



Anti-Human Trafficking Program in Vietnam

TRAFFICKING IN WOMEN AND CHILDREN FROM VIETNAM TO CHINA: LEGAL FRAMEWORK AND GOVERNMENT RESPONSES

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Executive Summary

Background

It is widely recognised that trafficking in persons is a gross violation of human rights. Despite various governmental and non-governmental efforts to counter human trafficking, the problem seems to be increasing at an alarming rate. In the Great Mekong Sub-Region, trafficking in women and children is a long established and complex issue often integrated with illegal migration and trans-national organised crime. In this region, the trafficking in women and children from Vietnam to China, especially the two border provinces with Vietnam, Yunnan and Guangxi, is also known as being on the rise and urgently need to addressed at both national and international levels.

In a context of increasing neo-liberal globalisation, the alarming growth of such a phenomenon engenders grave new dimensions in terms of basic human rights violation and increase rate of crime. The opening of borders and the improvement of transport infrastructure between nations, while bringing some benefits through increasing trade, has facilitated inhuman form of population movement, permitted organised syndicate groups to foster, heightened the demand for cheap labour, eased the conditions for the commodification of workers, etc. In most so-called developed countries intense neo-liberal globalisation has rather led to the creation of a fortress, where legal channel of migration have been tightly restricted. Would-be migrants who failed to meet entry criteria set by countries of intended destination therefore become illegal, giving rising to both people smuggling and trafficking, thus engendering the conditions for illegal forms of migrations that can be coupled with exploitation.

Recognising the urgency to act in front of such a situation, Oxfam family decided in 2003 to establish a joint project against trafficking in women and children in Vietnam. It has been agreed by all Oxfam affiliates in Vietnam that the issue of violence against women and children, one of its worst form being trafficking, goes hand in hand with Oxfam's Five Aims (right to sustainable livelihoods, right to basic social services, right to life and security, right to be heard and gender and equity). As one of the most active NGOs working in Vietnam, Oxfam's family has extensive resources and experience in gender policy, capacity building at grassroots level and, strong advocacy and campaigning record on human rights. Along with other governmental and non-governmental organisations, Oxfam's intervention in cross-border trafficking from Vietnam to China may have a significant impact on protecting human rights of women and children in the area.

Objectives of the study

The main objective of this study is on one hand to identify the legal framework against human trafficking in Vietnam and China, and on the other hand, to understand how the government intervene in the human trafficking issue in both countries. The study also intends to review all available literature, materials and documents related to human trafficking from Vietnam to China. In addition, this document will shed light on the concept of trafficking and its relation with prostitution and migration.

Methodology

The paper is based on review and analysis of available literatures including both primary data and secondary data. The materials have provided important insight into the existing situation of human trafficking from Vietnam to China. The materials have also presented government's responses as well as the laws and regulations related to human trafficking.

The primary data includes international commitments of Vietnam and China; laws and regulations/decrees of the two countries.

The secondary data includes clippers from mass media (such as newspapers), articles and documents related to human trafficking as well as websites of various multilateral and bilateral organizations, local and International NGOs.

Structure of the study

This study is organized in 6 chapters. Chapter 1 gives definition of human trafficking and discussion on the concepts of trafficking, prostitution and migration. The main reasons for the existence of trafficking are also provided in this chapter. Chapter 2 presents a profile of cross-border trafficking from Vietnam to China. Chapter 3 introduces legal framework regarding trafficking in these two countries, including international and regional commitments, domestic laws and policies. Chapter 4 focuses on government's responses and interventions on human trafficking related issues in both countries. Chapter 5 addresses main challenges to counter the problem of cross-border trafficking. Suggestions to such challenges will be elaborated upon at the end of this document.

As with many of its neighbours, human trafficking is a growing problem in Vietnam and China, but relatively little is known about it due to the covert nature of it. Due to the sensitivity of human trafficking and limitation of time and literatures on the topic, this paper may contain unavoidable mistakes. The responsibility for the view of this paper rests exclusively on the author.

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This paper was written by Yi Wang, Program Analyst for Oxfam-Quebec's Anti-Human Trafficking Program. The paper was reviewed by our Program Legal Advisor, Bianca Baldo. The final editing and layout was done by Stella Aucoin-Buckles. This paper is written and published to inform public debate on development and humanitarian policy issues related to human trafficking. The text may be freely used for the purposes of campaigning, education and research, provided that the source is acknowledged in full.

1. Definition of Human Trafficking

1.1. Definition of trafficking

On 15 November 2000, the UN General Assembly adopted the *Convention Against Transnational Organised Crime*, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the UN trafficking protocol) and the *Protocol Against the Smuggling of Migrants by Land Sea and Air*¹.

According to article 3 of the UN Trafficking Protocol, trafficking in persons means:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

“Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

“ The consent of a victim of trafficking in persons to the intended exploitation ...shall be irrelevant where any of the (fore mentioned) means... have been used”.

“ The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons,” even if this does not involve...(any of the above listed means)”.

“ Child shall mean any person under eighteen years of age.”

The establishment of the UN trafficking protocol was significant as it created a global language and legislation to define trafficking in persons – the first international agreed upon definition of trafficking; assist victims of trafficking; and prevent trafficking in persons. The above definition describes a wide range of activities for identifying the elements/acts of trafficking. This is an important new tool to facilitate international engagement and cooperation on the issue of trafficking.

While its human rights provisions could be expanded, enriched and made obligatory on States, the Protocol is nonetheless an important step towards locating trafficking within a rights framework. There are other accepted definitions and international standards relevant to trafficking which also give some indication on its content. These include such instruments as the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) and the

¹ In international law, conventions are more important than protocols. This means that countries need to sign and ratify the *Convention Against Organised Crime* before signing and ratifying the *Protocol to Prevent, Suppress and Punish Trafficking* and/or the *Protocol to Against the smuggling of Migrant*.

United Nations Convention on the Rights of the Child (1989). Furthermore, some ILO Conventions² also provide useful guidelines in the context of trafficking.

1.2. Trafficking vs. prostitution:

The various debates on the elements encompassed in the UN trafficking definition, reflect the wide range existing perspective on the subject. In recent years, the hottest issue has revolved around prostitution. One view holds that there should be recognition of the right to self-determination for women who voluntarily engage in prostitution, thereby distinguishing between women who choose to enter prostitution and women who were forced, deceived or tricked into prostitution (IOM 2000:11). The latter category of prostitutes is victims of human trafficking who need protection and assistance. This approach focuses more on preventative measures to combating trafficking for prostitution. The other prohibitionist approach seeks measures to eliminate practice of prostitution. Within this approach, attempts to eliminate prostitution not only involve criminalization of procurers and of others who facilitate prostitution, but the criminalization of prostitution themselves. Women in prostitution are thus viewed as deviants who need re-education and punishment (IOM 2000:11).

Most people agree that trafficking and prostitution are two distinct but inextricably linked phenomena. The above-mentioned definition of trafficking describes that one of the end goals of trafficking in women and children is to make them involved in prostitution. However, the definition also points out that human trafficking has much more wider scope and can take a victim into forced labour or services, slavery and removing of organs.

