

Universal Periodic Review

VIETNAM

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UPR submission prepared by:



ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography, child trafficking and child sex tourism). It represents 81 member organisations from 75 countries. ECPAT International holds Consultative status with ECOSOC.

Website: www.ecpat.net

In collaboration with:



Research Centre for Family Health and Community (CEFACOM) – Vietnam

The Research Centre for Family Health and Community Development (CEFACOM) of Vietnam was established in 2001 with an initial programme focus on issues relating to child sexual abuse. Throughout the growth of the organisation, its programmes have included issues relating to HIV/AIDS and community development with a key focus on child sexual exploitation. CEFACOM's programmes have worked in collaboration with and have been supported by the government, international organisations and local NGOs. CEFACOM also provides consultation services to local and international organisations on areas related to child sexual abuse and violence, including child trafficking.

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Executive Summary

This submission provides a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Vietnam. Although current data on the scale of manifestations of CSEC in Vietnam is lacking, a study on child laws and policies conducted by the Ministry of Labour, War Invalids and Social Affairs (MOLISA) and UNICEF in 2009, indicates that the incidence of children in prostitution is on a constant rise. According to the study, approximately 13% of prostitutes are under the age of 18 and the problem is said to be more evident in the South than in the North¹.

Vietnam has ratified most international legal instruments addressing CSEC, with the exception of the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*. ECPAT strongly encourages the Vietnamese government to ratify this international instrument as soon as possible. At the regional level, Vietnam has ratified the *ASEAN Declaration against Trafficking in Persons, Particularly in Women and Children*.

Vietnam's criminal code was amended in 1997 and 1999 to include new offences and more severe penalties for crimes related to CSEC. Despite this, laws addressing CSEC still fall short of reaching standards set forth in relevant international legal instruments. For example, the Criminal Code does not clearly define and prohibit child pornography in accordance with the Optional Protocol on the sale of children, child prostitution and child pornography, which was ratified by Vietnam in 2001. In addition, laws addressing human trafficking do not adequately define and prohibit child trafficking for sexual purposes and provisions addressing the sexual exploitation of children in travel and tourism need to be strengthened.

With regards to the child protection policy framework, Vietnam has no specific plan of action to address all forms and manifestations of CSEC. Existing policies on child protection only partially address commercial sexual exploitation and child trafficking and a specific plan of action aimed at preventing and combating CSEC is required.

Police units handling cases where children have been victims of commercial sexual exploitation must be staffed with well-trained personnel. There must also be a coordinated system of assistance and support services for victims of CSEC. The capacity of care and protection services for child victims should be strengthened in order to meet the needs of all children who have been victimised by commercial sexual exploitation.

¹ MOLISA and UNICEF, Creating a protective environment for children in Vietnam: an assessment of child protection laws and policies, especially children in special circumstances in Vietnam, 2009.

1. Legal and policy framework addressing commercial sexual exploitation of children

1.1 Legal Framework

1.1.1 International and regional legal standards addressing commercial sexual exploitation of children

Vietnam ratified the *Convention on the Rights of the Child* (CRC 1989) in 1990, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC, 2000) in 2001, the *ILO Convention on the Worst Forms of Child Labour* (No. 182, 1999) in 2001 and the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000) in 2012.

Vietnam has neither signed nor ratified the *Optional Protocol on a Communications Procedure* (OP3 CRC, 2011).

At regional level, Vietnam has ratified the *ASEAN Declaration against Trafficking in Persons, Particularly in Women and Children*.

Recommendation:

- **Sign and ratify the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*.**

1.1.2 Domestic Legal Framework

1.1.2.1 Laws regarding Child Prostitution

Vietnam's Criminal Code (Article 256) penalises those who have paid sexual intercourse with juveniles between the ages of 13 and 18 years (having paid sexual intercourse with juvenile aged between 13 and 16 years old is an aggravating circumstance). However, the law does not provide a clear definition of child prostitution.

References to Article 256 of the penal code suggest that offences against children would be narrowly construed to include only penetrative sex. Furthermore, it is not explicitly stated that the use of children in sexual activities for any consideration other than remuneration (as stated in Article 2 of the OPSC) is prohibited or that a child will not be sanctioned for his or her involvement in prostitution.

Recommendations:

- **Amend the Penal Code to provide a definition of child prostitution which is consistent with Article 2 of the OPSC.**
- **Include a provision in the *Criminal Code* that explicitly protects a child from any administrative sanction for prostitution related offenses.**

1.1.2.2. Laws regarding Child Trafficking for sexual purposes

The Vietnamese domestic legal framework addressing trafficking in human beings does not fully comply with the recently ratified *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. There is no law that specifically protects children from human trafficking. The only legal provision that could be used to address child trafficking cases is Article 120 of the penal Code addressing “trading in, fraudulently exchanging or appropriating children”, which includes, for the purpose of sexual exploitation. However, this provision does not provide an adequate definition of trafficking in human beings, including children, as defined in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Furthermore, the provision prohibits acts related to trafficking, as listed in the UN Trafficking protocol (harbouring, recruiting, transferring and transporting for an exploitative purpose), to be considered trafficking regardless of deceptive or forceful means, and regardless of whether or not the child has given consent.

