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HITTING THE BRAKES ON CHILD TRAFFICKING:
AN ANALYSIS OF ANTI-TRAFFICKING
LEGISLATION IN VIET NAM

LINH K. DAI*

INTRODUCTION

- I. BACKGROUND AND CONTEXT ON CHILD TRAFFICKING IN VIET NAM
 - A. *The Economics of Child Exploitation*
 - B. *Social Conditions*
 - C. *The Case History of “Kim”*
 - D. *The Child Prostitution Situation*
 - E. *Health Problems*
 - F. *Children and Their “Owners”*
 - G. *Tradition and the Child Sex Trade*
 - II. VIETNAMESE GOVERNMENT EFFORTS
 - A. *The Constitution*
 - B. *Trafficking Legislation*
 - C. *Local Initiatives*
 - 1. *Shortcomings of Viet Nam’s Legal Program*
 - 2. *Political and Judicial System (Prosecution)*
 - 3. *Government Corruption and Transparency*
 - III. INTERNATIONAL EFFORTS
 - A. *The International Front*
 - B. *Regional Initiatives*
 - C. *The Responses of UNICEF and Other Non-Profit Organizations*
 - D. *Rescue, Recovery, and Reintegration*
 - IV. U.S. EFFORTS
 - V. RECOMMENDATIONS
- CONCLUSION

INTRODUCTION

Trafficking in persons is a human rights issue that has gained significantly more recognition and prominence in the past decade,

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especially in Southeast Asia.¹ It is increasingly being covered in the media, is recognized as an issue by the general public, and has become a real concern of governments and civil society actors throughout the world.² In spite of the increased prominence of the issue, there is limited concrete and verifiable information about the phenomenon.³

The crime of trafficking in persons has been under-reported, under-recorded, and under-legislated.⁴ There has been a remarkable growth in the reporting and discussion of trafficking over the past decade by academics, and these organizations such as: IOM, NGOs, UNICEF, UNESCO, ILO, OSCE, EC, UNHCR, UNODC, and some governments, however much still needs to be done.⁵ The scarcity of data, the neglect in reporting, the lack of resources, the laxity of international and national legislation, and economic trade-offs between public enforcement and private sector laissez faire have all contributed to the growth of a new thriving business.⁶ Human trafficking is now a high profit–low risk venture for the traffickers.⁷

Viet Nam can be regarded as a liberal society. However, when it comes to sexual behavior, talking, or writing about sexuality, it is a very different matter.⁸ Sex education has been limited because of Viet Nam's traditional bias against the public mention of anything sexual.⁹ Thus, one needs to be sensitive to Viet Nam's culture. It can be an inherently dangerous activity for those who investigate in the field because one may be attacked for asking too many questions about child prostitution, as the sex trafficking industry is notoriously corrupt.¹⁰ Altogether, it is a dangerous task for anyone who

1. ANNUSKA DERKS, *COMBATING TRAFFICKING IN SOUTH-EAST ASIA: A REVIEW OF POLICY AND PROGRAMME RESPONSES* 16 (Int'l Off. of Migration 2000), https://publications.iom.int/system/files/pdf/mrs_2_2000.pdf [<https://perma.cc/AT9X-TEXU>]; PANUDDA BOONPALA & JUNE KANE, INT'L LAB. ORG., *UNBEARABLE TO THE HUMAN HEART: CHILD TRAFFICKING AND ACTION TO ELIMINATE IT* 18 (2002).

2. See SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 4 (2009).

3. LE BACH DUONG, INT'L LAB. ORG., *VIET NAM: CHILDREN IN PROSTITUTION IN HANOI, HAI PHONG, HO CHI MINH CITY AND CAN THO: A RAPID ASSESSMENT*, 2 (2002).

4. ALEXIS A. ARONOWITZ, *HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS* 15 (2009).

5. See KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* (2nd ed.) (2004).

6. KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY* 7 (2010).

7. See *id.*

8. Mai Do & Hongyun Fu, *Attitudes Toward Premarital Sex in Contemporary Vietnam: Findings from a National Survey*, 22 INT'L J. SEXUAL HEALTH 103, 103 (2010).

9. Thang Trinh, Allan Stecker, Anh Ngo & Eric Ratliff, *Parent Communication About Sexual Issues with Adolescents in Vietnam: Content, Contexts, and Barriers*, 9 SEX EDUC. 371, 372 (2009).

10. UNICEF, *CHILDREN ON THE EDGE: PROTECTING CHILDREN FROM SEXUAL*

tries to discuss or investigate the commercial sexual exploitation of children.

Finally, discussing the sexual exploitation of children can be an imprecise task because it is hard to tell whether the information one receives is accurate or not.¹¹ The lack of reliable information results partly from the secrecy of the government of Viet Nam on the trafficking problem, and partly from the tendency of scholars to focus on other recent human rights abuses such as the oppression of religious freedom within the country.¹² Although there are numerous studies on the trafficking of women and children for prostitution in Southeast Asia,¹³ very little has been written about trafficking in Viet Nam.

Viet Nam is considered a country of origin for child sex trafficking, especially to Thailand, Cambodia, and China, all significant destinations for child sex tourism, a form of prostitution.¹⁴ Despite existing laws and policies in Viet Nam and elsewhere in Southeast Asia, child trafficking operations in the region have flourished.¹⁵ Viet Nam has been characterized as a country whose “[g]overnment . . . does not fully meet the [Trafficking Victims Protection Act’s] minimum standards for the elimination of trafficking but is making significant efforts to do so.”¹⁶ Viet Nam has demonstrated its commitment to preventing human trafficking, both within and without its borders.¹⁷ It has done so by amending its laws, ratifying international treaties, and cooperating with regional anti-trafficking initiatives.¹⁸ However, the government of Viet Nam should undertake additional legislative reforms to fully comply with all applicable international human rights standards and anti-trafficking initiatives.

This Article seeks to examine Viet Nam’s trafficking problem both within the context of Viet Nam’s child sex trafficking patterns and

EXPLOITATION AND TRAFFICKING IN EAST ASIA & THE PACIFIC 4, 30 (2000) [hereinafter CHILDREN ON THE EDGE].

11. DUONG, *supra* note 3, at 2.

12. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 535 (2020) [hereinafter TIP REPORT 2020]; *see also* Letter from Brad Adams, Asia Director, Human Rights Watch, to Condoleezza Rice, U.S. Secretary of State (Feb. 28, 2005), <http://hrw.org/english/docs/2005/02/28/vietna10217.htm> [<https://perma.cc/4ENF-E589>]; Vietnam: New Documents Reveal Escalating Repression—A Human Rights Watch Briefing Paper (Apr. 2003), <http://www.hrw.org/background/asia/vietnam/montagnards> [<https://perma.cc/4MY6-C6U6>].

13. DERKS, *supra* note 1.

14. CHILDREN ON THE EDGE, *supra* note 10, at 4.

15. Charles Tucker, Kari Kammel, Heather Lehman & Elisabeth Ward, *An Analysis of Human Trafficking for Sexual Exploitation in Vietnam and a Comprehensive Approach to Combating the Problem*, 16 UC DAVIS INT’L J. L. POL’Y 437, 440 (2010).

16. *See* U.S. DEP’T. OF STATE, TRAFFICKING IN PERSONS REPORT 498 (2019) [hereinafter TIP REPORT 2019].

17. *Id.*

18. *Id.*

Viet Nam's cultural, economic, and political environment. The Introduction reviews the current problem and describes child trafficking in Viet Nam. The first part examines the Vietnamese government's effort to prevent, protect, and prosecute against child traffickers. It will concentrate on the implementation of national laws as mandated by international law and the likelihood of success of criminal prosecution in Viet Nam. The second part will focus on the impact of international efforts to rescue, rehabilitate, and reintegrate exploited children. The third part examines the impact of U.S. influence on the evolution of sex trafficking of children within Viet Nam. The last part discusses recommendations to combat child trafficking in Viet Nam.

I. BACKGROUND AND CONTEXT ON CHILD TRAFFICKING IN VIET NAM

The *Tale of Kieu*¹⁹ is a popular Vietnamese classical literary work, written by Nguyen Du in the eighteenth century. It is a long poem that recounts the tragic life of a young girl who was a victim of sex trafficking.²⁰ Lady Kieu piously sold herself as a wife to an unscrupulous scholar for money to secure the release of her father and brother who had been arrested for no reason.²¹ The scholar, a man devoid of virtue, turns out to be the husband of the madam of a brothel, and Kieu is forced into prostitution.²² This turned her into a courtesan, a prostitute associated with men of rank and wealth.²³ For years, she tried to escape her fate, suffering at the hands of men as well as women who competed for the attention of the men.²⁴ The *Tale of Kieu* conveys the "filial piety" Vietnamese society expects of children—the idea that they must be prepared to do anything to repay a moral debt to their parents.²⁵ Although it is sometimes manifested differently today, this tradition remains strong.²⁶ It is therefore not surprising to see that many Vietnamese children today become involved in prostitution and/or later are forced into prostitution, with

19. NGUYEN DU, *THE TALE OF KIEU: A BILINGUAL EDITION* (Huynh Sanh Thong trans., Yale Univ. Press New Haven and London 1973).

20. See John Swensson, *The Tale of Kieu*, DE ANZA COLLEGE, <https://www.deanza.edu/faculty/swenssonjohn/kieu/index.html> [<https://perma.cc/S5KG-FWVD>].

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. See *id.*; DUONG, *supra* note 3, at 3.

26. *Vietnamese Culture*, CULTURAL ATLAS, <https://culturalatlas.sbs.com.au/vietnamese-culture/vietnamese-culture-family> [<https://perma.cc/EW7A-4RXD>].

the sole purpose of helping their families out of poverty.²⁷ However, prostitution has long been severely condemned by society.²⁸

In many ways, the *Tale of Kieu* reflects the experience of countless girls who are exploited for sex. “Today, the trafficking of children is recognized as a distinct and egregious violation of children’s rights, comprising one of the worst forms of child” sexual slavery.²⁹ This is because the sexual exploitation of a child is a traumatic event that will profoundly impact³⁰ his or her life.³¹ Children do not possess the capability to address situations like an adult, and they are more vulnerable to tricks, deception, coercion, fraud, and persuasion.³² While many children around the world are loved and protected by their loved ones, child sex workers in Viet Nam do not attend school or “enjoy[] the innocence of childhood[;]” they “are struggling to cope with the grown-up consequences of their exploitation—AIDS, malnutrition, psychological trauma[,] and sexually transmitted disease.”³³

A. *The Economics of Child Exploitation*

The economic progress of Viet Nam has created many changes and improvements to the lives of Vietnamese people.³⁴ But, when Viet Nam opened herself to the world and received all the advantages of increased trade across the national border, “conditions [became] ripe” for child trafficking and prostitution.³⁵ Many businessmen travel abroad, far from their significant others, creating a demand

27. DUONG, *supra* note 3, at 3.

28. In Viet Nam, the influence of Confucianism has held an important place as part of the cultural environment of the country, which has contributed to the molding of the Vietnamese character. According to the author, the Confucian principle commands children to respect their father and mother and honor their memory, and provide strength, stability, and continuity to the family name. It is a powerful guardian of morality against prostitution and sex trafficking because of the fear of dishonoring the memory of ancestors and their family name.

29. BOONPALA & KANE, *supra* note 1, at XI.

30. LIN LEAN LIM, *THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 170 (Lin Lean Lim ed., 1998). The former United Nations Special Rapporteur to the Commission on Human Rights, on the Sale of Children, Child Prostitution and Child Pornography stated:

I do not pass judgement on the pros and cons of adult prostitution. However, child prostitution is inadmissible—it is tantamount to exploitation and victimization of the child because it undermines the child development. It is detrimental to the child both physically and emotionally, and is in breach of the child’s rights.

31. *Id.*

32. *Id.*

33. CHILDREN ON THE EDGE, *supra* note 10, at 3.

34. *Id.* at 4.

35. *Id.* at 5.

for prostitution.³⁶ Then there was the financial crisis of 1997, which exacerbated and further divided the rich from the poor.³⁷ While the main cities rapidly developed, the rural and urban areas were left behind.³⁸ The economy grew and all the prices of goods also increased, but the return for agricultural work was stagnant.³⁹ Yet, Viet Nam is flooded with consumer goods, all of which are very tempting and have led to a rise in consumerism in Viet Nam.⁴⁰ Modernization and economic growth have changed everything.⁴¹ Demands for new consumer goods are high as families try to climb into the ranks of prosperity—the cost of participation can be met by selling children for sex.⁴²

There are many underlying causes of child exploitation. The major cause of exploitation in Viet Nam is poverty.⁴³ As unstable economic development expands, it creates a wider gap between the rich and the poor, and between the rural areas and the city.⁴⁴ Other underlying causes for child exploitation are lack of vocational opportunities, insufficient and/or inaccessible schooling, inadequate or non-existent protective legislation, and poor law enforcement.⁴⁵ Also, families and children's lack of knowledge of the risk involved in trafficking fuels the industry.⁴⁶ Many chains of child trafficking have been detected and destroyed in recent years; however, other leaders appear and new trafficking chains are formed.⁴⁷ The traffickers, pimps, and brothel owners have been blinded by the green of foreign currency.

B. Social Conditions

Child trafficking into prostitution exists in Viet Nam, and the problem is getting worse. It is an epidemic that requires the undivided attention of both Viet Nam and the international community.

36. *Id.* at 4.

37. *Id.* at 5.

38. See DUONG, *supra* note 3, at 13 (“New disparities are also appearing between rural and urban areas”).

39. *Id.*

40. *Id.* at 3.

41. See KARA, *supra* note 2 (“Sex trafficking is one of the ugliest contemporary actualizations of global capitalism”).

42. *Id.* at 8, 168.

43. See *id.* at 168; DUONG, *supra* note 3, at 3.

44. DUONG, *supra* note 3, at 3.

45. *Id.* at 16.

46. See *id.* (Life experience and social association are considered individual level risks that make children vulnerable to trafficking).

47. Alisa Tang, *Trafficking of Vietnamese women for sex and marriage expands across region: expert*, REUTERS (May 18, 2016), <https://www.reuters.com/article/us-vietnam-human-trafficking/trafficking-of-vietnamese-women-for-sex-and-marriage-expands-across-region-expert-idUSKCN0Y9180> [http://perma.cc/5CW4-K75K].