A common practice in many countries is simply equate/or focuses only on trafficking and prostitution and inherent this practice in national policies. Unfortunately, this tendency often fails to recognize the wider scope of human trafficking and leads to deny protection and assistance to the large numbers of persons trafficked for other purposes.

1.3. Trafficking vs. migration:

Trafficking is often analysed in the context of migration, as it involves the movement of people within or across a country. Nonetheless, trafficking and migration are two very distinct phenomena. While trafficking normally involves the movement of people, the reverse is not necessarily true. Migration means person voluntarily move from one place to another. Key element makes trafficking distinct to migration is that trafficking has the elements of force, coercion/deception and exploitation and profits by someone other than the person undergoing the movement.

Due to globalization, the movement of people, especially for work purposes has grown throughout the world. Carefully distinguishing between movement of people and trafficking is essential to draft potential anti-trafficking intervention. The concept of trafficking does not only requires an examination in the manner in which a person enters a country –whether legally or illegally - but also its conditions at the final destination. Trafficking and more voluntary forms of

² Among others they are: the *ILO Convention 182 on the Worst Forms of Child Labour* (C182) and the *ILO Convention 29 on Forced Labour* (C29).

undocumented migration are best understood as a continuum, with room for considerable variation between the extremes (ILO 2001: 48).

To understand the complex nature of trafficking it is essential to comprehend the various forms of movement people can engage in. These movements forms include legal migration, illegal migration, smuggling and trafficking.

Frequently, migration occurs from a rural to an urban area or from a poor to a wealthier country for economic, political, social or cultural purposes. If illegal, the migration will normally involve the crossing of a border without proper documents and be carried out with or without the help of a smuggler. If a smuggler is used for the illegal crossing of a border, then the term smuggling is appropriate. Smuggling³ can occur for both humanitarian and economic purposes and normally comes with the consent of the adult smuggled.

When it comes to trafficking, it is difficult to categorise it as an illegal form of migration since a victim of trafficking can enter legally a country, but still be subjected to exploitation at the final destination. The presence of force, coercion or deception for the purpose of exploitation are key elements in differentiating trafficking from smuggling and other illegal forms of migration cases. However, according to ILO “Stopping Force Labour Global Report” (2001), identifying the element of exploitation may not be evident at the beginning of the trafficking cycle. A person may apparently enter voluntarily in an agreement with a recruiter for work purposes, border crossing or else, but without having been given the full or right information to take a sound decision. In such circumstances, the deception which will likely lead to some form of exploitation will be recognised as trafficking. In another scenario, a person may willingly migrate for labour and be fully conscient of the type of employment she/he will be engaged in, but the severity of the exploitation at the destination point have turned a seemingly initial migration process into a trafficking situation.

In theory and in practice, the difference between migration (legal and illegal), trafficking and smuggling is not clear-cut. Indeed, the complexity of the UN trafficking definition is a factor that breeds confusion in identifying a trafficking victim. In practice, even more confusion comes in to play. As Skeldon (2000) writes, a clear distinction amongst the concepts that involve population movement have become blurred, as traffickers have learned to manipulate legal channels of migration in order to gain entry to particular countries at particular time.

The responses developed to counter trafficking in the context of migration take on various forms, depending on whether they are developed by a sending or a receiving country. From the perspective of receiving countries, the issues of trafficking of migrants has become closely associated with illegal migration, which is viewed in terms of national security threat, requiring a crack-down on illegal migration and the quick deportation of illegal aliens. This approach may lead to criminalize the victims of trafficking and the rights of these victims may be neglected and/or violated. From the aspect of sending countries, while stimulating migration as a source of income, measures could be taken to protects their citizens from becoming exploited and abused as

³ According to the Protocol Against Smuggling in Migrant by Land, Air and Sea, *the term smuggling of migrant means the intentional procurement for profit for illegal entry of a person into and/or illegal residence in a State of which the person is not a national or a permanent resident.*

migrants in another country, such as pre-departure training, monitoring of migrants, bilateral agreement with receiving countries, return and reintegration programmes for the trafficked persons, as well as awareness-raising to the migrants and potential migrants (IOM 2000: 12).

1.3. Foundational reasons for the existence of trafficking

At its basis, trafficking is mainly due to structural and gender inequalities within the global capitalist economic system. Indeed, these socio-economic inequalities make overseas or urban “labour” opportunities in prostitution, domestic work, factories/sweatshops, etc. a more attractive and at times more lucrative form of employment for poor women and children. Because of a limited array of economic possibilities, women and children are pushed to go abroad or the urban area in order to support or increase their own economic and social status and/or their family’s status. The climate of growing consumerism often motivate poor women and children to go abroad or to the urban city in the hope to save enough money to purchase a land, a house or other material goods for themselves or their families. It is the social-economic context that drives them to put themselves at risk for the sake of economic improvement. Research on trafficking has indicated that victims are not necessarily the poorest and least educated in their community. Some people are aware of high potential earning elsewhere and may seek opportunities for higher income and changing their lifestyle.

2. A Profile of Cross-border Trafficking from Vietnam to China

The Vietnam-China border is 1,463 km with six provinces on the Vietnamese side (namely, Lai Chau, Ha Giang, Lao Cai, Cao Bang, Lang Son, and Quang Ninh) and two provinces on the Chinese side (Yunnan and Guangxi). On this frontier, four international, three national and 14 provincial border gates have been built. Yet there are a myriad of unofficial paths followed by local people, who have relatives on the other side of the border and frequently meet each other.⁴

Normalisation of relations in 1992 and the ongoing transition to market economy in Vietnam and China has resulted in increased trade between the two countries and easy entry of people as well as capital and goods from Vietnam to China. The economic boom, the improved infrastructure and the uneven development between these two countries have brought rapid increase in sophisticated and insidious trafficking of women and children lured by false promises of a better life on the Chinese side.

Globally and regionally, China is known as a sending country for human trafficking. But in relation to Vietnam, China has become a major receiving country for human trafficking. Vietnamese victims were transferred to Southern provinces of China such as Yunan and Guang Xi in land through small tracks or border gates in border provinces such as Lang Son, Quang Ninh and Lao Cai.

In terms of *types of trafficking*, Vietnamese women and children are trafficked to China for marriage, commercial sex work and labour exploitation (such as domestic workers, entertainers and waitresses in bars, cafes and massage houses, etc.). Most of *the trafficked persons* are women and children, both young girls and boys have been sold to China, but the motive of the latter is still under investigation. In the past, the *recruitment of these women and children* was often informal as the traffickers are usually relatives, friends and acquaintances of these women and children. But now the nature of the crime has changed and it has carried features of a transnational and organized crime (Ministry of Public Security of Vietnam 2004). In most of the trafficking cases, the *Vietnamese women and children were trapped* by phony promises of jobs or marriage, but nowadays, according to the Public Security Bureau of Guangxi Autonomous Region, traffickers often use violence or anaesthetic to force their victims into submission. Most *proven human traffickers* are Vietnamese who gang up with Chinese criminals in human trafficking⁵. There is evidence that *trafficked persons come* not only from northern Vietnam, but also from central and southern Vietnam. In recent years, the Chinese police has found that *the destination for trafficking* has extended from border regions to inland provinces such as Henan, Hebei, Anhui, Jiangsu and Guangdong⁶.

