



VIET NAM

ECPAT

COUNTRY OVERVIEW

*A report on the scale, scope and context of
the sexual exploitation of children*





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2018

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Acronyms

ASEANAPOL	Association of Southeast Asian Nations' Association of Chiefs of Police
CEDAW	Committee on the Elimination of Discrimination against Women
CEFM	Child, early and forced marriage
CEOP	Child Exploitation and Online Protection
CPFC	Committee for Population, Family and Children
CRC	Convention on the Rights of the Child
CRIN	Child Rights International Network
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communications Technology
INTERPOL	International Criminal Police Organisation
LGBT	Lesbian, Gay, Bisexual, and Transgender
MOLISA	Ministry of Labour - Invalids and Social Affairs
MoU	Memorandum of Understanding
OCSE	Online child sexual exploitation
OPSC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
SDGs	Sustainable Development Goals
SEC	Sexual exploitation of children
SECTT	Sexual exploitation of children in travel and tourism
UNODC	United Nations Office on Drugs and Crime
UNWTO	United Nations World Tourism Organization
VACR	Vietnam Association for Protection of Child's Rights

Preface

Over a decade since the publication of its first Country Monitoring Reports (CMRs) on Sexual Exploitation of Children, ECPAT International is sharpening its monitoring efforts in order to better address and represent the evolving incidence and existence of the sexual exploitation of children in the world today.

Recent years have seen some unprecedented opportunities that have embedded the child's right to protection from sexual exploitation more deeply into the global agenda, no more so than the global mandate to eliminate the sexual exploitation of children (SEC) enshrined in the Sustainable Development Goals (SDGs) adopted by world leaders in 2015. ECPAT International's decision to transform its Country Monitoring Reports into more concise and targeted ECPAT Country Overviews on SEC will ensure a more effective tool for advocacy at all levels and monitoring, including commitments made in the SDGs to end violence against children in all its different forms by 2030.

The report's structure aims at providing a comprehensive baseline of information on all manifestations of SEC in a country and an assessment of achievements and challenges in implementing counteractions - including the participation of children themselves - to eliminate SEC. They also suggest concrete priority actions urgently needed to proactively advance the national fight against SEC and enable the monitoring of the implementation of international instruments on child rights related to sexual exploitation that have been ratified by the State. Furthermore, the ECPAT Country Overviews

provide well-organised information and research, which can be used in preparing Alternative Reports and Additional Submissions to the Committee on the Rights of the Child and the Human Rights Council.

The preparation of this report is based on a review of the literature available on sexual exploitation. Drafts are shared with ECPAT members, relevant organisations, partners and local experts working on the ground who review the content and supplement the information with other local sources and analysis.

ECPAT International greatly relies on the contributions of all those involved in producing these reports and would like to express its profound appreciation for their invaluable inputs. This particular report addresses the different forms of sexual exploitation of children in Viet Nam. Exploitation of children in prostitution is the prominent manifestation and online sexual exploitation of children appears to be on the rise. Viet Nam is speedily becoming a key destination for sexual exploitation of children in travel and tourism. Child, early and forced marriages are still occurring and they are closely connected with sale and trafficking of children. Whilst Viet Nam has recently amended its legislation to strengthen the legal framework to prevent and protect children from sexual exploitation, the report highlights the fact that major gaps still remain. Viet Nam needs to intensify its efforts in addressing the root causes of sexual exploitation and in ensuring children's access to justice and reintegration.



Executive Summary

The **Socialist Republic of Viet Nam** is located in the Indochina Peninsula in Southeast Asia. After the implementation in the 1980s of a socialist-oriented market economy called *Doi Moi*, the country reached a lower middle-income status. However, inequality has risen quickly in recent years, with for children coming from marginalised groups disproportionately having poorer social outcomes. Including exposure to different forms of violence, including sexual exploitation.

In Viet Nam, **sexual exploitation of children (SEC)** can take various forms and seems to be present all over the country; however, accurate estimates of the number of child victims are difficult to obtain due to the clandestine nature of this crime. The **exploitation of children in prostitution** continues to be an issue due to the high demand for children, particularly virgin girls. **Online child sexual exploitation (OCSE)** is a growing concern in Viet Nam, which manifests itself in different ways, including through **child sexual abuse material** and **online grooming**. Viet Nam is also a source country for **child victims of trafficking for sexual purposes**, and children from rural and remote areas are the most vulnerable to trafficking. Viet Nam is speedily becoming a key destination for perpetrators for the **sexual exploitation of children in travel and tourism (SECTT)**, due to the tourism industry's impressive growth. **Child, early and forced marriages (CEFM)** continue to be an issue, particularly in the northern provinces (due to some harmful traditional practices) as well as through the practice of cross-border marriage, particularly Vietnamese girls with Chinese men.

The country has ratified the **main legal instruments in the fight against SEC**, including the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children,

Child Prostitution and Child Pornography (OPSC), as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). Moreover, the country is part of a number of international and regional commitments addressing SEC.

At the national level, The Ministry of Labour - Invalids and Social Affairs (MoLISA) is responsible for the promotion and implementation of children's rights. In terms of legislation, the **new Vietnamese Criminal Code** came into force in January 2018. This strengthens child protection efforts in the country by specifying and criminalising a broader array of SEC-related conducts. However, major inconsistencies and concerns remain in the national legislation, including a legal definition of a child as a person under the age of 16. Key policy initiatives that address SEC include the **National Programme on Child Protection 2016-2020** and the **National Programme of Action for Children 2011-2020** which strengthen child protection systems in the country.

With regard to prevention measures, the country has put increasingly more effort into **raising awareness and educating** people on SEC-related issues. The Vietnamese Justice system is evolving; however, more effort need to be made in order to provide adequate **access to justice and remedies for child victims of sexual exploitation**, including child-friendly national complaint mechanism and effective and timely recovery and reintegration services. In terms of children's participation, Viet Nam needs to ensure the effective implementation of existing legislation designed to protect the right of children's participation in issues involving them.

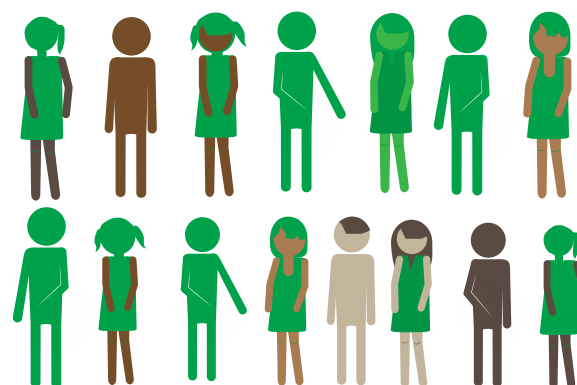
Introduction

INTRODUCTION: COUNTRY OVERVIEW AND SPECIFIC VULNERABILITIES LEADING TO THE SEXUAL EXPLOITATION OF CHILDREN

The Socialist Republic of Viet Nam (hereinafter Viet Nam) is the easternmost country on the Indochina Peninsula in Southeast Asia. It has overland border crossing with China to the north, Lao PDR to the northwest and Cambodia to the southwest. Viet Nam's constitution proclaims it to be a socialist country.¹

Vietnamese is the official language and is very widely spoken by the Kinh ethnic majority. Small proportions of the population also speak French, Chinese, Khmer and languages from the country's mountainous area, such as Mon-Khmer and Malayo-Polynesian.² Buddhism is the religion with most followers, followed by Catholicism, *Cao Dai*, Protestantism, *Hoa Hao* Buddhism, and to a lesser extent Islam, *Bahá'í* faith, Hinduism and Animism³

With an estimated population of 92.7 million inhabitants,⁴ Viet Nam is the world's 15th most populous country and the ninth most populous Asian country as of 2016.⁵ The children population



in Viet Nam corresponds to approximately 25,780 million inhabitants.⁶

In 1986, Viet Nam launched an economic and political reform called *Doi Moi*, which created a socialist-oriented market economy and brought an outstanding development to the country.⁷ The implementation of the new policy raised the

1. Government of Viet Nam (1992), "Constitution of the Socialist Republic of Vietnam", accessed 09 March 2018, http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10450.
2. US Central Intelligence Agency, "The World Fact Book", accessed 27 October 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/vn.html>.
3. UN Special Procedures (2015), "Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt", UN Doc. A/HRC/28/66/Add.2, 30 January 2015, para 6.
4. The World Bank, "Data: Vietnam", accessed 27 October 2017, <https://data.worldbank.org/country/vietnam>.
5. The World Bank, "Population 2016", accessed 27 October 2017, <http://databank.worldbank.org/data/download/POP.pdf>
6. UNICEF (2017), "The State of the World's Children 2017: Children in a Digital World", 177, accessed 2 February 2018, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf.
7. Government of Vietnam, "Vietnam economy overview", accessed 26 February 2018, <http://www.chinhphu.vn/portal/page/portal/English/TheSocialistRepublicOfVietnam/AboutVietnam/AboutVietnamDetail?categoryId=10000103&articleId=10000554>.

country, which used to be one of the poorest in the world, to a lower middle-income status, and placed it among the countries with the world's fastest GDP per capita growth.⁸ In 2016, the GDP per capita in Viet Nam amounted to around US\$2,185.7.⁹ However, despite impressive economic growth, the country ranked 115 out of 188 countries in the latest Human Development Index released in 2017 which gives it the status of medium human development, similar to the Philippines, Lao PDR, Cambodia and Myanmar.¹⁰

In contrast to the Convention on the Rights of the Child (CRC), which defines a child as a person below 18,¹¹ in Viet Nam a child is considered a "human being below the age of 16".¹² In view of this, the age of consent is 16.¹³ On the other hand, the marriageable age is 18 for women and 20 for men.¹⁴

Although social outcomes have improved significantly, inequality persists in Viet Nam, particularly among minority groups.¹⁵ The population consists of a significant majority of Kinh ethnic people (making up 85%) and there are also 54 ethnic minority groups in Viet Nam.¹⁶ Other ethnic groups represent less than 15% of

the total population; but constitute more than 50% of the poorest.¹⁷ In Viet Nam, they are often excluded from basic services including education.¹⁸ For instance, secondary education enrolment rates among the Kinh majority are above 65%, whilst merely 13.7% for ethnic minorities.¹⁹ Consequently, the latter may end up engaging in economic activities at an early age, exposing them to environments where they might suffer physical violence and sexual abuse.²⁰ Birth registration is an additional prominent disparity between the Kinh population and other ethnic groups. Although Viet Nam has good rates for birth registration,²¹ these rates drop drastically when isolating the birth registration rates of children from ethnic minorities.²² Consequently, the risk of trafficking for the latter is greater, as rescuing and returning trafficked victims without ID cards or birth certificates is more difficult.²³ Given the established links between poverty and sexual exploitation, that means children belonging to ethnic minorities are amongst the most vulnerable to sexual exploitation.²⁴

These striking disparities and fragilities for ethnic minorities in Viet Nam have been stressed by the Committee on the Rights of the Child (hereinafter

8 The World Bank (2017), "Data: Vietnam", accessed 27 October 2017, <https://data.worldbank.org/country/vietnam>.

9 The World Bank (2017), "GDP per capita (current US\$)", accessed 27 October 2017, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

10 United Nations Development Programme (2016), "Human Development Report 2016: Human Development for Everyone", 199, accessed 11 November 2017, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf.