In 2005, thousands of Vietnamese children were sent abroad, bought, and sold as prostitutes and sex workers.⁴⁸ The majority of these children come from the rural areas of Viet Nam.⁴⁹ Many are hoping to escape poverty and oppression when someone tricks, coerces, or misleads them into prostitution.⁵⁰ For some children, it is their families who sell them into the multibillion-dollar commercial sex industry.⁵¹ They are often taken to Cambodia, China, Hong Kong, Macau, Malaysia, Taiwan, Thailand, Laos, and/or Saudi Arabia,⁵² and forced to work off their debt. Too often, local, state, and national governments do little, if anything, to protect victims.⁵³ The trafficking of children into the world for sexual exploitation brings to our attention the systematic human rights violations that children experience and provides a global context to help us try to understand what happened to countless children. Many Vietnamese children were trafficked domestically, whereas others were trafficked across the border to foreign countries for the purpose of prostitution.⁵⁴ Non-Government Organizations (NGOs) estimate that the average age of victims is around nineteen years of age.⁵⁵ However, some reports indicate that the ages of the girls sent to neighboring countries is even lower,⁵⁶ but the number is unknown. There are countless stories of many children who were victims of trafficking that were much younger than fifteen.⁵⁷

48. HumanTrafficking.org, 6,000 VIETNAMESE WOMEN, CHILDREN TRAFFICKED ABROAD IN 2005 (2005); *6,000 Vietnamese Women, Children Trafficked Abroad in 2005*, PEOPLE DAILY ONLINE [hereinafter PEOPLE DAILY], http://english.people.com.cn/200603/08/eng20060308_248806.html [<https://perma.cc/J748-AUVL>].

49. DUONG, *supra* note 3, at 3.

50. *Id.*

51. *See id.* at 38.

My parents forced me . . . I wanted to help them and my sisters and my brothers. . . . But I am sad since they did not care much about what I feel and went through. . . . Once I wanted to have a few days off because I was so sick, they did not allow me. They yelled at me as if I was a lazy girl so that I had to go and work on the street again.

Id. at 35 (quoting Nhu Trang, 15 years old. Ho Chi Minh City (May 20, 2000)).

52. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 607 (2021) [hereinafter TIP REPORT 2021].

53. TRAFFICKING IN HUMANS: SOCIAL, CULTURAL AND POLITIC DIMENSIONS 103 (Sally Cameron & Edward Newman, eds. 2008) [hereinafter Cameron & Newman].

54. U.S. DEP'T OF STATE, VIETNAM: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2019 COUNTRY REPORT 501 [hereinafter COUNTRY REPORTS], <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/vietnam> [<https://perma.cc/WP5N-S5AQ>].

55. BLUE DRAGON, HUMAN TRAFFICKING & TRAFFICKERS IN VIETNAM 5 (July 2021).

56. Martin Brass, *The Modern Scourge of Sex Slavery: The Children, the Desperate, the Helpless, the Homeless Fall Victim to the Heartless*, SOLDIER OF FORTUNE MAG. (2003), http://www.military.com/NewContent/0,13190,SOF_0904_Slavery1,00.html.

57. Trang Thi Tong, a twelve-year-old girl, was a victim who was lured, tricked, coerced, and forced to prostitute in a Savy Pak brothel. She was smuggled into Cambodia and she cannot return home unless she can prove her nationality. Also, there are victims

The failure to register the births of children is another dilemma because it makes it impossible to access the ages of children who enter into prostitution.⁵⁸ “Children whose births are not recorded and do not officially exist can easily ‘disappear’ into the sex industry without a trace.”⁵⁹ For those reasons, reliable statistics on the number of children trafficked are not available; however, there is evidence that the number has grown in recent years.⁶⁰ Some researchers estimate that there were about two hundred thousand prostitutes in the country, in all types of prostitution.⁶¹

Children are sent into commercial sex by individual opportunists and informal networks, as well as some by organized groups.⁶² False promises of employment⁶³ as waitresses, nannies, house workers, and factory workers may lure them, but when the children arrive at their destination, they are sold into brothels and held captive, either literally or through a system of debt bondage.⁶⁴ The United Nations International Children’s Emergency Fund (UNICEF) estimates that 41% of child sex workers in Viet Nam were “introduced into the business by a friend or acquaintance.”⁶⁵

Some children may “consent” to work in the sex world,⁶⁶ but are deceived about the work conditions and their freedom to quit at any time.⁶⁷ However, they “consent” not because they want to, but because economic and social circumstances may dictate such courses of action.⁶⁸ When children allow themselves to work in the sex industry, the understanding behind it is that they are not consenting but rather surrendering. Also, many children are kidnapped,⁶⁹ and some children have been sold by their families, often into debt bondage.⁷⁰

of sexual exploitation who are even younger. Shu-valoy Majumdar, co-chair of the Future Group, a Canada-based non-profit organization challenging the child-sex business, met two Vietnamese girls, aged six and eight, while pretending to be in the business of organizing sex trips out of Thailand. Suvadip Das & Supatra Chowdhury, *Cambodia’s Child Sex Trade*, KI-MEDIA (Apr. 5, 2005), <http://ki-media.blogspot.com/2006/05/cambodia-child-sex-trade.html> [<https://perma.cc/MH7L-UMTU>].

58. COUNTRY REPORTS, *supra* note 54, at 31.

59. CHILDREN ON THE EDGE, *supra* note 10, at 6.

60. DUONG, *supra* note 3, at 2.

61. Dien Luong, *Will Vietnam Legalize Prostitution?*, THE DIPLOMAT (Apr. 13, 2016), <https://thediplomat.com/2016/04/will-vietnam-legalize-prostitution> [<https://perma.cc/C489-N4WY>].

62. CHILDREN ON THE EDGE, *supra* note 10, at 5.

63. *Id.*

64. *Id.* at 11.

65. *Id.* at 4.

66. LIM, *supra* note 30, at 174 (arguing “not all child prostitutes, especially teenagers, have been forced.”).

67. See DUONG, *supra* note 3, at xv.

68. LIM, *supra* note 30, at 174.

69. CHILDREN ON THE EDGE, *supra* note 10, at 5.

70. *Id.* at 11.

Although Viet Nam's laws expressly condemn sexual offenses against children, the laws have been relatively ineffective due to poor law enforcement.⁷¹ Despite the obvious inhumanity of child prostitution, some countries like Thailand, Cambodia, and Indonesia have created an international market for child sex tourism.⁷² Most of the consumers are males from industrialized nations.⁷³ Some are simply looking for a casual experimental experience; others are notorious pedophiles, representing a significant sector of the trade.⁷⁴

Because of poverty—resulting from lack of employment opportunities for their parents—many children in Viet Nam are forced to fend for themselves in the adult world.⁷⁵ Unfortunately, a myriad of children, both boys and girls, turn to a life of prostitution.⁷⁶ Although some choose prostitution, others are targeted because of their vulnerability by the traffickers, who use creative and ruthless methods designed to kidnap, trick, fraud, coerce, and win the confidence of potential victims.⁷⁷ Often, children are brought across borders.⁷⁸ The traumatic experiences of these children are so intense that rehabilitation seems almost impossible.⁷⁹ These victims are generally left psychologically as well as physically scarred for life.⁸⁰

C. *The Case History of “Kim”*

Kim, a beautiful twelve-year-old girl from Thot Not, Viet Nam, was rescued from a brothel in Phnom Penh last year.⁸¹ Kim's parents

71. COUNTRY REPORTS, *supra* note 54, at 32.

72. CHRISTINE BEDDOE, C. MICHAEL HALL & CHRIS RYAN, *THE INCIDENCE OF SEXUAL EXPLOITATION OF CHILDREN IN TOURISM* 17 (World Tourism Organization 2001).

73. *Id.* at 50.

74. *Id.* at 51.

75. *See* DUONG, *supra* note 3, at xiv (explaining the dire economic circumstances of many rural Vietnamese families).

76. TIP REPORT 2021, *supra* note 52.

77. *See* TIP REPORT 2019, *supra* note 16, at 8; DUONG, *supra* note 3, at xv.

78. TIP REPORT 2019, *supra* note 16, at 6 (explaining that trafficking can occur within and across borders); BOONPALA & KANE, *supra* note 1, at 10.

79. CHILDREN ON THE EDGE, *supra* note 10, at 24.

80. *Id.*

81. “Kim” refers to a composite story, reflecting the experience of many young Vietnamese girls. *See* Brass, *supra* note 56.

Cambodian policeman escorts 11-year-old Vietnamese girl from brothel in Toul Kork red-light district of Phnom Penh: Six girls from 11–13 years of age were rescued from a brothel that offered only young children. Trafficked from Vietnam, children were rescued during sting operation involving Cambodian Interpol and local police, led by End Child Prostitution, Pornography and Trafficking (ECPAT).

Id. (Caption).

befriended a family relative who, unbeknownst to her parents, was allegedly part of an organized group that trafficked girls from rural Viet Nam to Cambodia for prostitution.⁸² It appears that this relative promised Kim and her parents, and many girls like her, good jobs, better pay in a bigger city, and the advance payment of money.⁸³ To reassure Kim's parents, the relative offered them a chance to accompany their daughter to the establishment, if they wished to see that it was legitimate.⁸⁴ "Of course, in those cases everything had to be rehearsed."⁸⁵ Like many poor people, Kim's parents were in debt; therefore, they allowed her to leave with this relative, believing that their daughter would work as a domestic helper.⁸⁶ This exchange began the process of debt bondage that is used to enslave girls like Kim.⁸⁷ Poverty is one of the major reasons why many parents are in debt;⁸⁸ thus, this contractual arrangement between the relative and parents requires that this money be repaid by Kim's labor before she is free to leave or is allowed to send money home.⁸⁹ Sometimes this money is treated as a loan to the parents, with the girls being both the collateral and the means of repayment.⁹⁰ In such a situation, the "exorbitant interest" charged on the loan and costs such as transportation, health, and living expenses means there is little chance that sexual enslavement will ever repay the debt.⁹¹

Kim was subsequently brought across the border to Cambodia, where her relative promptly deprived her of her identity papers.⁹² Like Kim, many children find themselves deprived of identity papers and then forced and sometimes beaten into working as prostitutes.⁹³ "I did not want to go with those men, but being beaten was worse."⁹⁴ The relative then sold Kim's virginity for 600 U.S. dollars.⁹⁵ For that

82. See BEDDOE, HALL & RYAN, *supra* note 72, at 39.

83. DUONG, *supra* note 3, at 43.

84. *See id.* at 42.

85. *Id.*

86. *See* LIM, *supra* note 30, at 180.

87. *Id.* at 181 (parents often "receive advance payments" from brothel owners).

88. *Id.* (this practice is common in poor villages).

89. *Id.*

90. *Id.*

91. ARONOWITZ, *supra* note 4, at 42–43.

92. *See* BOONPALA & KANE, *supra* note 1, at 10.

93. TIP REPORT 2021, *supra* note 52, at 24.

94. *Children for Sale: Dateline goes Undercover with a Human Rights Group to Expose Sex Trafficking in Cambodia*, NBC (Jan. 23, 2004, 9:22 PM) [hereinafter NBC], <https://www.nbcnews.com/id/wbna4038249> [<https://perma.cc/Y6FF-H4CU>] (reporting on the illegal sex industry that victimizes Cambodian children, and the efforts to stop it).

95. *Id.*

price, “a middle-aged Chinese” businessman⁹⁶ could keep Kim for up to three days.⁹⁷ Like many rural Vietnamese people, Kim had a sheltered childhood and she was ignorant of what it meant to work in a brothel.⁹⁸ Her first customer hurt her, and at the first opportunity, she ran away.⁹⁹ On the street with no money and no travel documents, she was quickly caught, dragged back, locked in a room, beaten, and starved for three days.¹⁰⁰ Others are sexually abused, drugged, and their lives, and the lives of their family members left behind, are threatened.¹⁰¹ Kim and many Vietnamese children are extremely vulnerable due to the separation from their environment and the isolation of illegal circumstances in foreign places where they are treated poorly and incapable of asserting their rights.¹⁰² Even if the escape was a success, Kim’s possibility of returning home was minimal because of her inability to speak the language or understand the foreign system—in addition to the fear of stigmatization after her return.¹⁰³ Everyone knows what happened to Kim and why, but her rescue continues to have no effect on the governments of both countries.¹⁰⁴

Sadly, the modern version of *Lady Kieu* is all too relevant to the Vietnamese people because long after it was penned, it continues to tell the story of many Vietnamese children. To save their families from penury, Kieu’s generation sold themselves. Today Vietnamese children are doing so on the international level.¹⁰⁵ Like *Lady Kieu*, Kim’s tragic story is one of the lucky stories, because compared to the many who continue to disappear abroad, she at least was liberated from her bondage and reunited with her family after years of separation.¹⁰⁶

96. BEDDOE, HALL & RYAN, *supra* note 72, at 12 (explaining the majority of “sex tourists” in the region are “Asian nationals”); DUONG, *supra* note 3, at 35.

97. NBC, *supra* note 94.

98. DUONG, *supra* note 3, at 45 (noting there are “sharp differences between children interviewed in the South and . . . in the North, reflecting the much higher degree of voluntary decision made by those in the South.”).

99. KARA, *supra* note 2, at 159 (reporting that Panadda, who worked in a brothel had tried to escape in the beginning); DUONG, *supra* note 3, at 47.

100. NBC, *supra* note 94.

101. BOONPALA & KANE, *supra* note 1, at 12.

102. *Id.* at 10.

103. *Id.*

104. See BALES, *supra* note 5, at 71–79 (explaining the indifference towards sex slavery in the region).

105. *Id.* at 69–71 (considering, for instance, Vietnamese brothels have been found in the United States).