Statistics of the victim of trafficking and detailed information of these victims, such as their age, their education level, their family situation, their ethnicity, are difficult to collect due to the

⁴ Source: Vietnam News 24 Oct. 2003

⁵ Source: www.unicef.org/infobycountry/china At a glance: China, Real Life: *China and Vietnam join hands to fight cross-border trafficking of women.*

⁶ Source: Ibid

sensitivity and illegality of the trafficking business. It should be mentioned that the real picture of human trafficking from Vietnam to China might be difficult to obtain. Nonetheless, as reported by the Ministry of Public Security, the Women Union and other organizations in Vietnam and China, the following estimated statistics on trafficking from Vietnam to China may give us some information on the situation:

- A report issued in 2000 by the Vietnam Ministry of Public Security (MPS) indicated that at least 22,000 women and children were illegally sent to China between 1991 and 1999 as domestic workers and prostitutes or as forced wives as a result of China's shortage of women⁷.
- Another report from the Vietnam National AIDS Committee states that in the Chinese border town of Ha Khau alone, there are over 500 Vietnamese sex workers. Authority from China's Guangxi province reports that of the 1,000 Vietnamese women recently discovered to be illegally residing in the area, 80% of them were victims of trafficking⁸.
- The Vietnamese Border Guard Command reported receiving 7,918 trafficked women returned from China during the year 1996-2000 (Dang Nguyen Anh and others 2003: 14)
- According to a 1999 survey by Women's Federation of the Chinese border city Dongxing, 1,269 Vietnamese women are living in the city with a population of 120,000. Of them, 674 are married to local residents without going through legal formalities. Statistics from Dongxing Public Security Bureau indicate that 242 Vietnamese women are involved in the 74 trafficking cases recorded since 1990. To date, 231 of those women have been rescued⁹.
- According to the Public Security Bureau of another Chinese border city Pingxiang, the city had rescued 13 Vietnamese women between 1992 and 1997. During the nation wide crackdown on trafficking of women and children in 2000, the Bureau rescued 103 Vietnamese women, nearly half of who had been forced into prostitution¹⁰.

The *main causes of trafficking* from Vietnam to China can be analysed from

- the negative impacts of neo-liberal globalisation. The negative effects of rapid and uneven economic development, rural-urban and gender inequalities set the condition to create a pool of trafficked people;
- a flawed legal system in which adequate laws to prevent trafficking and protect victims are not in place or not enforced: where corrupt authorities (including law enforcement agencies) let trafficking happen and even benefit from it (Ginzburg 2003:3);
- demand for trafficked women and children for low status, low paid workers, brides, prostitutes, etc.;
- opportunities for traffickers because of the increased border control and migration policy; and because of the act of trafficking has low risk for traffickers (Ginzburg 2003:3);
- vulnerability factors play a role in pushing people into the hands of traffickers (poverty, low education, lack of law enforcement, etc.) (Ginzburg 2003:3).

⁷ Source: www.unicef.org/vietnam What's New? *UNICEF leads Assessment of cross-border trafficking*. 25/3/ 2002.

⁸ Source: www.unicef.org/vietnam UNICEF VN: Highlight: Child trafficking: *Protection Children from modern day slavery*.


⁹ Source: www.unicef.org/infobycountry/china At a glance: China. Real Life: *China and Vietnam join hands to fight cross-border trafficking of women*

¹⁰ Source: Ibid

- In addition, cross-border trafficking should be seen as a development problem from both the supply side and the demand side.

Human trafficking has *serious impact* on the socio-economic and health (HIV/AIDS) development in Vietnam and China. Most victims of trafficking are at high risk of being infected with HIV/AIDS and other transmitted disease (STDs). Socio-psychologically, victims have to face a high level of social stigma and can no longer live a normal life. Human trafficking has also affected national security, social order, border security, as well as increased transmission of sexual-transmitted diseases. Each year, the two governments spend billions of dollars to repatriate, integrate, treat the disease of the victims and investigate the trafficking cases.

Efforts at eradicating trafficking should not focus solely on sending countries. Receiving countries should also take some ownership of the problem. Therefore, the next two chapters try to review and analyse the legal framework and government responses against human trafficking in both Vietnam and China.



3. Legal Framework Regarding Human Trafficking in Vietnam and China

Both Vietnam and China have several good laws, policies and agreements for the protection of women and children from human trafficking and prostitution. At present, many laws against trafficking tend to protect legal citizens of countries and not women and children who have been trafficked or who illegally migrated across border.

In the following, the legal framework - international and domestic laws and/or conventions committing Vietnam and China in the fight against human trafficking will be presented:

3.1. Main international commitments

The international community has throughout history created a set of international law, regulations, guidelines and efforts to prevent, protect and combat against human trafficking. Both Vietnam and China have attached importance to the principles and regulations of international instruments relevant to human trafficking. Table 1 shows a list of international instruments ratified or signed by Vietnam and China. These international instruments include explicit reference to trafficking in women and children.

Table 1: International commitment:

International Commitment	Vietnam/year	China/year
Convention on Elimination of All Forms of Discrimination against Women (1979) (CEDAW)	Ratified/17/02/1982	Ratified/04/11/1980
The UN Convention on the Right of the Child (1989) (CRC)	Ratified/28/12/1990	Ratified/02/02/1992
The Optional protocols attached to the CRC governing 1) child rights in armed conflict and 2) in the sale and use of children for prostitution and pornography	Ratified/20/12/2001	Signed/06/09/2000
ILO Convention on the Worst Forms of Child Labour (No. 182) 1999	Ratified/19/12/2000	Ratified /08/08/2002
ILO Convention on Forced Labour (No. 29) 1930	Not ratified	Not ratified
ILO Convention on the Abolition of Forced Labor (No. 105) 1957	Not ratified	Not ratified
UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	Not ratified	Not ratified
The Convention Against Transnational Organized Crime (2000)	Signed/13/12/2000	Signed/12/12/2000
The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2000)	Not signed	Not signed
The UN Protocol against the Smuggling of Migrants by Land, Sea and Air (2000)	Not signed	Not signed

3.2. Existing bilateral/multilateral treaties with neighbouring countries:

Both China and Vietnam have signed several legal and judiciary agreements with countries in the Great Mekong Sub-region (GMS) and they are also active members of multilateral fora such as:

- Coordinated Mekong Ministerial Initiative against Trafficking in the Great Mekong Sub-region: Senior Officials and Ministerial Meetings (COMMIT, Bangkok, Thailand; July 2004, Yangon, Myanmar October 2004 and Hanoi, Vietnam March 2005)
- Bali Ministerial process (the first Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related transnational Crime, Bali February 2002)
- East Asia and the Pacific (EAP) Regional Consultation for the Second World Congress against Commercial Sexual Exploitation of Children (Bangkok, October 2001)
- Asian Regional Initiative Against Trafficking in Women and Children (ARIAT, Manila 2000)
- The Manila Process on Trafficking and Irregular Migration in East and South-East Asia (Manila 2000)
- International Symposium on Migration: Towards Regional Cooperation on Irregular/Undocumented Migration (Bangkok Declaration, Bangkok 1999).

