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# “Mind the Gaps”

A Legal Dogmatic Study on Service Provision  
for Returning Human Trafficking Victims in Vietnam

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The MFS Scholarship Programme gives Swedish university students the opportunity to carry out fieldwork in low- and middle income countries, or more specifically in the countries included on the *DAC List of ODA Recipients*, in relation to their Bachelor's or Master's thesis.

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# Abstract

With a legal dogmatic method, the purpose of this thesis was to examine how Vietnam is fulfilling its legal obligations to support returning human trafficking victims. The Vietnamese human trafficking law was the main research object and was considered in relation to the international standards in support to returnees set in the Trafficking Protocol. It also aimed to identify shortcomings, and assess how they affect the returnees' rights. *In theory*, there are no incoherencies, but shortcomings arise because of the *effects* of the interpretation and implementation of the laws. Cumulatively, they result in unequal access to services and rights they are entitled to by above laws. One underlying explanation to these shortcomings is the absence of the transformation from the teleology (supporting all returnees equally) to the desired normativity because of dominant gender norms and narrow perceptions of human trafficking. If Vietnam continues to pursue its development goals and wants to respect and protect the rights of returning human trafficking victims, it has to mind the gaps between theory and practice by addressing these norms and perceptions and overhaul the procedures. Only then is it more likely that Vietnam fulfils its legal obligations towards the national and international legal instruments.

**Keywords:** human trafficking, Trafficking Protocol, service provision, return process and legal dogmatic method.

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\* Ms Lang is a pseudonym to protect her real identity.

# Table of Contents

ABSTRACT.....	ii
ACKNOWLEDGEMENTS.....	iii
ACRONYMS AND ABBREVIATIONS.....	vi
PRESENTATION OF ORGANIZATIONS .....	vii
<b>1 INTRODUCTION .....</b>	<b>1</b>
FRAMING THE PROBLEM.....	1
RESEARCH PURPOSE AND RESEARCH QUESTIONS.....	2
POINTS OF DEPARTURE .....	2
KEY TERMS.....	2
RELEVANCE FOR DEVELOPMENT.....	3
THESIS OUTLINE .....	4
<b>2 METHODOLOGY .....</b>	<b>5</b>
PHILOSOPHICAL ASSUMPTIONS .....	5
RESEARCH PROCESS.....	5
ETHICAL AND MORAL CONSIDERATIONS.....	7
VALIDITY AND RELIABILITY .....	8
LIMITATIONS .....	9
<b>3 LEGAL DOGMATIC METHOD.....</b>	<b>10</b>
ON WHAT BASIS ARE LAWS CREATED? .....	10
LEGAL DOGMATIC METHOD IN RESEARCH .....	11
WHY USE THE LEGAL DOGMATIC METHOD IN THIS STUDY?.....	11
<b>4 VIETNAMESE CONTEXT .....</b>	<b>12</b>
POLITICAL CONTEXT.....	12
GENDER NORMS .....	12
ECONOMIC BOOST TRIGGERS MIGRATION .....	13
OVERLAP OF MIGRATION AND HUMAN TRAFFICKING.....	14
SUMMARY OF CHAPTER.....	15
<b>5 INTERNATIONAL LEGAL INSTRUMENTS.....</b>	<b>16</b>
THE BASIS .....	16
CTOC AND ITS PROTOCOLS.....	17
TRAFFICKING PROTOCOL.....	17
SUMMARY OF CHAPTER.....	18

<b>6 VIETNAMESE LEGAL INSTRUMENTS .....</b>	<b>19</b>
THE BASIS .....	19
HUMAN TRAFFICKING LAW .....	19
<i>Reception Procedure and Immediate Support</i> .....	20
<i>Victim Identification</i> .....	20
<i>Provision of Support upon Return</i> .....	22
SUMMARY OF CHAPTER.....	22
<b>7 PRESENTATION OF COLLECTED DATA .....</b>	<b>23</b>
RECEPTION PROCEDURE AND IMMEDIATE SUPPORT.....	23
VICTIM IDENTIFICATION .....	23
PROVISION OF SUPPORT UPON RETURN.....	25
<b>8 ANALYSIS.....</b>	<b>28</b>
ARE THERE ANY SHORTCOMINGS IN THE PRACTICE OF THE LAW?.....	28
IS IT ALL ABOUT INTERPRETATION OF WORDS? .....	30
HOW ACCESSIBLE ARE THE SUPPORT SERVICES? .....	31
TO WHAT EXTENT DOES THE LEGAL INSTRUMENTS CORRELATE? .....	33
WHAT IS THE NEXT STEP? .....	34
<b>9 CONCLUDING REMARKS .....</b>	<b>35</b>
BIBLIOGRAPHY.....	37
APPENDIX 1. <i>Interview guide</i> .....	44
APPENDIX 2. <i>Updated Interview Guide</i> .....	48

# Acronyms and Abbreviations

CSAGA	Center for Studies and Applied Sciences in Gender, Family, Women and Adolescents
CTOC	United Nations Convention against Transnational Organised Crime
HI	Hagar International
HTL	(Vietnamese) Human Trafficking Law
IOM	International Organization for Migration
JICA	Japan International Cooperation Agency
MOFA	Ministry of Foreign Affairs (in Vietnam)
NGO	Non-Governmental Organization
SWI	Social Welfare Institutions
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNIAP	United Nations Inter-Agency Project on Human Trafficking
VSC	Victim Supporting Centres
WU	Women's Union (in Vietnam)

# Presentation of Organizations

## **Center for Studies and Applied Sciences in Gender, Family, Women and Adolescents (CSAGA)**

A non-profit, non-governmental organization dedicated to the implementation of the rights of women and children who are affected by violence and discrimination. The programmes and projects include counselling, vocational training, mass communication and implementation of intervention projects and one of the target groups are women who have been subject to human trafficking (CSAGA homepage 2013).

## **Hagar International (HI)**

An international Christian organization dedicated to the recovery from extreme human rights abuses, particularly human trafficking, gender-based violence, and sexual exploitation. HI assists women and children to successfully integrate into the community of their choice by reconciling or reconnecting with family or finding a foster home. They also provide vocational training, shelter and counselling (HI homepage 2013).

## **International Organization for Migration (IOM)**

An intergovernmental organization that is committed to the principle that humane and orderly migration benefits migrants and the society. Their programmes and projects focus on safe migration and mobility including counter trafficking, emergency and post-crisis response to migration and labour migration. IOM works towards practical solutions for migration problems, providing humanitarian assistance to migrants in need, and with partners to promote international cooperation on migration issues (IOM Vietnam home page 2013).

## **Japan International Cooperation Agency (JICA)**

JICA aims to contribute to the promotion of international cooperation as well as the sound development of Japanese and global economy by supporting the socioeconomic development, recovery or economic stability of developing regions. JICA currently has a project that aims to establish an anti-human trafficking in persons hotline in Hanoi (JICA home page 2013).

## **Oxfam-Québec in Vietnam**

Oxfam-Québec is a non-profit, secular, non-partisan, non-governmental organization and member of the international confederation Oxfam. Their projects are mainly focused on the support of ethnic minorities and the improvement of living conditions for women. They also



have projects that aim to support returning migrants and human trafficking victims (Oxfam-Québec homepage 2013).

**United Nations Inter-Agency Project on Human Trafficking (UNIAP)**

Established in 2000 to facilitate a stronger and more coordinated response to human trafficking in the Greater Mekong Sub-region. As an inter-agency project, UNIAP works with governments, UN, and civil society partners at all levels – regional, national and community. One of the key initiatives it hopes to achieve is that victims of human trafficking will be able to access protection services across the region that meet international standards (UNIAP homepage 2013).

**United Nations for Gender Equality and the Empowerment of Women (UN Women)**

The goal is to support national partners to implement their commitments and priorities for advancing gender equality and women’s empowerment. The programmes and projects work for the elimination of discrimination against women and girls; empowerment of women; and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security (UN Women Viet Nam homepage 2013).

**Women’s Union (WU)**

A governmental organization that has a network operating throughout Vietnam at four administrative levels (central, provincial, district and commune) with a total membership of more than 13 million women. It is mandated to protect women’s legitimate rights and strive for gender equality. Currently, they provide temporary shelters for returning human trafficking victims in different parts of Vietnam and they work with the reconciliation process when female migrants and female human trafficking victims return to the family and the community (VWU homepage 2013).

# 1 Introduction

## Framing the Problem

Ms Lang<sup>2</sup>, married and a mother of three daughters from a rural village outside Hanoi, has worked as a domestic worker in Hanoi over the last decade. However, this life story could have been different. She came to Hanoi after having heard of job opportunities that could generate higher income than her current job. Such a job could enable her children to pursue higher education. Although questions were asked about the job, no answers were provided. Ms Lang grew suspicious because she also had heard of human trafficking. Soon after her arrival, she fled and turned to the local authorities. With their help, she found another position in Hanoi.

In the beginning, it was difficult to visit her family because rumours were spread of her prostituting in the city. Her husband blamed her for the poor reflection on him and the family but this later changed when she started to send home money. The opinions also shifted in the community after the building of their house; many in the community started to ask her about career advice. Although the work means being away from the family, she is content as the job pays for her dreams. Her only concern is that the eldest daughters are courted with job offers in China and she is afraid that they can be sold to Chinese men. Ms Lang was not trafficked, but it was still difficult for her to even speak of the risk of human trafficking. Sadly, her fear is valid; victims of human trafficking are often lured by acquaintances with promises of work with good pay (Yi 2005:7).

Remarkable for Vietnam is that the Government is trying to take its responsibility in addressing human trafficking. There are laws and even agreements with neighbouring countries on how to prevent and combat trafficking (MOFA 2012:43-44). The focus in the efforts, however, often leaves out the return process. In the case of Ms Lang, it became evident that it was not just the risk of being trafficked that was worrisome, but also the return to the community that can only be assumed to be worse for those who have been victims of human trafficking. This gives rise to the question: how are the returning human trafficking victims (hereafter *the returnees*) supported upon return?

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<sup>2</sup> Ms Lang is a pseudonym in order to protect her identity. The life story above was shared during an unstructured interview in Hanoi in October 2, 2012.