106. See CHILDREN ON THE EDGE, *supra* note 10, at 33 (telling the story of Nat and her reunion with her mother).

D. The Child Prostitution Situation

Child trafficking in Viet Nam occurs in four ways. First, like Kim, children are deceived by their relatives, friends, or neighbors.¹⁰⁷ Second, they willingly entered the sex industry but were deceived about the condition under which they would be forced to work.¹⁰⁸ Third, they agreed to work as prostitutes—here there would be no coercion.¹⁰⁹ Last, children with family or personal problems sought work in prostitution.¹¹⁰

Once the children have entered the sex trade, many will be so “[m]entally scarred” that they become pessimistic, sarcastic, hardened, and bitter.¹¹¹ Those children who choose to voluntarily work in the sex industry soon discover “they were wretchedly mistaken”¹¹² about the business. Unfortunately, regardless of how they entered the sex industry, many children will have to pay an atrocious price of physical and psychological harm, including disease and impeded growth.¹¹³ These diseases often have lasting effects.¹¹⁴ Children “are often subdued with drugs and subjected to extreme violence” to get them to obey their owners.¹¹⁵ The International Labour Organization (ILO) conducted an interview assessment of children in prostitution in Viet Nam, which showed that these children also face physical and emotional damage from violent sexual activity,¹¹⁶ forced substance abuse, exposure to sexually transmitted diseases including HIV/AIDS, food deprivation, and psychological torture.¹¹⁷ “Some victims suffer permanent damage to their reproductive organs” due to premature pregnancy and repeated abortion.¹¹⁸ Many children die as a result of child trafficking.¹¹⁹

107. DUONG, *supra* note 3, at xv.

108. *Id.* at xvi.

109. *Id.*

110. *Id.*

111. CHILDREN ON THE EDGE, *supra* note 10, at 10.

112. *Id.* at 9.

113. U.S. DEP'T. OF STATE, TRAFFICKING IN PERSONS REPORT (2006) 12 [hereinafter TIP REPORT 2006].

114. *Id.*

115. *Id.*

116. DUONG, *supra* note 3, at 47. Those children reported the following violent sexual activities: “having to serve strong customers . . . having to serve several customers at one time; being forced to perform embarrassing sexual acts; being tortured [and] beaten up by customers . . . [and] being hurt by customers’ sexual tools . . .”

117. BOONPALA & KANE, *supra* note 1, at 29; LIM, *supra* note 30, at 177 (citing M. BELSEY, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: THE HEALTH AND PSYCHOLOGICAL DIMENSIONS) (Paper submitted by the World Health Organization for the World Congress against the Commercial Sexual Exploitation of Children, Stockholm, Sweden, 27–31 Aug., 1996)).

118. BOONPALA & KANE, *supra* note 1, at 29; TIP REPORT 2006, *supra* note 113, at 12.

119. TIP REPORT 2006, *supra* note 113, at 12.

E. Health Problems

The HIV/AIDS epidemic did not decrease the number of exploited children, but instead has “fuel[ed] the market” for virgins.¹²⁰ This fuel creates a huge market for underage children. Men’s desire for virgins stems, in part, from the fear of HIV/AIDS.¹²¹ The men assume that having sex with virgins will “protect them from [HIV/AIDS]” because virgins have not had sex, and thus, they could not carry any viruses or diseases.¹²² Even after a child has lost her virginity, that child is still considered a fresh child and can be sold for a higher price because that child has only been with one customer.¹²³ “Once used in this way, the [child] is put to work with the other prostitutes in the brothel to feed the normal profit stream.”¹²⁴ In the eyes of many Asian men, virgins are considered a strong source of what they understand to be “coolness.”¹²⁵ This is a quality that Asian men believe slows the aging process.¹²⁶ For that reason, men prefer having sex with a virgin because “it will reawaken sexual virility and prolong life.”¹²⁷ Wealthy men will try to have sex with virgins as regularly as possible and will pay a very large sum for the opportunity.¹²⁸

Children brought to Cambodia face an even greater risk of HIV infection—the infection rate among prostitutes was reported to be forty-one percent in 1996.¹²⁹ The HIV infection rate in Cambodia is higher than in Viet Nam because of Cambodia’s well-established prostitution working force.¹³⁰ Children’s physical and mental health is often neglected because, with the help of the traffickers in children, it is more profitable for those abusing children to replenish their stock after it is depleted rather than to make an effort to take care

120. CHILDREN ON THE EDGE, *supra* note 10, at 9.

121. *Id.*

122. *Id.*

123. *See id.* (“[M]any men mistakenly believe that sex with . . . a child with few sex partners will protect them from infection . . .”).

124. BALES, *supra* note 5, at 57.

125. Coolness is considered to be a flow of energy that will balance the Yin and Yang energy within a person. *Id.* at 56.

126. *Id.*

127. *Id.*; *see also* CHILDREN ON THE EDGE, *supra* note 10, at 9.

128. BALES, *supra* note 5, at 56.

129. PATRICK DERR, *The AIDS Pandemic*, in *HOMOSEXUALITY AND AMERICAN PUBLIC LIFE* 106, 111 (Christopher Wolfe ed., Spence Publishing Company 1999).

130. *See* POLICY Project for Bureau for Asia and the Near East U.S. Agency for International Development, *HIV/AIDS in the Mekong Region, Cambodia, Loa PDR, Thailand, & Viet Nam: Current Situation, Future Projections, Socioeconomic Impacts, and Recommendations*, Policy Project, June 2003, <http://www.policyproject.com/pubs/generalreport/ACF1B3.pdf> [<http://perma.cc/RL22-WK4L>].

of the children being employed.¹³¹ Children are more susceptible to sexually transmitted diseases (STDs)¹³² when they are less likely to know or understand the risk and the consequences of having unprotected sex.¹³³ Health problems besides HIV/AIDS include injuries from violence, skin irritations, sore warts, “syphilis, herpes, urinary tract infections, and polyps.”¹³⁴

Unlike adults,¹³⁵ children have “immature reproductive tracts, the genital abrasions they suffer during sexual activity, and the hormonal fluctuations and permeability of key tissue walls increase the risk of transmission.”¹³⁶ They cannot depend on their immune systems to protect them because they are not fully developed.¹³⁷ Even if the children are informed and provided with the tools to prevent infection, they lack the experience and power to negotiate with their customers.¹³⁸ Very few children are lucky to have an owner or trafficker who brings them “medicine or [takes] them to hospitals for treatment, including abortion,” when they have STDs or other health problems, including pregnancy.¹³⁹ However, most children need to pay for all of the services,¹⁴⁰ while other unlucky children have to find their own medical services if they have the money.¹⁴¹ To save face and preserve their privacy, children avoid government services and often seek assistance from street/market health care.¹⁴² The majority of the children interviewed reported that they are exposed to many hazardous substances, for instance: smoking, drinking of heavy liquor, and addiction to cocaine.¹⁴³ Besides this, the children must endure other hazardous conditions like working long hours,

131. See BALES, *supra* note 5, at 57–58 (after five years, “it is more cost-effective to discard her and replace her with someone fresh.”).

132. DUONG, *supra* note 3, at xv (The children reported that they feared HIV/AIDS, STDs, and other diseases).

133. LIM, *supra* note 30, at 177.

134. KARA, *supra* note 2, at xiii–xiv; CHILDREN ON THE EDGE, *supra* note 10, at 9.

135. DUONG, *supra* note 3, at 47 (Vietnamese children that were interviewed reported that intercourse was often painful, particularly among girls with immature sex organs).

136. LIM, *supra* note 30, at 177.

137. *Id.*

138. *Id.*

139. DUONG, *supra* note 3, at 48.

140. *Id.*

141. *Id.*

142. *Id.* Seeking street/market health care is a dangerous action because most of the care providers are unlicensed. Their places are often unsanitary and unhealthy because they are constantly hiding from the authority; thus, the children face a higher risk from contaminated tools, infections, HIV/AIDS, and other diseases. The irony is that the children are afraid of getting exposure to HIV/AIDS and they choose a private health care to keep things under control, while in fact the reverse is more likely to be safer.

143. *Id.* at 46.

working late at night, and working through sickness.¹⁴⁴ Children are powerless to require their customers to use condoms.¹⁴⁵ Moreover, most children do not have access to condoms and must rely on their customers to provide them.¹⁴⁶ If the children want to use condoms, then they have to buy them for themselves.¹⁴⁷

F. Children and Their “Owners”

Fortunately, some of the children’s owners do protect them from street gangs, by not allowing gangs to order an individual child.¹⁴⁸ The term “owner” portrays the relationship that these children have with their captors or those individuals who bought the children from a trafficker; for instance, “[w]hen the customers were too rude,” said one child in a Can Tho karaoke bar, “she [my employer] assigned me to other room with better-behaved customers.”¹⁴⁹ Unfortunately, not all children receive that special treatment—many reported that they have to serve all types of customers, including “more than one customer.”¹⁵⁰

In Viet Nam, there is a notion that the customer is always right, and whatever the customer wants, the sellers need to provide.¹⁵¹ Such a notion is taken to new heights in this child sex industry, in which the owners of the children will “turn a blind eye” to satisfy their customers.¹⁵² Many owners resort to violence in the form of beating and threatening the children when they refuse to serve certain kinds of customers.¹⁵³

The relationship between the children and their owners is a complicated one. Being so young, the children have no one to depend on besides their owners.¹⁵⁴ No matter how they are being treated, most children will not dare to complain or say anything that will result in physical harm.¹⁵⁵ To protect themselves, these children have to learn to adapt to the environment and recognize their position in

144. *Id.* at 46–47. Some children reported that they had to work right after they had an abortion. *Id.*

145. *See* KARA, *supra* note 2, at 159, 186–87.

146. *See* DUONG, *supra* note 3, at 48, 69.

147. *Id.* at 48.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* at 47 (explaining that children reported that “having to serve strong customers” was one of the many pressures they faced).

152. *See* DUONG, *supra* note 3, at 48.

153. *Id.*

154. *Id.* (describing how this situation is often exploited by owners).

155. *Id.* (reporting that one child interviewed explained “[t]hings are pretty good, but I’m afraid of [the owner]”).

the eye of their owners.¹⁵⁶ Thus, when questioned about their relationship with their owners, most children will say that it is “fine.”¹⁵⁷ These are typical comments:

Everything’s fine if I obey.

She is nice, but she can also be very tough. Things are pretty good, but I’m afraid of her.

She is angry with me sometimes if I am not obedient.

Good. She gives me a meal a day but said she is not responsible if I am arrested.

They are nice but if there is no customer, they will put their anger on us.¹⁵⁸

The sex industry provides substantial income and employment for those directly involved.¹⁵⁹ Like a snowball rolling down a hill, it is impossible to stop. Having sex with children becomes a sale of goods,¹⁶⁰ and forced prostitution is a great business.¹⁶¹ The overheads are low,¹⁶² the turnover high, and profits immense.¹⁶³ The price of a child depends on what she looks like.¹⁶⁴ The range that an owner is willing to pay for a beautiful, virgin child is between one million to nine million Vietnamese dollars.¹⁶⁵ The special profits to be made from children all ensure a low-risk, high-return enterprise, because many men will pay from three to nine million—or even higher—to have sex with a virgin.¹⁶⁶ For all its decrepitude and filth, the brothel is a highly efficient engine that turns children into gold, which, in turn, destroys them. This profit stream makes child sex slavery very lucrative—the children earn around six million to sixteen million Vietnamese dollars a month, around 428 to 1,143 in U.S. dollars.¹⁶⁷ Children earn that money mainly from tips.¹⁶⁸ “The money offered

156. KARA, *supra* note 2, at 9 (including in this adaptation a “morose acceptance that the life of a slave is the best life they deserve”).

157. DUONG, *supra* note 3, at 48.

158. *Id.*

159. *Id.* at 32.

160. *Id.* at 72.

161. *Id.* at 11, 55 (explaining that forced prostitution is seen as “the only business that [can] bring quick and easy money”).

162. A twenty-nine-year-old Vietnamese pimp proudly stated that, “[w]henver I want, I can get dozens of girls. They all trust me.” DUONG, *supra* note 3, at 49.

163. CHILDREN ON THE EDGE, *supra* note 10, at 11.

164. DUONG, *supra* note 3, at 56. Brothel owners stressed that it is very important that the child looks good; however, there is no clear definition on what is “good.” *Id.*

165. This is about 70 to 600 U.S. dollars. *Id.*

166. *Id.* at 56.

167. *Id.* at 55–56.

168. *Id.* at xvi.

by one client for one night can represent three to four times the minimum weekly wage.¹⁶⁹ However, their owners will keep the majority of the money they get from the sex trade,¹⁷⁰ as a technique to control the children, making sure that children will listen and obey the owners. After paying the debt bondage and daily expenses, some children are allowed to send money home to their families.¹⁷¹

In the sex industry, forced prostitution makes significant profits.¹⁷² Some prostitutes charge higher prices but have fewer customers a day; however, they get to keep a much larger proportion of the money they make.¹⁷³ They also get to exercise their discretion over which customers they will serve.¹⁷⁴ In comparison, the brothel's owners' total control over the children, over the volume of clients those children must take, and over the money that they make, means vast profits.¹⁷⁵ However, there is no doubt that with such low costs and enormous profits, there is a cost laid against their profits, and that cost is the price that the children pay with their bodies, minds, and health.

Many children wish that their owners would be less controlling¹⁷⁶ and would not exploit them as much.¹⁷⁷ But in this business, the profits first go to brothel/karaoke/bar owners and their agents; then “commissions to middlemen and women . . . as payment to those who sell the [children] into the sex industry[;]” and last to the children—if they receive any money at all.¹⁷⁸ Viet Nam's average per capita Gross Domestic Product (GDP) is a little over 300 U.S. dollars

169. CHILDREN ON THE EDGE, *supra* note 10, at 11.

170. DUONG, *supra* note 3, at 53; KARA, *supra* note 2, at 52.

171. DUONG, *supra* note 3, at 50. More than seventy-two percent of those children sent money home. *Id.* They believe that it is their job and responsibility to help their parents as much as possible. *Id.* They feel that they have to accept the card that was dealt for them; it is the only way that they could earn the money that they wanted. *Id.* The irony of this is that some parents even encouraged their daughters to work harder to get more money, not knowing the sacrifice that their daughters have to endure. *See id.* It is true that everything has a price, but to what extent are these children required to sacrifice.

172. *Id.* at 56 (explaining how much brothels will charge for a “virgin”).

173. LIM, *supra* note 30, at 17.

174. *Id.* (“independent streetwalkers or high-income call-girls may set their own terms, choose their hours of work and select their clients.”).

175. *Id.*

176. DUONG, *supra* note 3, at 49. One seventeen-year-old sex worker explained: [t]he employer keeps all the money I make. I don't even receive tips, since she asks the customers to give all the money to her. This is how she keeps me working here. I have to serve from four to six customers every day and, for the last four months I haven't received the salary that the employer should pay me.

Id. Some child prostitutes are allowed to leave the premises, but not before permission is granted by their owner. *Id.*

177. *Id.* at 51.