Vietnam, as a member state of ASEAN, has taken stand against human trafficking together with other ASEAN members:

- In 1997, the ASEAN Declaration on Transnational Crime calls for joint efforts to combat transnational crime including trafficking in women and children in the region;
- In 1998, member states developed the ASEAN Hanoi Plan of Action to Combat Transnational Crime calling for greater cooperation and assistance in prosecution of cross-border crimes.
- In 2000, Immigration chiefs from the 10 member countries signed the Davao Accord with a unified stand against the widespread and lucrative market of trafficking women and children;
- In 2002, at the 23rd Assembly of the ASEAN Inter-Parliamentary organization in Hanoi, member countries addressed the importance of cooperation in fighting trafficking.
- On 17 Sept. 2003, a joint press statement was issued at the 7th meeting of ASEAN Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of Ministries of Foreign Affairs (DGICM). The States will take measures to further accelerate the implementation of the ASEAN Plan of Action on Immigration Matters adopted in 2002 and further promote regional cooperation on immigration and consular matters and stressed the importance of Immigration and Consular Authorities in fighting transnational crimes, especially trafficking in human beings.

Both China and Vietnam have also signed several bilateral agreements against trafficking, with their neighbouring countries. China has bilateral agreements with Vietnam, Cambodia, Laos and Thailand focusing mainly on cross-border cooperation to combat human trafficking. The following is some detailed information on Vietnam's bilateral agreement with its neighbouring countries:

Treaty on Border between Vietnam and Cambodia 20/07/1983

“The two sides enhance the cooperation to keep security and social order in the bordering region. In the case citizens of one country violate regulations of the other country (assault, robbery, smuggling...) the local authority will arrest, document and hand over the offender and evidence to authority of the citizen’s country for conviction”.

Now the two sides are on the process of discussion to sign Vietnam-Cambodia Bilateral Agreement on Elimination of trafficking in Women and Children and on Victim Assistance.

Provisional Agreement on Solving affairs in Border Area between Vietnam and China 07/11/1991 (Chapter IV)

“The two countries will collaborate to keep the security and social order in the bordering area including addressing the issue of illegal migration. They will work together to investigate, arrest and transfer cross-border criminals. Coordinate to prevent and suppress smuggling, drug, arms, counterfeit money, seduce and trafficking in women and children”.

Agreement on Mutual Legal Assistance in Civil and Criminal Matters between Vietnam and China 19/10/1998

Art. 26: *“ The required party shall provide other party duplicates of the criminal sentences related to nationals of the other party”.*

Art. 28: *“ Both parties, as required will provide to each other information about the current law and practices of law implementation in each country”.*

Border Agreement between Vietnam and Laos 22/9/2003. Signed by officials of Vietnam’s Quang Tri and Lao’s Savanakheth provinces.

The two sides agreed to raise awareness about border regulations, improve management capacity, smash drug trafficking and smuggling and ease people’s mobility and movement through the border.

3.3. Domestic Laws regarding human trafficking

According to China Country Paper against Trafficking in Women and Children and Vietnam Country Paper on Countering Trafficking in 2004, both China and Vietnam have claimed that they have developed a comprehensive legal framework to combat human trafficking. In both countries, as there is no separately specific law on human trafficking, the Criminal Law is the cornerstone of the framework and main legal instrument against trafficking, which is supplemented by relevant laws, administrative acts and other government ordinance and regulations with operative measures.

Vietnam:

- **The 1992 Constitution** specifies state enforcement against social evils¹¹ and protect of women and children (Art. 40, 59);
- **The Penal Code** is the main legal instrument regarding trafficking. Article 115, 119, 120 and 149 refer to trafficking in women and children, without though giving a clear definition of what trafficking consist of and set a punishment of five to 20 years in prison. In most cases though, cross-border trafficking is understood as being for the purpose of

¹¹ Terms used in Vietnam regarding any socially harmful activities, notably prostitution, drug and gambling.

prostitution. In addition, the Penal code refers to the prohibition of sexual exploitation of children and the prevention and punishment of prostitution. It also penalizes anyone who forces another person to enter into marriage against his or her will and anyone who arranges an early marriage, that is, the marriage of a person who is not of legal age.

- **Law on Protection, Care and Education for Children** (1991) states that the law bar seducement, guide children into prostitution, trafficking or pornography (Art 8, 14);
- **Law on Marriage and Family** (2000) forbids forcing marriage, hindering voluntary and progressive marriage, feigning marriage, deceiving other persons into marriage (Art. 4);
- **Instruction No. 766/TTg of the Prime Minister** (1997) makes clear the duties and functions of each ministries, agencies and local authorities to implement preventive measures to combating trafficking in women and children.
- Vietnam's National Assembly has also issued administrative measures against sex workers. Under **the Ordinance on Administrative Violation**, local authorities can take prostitutes into police custody.
- The Politburo and the Vietnamese Communist Party as well as the government have all issued **Decrees and Directives** against social evils and diseases and detailed administrative measures and responsibilities to prevent and suppression of prostitution, and prevent trafficking of women and children abroad. Vietnam has recently introduced a new decree The Adoption Decision 68 (which has taken effect on January 2, 2003) tightens control over foreign adoptions of Vietnamese children in an attempt to halt fraud and child trafficking.

China:

- Two Decisions of the Standing Committee of the National People's Congress “ **On the Severe Punishment of Criminals Abducting or Kidnapping Women and Children**” and “**On the Measures Against Prostitution and Severe Punishment of the Crime of Organising, Forcing, Seducing, Harboring, or Introducing prostitution**” (1991) called for action to criminalize the following: “Abduction for sale of women and children; kidnap of women and children, kidnap for purpose of blackmail; purchase of abducted and kidnapped women and children; abuse of office to hinder the rescue of abducted and kidnapped women and children”;
- **The New Criminal Law** (1997) Article 240, 241 and 243: higher penalties for traffickers up to life sentence and even capital punishment. Article 358-362: up to 10 years or life sentence in prison for the crime of organizing, forcing, seducing, harbouring, or introducing prostitution.
- There are other laws which target specially the protection of women and children: **Law of the Protection of Women's Rights** (1992) prohibits the abduction, trafficking and purchase of women;
- **Protection of Minors Act** (1991) and **Adoption Act** (1991) obliges parents to stop children from engaging in prostitution and forbids the sale of children; some other laws may contribute to prevent the phenomenon of trafficking;
- **Marriage Law** (2001) states that marriage upon arbitrary decision by any third party or by the use of compulsion is prohibited (Art. 3).
- **Immigration Laws** specifies that illegal entry, forgery or alteration of exit or entry certifications, may be punished with a fine of 500-2,000 Yuan or detention for 3-10 days

and or an order to leave the country within specified time, deportation or subject to criminal liability if the case constitutes a crime (Art. 14 Law on Control of the Exit and Entry of Citizens 1986; Art. 29 Law on Entry and Exit of Aliens; Art 40, 47 Rule for the Implementation of the Law on Entry and Exit of Aliens 1985). Aliens who violate the provision on residential administration may be punished with a fine of 100-500 Yuan or detention of 1-3 days and ordered to leave the country within specified time if the case is serious; the penalties or fines and detention shall be applicable to persons helping aliens to enter or exit the country illegally or to reside or stay in China illegally (Art. 42, 49 Rule for the Implementation of the Law on Entry and Exit of Aliens 1986).

