



## ***Setting Captives Free***

### **COALITION TO ABOLISH MODERN-DAY SLAVERY IN ASIA**

Website: <http://camsa-coalition.org>

#### **Submission to the Universal Periodic Review of the Socialist Republic of Vietnam**

1. Founded in February 2008, CAMSA is a coalition of international and national organizations sharing the same goal of eliminating labor and sex trafficking of men, women and children within, from and to Asia.
2. The 2009 UPR of the Socialist Republic of Vietnam (SRV) contains over one hundred recommendations. Of these we will focus on recommendations relating to forced labor, human trafficking and labor rights, namely:
  - Cooperate with the international community and neighbouring countries particularly in the fight against transborder organized crime, and fight against trafficking in women and children (Islamic Republic of Iran).
  - Intensify its efforts to combat child prostitution, provide effective support to the children affected and sensitize its police forces to this problem in particular through adequate training courses (Austria).
  - Continue national efforts aimed at combating forced labour and taking necessary measures to prevent, suppress and punish trafficking in persons, particularly women and children (Morocco).

#### **Methodology and consultation process**

3. The information presented herein is drawn mostly from some 60 cases involving around 3,000 Vietnamese victims of human trafficking that we have rescued or assisted over the past 5 years. As a coalition of international and national organizations we have regularly conducted consultation with coalition members as well as partners. We have compiled their inputs on specific cases and also their observations and analysis of broad policy issues. Namely, we have included information from service providers in destination countries (such as Malaysia and Taiwan) that work to rescue and protect Vietnamese victims of human trafficking, and from organizations that conduct prevention campaigns or serve repatriated victims in Vietnam. We have also consulted legal professionals inside Vietnam about Vietnam's labor and anti-trafficking in persons (ATIP) laws.

#### **Developments since 2009 UPR**

4. In March 2011 the SRV's National Assembly passed the anti-trafficking in persons (ATIP) law. This law would take effect January 1, 2012. The SRV developed a national 5-year plan and allocated the equivalent of US \$15 million to fight human trafficking. In June 2012 the SRV signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (aka the Palermo Protocol).
5. On 15th of February, 2012, the SRV's Ministry of Labor War Invalids and Social Affairs (MOLISA) issued a circular accusing ATIP organizations that have come to the assistance of

Vietnamese trafficked victims in destination countries of “taking advantage of our worker’s ignorance” to sabotage Vietnam’s labor export program (Circular dated February 15, 2011). The same circular instructs labor export companies to exert tighter control of Vietnamese migrant workers, intercept any contact between workers and ATIP organizations, and settle “disputes” between the striking employees and their employers expeditiously. Settling disputes often means returning to work for the traffickers.

6. As illustration, in 2012 42 Vietnamese women and 3 Vietnamese men were rescued from a labor exploitation situation in Malaysia. The Vietnamese embassy explicitly requested the Malaysian government not to allow NGOs access to the rescued victims, threatening that any such access could sour the relationship between the two countries. The Vietnamese women were then repatriated expeditiously, even before the Malaysian government could determine whether they were victims of human trafficking.
7. The recent contracts that migrant workers must sign appear to reflect this circular. Workers are now warned not “*to fabricate stories to defame, distort the truth about the policy of the Vietnamese government. Pass around information about [the labor export company] without evidence, without respect for the Vietnamese community. [Join] illegal organizations that the [destination country’s] law or the Vietnamese law does not approve. Hold a strike or mobilize, threaten, entice others to hold a strike contrary to the law...*” Such provisions place restrictions on the migrant worker’s rights and prevent them from defending themselves in the face of labor exploitation and trafficking.
8. MOLISA operates and manages the labor export program, through which many Vietnamese have been trafficked. The government has expressly suppressed the voice of those who expose labor trafficking under this government-run program and demand justice, threatening them and their family members with punishment. State-owned labor export companies involved in human trafficking continue to operate with impunity. State-owned banks have placed many victims in debt bondage and hold the titles of their homes and farmlands. More than being merely complicit, MOLISA runs a national program that is a hotbed for labor trafficking.
9. In September 2011, Human Rights Watch published its report titled “The Rehab Archipelago” exposing the various forms of forced labor in the SRV’s rehabilitation centers, including producing cashews, sewing garments, and manufacturing other items. Through interviews with asylum seekers in Thailand, we have discovered that many individuals imprisoned because of their political opinions or because of their faith have also been subjected to exactly the same type of forced labor. One Montagnard, jailed from 2002 through 2009, had been forced to manually process cashew nuts for 7 years. His hands were eaten by the acid from the cashew nuts because he was not allowed to wear gloves. Another Montagnard jailed from 2005 until 2009 at Dai Binh Prison in Lam Dong described prisoners being divided into production teams (cashew production, farming, vegetation, packaging fish for exporting). Those failing to meet the quota imposed by the prison’s Administration were whipped and kicked. A Vietnamese dissident sentenced to 2.5 years in prison for promoting democracy over the internet and for distributing leaflets was required to break cashew shells during his incarceration at the Z 30A Xuan Loc prison. His quota was about 22 kilograms per day. Human Rights Lawyer Nguyen Van Dai, a recently released prisoner of conscience, also reported the wide use of forced labor in prison to manufacture products that were then exported to Western countries.