178. CHILDREN ON THE EDGE, *supra* note 10, at 11.

a year.¹⁷⁹ In contrast, the brothel owners make sixty million Vietnamese dollars a month, a net income of at least twenty-four thousand U.S. dollars per year.¹⁸⁰ Such profits explain why more and more children are being exploited in and outside of Viet Nam.¹⁸¹ Even with the recent economic slowdown that had a catastrophic impact on Viet Nam, the child sex industry still exists and flourishes.¹⁸²

In debt bondage, the owners keep all the money, while children are forced to work to pay off the original debts plus the new “debts’ of transportation, accommodation, food[,] and health care.”¹⁸³ This debt bondage system is a means of subduing the children and assuring their cooperation. These owners know that the debts are rarely erased because of the added interest;¹⁸⁴ thus, the children will always be under their control. For the children caught in this disgusting deal, they do not have anything except their virginity, the greatest asset that some hope will diminish their debts.¹⁸⁵ It is not uncommon for the brothel owners to sell their prostitutes to another brothel or to trade children to each other¹⁸⁶ in order to satisfy their customers and make sure that they always have fresh faces working at their brothel.¹⁸⁷ For the benefit of all, brothel owners remain friendly and rely on each other.¹⁸⁸

G. Tradition and the Child Sex Trade

The more we understand the social, cultural, and economic factors that contribute to trafficking, the more successful our legal responses will be. Rooted in two thousand years of feudalism, Vietnamese children are born and educated in an environment that rewards “obedience.”¹⁸⁹ Thus, children, especially children in the past,

179. DUONG, *supra* note 3, at 19.

180. *Id.* at 58.

181. *Id.*

182. *Id.* “Two years ago, I made VND [Vietnamese dollar] 180 million a month. Now, some day I only get up to 3 million, sometime 2 million, sometimes even a few hundred thousand.” Interview with Thu, 32-year-old disguised brothel owner in Hanoi (Nov. 25, 1999). *Id.*

183. CHILDREN ON THE EDGE, *supra* note 10, at 11.

184. *Id.*

185. *See id.* Children can hope all they want but it is useless, because such money does not go toward the debt that was owed. *Id.*

186. BALES, *supra* note 5, at 56–57.

187. *Id.*

188. *Id.* at 53, 56–57. A motorbike for hire driver is also a pimp that is active in finding customers and carries children to their customers. *Id.* In return, he receives tips from both sides. *Id.* He reported that there is no stealing of customer or prostitutes between brothel owners. *Id.* Also, there is no competition between pimps because each serves specific sex workers. BALES, *supra* note 5, at 53, 56–57.

189. LIM, *supra* note 30, at 181.

are often very passive and dependent.¹⁹⁰ The passiveness and dependence can influence the lives of children such that they will be easily attracted to both healthy and unhealthy activities. Speaking from experience, I know that children growing up in traditional Vietnamese families learn dependence and nurture, not independence. They learn the importance of hierarchy, not equality. They learn the rewards of submission to those of senior status, not assertiveness. They also learn that they have to do anything possible to repay a moral debt to their parents. It is therefore not surprising to see many children surrender to become involved in prostitution with the sole purpose of helping their families.

Parents and teachers often do not feel comfortable teaching their children about sexuality and reproductive health.¹⁹¹ On the one hand, parents think that children are too young to learn about these issues. On the other hand, they admit that they do not have enough knowledge and skills to talk with their children.¹⁹² They expect teachers in school will provide their children with the necessary knowledge of sexuality. However, teachers think that parents should talk with the children about these issues. Consequently, most children do not get essential information concerning reproductive health, sexuality, and HIV/AIDS through adults who are closest to them. They learn this information from sources that may not be reliable: their peers, foreign films, newspapers, youth publications, and television. More efforts should be made to convey accurate and important messages concerning sex and sexuality to children to help them establish healthy sexuality. Experienced people such as parents and teachers, and formal sources such as television, radio, and newspaper should be involved in sex education for children.

II. VIETNAMESE GOVERNMENT EFFORTS

The Vietnamese government acknowledges that child prostitution is a problem¹⁹³ and Viet Nam has demonstrated its commitment to the prevention of child trafficking through several legal initiatives, including revising its Penal Code,¹⁹⁴ entering into bilateral

190. *See id.*

191. *See* Cameron & Newman, *supra* note 53, at 12 (discussing societal discomfort with sexuality).

192. Cameron & Newman, *supra* note 53, at 12; DUONG, *supra* note 3, at xiv.

193. International Labour Organization, Mekong Sub-Regional Project to Combat Trafficking in Children and Women: An ILO-TICW Project Overview in Viet Nam [hereinafter ILO-TICW], <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/vietnam-profile.pdf> [<https://perma.cc/DN97-7NPM>].

194. Penal Code No. 100/2015/QH13, amended No. 12/2017/QH14 (Viet.).

agreements with countries in the region,¹⁹⁵ and ratifying or implementing certain international treaties.

Although these actions demonstrate Viet Nam's commitment to preventing child trafficking, trafficking continues to constitute a significant problem in Viet Nam. Much more could be done to further stem the tide of child trafficking in Viet Nam and the region. Due to the high degree of complexity involved in this issue, however, no single solution exists. Instead, the solution to such an egregious violation of human rights lies in undertaking a multipronged, multidisciplinary approach. One crucial component of such an approach is continued legal reform.

A. *The Constitution*

The 1992 Viet Nam Constitution expresses several principles concerning the rights of women and children.¹⁹⁶ Article 37 of the Constitution states, "Children [shall] enjoy protection, care and education by the family, the state and society[.]"¹⁹⁷ Perhaps most significantly, in 1997 the Prime Minister issued an order to coordinate measures to prevent trafficking¹⁹⁸ of children across the border, with goals including: evaluating when Vietnamese women and children were illegally sent abroad, identifying "networks of trafficking" in Viet Nam, taking action against tourist agencies involved in trafficking, formulating vocational training projects and job creation for the victims of trafficking, and investigating and prosecuting traffickers.¹⁹⁹

The 2004 Law on the Protection, Care, and Education of Children has indirect provisions specifically against the trafficking of children.²⁰⁰ Moreover, the law indicates that all acts violating the rights of children or acts detrimental to their normal development shall be severely punished.²⁰¹ It further states that illegal child labor, enticement, or initiation of children to prostitution is strictly prohibited.²⁰²

195. See, e.g., ILO-TICW, *supra* note 193, at 2 (describing the cooperation between Viet Nam and Australia).

196. Hiến pháp nước Cộng hòa xã hội chủ nghĩa Việt Nam. [Constitution of the Socialist Republic of Viet Nam] Apr. 15, 1992, art. 36.

197. *Id.* at art. 37.

198. Directive 776/TTg of the Prime Minister, issued 17 September 1997 detailed the responsibilities of related state bodies to prevent trafficking of women and children abroad. UNICEF & U.N. OFF. DRUGS & CRIME, ASSESSMENT OF THE LEGAL SYSTEM IN VIETNAM 3 (2004).

199. *Id.* at 4.

200. Law on Protection, Care and Education of Children, No. 25/2004/QH11 (Viet.).

201. *Id.* at art. 27 ("The child has the right to be protected . . . from violence . . . which [is] prejudicial to his/her . . . development.").

202. *Id.* at art. 4. Viet Nam is also a party to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,

Altogether, these laws offer a clear prohibition on the trafficking of women and children.²⁰³ However, the Constitution is hardly ever used in court to advocate on behalf of victims.²⁰⁴ Whether the Constitution is more of an ideal than a useful document is a question that the Vietnamese government needs to answer. Yet, the laws above still can and should be used to strengthen enforcement efforts against exploiters and protect victims more vigorously. These laws include the 2016 Children Law, which establishes a child as a person under the age of sixteen.²⁰⁵

B. Trafficking Legislation

In the past, Viet Nam treated child trafficking as a criminal problem.²⁰⁶ Therefore, anti-trafficking efforts have focused primarily on the criminalization of the practice instead of victim protection problems.²⁰⁷ For example, the Vietnamese Criminal Code has been amended with regard to child sexual exploitation offenses.²⁰⁸ This criminal code prohibits the kidnap, exchange, fraudulent buying, and selling of children either within Viet Nam or abroad.²⁰⁹ The latest amendment introduced new offenses and more severe punishment. Vietnamese legislation against child sexual exploitation crimes deals with a child who is under sixteen years of age.²¹⁰ Moreover, most offenses are considered aggravated if they are committed against a child under thirteen years of age.²¹¹ All Vietnamese children, irrespective of sex, are protected from sexual intercourse and other lewd acts.²¹² Sexual intercourse with a child under thirteen years of age is regarded as statutory rape.²¹³ The offense is also considered to be aggravated if the offender is a legal guardian or is in a position to

which “prohibit[s] the sale of children, child prostitution and child pornography.” G.A. Res. A/Res/54/263, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, art. 1 (Jan. 18, 2002).

203. *Id.*; see also Constitution of the Socialist Republic of Viet Nam, *supra* note 196.

204. Statistics indicate that most prosecutions occur under various statutes, rather than the Constitution. See U.S. DEPARTMENT OF STATE, VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000: TRAFFICKING IN PERSONS REPORT (2001) [hereinafter TIP REPORT 2001].

205. Children Law No. 102/2016/QH13 dated 05 Apr. 2016.

206. Penal Code No.37/2009/QH12 (Viet.).

207. *See id.*

208. ECPAT.org, VIET NAM ECPAT COUNTRY OVERVIEW 17 (ECPAT International, 2018) [hereinafter ECPAT].

209. Penal Code No. 100/2015/QH13 art. 150–51.

210. *Id.* at art. 151.

211. *Id.* at art. 143–45.

212. *Id.*

213. *Id.* at art. 142.

exert authority over the child.²¹⁴ Penalties range between one to fifteen years imprisonment with the possibility of a life sentence or even capital punishment for the most aggravated offenses.²¹⁵

The 1999 criminal code targets the problem of prostitution and sees the prostitute as a victim and not as an offender.²¹⁶ Instead, the procurers, brothel owners, and clients are criminalized.²¹⁷ Therefore, it is prohibited to keep or conceal a prostitute or to lure or lead a person into prostitution, regardless of the person's age.²¹⁸ Penalties vary if the offense is committed against children from thirteen to sixteen years of age in the following circumstances:

1. "harboring prostitution" between 13 to 16 then the sentence ranges from 12 to 20 years
2. "brokering prostitution" between 13 to 16 then the sentence ranges 7 to 15 years.²¹⁹

The offense is aggravated if it involves minors and children, respectively.²²⁰ The maximum penalty is life imprisonment, but capital punishment is not off the table.²²¹ Additionally, the purchasing of sexual services from minors is prohibited—offenders are liable to a punishment of up to eight years imprisonment if the minor is under sixteen years of age.²²²

Although anti-trafficking policies are an important step in addressing the country's child trafficking problem, they suffer from several weaknesses. First, advocates of victims' rights believe that although the law does not make "procuring prostitutes" legal, the law will prosecute child prostitutes who recruit²²³ other children to enter the sex industry.²²⁴ Second, the law does not go far enough in

214. *Id.*

215. Penal Code No. 100/2015/QH13 art. 143–45, 150–51.

216. Penal Code No.15/1999/QH10 art. 119–120 (Viet.).

217. *Id.*

218. *Id.* at arts. 254–55.

219. *Id.*

220. *Id.*

221. *Id.* at arts. 119–20, 254–55.

222. Penal Code No.15/1999/QH10 art. 255.

223. *Id.*; see also Chinh Quyen Hai Nuoc Lam Ngo Nan Mai Dam Tre Em Viet Nam o Cambodia [Interview with Aaron Cohen, an expert on commercial sexual exploitation of children who has worked for the US State Department] [hereinafter Cohen], <https://www.youtube.com/watch?v=ZyMAFLVeEJU> [<https://perma.cc/T6X6-GBE2>] (last visited Apr. 7, 2022).

224. *Id.*

I believe that all the Vietnamese children that are being trafficked across the border do not understand the magnitude of what's going on. They do not have any choice other than prostitution. In my last trip to Cambodia, it troubled

requiring the local government to take positive measures to protect victims of trafficking.²²⁵ Further, the law does nothing to safeguard the identity or safety of victims who come forward with evidence against traffickers.²²⁶ Finally, the law suffers from serious implementation and enforcement problems resulting from legal uncertainties and corruption.²²⁷

In 2011, the Vietnamese government approved the Law on Human Trafficking, which came into effect in January 2012, and launched a comprehensive anti-trafficking framework containing provisions encompassing prevention, prosecution, protection, and partnership measures.²²⁸ This law, however, does not contain a clear definition of trafficking consistent with the model definition of trafficking in the Protocol²²⁹ and is only somewhat aligned with that definition. The understanding of the offense in the Law on Human Trafficking has to be derived from different sections of the law (specifically the “Interpretation of Terms” and “Prohibited Acts” sections of the Law on Human Trafficking).²³⁰ Moreover, though the trafficking offense in the Law on Human Trafficking is more closely aligned with the model definition in the Protocol, an offense is criminal only if it falls within the sphere of Articles 119 and 120 of the Previous Penal Code²³¹ or within any other provision of the Previous Penal Code.²³² Given that the amended Penal Code is now in force as of January 2018, it is still unclear whether the references to the Previous Penal Code under the Law on Human Trafficking are superseded by the new provisions on human trafficking in the Penal Code.²³³

me when I met an 8-year-old Vietnamese child in a brothel. The worst part is that I learned that the brothel owner allows this young child to go back to Viet Nam to trick and persuade other children to come to Cambodia.

Id. (translated by the author). There is a chance that this eight-year-old child will receive a tip for her new job, and it will not be a surprise if the tips will go toward her debt. In a legal aspect, she is a recruiter and under the Viet Nam Criminal Code, she could face up to fifteen years in prison.

225. See Penal Code No. 100/2015/QH13.

226. *Id.*

227. *Coalition Against Trafficking in Women: Vietnam*, CATWINT'L [hereinafter *Coalition*], <http://www.catwinternational.org/factbook/Vietnam.php> (last visited Apr. 7, 2022).

228. Law on Prevention and Combatting of Human Trafficking, No. 66/2011/QH12 (Viet.).

229. Compare *id.*, with G.A. Res 55/25, Convention against Transnational Organised Crime, at art. 3 (Nov. 15, 2000) [hereinafter Protocol].