- Regulations and acts that deal with criminal cases of trafficking women and children by the Supreme People's Procuratorate and the Ministry of Public Security in 1999 and 2000.

From the aforementioned, it can be said that although both countries have not developed a clear definition of trafficking and there is no specific procedures related to human trafficking, both Vietnam and China have necessary legal instruments to counter human trafficking in women and children within their own countries and across the border. It is understandable that the laws in both countries prescribe human trafficking as a criminal offence and laws on criminal procedures for human trafficking cases exists, although some areas have not fully respond to the requirements of international instrument.

There are some amendments need to done on Vietnam and China's legislation to be useful and not detrimental for the victims.

- Improper definition of trafficking. There is no clear definition of trafficking and what exactly does it comprised of. It seems as though trafficking is mostly understood under a problem of sexual exploitation. It is fundamental that each county adopt a broad and precise definition of trafficking.
- An approach that focuses almost exclusively on prostitution and forced marriage of women and children, privileges one gender-specific group of victim. Trafficking is indeed a phenomenon that affects particularly women and girl, but trafficking in men should not be discarded. The myth that women and children are trafficked while men migrate needs to be taken with caution. Men are also trafficked even though very few studies have been done on the subject.
- There is no differentiation between smuggling, trafficking and other kind of illegal migration. Undocumented migrants and trafficked persons are treated in the same way in order to discourage future undocumented migration. Government adopt a two-tiered approach to human rights wherein only citizens have rights, despite the fact that international human rights law does not predicate the majority of rights upon citizenship (Jordan 2002: 35).
- From the aforementioned it can be observed that a crime control approach is favored by these two countries rather than a rights-based approach. This approach criminalises trafficked people rather than considering them as victims that need protection.

4. Government Responses to Human Trafficking in Vietnam and China

To what extent does the legal framework and government policies manage to prevent and remedy the problem of trafficking? The basic framework for needed action is already present in both countries (although it needs improvement). The main issue is implementation of the international standard and domestic laws and policies. The effectiveness of these international standards and domestic laws and policies depends on the awareness of the society, the resources needed and the effectiveness of their enforcement by the police, the immigration officials and other relevant institutions. In the following the government responses in Vietnam and China will be analyzed along the following three main topics; i) prevention; ii) protection and reintegration/repatriation; and iii) punishment:

4.1. Sending country Vietnam:

According to the Vietnam Country Paper on Countering Trafficking (2004), Vietnamese government has established a comprehensive program for combating human trafficking. The relevant sectors and ministries have set up concrete programmes and projects coherent to a range of synchronous approaches with the aim to avoid traffickers preying upon women and children. Vietnam's Ministry of Public Security assumes a leading role in the anti-trafficking efforts. The other main stakeholders includes the Ministry of Labour, War and Invalids, the Ministry of Justice, the Central Women Union, the Committee for Population, Family and Children etc. Policies and resolutions were developed as a national policy to address and prevent trafficking and prostitution. The government has encouraged and created conditions for different organizations in the country and abroad to help protect and care for women and children (IOM 2000:46). In 1997, the government issued a directive calling for a multi-sectoral action approach towards the trafficking of women and children and for a closer cooperation between government agencies, mass organizations as well as international and non-governmental organizations¹². On July 14 2004, "National Action Plan on Combating Trafficking in Women and Children 2004-2010" was ratified by the government according to the Decision No. 130/2004/QĐ – TTg of Prime Minister. This action plan has overall targets to prevent and reduce considerable trafficking in women and children by 2010 with the collective and comprehensive contents and proposals (Ministry of Public Security of Vietnam 2004: 5).

Vietnam's approach to counter trafficking is: to implement comprehensive education, economic, administrative and legal measures to prevent and suppress effectively this phenomenon. The policy resides on: 1) Prevention; 2) suppression of social evils should be combined with social and economic development programs; 3) The offences of prostitution and trafficking in women and children should be severely punished. (Bureau for Prevention and Suppression of Social Evil 2002:1).

¹² Prime Minister Direction 776/TTg dated 17/09/1997

Prevention:

As part of national policy, several measures have been taken to prevent trafficking and prostitution of women and children such as advocacy and IEC campaign to provide information directly to the public and the targeted group who are most at risk, training for governmental and sectoral officials, local authorities, school children... Some of the measures are as follow:

- Awareness raising campaigns have been conducted in addition to professional and vocational training. Education and media propaganda activities on anti-trafficking have been implemented regularly in targeted cities and provinces such as: Lang Son, Quang Ninh, Hanoi, Ho Chi Minh City, Thanh Hoa, An Giang, etc. Pamphlets, posters and small books have been delivered to targeted population to provide information on anti-human trafficking. Education in schools and families, esp. in rural areas, about the risk of human trafficking and related issues has been carried out (Bureau for Prevention and Suppression of Social Evil 2002:3-4).
- Institutional measures to prevent and combat crimes in general and trafficking in women and children in particular have been improved. A National Program on Prevention of Prostitution has been established to crack down on prostitution through raids of brothels, karaoke bars and discos. The effectiveness and usefulness of such a method is however being questioned (IOM 2000: 47). Control of birth and population registration, immigration, marriage and child adoption to foreigners have been reformed and adapted to the particular context in order to contribute to prevention of laws violations (Ministry of Public Security of Vietnam 2004: 6).
- Income generation activities. The government has developed a National Hunger and Elimination Program as well as Poverty Reduction Program to assist families in creating jobs and increasing income, which in turn, could prevent one of the causes of trafficking in women and children i.e. poverty. Women have been the focus of the government, international agencies and NGOs. For instance, they have received small credit programmes, vocational trainings and other support to better their economic situation (Bureau for Prevention and Suppression of Social Evil 2002: 3-4).
- International joint programmes have cooperated with Vietnam partners to prevent trafficking. UNDP, UNICEF, ILO, IOM and International NGOs, such as Oxfam International, Save the Children, Action-Aid, Care International and World Vision International have been involved in awareness-raising and advocacy regarding human trafficking.
- Gaps in prevention efforts: a) The national legal framework has not been completed. Institutional structure and resources have not been adequate to respond to measure on combating trafficking in women and children in the current situation; b) The effectiveness of these prevention efforts is not easy to measure as they often focused on precise areas and/or groups and the follow up is weak. c) Some harmful traditions that devalue women and girls are still observable, especially amongst poor families. Values, which discriminates women and girls are illegal, but as punishment is not effective, detrimental behaviours are maintained. d) Coordination - among vertical agencies and/or inter-agency, and/or among communities, families and individuals- in prevention of trafficking in women and children, is limited, especially at local level. Often the prevention activities are overlapped and are fragmentally organised, including in international assistance (Bureau for Prevention and Suppression of Social Evil 2002:7).

Protection and reintegration

Vietnam has affirmed its consistent policy to provide women and children with the best protection on various occasions. The laws in Vietnam consider trafficking in persons as a grave crime. It prohibits theoretically all forms of discrimination against women and any act encroaching upon their dignity. According to the Vietnam Country Paper 2004, the government has initiated several initiatives to support the reintegration of trafficked women and children into their communities. The Ministry of Labour, Invalids and Social Affairs and the Women Union have coordinated with other relating ministries and agencies to set up reception and re-integration programs. The Women Union has played a major role in assisting trafficked and other vulnerable women and children returning from China in the Northern border provinces of Lang Son and Quang Ninh. Supported by IOM, ILO and various International NGOs, the joint projects offer temporary accommodation, resettlement assistance, job-generation, vocational training and special programs for former prostitutes. The effectiveness is relatively unknown, as follow-ups are difficult (IOM 2000:48).