11 UN General Assembly (1989), "Convention on the Rights of the Child" Res. 44/25 of 20 November 1989, entered into force on 2nd September 1990, Article 1.

12 Government of Viet Nam (2016), "Children Law", Law 102/2016/QH13, Article 1.

13 Government of Viet Nam, "Criminal Code", Law 100/2015/QH13, Article 145.

14 Government of Viet Nam (2000), "The Marriage and Family Law", Law 22/2000/QH10, Article 9(1).

15 United Nations Population Fund (2016), "Human Development Report 2016: Human Development for Everyone", 59, accessed 09 March 2018, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf.

16 United Nations Population Fund (2011), "Ethnic Groups in Viet Nam: An analysis of key indicators from the 2009 Viet Nam Population and Housing Census", 7, accessed 09 March 2018, <http://vietnam.unfpa.org/sites/default/files/pub-pdf/Ethnic%20Group%20ENG.pdf>.

17 UNICEF (2015), "Multidimensional Child Poverty of Ethnic Minority Children: Situation, Dynamics, and Challenges", 8, accessed 09 March 2018, http://www.un.org.vn/en/publications/government-agency-publications/doc_details/483-multidimensional-child-poverty-of-ethnic-minority-children-situation-dynamics-and-challenges.html.

18 UNICEF (2015), "UNICEF Annual Report 2015: Vietnam", 1, accessed 09 March 2018, from https://www.unicef.org/about/annualreport/files/Vietnam_2015_COAR.pdf.

19 United Nations Population Fund, "Human Development Report 2016: Human Development for Everyone", 86.

20 ECPAT International, "The Commercial Sexual Exploitation of Children in East and South-East Asia", 7.

21 UNICEF, "The State of the World's Children 2017: Children in a Digital World", 185.

22 UNICEF (2013), "Every Child's Birth Right: Inequities and trends in birth registration", 23, accessed 09 March 2018, https://www.un.org/ruleoflaw/files/Embargoed_11_Dec_Birth_Registration_report_low_res.pdf.

23 Blue Dragon, "Preventing the trafficking of children into forced labour: A Manual for Local Government Officials", 7, accessed 09 March 2018, <https://www.bluedragon.org/wp-content/uploads/2015/03/Blue-Dragon-Preventing-the-trafficking-of-children-into-forced-labour-A-manual-for-local-government-officials.pdf>.

24 ECPAT International (2014), "The Commercial Sexual Exploitation of Children in East and South-East Asia: Developments, progress, challenges and recommended strategies for civil society", 12, accessed 09 March 2018, http://www.ecpat.org/wp-content/uploads/2016/04/Regional%20CSEC%20Overview_East%20and%20South%20East%20Asia.pdf.

CRC Committee)²⁵ and the Committee on the Elimination of Discrimination Against Women (CEDAW) in their regular reporting.²⁶

Child labour increases the vulnerability of children to sexual exploitation in Viet Nam. Although 15 is the minimum age required for a person to work under Vietnamese law,²⁷ previous research has indicated that 16% of children aged between 5–17 are involved in child labour.²⁸ Child migrant labour (for example, rural children moving to urban areas to work in restaurants or shops) is a particular concept commonly accepted by Vietnamese families as a means to supplement family income.²⁹ This fragility is exploited by traffickers, who deceive children and their families with eye-catching work opportunities. However, the conditions agreed upon prior to working diverge largely from the conditions encountered by children later on, which include extensive working hours and physical and sexual abuse.³⁰

Lesbian, gay, bisexual, and transgender (LGBT) children face discrimination on a grand scale at the family and community level in Viet Nam.³¹

The discrimination faced within households often leads to children being thrown out, where they seek a “more accepting community” on the streets.³² These combined vulnerabilities of LGBT identity child and living on the street exacerbates marginalisation and makes them more vulnerable to sexual exploitation.³³

Children with disabilities also face significant stigma and discrimination in Viet Nam.³⁴ Children with disabilities are at higher risk of suffering violence and sexual abuse,³⁵ particularly children with mental health issues and children with hearing and speaking impairments.³⁶ Enduring social inequalities in Viet Nam therefore demonstrate that despite an outstanding economic growth, children from marginalised social groups still face risks.³⁷ Social exclusion from basic services leads to poverty and higher vulnerability, thereby exposing them to different forms of violence including sexual exploitation.³⁸ The number of children subjected to sexual exploitation in Viet Nam is growing with poverty being one of the main driving factors.³⁹

25 Committee on the Rights of the Child (2012), “Consideration of reports submitted by States parties under article 44 of the Convention”, UN Doc. CRC/C/VNM/CO/3-4, 22 August 2012, para 67.

26 Committee on the Elimination of Discrimination against Women (2015), “Concluding observations on the combined seventh and eighth periodic reports of Viet Nam”, UN Doc. CEDAW/C/VNM/CO/7-8, 29 July 2015, para 26.

27 Government of Viet Nam (1994), “Labour Code”, Law 10/2012/QH13, Article 3, accessed 09 March 2018, <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>.

28 UNICEF, “The State of the World's Children 2017: Children in a Digital World”, 185.

29 Monash University (2013), “Child Labour & Migration From Hue to Saigon, Vietnam”, 7, accessed 09 March 2018, https://www.monash.edu/_data/assets/pdf_file/0015/142026/child-labour-and-migration-report.pdf.

30 Monash University, “Child workers in Vietnam face further exploitation”, last modified 23 June 2014, accessed 09 March 2018, <http://www.monash.edu/news/articles/child-workers-in-vietnam-face-further-exploitation>.

31 Save the Children (2015), “Being LGBT Young People in Vietnam: Life on the Streets and the Light through the Crack”, 8, accessed 09 March 2018, https://resourcecentre.savethechildren.net/sites/default/files/documents/lgbt_young_people_in_vietnam_-_save_the_childrens_report.pdf.

32 *Ibid.*, 9.

33 UNDP and USAID (2014), “Being LGBT in Asia: Viet Nam Country Report”, 21, accessed 09 March 2018, https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Viet_Nam_report_ENG.pdf.

34 UNICEF Viet Nam and Ho Chi Minh City People's Committee (2017), “Situation Analysis of Children in Ho Chi Minh City”, 63, accessed 09 March 2018, https://www.unicef.org/vietnam/Final_Sitan_HCMC_Eng.pdf.

35 UNICEF East Asia and Pacific, “UN envoy calls for strong collaboration and action to eliminate violence against children in Viet Nam”, last modified 22 June 2016, accessed 09 March 2018, https://www.unicef.org/eapro/media_25573.html.

36 This information was provided by CBM, an international development organisation working in Viet Nam.

37 Institute of Human Rights and Peace Studies, “Child Rights Situation Analysis Within the ASEAN Region”, 50, accessed 09 March 2018, http://crcasia.org/wp-content/uploads/2016/11/Child-Rights-Situation-Analysis-Within-the-ASEAN-Region_Mahidol-University-2016.pdf.

38 UNICEF (2016), “Report on Situation Analysis of Children in Lao Cai”, 158, accessed 09 March 2018, https://www.unicef.org/vietnam/resources_25751.html.

39 Committee on the Rights of the Child, “Consideration of reports submitted by States parties under article 44 of the Convention”, para 70.

The context of the sexual exploitation of children in Viet Nam

EXPLOITATION OF CHILDREN IN PROSTITUTION⁴⁰

Article 2 (b) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) defines 'child prostitution' as "the use of a child in sexual activities for remuneration or any other form of consideration".⁴¹

Ending the exploitation of children in prostitution is part of the 2030 Agenda.⁴² Accordingly, taking immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, which include prostitution,⁴³ is target 8.7 of the SDG 8.⁴⁴ Moreover, taking steps to eliminate all forms of violence against girls, including sexual exploitation, is target 5.2 of the SDG 5.⁴⁵

Under Vietnamese laws, engaging in prostitution is illegal and criminalised by the Criminal Code.⁴⁶ Yet this law seems to be rarely enforced and it remains widespread across the country and the exploitation of children in prostitution is reported to be the most prevalent SEC manifestation in Viet Nam.⁴⁷ However, accurate estimates of the number of children exploited in prostitution are not available. According to a study undertaken by UNICEF Viet Nam and the Ministry of Labour - Invalids and Social Affairs (MOLISA), some children are exploited in prostitution from a very young age. The youngest child identified in the study was 8 years old.⁴⁸

The country has received continuous critical attention from human rights treaty bodies, including the CRC Committee, regarding the rise of the number of children sexually exploited in prostitution.⁴⁹ This lucrative illegal business continues to thrive in Viet Nam due to the high demand for children. Among the exploiters are Vietnamese and foreign nationals, men and women, and people of all ages and professions.⁵⁰

40 ECPAT prefers the term 'exploitation of children in prostitution' instead of 'child prostitution' in line with the recently widely adopted Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children (2016), "Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse" (hereinafter Terminology Guidelines) adopted in Luxembourg, 28 January 2016, 30, accessed on 28 May 2017, <http://luxembourgguidelines.org/>

41 UN General Assembly (2000), "Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography" (hereinafter OPSC), A/RES/54/263, 25 May 2000, entered into force on 18 January 2002, Article 2(b), accessed 21 February 2018, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.

42 The 2030 Agenda is the plan of action including all Sustainable Development Goals and related targets adopted by the UN in 2015.

43 Although not explicit in the text of target 8.7, the International Labour Organization stated that the worst forms of child labour comprise "the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances". International Labour Organization (1999), Worst Forms of Child Labour Convention C182, Article 3(b).

44 United Nations (2017), "Sustainable Development Goal 8", accessed on 28 October 2017, <https://sustainabledevelopment.un.org/sdg8>.

45 United Nations (2017), "Sustainable Development Goal 5", accessed on 28 October 2017, <https://sustainabledevelopment.un.org/sdg5>.

46 Government of Viet Nam (2003), "Ordinance on Prostitution Prevention and Combat", accessed 13 March 2018, <http://www.ilo.org/dyn/natlex/docs/SERIAL/71702/77065/F997924439/VNM71702.pdf>.

47 MOLISA and UNICEF Viet Nam (2011), "An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam", 13, accessed 13 March 2018, https://www.unicef.org/vietnam/bao_cao_CSEC_tiang_anh_04-12.pdf.

48 *Ibid.*, 13.

49 Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention", para 71.