## Research Purpose and Research Questions

The framework that can provide the parameters for such assessment is the Vietnamese *Law on Prevention and Suppression Against Human Trafficking* (human trafficking law hereafter shortened to HTL) that was passed on March 29, 2011 and took legal effect on January 1, 2012. This was passed a few months before Vietnam's accession<sup>3</sup> of *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime* (2000) (hereafter the *Trafficking Protocol*) that embodies international standards on how to support returnees (UNODC 2012:12). With regard to the worries related to the return process shared above, the purpose of this study is to apply a legal dogmatic method (presented in Chapter 3) and assess how Vietnam is living up to its legal obligations towards above legal instruments. Accordingly, this study will be guided by the following research questions:

- *Are there any shortcomings in the interpretation and implementation of the Vietnamese human trafficking law in terms of access to service provision for returnees?*
- *To what extent does the Vietnamese human trafficking law correspond to the international standards set in the Trafficking Protocol in terms of support to returnees? If there are any gaps in the interpretation and implementation of the national and international laws at hand, how do they affect the returnees' rights?*

## Points of Departure

In broad strokes, existing studies on human trafficking often analyse from a sexual violence and victim-centred perspective (Piper 2005:209). The same perspectives dominate the studies on the return process that commonly also focus on rehabilitation. In order to acknowledge that not all human trafficking victims are subject to sexual violence only and that the crime involves human rights violations, this study takes migration (elaborated upon later) and the laws as starting points and focuses on the return process. After all, the rights determine what support they are entitled to in the return process and laws are supposed to serve the all individuals' rights on an equal basis. This focus is also chosen with respect to the absence of assessments of laws that specifically address the service provision in the return process in Vietnam.

## Key Terms

This study will frequently refer to certain terms and a presentation is thus in order. In the absence of subjective levels of understandings expressed by returnees, the presented definitions mainly derive from the academia and legal framework.

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<sup>3</sup> Accession is another process of ratifying a treaty and means that Vietnam is legally obligated to abide the intentions and formulations set in the Trafficking Protocol.

**Discrimination:** It is here understood as the failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured. *Non-discrimination* thus means that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection from discrimination (IOM 2004:19, 44).

**Irregular migration:** This term refers to the movement that takes place outside the regulatory norms of the sending, transit and receiving countries, i.e. an illegal entry. The term is often interchangeably referred to as ‘illegal migration’ and ‘clandestine migration’ (IOM 2004:34). The opposite would be *regular migration*.

**Migration:** It is here used to refer to the whole migration process and adopts the definition from the Migration Convention<sup>4</sup> that stipulates that “*it comprises of the preparation for migration, departure, transit and the entire period of stay [...] and the return to the state of origin or the state of habitual residence*” (Article 1(2)).

**(Social) stigma:** It is here understood as an act that entails severe disapproval from the community for behaviour that is considered to deviate from social, cultural and gender norms (Fick 2005:20).

**Teleology:** Term derived from the Greek *telos* that means end or purpose, which is best described as a goal-targeting activity with cognitive background (Klami 1984:4).

## Relevance for Development

Migration is by no means a new phenomenon. Individuals have since the beginning of mankind moved for different reasons such as food, jobs and survival among others. Remarkable for the recent decades is, however, the boost in number of migrants as a result of the world becoming more integrated and interdependent. This has caused a debate called ‘the migration-development nexus’ that is about whether migration de facto contributes to development (Heilmann 2006:231).

While academics still discuss, the international community has made up its mind. At the 2012 United Nations Conference on Sustainable Development in Rio de Janeiro, Brazil, migration was recognized to have relevance to development (UNCSD 2012:1). Through migration, individuals can improve and acquire new skills and the sum from 2009 shows that remittances (through formal channels) from migrants were estimated to be over \$300 billion dollars (Ratha et al 2010:1). Scholars such as Binci (2012:4) recognise the positive impacts by

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<sup>4</sup> Formally known as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

claiming that migration is integral to development because “*the impact of migration on the lives of migrants, on their future prospects and possibilities can also affect the socioeconomic development of their host country and origin country*” (p. 6).

Within the scope of migration, one must, however, also consider the risks of human trafficking as traffickers can use the same migration channels. Although human trafficking often may be associated with irregular migration, one has to be reminded that a victim of trafficking can be trafficked within State borders or enter a State legally and be subjected to exploitation at the final destination. The difference between human trafficking and migration is thus not clear-cut in neither theory nor practice (Yi 2005:5).

Therefore, if States are to promote migration as part of development strategy, it is here argued that human trafficking as a plausible related risk must be addressed as it benefits from such promotion. It is also here argued that the development purpose is dependent on the success of the reintegration process. The State must thus take its responsibility and provide support – regardless of if the individual returning is a working migrant or a victim of human trafficking.

## Thesis Outline

With the exception of Chapter 2 that explains how the research was conducted, the succeeding chapters aim to build up an understanding of the study. Since this study has not chosen a theoretical framework to rely on, Chapter 3 will provide an outline of what the legal dogmatic method is and how it is used. In order to understand the basis of the study, Chapter 4 aims to provide an overview of the Vietnamese context. With the same aim, Chapters 5 and 6 are dedicated to present the relevant international and national legal instruments. The latter will be structured in accordance with the reception order. Chapter 7 will present the collected primary and secondary data that focus on how the laws are implemented. These chapters will jointly form the basis for the analysis in which the research questions will be discussed. The final chapter will answer the research questions by summarizing the findings.

## 2 Methodology

When it was decided that the focus would be on human trafficking, it was anticipated that the research would encounter difficulties. This chapter will describe the research process that includes fieldwork in Hanoi, Vietnam over a period of six months (July – December 2012).

### Philosophical Assumptions

Before describing the process, it is necessary to be open with the entrenching ‘world views’ that have influenced the choices of methods and the research design. Aligned with the view on research shared by Mack et al’s (2002:1), I wanted to do qualitative research that brought forward the ‘human side’ of the observed reality. It was because of this that the initial research questions aimed to assess *how* female returnees *experience* their re-integration process.

With this purpose in mind, constructivist grounded theory was favoured as an approach to inquiries. Grounded theory (in its basic form) is best described as a methodology that seeks to construct theory about issues of importance in people’s lives through a process of data collection that is often inductive in its nature (Mills et al 2006:2). The intriguing parts were its ontological and epistemological assumptions. I for instance sided with Strauss and Corbin (1994, cited in Mills et al 2006) in their belief that there is no “*pre-existing reality*” (p. 2). One can add the views of Alasuutari et al (2008) who say that constructivist grounded theory responds to the fact that “*the reality is multiple, processual, and constructed*” (p. 14-15). Every ‘reality’ or context should thus be considered as unique as it is built on norms, rules, traditions, behaviours, thoughts and desires expressed by individuals within the specific context that is also influenced by factors such as culture, politics, history, among others.

### Research Process

Practical challenges that were beyond personal control, however, forced me to put some of the above ambitions aside. Although the Government and organizations work with the issue of human trafficking, few specifically work with returnees. Furthermore, every contacted organization denied interview access with reference to their ethical guidelines. After having performed two unstructured interviews to see if the research questions would hold, I had to abandon them as they indicated the need to include the returnees’ voices. Alternatively, I altered them into the current research questions. By the time I decided this, I also chose to abandon grounded theory since it would be difficult to construct a theory without the subjective understandings. I, however, stayed in line of its methodology, i.e. explorative and inductive when collecting data. More importantly, I widened the scope and adopted a

gender-neutral perspective that is aligned with the international standards set in the Trafficking Protocol.

Given that the new research object was legal sources, it was suitable to apply a legal dogmatic method that is used to analyse the interpretation and implementation of laws (Sandgren 2005:655). Although the study applied a legal approach, the research was still influenced by above philosophical assumptions. It was for instance important to identify the dominant views, ideas, values and norms in the Vietnamese society as they, as well as the laws, are products of individuals. Participatory observations were thus conducted; not for the purpose of providing answers but to broaden the understandings of the Vietnamese society and the views, norms and values the individuals hold. The observations were initiated as soon as I stepped foot on Vietnamese soil and took place in the everyday life and interactions with Vietnamese men and women at work at the UN Women office and when socializing with people around me in Hanoi. These insights were often discussed in an informal network called “Gender Talk”, where mainly young Vietnamese women discussed and reflected on their ways of life. Besides identifying the relevant legal frameworks, it was also necessary to collect secondary data such as articles and reports that captured the inputs of how the laws are practiced.

Above data collection methods were complemented with more primary data. Through the use of snowball sampling<sup>5</sup> as a way to get introduced to relevant stakeholders, semi-structured interviews were performed with organizations. Although not all of them provide gender-neutral support to returnees, they have experience from supporting the returnees and have knowledge about the national and international laws regarding human trafficking (see below Table 1).

#	Name of organization	Date of interview
1	Center for Studies and Applied Sciences in Gender, Family, Women and Adolescents (CSAGA)	October 22, 2012
2	Hagar International	November 22, 2012
3	Women’s Union	November 22, 2012
4	Oxfam-Québec	November 23, 2012
5	International Organization for Migration (IOM)	December 3, 2012
6	United Nations Inter-Agency Project on Human Trafficking (UNIAP)	December 19, 2012

*Table 1. List of interviewees (semi-structured interviewees)*

All interviewees were informed about the purpose of the study and they all gave oral consents to their inputs being used in this study. The consent extended to include the

<sup>5</sup> Snowball sampling is to establish contacts with other relevant stakeholders/interviewees through the contacts with a small group of people who are relevant to the research topic (Bryman 2008:184).

interviews being taped and transcribed. Although not requested, the study ensured the anonymity of one of the interviewee's identity (except for gender as that bears relevance).

All interviews lasted for about 1,5 hours and were conducted with the help of an interview guide (see Appendix 1) entailing questions based on data from the unstructured interviews and the initial desk research. Each interview also followed up on topics and information the previous interviewees had pointed out as important as to validate the significance. This later led to the decision to improve the interview guide to focus more on the return process (see Appendix 2). The order of the questions was, however, not always followed because a 'natural flow' of the conversation was encouraged; this also made it more natural to ask follow-up questions. Although this strategy often introduced me to new topics, it reflected the explorative approach, which was useful in terms of deepening the understandings of the research topic.

Cumulatively, these sources of information nuanced and triangulated the understandings of the collected data. To assure myself that there was enough relevant data, I had a meeting with representatives from *Japan International Cooperation Agency* (JICA) (December 20, 2012) to disseminate the collected data before leaving Hanoi. This meeting confirmed the significance of the research and that the collected data were representative for the study.

## Ethical and Moral Considerations

When interview access to returnees was denied, I was (to be honest) relieved. If the initial research purpose were to be pursued, there would never be a guarantee of ethical research, where, as Scheyvens and Storey (2003) say: "*the well-being of research participants must be a priority*" (p. 8). Based on previous work with human trafficking victims, I was aware that there would always be the risk of the individual reliving experiences when talking about the past. This is not to say they would be unwilling to participate or that such research would be ethically wrong; I am only confessing that I struggled with the ethics on a personal level.

The second significant challenge was the need to position myself as a researcher in relation to the context I entered and the people I met; I was concerned that I would be too influenced and biased by my own values and ideas. The reason for this was that the Vietnamese culture is influenced by Confucianism (originating from my home country China), which was (and still is) a significant part of my upbringing and way of leading my life. In addition to this, my physical appearance looks Vietnamese. The line between being a 'curious private person' and an 'observing researcher' was thus not clearly defined for the persons I met (or even for me at times!), which can only be identified as the dilemma of looking like an 'insider' and yet being an 'outsider'.