Recommendations:

- It is urgent that Vietnam adopt a specific law on trafficking in human beings, including children, which defines and criminalises all conducts related to trafficking in human beings in strict accordance with Article 3 of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.
- The law addressing trafficking should specifically stipulate that victims of trafficking in human beings should never be sanctioned for offenses committed while they were victims of trafficking.

1.1.2.3 Laws regarding child pornography/child abuse materials

Vietnam does not have any laws adequately defining or prohibiting child pornography/child abuse materials. Article 253 of the Penal Code on *Disseminating debauched cultural products* is the only provision under which issues related to child pornography/child abuse materials could potentially be addressed. However, this provision falls short of international standards. The 2003 *Ordinance on the Prevention of Prostitution* prohibits the production, distribution, transportation, storage, purchase, sale, export, import or publicising of pornographic materials, but it fails to specifically mention or define child pornography/ child abuse materials.

Recommendation:

- It is urgent that Vietnam enact legislation defining child pornography and prohibiting its production, dissemination, sale, mere possession, access and intentional viewing. Vietnamese legislation should also take steps to criminalise the solicitation of children through the use of information and communications technologies for sexual purposes ('grooming' of children).

1.1.2.4 Laws regarding the exploitation of children in travel and tourism

Vietnamese law does not contain provisions defining or expressly criminalising the sexual exploitation of children in travel and tourism (e.g. prohibiting making travel arrangements, transporting, or printing or publishing information intended to promote child sex tours). As

Vietnam grows as a tourist destination, so does the risk of commercial sexual exploitation of children in travel and tourism.

Recommendations

- **Vietnam should amend its Penal Code to include specific provisions specifically prohibiting sexual exploitation of children in travel and tourism (making travel arrangements with the purpose of sexually exploiting children, printing or publishing information intended to promote child sex tours)**

1.2 Policy framework

Vietnam does not have a national plan of action that comprehensively addresses all forms of CSEC². The National Programme on Child Protection 2011-2015 contains measures relating to the support, recovery and reintegration services for children in special circumstances, including abused and exploited children. However, this Programme does not address commercial sexual exploitation of children in a comprehensive manner.

Recommendations:

- **Vietnam should adopt a comprehensive national plan of action to address all forms of commercial sexual exploitation of children, developed in collaboration with civil society groups, children and young people and other relevant stakeholders.**

2. Key areas of concern with regards to the implementation of children's right to protection against commercial sexual exploitation on the ground

2.1 Lack of coordination and cooperation to prevent and combat commercial sexual exploitation of children

At regional level, especially as part of the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT), as well as at national level (through collaboration with IOM and UNIAP), Vietnam has made progress addressing trafficking of children for sexual purposes. A ministerial focal point has been assigned to coordinate the country's efforts in related aspects. However, the country does not yet have a focal point to coordinate national efforts against commercial sexual exploitation of children in areas other than child sex trafficking³. This lack of coordination hampers the effectiveness of efforts, developed by the government, intergovernmental agencies and civil society organisations, towards preventing and combating CSEC.

Recommendation:

- **Government should increase efforts to coordinate initiatives aimed at preventing and combating child prostitution, child pornography/child abuse materials and**

² ECPAT International, Global monitoring report on the status of action against commercial sexual exploitation of children – Vietnam, 2011.

³ Ibid.

sexual exploitation of children in travel and tourism. The appointment of a ministerial focal point focusing on the coordination of programmes addressing commercial sexual exploitation of children is required.

2.2 Lack of specialised police unit to address cases of commercial sexual exploitation of children

Vietnam does not have a centralised child protection police unit to address CSEC cases. In some regions a limited number of police officers have been trained to deal with these crimes⁴. The lack of specialised law enforcement personnel is a major concern as many front line police officers do not have the training to identify child victims of trafficking or other forms of commercial sexual exploitation, to apply child-friendly procedures and to effectively assist child victims or witnesses.

Recommendation:

- **Vietnam should establish a specialised police unit to deal with cases relating to the commercial sexual exploitation of children. This unit should operate at a national and local level. Furthermore, officers working within this unit should receive adequate training on implementing child-friendly procedures and understanding children's rights.**

2.3 Lack of adequate assistance and support services for child victims of commercial sexual exploitation.

There are limited services available to assist sexually exploited children in Vietnam. Even though a number of psychological and physical rehabilitation centres have been built to support sexually abused children in several provinces and in major cities, like Ho Chi Minh City, there is not a system in place to ensure that all sexual abuse victims are systematically assessed by trained social workers and referred to appropriate recovery services⁵. Some centres lack appropriately trained staff (counsellors, social workers, vocational trainers) and the conditions and care provided to juvenile victims of sexual exploitation often do not meet international standards⁶.

Recommendation:

It is critical that the government increase the capacity of public services to provide adequate care and protection for all child victims of commercial sexual exploitation, including children from foreign countries. Staff working for these service organisations should be provided with appropriate training to deal with child victims of sexual exploitation and trafficking.

⁴ ECPAT International, Global monitoring report on the status of action against commercial sexual exploitation of children – Vietnam, 2011.

⁵ Ibid.

⁶ MOLISA and UNICEF, Creating a protective environment for children in Vietnam: an assessment of child protection laws and policies, especially children in special circumstances in Vietnam, 2009.