50 MOLISA and UNICEF Viet Nam, "An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam", 13.

Something particular in Viet Nam's sex industry is the demand for virgin girls, which can be attributed to the sociocultural value credited to virginity. Many Southeast Asian men assume that having sexual intercourse with a virgin girl is a means to boost virility and health.⁵¹ Consequently, exploiters spare no effort in pursuing sexual relations with 'virgin school girls' in order to feel 'more masculine'.⁵²

Whilst the majority of children are sexually exploited in prostitution through force and/or deception, some children engage in it actively.⁵³ Poverty has been identified as a major contributing factor in Viet Nam for the so-called 'voluntary or self-engaged prostitution', which implies that children 'choose' to 'sell' their virginity and/or engaging in prostitution.⁵⁴ Contrary to popular belief, social inequality leaves the most vulnerable Vietnamese children with little choice other than to subject themselves to sexual exploitation for the sake of survival. Since the money earned by these children complement their families' low income, parents and family members refrain from reporting this sexual exploitation.⁵⁵

Often children receive other forms of remuneration besides money, such as objects that they might desire, but cannot afford. Surveys such as those conducted by World Vision indicate that exploiters take children shopping in exchange for sexual acts.⁵⁶ According to the study, exploiters reported that exchanging sex for 'gifts' is an alternative form to pay for sex without the label of

'commercial sex'.⁵⁷ An aftermath of this increasing trend is that Vietnamese children, who exchange 'sexual favours' for gifts, often do not recognise themselves as victims and some children see it as an "attractive prospect".⁵⁸

ONLINE CHILD SEXUAL EXPLOITATION (OCSE)

Online child sexual exploitation (OCSE) can include child sexual abuse/exploitation material (CSAM/CSEM),⁵⁹ live streaming of child sexual abuse, online grooming of children for sexual purposes, sexual extortion of children and various CSAM/CSEM-related conducts (production, distribution, downloading).⁶⁰ Article 2 (c) of the OPSC defines 'child pornography' as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes".⁶¹

In Viet Nam, accessibility to ICTs is widespread, with as many as 64 million Internet users.⁶² The total number of monthly active Facebook users is 46 million, of which 7.2 million are children between 13 and 17 years old.⁶³ The increasing

51 Ashley G. Blackburn, Robert W. Taylor, et al. (2010), "Understanding the Complexities of Human Trafficking and Child Sexual Exploitation: The Case of Southeast Asia", *Women & Criminal Justice*, 20:1-2, 109.

52 World Vision Australia (2014), "Sex, Abuse and Childhood: A study about knowledge, attitudes and practices relating to child sexual abuse, including in travel and tourism, in Cambodia, Lao PDR, Thailand and Vietnam", 45, accessed 13 March 2018, <http://www.worldvision.at/sites/default/files/Sex-Abuse-Childhood-Report.pdf>.

53 MOLISA and UNICEF Viet Nam, "An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam", 13.

54 ECPAT applies the Luxembourg Guidelines when stating that the terms 'voluntary' and 'self-engaged' should be avoided since "children under the age of 18 years who are involved in prostitution should always be seen and addressed as victims of sexual exploitation." ECPAT International, "Luxembourg Guidelines", 32.

55 World Vision Australia, "Sex, Abuse and Childhood", 46/49.

56 *Ibid.*

57 *Ibid.*, 48.

58 *Ibid.*, 47.

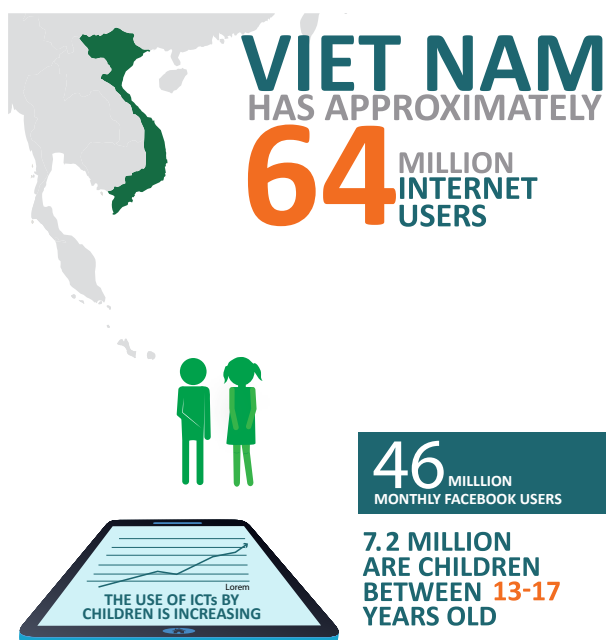
59 ECPAT prefers the terms 'child sexual exploitation material' or 'child sexual abuse material', but in a legal context still uses 'child pornography' in line with the recently widely adopted Terminology Guidelines, 40.

60 ECPAT, "Issues we work on", accessed 21 February 2018, <http://www.ecpat.org/issues-we-work-on/ending-sexual-exploitation-of-children-online/>.

61 OPSC, Article 2(c).

62 Internet World Stats, "Vietnam", accessed 28 March 2018, <https://www.internetworldstats.com/stats3.htm>.

63 LinkedIn SlideShare, "Digital in 2017: Southeast Asia", accessed 27 February 2018, <https://www.slideshare.net/wearesocialg/digital-in-2017-southeast-asia>. See also: We Are Social, "Digital in 2017: Southeast Asia", accessed 27 February 2018, <https://wearesocial.com/special-reports/digital-southeast-asia-2017>.



use of ICTs by children in Viet Nam exposes (most access the Internet through Internet-enabled smartphones and many share devices) them to various risks of harm, including online grooming, and creates the need for parents, who are still learning themselves, to monitor their online activities.

In Viet Nam, evidence indicates that child sexual abuse/exploitation material (CSAM/CSEM) portraying sexually abused and exploited children are widely available and can be easily obtained through Internet and mobile phones.⁶⁴ Some materials are produced with children being exploited in prostitution and/or trafficked for sexual purposes.⁶⁵

An emerging form of OCSE in Viet Nam is 'live streaming of online child sexual abuse', which often involves the coercion of a child to participate in sexual activities that are transmitted live through the Internet to be watched by exploiters remotely.⁶⁶ The *modus operandi* of this crime

varies; some sex offenders watch the abuse from cubicles set up for this purpose in sex districts only, whilst others prefer to access the live-streamed content from their personal devices.⁶⁷ This content is then usually also harvested and recirculated via the Dark Web.

Offenders also use messaging apps, social media, games and chat rooms to locate and groom children for abuse or obtaining their images (sexting and sexual extortion).⁶⁸ Findings from a UNICEF poll conducted in 2016 with 18 year-old Vietnamese people, demonstrated that 74% of the people interviewed recognised that children are at risk of being sexually abused or taken advantage of online.⁶⁹ By contrast, parents often are not aware that sexual abuse and exploitation can be perpetrated using ICTs,⁷⁰ leaving children without guidance or supervision in the virtual world.

SALE AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), defines 'trafficking in persons' as "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

64 MOLISA and UNICEF, "An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam", 14.

65 *Ibid.*, 81/82.

66 ECPAT International (2017), "Online Child Sexual Exploitation: A Common Understanding", 17, accessed 13 March 2018, http://www.ecpat.org/wp-content/uploads/2017/05/SECO-Booklet_ebook-1.pdf.

67 MOLISA and UNICEF, "An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam", 84.

68 *Ibid.*.

69 UNICEF (2016), "Perils and Possibilities: Growing Up Online", accessed 1 November 2017, https://www.unicef.org/vietnam/VIETNAM_Ipsos_Unicef_Graphic_Report_26.pdf.

70 World Vision Australia, "Sex, Abuse and Childhood", 70.

other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.⁷¹

In case of child victims, Article 3 (c) of the Protocol specifies that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if it does not involve any of the means stipulated in Article 3 (a)”.⁷² In other words, the Protocol recognises that children can never be willing participants to their own exploitation.

For its part, the OPSC deals with the ‘sale of children’, defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.⁷³

Both concepts are often used in conjunction and without any clear distinction. However, despite a certain overlap, ‘sale of children’ is not identical to ‘trafficking’. The ‘sale of children’ always involves some form of commercial transaction, which trafficking in children does not require, but does not necessarily include the purpose of exploiting a child (e.g. sale of children for illegal adoption). Therefore, ‘sale of children’ is not necessarily related to sexual abuse and sexual or other forms of exploitation.

Lastly, the ‘sale of children’ can take place without physically moving the child out of his/her social environment, whereas trafficking inherently depends on the movement of the child.⁷⁴

CEDAW and the US Department of State classify Viet Nam as a source country for child victims of trafficking for sexual purposes,⁷⁵ and the CRC Committee has raised concerns regarding the growing number of children being trafficked in Viet Nam.⁷⁶ UNICEF and MOLISA have stressed that exploiters use a range of deception strategies, but sometimes resort to extremes like kidnapping and drugging.⁷⁷ Girls and boys all over Viet Nam are at risk of being trafficked; however, research has revealed that children from rural and remote areas are more vulnerable to trafficking, owing to economic distress and low capacity in law enforcement.⁷⁸ This is certainly true in the case of girls from remote ethnic communities who are deprived of citizenship, which makes them easy targets for traffickers.⁷⁹

The United Nations Office on Drugs and Crime (UNODC) revealed that Vietnamese trafficked victims are found in different countries all over the world.⁸⁰ Vietnamese children have been found trafficked into Europe, as evidenced in the data released by the British government, which shows that between 2009 and 2016, 73 Vietnamese children were identified as potential sexually

71 UN General Assembly (2000), “United Nations Convention against Transnational Organized Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime” (hereinafter Palermo Protocol), Res. 55/25 of 15 November 2000, Article 3 (a), accessed 21 February 2018, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

72 Palermo Protocol, Article 3 (c).

73 OPSC, Article 2 (b).

74 Terminology Guidelines, 58.

75 CEDAW (2015), “Concluding observations on the combined seventh and eighth periodic reports of Viet Nam”, para 20. See also: US Department of State (2017), “Trafficking in persons report”, 427, accessed 13 March 2018, <https://www.state.gov/documents/organization/271339.pdf>.

76 Committee on the Rights of the Child, “Consideration of reports submitted by States parties under article 44 of the Convention”, para 71.

77 MOLISA and UNICEF Viet Nam, “An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam”, 13.

78 Fondation Scelles and Charpenel Y., “4° Global Report: Prostitution: Exploitation, Prosecution, Repression”, 439/440, accessed 1 November 2017, https://www.fondationscelles.org/pdf/RM4/1_Book_Prostitution_Exploitation_Persecution_Repression_Fondation_Scelles_ENG.pdf.

79 ECPAT International jointly with Defence for Children-ECPAT Netherlands (2016), “Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism” (hereinafter Global study on SECTT), 51, accessed 13 March 2018, <http://globalstudysectt.org/global-report/>.

80 United Nations Office on Drugs and Crime (2016), “Global Report on Trafficking in Persons”, 107, accessed 13 March 2018, http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf.



SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM (SECTT)

The sexual exploitation of children in travel and tourism (SECTT) is defined as any “acts of sexual exploitation embedded in a context of travel, tourism, or both”.⁸⁶ The UNWTO Framework Convention on Tourism Ethics recognises that the exploitation of children conflicts with the fundamental aims of tourism and should be strongly combated with the cooperation of all the States concerned.⁸⁷

exploited trafficking victims.⁸¹ Similarly, in 2016, the United Kingdom National Referral Mechanism received 227 referrals from Vietnamese children victims of sale and trafficking, 21 of which were for sexual purposes.⁸²

Trafficking of Vietnamese children largely takes place through overland border crossings with neighbouring countries China, Cambodia and Lao PDR.⁸³ This is evident in the Lao Cai province, which has many commercial border gates that make trafficking of child brides into China possible.⁸⁴ This cross-border trafficking in Viet Nam is also distinguished by the selling of children to brothel owners on the borders of China, Cambodia, Thailand as well as Asian countries.⁸⁵

Triggered by the *Doi Moi* policy, over the past few decades, Viet Nam has experienced an impressive growth in the tourism sector, thereby increasing the number of international tourists visiting the country from around the world.⁸⁸ Statistics provided by the Viet Nam Ministry of Culture, Sports & Tourism revealed that from January to October 2017, international arrivals reached 10,473,230; marking a 28.1% increase compared to the same period in the preceding year.⁸⁹

The growth of travel and tourism in Viet Nam carries specific risks for children, as having more people on the move creates more opportunities for offenders to exploit children.⁹⁰ Previous research indicates that the consolidation of policies and law enforcement to combat SECTT in Thailand and the Philippines has diverted exploiters to Viet Nam.⁹¹ Hence, the country is

81 UK Independent Anti-Slavery Commissioner (2017). “Combating modern slavery experienced by Vietnamese nationals en route to, and within, the UK”, 15, accessed 13 March 2018, <http://www.antislaverycommissioner.co.uk/media/1159/iasc-report-combating-modern-slavery-experience-by-vietname-nationals-en-route-to-and-within-the-uk.pdf>.

82 UK National Crime Agency (2017), “National Referral Mechanism Statistics – End of Year Summary 2016”, 9, accessed 20 October 2017, <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file>.

83 MOLISA and UNICEF Viet Nam, “An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam”, 13.

84 UNICEF, “Report on Situation Analysis of Children in Lao Cai”, 152.

85 US Department of State, “Trafficking in persons report”, 428.

86 ECPAT International jointly with Defence for Children-ECPAT Netherlands, “Global study on SECTT”.

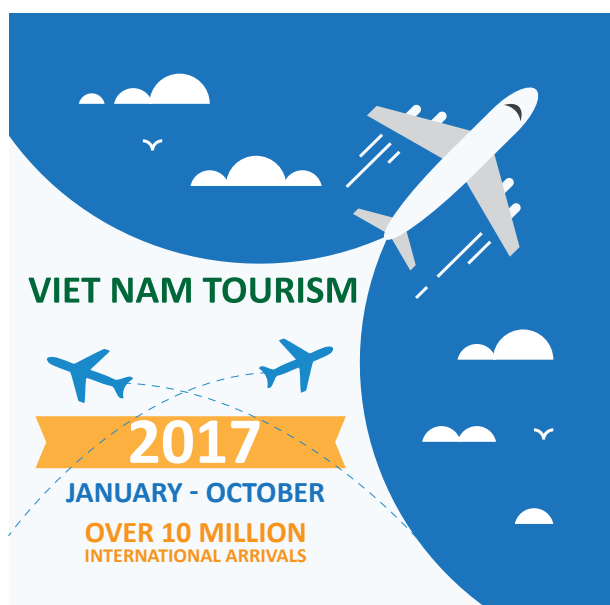
87 UNWTO (2017), “Consideration, approval or adoption of the UNWTO Framework Convention on Tourism Ethics”, Article 5 (3), UN Doc. A/RES/707(XXII), accessed 20 February 2018, <http://cf.cdn.unwto.org/sites/all/files/docpdf/ares707xxiiconventionontourismethics.pdf>.

88 Wantanee Suntikul, Richard Butler & David Airey (2008) “A Periodization of the Development of Vietnam's Tourism Accommodation since the Open Door Policy”, *Asia Pacific Journal of Tourism Research*, 13:1, 67-80.

89 Viet Nam Ministry of Culture, Sports & Tourism (2017), “International visitors to Viet Nam in October and 10 months of 2017” accessed 1 November 2017, <http://vietnamtourism.gov.vn/english/index.php/items/12282>.

90 ECPAT International and Defence for Children-ECPAT Netherlands, “Global study on SECTT”, 15.

91 Fondation Scelles and Charpenel Y., “4° Global Report: Prostitution: Exploitation, Prosecution, Repression”, 438.



becoming a key destination for exploiters from all over the world.⁹² UNICEF and MOLISA have highlighted that, although these issues are commonly reported in large cities, the evidence demonstrates that SECTT is migrating to remote and mountainous areas such as Lao Cai and An Giang.⁹³

CHILD, EARLY AND FORCED MARRIAGE (CEFM)

The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Luxembourg Guidelines) define 'child marriage' as "a marriage in which at least one of the parties is a child. It also refers to the act of marrying off children, usually young girls, with or

without their consent".⁹⁴ Some forms of child marriage are related to commercial sexual exploitation of children, in cases where child marriage is linked to forced child labour, slavery and bondage, servitude or payment of a dowry.⁹⁵

The elimination of CEFM is also part of the 2030 Agenda. Taking immediate and effective measures to eliminate all harmful practices, including CEFM, is target 5.3 of the SDG 5.⁹⁶

CEFM is present in Viet Nam and has received critical attention from CEDAW.⁹⁷ Data collected by UNICEF from 2010 to 2016 verified that 11% of Vietnamese women aged between 20 and 24 years were married for the first time or in union before they were 18 years old.⁹⁸ The figure rises to 23% for ethnic minorities.⁹⁹ Although CEFM is not restricted to female children, girls are the predominant victims of this children's rights violation.¹⁰⁰ A 2017 study revealed that children belonging to ethnic communities in Viet Nam are often not forced into early marriages by adults but influenced in their decision to get married by a number of factors including gender inequality, social pressure, cultural norms and the economy.¹⁰¹

In Viet Nam, CEFM can also be interconnected with trafficking of children. Traffickers exploit the demand from Vietnamese and foreign men to get married, by trafficking and selling Vietnamese girls. This lucrative illegal business includes the practice of cross-border marriage, which often takes place in populated areas near Viet Nam's overland border crossings,¹⁰² and frequently involves the trafficking in girls for the primary purpose of forced marriage.¹⁰³

92 US Department of State, "Trafficking in persons report", 428.

93 MOLISA and UNICEF Viet Nam, "An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam", 14.

94 Terminology Guidelines, 63.

95 ECPAT International and Plan International (2015), "Thematic Report. Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage", accessed 13 March 2018, http://www.ecpat.org/wp-content/uploads/legacy/Child%20Marriage_ENG.pdf.

96 United Nations, "Sustainable Development Goal 5", accessed 28 October 2017, <https://sustainabledevelopment.un.org/sdg5>.

97 CEDAW, "Concluding observations on the combined seventh and eighth periodic reports of Viet Nam", para 16.

98 UNICEF, "The State of the World's Children 2017: Children in a Digital World", 185.

99 Viet Nam General Statistics Office and UNICEF (2015), "Viet Nam Multiple Indicator Cluster Survey 2014, Final Report", 229, accessed 13 March 2018, https://mics-surveys-prod.s3.amazonaws.com/MICS5/East%20Asia%20and%20the%20Pacific/Viet%20Nam/2013-2014/Final/Viet%20Nam%202013-14%20MICS_English.pdf.

100 ECPAT International, "Luxembourg Guidelines", 63.

101 iSEE, ChildFund Australia, Plan International Vietnam, World Vision International Vietnam (2017), "Child Marriage in Several Ethnic Communities in Vietnam. An analysis from an anthropological perspective".

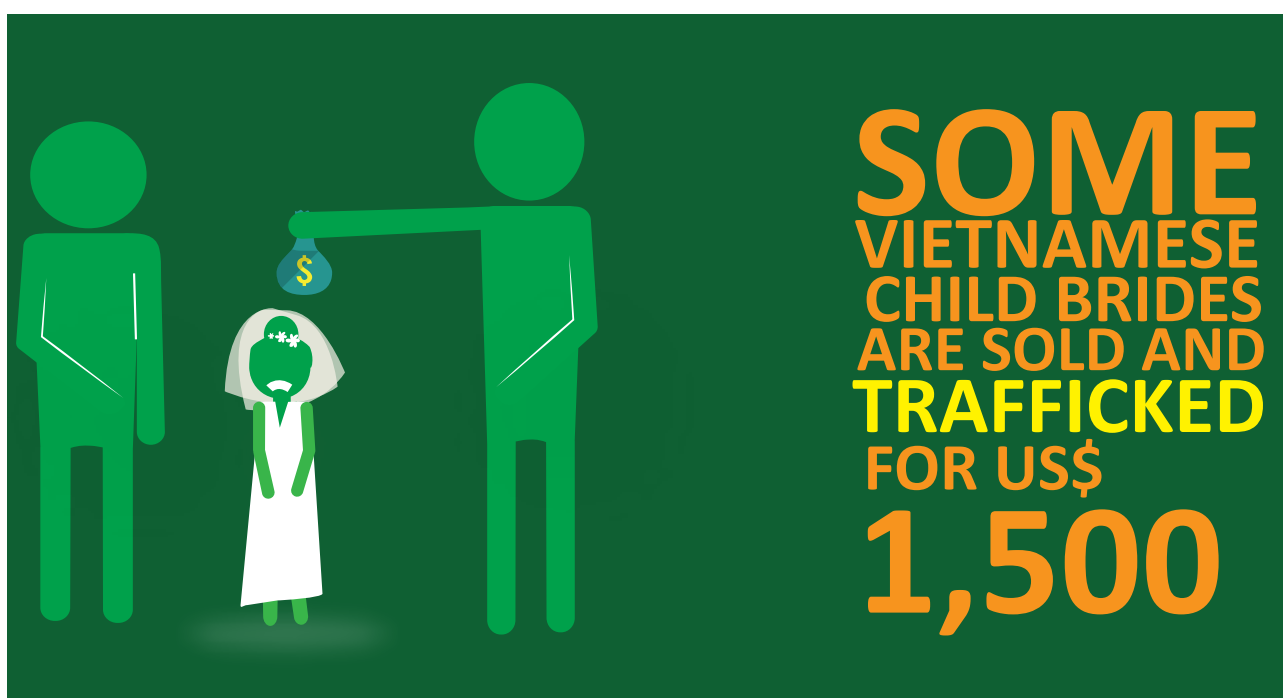
102 Nguyen Ha Dong and Dang Thi Hoa (2015), "Cross-border Marriage in Mountainous Provinces of Vietnam at Present", 76.

103 *Ibid.*, 83.