This dilemma is widely reflected in academic discussions within qualitative research. On one side, it is argued that being an “insider” can be advantageous as one is familiar with the unspoken rules and norms. Wolf (1996, cited in Scheyvens & Leslie 2000) goes as far as to say: “*only those who are of particular race or ethnic group can study or understand others in a similar situation*” (p. 121). Critics like Sidaway (1992) condemn this opinion and says that assuming that ‘insiders’ “*automatically have a more sophisticated and appropriate approach in their society is to fall into the fallacy of Third Worldism*” (p. 406, cited in Scheyvens & Donovan 2003:4). While I can understand Wolf’s point, I would not go as far as to support such an opinion. Foremost because it implicitly assumes that people who endured similar circumstances are homogenous in their perceptions, views and feelings about their experiences. Agreeing with this would also go against above philosophical assumptions. I would, however, dare to say that being familiar with certain cultural understandings can be helpful. Put simply, it helped me to be in ‘between’, which, described by England (1994, cf. Rose 1997:313), is a world “*between ourselves and the researched*” (p. 86) that promotes fieldwork being performed as objectively as possible.

Although this study in the end adopted a relatively objective judicial stance, the lessons learned are that performing research is not free of values, power or subjectivity, and that one must early on and constantly reposition as a researcher. As Rose (1997:318) rightly points out, being transparent in reflexivity does not fully balance or remove the power relations but I believe positioning oneself encourages the performance of ethical research as much as possible.

## Validity and Reliability

All interviews were conducted in Hanoi, which could be questioned in terms of validity of the data. This would have been an issue if the aim were to understand how the returnees experience their return process, as there may be differences in terms of rural and urban areas and north, central and south areas. Since the interviewees have a central coordination role in their organizations and work with the returnees and/or the legislation, it was deemed to be adequate to include their voices in order to assess the current interpretation and implementation of the HTL.

The choice to address support services could also be considered as walking into a trap. I was aware that it could be expected that I identify the needs of support through the returnees. Regardless of whether I had access to returnees or not, I knew that I would be unable to identify *all* needs, wishes and dreams of returnees. Given the focus on the interpretation and implementation of the laws, it was found adequate to focus on the laws and include the above-mentioned interviewees. To enhance this data’s validity, other data collection methods were chosen as well. The aim was, however, not to address the reliability; given the

philosophical assumptions above, it is here argued to be inadequate to use the findings from this context to explain another; especially since legal frameworks differ from State to State.

Another concern of the study was the absence of inputs from the Government. The study would of course have benefited from including their point of views. The WU's participation, however, mitigated this concern as their assignment to support returnees is delegated and supported by the Government. Although WU only support females in practice, they still shared views on support to men. In relation to this, it is necessary to address the data's level of trustworthiness. Since Vietnam is a one-party socialist state<sup>6</sup>, it can be questioned whether the interviewees felt comfortable enough to share their genuine views. In order to mitigate this, the study applied different methods to collect data to triangulate the understandings of the interpretation and implementation of the laws.

Also, by collecting data from service providers, there was a risk of compromising or generalizing returnees' experiences and thoughts as they were communicated through a third party's subjective perceptions. Furthermore, it was initially a concern whether the number of interviews had provided enough data. Since the collected data indicated somewhat similar observations, I interpreted it as a signal that there should be adequate data in order to make conclusions. To mitigate this (for the sake of credibility), this study also included secondary data to validate or contradict the provided information and a data-disseminating meeting was held with JICA to confirm the significance, relevance and credibility of the data.

## Limitations

Given the vast number of national and international legal instruments and articles, this study only considered those that included references to human trafficking and the support services to returnees. This study also makes references to other Vietnamese laws and procedures such as registration and administration law, but they are mentioned to make a point and will not be addressed in depth because of the study's brevity. Due to the absence of a personal interpreter, the study could also only include organizations that had the opportunity to communicate in English. Fortunately, all the approached organizations could provide interpreters when needed.

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<sup>6</sup> The main characteristic for a socialist state is the belief in the State's ability to solve political and economical problems. It is term that refers to both a set of political ideals and political parties that work to obtain those ideas (National encyclopaedia 2013).

### 3 Legal Dogmatic Method

As mentioned above, this study adopts a legal dogmatic method. Inarguably, it would have been easier to adopt a ‘ready-to-be applied’ theory that could provide a framework to which the study could relate. Given the aim to assess the interpretation and implementation of the laws, this method was found more appropriate. Remarkably, it is seldom discussed or defined by scholars who use it in research (Sandström 2005:133), but this chapter will present some key aspects for the sake of understanding how it is perceived and used in this study.

#### On what Basis are Laws Created?

Before outlining the details of its use, it is necessary to first elaborate on what ‘the law’ is; on what basis are they created? According to Klami (1984:5), laws assume a transformation from teleology to normativity. The end result of such transformation creates behavioural models for the state and its citizens in order to enforce the preferred normative condition. The preferred conditions are dependent on the teleological arguments. Klami (1984:5-6) argues that these in turn are dependent on two components: 1) our cognitive understandings of the world and human behaviour, and 2) our evaluative understandings of principles and values. These create expectations on the law to address the hierarchy of different desired conditions such as democracy, justice, equality, due process, among others. These terms are also influenced by the goals the law is hoped to fulfil, e.g. cause less impact on the environment by forbidding the use of certain chemicals. The teleological arguments are thus based on norms that translate into desired normative behaviour, which are considered in laws.

This order is the most common, but not all laws are created with such considerations. More importantly, it has to be acknowledged that this order does not necessarily result in laws that are based on homogenous values or perceptions about the particular legal issue at hand; personal motives and interests of certain groups can, for instance, not be ruled out (Klami 1984:7). It can be argued that it can be a challenge for States to fully respect their legal obligations too. When laws are established, it is thus relevant to assess the implementation and evaluate how it corresponds with the State’s obligations towards both national and international legal instruments. This leads to the discussion about what the legal dogmatic method is.

## Legal Dogmatic Method in Research

A simplified definition of ‘dogmatic’ is the study within a set framework (Sandgren 2008:648-649). It is thus applicable in judicial research where the aim is to describe, systematize and interpret laws as a coherent system of norms (Dalberg-Larsen 2004:167). However, although it has been applied since the jurists in Roman times, its existence has been (and still is) questioned. One opinion addresses whether the legal dogmatic method can be used in research; mainly because it does not provide a given framework to which an analysis can relate (Stelmach & Brozek 2006:1). Another argument puts forward that the law is politics; consequently, there is no such thing as the ‘method of law’. Since the traditional way of performing research often is theory-oriented, these questionings are valid.

Opponents in favour of the method, however, see the benefits of it defining the judicial assessment and approach to inquiries. Peczenik (1990:44f) elaborates on the key aspects of the legal dogmatic method and argues that it is used to analyse the current practice of the law. Opposed to the adoption of a theory as a lens through which data can be analysed, *the laws* instead serve as the backbone of the research as both the framework and the research object. It is this perception that has influenced this study.

## Why use the Legal Dogmatic Method in this Study?

Since the assessment is on the national legislation on human trafficking with considerations of the international standards set in the international legal instruments, it is most fitting to use the articles in those laws as the main points of departure for this study. The absence of a theory would perhaps have been a problem if the purpose were to assess how the returnees experience their return process on a *subjective* level. Theories could in such case serve as an *objective* layer of understanding. With such aim, sociolinguistic discourse analysis would have been relevant since it is concerned with how conversations and revealing structures of social interaction can describe features of a social context (Brown & Yule 1983:viii). Such adoption would, however, not correlate with the purpose of this study; not to mention that it would be unfair to define concepts without the returnees’ inputs and thus go against the philosophical assumptions above.

This study is more concerned with how the laws are *practiced*. As a way to acknowledge that laws are based on norms, it is found necessary to identify the teleology and the underlying norms that are innate to these laws. Such discussions facilitate the understanding of how the laws are interpreted and implemented. It is for this reason each of the upcoming chapters on the legal instruments are narrative and consider the contexts within which the laws were established.

## 4 Vietnamese Context

Since the study focuses on Vietnam, it is necessary to provide an overview of the country. This chapter will therefore provide chief insights on relevant aspects that can facilitate the understanding of the upcoming analysis.

### Political Context

Vietnam (formally known as the Socialist Republic of Vietnam) is a one-party state where the Communist Party of Vietnam has great power and influence on how the state is governed (UK Home Office 2012:16-17). The state administration is a four-levelled hierarchy: the central, the provinces, the cities, and the districts/communes. They implement the laws and policies established by the highest organ of State power, namely the National Assembly that also decides the State's priorities and monitors all its activities (Vietnam Government homepage 2013).

### Gender Norms

Although this study does not apply a gender-specific focus, it is nonetheless a fact that more and more women migrate for work (IOM 2012). It is thus important to identify the push factors for such decisions. One must particularly take into account the Confucian ideology<sup>7</sup> that has an entrenching effect on the socio-political context. Similar to other Asian countries, it sets up the social hierarchy and defines attitudes that are appropriate for each member of the Vietnamese society (Bui & Morash 1999:775). Individuals abide these social rules to not 'lose face', i.e. to not shame or humiliate oneself or one's family (Thao & Agergaard 2012:113). Furthermore, most Vietnamese families' structure is patrilineal and patriarchal, i.e. the family hierarchy is based on gender, generation and age that are in favour of the men and women are expected to take on a subordinate role (Hirschman & Loi 1996:230; Thao & Agergaard 2012:105).

As for responsibilities, the male family members are considered to be strong and the breadwinners (Thao & Agergaard 2012:105). Despite her subordinate role in the family, the woman is expected to work to improve herself and her skills that are beneficial for the family and it is also expected that she will always prioritize the family's interests over her own. It could therefore be argued that the Vietnamese socio-cultural norms hold women to a very

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<sup>7</sup> Important to mention is that the ideology is not a religious system; it is rather meant to be understood as an ideology that is a mixture of a world view, social ethics, a political ideology and a scholarly tradition (Tu 1998:3).

high standard despite her expected status, which enforces the gender inequality (Schuler, et al 2006:385).

In terms of contributions to the household and the economy, her main duties are mainly domestic-oriented which is why it is most often expected that the wife is dependent on her husband throughout her lifetime (Knodel et al 2006:61). The expectations on the household responsibilities do not differ even though the wife gets a job outside the house; she is still expected to care for the domestic-oriented tasks. As for the family life, women are responsible for preserving the family honour and family harmony, which often means that women are expected to withhold their own wishes by giving in, keeping quiet and making sacrifices for the sake of the family (Schuler et al 2006:387).

As for their advancement in the society, Vietnam is in fact one of the countries that has tried to obtain changes through legislation and social programmes as well as attempted to institutionalize gender equality at different societal levels (Schuler et al 2006:384). The State has also encouraged women to take active part in the public sphere, but these have not been enough to combat the gender inequality.