230. Law on Prevention and Combatting of Human Trafficking, No. 66/2011/QH12 (Viet.).

231. Penal Code No.37/2009/QH12.

232. For example, although trafficking for forced labor purposes is specified as a trafficking offense under the Law on Human Trafficking, it is not definitely a criminal offense because it is not clearly covered in the Previous Penal Code.

233. Penal Code No. 100/2015/QH13.

Human trafficking is now criminalized under Article 150 and Article 151—for minors—of the Penal Code.²³⁴ The Penal Code significantly improves the Vietnamese Anti-Trafficking Laws by creating clearer, more precise trafficking offenses.²³⁵ The Penal Code now contains the following offenses:

Article 150 Human trafficking: the offense involves us[ing] violence, threat[s] . . . [of] . . . violence, [deception for the purpose of] (I) transferring or receiving [persons] for money, property, or other financial [benefits], for sexual [exploitation], coerc[ed] labor . . . or for other inhumane purposes or (II) recruiting, transporting, harboring other [persons] to conduct such acts.

Article 151 Human trafficking of minors: the offense is (I) transferring, or receiving persons under 16 years of age for delivery, for receiving money, or other financial [benefits] (except if for humanitarian reasons), for sexual [exploitation], coerc[ed] labor . . . or for other inhumane purposes or (II) recruiting, transporting or harboring person[s] under 16 [years of age] to conduct such acts.²³⁶

The Penal Code now separates trafficking in persons under sixteen years of age as an independent article, whereas it was combined under Article 120 of the Previous Penal Code.²³⁷

The human trafficking offenses set out in Articles 150 and 151 of the Penal Code convey more accuracy to trafficking offenses than the Previous Penal Code, thereby making it consistent with the trafficking definition introduced by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Woman and Children.²³⁸ Although the trafficking offenses in the Penal Code now recognize the three requirements act, means, and exploitation that collectively define human trafficking in the Protocol,²³⁹ the means requirement includes only “violence, threatens to use violence, deceives, or employs other tricks.”²⁴⁰ The abuse of power, the vulnerability of the victim, the giving or receiving of money, or other interests to achieve the consent from the victim could be considered as “other tricks”

234. *Id.*

235. The Penal Code also maintains the slavery type offences from the Previous Penal Code.

236. Penal Code No. 100/2015/QH13 (arts. 150–51).

237. In the Old Penal Code, Article 120 imposes criminal liability on any person partaking in “trading in, fraudulently exchanging, or appropriating children.” *Compare* Penal Code No.37/2009/QH12, *with* Penal Code No. 100/2015/QH13.

238. Protocol, *supra* note 229.

239. *Id.*

240. Penal Code No. 100/2015/QH13 art. 150.

used to commit the acts under Articles 150 and 151, but such interpretation is up to the courts.

Article 151 of the Vietnamese Penal Code has a penalty range between seven to twelve years imprisonment, and offenders may also be liable for a fine of up to 200 million in Vietnamese dollars.²⁴¹ Offenders are forbidden from holding certain positions or doing certain works.²⁴² They are also under mandatory supervision for one to five years, or property confiscation.²⁴³ If aggravating factors are present, traffickers face an increased sentence between twelve to twenty years of imprisonment or life imprisonment.²⁴⁴ The offense is considered aggravated if the offender is, for example, a legal guardian, or in a position of power to exert authority over the child.²⁴⁵ Life imprisonment may be warranted for those offenses that cause death, suicide, or damages to the physical and mental health of the victims.²⁴⁶

Moreover, most offenses are considered aggravated if they are committed against a child under thirteen years of age.²⁴⁷ All Vietnamese children, irrespective of sex, are protected from sexual intercourse and other lewd acts.²⁴⁸ Moreover, sexual intercourse with a child under sixteen years of age continues to be regarded as statutory rape under Article 142.²⁴⁹ Penalties range between seven years imprisonment to a life sentence, or even capital punishment for the most aggravated offenses.²⁵⁰ Article 144 of the Penal Code introduces a separate offense of forced sexual intercourse with a person between the ages of thirteen and sixteen with the penalty ranging from seven years imprisonment to life punishment, with the actual sentence depending on the presence of aggravating factors such as the severity of the consequences suffered by the victim.²⁵¹ It added an aggravating factor in the assessment of victims who suffer from “11–45% mental and behavioral disability” due to sexual abuse.²⁵²

In addition, Article 183 of the Penal Code provides that a person who organizes an underage marriage shall, if previously sanctioned

241. *Id.* at art. 151.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. Penal Code No. 100/2015/QH13 art. 151. The penalty of eighteen to twenty years or life imprisonment is for victims who were assessed to be more than 61% damage. Those who are 31–60% fall under the twelve to twenty years of imprisonment.

247. *Id.*

248. *Id.*

249. *Id.* at art. 142.

250. *Id.* at arts. 142, 150–51.

251. *Id.* at art. 144.

252. Penal Code No. 100/2015/QH13 art. 144

for the same offense, “be liable to a fine” between 10 million and 30 million VND (approximately 438 to 1,314 U.S. dollars) or face a penalty of up to two years “community sentence.”²⁵³ In Viet Nam, there is a different minimum marriage age for men and women. Men must be at least twenty and women must be at least eighteen.²⁵⁴ Both parties are required to give consent.²⁵⁵

In the past, birth registration was not a priority of the Vietnamese government.²⁵⁶ They failed to recognize the significance of this concrete record, which supports the rights of Vietnamese children.²⁵⁷ This is the most important tool in Viet Nam to determine a child’s age and identity.²⁵⁸ The 1998 birth registration law was amended in 2005 to simplify and speed up the registration process.²⁵⁹ Additionally, the Vietnamese Civil Code was amended in 2005.²⁶⁰ It reiterates that “[i]ndividuals, when born, shall have the right to have their births registered.”²⁶¹ It is equally important that birth registration be consistent for all children, including, children of all ethnic groups and children who live in the street.²⁶²

Experts believe that even though the government has made efforts to improve this program, there are many obstacles that nevertheless hinder this process.²⁶³ First, there is a registration fee, which places a burden on destitute families.²⁶⁴ This does not include late fees, non-registration penalties, and other violations of family law.²⁶⁵ Second, Viet Nam has many government policies, some of which conflict with each other; thus, Viet Nam has a problem with balancing all its policies so that they can work together instead of creating more conflicts.²⁶⁶ Third, there is a problem with the registration itself for minorities because it uses the official language of Viet Nam, whereas many minorities have their own language.²⁶⁷ Thus, minorities may

253. *Id.* at art. 188.

254. Law on Marriage and Family No. 52/2014/QH13.

255. *Id.*

256. Less than 87% of births were registered. Vietnam Multiple Indicator Cluster Survey (2006), <https://mics.unicef.org/files?job=W1siZiIsIjIwMTUvMDEvMjcvMTIvMzAvMDEvNTgvTUIDU19ib29rbGV0X2luX0VuZy5wZGYiXV0&sha=5862fa82ba6dedba> [https://perma.cc/AV2K-B8TR].

257. *Id.*

258. *Id.*

259. UNICEF, *Birth Registration Right from the Start*, 9 INNOCENTI DIG. at 16 (2002).

260. Civil Code of Vietnam (No. 33/2005/QH11) art. 29, Unofficial Translation to English.

261. *Id.*

262. NATASHA PAIRAUDEAU, UNICEF & PLAN INT’L, BIRTH REGISTRATION IN VIETNAM, 11 (1999).

263. *Id.*

264. *Id.* at 18–19.

265. *Id.* at 19.

266. *Id.* at 11.

267. *Id.* at 33.

not understand or know the registration process. Fourth, another problem is the location of the registrar for people who live in the mountains and other remote places where there is no easy access to the registrar.²⁶⁸ Last, but not least, it is a complicated process for people to receive another copy of legal documents if they have lost their original copy.²⁶⁹

C. Local Initiatives

To adhere to their policy, the Vietnamese government has adopted several measures to combat the trafficking of children.²⁷⁰ To combat the sexual exploitation of children, the government focuses on education, employment, and life skills training programs to prevent children from entering into prostitution.²⁷¹ Further, there are two existing national plans²⁷² regarding the commercial sexual exploitation of children. The emphasis of these plans is to support, help, and protect children from sexual abuse and exploitation.²⁷³ These plans also encourage the government to be more vigilant against prostitution by investigating and infiltrating “brothels, karaoke bars, and discos.”²⁷⁴ However, experts have questioned the effectiveness of such actions as commercial sexual exploitation of children continues to expand tremendously.²⁷⁵

268. Nguyen Thi Thanh Huong, *Getting feedback from citizen to improve birth registration services in Viet Nam*, UNICEF (Apr. 29, 2016), <https://www.unicef.org/vietnam/stories/getting-feedback-citizen-improve-birth-registration-services-viet-nam> [https://perma.cc/HGK4-LD5G].

269. *Vietnam*, CONSORTIUM ST. CHILD. (Apr. 2019), <https://www.streetchildren.org/legal-atlas/map/vietnam/legal-identity/can-a-child-obtain-retroactive-or-replacement-birth-registration-documents> [https://perma.cc/6T6T-59M5].

270. DERKS, *supra* note 1, at 47.

271. ECPAT, *supra* note 208, at 21.

272. *Id.* at 21. The National Plan of Action to Protect Children for 2016–2020, and the National Program of Action for Children for 2011–2020.

273. *Id.* at 20–22. The government also issues national action plans setting out anti-trafficking initiatives and priorities in order to implement the responsibilities set out in the Law on Human Trafficking and to promote cooperation between the various government bodies who have anti-trafficking responsibilities. *Id.* Funds are allocated from the central budget to finance the action plan. *Id.* The current national action plan for the period from 2016 to 2020 was approved by the Prime Minister under Decision No. 2546/QĐ-TTg dated 31 December 2015. *Id.*

274. DERKS, *supra* note 1, at 47.

275. *Id.*; DUONG, *supra* note 3, at 71. The national action plan calls for an intensification of the involvement of national and local government bodies in the prevention and combatting of human trafficking and for anti-trafficking measures to form an integral part of general social development programed as well as the formulation of interjurisdictional cooperation mechanisms for effective enforcement of the anti-trafficking laws. *See id.* The national action plan was launched nationwide with a particular focus on provinces bordering Cambodia, Laos and China. *See id.*

1. *Shortcomings of Viet Nam's Legal Program*

In 2005, there were six thousand women and children sent abroad for the purpose of prostitution,²⁷⁶ which proves that Viet Nam has continuously failed to prevent exploitation and protect their children. Under pressure to live up to the national policy, the Vietnamese Government tried to improve its efforts to protect children by implementing four components from 2005 to 2010: “strengthening propaganda and education on preventing child . . . trafficking in the community, intensifying fights against human trafficking, building up legal documents on the issue, and giving stronger support to victims.”²⁷⁷ It is obvious that Viet Nam has created many laws to protect the rights of children; however, many experts believe that there are “weaknesses in the formulation of the laws relevant to trafficking” because the laws themselves often are unclear.²⁷⁸ In Viet Nam, passing realistic and reasonable legislation has been difficult because it is struggling with two different ideologies.²⁷⁹ When new laws are passed, courts and law enforcement authorities are not consistently informed of or educated about these laws.²⁸⁰ Even when a law is clear, officials are often uncertain about methods of enforcement.²⁸¹ Thus, more could be done to improve the law and communication between state and local agencies.

2. *Political and Judicial System (Prosecution)*

In addition to laws and non-profit organizations, there are two extremely important sectors in combating child sexual exploitation: the judicial system and law enforcement.

According to the Vietnamese crime statistics of 2004–2005, there were 142 trial hearings and 110 guilty verdicts “related to the trafficking [of] women and children.”²⁸² In 2005–2006, there were 182 trials and 161 guilty verdicts.²⁸³ One of the many cases in 2004 involved ten individuals who were charged with kidnapping, extortion,

276. PEOPLE DAILY, *supra* note 48.

277. *Id.*

278. DERKS, *supra* note 1, at 47.

279. See Daniel D. Veniez, *Capitalism: the Communist Way*, INST. RSCH. PUB. POL'Y (Sept. 1, 2009), <https://policyoptions.irpp.org/magazines/employment-insurance/capitalism-the-communist-way> [https://perma.cc/8B26-CVMT]. One is a Communist ideology, and the other is Capitalism.

280. DERKS, *supra* note 1, at 47.

281. *Id.*

282. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2005) 226.

283. TIP REPORT 2006, *supra* note 113, at 259.

and possession of forged stamps, illegal visas, and other documents.²⁸⁴ “The Ha Noi People’s Court sentenced ten individuals to [five-to-thirteen] years in prison for human trafficking activities.”²⁸⁵ The Vietnamese government should not be satisfied with such minimal progress because the number of prosecutions for the trafficking of children is a small fraction of the countless number of children being exploited in prostitution abroad and within the country.

Separate from the problems discussed above, enforcement is severely hindered by widespread corruption in the judiciary system.²⁸⁶ Judges are known for taking bribes²⁸⁷ both as a means of supplementing their meager salaries and appeasing those in power.²⁸⁸ Prosecutions against traffickers of children are rare and tend to focus on small players, allowing the bigger fish of the sex trafficking underworld to operate freely.²⁸⁹ A common problem of the judicial system can be seen in the following example. On December 28, 2005, the Supreme Court of Viet Nam turned down an appeal from former British rocker Gary Glitter and confirmed the lower court sentence of three years in jail for having sex with two eleven-year-old girls.²⁹⁰ The former rocker’s lawyer²⁹¹ believed he could be paroled sooner than his prison term.²⁹² The judge considered the four thousand U.S. dollars²⁹³ that Glitter paid to both girls’ families as a reason for a

284. *Ha Noi Court Sentences Human Trafficking Ring*, HUMANTRAFFICKING.ORG (Mar. 25, 2006), <https://web.archive.org/web/20060509214847/http://www.humantrafficking.org/updates/160>.

285. *Id.*

286. TIP REPORT 2001, *supra* note 204.

287. *Id.* (“Corruption is a serious problem at all levels in Vietnam and some officials may be involved in the flow of overseas workers.”); *see also* AMNESTY INTERNATIONAL REPORT 2003: VIETNAM, 273 (suggesting that evidence shows that the judicial corruption argument might hold true for Viet Nam since there is widespread corruption in Viet Nam which extends to senior officials of the country).