The gender imbalance in China makes it problematic for Chinese men to find a marriage partner. Evidence suggests that the scarcity of young women in China drives the practice of CEFM in Viet Nam.¹⁰⁴ The purchase of a Vietnamese child bride is seen as an economically efficient way of getting married because it is cheaper to 'buy a child bride' than to pay the dowry required by Chinese families.¹⁰⁵ The UNODC has highlighted that some Vietnamese child brides are sold and trafficked for as little as US\$ 1,500.¹⁰⁶

The phenomenon of imbalanced sex ratio at birth is emerging in Viet Nam. Studies such as the one

conducted by the United Nations Population Fund (UNPFA) show that a son preference has led to the practice of sex selection through prenatal sex determination. Women are resorting to sex selective abortions owing to the 'male-oriented kinship system' existent in Viet Nam¹⁰⁷. Substantial gender imbalance carries specific risks for girls, including CEFM and the sale and trafficking of children for sexual purposes. Therefore, if sex selection continues to grow in Viet Nam, children might also be at risk of being trafficked and sold internally for the purpose of CEFM.



104 UNICEF, "Report on Situation Analysis of Children in Lao Cai", 151.

105 Kate Hodal, "'I hope you're ready to get married': in search of Vietnam's kidnapped brides", *The Guardian*, 26 August 2017, accessed 28 October, <https://www.theguardian.com/global-development/2017/aug/26/ready-married-kidnapped-brides-vietnam-china>.

106 United Nations Office on Drugs and Crime, "Global Report on Trafficking in Persons", 32.

107 United Nations Population Fund in Vietnam, "Policy Brief: The Imbalanced Sex Ratio at Birth in Vietnam: Connecting Research and Policy for Change", accessed 1 November 2017, http://vietnam.unpfa.org/sites/default/files/pub-pdf/Policy%20brief_ENG.pdf.

International, Regional and National Commitments and Legislation on the Sexual Exploitation of Children

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments		Date of ratification/accession
Convention on the Rights of the Child - 1989		28 February 1990
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000		20 December 2001
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		19 December 2000
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organized Crime)		8 June 2012
Regional Instruments		Date of ratification/accession
ASEAN Convention against Trafficking in Persons, Especially Women and Children		5 January 2017
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (CRC review)	3 August 2009	<p>Next report due on 1 September 2017</p> <p>Key concluding recommendations related to SEC:</p> <ul style="list-style-type: none"> • Increase efforts to combat child prostitution and trafficking; • Develop and implement a strategy for the prevention of child sexual exploitation and abuse, focusing on vulnerable groups of children, including street children and children of poor or near-poor families; • Amend and disseminate administrative and criminal laws to ensure that child sex workers are treated as victims and not as criminals;

Human Rights Bodies	Date of latest submitted report	Comments
		<ul style="list-style-type: none"> • Develop child-friendly reporting procedures and ensure that child victims are aware of these procedures and can access them; and develop rehabilitation and reintegration programmes for child victims of sexual exploitation and trafficking, as well as confidential counselling services; • Fully harmonise national legislation with the OPSC in order to explicitly criminalise all acts listed in article 3 of the OPSC when committed against all persons below 18.¹⁰⁸
Committee on the Rights of the Child (OPSC review)	8 November 2005	<p>Key concluding recommendations related to SEC:</p> <ul style="list-style-type: none"> • Provide appropriate training to professional groups working with and for child victims; • Undertake research on the nature and extent of the offences covered by the OPSC and ensure that data is systematically collected and analysed; • Amend the legislation in order to explicitly criminalise all acts listed in article 3 of the OPSC when committed against all persons below 18; • Withdraw the reservation to article 5 of the OPSC and use this article as a legal basis for extradition; • Allocate resources to provide adequate services for child victims and their families; • Ensure that child victims are not criminalized or penalized; and adopt measures to avoid their stigmatization and social marginalization; • Allow the views, needs and concerns of child victims to be presented and considered in proceedings related to them; • Use child-sensitive procedures; • Set up special teams to investigate crimes covered by the OPSC.¹⁰⁹

Human Rights Bodies	Date of latest submitted report	Comments
Human Rights Council – Working Group on the Universal Periodic Review	8 November 2013 (2 nd cycle)	5 recommendations related to SEC, particularly to the sale and trafficking of children and exploitation of children in prostitution. ¹¹⁰ Next review: 32nd session (Jan-Feb 2019)

INTERNATIONAL AND REGIONAL COMMITMENTS

International commitments	
Commitment	Start date
Sustainable Development Goals (SDGs)	2016
WePROTECT - an international movement dedicated to national and global action to end the sexual exploitation of children online.	2014
Regional commitments	
Commitment	Start date
ASEAN	
• ASEAN Guidelines for the Protection of the Rights of Trafficked Children 2007	1995
• ASEAN Regional Plan of Action on the Elimination of Violence against Children	2013
Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) - a Government-led process incorporating the six countries in the Greater Mekong Sub-region (Cambodia, China, Lao PDR, Myanmar, Thailand, and Viet Nam) in a formal alliance to combat human trafficking	2004
The Bali Process - a forum for policy dialogue, information sharing and practical cooperation to help the region address people smuggling, trafficking in persons and related transnational crimes.	2002

¹⁰⁸ Committee on the Rights of the Child, “Consideration of reports submitted by States parties under article 44 of the Convention”, para 72.

¹⁰⁹ Committee on the Rights of the Child (2006), “Consideration of Reports Submitted by States Parties under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”, UN Doc. CRC/C/OPSC/VNM/CO/1, 17 October 2006.

¹¹⁰ Human Rights Council (2014), “Report of the Working Group on the Universal Periodic Review”, UN Doc. A/HRC/26/6, 2 April 2014.

Viet Nam has shown great commitment to the implementation of the SDGs by developing a comprehensive National Action Plan for the Implementation of the 2030 Sustainable Development Agenda. The plan includes the 17 SDGs and sets 115 specific targets to achieve them. The Action Plan set key tasks for the SDG targets, including some relevant to the fight against SEC, which should be implemented within two designated periods: 2017-2020 and 2021-2030.¹¹¹

For the SDG 5 and its target 5.2, which aims to eliminate all forms of violence against girls including trafficking and sexual and other types of exploitation, the government committed to improve its legislation; put into operation a database to track the enforcement of the legislation; and develop the following campaigns: “city without violence against women and girls”, “countryside without violence against women and girls”.¹¹² On the other hand, for the SDG 5 and its target 5.3, which aims to eliminate harmful practices such as CEFM, the government committed to formulate national programmes to prevent child marriages that take into consideration the particularities of affected regions and ethnic minorities, and to formulate advocacy programmes on abolishing these practices.¹¹³ Finally, for the SDG 16 and its target 16.2, which aims to end abuse, exploitation, trafficking and all forms of violence and torture against children and adolescents, the government committed to integrate child protection into socio-economic development plans; make efforts in implementing effective child-related laws and policies; and enhance monitoring efforts and evaluations of child protection laws and policies.¹¹⁴

Together with the WePROTECT Global Alliance, Viet Nam has reaffirmed its international commitment to identify and safeguard victims from online child sexual exploitation, apprehend more perpetrators and create an Internet free from this crime. Additionally, the country

committed to coordinating a national response to online child sexual exploitation in compliance with the WePROTECT Model National Response.¹¹⁵

NATIONAL LEGISLATION

Viet Nam enacted a new Criminal Code (hereinafter 2015 Criminal Code), which was drafted in 2015, amended in 2017 and came into force on 1 January 2018.¹¹⁶ The new legislation strengthens child protection in the country by criminalising a broader array of SEC-related conducts. However, it also introduced more lenient penalties for some SEC-related offences.

This section will draw comparisons between the current Criminal Code and the previous legislation. Moreover, it will analyse the national legislation’s compliance with the OPSC and the Palermo Protocol, which are central legal frameworks in the fight against SEC.

Exploitation of children in prostitution

The Children Law (2016) stresses the prohibition of any act related to ‘child sexual exploitation’, which includes the use of children for prostitution.¹¹⁷ The 2015 Criminal Code criminalises and sets a penalty for three acts related to the exploitation of children in prostitution, namely harbouring,¹¹⁸ procuring¹¹⁹ and engaging in prostitution with a person under 18.¹²⁰ The 2015 Criminal Code contrasts with the 1999 Criminal Code by reducing the maximum prison sentence for all mentioned offences.¹²¹

The 2015 Criminal Code condemns harbouring children aged between 13 and 18 for prostitution.¹²² The legislation introduced new aggravating factors, notably for offences involving more than one child aged between 13 and 16, and for forced prostitution

111 Government of Viet Nam (2017), “The National Action Plan for the implementation of the 2030 sustainable development agenda”, accessed 1 November 2017, http://www.un.org.vn/en/publications/doc_details/543-the-national-action-plan-for-the-implementation-of-the-2030-sustainable-development-agenda.html.

112 *Ibid.*, 32/33.

113 *Ibid.*, 33/34.

114 *Ibid.*, 69.

115 WeProtect Global Alliance (2015), “WeProtect summit - Statements of action 2015”, accessed 1 November 2017, <http://www.weprotect.org/our-commitments/>.

116 Government of Viet Nam (2015), “Criminal Code”, Law 100/2015/QH13, accessed 13 March 2018, <http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn086en.pdf>.

117 Viet Nam, “Children Law”, Article 4(7) and 6(3).

118 Viet Nam, “Criminal Code”, Article 327.

119 Viet Nam, “Criminal Code”, Article 328.

120 Viet Nam, “Criminal Code”, Article 329.

121 Viet Nam, “Criminal Code”, Articles 327-329. See also: Government of Viet Nam, “1999 Criminal Code”, Law 15/1999/QH10, Articles 254-256, accessed 13 March 2018, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/56207/111125/F97325861/VNM56207%20Eng.pdf>.

122 Viet Nam, “Criminal Code”, Article 327.

that results in the victim's death or suicide.¹²³ The penalties prescribed by the law for harbouring vary according to the age of the child, the circumstances of the crime and the gravity of the offence, and can range from a fine, to imprisonment for up to 20 years.¹²⁴

In terms of procuring, the 2015 Criminal Code condemns procuring children aged from 13 to under 18 for prostitution.¹²⁵ The penalties prescribed by the law for procuring vary according to the age of the child, the circumstances of the crime and the gravity of the offence, and can range from a fine, to imprisonment for up to 15 years.¹²⁶

Although there is no specific offense for harbouring and procuring children under the age of 13, the Viet Nam's Ministry of Justice advises that the applicable charge should be complicity or accomplice in rape.¹²⁷ However, the gap in the law hinders the work of law enforcement officers, who find it difficult to identify offences and penalties with accuracy and therefore to have a consistent approach.¹²⁸

In terms of engaging in prostitution, the 2015 Criminal Code condemns engaging in prostitution with children under the age of 18.¹²⁹ The penalties prescribed by the law for this offence vary according to the age of the child, the circumstances of the crime and the gravity of the offence, and can be up to 15 years of imprisonment.¹³⁰

Regarding this provision, the new legislation differs from the 1999 Criminal Code in a number of important ways. For instance, the legislation draws attention to the fact that engaging in sexual intercourse or other sexual activities with a child under the age of 13 is deemed rape, which

is punished more severely.¹³¹ Moreover, the provision uses the term 'engaging in prostitution' and no longer paying for 'sexual intercourse'.¹³² Since the latter is often narrowly understood as penile-vaginal penetration, civil society reported that the previous legislation hindered the legal protection that should also be guaranteed to boys.¹³³

However, the main limitation of this provision lies in the fact that the legislation does not define 'prostitution'. Moreover, the act of offering and providing a child to be exploited in prostitution is not expressly covered in the national legislation, as determined by the OPSC.¹³⁴

Online child sexual exploitation (OCSE)

The Children Law stresses the prohibition of any act related to 'child sexual exploitation', which encompasses using a child to perform or produce pornographic material.¹³⁵ The new Criminal Code introduced two new provisions related to OCSE, which are employment of children for pornographic purposes¹³⁶ and distribution of pornographic materials.¹³⁷

In the case of employing a child for pornographic purposes, the provision condemns persuading, enticing and forcing a child under the age of 16 to participate or watch a pornographic performance in any shape or form.¹³⁸ The penalties prescribed by the law for this offence vary according to the circumstances of the crime and the gravity of the offence, and can be up to 7 years of imprisonment. Although the provision advanced the Vietnamese criminal legislation, the protection is only provided for children under the age of 16, thereby contradicting the rights enshrined in the OPSC for all children under the age of 18.