- Victims of the trafficking are protected in prosecution process now. According to the Vietnam's Prosecuting Code that comes into effect in July 2004, victims are entitled to receive compensation for damages, which have been caused by an offence.
- Over 40 rehabilitation centres for former prostitutes and women and girls trafficked for the purpose of sexual exploitation have been set up. These centres are supposed to provide medical treatment, vocational training and counselling in an effort to protect victims from discrimination and abuse (US Department of State 2003).
- IOM and the WU have a project in Lang Son province, near the Chinese border. The project supports a reception centre providing shelter, assistance and reintegration scheme to returned women to Vietnam (IOM 2000: 48). But procedures and the political situation have made repatriation to Vietnam a sensitive and complex issue. The reintegration centre is not fully used, but it is not clear why.
- The WU in Bac Giang province has opened a training course on the fight against trafficking under the UN/Inter-Agency Project on trafficking in women and children in the Great Mekong Sub-region.
- The Centre for Family and Women's Study, the Vietnam Committee for the Protection and Care for Children (CPCC), and World Vision International have developed initiatives regarding rehabilitation, reintegration and repatriation of trafficked women and children (IOM 2000: 49).
- Gaps: a) The government should take additional steps to ensure that victims are not further abused after they return home. The existing stigma of those who have been trafficked, makes the reintegration more difficult; b) More education training for law enforcement officials. c) More self-esteem and empowerment training should be held for trafficked victims so that they can become more confident when returning home; d) Some vocational options offered for repatriated women are often traditional, limited and not linked to real job opportunities (Oxfam 2001:15). Organizations who provide vocational trainings need to be financially supported to find out about the kind of training, which is more adapted to trafficking victims and thus for the reinsertion to be successful.

Punishment

Vietnam has a statute that prohibits sexual exploitation and trafficking in women and children. The Public Security Bureau and the People's Court are in charge of investigating, arresting and punishing traffickers. Over the last years, competent Vietnamese agencies have actively investigated cases that come to their attention and some traffickers have been prosecuted according to the laws. The key forces are: Police, Border Guard, Procurator-Inspection and Court. The punishment is harsh as the government focuses more on a crime-control approach to trafficking and prostitution.

- Between 1991 and 2002, local police discovered 2,015 cases involving human trafficking and kidnapping. 3,376 criminals were arrested in these cases, and, of these, 2,805 were brought to court and charged with the crime of human trafficking¹³. The government also brought trafficking cases to trial against local government officials in 2002 and 2003, in which over 150 persons, including ex-ministerial and law enforcement officials, were indicted for prostitution and migrant smuggling (US Department of State 2003). In May 2005, Police have arrested a group of men for duping about 40 women and selling them into prostitution to agents near the Chinese border in the north (Vietnam News 19/05/2005).
- Cases of trafficking in women and children to China punished by VN police:
 - 1). Do Thi Dao and Le Thi Dep have been sentenced in Vung Tau province to a total of 20 years in prison for trafficking women from Southern Vietnam to Southern China to work as prostitutes. Instead of finding the jobs for the 18 women in shops, the two women sold those 18 women to be prostitutes (Deutsche Presse-Agentur 17 December 2003)
 - 2). Vietnam News Agency reported (24/9/2003) that Bui Thi Lan was sentenced for 10 years behind bars by the Municipal Court of Hanoi for the trafficking of women to China. Lan, 41, was found guilty of swindling Dinh Thi H., who came from the Red river delta province of Thai Binh, and selling her to China for 2,800 Chinese Yuan. Earlier, Lan also sold another girl, identified only as P, who came from Que Vo District of northern Bac Ninh Province, to China.
 - 3). On 10 June 2001, three Vietnamese women were tried for selling teenage girls to flesh traders in China for as little as 50USD a head. Van Thi Ken, 48, Di Thi Thanh, 63 and Hoang Thi Hien, 20 were accused of selling five girls aged between 15 and 18 to a middleman in China in March of that year. The three women were arrested in the border by police, but the five girls, all from the Lu Ethnic Minority, were still missing in June 2001¹⁴.
- Gaps: a) The penalties for human trafficking remains less stringent than those of drug trafficking; b) The authorities do not make comprehensive statistics on arrests and convictions, so the efforts of law enforcement can not be fully evaluated. c) As government focus more on a crime-control approach, trafficked victims either are afraid of or ashamed of their suffering, and dare not report to the police. This may fail to curb the problem of trafficking and prostitution. d) There is a lack of coordination among central, provincial and commune authorities in the implementation of law in a consistent and uniform manner (Bureau for Prevention and Suppression of Social Evil 2002:7).

¹³ Vietnam News: *UN, VN to battle human trafficking* 11/08/2003

¹⁴ Borneo Bulletin 19/06/2001: *Viet women tried for selling girls*. Stop trafficking website 21/06/2001

4.2. Receiving country China:

The Chinese government has created a model of multi-link effort starting from prevention to legal intervention, punishment, rescue and rehabilitation since the late 1990s. It has established a coordination mechanism for multi-sectoral cooperation including 14 fourteen ministries and mass organizations (China National Report: 2002), including the Ministry of Public Security, the Ministry of Justice and Ministry of Labour, the Ministry of Education and the All China Women's Federation and other stakeholders. The National Working Committee on Children and Women under the State Council (NWCCW) as a standing body is responsible to liaise and coordinate with the relevant ministries/committees in charge of preventing and combating of trafficking in women and children. The coordinating group called on focus meetings and created work-plans to implement and carry out the relevant laws and regulations (The National Working Committee on Children and Women Under the State Council 2004:4). Apart from awareness-raising campaign, the law enforcement organs carried out several movements to crack down traffickers and rescue victims, including Vietnamese women and children.

However, from the perspective of receiving countries trafficking has become closely associated with illegal migration needed to be crack down. In China, officially, the trafficked victims are illegal migrants under Chinese laws. Most victims of trafficking are considered as criminals and are treated as illegal aliens who should be sent back to their country.

Prevention

Public education is very important in anti-trafficking activities. Many residents living close to the border areas view marriage with women brought across the border as a pragmatic matter. Many do not seem to question such a practice, despite the fact that buying wives is illegal and that many women seems to be deceived or forced into marriages¹⁵. The underlying factor that Chinese men are simply too poor to marry Chinese girls might explain such behaviour. In recent years, sex trade has grown up to meet the demand from businessmen and other visitors. Many Vietnamese women and girls have thus become the victims of trafficking. For local authorities, to curb these problems is not easy.

¹⁵ Source: *Trade in Vietnamese brides a boon for Chinese* Stop-Traffick website Jan 4 2003.

