



**UNODC**

United Nations Office on Drugs and Crime



United Nations Entity for Gender Equality  
and the Empowerment of Women

# **ASSESSMENT OF THE SITUATION OF WOMEN IN THE CRIMINAL JUSTICE SYSTEM IN VIET NAM**

**In support of the Government's efforts  
towards Effective Gender Equality  
in the Criminal Justice System**

**Hanoi, July 2013**

**Assessment of the Situation of Women in the  
Criminal Justice System in Viet Nam**

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## ACRONYMS

VIJUSAP	Viet Nam Association for Judicial Support against Poverty
CCIHP	Centre for Creative Initiatives in Health and Population
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CFAW	Committee for the Advancement of Women
CRES	Centre for Reintegration of Ex-prisoners in to the Society
CSAGA	Centre for Studies and Applied Sciences in Gender, Family, Women and Adolescents
DV	Domestic violence
GBV	Gender-based violence
GE	Gender equality
GENCOMNET	Gender and Community Development Network
GFCD	Centre of Study on Gender-Family and Community Development
GSO	General Statistics Office
HEUNI	European Institute for Crime Prevention and Control
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IOM	International Organization for Migration
ISDS	Institute for Social Development Studies
MOH	Ministry of Health
MOJ	Ministry of Justice
MOCST	Ministry of Culture, Sports and Tourism
MOLISA	Ministry of Labour, Invalids and Social Affairs
MPS	Ministry of Public Security
NCFAW	National Committee for the Advancement of Women
NGO	Non-governmental Organization
NLAA	National Legal Aid Agency
OMCT	World Organization Against Torture
SPP	Supreme People's Procuracy
SPC	Supreme People's Court
TIPP	Trafficking in Persons Protocol
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VAW	Violence against women
VLA	Viet Nam Lawyers Association
VWU	Viet Nam Women's Union
WHO	World Health Organization

## **EXECUTIVE SUMMARY**

Over the past few decades, Viet Nam has made significant strides in improving its legislative framework to advance gender equality. The 2006 Law on Gender Equality illustrated the government's commitment to advance this issue, and subsequent policies and laws have contributed to the promotion of women's rights. However, women continue to face challenges in many areas of society, including the criminal justice system. Whether they experience violence, perpetrators of crimes, or criminal justice workers, women face a patriarchal system laden with gender stereotypes. In order to contribute to the growing volume of research on gender in Viet Nam, the United Nations in Viet Nam undertook an assessment process to research the role of women in the criminal justice system and identify areas for improvement. The assessment was based on a desk review of available documents and interviews with stakeholders during a mission visit to Ha Noi, Viet Nam, led by staff from the United Nations Office on Drugs and Crime (UNODC) in Viet Nam, as well as international and national consultants from UNODC and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). As the product of this assessment, this report focuses on three general areas: women who have experienced violence, women in conflict with the law, and women working in the criminal justice system. Each chapter provides an overview of the current situation and the normative framework before analyzing the available data and providing a series of high-level recommendations for policy-makers in Viet Nam. All three areas of research identified the need for improved implementation and monitoring and evaluation of existing laws and policies on VAW, as well as further research and analysis to develop evidence-based, gender-sensitive policies and programmes.

### **CHAPTER 1: WOMEN WHO EXPERIENCE VIOLENCE**

Chapter One focuses on the experiences and the challenges of women who have experienced violence. In Viet Nam, domestic violence has been the focus of government interventions for violence against women (VAW). A recent study found that 58% of women in Viet Nam experience some type of emotional, physical or sexual domestic violence during their lifetime. Other types of VAW, such as human trafficking, sexual harassment and early marriage, are occurring in Viet Nam, but there has been much less research into these issues. As a result, this chapter focuses on women who experience domestic violence but notes some specific challenges for survivors of other types of VAW.

The chapter explores the legal provisions against VAW as well as the social context in Viet Nam. In Viet Nam, patriarchal norms have created a society in which such violence is often considered to be "normal" and women are encouraged to deal with violence outside of the criminal justice system. As a result, rates of reporting VAW are low, and survivors are often referred to

reconciliation facilitators within their local community to arrive at a solution within the family before involving the criminal justice system. For cases that do enter the criminal justice system, the investigation and evidence-gathering process presents many difficulties. Though legislation has been passed to prohibit VAW, the Police and Procuracy<sup>1</sup> have had limited guidance or training on the implementation of these laws. Once a case comes to trial, women frequently are unable to access legal aid services and the court does not have procedures in place to appropriately deal with the specific needs of women who have experienced violence. For all these reasons, and many more that are explored within the report, conviction rates for cases of VAW are extremely low and perpetrators of such violence are rarely punished for their crimes.

The report highlights three main recommendations for policy-makers in Viet Nam to address the challenges facing women who have experienced violence.