## Economic Boost Triggers Migration

The Governmental efforts have also left prints on Vietnam's economic development. In the late 1980s, it implemented a political and economic reform called 'Doi Moi' (or 'renovation') which transformed the former planned but closed social and economic entity into a more open market that wished to integrate with the international market. As a result of the opening of the borders, the country attracted foreign direct investments in the beginning of the 1990s and the economy started to thrive thereafter (Drummond 2006:248). Today, Vietnam is considered as one of the fastest growing economies in the world. Although still labelled as a developing country, Vietnam was categorized as a middle-income country in 2010 (MOFA 2012:9).

The economic development is relevant when considering the Vietnamese demography and migration patterns. With its 87 million people (World Bank 2011), Vietnam is the third most populous in Southeast Asia. As for the working population, it is estimated that 75% of them live in rural areas and most of them are poorly paid due to their low skills. With nearly 1,7 million entering the working sector per year (and most of them are the younger population), it is difficult for them all to find employment. Thus, as a result of this economic development, there has been an increase in rural to urban migration; it is estimated that 45% of the population will live in urban areas by 2020 (MOFA 2012:9-10; UNIAP webpage).

Although the migration to urban areas can be a beneficial option for some, the intense migration also causes a hardened competition for work in the cities which leaves others still unemployed (UNIAP 2012). This intense migration pattern has urged the Government to address the problem. Since it is acknowledged that the economic development does not benefit the whole population, the Government has realized that the poorer population in rural areas need more outspoken support. Through a poverty reduction strategy<sup>8</sup>, the Government encourages the ‘export’ of Vietnamese labour. Many labour export companies in Vietnam, most of which are affiliated with the Government, thusly advertise themselves as being able to offer work abroad. Since people are in need of jobs, many turn to these companies and also pay a fee for the opportunity (sometimes as much as 10,000 US dollars). The rationale for this Governmental support is to promote safer migration through regular migration channels. In a long-term perspective, the effects from migration are expected to contribute to a more stable society and to the building of a more skilled and professional labour force in Vietnam (MOFA 2012:15).

## Overlap of Migration and Human Trafficking

As of 2012, more than 500,000 Vietnamese individuals worked abroad. It has been estimated by the Ministry of Foreign Affairs (MOFA) that more than 80,000 on average has chosen cross-border migration the last couple of years and no circumstances indicates that the statistics will drop. Important to point out is that the available official data is not sex-disaggregated but it is estimated that women account for 30% of the total number of contract-based workers who work abroad (MOFA 2012:15).

The choice to migrate is often motivated by a mixture of purposes. In a situation analysis of labour migrants performed on behalf of *the Department of Overseas Labour* and *UN Women*, Bowen and Huong (2012) identified that many migrants (both men and women) choose to migrate in order to receive better income. This is followed by the motivation to improve the livelihood, the childrens’ education and the attention to materialistic needs such as the building of a house. According to MOFA (2012:16-17), most of the migrant workers receive a relatively stable income that is about 2-3 times higher than the income they would have earned in Vietnam doing the same occupation. It is identified that an unskilled labourer can earn from 2-3 million Vietnamese dong (VND)<sup>9</sup> per month in Malaysia and 15-20 million VND per month in the United Arab Emirates (MOFA 2012:17).

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<sup>8</sup> Formally known as the Decision No. 71/2009/QĐ-TTg dated April 29<sup>th</sup> 2009 approving the project on supporting poor districts in promoting the sending of workers abroad for sustainable poverty reduction in the period of 2009-2020.

<sup>9</sup> One US-dollar is roughly equivalent of 20,800 VND.

Knowing the benefits of migration encourages individuals to migrate. Although there are labour export companies, not all can afford such support. This opens up prospects for traffickers to offer jobs where individuals are deceived into an abusive and/or exploitative situation. Statistics show that 2,935 persons were trafficked between 2004 and 2009. This is only an estimated number since not all persons approach the authorities for support or prosecute their offenders and there are no reliable statistics on the number of individuals being trafficked in and from Vietnam (UNIAP 2012:30; Kneebone & Debeljak 2012:149). Given the number of migrants per year and the fact that many are trafficked under irregular forms, one can suspect that the number is considerably higher.

The trafficked situation is very difficult to escape from, especially for those who are put in debt bondage because of the unpaid fee for the work 'opportunity'. Under such bondage, the person is obligated to fulfil the wishes of the trafficker until the debt is considered to be settled (Larsen 2010:2). There are, however, those who succeed in escaping; some on their own and others with the help of organizations or the police that work on behalf of the Government.

## Summary of Chapter

Inarguably, there are beneficial causal links between migration and development in Vietnam. This is, however, only portraying one side of the coin. The more migration is depicted as a profitable opportunity, the more individuals will be motivated to migrate. This spurs on one fact that remains uncontested: the fact that the world becomes more globalised and migration as a phenomenon grows, keeps the risk of human trafficking existent. When considering the context, it also becomes evident that there are more sides to the story when one considers the gender norms. This supports the need to focus on the return process.



## 5 International Legal Instruments

This study acknowledges that there is more to the articles in the legal instruments than just their wordings; they were created within a context motivated by the ideas, values and perceptions dominant for that period of time. For this reason, the chapter will narrate a chief overview of the relevant international legal instruments.

### The Basis

As a response to the crimes against humanity committed during the Second World War, the first international legal instrument was adopted, namely the 1948 *Universal Declaration on Human Rights* (UDHR) that is a universal set of normative standards that roughly 200 UN member states have recognised as inalienable, indivisible and interdependent human rights (Nowak 2003:3; Ignatieff 2001:4). Essential to highlight is that this is not a statement of law, i.e. it has no legal force on States (Bates 2010:36; Ignatieff 2001:8). Regardless, the states should acknowledge that the UDHR serves to be “*a common standard of achievement for all peoples and all nations*” (cited from Eleanor Roosevelt<sup>10</sup> in Bates 2010: 35) and it applies to all individuals in all parts of the world regardless of whether the State has formally accepted its principles or not (ILO 2010:118). More importantly, it articulated that the sovereign State is the duty-bearer to respect, fulfil and protect human rights (Cornwall & Nyamu-Musembi 2004:1422). This was, and still is, translated into the expectations of states implementing legislative, administrative, judicial and practical measures necessary to ensure the respect and protection of human rights to the greatest extent possible (Nowak 2003:48-49).

Since the UDHR does not address specific groups of people and the world became more globalized in terms of more open state borders and easier transfers of goods and people, it became obvious that certain groups needed additional protection. Returnees are chiefly mentioned in the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*<sup>11</sup>. It stipulates that the State shall “*co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers / ... / when they decide to return / ... / or when they are in the state of employment in an irregular situation*” (Article 67). It does not define what ‘irregular situation’ is, but the preamble states that the risks are increased when combined with “*serious problems*” which is why it encourages “*appropriate action to prevent and eliminate clandestine movements and trafficking in migrant workers*”. It also says that this must be performed while “*at the same time assuring the protection of their fundamental human rights*”

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<sup>10</sup> Eleanor Roosevelt chaired the UN commission on Human Rights that drafted the UDHR (Bates 2013:35).

<sup>11</sup> N.B. Adopted in Geneva 18 December 1990 but did not enter in force until 1 July 2003.

(preamble). Returnees are also addressed in the *International Covenant on Civil and Political Rights* (1996)<sup>12</sup>; it says that migrants can end up in bad situations, but human trafficking is not the term used. Instead, Article 8 stipulates that “*no one shall be held in slavery or servitude or required to perform forced or compulsory labour*” (ILO 2010:119).

## CTOC and its Protocols

Besides the awareness above, there was also an increased recognition of the sexual exploitation of particularly women and children. This led to the establishment of the *United Nations Convention against Transnational Organised Crime* (CTOC) (2000) and two supplementary protocols, namely the *Trafficking Protocol* and the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* (2000) (Okech et al 2011:490; Kneebone & Debeljak 2012:100). The basis for these was to acknowledge that the international growing problem needed cross-border law enforcements, and the only instrument addressing human trafficking specifically is the *Trafficking Protocol* (UNODC 2004:iii).

## Trafficking Protocol

Although there are varieties in definitions adopted by states, it is the definition in Article 3(a) in the *Trafficking Protocol* that is most widely discussed and adopted (Jorge-Birol 2008:164). Article 3(a) stipulates the following:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 3(a)).

A simplified translation of this definition is that one can only categorize a crime as human trafficking if the three core elements of the definition are present, i.e. the act, the means and the purpose of exploitation (Chandran 2011:9-10). Accordingly, it declares that the effective action to prevent and combat trafficking in persons requires a comprehensive international approach that includes measures to *prevent* trafficking, to *punish* the traffickers and to *protect* the victims of trafficking, which includes the protection of their internationally recognised human rights in the return process (Kneebone and Debeljak 2012:103).

Moreover, the *Trafficking Protocol* addresses assistance and protection of returning victims of trafficking in its own section. Article 8(3) explicitly states that it is the State’s obligation to

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<sup>12</sup> The covenant is legally binding by ratification or accession (ILO 2010:119).

receive its national (if identified a human trafficking victim) without due of unreasonable delay. Furthermore, Article 6(3) stipulates that States are expected to implement measures to provide for the physical, psychological and social recovery of victims of human trafficking. In appropriate cases, this includes cooperation with non-governmental organizations (NGOs), other relevant organizations and other elements of civil society. This article prescribes the following provision of services:

- Appropriate housing;
- Counselling and information;
- Medical, psychological and material assistance; and
- Employment, educational and training opportunities.

It continues by saying that each State shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons. Article 14(1) in the Trafficking Protocol also acknowledges the importance of other international legal instruments by stating that *“nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights laws / .../”*.

Article 14(2) adopts the same argument by stipulating that *“measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking”* and that *“the interpretation and application to those measures shall be consistent with internationally recognized principles of non-discrimination”*. Although the Trafficking Protocol was never meant to be a human rights instrument, it intended to preserve existing elements of human trafficking (Kneebone & Debeljak 2012:12), which is why it is important to include these aspects in this study.

## Summary of Chapter

The UDHR serves as the basis for most succeeding international legal instruments such as the Trafficking Protocol and the underlying conviction of them all is that human rights are worth respecting and protecting. Incorporating human rights in legal instruments makes them legal rights and a way to protect human rights. However, establishing legal rights is not sufficient to guarantee the fulfilment of human rights, which is why the State's duty-bearing role is an essential feature in the assessment of service provision for returnees. More importantly, above legal framework acknowledges the need of support upon return.

## 6 Vietnamese Legal Instruments

It is relevant to repeat that Vietnam only recently acceded the Trafficking Protocol. In the meantime, Vietnam has taken its own measures to address human trafficking (Kneebone & Debeljak 2012:150). In order to assess how Vietnam is fulfilling its legal obligations, it is necessary to outline its legal framework. Although not all of them are laws *per se*, the intent with the narrative descriptions is to unveil dominant perceptions of human trafficking.