## Deficient Legal Framework

10. The SRV's 2011 ATIP law is substantively flawed and fundamentally out of line with the Palermo Protocol. The definition of trafficking in persons in the SRV's law protects government-sanctioned labor export companies from being implicated in the act of labor trafficking. This definition explicitly states that "transfer, receipt of persons involving payments, assets that are in nature compensations in accordance with the law are not acts of human trafficking..." The Palermo Protocol places no such restriction on the definition of the acts of human trafficking. Namely, a labor export company may charge a fee that is in compliance with the law and at the same time deceive a victim into a slave-like situation. Under Vietnam's law, this company would not be implicated in the act of trafficking human beings.

## Deficient Law Enforcement

11. Over the years we have publicized the list of forty Vietnamese labor export companies involved in labor trafficking cases that we worked on. So far not a single company has been investigated or prosecuted. Instead, close to a dozen of them have received awards for excellent performance from Viet Nam Association of Manpower Supply (VAMAS). Among the awardees are many repeat offenders such as LETCO and VINAMOTOR. A partial list of such companies can be found at: <http://www.camsa-coalition.org/vi/index.php/cong-ty-moi-gioi/danh-gia-cong-ty>.
12. Vietnamese embassies often take the side of employers and blame the workers who are on strike of breaching their employment contracts, which contain provisions banning strikes. In the case of VINASTAR, a Vietnamese-owned sweatshop, 102 Vietnamese migrant workers had been forced to work 15-18 hours a day, sometimes as much as 22 hours. There was no holiday and no break on weekends. They were paid much less than what was promised in the contracts and also much less than the minimum wages required by Vietnam's and Russia's labor laws. It is estimated that the trafficker had cheated them of some US \$1,000 per month per worker on the average. There was nothing left of their salaries after deductions for food and lodging. They made numerous calls to MOLISA and the responsible labor export companies, but there was no response. When they stopped work to demand fair pay, the employer turned off power, running water and heating, and drastically reduced food rations as well as drinking water. A BBC reporter learned of this case and exposed it (<http://www.bbc.co.uk/news/world-europe-19197095>). An official from the Vietnamese embassy in Moscow soon came to talk to the workers on strike. He was caught on video stating that the workers were at fault and had breached the contract: "*We only help those who believe in the Party and the Government, not those who 'betray' our Government.*" He meant that these victims had betrayed the Vietnamese government by contacting the international media. Responding to the BBC report, the Russian authorities later rescued all victims.
13. VINASTAR is hardly the only case of Vietnamese trafficked to Russia. There are reportedly some 3,000 Vietnamese-owned sweatshops in and around Moscow alone, each employing between 30 and 150 workers. There has been no record of any victim ever rescued or assisted by the Vietnamese government. There has been no record of any labor export companies prosecuted for the act of labor trafficking.