1. Strengthen legal provisions for VAW cases and revise the penal code
2. Improve implementation and monitoring and evaluation of existing laws and policies on VAW
3. Conduct further research and analysis to develop evidence-based gender-sensitive policies and programmes

## **CHAPTER 2: WOMEN IN CONFLICT WITH THE LAW**

Chapter Two focuses on women who come into conflict with the law and enter the criminal justice system as suspects, defendants, offenders and prisoners. The chapter reviews pertinent international standards and Vietnamese laws regarding women who violate criminal or administrative law. As is the case with women who have experienced violence, gender stereotypes influence the treatment of these women as well. It was difficult for the assessment team to collect comprehensive information about the current situation, but available data indicates women commit fewer crimes than men in Viet Nam and make up only 10% of the prison population. A legal analysis illustrated that while there are some specific provisions for female offenders and prisoners, the criminal justice system is male-focused and male-dominated. Women have different biological (i.e. pre-natal and post-natal) and societal (i.e. women are typically the primary caregivers for children) needs that the criminal justice system does not always address. The Bangkok Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules), which were adopted by the UN General Assembly in 2010, outline specific guidelines for women prisoners. This chapter reviews many of the Bangkok Rules in the Vietnamese context and highlights provisions that are being followed in Viet Nam, though data was not available for a complete analysis.

This chapter also explores recent legislation which closed so called “05 Centres” for women involved in the sex industry. This represents a significant step towards the Government’s efforts to reduce stigmatisation of women involved in sex work. NGOs and government ministries are

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<sup>1</sup> Prosecutor’s Office

developing plans to reintegrate former detainees into society and the government is developing new policies for women involved in sex work.

Based on the information available, the report highlights four main recommendations for policy-makers in Viet Nam to address the challenges faced by women who have experienced violence.

1. Conduct research and analysis to develop evidence-based gender-sensitive policies and programmes
2. Improve implementation of existing policies and laws
3. Ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (CAT)
4. Support reintegration of former prisoners and detainees into their communities

### **CHAPTER 3: WOMEN WORKING IN THE CRIMINAL JUSTICE SYSTEM**

The last chapter addresses the challenges facing women working in the criminal justice sector. Women are vastly under-represented within this sector and are concentrated at the lower levels of management. Viet Nam has passed a number of laws and policies to promote gender equality and has instituted quotas to boost hiring rates of female workers. However, the system is built on a male-dominated culture which views women as incapable of handling the same tasks as men. Additionally, women are usually the primary caregivers in Viet Nam and the criminal justice agencies offer little flexibility for women workers to fulfil all of their responsibilities at work and at home. Lastly, the differential retirement age of 55 for women and 60 for men prevents women from advancing their careers within the criminal justice system, since they have fewer working years to obtain the necessary experience. It should also be stressed that sexual harassment also occurs in criminal justice agencies and makes the workplace unwelcoming for female workers.

Based on the information available, the report highlights four main recommendations for policy-makers in Vietnam to address the challenges for women workers in the criminal justice system.

1. Conduct research and analysis to develop evidence-based gender-sensitive policies and programmes
2. Improve implementation of existing policies and laws on gender equality
3. Equalise the retirement age for women and men
4. Address gender discrimination and promote cultural change to promote gender equality

## INTRODUCTION

Viet Nam has made tremendous strides in developing its legal system since committing to a rule-of-law state in 1991 and adopting a judicial reform policy in 2005.<sup>2</sup> These reforms, along with the passage of the 2006 Law on Gender Equality (GE Law),<sup>3</sup> firmly illustrate the Government's commitment to building a just and democratic legal system which addresses the needs of all Vietnamese citizens. However, despite this legislative progress, women in Viet Nam still encounter many difficulties within the criminal justice system, whether they have experienced violence, perpetrators of crimes or employees in the criminal justice sector.<sup>4</sup> The UN in Viet Nam therefore undertook an assessment process to evaluate the current situation for women within the justice system and provide guidance on areas for improvement. The criminal justice system in Viet Nam, as in most countries, was designed by men for men. Thus, promoting equal access to a patriarchal criminal justice system runs the risk of unintentionally reinforcing gender inequalities. It is essential to recognize the different impacts that laws and policies can have on women and men. Women encounter structural inequalities due to deep-rooted power differentials that privilege men over women and contribute to the discrimination of women in every area of society. Since institutions are built to favour men, the effective implementation of the GE Law does not necessarily require that women be treated the same as men, since this could still lead to discrimination. Rather, women may sometimes need special measures in order to ensure that they are able to obtain full equality with men and access all of their rights.