### The Basis

The 1992 Constitution<sup>13</sup> is the fundamental legal document of highest jurisdiction that embodies the views and values of the Communist Party of Vietnam. Article 2 declares that its power derives from the people and operates on behalf of them. Moreover, it endows all men and women with human rights in all political, economical, cultural and social areas (Article 50) and it stipulates the right for people to move freely and reside within Vietnam, the right to go abroad and return as stipulated by the laws (Article 68) (Vietnam Government homepage). One of the later adopted legal documents referring to human trafficking was the *National Plan Against Crime of Trafficking in Children and Women during 2004-2010*. In the preamble, it acknowledges that human trafficking in women and children has become more complicated and serious and tends to increase. It also states that women and children are trafficked within the country, mainly from mountainous and rural areas to cities and towns for prostitution. Its stated aim is thus to provide assistance to trafficked women and children who return to their hometown for reintegration into the community. These understandings are also embodied in the *Decision on Promulgation of the Regulation on receipt and support to community reintegration of the trafficked women and children returned home from overseas* (2007) and the *Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad* (2008). Both had the purpose to outline the support procedures in the reintegration process for women and children returned home from overseas (Article 1).

### Human Trafficking Law

The Government passed the HTL in 2011. The HTL is a comprehensive response to human trafficking with 58 articles that addresses prevention, prosecution, protection and partnership (UNODC 2012:11-12).

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<sup>13</sup> Adopted by the 8th National Assembly in 1992 and supplemented and amended in 2001 at the 10th session of the 10th National Assembly (Vietnam Embassy homepage).

### ***Reception Procedure and Immediate Support***

In terms of the support to return to Vietnam, Article 4(2) in the HTL stipulates that the rescue, protection, receipt, verification and assistance to victims must be conducted in precise manner and in due course. At the same time, the victims' legitimate rights and interest must be respected, and discrimination or differentiation shall not be made against the victims.

The HTL responds to different reception scenarios. Article 24 addresses internal migration and outlines the responsible stakeholders in the referral procedure. Within 3 days after having received the notification of potential victim, the receiving agency has to initiate the victim identification process, which has to be finalized within 20 days since the reception of the case. If the case is complex, the process can be extended to two months. Article 25 responds to the individuals who have been rescued within national borders and the procedure is the same as articulated in the previous article. If the individual has not been confirmed as a victim, receiving stakeholders are also responsible for aiding the identification of the preliminary information of the victims prior to providing services or transferring to social welfare institutions (SWI) or victim supporting centres (VSC). Article 26 targets the receipt and verification of victims who have returned from abroad and the reception procedure is in accordance with the provisions in Article 24 of this Law. The difference is that the rescued are transferred directly to SWI or VSC if they do not want to return to their place of residence.

As articulated in Article 40, the obligations and responsibilities to make sure of the support lie with the SWI; they are meant to receive and provide shelter for victims. On the basis of the institution's ability, they are also meant to provide support for essential needs such as health care, psychological support to the victims that take their sex, age and will into consideration. Moreover, victims are entitled to education on living skills and vocational guidance (such as vocational training). In order to make sure that they are provided the necessary services, the SWI evaluate the victims' possibility of integration into communities while they are at the SWI or VSC and then provides information of supportive policies, regimes and services for victims in the receiving communities.

The following clause in the same Article of this Law also explicitly says that the SWI are meant to be established by Vietnamese individuals or organizations and that their establishment and operation shall not be borne by state budget.

### ***Victim Identification***

The victim identification process is part of the initial phase of the return and it requires the fulfilment of certain criteria in order to be recognised as a victim. The assessment is dependent on the framework that decides who is a victim of human trafficking. While the

HTL defines terms such as sexual exploitation, forced labour and victim, it does not define human trafficking. Instead, there are 12 points under Article 3 in the HTL that state the following ‘prohibited acts’:

1. The trafficking in persons as stipulated in Article 119 and 120 of the Penal Code.
2. The transfer or receipts of persons for sexual exploitation, forced labour, the removal of organs, or for other inhuman purposes.
3. The recruitment, transportation, harbouring of persons for sexual exploitation, forced labour, the removal of organs or for other inhuman purposes, or for the commission of the acts as stipulated in paragraphs 1 and 2 of this article.
4. Coercion of persons to commit any of the acts stipulated in paragraphs 1, 2 and 3 of this article.
5. Conducting brokerage to help others commit any of the acts stipulated in paragraphs 1, 2 and 3 of this article.
6. Revenge or the threat of revenge of victims, witnesses, denunciators, their relatives or persons who deter the acts stipulated in this Article.
7. Misuse of the prevention, suppression against human trafficking for illegally obtaining profits or committing illegal acts.
8. Obstruction against denunciation, notification and handling of acts stipulated in this Article.
9. Differentiation or discrimination against victims.
10. Disclosure of the information of victims without their consent, or their lawful representatives.
11. Assuming false positions as victims.
12. Other acts of violation of the provisions in this Law.

Figure 1. Article 3. Extract from the Vietnamese human trafficking law

The reference to Article 119 and 120 in the Penal Code addresses the criteria for prosecution. The 1999 Penal Code refers to trafficking in women, where a trafficker can be prosecuted if women have been trafficked for the purpose of prostitution overseas in an organized and professional manner among others. Article 120 refers to trading in fraudulently exchanging or appropriating children. A trafficker can be prosecuted if children have been trafficked in an organized and professional manner, for a despicable motive and when the purpose is to send them abroad for use for inhumane and/or prostitution purposes that are dangerous recidivism and causing serious consequences. The 1999 Penal Code was amended in 2009; Article 5 broadened Article 119 to cover traffic in humans<sup>14</sup> and both articles were amended in Articles 5 and 6<sup>15</sup> to include the purpose of removing organs.

Furthermore, Article 27(1)(a) and (b) stipulate that an individual is recognised as a victim of human trafficking if the person has been trafficked, transferred or received as stipulated in

<sup>14</sup> Law Amending and Supplementing a Number of Articles of the Penal Code (Socialist Republic of Vietnam). Law No. 37/2009/QH 12 approved by the Vietnamese General Assembly June 19, 2009 and entered in force January 1, 2010. Article 5 regarding Article 119 in the 1999 Penal Code.

<sup>15</sup> Law Amending and Supplementing a Number of Articles of the Penal Code (Socialist Republic of Vietnam). Law No. 37/2009/QH 12 approved by the Vietnamese General Assembly June 19, 2009 and entered in force January 1, 2010. Articles 5 and 6 regarding Articles 119 and 120 in the 1999 Penal Code.

paragraphs 1 and 2 under Article 3 of this Law; or if the person was recruited, transported or harboured as stipulated in paragraph 3 under Article 3 of the same Law.

### *Provision of Support upon Return*

Once an individual has been recognised as a victim of human trafficking, they are entitled to certain support upon return. Article 32 and the succeeding articles of this HTL outline that the identified victims are entitled to the following services of support:

- **Support for essential needs and travelling expenses**, such as temporary housing, clothing food and other necessary personal tools on basis of actual conditions and according to their sex, age and health characteristics (Article 33);
- **Medical support**: if in need of health care for health recovery, the victims are entitled to health care and/or medical treatment during the stay in social welfare institutions or victims supporting units (Article 34);
- **Psychological support**: shall be provided to help them have their psychological health stabilized during their stay in social welfare institutions or victims supporting institutions (Article 35);
- **Legal aid**: shall be provided legal counselling for the purpose of prevention of re-trafficking, and to participate in other legal procedures in connection with the human trafficking cases (Article 36);
- **Support for educational training, vocational training**: provision of vocational training to victims upon return to their areas if they are poor household family members (Article 37(2)); and
- **Short-term allowances for overcoming difficulty, and loaning**: shall be once provided with short-term allowance for overcoming difficulty if they are poor household family members and be given loans if the victims are in need of capital for production or business (Article 38(1) and (2)).

Figure 2. Articles 32-38 (1) and (2). Extract from the Vietnamese human trafficking law.

## Summary of Chapter

It is evident that the perception of women and children as possible victims of human trafficking abroad for the purpose of sexual exploitation has dominated above legal framework, but the amendment of the Penal Code has changed the scope of focus. Moreover, Vietnam does not have a definition on human trafficking but it has listed 12 prohibited acts that include elements of the Trafficking Protocol. The reception and victim identification procedures, and the responsibilities for the return process are outlined but the state budget does not bear the costs related to the operations and establishments of SWI.

## 7 Presentation of Collected Data

Given the explorative and inductive approach that meant simultaneous collection of primary and secondary data, this chapter will weave in both types of data as to discuss the key aspects of the return process and access to the service provision.

### Reception Procedure and Immediate Support

In general, the interviewees share that the procedures of reception and the provision of immediate support have improved due to the new HTL. One highlighted aspect was the different procedures. If an individual has fallen victim of human trafficking *outside* Vietnam, they all confirm that the state representatives in that country or the Border Police are contacted for the referral back to Vietnam and transferred to a SWI. The returnee is then provided with services that cover the immediate needs under the 20 days of the stay at the SWI. Oxfam-Québec also confirms that the returnees are cared for by social workers who assess the psychological impact of the trauma to see if they need more assistance after their temporary stay. These assessments are part of the basis on which the victim identification process later relies.

Individuals who have fallen victim to human trafficking *within* the Vietnamese borders can report their cases to the local authorities. If there are reasons to believe that there has been a crime, the interviewees confirm that the person is referred to the SWI or VSC as described in the HTL. The concern shared among all interviewees, however, is that there is a lack of coordination in terms of referrals and they attribute this to the involvement of too many responsible agencies, i.e. it is not always clear on whom to contact to access support or a SWI or VSC. Another concern expressed by CSAGA and UNIAP, is the difficulty for self-returnees to access support because it is difficult for them to be identified as victims of human trafficking. In discussions with the organizations, human trafficking cases within Vietnamese borders are more perceived as ‘failed migration’ rather than a crime that needs to be addressed by the Government. The reception procedures are thus seemingly working and the concerns rather address the victim identification process itself.

### Victim Identification

Access to services for returnees is often dependent on whether one has been *identified* as a victim of human trafficking. One issue that can hinder the access is the lack of knowledge of the criteria for human trafficking which can result in trafficked persons rarely being treated or identified as victims of a crime (Jorge-Birol 2008: 174). This hindrance was mentioned by



all the interviewees. IOM has noticed incoherence in the practice of the laws; e.g. how to identify victims practically and how to interpret and implement the laws in the same way across the country and among all stakeholders. According to IOM, the incoherence could be explained by how the legal human trafficking framework is applied in the criminal law. UNIAP shares the same concern and shares that the Government intends to suggest further amendments to the Articles 119 and 120 (that are mentioned in the list of prohibited acts) in the Penal Code next year. This is to align the intentions in these Articles with the new HTL and with respect to the accession of the Trafficking Protocol.