123 Viet Nam, "Criminal Code", Article 327(4).

124 Viet Nam, "Criminal Code", Article 327.

125 Viet Nam, "Criminal Code", Article 328.

126 *Ibid.*

127 UNODC, "Legal Analysis Report", 41.

128 *Ibid.*

129 Viet Nam, "Criminal Code", Article 329.

130 *Ibid.*

131 Viet Nam, "Criminal Code", Article 329(1). See also: Viet Nam, "Criminal Code", Article 142(1).

132 Viet Nam, "Criminal Code", Article 329. See also: Viet Nam, "1999 Criminal Code", Article 256.

133 Blue Dragon Children's Foundation, "Changing the law to protect boys", last modified 14 January 2016, <https://www.bluedragon.org/founders-blog/working-to-protect-boys-from-sexual-abuse/>.

134 Article 3(b), OPSC.

135 Viet Nam, "Children Law", Article 4(8) and 6(3).

136 Viet Nam, "Criminal Code", Article 147.

137 Viet Nam, "Criminal Code", Article 327.

138 Viet Nam, "Criminal Code", Article 147.

As regards distribution of pornographic materials, the provision covers a wide range of acts related to ‘child pornography’ prescribed by the OPSC.¹³⁹ Most recently, the provision was amended by the ‘Law on Amendments to the Criminal Code’ to substitute the word ‘store’ with the term ‘posses’,¹⁴⁰ in compliance with the OPSC.¹⁴¹ Providing pornographic materials for a child under the age of 18 was established as an aggravating factor in the new legislation.¹⁴²

With regards to offences committed by means of ICT, the Law on Information Technology and the Decree on the Management, Provision and Use of Internet Services and Online Information prohibits the use of ICT to disseminate ‘obscene contents’.¹⁴³ The latter legislation also requires ISPs to prevent users from committing such acts¹⁴⁴ and to supervise and eliminate prohibited contents.¹⁴⁵ However, the decree is unclear regarding individuals’ duty to report. Additionally, there is no explicit provision requiring cybercafés to identify users.¹⁴⁶

A significant advancement brought by the 2015 Criminal Code was the establishment of severe penalties when the offence is committed by means of ICT.¹⁴⁷ These penalties vary according to the circumstances of the crime and the gravity of the offence, and can range from a fine, to imprisonment for up to 15 years.¹⁴⁸ A limitation remains in the 2015 Criminal Code in the fact that the legislation still does not define specifically ‘child pornography’ and therefore, does not distinguish it from adult pornography.

The 2015 Criminal Code remains silent regarding online grooming, which is a significant loophole that allows offenders to escape punishment in Viet Nam.

Sale and trafficking of children for sexual purposes

The 2015 Criminal Code introduced a specific offence for trafficking in children, reflecting some key elements of trafficking in person enshrined in the Palermo Protocol.¹⁴⁹ This provision was a significant advancement in comparison to the 2009 Criminal Code. The latter did not adopt the terminology ‘trafficking’; instead, it criminalised the act of trading in, fraudulently exchanging or appropriating children under the age of 16, in any form.¹⁵⁰ The non-adoption of the trafficking in human international definition has reportedly resulted in child victims being wrongly labelled ‘child prostitutes’ or ‘willing prostitutes’.¹⁵¹

Furthermore only children under the age of 16 are protected by this provision.¹⁵² Though offences committed against children aged from 16 to under 18 are still considered human trafficking (and treated as with adult victims).¹⁵³ The legislation incorporated new aggravating factors, including when the child victim is taken across the border out of Viet Nam,¹⁵⁴ and when the offence results in the death or suicide of the child victim. The penalties prescribed by the law for this offence vary according to the circumstances of the crime and the gravity of the offence, and can be up to 20 years of imprisonment.¹⁵⁵

139 Article 3(c), OPSC.

140 Government of Viet Nam (2017), “Law on Amendments to the Criminal Code”, Law 12/2017/QH14, Article 124.

141 Article 3(c), OPSC.

142 Viet Nam, “Criminal Code”, Article 326(2).

143 Government of Viet Nam (2006), “Law on Information Technology”, Law 67/2006/QH11, Article 73. See also: Government of Viet Nam (2013), “Decree on the management, provision and use of Internet services and online information”, Decree 72/2013/ND-CP, Article 5(1).

144 Viet Nam (2013), “Decree on the management, provision and use of Internet services and online information”, Article 9(1).

145 Viet Nam, “Decree on the management, provision and use of Internet services and online information”, Article 24(4).

146 Information provided by VACR, the ECPAT Member in the country.

147 *Ibid.*

148 Viet Nam, “Criminal Code”, Article 326.

149 Viet Nam, “Criminal Code”, Article 151.

150 Viet Nam, “2009 Criminal Code”, Article 120.

151 Yvonne Rafferty (2015), “Challenges to the rapid identification of children who have been trafficked for commercial sexual exploitation”, *Child Abuse & Neglect* (International Journal), 4.

152 Viet Nam, “Criminal Code” Article 151.

153 Viet Nam, “Criminal Code”, Article 150.

154 Viet Nam, “Criminal Code”, Article 151(2)(3).

155 Viet Nam, “Criminal Code” Article 151.

Sexual exploitation of children in travel and tourism (SECTT)

The Vietnamese legislation does not address specifically the issue of SECTT; however, the offences listed in the Criminal Code and described above can potentially be used to prosecute traveling child sex offenders.

Child, early and forced marriages (CEFM)

The Children Law prohibits organising, supporting, inciting or forcing a child to partake in a child marriage.¹⁵⁶ As mentioned earlier, the Marriage and Family Law sets the minimum legal age for marriage at 18 for women and 20 for men.¹⁵⁷ Accordingly, the 2015 Criminal Code condemns the act of organising a marriage for a person under the marriageable age.¹⁵⁸ The new legislation contrasts with the 1999 Criminal Code in that it no longer uses imprisonment as penalty.¹⁵⁹ Instead, the 2015 Criminal Code only prescribes a fine and community sentence as a penalty for organising a child marriage.

The Marriage and Family Law also imposes that marriage must be voluntarily decided.¹⁶⁰ The 2015 Criminal Code condemns forcing a person to marry against her/his will. Similarly, to other offences, the new legislation provides penalties that are more lenient for this crime. The penalties vary according to the gravity of the offence, and can be up to 3 years of imprisonment.¹⁶¹ However, the provision does not specifically refer to children.

Extraterritorial jurisdiction and extradition law

The Criminal Code applies to all criminal offences committed within Vietnamese territory.¹⁶² Moreover, the offences listed in the criminal legislation are also subject to extraterritoriality jurisdiction.¹⁶³ Therefore, the Vietnamese legal system enables the prosecution in Viet Nam of foreign offenders who sexually exploit children in the country;¹⁶⁴ and of Vietnamese citizens who commit SEC-related offences covered by the Criminal Code, abroad.¹⁶⁵ An important contribution brought by the 2015 Criminal Code was a victim-centred approach, which enables the prosecution of foreign offenders who sexually exploit Vietnamese children outside Viet Nam's territory.¹⁶⁶

In terms of extradition, the Law on Legal Assistance stipulates that Viet Nam may refuse the extradition of Vietnamese citizens.¹⁶⁷ The legislation also provides comprehensive and detailed provisions regarding extradition, including the required steps to make and receive requests.¹⁶⁸ Moreover, the Criminal Procedural Code also adds provisions on international cooperation, including extradition.¹⁶⁹

156 Viet Nam, "Children Law", Articles 6(4).

157 Government of Viet Nam (2000), "The Marriage and Family Law", Law 22/2000/QH10, Article 9(1).

158 Viet Nam, "Criminal Code", Article 183.

159 *Ibid.* See also: Viet Nam, "1999 Criminal Code", Article 148.

160 Viet Nam, "The Marriage and Family Law", Article 9(2).

161 Viet Nam, "Criminal Code", Article 181.

162 Viet Nam, "Criminal Code", Article 5.

163 Viet Nam, "Criminal Code", Article 6.

164 Viet Nam, "Criminal Code", Article 5.

165 Viet Nam, "Criminal Code", Article 6(1).

166 Viet Nam, "Criminal Code", Article 6(2).

167 Government of Viet Nam (2007), "Law on Legal Assistance", Law 08/2007/QH12, Article 35(1).

168 Viet Nam, "Law on Legal Assistance", Articles 32-48.

169 Government of Viet Nam (2015), "Criminal Procedural Code", Law 101/2015/QH13.

National Response to the Sexual Exploitation of Children

COORDINATION AND COOPERATION

As demonstrated in the previous section, the national legislation regarding SEC in Viet Nam is progressing gradually. However, as highlighted by the mother of a Vietnamese SEC victim, even though the legislation is strengthened, exploiters “get smarter and more sophisticated”.¹⁷⁰ Hence, coordination and cooperation are key tools to ensure that the legislation designed to prevent and combat SEC is enforced.

Coordination for the protection of children’s rights in Viet Nam was transferred from the Committee for Population, Family and Children (CPFC) to MOLISA.¹⁷¹ The devolution of powers from national to provincial, district and communal levels of government has received considerable critical attention from the CRC Committee. It argues that it has “contributed to an inconsistent implementation of the Convention, particularly at the local level, in the light of the dissolution of all local committees of the previous coordinating body”.¹⁷²

However, MOLISA has been joining efforts to end SEC in Viet Nam. This is illustrated by the study

developed with UNICEF Viet Nam to establish a solid basis for the development of policies and initiatives focusing on protecting children from SEC and providing appropriate care for the victims of this crime.¹⁷³ While research has been carried out previously, this was the first study published by MOLISA, and it has greatly contributed to the identification of the nature and magnitude of SEC in Viet Nam.