288. *See Vietnam*, BUSINESS ANTI-CORRUPTION PORTAL (2014), <https://web.archive.org/web/20150702184913/http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/vietnam/show-all.aspx>. Officials’ corruption is a well-known issue in Viet Nam. Vietnamese people are used to the bribing system and they often use it to get what they want. *Id.* This includes: getting a good position in the company and/or public sector, a good grade in school, reduced jail time or even receiving no penalty and many more. *Id.* Thus, middle-level Vietnamese officials take the bribes they receive from those beneath them and use these bribes to pay those above them. *Id.*

289. DUONG, *supra* note 3, at 54 (explaining that some successful brothels have relationships with local authorities).

290. *Vietnam Judges Reject Glitter Appeal*, GUARDIAN (June 15, 2006 6:18 AM), <https://www.theguardian.com/uk/2006/jun/15/ukcrime.world> [<https://perma.cc/QFZ5-GCU7>].

291. ECPAT, *supra* note 208, at 20 (stating that foreign nationals are subject to prosecution for sex trafficking and related offenses in Vietnam).

292. *Vietnam Judges Reject Glitter Appeal*, *supra* note 290.

293. *See Rocker Glitter Paid \$4K to His Alleged Victims’ Families*, FOX NEWS, <http://www.foxnews.com/story/0,2933,179994,00.html> [<https://perma.cc/XA7S-SF7C>] (last visited

lighter sentence than the possible maximum of twelve years.²⁹⁴ This outcome strengthens experts' opinion that both the laws and the judicial system of Viet Nam are selectively enforced.²⁹⁵ Thus, Viet Nam is extremely appealing to foreign child molesters because they will not have to face penalties as tough as they would face in their own countries.²⁹⁶

Many cases are settled out of court because a poor family of a wounded child takes hush money even if the distraught child only wants justice.²⁹⁷ It might be argued that it is the Vietnamese government's clandestine policy to ignore child sexual exploitation because it attracts tourists, which helps the economy.²⁹⁸ Regardless of whether there is any truth to this allegation, there does appear to be a genuine reluctance to press charges against traffickers.²⁹⁹ As a result, impunity for the traffickers, like that for most political elites, continues to rankle justice in Viet Nam.³⁰⁰

3. Government Corruption and Transparency

People often think that having a good relationship with the local official is difficult, but in fact, it is not. Sometimes you don't even

Apr. 7, 2022). After receiving the money, they are required to send written statements asking the investigation bureau and the court to drop the case. *See id.* Besides the destitution factor, there is also the shame that drove the children's families to accept the money. *Id.* What happened to their family is so shameful that they do not want the story to drag out in court and in the media. *See id.*

294. *Id.*

295. TIP REPORT 2001, *supra* note 204; *see also* BOONPALA & KANE, *supra* note 1, at 28 (“[M]any countries suffer from lax regulatory environments and under-funded regulatory mechanisms such as police, border guards, and judiciary.”).

296. Child molestation could carry a sentence as low as six months. *See* Quot Dot, *New Vietnam Decree Graphically Defines Child Molestation*, VNEXPRESS (Oct. 15, 2019), <https://e.vnexpress.net/news/news/new-vietnam-decree-graphically-defines-child-molestation-3997417.html> [<https://perma.cc/E9CT-B3AM>].

297. BOONPALA & KANE, *supra* note 1, at 54.

298. *Coalition*, *supra* note 227; *see* Cohen, *supra* note 223 (The question of whether the Vietnamese Government turns a blind eye to the trafficking of children should be raised directly to Viet Nam and Cambodia. Both countries will no doubt deny this allegation but evidence shows that both countries are well aware of the trafficking of children across their borders and yet nothing has been done. I believe that the Viet Nam Ambassador in Phnom Penh has knowledge of Vietnamese children being sexually exploited in Cambodia and yet s/he chooses to remain quiet, which is beyond my imagination.) (translated by the author).

299. *Child Trafficking on the Rise Due to Weak Laws, Lax Enforcement*, ASIAN ECONOMIC NEWS (Mar. 13, 2000), <https://www.thefreelibrary.com/Child+trafficking+on+rise+due+to+weak+laws,+lax+enforcement-a060067205> [<https://perma.cc/ZBH2-9Q8B>] (explaining the problem of “lax enforcement”).

300. *Id.*; *see also* CHRISTIAN SALAZAR-VOLKMAN, APPROACH TO PROGRAMMING FOR CHILDREN AND WOMEN IN VIET NAM: KEY ENTRY POINTS AND CHALLENGES 3 (2004) (necessitating the reform of the judicial system).

have to pay. If you do things right, there's no need to spread money for them. Everyone has his weakness. For example, some are hungry for girls; some are hungry for money. But they are all afraid of their wives or that their behaviour [sic.] will become known to the public.³⁰¹

This statement from Hai, a twenty-nine-year-old university graduate, who ran the entire prostitution operation in Ha Noi,³⁰² proves that corruption exists in Viet Nam. Similar to Hai, Mrs. My Linh, who owns a lavish prostitution business in Ho Chi Minh City, also believes that no authorities will ever touch her because she has a network with officials all over the city.³⁰³

Government officials, especially in poor, developing countries, are constantly tempted,³⁰⁴ and the government officials in Viet Nam are no different. Their core motive is greed—profit is its own justification and success conveys respectability, which drives new businesses, and therefore ignore the human cost. In some areas of Viet Nam, child prostitution grows because the local officials responsible for controlling it are poorly trained, underpaid, undervalued, and so greedy that they participate in child trafficking.³⁰⁵ In Viet Nam, it is difficult to find honest officials; arguably, they could not last in a system of government soaked through with corruption from top to bottom.³⁰⁶ Police officers often do more to support the commercial sex industry than to thwart it.³⁰⁷

As discussed above, bribes do not need to be in the form of money; they could be in a form of a dinner at a restaurant, a couple of cases of beer, presents for family members, and/or a night with a prostitute of one's choice. In Viet Nam, it is not unpredictable that an officer would stop by once a day to collect tax money and/or his incentives. Again, bribe income is the key reason that many senior officials are happy to buy their positions and compete for the most lucrative

301. DUONG, *supra* note 3, at 54.

302. *Id.*

303. *Id.*

304. *Id.*; see also TIP REPORT 2006, *supra* note 113, at 24.

305. CHILDREN ON THE EDGE, *supra* note 10, at 31; BOONPALA & KANE, *supra* note 1, at 69; ECPAT, *supra* note 208, at 13.

306. *Coalition*, *supra* note 227 (“Child prostitution is on the increase in Vietnam. The military and Communist Party officials have been implicated in the rise” (citing *International Human Rights Group Slams Vietnam*, REUTERS (25 July 1997))).

307. *Coalition*, *supra* note 227 (“As high as two thirds of the Vietnamese government officials are known buyers of women in prostitution in, massage parlours, karaoke bars and brothels. Their activities are financed through government agency ‘slush funds’” (citing *Vietnamese Government Officials Biggest Customers for Prostitutes*, DEUTSCHE PRESS-AGENTUR (Mar. 2, 1998))).

ones.³⁰⁸ Occasionally the government will order a search of a brothel, karaoke bar, massage parlor and take all the children into custody.³⁰⁹

In addition, it has been reported within the last year that many local government officials profited from commercial sex exploitation of children; however, no officials were prosecuted for their crimes.³¹⁰ Recently, a government official who worked for the Province Board of Education and Training Department was arrested for having sex with a child.³¹¹ The police arrested a robbery and prostitution gang earlier, which led them to the arrest of this official.³¹² It is reported that each time this official had sex with this child, he tipped her 100,000–300,000 Vietnamese dollars,³¹³ which is about eight to twenty U.S. dollars. Clearly, this government is unable to protect children from being kidnapped, deceived, and tricked—even by government officials.³¹⁴

Corruption is an enormous dilemma in Viet Nam,³¹⁵ but corruption is not often seen as a problem. A free press³¹⁶ and a tradition of service among the educated elite contributes to government accountability.³¹⁷ Hopefully, when Viet Nam incorporates democracy and it works well, politicians will have to be more careful. Even a handful of honest bureaucrats can be the downfall of a corrupt political apparatus.³¹⁸ All of these factors can hopefully promote an honest government in Viet Nam.

308. *See supra* notes 281–87.

309. *See Coalition, supra* note 227. I wonder if all of this is done for show, when newspaper reports or foreign interest makes it necessary.

310. TIP REPORT 2006, *supra* note 113, at 259.

311. *Mot Can Bo So GD&DT Cao Bang Mua Trinh*, VN EXPRESS, <https://vnexpress.net/mot-can-bo-so-gd-dt-cao-bang-mua-trinh-2817522.html> [<https://perma.cc/8CCA-RP54>] (translated by the author) (last visited Apr. 7, 2022).

312. *Id.* This gang is known to defraud, trick, and lure young girls at their school to sell their virginity and then force and threaten them into prostitution. *Id.* This is an ongoing case, where the police continue to investigate all people related to this gang. *Id.*

313. *Id.*

314. *See id.*; *see also* TIP REPORT 2006, *supra* note 113, at 14.

315. DUONG, *supra* note 3, at 54.

316. *See* Maira Martini, *Overview of Corruption and Anti-Corruption in Vietnam* 8, U4 (Jan. 27, 2012). Even though Viet Nam has opened its door to foreigners, the country is still run by a communist party, thus freedom of the press is limited. *See id.* That is why it is so difficult to find any information regarding the corruption of senior officials in the party. The only limited information on corruption that can be found was only of minor trivial officials.

317. More advocates of children's rights can be found in International and Vietnamese-American Organizations around the world but little can be recognized from within the country.

318. That is why it is extremely important for the advocates of children's rights who work in Viet Nam to know that they are being watched over by the international organizations. More importantly, when the traffickers, governments and their corrupted bodies know that they are being watched from abroad, such knowledge leads to power and protection to those fighting commercial sex exploitation of children in Viet Nam.

III. INTERNATIONAL EFFORTS

Child trafficking is more than just a Viet Nam problem, it is a global tragedy.³¹⁹ Many countries are affected by this inhumane violation of children's rights.³²⁰ The effort of the Vietnamese government alone is insufficient in combating child trafficking; it requires a collaboration between Viet Nam and international communities. The most widely recognized development in international law regarding the protection of children is the United Nations Convention on the Rights of the Child.³²¹ It was adopted by the United Nations General Assembly in 1989 and entered into force in 1990.³²² Article 34 of the Convention requires countries to protect children from "all forms of sexual exploitation and sexual abuse."³²³ Article 35 provides that countries must take "appropriate national, bilateral and multi-lateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."³²⁴ The government of Viet Nam has signed and ratified the Convention on the Rights of the Child, pledging to combat child trafficking.³²⁵

A. *The International Front*

After the recognition of the Rights of the Child, the international community stood united by signing the Convention Against Transnational Organized Crime in 2000 and its supplementing protocol which prevents, suppresses, and punishes any trafficking of children by land, sea, and air.³²⁶ Under the Protocol, Viet Nam is required to adopt legislative and other measures as necessary to establish human trafficking activities as criminal offenses.³²⁷ As discussed earlier, Viet Nam human trafficking offenses under the Law on Human Trafficking were not consistent with the model definition in the Protocol.³²⁸ International laws indicate that a child shall mean any

319. U.N. OFF. DRUGS & CRIME, GLOBAL PROGRAMME AGAINST TRAFFICKING IN HUMAN BEINGS: TOOLKIT TO COMBAT TRAFFICKING IN PERSONS 7 [hereinafter GLOBAL PROGRAMME].

320. *Id.*

321. G.A. Res. A/RES/44/25, Convention of the Rights of the Child (Dec. 12, 1989).

322. *Id.*

323. *Id.*

324. *Id.*

325. ECPAT, *supra* note 208, at 14.

326. CHILDREN ON THE EDGE, *supra* note 10, at 19; Protocol, *supra* note 229. The Protocol contains the internationally agreed definition of human trafficking and sets the standard for national legislation to follow. *Id.* The Protocol represents the international community's recognition of all forms of human trafficking, not only the sexual slavery of women and children. *Id.*

327. CHILDREN ON THE EDGE, *supra* note 10, at 19.

328. *Supra* notes 229–30 and accompanying text.

person less than eighteen years of age.³²⁹ In Viet Nam, however, the legislation legally defines a child as any person under sixteen years of age, which is inconsistent with the Protocol.³³⁰

Notably, this convention recognized that exploitation could happen even with a child's "consent," and the convention supports a global campaign to recognize the rights of every child around the world.³³¹ Another milestone was in 2000, when Viet Nam ratified the ILO convention No. 182 on the Worst Forms of Child Labor,³³² which was a necessary step toward the fight against sexual exploitation and trafficking of children.

B. Regional Initiatives

At the regional level, China, Laos, Thailand, and Cambodia acknowledge the problem of trafficking children crossing the border for sexual exploitation, which led to a consistent call for regional cooperative initiatives to combat the problem.³³³ This acknowledgment has resulted in several programs and projects that take a regional approach in their effort to deal with the different facets of the problem.³³⁴ As result, an International Labour Organization–International Programme on the Elimination of Child Labour (ILO-IPEC) program was incorporated to combat trafficking in children covering Cambodia, Thailand, Viet Nam, Laos, and the Yunnan Province of China.³³⁵ This Mekong subregion program aims at "strengthening national capacity to combat trafficking and promoting bilateral collaboration among countries in the subregion."³³⁶ In these countries, whether at a district or provincial level, most activities that are intended to prevent the trafficking of children are implemented with the cooperation of the government and NGOs.³³⁷ All of these activities need to adhere to each country's plans and policies,³³⁸ as each country has

329. Protocol, *supra* note 229.

330. Compare *id.*, with Children Law No. 102/2016/QH13.

331. Protocol, *supra* note 229.

332. ILO-TICW, *supra* note 193.

333. BOONPALA & KANE, *supra* note 1, at 37; Statement, Ass'n. Se. Asian Nations, ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (Nov. 29, 2004).

334. DERKS, *supra* note 1, at 21; Statement, Ass'n. Se. Asian Nations, ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).

335. BOONPALA & KANE, *supra* note 1, at 37; ASEAN Convention Against Trafficking in Persons, Especially Women and Children (2015); *see* Agreement between Vietnam and Cambodia on Cooperation to Eliminate Trafficking in Women and Children and Assisting Victims of Trafficking (2005) (as amended in 2012) [hereinafter Viet Nam–Cambodia Agreement].

336. BOONPALA & KANE, *supra* note 1, at 37.

337. *Id.* at 38.