In the context of identifying victims, the timeframe of 20 days within which the authorities are meant to conduct the assessment was also addressed. When asked whether the timeframe is enough to perform a proper assessment and if there are risks related to it, the interviewees all agreed that it is adequate to make an assessment. UNIAP admits, however, that there always is the risk of individuals not being identified as victims. They also express the concern that a clear majority of those who perform the victim identification process are males, but they still side with the others that these are not problems; the problem is rather about the interpretation and implementation of the laws.

An aspect of this addresses one of the most important components of the victim identification process, namely the definition of human trafficking. After all, that is the parameter with which individuals' experiences are assessed. As stated earlier, Vietnam does not have a definition on human trafficking. It has already been highlighted that there is incoherence in the interpretation of what human trafficking as a concept *de facto* is. UNIAP also shares that they have noticed that there is too much focus on sexual exploitation and those who have been victims abroad, which has an impact on who is recognised as a victim. It can be argued that this observation is reflected in the human trafficking discourse in academia. Piper (2005) argues that the focus on sexual exploitation has dominated the whole discourse of human trafficking and, as mentioned earlier, existing studies on trafficking issues can be divided into two categories: distinguishing those coming from a sexual violence perspective (and thus focus on commercial sexual exploitation) and those taking migration as their starting point.

The confusion on what human trafficking *de facto* is also calls into question the absence of a definition. WU explains that there have been attempts to define the crime, but no consensus has been reached. Given the severity of the crime and the increase in number of crimes, the Government had to compromise and come up with a solution; they were able to agree on the list of 12 prohibited acts. Oxfam-Québec says this is not the optimal option, but acknowledges that the list can contribute to more cohesive interpretation and implementation of the laws because the acts make the criteria and concept more concrete. IOM did raise concern about whether the list *de facto* covers all elements of the definition

on human trafficking in the Trafficking Protocol. In their opinion, the current 12 acts are narrow in their translation of the international standards. At the same time, IOM stresses that this is not the *main* issue to address. Given the mentioned incoherencies, IOM identifies a greater need to support the Government to ensure cohesive implementation of the HTL.

IOM points out another concern related to the access to services. As mentioned several times already, IOM echoes that the “*victim identification in Vietnam goes hand in hand with certain rights that derive from the status of being accepted or a recognised victim*” (IOM 3 December 2012). That is, the access is dependent on the victim recognition and IOM also shares that it is contingent on whether you were properly registered before migrating. This is a reference to the household registration system that initially was meant to be used as a mechanism for population management. Individuals who migrate internally need to register in order to gain access to basic and specialized services (UN Vietnam 2010:7-8). This complication is confirmed by a study by UN agencies in Vietnam (*ibid*), which also says that it is difficult for those who reside in another place to re-register due to a burdensome administration system, and that the system is not uniformly implemented across the country. This is of specific concern for those who choose to reside elsewhere than their former residence of stay upon return.

## Provision of Support upon Return

If an individual has been identified as a victim of human trafficking and is properly registered, all interviewees confirm the availability of support services that can facilitate the return process. Based on their own work and services, they also agree that the outlined services are adequate in their scope. Although the above procedures are difficult, it is, as put by Kneebone and Debeljak (2012:244), the return process that is most challenging because it is closely linked to the moral and legal obligations to respect and protect the rights of the survivors. The challenge lies in the fact that the returnees’ needs are highly subjective. This is addressed by USAID that has identified the reasons for the challenges as follows:

Its complexity lies in the fact that it is different for each individual victim and that it involves not only the victim but also the environment and culture within which the reintegration is to take place. /.../ The process entails putting the pieces of the former victim’s life together in a way that she can be re-united with a former life, a family, and a community, or helping the victim create a new life in another place in society (2007:20).

Many practitioners and scholars agree on these problem definitions of the return process; it is difficult, if even possible, to address all needs that returnees have upon return, but it is argued that some key aspects should be addressed. Based on their experiences from supporting returnees, Hove and Montier (2011:180) argue that any support should seek to restore and defend the survivors’ rights. The rationale is that human trafficking is a violation of their rights that “*attacks the core of a person and affects the person’s being, sense of self-worth and*

*identity*” (ibid p. 180). This opinion is seconded by Hagar International (HI) that also identifies the dire need to restore returnees’ identity and self-esteem; not only because of the need to build up the individual’s capacity to lead his or her own life, but also to minimize the risks of being re-trafficked. Moreover, Oxfam-Québec also sees the relevance of supporting the individual in the prosecution process. This is not just important in the claim to access the services if one was not identified as a victim, but it is also a proclamation that there has been a crime that occurred through no fault of the individual. This is addressed by CSAGA that mention that some returnees are committed to the prosecution process because *“they want to prove that they are victims of something”*.

Besides these supports, one can complement with the need for assets such as housing, education, health care, among others. Housing is highlighted by many interviewees as an indispensable asset for returnees since it is something to which the individual can come back. In the absence of such alternatives, WU and NGOs provide temporary shelters (the former for women and children). As witnessed by Oxfam-Québec, there is also added value to having an income or performing activities that generate a steady income. Through financial means, the individual is more equipped to live the life he or she wants to lead and there is a sense of stability and comfort. Moreover, HI emphasizes the importance of returning to supportive social networks as that can provide the social acceptance necessary to integrate successfully. This is an important component of the reintegration process in the Vietnamese context given the fact that an individual can face challenges that express themselves in the community. The interviewees confirm this risk, as they have witnessed rural and urban differences that are highly related to the perceptions of human trafficking, i.e. the perceptions of negative character tend to be dominating in the rural areas. Relevant to mention is that in CSAGA’s experiences, the family is most often accepting while the community can experience more trouble of tolerating backgrounds related to human trafficking as they *“don’t think the person is a good person”* (CSAGA, October 22, 2012).

CSAGA elaborates by saying that such risk is connected to the level of knowledge. As they see it, the perceptions of human trafficking are often narrow; people still think that human trafficking only occurs overseas, that only women and children can be affected and that they have been sexually violated. Oxfam-Québec seconds these impressions and adds that it is difficult for particularly women to return as they face negative attitudes on the basis that people think she has been prostituting and that she is a “bad woman”. WU acknowledges the difficulties for women to return to rural areas, but states that there has been a change of late; it is easier now for people to return than before because there is more knowledge about human trafficking, i.e. not all returnees are believed to be human trafficking victims. However, they admit that it can be more challenging if it becomes known that the person has been subject to human trafficking as it is still associated with sexual exploitation.

This input touches upon another aspect that was shared by the interviewees. As emphasized by Oxfam-Québec and HI, some individuals do not want to be identified as victims. The latter says that it might not be of interest if the individual has been abused. The former shares the story of a girl who did not want to be identified as a victim and therefore did not cooperate in the identification process. She was thus without the support in the return process. CSAGA shares that they have not come across any person who has come forward voluntarily to them with their background and explain that it could be due to their fear of attacks from the community. Besides the personal reasons for not wanting to come forward as a victim, IOM points to the fact that the identification does not guarantee a good return process. In fact, UNIAP shares that they have met unidentified victims within their projects who have done 'better' in the return process if one is to compare with those who are identified. The argument is that they have not been subject to stigma or discrimination from the community, which has enabled them to lead the lives they want.

There is one aspect that was only mentioned by HI that deserves mentioning because it sheds light on the multi-faceted issue of return. HI points out that shame and negative perceptions related to human trafficking are not only embodied by the families or the community. The returnee can also experience what they call 'self-stigma'. In their words, this means that returnees can experience stigma and discrimination without substantial cause. The example used is that returnees can believe that the talks or whispers are about them in a negative way because they themselves feel ashamed of what has happened. This is a relevant observation because it highlights that also the victims can uphold dominant negative ideas and perceptions about human trafficking. This fear of other people's opinions was a dominant feature of the Vietnamese society captured through participatory observations; especially for women since they were very concerned with how they were perceived.

Another aspect shared by HI and Oxfam-Québec is that the service provision may be dependent on the victim identification process and services may be available but it does not guarantee access for all. Most interviewees share that above aspects are taken into consideration in the service provision, but some also highlight that the support is without the long-term perspective, leaving the returnee with the option of seeking assistance from NGOs. Moreover, all interviewees agree that the allocated budget for the SWI and VSC is inadequate, but Oxfam-Québec points out that it is also due to a poverty reduction strategy. In the new HTL, it is prescribed that returnees from identified poor households are to receive financial support. However, due to the constrained budget, there is an annual quota of households, which means that not all eligible households can access the support and it is on a 'first come first serve basis'.

## 8 Analysis

This study has thus far presented the relevant legal instruments and the collected data. Combined, they create the basis to which this analysis relates. With regard to the legal dogmatic method, it will consider the research questions: Are there any shortcomings in the interpretation and implementation of the Vietnamese HTL in terms of access to service provision for returnees? To what extent does the Vietnamese HTL correspond to the international standards set in the Trafficking Protocol in terms of support to returnees? If there are any gaps in the interpretation and implementation of the national and international laws at hand, how do they affect the returnees' rights?

### Are there any shortcomings in the practice of the law?

It has to be emphasized that all interviewees commended the Government for having established a HTL. Given the severity and the increasing number of crimes, a law that embrace a teleology that is aligned with international standards set in the Trafficking Protocol was much needed. There is thus an impression of the Government trying to improve its role as the duty-bearer of fulfilling all citizens' rights. In spite of this, however, shortcomings were identified that are relevant to assess further.

One shortcoming that was addressed by all interviewees was related to the victim identification process. Although the Government attempts to apply above teleology, the interviewees shared that the law practitioners do not recognize men as possible victims of human trafficking as easily as women. That is, they have witnessed more women and children being recognized as victims of human trafficking. In the absence of sex-disaggregated data, the unison information from the interviewees gives no rise to doubt that this may be the case. With the same confidence, there is also no reason to question their observation that it is more likely to be recognised as victims if they have been trafficked abroad for the purpose of sexual exploitation. In other words, it has come to the interviewees' attention that the law practitioners often overlook that human trafficking can occur within Vietnam's borders. Instead, it is perceived as 'failed migration'. These shortcomings occur despite the fact that forced labour among other non-sexual violent circumstances within Vietnam account as human trafficking too. If the HTL stipulates a broad teleological approach, then what are the reasons for such narrow practice of the law?

One identified explaining factor is *lack of knowledge* of what human trafficking is. Not only does this increase the likelihood of individuals (who share different and deviating backgrounds than the above dominant perceptions) not being recognised as victims of

human trafficking, but more severely, it has been observed by the interviewees that it results in incoherent implementation of the HTL in the different administrative levels and provinces. Although this shortcoming is alarming, it can be argued that implementation of laws is a challenge for all States and that there is no guarantee of coherent practice. However, since the identified teleology is to respect and protect all citizens' rights, it can be argued that it is a reasonable expectation on the State to establish structures and procedures to fulfil such goal. In relation to such a notion, it is relevant to consider the actual victim identification procedure. As stated in the HTL, the individual cases are expected to be assessed within 20 days after have received the case. The interviewees all share that this is of no particular concern, but can it with regard to above really be of *no* concern?