Additionally, Viet Nam has demonstrated efforts to combat SEC by developing national plans designed to strengthen child protection in the country. These are the National Programme on Child Protection for the period of 2016-2020, and the National Programme of Action for Children for the period of 2011-2020. However, as highlighted by the CRC Committee, the policies adopted by the country are impaired by the absence of proper coordination and cooperation and the lack of sufficient human resources, which directly influence the effectiveness of the national plans.¹⁷⁴

The country has joined international agreements on law enforcement. An important example is the cooperation with the International Criminal Police Organization (INTERPOL)¹⁷⁵ and the ASEAN Association of Chiefs of Police (ASEANAPOL).¹⁷⁶ In addition, a Child Exploitation and Online Protection (CEOP) Advisory Panel has been established in Viet

170 Kate Hodal, “‘I hope you’re ready to get married’: in search of Vietnam’s kidnapped brides”.

171 Government of Viet Nam (2017), “Stipulating Functions, Duties, Authorities and Organization Structure of the Ministry of Labour - Invalids and Social Affairs”, Decree 14/2017/ND-CP, Article 2(14).

172 Committee on the Rights of the Child, “Consideration of reports submitted by States parties under article 44 of the Convention”, para 11.

173 MOLISA and UNICEF Viet Nam, “An Analysis of the Commercial Sexual Exploitation of Children in Selected Provinces and Cities of Viet Nam”.

174 Committee on the Rights of the Child, “Consideration of reports submitted by States parties under article 44 of the Convention”, para 11 and 13.

175 INTERPOL, “INTERPOL General Assembly opens in Vietnam with new member countries expanding fight against transnational crime”, last modified 31 October 2011, <https://www.interpol.int/News-and-media/News/2011/PR091>.

176 ASEANAPOL, “Organisational Structure of ASEANAPOL”, accessed 1 November 2017, <http://www.aseanapol.org/about-aseanapol/governance>.

Nam to prevent online child sexual exploitation by British nationals and other foreign nationals.¹⁷⁷

Viet Nam has also signed various Memoranda of Understanding (MoUs) regarding cooperation on assistance to victims of trafficking with ASEAN Member States, including Cambodia, Lao PDR, Myanmar and Thailand.¹⁷⁸

PREVENTION MEASURES, AWARENESS-RAISING AND EDUCATION

Viet Nam has put in increasingly more efforts in raising awareness and educating people on SEC-related issues.¹⁷⁹ A notable example of this is the role that MOLISA has played in developing strategies to raise awareness on SEC.¹⁸⁰

Civil society has also contributed extensively to the efforts made to prevent SEC. The Vietnam Association for Protection of Child's Rights (VACR) is a good illustration of these efforts. VACR is a network of individuals and organisations working for children, which focuses particularly on preventing children's rights violations.¹⁸¹ The network functions as a focal point between NGOs and government agencies and work on prevention by communicating and raising awareness on children's rights.¹⁸²

Sensitisation campaigns have proven to be a key strategy to increase awareness of and switch attitudes towards SEC. In Viet Nam, the Child Rights Coalition Asia has collaborated with UNICEF to produce materials for children on how to stay

safe online. These materials include booklets available in Vietnamese¹⁸³ and videos made by young Vietnamese children.¹⁸⁴ Similarly, with a Global Partnership to EVAC grant, ChildFund has developed and is delivering tailored Vietnamese training and resources for online safety training with adolescents.

Regarding law enforcement training, more recently, Viet Nam hosted the 40th Asia Region Law Enforcement Management Program (ARLEMP), with the theme of Transnational Child Sexual Exploitation.¹⁸⁵ ARLEMP is a partnership between the Vietnamese Ministry of Public Security through the General Department of Police, the Australian Federal Police and RMIT International University in Viet Nam. It was the first course held in Viet Nam to focus on training law enforcement officials on online child sexual exploitation, sale and trafficking of children for sexual purposes and sexual exploitation of children in travel and tourism.¹⁸⁶ For the occasion, the Major General Nguyễn Phong Hòa told the ARLEMP audience that "along with policies and action plans delivered by the Government, it is up to all of us as global partners in law enforcement to work with our communities to eradicate this heinous crime collaboratively."¹⁸⁷

Some private Vietnamese travel and tourism actors committed themselves to prevent and/or denounce sexual exploitation of children in travel and tourism by becoming members of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, an industry-driven initiative supported by ECPAT, UNICEF and the UNWTO.¹⁸⁸

177 Child Exploitation and Online Protection Centre, "Child Exploitation and Online Protection (CEOP) Centre", accessed 1 November 2017, https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_20/Thematic_Discussions/WEOG_Child-exploitation-online-protection-centre_Shaw.pdf.

178 ASEAN (2016), "Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children", ASEAN Secretariat, 12, accessed 14 March 2018, <http://asean.org/storage/2016/09/ACWC-Regional-Review.pdf>.

179 US Department of State, "Trafficking in persons report", 425.

180 UNICEF (2016), "Child protection in the digital age: National responses to online child sexual abuse and exploitation in ASEAN Member States", 97, accessed 14 March 2018, https://www.icmec.org/wp-content/uploads/2016/06/Child_Protection_in_the_Digital_Age.pdf.

181 ECPAT International, "Vietnam Association for Protection of Child's Rights (VACR)", accessed 6 December 2017, <http://www.ecpat.org/members/cefacom/>.

182 Civil Society for Children's Rights in Asia, "Vietnam", accessed 6 December 2017, <http://www.civilsocietyasia.org/vietnam>.

183 Child Rights Coalition Asia, "#SafeWeb4Kids", accessed 6 December 2017, http://crtcasia.org/wp-content/uploads/2016/11/SafeWeb4Kids_Vietnamese.pdf.

184 YouTube, "Vietnam #SafeWeb4Kids", accessed 6 December 2017, <https://www.youtube.com/watch?v=Hk9J0VkdruQ>.

185 Australian Embassy in Viet Nam, "Law Enforcement Officers Join Forces to Combat Child Sexual Exploitation", last modified 31 May 2016, <http://vietnam.embassy.gov.au/hnoi/MR160531.html>.

186 *Ibid.*

187 *Ibid.*

188 The Code (2016), "The Code and AccorHotels Vietnam join hands against child abuse and trafficking", accessed 15 November 2017, http://www.thecode.org/wp-content/uploads/2016/10/PR_The_Code_Vietnam_2016.pdf.

CHILD PROTECTION, ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

National complaint mechanisms

The CRC Committee has underlined that “for rights to have meaning, effective remedies must be available to redress violations”.¹⁸⁹ By ratifying the International Covenant on Civil and Political Rights, Viet Nam took the responsibility to ensure that every child victim of sexual exploitation has the right to an effective remedy.¹⁹⁰ This guarantee means that, states must ensure that child victims have access to effective remedies that are “appropriately adapted so as to take [into] account the[ir] special vulnerability”.¹⁹¹ This guarantee is reinforced by the CRC, which stresses that a child’s “best interests” are a “primary consideration” in all legal actions that concern children.¹⁹² Moreover, the OPSC rules that states have the obligation to adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process.¹⁹³

Concerning the right to access justice in the criminal sphere of Viet Nam’s national jurisdiction, no information was found on existing mechanisms for children to access justice. Regarding the civil sphere, the Vietnamese law considers that children under the age of six have no civil procedural capacity to act,¹⁹⁴ meaning that they cannot authorise their representatives to participate in civil procedures. In this case, lawful

representatives must perform the protection of their legitimate rights and interests.¹⁹⁵ On the other hand, children aged between 6 and 18 have civil procedure capacity to act and can authorise their representatives to participate in civil procedures; however they can only bring cases through a lawful representative.¹⁹⁶

The Child Rights International Network (CRIN) developed a global ranking of states according to the extent to which their legal systems effectively guarantee access to justice for children.¹⁹⁷ Viet Nam ranked 114 and scored 121.5 out of 261 in the CRIN’s global ranking.¹⁹⁸

There is insufficient data worldwide concerning the unique challenges and barriers that child victims of SEC face when accessing justice,¹⁹⁹ and the same is true for Viet Nam. Although sufficient information is not available regarding child victims of SEC’s access to complaint mechanisms, evidence suggests children do not have access to effective remedies. This can be illustrated by the fact that SEC remains dramatically underreported, despite its estimated magnitude in the country.²⁰⁰

Child-sensitive justice

The country is taking steps towards the implementation of a child-sensitive justice. A notable example of Viet Nam’s progress is the issuance of a joint circular with a dedicated chapter providing guidance on criminal procedures designed to address the needs of child victims and witnesses based on the current Criminal Procedure Code.²⁰¹ The instrument states that trials involving child victims need to safeguard their best interests by providing child-sensitive information and

189 Committee on the Rights of the Child (2003), “General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)”, UN Doc. CRC/GC/2003/5, 27 November 2003, para 24.

190 United Nations (1966), International Covenant on Civil and Political Rights, Article 2(3).

191 Human Rights Committee (2004), General Comment No. 31, “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant”, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 15.

192 Article 3, Convention on the Rights of the Child

193 Article 8, OPSC.

194 The Vietnamese Code of Civil Procedure defines civil procedure act capacity as the “ability to exercise one’s own rights and obligations by him/herself in civil procedures or authorize his/her representative to participate in civil procedures”. Government of Viet Nam, “Code of Civil Procedure”, Law 92/2015/QH13, Article 69.

195 Viet Nam, Code of Civil Procedure, Article 69(4).

196 Viet Nam, Code of Civil Procedure, Article 69(5-6).

197 Child Rights International Network (2016), “Rights, Remedies & Representation: Global Report on Access to Justice for Children”, accessed 14 March 2018, https://www.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf.

198 Child Rights International Network, “Access to Justice for Children: Global Ranking”, accessed 6 December 2017, <https://www.crin.org/en/access-justice-children-global-ranking>.

199 ECPAT International, “Expert Paper: Access to Justice for Child Victims of Sexual Exploitation in Travel and Tourism”, 1, accessed 6 December 2017, <http://www.ecpat.org/wp-content/uploads/2016/10/4.9-Expert-Paper-ECPAT-Barriers-to-Access-to-Justice.pdf>.

200 United Nations Viet Nam, “The UN is seriously concerned about the magnitude of child sexual abuse in Viet Nam”, accessed 14 March 2018, <http://www.un.org.vn/en/feature-articles-press-centre-submenu-252/4377-the-un-is-seriously-concerned-about-the-magnitude-of-child-sexual-abuse-in-viet-nam.html>.