338. *Id.*

an agency to review program activities and to guide the course of action at the national level.³³⁹

UNICEF is one of the most important organizations that supported the Vietnamese government's "legal reviews of legislation to strengthen the protection of child rights" in Viet Nam.³⁴⁰ UNICEF has been crucial in supporting cross-border initiatives that Viet Nam and other partners undertake in their efforts to establish cooperation amongst the countries of the Mekong subregion.³⁴¹ UNICEF has also assisted Viet Nam and China in an agreement regarding the trafficking of children across the border of the two countries.³⁴² 2010 marked a successful collaboration between the governments of Viet Nam and China on a memoranda of understanding on the trafficking of children and sexual exploitation.³⁴³ The yearlong collaboration aimed "to strengthen the cooperation between the two governments to prevent and combat human trafficking."³⁴⁴

In a regional meeting between Viet Nam and Cambodia, both countries expressed grave concern that trafficking in children is a repulsive violation of human rights and a serious injury to the dignity of human beings.³⁴⁵ The meeting recognized the negative impact of trafficking on children's "physical, mental, emotional, and moral development[,] which is harmful to the social structure and values of both societies."³⁴⁶ Adhering to the United Nations Convention Against Transnational Organized Crime to prevent, suppress, and punish trafficking of children, both countries agreed and pledged to "faithfully cooperate to eliminate trafficking in children and to protect and assist victims of human trafficking."³⁴⁷ Together, both countries hope to strengthen their border security. Each country promised to share more information and experience³⁴⁸ to increase the efficiency of combating the trafficking of children across their borders.³⁴⁹ Again, to effectively combat child trafficking, China, Laos, Thailand,

339. *Id.*

340. CHILDREN ON THE EDGE, *supra* note 10, at 23.

341. *Id.*

342. *Id.*

343. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 387 (2011).

344. Christina T. Le, *The Exploitation of Women—A Comparative Study of Human Trafficking Laws between the United States–Mexico and China–Vietnam*, GLOBALLEX (Nov. 2021), https://www.nyulawglobal.org/globalex/Human_Trafficking1.html [<https://perma.cc/8DHM-KSM9>].

345. Viet Nam–Cambodia Agreement, *supra* note 335.

346. *Id.*

347. *Id.*; Protocol, *supra* note 229, at 41.

348. Viet Nam–Cambodia Agreement, *supra* note 335.

349. *Id.* Mere promises will not aid in the fight against trafficking of children for commercial sexual exploitation. If both countries are committed to fight this war, then actions will speak louder than words and so far, very minimal actions can be seen.

and Cambodia must communicate and share information, network and join forces, provide technical assistance, and comprehensive research and analysis.³⁵⁰ At this critical juncture, Viet Nam cannot rely on being secretive, saving face, or denying the existing crisis; doing so will only escalate the crisis to a point beyond imagination.

Previously, a conference was held by the Ministry of Public Security of Viet Nam, the Ministry of the Interior of Cambodia, and the United Nations Office on Drugs and Crime (UNODC) to campaign on the fight against human trafficking.³⁵¹ It is the hope of both countries that such collaboration will strengthen their national policy, further their determination to cooperate, and intensify their control over their borders.³⁵² The 2017 Trafficking in Persons Report elaborated that the government adopted victim identification criteria as part of the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT) and maintained its formal procedure for victim identification, but did not proactively or widely employ either mechanism among vulnerable groups such as women arrested for prostitution, migrant workers returning from abroad, and child laborers.³⁵³ It also did not systematically refer victims to protective services due to inadequacies in its formal referral process, including some border officers' unfamiliarity with trafficking crimes, a lack of interjurisdictional cooperation, and incomplete data collection processes.³⁵⁴ In addition, authorities deported a large number of victims without referring them to services, including as many as 218 Cambodian victims—152 of whom were children.³⁵⁵ Officers continue to conflate trafficking with smuggling, which precludes the identification of victims who voluntarily migrated abroad.³⁵⁶

This campaign, if performed according to plan, would be successful in fighting against suspects and organized trafficking groups. The trafficking of children across the border has proved to be more complicated and difficult to control. That is why such collaboration between both countries should be an ongoing process and not just a one-time deal to quiet the international community.

350. BOONPALA & KANE, *supra* note 1, at 37; Statement, Ass'n. Se. Asian Nations, ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (Nov. 29, 2004).

351. *The Ministry of Public Security in Viet Nam and UNODC consult on drug control and crime prevention*, UNODC.ORG (Feb. 2, 2011), <https://www.unodc.org/roseap/en/2011/02/consultation-meeting-vietnam/story.html> [<https://perma.cc/XFJ4-RL3U>].

352. *Id.*

353. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 26 (2017).

354. *Id.*

355. *Id.* at 427.

356. *Id.*

C. The Responses of UNICEF and Other Non-Profit Organizations

On the local level, the Vietnamese government encourages the participation of international agencies like UNICEF and local NGOs to work with provincial and municipal governments to protect and prevent Vietnamese children from being trafficked across the border³⁵⁷ to China, Laos, Thailand, and Cambodia. The goal of UNICEF has been to “lift the veil of ignorance, to educate, retrain, improve living conditions and eliminate the causes of poverty that make children particularly vulnerable to exploitation”³⁵⁸ in Viet Nam. Families are the first line of prevention and protection for Vietnamese children from being trafficked across the border;³⁵⁹ thus, UNICEF’s prevention programs are extremely helpful. The program aims to educate families and children about the dangers of commercial sexual exploitation and trafficking across the border.³⁶⁰ UNICEF also assists in the liberation of children from their captors and owners and also “reunite children with their families and communities.”³⁶¹ In addition, UNICEF works closely with other organizations and national and local governments to close all possible means of escape for the traffickers and exploiters.³⁶²

In 2004, the teamwork of the International Labour Organization Trafficking in Children and Women (ILO-TICW) and Viet Nam Television effectively produced and promoted a documentary about the trafficking and exploitation of Vietnamese women and children which “aired in prime time across the country.”³⁶³ In that same year, Vietnamese children voiced their opinion about trafficking through a forum that was set up by the collaboration of many organizations, such as the Young Pioneers’ Council, Save the Children UK, UNICEF, and the International Organization for Migration (IOM).³⁶⁴ The forum continues to this day under the name “Children Speak Out on Prevention of Child Trafficking and Labour[.]”³⁶⁵ The purpose of having this forum was to let children speak to the policymakers of Viet Nam.³⁶⁶ Furthermore, there was an organized “Children’s Concert

357. *See id.* Notably, it remains unclear “how many . . . victims benefitted from government or NGO protection services.” *See id.*

358. CHILDREN ON THE EDGE, *supra* note 10, at 23.

359. *See id.* (reporting that UNICEF hopes families become “the first line of protection for children.”).

360. *Id.*

361. *Id.*

362. *Id.*

363. ILO-TICW, *supra* note 193, at 2.

364. *Id.*

365. *Id.*

366. This forum is a great tool not just for the children and the government but also

Against Child Trafficking and Labour,” which consisted of fifty Australian children and fifty Vietnamese children.³⁶⁷ This concert was held in Hanoi and marked a successful collaboration between the Australian Embassy in Viet Nam and Vietnamese advocates.³⁶⁸

After a year of implementing the ILO-TICW project, the Vietnamese government signed an agreement to expand this project to other provinces.³⁶⁹ This project is a group effort with Vietnamese government agencies, like that of the Ministry of Labour, Invalid and Social Affairs (MOLISA), the Viet Nam Women’s Union (VWU), and other agencies.³⁷⁰ With a working plan to prevent the trafficking of children within and across borders, the project directed its attention at three provinces: Tay Ninh,³⁷¹ Hau Giang, and Can Tho.³⁷² After careful research for high-risk areas, project advocates learned that these three provinces supply the majority of children to Cambodia for sexual exploitation.³⁷³ The project calls attention to the importance of building a community and maintaining it to prevent child trafficking.³⁷⁴ With massive collaboration at all levels from international communities to the local government agencies, hundreds of children from those provinces are being “taught about the dangers of trafficking and ill-prepared migration.”³⁷⁵ Moreover, any children that have dropped out of school will have a chance to attend classes that will help them reach the level of education required of them before they can go back to public school.³⁷⁶ In the future, this project will run simultaneously across twenty-four of Viet Nam’s communities.³⁷⁷

the public. Using this forum, the children can voice their concerns, suggestions, or report any suspicion suspects. Children can also ask questions on this forum thus increasing their own awareness of the situation. On the other hand, this forum can be an empty promise for the children because there is nothing to prove the Vietnamese governments will see or read those posted comments of the children. Also, in order to use the forum, children need to have access to a computer and internet service. This may not prove to be a problem for children who live in the city, but the at-risk children do not live in Ho Chi Minh City or Ha Noi. They may not even know what a computer is. Even if they are able to get to a computer facility, will they have money to pay for the usage of the computer? It is true that the usage fee is not expensive to many people, but we need to remind ourselves that our focus group is not likely to have such money to spend.

367. ILO-TICW, *supra* note 193, at 2.

368. *Id.*

369. *Id.* at 1.

370. *Id.*

371. I can see why the project aims at these communities. Geographically, Tay Ninh is the closest to Cambodia, it actually borders with Cambodia. As for the other two provinces, they do not border Cambodia, but they are not too far away.

372. ILO-TICW, *supra* note 193, at 2.

373. *Id.*

374. *Id.*

375. *Id.* at 3.

376. *Id.*

377. *Id.*

Recognizing the weakness of the Vietnamese judicial and law enforcement system, the UN Offices of Drugs and Crime (UNODC) has been helping to enhance their ability to fight against child traffickers.³⁷⁸ UNODC plans to reinforce existing systems that prevent and challenge child traffickers by building favorable conditions for the judicial and law enforcement agencies.³⁷⁹ It is essential that both the judicial and law enforcement systems improve their skills.³⁸⁰ Training workshops are a must for all Vietnamese government agencies, as they may lack the knowledge, experience, and resources to deal with this dilemma. Such workshops focus on the issue of child trafficking and acknowledge the need for ongoing training in all areas that will help prevent, protect, and prosecute any traffickers and exploiters.³⁸¹ This program has been a valuable tool, which aids officials who are responsible for combating child trafficking.³⁸² Attending officials will learn about the current situation, different ways of child trafficking within, or across, border, and effective techniques that will help to combat this crisis.³⁸³ Due to the training workshop, the anti-trafficking force has taken an active role in investigating suspects and building a conviction record.³⁸⁴

D. Rescue, Recovery, and Reintegration

Rescue is, as it should be, the job of law enforcement, a job that cares for victimized children and will support them at this tragic time.³⁸⁵ UNICEF, NGOs, social services, and other agencies recognize a need for child-centered services and for trained staff that will make sure that the “recovered child is not the immediate focus of legal sanctions.”³⁸⁶ Indeed, “in many instances, children are arrested for illegal activity and taken to holding facilities while exploiters are allowed bail or even to go free.”³⁸⁷ These issues continue to challenge authorities seeking to resettle rescued children. For example, Kim,³⁸⁸

378. GLOBAL PROGRAMME, *supra* note 319, at 45.

379. *Id.*

380. *See, e.g., id.* at 210–19.

381. *See* Mike Dotteridge, *Response to Trafficking in Persons: International Norms Translated into Action at the National and Regional Levels*, in UN Off. Drugs & Crime, *An Introduction to Human Trafficking: Vulnerability, Impact, and Action*, at 103–05 (2009).

382. *See* UN Off. Drugs & Crime, *Global Report on Trafficking in Persons*, at 18 (2012) [hereinafter *Global Report*].

383. *See id.*

384. *See* TIP REPORT 2019, *supra* note 16, at 500–01.

385. BOONPALA & KANE, *supra* note 1, at 49.

386. *Id.*

387. *Id.*

388. *Supra* notes 81–106 and accompanying text.

a lucky twelve-year-old girl who was rescued from a brothel in Phnom Penh, now sits nervously in an NGOs' shelter in Cambodia. Looking at her face there is no telling whether she is happy or sad. What will happen to her now when prevention strategies have come too late for her? When will she be able to go back to Viet Nam and reunite with her parents? Such questions trouble the authorities of both countries because they do not have an answer, especially when they have no way to prove what nationality she is. Even if she still has all her identification, the "bureaucratic procedures and the political situation have made repatriation to Viet Nam a sensitive and complex issue."³⁸⁹

The recovery of children, who have been captured, exploited, traded, sold, and prostituted and their return, or "reintegration into their home communities is perhaps the most challenging areas of program intervention."³⁹⁰ In fact, the International Programme on the Elimination of Child Labour (IPEC) has recognized that

Children who have been prostituted have multiple, urgent needs. These include accommodation, basic provisions, medical care, counseling, assistance to return, legal advice, financial support during the healing process, classes, life skills and pre-vocational training, protection from reprisals, and support to begin building a future. Some of these may be a short or medium term, but they may also be long-term.³⁹¹

The quality of this return and reintegration process will ultimately determine the success of the victims' psychological recovery, the risk of being re-trafficked, and the chances of their healthy development into adulthood.³⁹² Trafficked and sexually exploited children are extremely traumatized: "[t]hey . . . carry a great deal of shame and guilt . . . and can fear returning home."³⁹³ Therefore, they can be picked up by authorities one day and not be ready to return home the next.³⁹⁴

No child staying in the resettlement shelters established by UNICEF remains longer than two years.³⁹⁵ They are then either reunited with their families or helped to find a job to live independently.³⁹⁶ Social workers from Action for Women in Distressing Circumstances (AFESIP) "visit families first to assess the chances of a

389. DERKS, *supra* note 1, at 49.

390. BOONPALA & KANE, *supra* note 1, at 49.

391. *Id.*

392. See ARNONOWITZ, *supra* note 4, at 157–58.

393. CHILDREN ON THE EDGE, *supra* note 10, at 28.

394. *Id.*

395. *Id.*

396. *See id.*

successful reunion, to reduce the stigma associated with their return, and to identify a local employment contact.”³⁹⁷ After their return, children who were rescued will receive visits from social workers in the first three months the child is back at home.³⁹⁸ In this manner, AFESIP has helped seventy-four children from Cambodia and Viet Nam.³⁹⁹ Additionally, “UNICEF . . . work[s] with the region’s ministries of education to ensure that children are enrolling and continuing in school.”⁴⁰⁰ UNICEF, NGOs, and government organizations are incorporating into school curricula “to ensure that children and parents have adequate information to protect themselves from traffickers.”⁴⁰¹ They are also working “to track and trace school dropouts.”⁴⁰²

IV. U.S. EFFORTS

In 2003, the U.S. government “strengthened its ability to fight child sex[ual exploitation] by passing the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) and Trafficking Victims Protection Reauthorization Act” (TVPRA).⁴⁰³ Together these laws criminalize traveling to another country to engage in sexual acts with a child.⁴⁰⁴ The legislation carries penalties of imprisonment for up to thirty years.⁴⁰⁵ In January of 2006, President George W. Bush continued to reaffirm his support for TVPRA by signing it into law stating:

We cannot put the criminal out of business until we also confront the problem of demand. Those who pay for the chance to sexually abuse children and teenage girls must be held to account. So we’ll investigate and prosecute the customers, the unscrupulous adults who prey on the young and innocent.⁴⁰⁶

A grant of twenty-five million dollars went towards states and local law enforcement to prevent child trafficking to and in the United States.⁴⁰⁷ Another ten million dollars went to the local department of Health and Human Services to help care for those victims after

397. *Id.*

398. *Id.*

399. CHILDREN ON THE EDGE, *supra* note 10, at 28.

400. *Id.* at 24.