14. The Vietnamese embassy in Malaysia has gone one step further, requiring that Malaysian employers include specific provisions in all contracts with migrant workers from Vietnam (List of the Required Documents and Sample Documents for Attestation issued by the Vietnamese Embassy in Malaysia, May 2002). One such provision states that “The Employee shall not strike or being [sic] involved in any strike or industrial action as well as any political activities and activities of those related with Trade Union in Malaysia, or instigate others to commit such acts.” This provision not only excludes Vietnamese migrant workers from seeking protection and support from labor unions, it contravenes Malaysian law, which allows migrant workers to join Malaysian trade unions. Another provision stipulates that “Employee shall not engage in any romance relationship and/or marry and/or intent [sic] to marry any Malaysian in the period of this Contract.” Violation of these provisions would constitute a breach of the contract, which would expose workers to heavy penalties imposed by the labor export companies. These provisions have rendered Vietnamese migrant workers highly vulnerable to labor exploitation and trafficking by employers and put them at the total mercy of the labor export companies.
15. Even in the realm of sex trafficking, there are signs of complicity of certain government officials. In the case involving 15 young Vietnamese women held captive and forced into prostitution at a Vietnamese-owned brothel in Moscow, the Vietnamese Counselor Envoy to the Russian Federation refused to intervene when four victims who had managed to escape from the brothel sought the embassy’s protection and help. They were soon recaptured by the trafficker. It later turned out that this Counselor Envoy and the brothel’s owner are close acquaintances. This case soon made the news in the US (<http://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-woman-worried-for-sister-in-Russia-4301768.php#ixzz2L13iZGAg>). To avoid further publicity, the brothel’s owner released the victim featured in the Houston Chronicle to the Vietnamese embassy. An embassy staff instructed the victim to write a letter thanking the Vietnamese embassy and the brothel’s owner for having facilitated her repatriation.
16. A number of victims of labor trafficking are seeking refugee protection in Vietnam’s neighboring countries because the Vietnamese police had arrested, detained and beaten them for having exposed labor trafficking in the government’s national labor export program. Two of these victims were ordered by the police to pay huge sums of penalty to the labor export companies for having breached their contracts when they escaped from the labor trafficking situation.

### **Involvement of Civil Society**

17. The SRV does not allow the free formation of genuine non-governmental organizations (NGOs). This has excluded the full participation of civil society in combatting human trafficking. Consequently there is no mechanism to monitor law enforcement, advocate for the rights of victims, and challenge the labor export companies (particularly state-owned ones) which engaged in labor trafficking under national programs run and promoted by the government. In such circumstances, government-sanctioned NGOs (also known as government-operated NGOs, or GONGOs) would inevitably come into conflict of interests. Indicative of this conflict is the fact that very few of these GONGOs have provided assistance to victims of labor trafficking. None of them has taken on labor trafficking cases without the vetting and approval of the government.

18. Vietnam's state-controlled media do not report even high-profile cases that have been featured in reports by foreign governments or published in the international media. This absence of media coverage about typical cases of human trafficking severely hinders prevention efforts.

## **Recommendations**

19. In light of the above, we respectfully make the following recommendations to the Human Rights Council's Working Group and the SRV.
20. The SRV should amend its 2011 ATIP law and adopt the Palermo Protocol's definition of human trafficking.
21. The SRV should immediately investigate labor export companies implicated in labor trafficking, starting with those on our list, which makes reference to actual cases of labor trafficking and/or fraudulent recruitment.
22. The SRV should tightly monitor and inspect the flow of Vietnamese, especially extremely low-income young people from rural areas, traveling on tourist visas to other countries, such as Russia and Malaysia.
23. The SRV and its Vietnamese embassies in destination countries should immediately eliminate contract provisions that prohibit migrant workers from joining labor unions in, seeking help from NGOs, or exercising their basic human rights (such as getting married to locals, being in relationship with locals, becoming pregnant, joining associations or organizations, or participating in religious or political events). The Working Group may want to closely examine these contracts and recommend the proper language, ideally in consultation with ILO, and then assess Vietnam's compliance with such recommendations.
24. The SRV should immediately end the use of forced labor in drug rehab centers, re-education centers, and prisons across the country. The SRV should transfer the management of rehab centers from MOLISA to the Ministry of Health.
25. The SRV should end all harassment against NGOs and threats against victims that expose labor trafficking, and recognize and respect the roles of non-governmental or non-government-sanctioned stakeholders in the fight against human trafficking.
26. The SRV should welcome the role of true civil society inside Vietnam (including faith-based organizations across the country) and genuine collaboration with foreign NGOs in assisting rescued victims to return home, including paying for their repatriation costs. Namely the SRV should welcome all formal and informal organizations to participate in mass education campaigns to promote prevention, the formation of legal aid organizations to help victims with access to justice, and the function of civil society organizations as watchdogs of law enforcement.
27. The SRV should publicly disclose its national 5-year action plan to combat human trafficking and welcome inputs from civil society, stakeholders and human rights organizations.