The implicit assumption of the victim identification assessment is that individuals share the details of the circumstances they want to claim as human trafficking. That is, the burden of proof is on the individual. By extension, this also implies that the individuals are expected to have the agency and the will to share their life stories that may include traumatizing circumstances. Both Oxfam-Québec and HI shared that not all returnees want to be recognized as victims of human trafficking because of the risk of stigma and/or discrimination that could lie ahead upon return to the family and the community. With respect to the gender norms that prevail in the Vietnamese context, one can understand why this is of valid concern. Upholding good appearances and align with expected behaviour and roles are of significance for both men and women. These individuals, however, have made a decision to not share and considered the risks related to potential exposure. Sure, one could argue that the State should take greater responsibility of ensuring their anonymity, but there is never such a guarantee. It is thus more relevant to consider those who may want support in the return process, but who may experience difficulties sharing their life stories. It is in this context that the time period of 20 days is important to consider more carefully.

As mentioned by UNIAP, a majority of the personnel who assess the cases are men. This fact is of significance with regard to the prevalent gender norms in Vietnam as they can be difficult to set aside and it may be difficult to share sensitive details to a male, regardless of the returnee's gender. It is said that social workers are involved in this process, who may be females, but 'to lose face' and deviate from expectations or assumed gender roles of being the 'strong man', the 'breadwinner' or the 'keeper of family harmony and honour' can also stand in the way for both men and women to come forward as victims, regardless of the social worker's gender. This is an assumption based on what HI pointed out, which is that the 'self-stigma' they have witnessed is revealing that the gender norms and gender roles are not only embodied in the 'observer', but also by the returnee. One way of mitigating these difficulties is to build up trust among the returnees and be explicit about the Governmental role as a supporter. In relation to this, it can be questioned whether 20 days are enough to build up enough confidence and trust in the individuals as to create room for them to come

forward as victims. The reason why this is identified as a concern is because one overarching risk with the current reception procedure is that those who may be of great need of support may not dare to seek the Government's support.

It can here, of course, be argued that it is the individual's responsibility to come forward, as the Government can only help if aware of the need for support. And the procedure can, in fact, be extended by two months if deemed necessary. The point is, again, that it is the State's responsibility to ensure that its citizens feel comfortable enough to approach them in order to access services. Since the Government cannot be aware of all needs, it is by structural and procedural means that the State can operate to fulfil its legal obligations to respect and protect its citizens' rights. This may be considered as a minor concern, but it is here argued that the consequences related to the reception procedures must be considered more extensively – at least as long as the access to services in the return process is contingent on the recognition of being a victim of human trafficking.

## Is it all about interpretation of words?

Due to the need to be identified as a victim first before being granted access to services, it is necessary to further assess the list of the 12 prohibited acts. Although a definition on human trafficking could be a more suitable option, Oxfam-Québec has argued that this list is 'the second best thing'. The rationale for such opinion is that the Government at least has verbalized how it perceives human trafficking.

When considering the formulations of the prohibited acts, one can understand this point of view. The HTL includes the three elements that determine the crime of human trafficking set in the Trafficking Protocol, namely the act, the means and the purpose. More specifically, it prohibits the acts of "*transfer or receipts of persons for sexual exploitation, forced labour, the removal of organs or for other inhuman purposes*" (Article 3(2)), and "*the recruitment, transportation, harbouring of persons for sexual exploitation, the removal of organs or for other inhuman purposes*" (Article 3(3)). The most relevant article to assess further, however, is Article 3(1). Not only because it is the only article that includes the key word "*trafficking in persons*" or because it is the one to which many other articles refer; its significance lies in the verbalization that "*trafficking in persons [is] as stipulated in Article 119 and 120 of the Penal Code*" (Article 3(1)). What does this de facto mean?

The reason why this aspect is necessary to consider is because the Penal Code is a *different* law. The formulations in Article 119 in the 1999 Penal Code clearly state that trafficking is "*where a trafficker can be prosecuted if women have been trafficked for the purpose of prostitution overseas*" (own underlining). Article 120 in the same law addresses human trafficking in children. Article 119 was amended in 2009 and adopted the new teleology of covering "*traffic in humans*" (own underlining). When Article 3(1) in the HTL states that an individual is a victim

of human trafficking when the circumstances are “*as stipulated*” in Article 119 and 120 in the Penal Code, this argues for the fact that these two articles determine who can be identified as a victim of human trafficking *and not* the HTL in question.

This is of particular significance. The new teleology may have been to be more inclusive in terms of gender and purposes, but the practice of the law can be argued to still be entrenched by the norms and perceptions of human trafficking that is aligned with the formulations in the 1999 Penal Code. This suggests that the teleology embodied in the 2009 Penal Code was not translated into the desired normative behaviour because of the strong norms and perceptions of human trafficking that still persist. Identifying this helps explain the shortcomings discussed above in terms of why it is particularly women and children who have been trafficked outside Vietnam’s borders for the purpose of sexual exploitation who are identified as victims. It could also add explanations to why the available statistics say that only 2,935 have been identified as victims of human trafficking between 2004 and 2009, which is most likely a fraction of the real account.

While this finding can help explain some of the above-identified shortcomings, a closer look at the other articles in the HTL indicates that there are more teleological aspects that need to be assessed – especially in terms of the actual services.

## How accessible are the support services?

The HTL clearly outlines what services the State has to provide and the interviewees confirm the availability of those services, but the interviewees share that the actual ‘access’ to the services is not a given. That is, even though one has been identified as a victim of human trafficking, the access to the public services is not certain. Moreover, in their experiences, not all of them are entitled to the *same* services. When asked what the reason for these shortcomings is, the interviewees agree that it is due to the limited budget that is allocated to the return process. But can issues with the budget explain such shortcomings? This question points to the need to assess what the HTL *de facto* says and how it is interpreted.

One positive aspect that was highlighted by many interviewees is that there are shelters to offer returnees, although they are time-limited. In this sense, WU is fulfilling the Government’s legal obligations to care for the returnees’ immediate needs, but the problem is that their facilities are restricted to women and children. This leaves the option to turn to NGOs who can offer temporary shelter as well. The provision of shelter is, of course, much appreciated among those who are without a home to return to due to different personal reasons. Although the *temporary* stay is an issue in itself, the interviewees shared that there are other more troublesome concerns. As stated above, not all returnees obtain access to the services stated in the HTL, despite the fact that they have been recognised as victims.



In HP's experiences, the support in the return process requires a long-term commitment but in their opinion, this is not taken into account in the law. If one considers Article 34 in the HTL, it becomes obvious why. The phrasing states that victims are entitled to medical support "*during the stay in SWI or VSC*" (own underlining) if in need. Similar commitment is verbalized in Article 35 where psychological support is provided during the stay at the same facilities as mentioned in the previous article. This problem widens when one also considers Article 37(2) and Article 38(1) and (2) that specify that the access to the support for educational and vocational training and short-term allowances for overcoming difficulty and loans, respectively, are dependent on whether one's household has been listed as a poor household or not. As shared by Oxfam-Québec, the allocated funds for the poor households also uphold a 'first come first serve' principle, which can result in identified victims being denied the fulfilment of their right just because of bad timing. An additional aspect mentioned by IOM, is that the access to the services also depends on if the returnee was properly registered before leaving the country. These formulations give the impression that the Government is not prioritizing issues related to the return process. This impression deepens when one considers that Article 40 stipulates that the establishment and operations of SWI and VSC will not be borne by the state budget. It is instead supposed to rely on funding from organizations and individuals who want to meet the needs of the returnees.

As a result of the State not offering long-term services, or services upon return in the hometown or the area the individual chooses to reside, NGOs (as mentioned earlier) operate and provide services that meet the needs of returnees they are able to reach. Although their work is highly commendable, the worrisome aspect is that NGOs are dependent on external funding. Their services can therefore not be assumed to last in a long-term perspective. Moreover, while NGOs are fulfilling the tasks that are meant to be fulfilled by the Government, it can be argued that this makes the latter less likely to be impelled to step in and take its responsibility with urgency. If one considers the interviewees' argument that the rebuilding of a life the returnee wants to lead requires a long-term commitment, neither of above support options are *sustainable* solutions, which adds to the argument that the State, again, is lacking in its responsibilities in practice.

When considering all above shortcomings and complications, it can be concluded that the difficulty of gaining access to the service provisions one is entitled to by law is not only contingent upon the need to first be identified as a victim. It is also a matter of funds allocated for the services and laws that regulate whether one is part a poor household and registered properly before migrating, and that returnees know where to find support. Since it is the Government's legal obligation to respect and protect the returnees' rights, should it really be this difficult to claim one's rights? It is here necessary to assess what responsibilities the State de facto has.

## To what extent does the legal instruments correlate?

The relevance of considering international standards set in international legal instruments is because they are meant to influence how States practice them in their own countries. They serve as the minimum levels of what is required to protect individuals' rights and enforce the expectation on the State to take on its duty-bearing role. This stated relationship between the duty-bearer (the state) and the citizen (the rights-holder) is the very basis of laws. In order to assess to what extent Vietnam is fulfilling its legal obligations, it is relevant to consider how well the HTL correlates with the international standards set in the Trafficking Protocol.

If one considers the definition on human trafficking provided in the Trafficking Protocol, it is apparent that the teleology is inclusive in terms of gender and purposes. That is, there is an acknowledgement that *all* individuals can be subject to human trafficking. More importantly, it can occur anywhere and not only for sexual purposes. *In theory*, there is coherence with the Trafficking Protocol in terms of whom can be identified as a victim of human trafficking. The assessment of the implementation of the HTL, however, reveals discriminatory practice and is motivated by the dominant norms and perceptions of human trafficking (mentioned above).

As for the actual access to service provision and the received support in the return process, one could, again *in theory*, argue that it is difficult to claim that there are any incoherencies with the Trafficking Protocol. The basis for such argument is that the Trafficking Protocol does not outline the time frames for each support service the State is expected to provide or where it should be offered. The words 'expected to provide' should be emphasized because it can be argued that it implies that 'provision' does not mean 'equal access' or 'actual access'; it rather states the obligation to ensure the *availability* of the listed services and there is no disagreement about the fulfilment of such obligation in Vietnam. Does these theoretical coherencies mean that Vietnam fulfils its legal obligations?

It can be argued that Vietnam is within its rights to primarily abide its own laws and that they therefore are not failing at respecting the returnees' rights as stated in the HTL. But when one considers the *effects* of the interpretation and implementation of the HTL as discussed this far, however, it cannot be ignored that they are not fulfilling the very basis of the law. It is clearly stated that the 1992 Vietnamese Constitution is the fundamental legal document of highest jurisdiction and the HTL must adhere to its intentions, and Article 50 in the Constitution stipulates equal rights for all. With regard to the Trafficking Protocol, it too is clear that the UDHR and other international human rights laws must be the foundation of any legal practice. All citizens are thus entitled to be treated equally in a non-discriminatory way in terms of protection and fulfilment of rights. In both legal instrument, the State's

responsibilities thus exceeds what is stated in them; it has to consider the *fundamental* human rights they are legally obligated to abide.