401. *Id.*

402. *Id.*

403. TIP REPORT 2006, *supra* note 113, at 24.

404. *Id.*

405. *Id.*

406. *Id.* at 21.

407. *Id.*

they were rescued from being sexually exploited.⁴⁰⁸ Funding the NGO World Vision is one way for the United States to combat child sexual exploitation.⁴⁰⁹ Such grants help World Vision conduct major public awareness campaigns, deterrence, and crime prevention overseas.⁴¹⁰ Further financial support goes to the Mekong Region Return and Reintegration project and other projects that provide assistance to children and victims of sexual exploitation in Asia.⁴¹¹

It is clear that the United States has devoted substantial time, effort, and personnel to prepare the annual Trafficking in Persons (TIP) report. The report will continue to serve as a useful tool to raise global awareness, highlight the growing effort of the international community, and encourage diplomats, foreign governments, and members of Congress as it engages its foreign counterparts regarding their efforts to combat human trafficking.⁴¹²

Nonetheless, the TIP report is not flawless. Viet Nam received better rankings than it deserved despite credible reports indicating its efforts to combat trafficking were insignificant in light of the enormity of the trafficking of children for sexual exploitation problems in Viet Nam.⁴¹³ More and more children are believed to be working in the sex industry against their will than at any other time.⁴¹⁴ Evidence indicates that law enforcement and government officials help facilitate child trafficking, that investigations and prosecutions of traffickers are rare, and that local corruption renders most prosecutorial efforts ineffective.⁴¹⁵ Nonetheless, the State Department deemed Viet Nam to be making “significant efforts” to combat trafficking.⁴¹⁶

According to Independent researcher Aaron Cohen, the governments of two countries, Viet Nam and Cambodia, are at fault for failing to stop the chaos.⁴¹⁷ He also thought the US State Department should not have removed Viet Nam from the 2004 watch list of countries that needed to be monitored closely on the human trafficking issue.⁴¹⁸ It was not until 2019 that the State Department’s Human

408. *Id.*

409. TIP REPORT 2006, *supra* note 113, at 21.

410. *Id.*

411. DERKS, *supra* note 1, at 30–31.

412. TIP REPORT 2020, *supra* note 12, at 2–3.

413. *See, e.g.*, PEOPLE DAILY, *supra* note 48.

414. *Viet Nam: Child sexual exploitation present “all over the country,”* ECPAT INTERNATIONAL (Mar. 22, 2018), <https://ecpat.org/viet-nam-child-sexual-exploitation-present-all-over-the-country> [<https://perma.cc/K6K7-5M7E>].

415. *See, e.g.*, DUONG, *supra* note 3, at 54 (providing examples of corruption in Viet Nam).

416. TIP REPORT 2006, *supra* note 113, at 258.

417. Cohen, *supra* note 223.

418. *Id.*

Trafficking Report downgraded Viet Nam to Tier II watch list country because Viet Nam “does not fully meet the [U.S. Trafficking Victims Protection Act’s] minimum standards[.]”⁴¹⁹ Many researchers and child advocates think the Tier 2 watch list was an error, and Viet Nam’s response to its trafficking problems remains inadequate.⁴²⁰ The only reason Viet Nam was not classified as Tier 3, a country that does nothing about human trafficking, is that Viet Nam promised that it would do better—however, there is no evidence that it has.⁴²¹ If anything, the Vietnamese government makes money from sending Vietnamese abroad, and some officials are complicitous with foreign employers who exploit children for sex.⁴²²

Viet Nam needs to show that it is not merely trying to smooth out some minor misunderstandings that get in the way of its important economic and political goals, but rather that it has made a fundamental commitment to child rights and reform, and to fulfilling its international commitments, a fundamental commitment that will not be forgotten after it has achieved those goals. Those officials who violate government-guaranteed child rights appear to be punished lightly or never. This is not the way to develop a society that is subject to the rule of law.⁴²³ Though promises of future improvement are encouraging, the United States should not reward Viet Nam too quickly by lifting Viet Nam to a Tier 2 government in the TIP report, when Viet Nam is still “a source, transit and, to a lesser extent, destination country for persons trafficked for forced labor and sexual exploitation.”⁴²⁴

The 2020 TIP report stated that Viet Nam continues to not make any effort toward its commitment to preventing human trafficking.⁴²⁵ The U.S. government must be sure that the change in Viet Nam is real. The United States has a unique opportunity now to achieve real and lasting progress in Viet Nam. Thus, the United States should use the leverage that it has and seek to increase it. The United States can do this by limiting further increases of non-humanitarian U.S. aid being provided to Viet Nam if certain child rights provisions

419. TIP REPORT 2019, *supra* note 16, at 498.

420. Jason Nguyen, *Q&A: What You Should Know About The Human Trafficking Situation In Vietnam*, THE VIETNAMESE (July 17, 2021), <https://www.thevietnamese.org/2021/07/qa-what-you-should-know-about-the-human-trafficking-situation-in-vietnam> [<https://perma.cc/5JEV-AGC9>].

421. *Supra* notes 418–19 and accompanying text.

422. TIP REPORT 2019, *supra* note 16, at 498.

423. The changes are only cosmetic, intended to increase Vietnam’s ability to gain WTO membership and receive Congressional support.

424. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* 162 (2003).

425. TIP REPORT 2020, *supra* note 12, at 532.

are not met, and by authorizing funding to support non-governmental organizations, which promote child rights and democratic change in Viet Nam.

V. RECOMMENDATIONS

According to Donna Hughes, a prominent scholar on the trafficking of children, holding sex consumers personally accountable for their behaviors should curtail demand and ultimately stop the illegal sex trade.⁴²⁶ This model offers the advantage that the laws of the “superpowers” can become the driving force for the eradication of human trafficking.⁴²⁷ In this recommendation, legislative reform is what helps give teeth to the anti-human trafficking laws. Viet Nam has taken the initial steps to combat human trafficking both within and without its borders through legislation.⁴²⁸ However, the Vietnamese government must take further legislative action to continue to fight this human rights violation of epidemic proportions. Viet Nam should make the necessary legislative changes to amend the Penal Code to expand the age definition for children.

Vietnamese law defines children as persons under the age of sixteen⁴²⁹ and adults are defined as persons eighteen years old and older.⁴³⁰ This creates a legal gap for persons aged sixteen and seventeen.⁴³¹ Furthermore, such definition is inconsistent with the definition of children found in the CRC, as well as in the Trafficking Protocol, both of which define children as persons under the age of eighteen.⁴³² This inconsistency with international law led to confusion on how to treat cases involving sixteen and seventeen-year-olds.⁴³³ Changing the Vietnamese legal definition of children to include all those persons under eighteen would alleviate this problem.

Next, Article 17 of the Penal Code addresses accomplice liability using a similarly broad language. Article 17 imposes criminal liability on those complicit in the commission of a crime.⁴³⁴ Complicity is

426. DONNA HUGHES, *Best Practices to Address the Demand Side of Sex Trafficking*, 2 (2004).

427. *See id.*

428. *Supra* Section II.B.

429. Law on Child Protection, Care and Education, No.25/2004/QH11 art. 1 (Viet.).

430. Penal Code No. 100/2015/QH13 art. 2(6); Law on Prevention and Combatting of Human Trafficking No. 66/2011/QH12 (Viet.).

431. *See id.*

432. Protocol, *supra* note 229, at art. 3.

433. *Legal age for children should be adjusted for better protection*, VIETNAM NEWS (Aug. 31, 2019), <https://vietnamnews.vn/society/534847/legal-age-for-children-should-be-adjusted-for-better-protection.html#:~:text=The%20study%20said%20the%20adjustment,the%202016%20Law%20on%20Children> [https://perma.cc/D4NN-B56U].

434. Penal Code No. 100/2015/QH13 art. 17.

defined as “two or more people deliberately commit[ing] the same crime.”⁴³⁵ It holds “organizer[s], perpetrator[s], instigator[s] or abettor[s]” criminally liable as accomplices.⁴³⁶ The creation of accomplice liability in Article 17 is a positive step toward greater prosecution of the crime of trafficking. However, in order to emphasize Viet Nam’s commitment to combating trafficking, the Viet Nam government should amend the Penal Code to add an article explicitly addressing accomplice liability vis-à-vis the crime of trafficking. Simply put, the general accomplice liability article is inadequate to combat trafficking, particularly given the complexities involved. By leaving the law inadequate you run the risk of not criminalizing behaviors that are already there. This area of the law should be more limiting, in order to avoid overreach by a government that may be corrupt.

In addition, further methodical research⁴³⁷ aimed at locating the activities of child trafficking through a carefully designed program of in-depth, open-ended unstructured interviews.⁴³⁸ These interviews would seek to define the socio-economic conditions in which people live and work, facilities they lack access to, the position of children towards parents, the extent of feudalistic structures, decision-making structures, religious aspects, traditions, and historical factors. Interviewees should primarily include trafficked children, who have experienced sexual exploitation, but also those associated with them, family members, clients, pimps, and interested parties such as social workers, NGO’s staff, members of the police, doctors, teachers, monks, and village leaders. The research should include the underlying social, cultural, and economic influences upon the activities and practices of child trafficking in prostitution. It also should provide valuable qualitative data to improve strategies aimed at eliminating or minimizing trafficking behavior and mitigating its effects. Researchers who are carrying out these contacts and interviews with trafficked children, traffickers, brothel owners, and others must be a part of the international rather than Vietnamese organizations. Confidentiality is significant in such circumstances, and only researchers that are non-Vietnamese can be sure to have no relations with the Vietnamese government. In addition, the identification of all individuals and locations must be completely protected.⁴³⁹

435. *Id.* at art. 17(1).

436. *Id.* at art. 17(3).

437. BOONPALA & KANE, *supra* note 1, at 67 (“At the moment no one research methodology has been shown to be universally applicable and reliable.”).

438. Experts believe that “the most useful data remains that which is built up from a multiplicity of sources, taking into account variations in samples and methods.” BOONPALA & KANE, *supra* note 1, at 67.

439. All research activities should be undertaken without jeopardizing the well-being of the children. For that reason, it should be in a private, one on one environment.

International researchers should have extensive experience of life and culture in Viet Nam and in other neighboring countries to ensure that they can make comparative observations. These researchers need to understand that in a country like Viet Nam family values are strong and virginity is still treasured by many. This may indicate why child trafficking is expanding rapidly in Viet Nam. Understanding how children are forced to the streets and bars in different cities within Viet Nam and how they are lured into prostitution is pivotal to gaining an understanding of why this can occur in the first place. Furthermore, researchers' awareness of how the internet and new technology are affecting targeted strategies on child trafficking will be crucial in the effort to eliminate the sexual exploitation of children.

CONCLUSION

According to the Vietnamese government, the motto of Viet Nam is "Independence, Freedom, and Happiness,"⁴⁴⁰ which does not ring true to those children who are trafficked into prostitution. The number of children subjected to prostitution and sexual exploitation in Viet Nam is exorbitant.⁴⁴¹ The damage suffered by these children subject to such sexual exploitation is oftentimes irreparable.⁴⁴² Being forced into the scheme of child sexual exploitation, many children do not have independence, freedom, and happiness as in the Vietnamese motto. Countless children in countries like Thailand, Cambodia, and China have been affected each day by child sexual exploitation, which has flourished in part from social and economic changes.⁴⁴³ In the light of Viet Nam's current changes and its government, it is not surprising that child trafficking does not receive the attention it requires. However, child trafficking into prostitution equals or exceeds other urgent issues, as it is the innermost social problem in Viet Nam.

Viet Nam and the international communities need to acknowledge their role in fueling the child sexual exploitation industry and act responsibly by implementing laws to rein in these atrocious crimes. Enacting national laws in order to facilitate criminal prosecution of sex offenders is a step in the right direction for Viet Nam and other

440. *Independence, Freedom, and Happiness in Vietnam?*, ASIA SENTINEL (Aug. 31, 2012), https://www.asiasentinel.com/p/independence-freedom-and-happiness-in-vietnam?utm_source=url [https://perma.cc/TN5M-C23P].

441. Donna Hughes, *The "Natasha" trade: The transnational shadow market of trafficking in women*, 53 J. INT'L AFF. 625, 627 (2000).

442. *Id.* at 637–38.

443. Global Report, *supra* note 382, at 71; TIP REPORT 2020, *supra* note 12, at 136, 155, 482.

neighboring countries. However, more can be done to deter child trafficking. Cooperation with foreign law enforcement officials and NGOs, informational exchanges between countries, and educational campaigns are all events that if implemented can assist to deter child trafficking within Viet Nam.

The growth of child sexual exploitation has reached an unimaginable height; thus, Viet Nam and international communities cannot turn away from these serious criminal offenses committed against children. The measures taken by the Vietnamese government and its neighboring countries have not been effective. The international communities must acknowledge the seriousness of these heinous, senseless crimes and provide some sort of recourse to past child victims as well as protection to those who may be the targets of such crimes in the future. With the help of international organizations, the Vietnamese government has made admirable efforts in combating child trafficking. However, the problem will likely get worse if many goals remain unaccomplished. All trafficking in children is despicable and destructive to our dignity. There is no doubt that all children who are victims of trafficking need basic services and protection. Surely, Viet Nam can afford to adopt truly ethical and moral treatment of trafficked children.