- Public Education is recognized as a key to reduce trafficking. Great efforts have been made to target the awareness of the high-risk population such as adolescents, migrating population and parents of young children to enhance their sensitivity and capacity in preventing trafficking. The Women Union has a major role in raising public awareness at all levels. A legal literacy programme developed by All China Women's Federation has published materials on trafficking and organized access to legal services. A lot of anti-trafficking manual had been distributed the targeted groups.
- In Yunnan and Guangxi, two Chinese provinces bordered with Vietnam, the Provincial Women Federations have worked with schools and local communities to raise awareness about the problem of wife-buying and educating girls and other at the risk segment of the population. Ad doc-prevention groups have been set up at selective areas near the border.
- Income generation. To get at the root of trafficking, the Chinese government and NGOs are active in helping targeted group to reduce poverty through training and education in order to increase their chances to find a job. This work involves prevention efforts through a rural development approach consisting of vocational training, micro credit and employment creation etc. Women are the major targeted group for poverty reduction. Small loans are given to poor women to better their life and reduce the risk of trafficking.
- International joint programmes in combating trafficking: ILO-IPEC (International Programme on the Elimination of Child Labour) Mekong-Sub-regional Project to combating trafficking in women and children focuses on prevention through employment creation, education and vocational training in Yunnan province. UNDP Project on Trafficking in Women and Children in the Great Mekong Sub-region aims to provide an overarching mechanism to coordinate local, national and sub-regional activities, including prevention activities in southern province of China. Save the Children's office in Yunnan (UK) has carried out a media awareness-raising campaign in Yunnan province, established the Women and Children Development Centres in Yunnan and expanded its projects to Guangxi province in 2002.
- Gaps in prevention efforts: a) There are more to be done in awareness raising and educating local people to realize that trafficking as well as buying trafficked women for the purpose of forced marriage is a crime. b) The Vietnamese women who have been in China should also be targeted in anti-trafficking programmes and their human rights should be respected. c) More work need to be done to strengthen the border control in cooperation with the Vietnamese government.

Protection and repatriation

China has reiterated its commitment to protect women and children according to the law. A lot of efforts have been done to achieve the goal, but in terms of victims from foreign countries, the intervention is more focused on a crime control approach than a rights approach. The protection and repatriation activities have been carried out in the border areas, but it is limited due to the complexity of cross-border trafficking.

- Several transfer, training and rehabilitation centres have been set up to rescue women and children in Yunnan, Jiangsu and Sichuan. They provide services for more than 2000 trafficked women, accommodating and rehabilitating them physically and psychologically (China Country Paper against Trafficking in Women and Children 2004). The Guangxi Women Federation set up a network of rights protection centre in the community in 2000

and by the end of 2002, 1206 stations of this kind had been built to support women and children¹⁶. Many legal aid centers of legal counselling centred are set up to provide legal aid and services to victims.

- The government and NGOs help the poor and dropout girls back into school in Guangxi and Yunnan province. Lectures of how to protect young girls from trafficking have been held by the Women Federation. With the support from Aus-Aid, the border areas set up clinic for HIV/AIDS program for both Chinese and Vietnamese women and children. Documents of HIV/AIDS prevention in Vietnamese are available.
- Repatriation victims according to the laws. Understanding rules of China's Ministry of Public Security, once a woman suspected of being Vietnamese is rescued, the concerned provincial public security must deliver a note to this effect to the Vietnamese Embassy or the concerned Vietnamese consulate. Upon the receipt of the notice, the Vietnamese side is to check the case and notify the Chinese side of the result and decisions of acceptance or rejection within 42 days. The Chinese side then must notify its Vietnamese counterpart of the detailed time, place and name of the transferee 10 days in advance. The Chinese local government is obliged to pay for the food, lodging and sometimes medical treatment incurred by the trafficked victims before their repatriation¹⁷.
- The main problem of repatriation is that it takes a long time to verify the identities of the victims. Mass round up and deportation of Vietnamese women have been organized, leaving some of them stranded at the border area while being separated from their children and husbands. According to UNICEF's statistic, IOM has facilitated the return of over 1,700 Vietnamese women who were trafficked to China. Wei Xiaoning, director of the Women's Rights Department of the Guangxi Women's Federation, reported that Guangxi police rescued and expatriated a total of 1,030 Vietnamese women during the crackdown of trafficking in 2000¹⁸.
- Gaps: a) The involvement of rescuing and repatriation of trafficking victims is limited because of various reasons: criminalized approach to trafficking problem, lack of information and fund, long time to identify the victims and resources, etc. b) The victims are treated as illegal migrates as the authorities have not clearly made distinction between trafficking and illegal migration. (IOM 2001:49-50). c) For those who are first trafficked into marriage in China, but later decided to stay on or refused to return to Vietnam, their rights may not be protected in China. D) There is no special asylum in most of the border cities because of the limited fund, thus further limited the protection of victims.

Punishment

A comprehensive legal framework to punish traffickers has been developed in China. The Criminal Law is the cornerstone for the framework, which is supplemented by other relevant laws. During the last decade, the Ministry of Public Security (MPS) has played a key role in the national fight against trafficking in women and children. MPS had launched several massive police operations against human trafficking across the country. The law enforcement organs are

¹⁶ Tan Heping: Speech at the Seminar of Anti-trafficking in Women and Children, Guangxi province China. March 2003.

¹⁷ Source: www.unicef.org/infobycountry/china At a glance: China, Real Life: *China and Vietnam join hands to fight cross-border trafficking of women*

¹⁸ Source: Ibid.

served in punishing the activities of internal and cross-border human trafficking. But the increased trafficking activities are still difficult to control.

- The Chinese government has taken a strong law enforcement approach in dealing with the trafficking problem. Persons helping aliens to enter or exit the country illegally or to reside or stay in China illegally will be punished.
- Penalties for trafficking have been increased up to life imprisonment and even capital punishment (Criminal Law 1997 and Immigration Laws). For example, according to People's Daily (March 31 2003), in November 2000 and Sept. 2001, trafficking ringleaders in Fujian province were jailed for life for human trafficking. In 2000, four gangster leaders got death sentence for women trafficking (Xinhua News Agency 10/20/2000.)
- From 1991 to 2000 MPS organized four campaigns to combat trafficking in women and children in selected areas across the country. Under the lead of the Ministry of Public Security, provinces bordered with Vietnam organized four large-scale campaigns against trafficking and punished many criminals in 1991,1993,1995 and 2000.
- The Immigration Laws in China impose penalties on persons who enter and stay in the country regardless of how such persons may have entered the country. Such laws do not expressly provide relation or exemption from penalty for trafficked women and children who may have illegally entered the country. Consequently, trafficked women and children may be subject to such penalties for illegal entry and stay (Save the Children 2001:22).
- Gaps: a) The penalties for human trafficking are still less stringent than those for drug trafficking. Few buyers of trafficked women have been punished. B) More efforts should be taken to protect the rights of victims from other countries and encourage them to report and testify against the traffickers. c) Statistic of people who have been arrested and punished due to cross-border trafficking is limited or simply not available.

4.3. Cooperation between the governments of Vietnam and China

The cooperation in prevention of trafficking, and protection, repatriation and reintegration of trafficked victims between China and Vietnam is essential to crack down cross-border human trafficking. In realizing this, the two countries have signed several bilateral agreements, held various talks and carried out joint activities on fighting trafficking. But until now there is no specific MOU on trafficking between Vietnam and China. In the following some examples of cooperation will be presented.