Although there to some extent are positive *theoretical* aspects with the return process, it is here argued that the *effects* of the interpretation and implementation of the HTL causes shortcomings that are too severe for the returnee; it complicates the access to services that are argued to be helpful for returnees in the return process. It is for this reason argued that the Vietnamese Government is not fulfilling its duty-bearing role to meet its legal obligations set in the national legal instruments. As a result of interpreting human trafficking with a too narrow focus, it is also incoherent with the intentions set in the Trafficking Protocol. All in all, these gaps between theory and practice of the HTL and the gaps between the HTL and the international standards set in the Trafficking Protocol affect the returnees who are not guaranteed the respect and fulfilment of their rights by both national and international law.

## What is the next step?

With regard to the conclusions above, one legitimate question that arises is: how can Vietnam improve its duty-bearing role and live up to its legal obligations?

What the legal dogmatic method encourages is that the assessment of laws needs to analyse *beyond* the results of practice; one needs to consider the underlying norms and perceptions of the law at hand. This study has identified that the dominant gender norms and narrow perceptions of human trafficking overpower the teleology (i.e. supporting all returnees equally); they can serve as hindrances to come forward as a victim and give rise to risks of discrimination and stigma upon return for returnees. In other words, the teleology did not result in the desired normativity (or normative behaviour) because of the dominant norms and perceptions.

If the desired teleology is to be fulfilled, there is thus the challenge in changing the norms and perceptions but this takes time. It is therefore here argued that a long-term political will is required that addresses the gender norms and the current procedures. The Government must also raise awareness about human trafficking where the out-going information is aligned with its teleology. If these efforts were to take place, the results could address the identified shortcomings and fill the identified gaps. More importantly, they could encourage to a more cohesive interpretation and implementation of the HTL that results in enhanced and equal respect and protection of the returnees' rights.

## 9 Concluding Remarks

The purpose of this study was to assess how Vietnam supports its returnees and lives up to its legal obligations towards the HTL and consider it in relation to the international standards set in the Trafficking Protocol. The study aimed to identify shortcomings in the practice of the laws and the gaps between the national and international legal instruments and assess how they affect the returnees' rights they are entitled to by the legal instruments at hand.

This study has identified that the Government has made efforts to address the full scope of human trafficking. One positive aspect is the change in its teleology related to human trafficking. Instead of only considering women and children trafficked abroad for the purpose of sexual exploitation as potential victims of human trafficking, the perception of HTL now includes men and other purposes for human trafficking that can occur within Vietnam's borders. This shift is aligned with the international standards set in the Trafficking Protocol.

Although this could give the impression of Vietnam living up to its legal obligations, this study argues that they are only fulfilled *in theory*. Because of a too narrow focus of human trafficking, numerous shortcomings have been identified. Women and children trafficked for the purpose of sexual exploitation are still primarily recognised as victims. The victim identification procedure can cause difficulties for returnees to come forward as victims due to the limited time frame for the actual assessment and the gender norms and ascribed gender roles that women and men are expected to fulfil that may be difficult to set aside. Moreover, the access to services is not a given due to the need to be identified as a poor household, the need to be properly registered before migrating and the limited budgets to meet all returnees' needs. With NGOs meeting their needs when not accessible through the Government, NGOs are not only taking over part of the Government's responsibilities, but it is also difficult for returnees to know where or from whom to receive support. Cumulatively, these shortcomings result in unequal access to the services and the rights they are entitled to by national and international law.

One identified underlying reason to some shortcomings is argued to be because of the absence of a transformational order; the teleology above did not result in the desired normativity because of the dominant gender norms and narrow perceptions of human trafficking. In order for Vietnam to fully live up to its legal obligations towards the national and international legal instruments at hand, the Government must address the *underlying* norms. It is when these have changed that it can translate into desired normativity and

changed behaviour (i.e. legal practice that is coherent with the teleology and the norms it is based on). Overhauling the procedures to create room and trust for returnees to come forward as victims is equally important to obtain changed practice. These efforts could make it more likely that the interpretation of the law can result in cohesive implementation that is aligned with the intentions embodied in the legal instruments at hand.

Although minding these shortcomings and gaps is important for the fulfilment of the legal obligations, this study also identifies the need for Vietnam to take responsibility for the effects of its development goals. With its teleology of reducing poverty levels among poor households through labour export, it is evident that Vietnam is trying to fulfil its other teleology of creating a stable and more skilled and professional labour force. It cannot be ignored that such development promotions spur on human trafficking to exist. It is therefore important that Vietnam acknowledges these linkages that put individuals at risk. It is important to prevent human trafficking from occurring in the first place, but given the current reality, Vietnam must dedicate more efforts and political will to support its returnees and meet their needs.

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## Appendix 1. *Interview guide*

First interview guide based on the initial desk research and two unstructured interview with a woman who was at risk of human trafficking and a project manager who works with returnees at Hagar International.



Date: \_\_\_\_\_

Reg. no.: \_\_\_\_\_

Study on the Re-integration Process for Returnees

*Connie Tran*

*Master's student in International Development and Management*

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### **Section A - Personal information about you**

Family name: \_\_\_\_\_

First name: \_\_\_\_\_

Organization: \_\_\_\_\_

Work title: \_\_\_\_\_

Sex: Male / Female (*circle the answer*)

E-mail: \_\_\_\_\_

### **Section B – General information about the work with human trafficking**

- B1. How does your organization work with human trafficking? How is a “normal” procedure? How do you finance the support/organization?
- B2. If you provide assistance, could you clarify what kind of assistance your organization offers to victims of human trafficking? Is there a limit on how many you can help?
- B3. How do the returnees normally know of your organization? Does the Government refer returnees to your organization? Do you collaborate with other organizations, and if yes, in what ways?

- B4. How long does the returnee stay within your care? Is there a special programme or is the stay based on their needs?
- B5. What are the characteristics of the dominant groups you support (*gender, nationality, age, class, rural, urban, etc.*)?
- B6. In what ways is your organisation's role auxiliary to the Government's responsibilities?
- B7. Under which definition of the word "human trafficking" does your organization work with human trafficking? Do you follow certain legal framework?

### **Section C – Observations**

- C1. If you had to generalize, what are the most common reasons for the returnee to seek your organization's support? What do you do if you cannot help the returnee?
- C2. Do you know if the returnees seek support from the Government? Do they do it before or after coming to your organization?
- C3. In your opinion based on your experiences, do you think there is enough legal support for the returnee you support? What changes would you like to see? What are the most urgent changes?
- C4. In terms of the legal framework, do you see any difficulties with the definition of human trafficking here? Do you see any difficulties with the support to human trafficking victims? Are there any grey zones between the legislation for labour migrants and the legislation for human trafficking victims, i.e. those who started out as working migrants but were later tricked into trafficking? If yes, how are these grey zones expressed and what impact does it have on the human trafficking victims?
- C5. Within the existing legal framework, what do you think the Government should improve? I.e. what are they supposed to do, but are not doing enough about?
- C6. What are your opinions on the feminization of migration here in Vietnam? And the facts that labour overseas are used as a poverty reduction strategy by the Government?

### **Section D – Experiences**

- D1. If you had to generalize about the returnees you support, what are the most common reasons for them to choose to migrate for work?
- D2. Do you know how their decisions to migrate are conceived by the family/neighbours/society?
- D3. Could you inform me on how the returnees normally are put into the situation of human trafficking (if it can be generalized)? What are your impressions of the stories you hear? Are they often the same? How do the returnee take that they have been tricked into human trafficking?
- D4. Those who seek your help, how have they escaped the situation (if this can be generalized)? Is it through Governmental help?

### **Section E - Issues of Return**

- E1. How is the family situation for the returnees who seek your help? Is it for instance common that they still live with their family?
- E2. In your experience, how is it for returnees who have been subject to trafficking, to return to the family? Are there any rural or urban differences that you have noticed? Does age/generation have an impact? If yes, could you motivate your answer?
- E3. In your experience, what are the most common challenges returnees faces upon return?
- E4. If you had to generalize, what kind of support are the returnees in MOST need of (including support they are not entitled to or without access to)?
- E5. In terms of the Confucian traditional norms, do you have any impressions of what kind of impact that has on returnees? How is this affecting the reintegration process?
- E6. In your opinion based on your experiences, what kind of support would you find necessary to provide that is not provided today? If you have suggestions, why did

you choose that/them and why is it not provided today? What does the law say about it?

E7. If you look at the bigger picture, what would it take for returnees to reintegrate successfully?

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**Additional questions:**

Do you have any questions?

Could I contact you again if I need to clarify or ask more questions?

*Thank you for your participation!*



## Appendix 2. *Updated Interview Guide*

After I had performed two interviews with the guidance from above interview guide and I had to narrow down the scope of analysis, it was found necessary to modify the interview guide.



Interview guide

Date: \_\_\_\_\_

Reg. no.: \_\_\_\_\_

Study on the Re-integration Process for returnees

*Connie Tran*

*Master's student in International Development and Management*

### **Section A - Personal information about you**

Family name: \_\_\_\_\_

First name: \_\_\_\_\_

Organization: \_\_\_\_\_

Work title: \_\_\_\_\_

Sex: Male / Female (*circle the answer*)

E-mail: \_\_\_\_\_

### **Section B – Information about the work with human trafficking survivors**

How does your organization work with the issue of human trafficking?

Under which definition does your organization work with human trafficking? Do you follow certain (legal) framework?

If you provide assistance, could you clarify what kind of assistance your organization offer to survivors of human trafficking?

In what ways is your organisation's role auxiliary to the Government's responsibilities?

What are the characteristics of the dominant groups you support (*gender, nationality, age, class, rural, urban, etc.*)?

**Section C – Observations on support to survivors of human trafficking**

What would you say is the general perception of a survivor of human trafficking in Hanoi?

Would you say that there are any rural and urban differences?

What do you think about the legal framework? Is it responsive to the needs and wishes expressed by the returnees in the reintegration process?

What would you say is the reason why returnees come to your organization for assistance and support? Is there any reason why they do not receive it from the Government?

What changes would you like to see in the legal framework as to make support more accessible for returnees? Is your organization advocating for anything in particular?

**Section D - Issues of reintegration**

In your experience, how is it for returnees who have been subject to trafficking, to return to the family? Are there any rural or urban differences? If yes, could you motivate your answer?

In your experience, what are the most common challenges returnees face upon return?

Academically, there are three identified aspects in the “reintegration cycle”: economy, psychosocial and identity (*explain them further*). Would you agree that these three aspects are the key aspects of the cycle or do you have other aspects you would like to add?

In relation to these aspects, what would you say are the reasons for the returnees to not experience a “successful” reintegration?

*Is there anything more you would like to add that you find important for me to consider?*

Thank you for taking the time to meet with me and share your valuable insights!