201 Government of Viet Nam (2011), “Joint Circular No. 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXH of July 12, 2011, guiding a number of provisions of the Criminal Procedure Code on minor procedure participants”.

procedures.²⁰² Especially for cases of child sexual abuse and trafficking, the instrument also offers the option of in camera hearings in order to protect children's personal rights, honour and dignity.²⁰³ Concerning child statements, there is a provision that allows children to present their statements behind a screen or a shield, or in another room through a camera system, thereby avoiding direct visual contact with the defendant.²⁰⁴

The 2015 amendments to the Criminal Procedure Code also support the aforementioned joint circular. They include provisions regarding procedures to support child victims and protection measures. Unfortunately, the 2015 amendments are not currently available, but it appears that principles on how to conduct trials involving child victims, such as child-sensitive techniques and confidentiality, were included. Moreover, special training for legal and justice professionals involved in criminal proceedings involving children were added as a requirement. The amendments support the mentioned joint circular by reinforcing the provision of in camera hearings and the use of child-sensitive procedures to collect statements.²⁰⁵

Regarding protection measures, the 2015 amendments state that child victims are entitled to receive protection measures from competent authorities if necessary, which include but are not limited to, confidentiality regarding the victim's identity and, as a last resort, change of domicile.²⁰⁶

Supplementary protection measures are enshrined in the Children Law. The instrument states that "human life, health, dignity, honour and privacy of children" must be protected and the psychological pressure of children who are testifier must be minimised. The protection measures provided by this law are separated in two categories: denominated support and intervention. In terms of support, the protective measures might consist of assisting children and their families in accessing

social support policies. In terms of intervention, protection measures might consist of a safe temporary residence for children, separating them from the environment or individuals that constituted a threat to them.²⁰⁷

Protection measures can also be found in the Law on human trafficking prevention and combat, which contains provisions regarding confidentiality of information on victims and in camera hearings.²⁰⁸

Although Viet Nam has a progressive legislation regarding child-sensitive justice, the legislation has not been implemented effectively, thereby demonstrating gaps between the law and the everyday reality of child victims. Previous studies have conclusively shown that child victims of SEC suffer aggression and threats from police officers when providing statements.²⁰⁹ In this regard, the CRC Committee has stressed that sexually exploited children are often treated as criminals instead of victims.²¹⁰ Likewise, the CEDAW has expressed concerns regarding the administrative penalties imposed on girls exploited in prostitution, and the stigmatisation from which they suffer.²¹¹

Another major limitation of the Vietnamese judicial system is that victims above the age of 16 years are treated as adult victims, owing to the national definition of a child, which means that the evolving capacities of child victims aged 16 are disregarded by the judicial system.

Access to recovery and reintegration

SEC has a vast impact on the development of children, thereby resulting in greater vulnerability to social, emotional and cognitive harm. Hence, access to recovery and reintegration in a 'manner consistent with the evolving capacities of the child' is essential to help child victims rebuild their lives. Although sufficient data is not available to analyse

202 Viet Nam, "Joint Circular No. 01/2011/TTLT-VKSTC-TANDTC-BCA-BTP-BLDTBXH", Article 16(1-2).

203 *Ibid.*, Article 16(3).

204 *Ibid.*, Article 16(5).

205 UNODC, "Legal Analysis Report", 45-47.

206 *Ibid.*, 47.

207 Viet Nam, "Children Law", Articles 49, 50 and 71.

208 Government of Viet Nam, "Law on human trafficking prevention and combat", Law 66/2011/QH12, Article 31, accessed 14 March 2018, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91653/106409/F-1429920306/VNM91653%20Eng.pdf>.

209 NEXUS Institute, UN-ACT and World Vision (2017), "Supporting the Reintegration of Trafficked Persons. A Guidebook for the Greater Mekong Sub-Region", Bangkok: Nexus Institute, 71, accessed 10 November 2017, <https://nexushumantrafficking.files.wordpress.com/2017/04/final-reintegration-guidebook-gms.pdf>.

210 Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention", para 71.

211 CEDAW, "Concluding observations on the combined seventh and eighth periodic reports of Viet Nam", para 20.

accurately the accessibility of child victims of SEC to recovery and reintegration programmes in Viet

Nam, it is possible to review some cases illustrated in a study conducted by the United Nations Action for Cooperation Against Trafficking in Persons (UN-ACT), and other organisations. The study reports a successful case of referral to shelter programmes, where the child victim received various services including personal and family healthcare. However, cases demonstrating the failure of reintegration services in providing access to education were also reported.²¹²

Other studies reported that bureaucratic procedures imposed by the government make it difficult for child victims to access reintegration services.²¹³ Accordingly, CEDAW and the CRC Committee have drawn attention to the country's inadequacy in providing rehabilitation and reintegration assistance for victims of SEC.²¹⁴ The need to invest more in specialised assistance for child victims has also been emphasised by the United Nations.²¹⁵

Access to compensation

The term compensation refers to “a monetary reward meant to redress the harm suffered” by the victim.²¹⁶ Although no amount of money can extinguish the despair inflicted on a child victim of sexual exploitation, it can enable he/she to rebuild his/her life by providing for basic needs such as accommodation and health care. For instance, the study conducted by UN-ACT has illustrated the case of a Vietnamese girl trafficked for prostitution purposes to Cambodia, whose primary need was to rebuild her family home.²¹⁷

Pursuant to the Vietnamese legislation, victims, including children, are eligible to receive compensation in case of moral and material damage caused by the offence.²¹⁸ Moreover, they are entitled to suggest compensation levels and measures to secure such compensation.²¹⁹ Limited information was available on cases of children successfully securing compensation in cases of SEC.

212 NEXUS Institute, UN-ACT and World Vision, “Supporting the Reintegration of Trafficked Persons. A Guidebook for the Greater Mekong Sub-Region”, 29 and 49.

213 Yvonne Rafferty, “Challenges to the rapid identification of children who have been trafficked for commercial sexual exploitation”, 4.

214 CEDAW, “Concluding observations on the combined seventh and eighth periodic reports of Viet Nam”, para 20. See also: Committee on the Rights of the Child, “Consideration of reports submitted by States parties under article 44 of the Convention”, para 53.

215 United Nations Viet Nam, “The UN is seriously concerned about the magnitude of child sexual abuse in Viet Nam”.

216 ECPAT International (2017), “Barriers to Compensation for Child Victims of Sexual Exploitation: A discussion paper based on a comparative legal study of selected countries”, Bangkok: ECPAT, 4.

217 NEXUS Institute, UN-ACT and World Vision, “Supporting the Reintegration of Trafficked Persons. A Guidebook for the Greater Mekong Sub-Region”, 26.

218 Viet Nam, “Criminal Code”, Article 42.

219 Viet Nam, “Criminal Procedural Code”, 51(2).



Child, Victim and Survivor Participation

The right for children to express their views freely in all matters affecting their lives²²⁰ is guaranteed by the Vietnamese Constitution.²²¹ Yet the CRC Committee has expressed concern in the past regarding the absence of consultation with children in the process of making laws and policies that affect them.²²² The recent Children Law is an important step towards the realisation of this right. It provides comprehensive provisions regarding children's participation in issues involving them. Specifically, it protects the right of children to participate in the "establishment and

implementation of programs, policies and legislative documents and socioeconomic development plans" that involve them directly or indirectly.²²³

The country has been convening provincial and national forums where children can, to a limited extent, be heard.²²⁴ A notable example of the impact of these forums can be seen in Lao Cai, where children's views informed the formulation of the Lao Cai's Socio-Economic Development Plan for the period of 2016-2020.²²⁵

220 Article 12, CRC.

221 Viet Nam, "Constitution of the Socialist Republic of Vietnam", Article 31(1).

222 Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention", para 35.

223 Viet Nam, "Children Law", Article 74.

224 UNICEF, "Child protection in the digital age National responses to online child sexual abuse and exploitation in ASEAN Member States", 97.

225 UNICEF (2015), "UNICEF Annual Report 2015", accessed 1 November 2015, https://www.unicef.org/about/annualreport/files/Vietnam_2015_COAR.pdf.

Recommendations for Action

INTERNATIONAL AND REGIONAL LEGISLATION, COMMITMENTS AND COORDINATION TO ENDING SEC

- Accede to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure and ratify the UNWTO Framework Convention on Tourism Ethics.
- Strengthen the existing international policies and judicial cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, to improve the prevention, investigation, prosecution and punishment of SEC, particularly the sale and trafficking of children and SECTT. Develop mechanisms to coordinate the implementation of such arrangements.
- Submit a voluntary national review on the implementation of the SDGs at the national and sub-national levels by 2018.

NATIONAL RESPONSE TO SEC'S MANIFESTATIONS

- Take legislative measures to raise the legal age of a child to 18, in compliance with the CRC.
- As regards exploitation of children in prostitution, enact provisions defining 'child prostitution' in compliance with the OPSC. Furthermore, amend the legislation to cover all the condemned acts prescribed in the OPSC related to this offence. Additionally, enact legislation to protect children under the age of 13 from harbouring and procuring.

- In terms of OCSE, amend the legislation to protect all children under the age of 18 from being exploited in pornographic performances. Likewise, enact provisions defining 'child pornography' that comply with the OPSC, prohibiting all thereof prescribed acts. Furthermore, take legislative measures to criminalise the act of 'grooming' children. Adopt explicit provisions requiring ISPs to report cases of OCSE and cybercafés to identify their users.
- In the case of trafficking in children, amend the legislation to protect all children under the age of 18.
- Regarding SECTT, enact legislation defining and criminalising SECTT, including provisions holding the travel and tourism sector accountable for the protection of children and for prohibiting the promotion of SECTT.
- Make sure that the National Programme on Child Protection 2016-2020 and the National Programme of Action for Children 2011-2020 address the deep-rooted socioeconomic factors that make children vulnerable to SEC, including prevention of ethnic discrimination against children.
- Strengthen the coordination and cooperation of policies designed for children and ensure that they are comprehensive, coherent and consistent at the national, provincial, district and communal levels.
- Provide appropriate human, technical and financial resources to support the implementation of child-rights policies and legislation.

- Establish an effective national system of data collection, analysis and dissemination of SEC in all its manifestations, disaggregated by age, gender, place of residence, ethnic origin and socio-economic background, to facilitate analysis on how SEC is present in the country.
- Intensify efforts to raise awareness on SEC by designing and implementing public awareness-raising programmes among children, families and groups of professionals working with and for children. Such programmes should take into consideration the needs of and be accessible to persons with disabilities and speakers of minority languages.
- Make available a systematic training on child rights for all professionals working with and for children; in particular, law enforcement officers, prosecutors, judges, teachers, and personnel working in all forms of alternative care.
- Ensure that law enforcement officers treat sexually exploited children as victims and not as criminals.

ACCESS TO JUSTICE AND RIGHT TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

- Advance child-friendly national complaint mechanisms, develop recovery and reintegration programmes for child victims of sexual exploitation that take into consideration their special vulnerability, and design mechanisms to guarantee that children have access to compensation.

CHILD, VICTIM AND SURVIVOR PARTICIPATION

- Promote to a greater extent the participation of children, including child survivors, in the decision-making of policies and legislation affecting them, by setting up mechanisms at all levels to facilitate consultations.
- Design strategies to involve child survivors in specific programmes combating SEC in a safe and empowering manner that does not exacerbate their victimisation.

RESEARCH NEEDS AND AGENDA

- Produce research on OCSE issues that are not comprehensively covered by the literature, particularly ‘live online child sexual abuse’ and online grooming.
- Undertake research on the deep-rooted social factors that increase the demand for virgin girls and how to develop appropriate programmes to combat it.
- Conduct research on the risks posed by SEC to boys and LGBT children in Viet Nam. Include in the research strategies to address the unique needs of male child victims, including in terms of recovery and reintegration.
- Conduct research on the phenomenon of imbalanced sex ratio at birth that is emerging in the country. Focus the research on the threat that this represents to children and on the extent to which this increases the level of risk of SEC in the country.



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