- High-level talks. Lately, leaders of Vietnamese and Chinese public security ministries have met several times in China and Vietnam on measures to strengthen bilateral ties, including tight border security control and joint efforts against trans-national crimes. Issues high on the talks' agenda included joint efforts to fight against trans-national crimes such as international terror, trafficking in drugs, weapons, and women and children in the period to come. The talks concluded with the signing of an agreement on mechanisms of cooperation between the police and security forces of the two countries¹⁹.

¹⁹ www.vnagency.com.vn Sept. 18 2003

- Joint meetings. Several workshops and seminars have been held both in Vietnam and China. In October 2003, UNICEF facilitated a meeting between China and Vietnam on human trafficking in Hanoi. People from Women Union, Ministry of Public Security, Border guards, Ministry of Foreign Affairs, Ministry of Cultural and Information, and others participated in the meeting. In October 2004, UNODC supported a meeting against crime-border crime between the Chinese and Vietnamese public security force and border guards in Ha Long City, Vietnam.
- Cooperation between police forces. The police forces of the two countries have joined hands in hunting for wanted criminals fleeing across the border into the other country. To combat human trafficking, which is going increasingly complicated, both countries' police have strengthened their cooperation on this issue. For example, the two countries have set up border liaison offices for prevention and control of criminal activities in Mong Cai town in Vietnam's Quang Ninh province and Dongxing county in China's Guangxi province. The two offices hold regular briefings to exchange information about criminal activities including human trafficking and other related issues.
- Joint international programmes. The two countries have also worked together with international society to fight against trafficking, such as: the ILO-IPEC (International Programme on the Elimination of Child Labour) Mekong-Sub-regional Project to combat trafficking in women and children, UNDP Project on Trafficking in Women and Children in the Mekong-Sub region, UNIAP anti-trafficking program, and several international NGOs' projects or workshops on trafficking issues between China and Vietnam. The recent cooperation is a joint communication campaign supported by UNICEF to combat cross border trafficking between China and Vietnam on 3 June 2004.

Both Vietnam and China have benefited a lot from the cooperation between the two countries. However, a further development of cooperation is needed to jointly cope with problems related to the trafficking of human beings from Vietnam to China. For example, some of the victims choose to stay with their husbands and children in China, so even if they are repatriated, they will manage to re-enter China sooner or later. Other victims just do not have any legal papers and it takes a long time to identify them. In addition, we should keep in mind that historical obstacles to cooperation between governments exist, although Chinese and Vietnamese police authorities have reportedly expressed willingness to cooperate.

5. Main Challenges

- Lack of awareness, shortage of resources and cooperation between law enforcers (at national and regional level), corruption and lack of enforcement make systematic implementation difficult (IOM 2000: 34,36). Both countries have no specific trafficking laws. And in both countries human trafficking issue is less on agenda than drug smuggling. This may hinder the ability of Vietnam and China to combat human trafficking in a range of ways.
- Trafficking in women and children is often addressed as a problem related to illegal migration and social evil in Vietnam as well as in China. Without a clear distinction between trafficking and migration, the anti-trafficking intervention may have direct or indirect impact in a person's right to mobility and to be protected in some certain circumstances. Moreover, the trafficking may become more underground.
- Lack of legal and social environment that is protective of the rights of trafficked victims. This may cause difficulty for community integration support efforts. Victims back and leave due to discrimination against them. Thus it is important to change traditional value of filial duty of daughters and inequality in the value placed on girls and boys in rural communities in areas vulnerable to trafficking.
- Lack of concrete data and solid body of research: given the nature of trafficking and its often hidden activities from any form of monitoring, it is very difficult to develop statistics accurately reflect the magnitude of the number of trafficked persons from Vietnam to China. Consequently, figures are estimated by governments, UN and other international agencies and international NGOs.

6. Suggestions to improve government response and mutual cooperation

Government response:

- To promote a clearer legal framework which recognizes and acknowledges basic rights of trafficked people (before, mid and after being trafficked).
- To build capacity for law enforcement units and introduce system of inspection and evaluation of law enforcement.
- More awareness raising campaign across the country to empower women and children who are vulnerable to human trafficking activities. More gender responsive approaches in anti-trafficking.
- To mainstream reintegration services such as credit and savings project, and small-enterprises training and within other community-based livelihood projects and to integrate Oxfam development project into the combating against trafficking.

Further cooperation initiatives can be:

- More cross-border initiatives cooperations. Cooperation with international NGOs, mass organizations and police forces in both countries. Build cross-border database, training qualified human resources.
- More closer investigation and analysis in order to clarify the dynamics of trafficking across the border of China and Vietnam, and offer better intervention mechanism.
- More strong multi-bilateral agreement on cross border trafficking similar to campaign against drug smuggling. Development of MOU on human trafficking.

Literatures and Sources

Bureau for Prevention and Suppression of Social Evil (2002): *Efforts by Vietnam in Prevention and Suppression of Trafficking in Women and Children* National Seminar on International Law on Trafficking of Women and Children 6/12/2002

China National Report (2002): Paper for the Second Regional Conference on Illegal Labour Movement: *the Case of Trafficking in Children and Women*, 12 Nov.2002

Dang, Nguyen Anh (2003): Paper for presentation at the 8th IASFM Biannual Conference on “Forced Migration and Global Processes”, Chiang Mai, Thailand, 5-9 January 2003 *Development and Trafficking in Women and Children: the Case of Vietnam*

Dang, Nguyen Anh and others (2003): Paper for Regional Conference on Migration, Development and pro-Poor policies Choices in Asia 22-24 June 2003 in Dhaka, Bangladesh. *Migration in Vietnam : A review of information on current trends and patterns, and their policy implications*

Ginzburg, Oren(2003): *Q & A Trafficking* (20/1/2003)

ILO (2001): *Stopping Force Labour Global Report*

IOM (International Organization for Migration) (2000): *Combating Trafficking in Southeast Asia: A review of policy and programmes responses* 2/2000

Jordan , Ann D. (2002): *Human Rights or Wrongs?* In Gender and Development Vol 10, No. 1, March 2002

Ministry of Public Security of Vietnam (2004): *Vietnamese Country Paper on countering trafficking*

The National Working Committee on Children and Women Under the State Council (2004): *China Country paper against Trafficking in Women and Children*

Oxfam (2001): *Oxfam GB East Asia Preliminary Proposal for a Programme Against Trafficking of Women and Children* Prepared for Oxfam GB Vietnam by Riuth Bowen May 2001

Save the Children (2001): *Advocacy Paper on Comparative Laws of the Countries in the Mekong Sub-region with Respect to Trafficking in Women and Children* International Save the Children Alliance Southeast, East Asia and Pacific Region

Skeldon, Ronald (2000): *Perspectives on Trafficking of Migrants: a Perspective from Asia*, International Migration 38(3) Special Issues:

UNIFM (2002): *Trafficking in Women and Children* UNIFEM Gender Issues Fact Sheet No.2
UNIFEM East and Southeast Asia Website, 9/April 2002

UNIFEM: *Trafficking in Persons: A Gender and Rights Perspectives Briefing Kit*

US Department of State (2003): *Trafficking in Persons Report Vietnam Situation 11/6/2003*
Ministry of Public Security of Vietnam (2004): *Vietnam Country Paper on Countering
Trafficking 2004*