p>
7.5.		<i>Legal provisions in law on medical care and health community:</i>	
		<ul style="list-style-type: none"> - Law on protection of health community dated on 30th September, 1989; - Decree No. 23/HDBT dated on 24th January, 1991 issuing 5 Regulations to implement implementation of the Law (Sanitation; examining and treating medically by traditional one; preventive and treating medicine; examining and treating and function recovery; health inspection). - Ordinance on prevention and against HIV/AIDS infection dated on 31st May, 1995; - Ordinance on carrying on private health and medicine dated on 25th February, 2003; 	<p>Law on protection of health community 1989 are having many inadequate and insufficient after over 10 years of implementation: many provisions must be amended and supplied. A lot of provisions in this law in form of principles, therefore, they need to be guided by a big number of normative legal instructive documents. Many provisions in the law only can be applied after referring to many other normative legal documents. Beside this, amendments, supplements and promulgation of normative legal</p>

		<ul style="list-style-type: none"> - Decree No.103/2003/ND-CP dated on 12th September, 2003 for its implementation. - Normative legal documents related to disable persons. - Normative legal documents related to victims of chemical poison. - Normative legal documents related to the elderly. 	documents drafted by inter-ministries have been carrying out slowly, therefore, they do not satisfy factual requirements: fees, charges, medical insurance. Many legal provisions of other laws are overlapped and contradictory to the law on protection of health community , therefore, they can not be applied. For example: Article 31 of the law on protection of health community and Article 32 paragraph 5 of the Civil Code.)
7.6.		<i>Legal provisions in law on social security and law on protection of women and children from social evils as prostitution and drugs:</i>	
		<ul style="list-style-type: none"> - Law on prevention and against drugs dated on 2000; - The solution No.06/2003/NQ-QH11 on model implementation of organization, vocational training and providing drug users after detoxification with jobs in HCM City and others. - Decree No. 103/2002/ND-CP dated on 17 December, 2002 on compensation and allowance to persons and families, agencies and organizations participating who are to be harmed on life, health and property in prevention and against drugs. - Decision No. 133/2002/QD-TTg dated on 9th 	Legal provisions on social security, and protection of women and children from drugs and prostitution are stipulated in many normative legal documents, including management documents and settlement documents. However, in this field, provisions related to rights of women and children have not been manifested clearly. Mainly, these legal provisions setting out legal rules of state managements for everybody based on social groups, not in genders or especially for

		<p>October, 2002 issuing Regulation on collaboration between Polices and Border Army Force, Marine Police and Custom agencies in prevention and against drug crimes in location of borders, entry and on the sea.</p> <ul style="list-style-type: none"> - Decree No. 56/2002/ND-CP dated on 15th May, 2002 on organization of drug detoxification at families and community. - Ordinance on prevention and against prostitution dated on 17th march, 2003; - The Solution No. 05/CP; - Directive No. 25/2003/CT-TTg dated on 21 November, 2003 on organization of implementation of the Ordinance on prevention and against prostitution; - Law on road transportation; - Law on aviation; - Ordinance on administrative penalties dated on 12th June, 2002; - Normative legal documents related to administrative penalties issued by the Government and ministries: (See Part III of the Report) such as: <p>+ Decree No. 49/CP dated on 15th August, 1996 on administrative penalties in social security;</p>	juvenile.
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		<ul style="list-style-type: none"> + Decree No. 15/2003/ND-CP on administrative penalties in road transportation; + Decree No. 40/CP dated on 5th June, 1996 on administrative penalties in domestic waterways; + Decree No. 92/1999/ND-CP dated on 4th September, 1999 on administrative penalties in sea transportation; + Decree No. 39/CP dated on 5th June, 1996 on administrative penalties in railway transportation; + Decree No.1/2001/ND-CP dated on 4th February on administrative penalties in aviation; + Decree No. 31/2001/ND-CP dated on 26th June, 2001 on administrative penalties in culture and information; + Normative legal documents related to issues of State management of inns, hotels and related to requirements of security and social order. 	
7.7.		<i>Legal provisions in law on family and marriage:</i>	
		<ul style="list-style-type: none"> - Law on marriage and family 2000; - Some normative legal documents for instructive implementation of the Law: 	In general, Legal provisions on marriage and family stipulate comprehensively direct issues related to rights of women and children.

		<p>+ Decree No. 70/2001/ND-CP dated on 3rd October, 2001 on concrete instruction of implementation of the Law;</p> <p>+ Decree No. 32/2002/ND-CP dated on 27th May, 2002 on application of the Law to ethnic people;</p> <p>+ Decree No. 12/2003/ND-CP dated on 12 February, 2003 on confinement in scientific method.</p> <p>- Registration of birth, dead and marriage:</p> <p>+ Decree No.83/1998/ND - CP dated on 10th October, 1998 on registration of birth, dated and marriage;</p> <p>- Adoption and adoption related to international factor:</p> <p>+ Decree No.68/2002/ND-CP dated on 10th June, 2002 on marriage relations with international factors;</p> <p>+ Circular No. 07/2002/TT-BTP dated on 16th December, 2002 ;</p> <p><i>Protection of regulations on marriage and family:</i></p> <p>+ Decree No. 87/2001/ND-CP dated on 21st November, 2001 on administrative penalties in field of marriage and family.</p>	<p>Issues of marriage, adoption, maintains for children and spouse after divorce ...have been provided concretely, comprehensively based on spirit of human being and quite suitable to international laws on protection of women and children's rights. However, problems of implementation in reality have been arisen.</p>
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