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<sup>2</sup> Starting with the 7th Communist Party's Congress in 1991, the fundamental component of the rule of law concept was officially endorsed in the Party documents and enacted through different laws and regulations. The Vietnam's Communist Party's Manifesto on national construction in transition period towards socialism 1991 stated that the Party committed to lead the country towards a "socialist **rule-of-law** based state." The Vietnam's Communist Party's Manifesto on National Construction (1991). In 2005, the Communist Party of Viet Nam adopted the Judicial Reform Strategy (Res No 49). The Strategy addresses the goal of the judicial reform as "Building a judicial system which is clean, strong, democratic, strict and just, justice-protecting, modernized, people-serving, serving the Socialist Republic of Viet Nam; judicial activities, with a focus on trial activities, shall be conducted with a high level of efficiency and effectiveness". The Strategy specifies the changes required to realize the objectives in seven major areas: 1) criminal and civil policy legislation and judicial procedures, 2) the organizational structures of the judicial organs with focus on the people's courts, 3) judicial support institutions, 4) ethical, healthy and strong corps of judicial and support staff, 5) oversight of the judicial system by elected bodies, 6) international cooperation in the judicial sector, and 7) physical infrastructure for the judicial activities. At the 5<sup>th</sup> Session of Central Steering Committee on Judicial Reform in April 2012, projects relating to major issues in renovation of operations and structuring of judicial bodies in judicial reform progress were discussed. For more information on legal reforms see "The 4<sup>th</sup> Legal Policy Dialogue: Gender Mainstreaming in Law Making and Implementation: the Justice Sector's Response to Gender Inequality and the Protection of Women's Rights (Government of Viet Nam and UNDP: September 2011); "The 8<sup>th</sup> Legal Partnership Forum: Strengthening Legal and Judicial Reform" (Government of Viet Nam and UNDP: December 2011); "Newsletter: Strengthening Access to Justice and Protection of Rights in Viet Nam" (Issue No. 5, December 2011 and Issue No. 6, May 2012).

<sup>3</sup> Viet Nam, National Assembly, Law on Gender Equality, No. 73/2006/QH11, 12 December 2006: Article 5(7): Gender mainstreaming in developing legal normative documents is a measure to undertake the gender equality objective by determining gender issues, forecasting impacts to gender caused by the document, responsibilities, resources for resolving gender issues in social relations as governed by the legal normative documents.

<sup>4</sup> While recognizing that not all women and girls are the same, the assessment tries to be mindful of the differences among women and girls; age, socio-economic status, marriage, race and education level can influence needs and opportunities for women and girls. In this report, the term "women" will include both women and girls, unless specifically addressing the group "girls".

## **Purpose of the Report**

The objective of this assessment was to gain insight into the situation of women in the criminal justice system, focusing on three areas: women who have experienced violence, women in conflict with the law, and women working in the criminal justice system. This report summarizes key information from the assessment and provides recommendations for the Government of Viet Nam to address moving forward, in addition to identifying areas where the UN and other international organizations can provide assistance. This assessment is based on a desk review of available documents and interviews with relevant stakeholders during a mission visit to Ha Noi, Viet Nam by a UNODC-UN Women assessment team from November 12-23, 2012.<sup>5</sup> Due to some challenges in collecting data and information, certain sections of this report are more robust than other. However, this report is a valuable starting point to initiate a more comprehensive discussion on the key issues facing women in the criminal justice system and encourage further research.

## **The Normative Framework**

Viet Nam is a signatory to many international treaties, including the following:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC) and Optional Protocols
- International Convention on Transnational Organized Crime (UNTOC) and Protocol on Human Trafficking (TIPP)
- Convention on Rights of Persons with Disabilities (CRPD)
- Convention Concerning Discrimination in Respect of Employment and Occupation (International Labour Organization)
- Viet Nam is also currently considering signing the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Through these treaties, Viet Nam has illustrated a strong commitment to fulfilling international standards on equality, discrimination and the promotion of human rights. Many provisions on gender equality have been incorporated into domestic law. In fact, the current Constitution, which was amended in 2001, stipulates that “all citizens regardless of their sex have equal rights in all respects, political, economic, cultural, social and in family life” and that “any discrimination against women and violation of women’s dignity is prohibited,”<sup>6</sup> Similarly, the GE Law states that women and men are equal in all fields and that no one should be discriminated against based on gender.<sup>7</sup> The Law further clarifies that equality applies within a marriage as well.

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<sup>5</sup> The details of these meetings are summarized in Appendix 4.

<sup>6</sup> Viet Nam, National Assembly, Constitution of the Socialist Republic of Viet Nam, 15 April 1992: Article 63.

<sup>7</sup> Viet Nam, National Assembly, Law on Gender Equality, No. 73/2006/QH11, 12 December 2006: Article 18.

Legally, wives and husbands should be equal in their access to the family income and in making decisions about resources. Furthermore, both spouses have the responsibility to contribute to domestic work. However, implementation of these legal obligations remains a challenge, as will be explored throughout this report.

Since Viet Nam committed to building a rule-of-law state in 1991, there have been many notable achievements, including the establishment of a legal framework and institutional reforms to strengthen the Supreme People's Court (SPC), which is the highest court in Viet Nam. Viet Nam has also reformed its legal training institutions and the administrative justice system. Viet Nam instituted a legal aid program for underprivileged individuals in order to ensure that everyone can access the legal system, regardless of their financial status. Over the last decade, Viet Nam has strengthened the capacity of its key institutions, including the National Assembly, which is Viet Nam's legislative body and the Supreme People's Procuracy (SPP or Procuracy), which is the prosecutor's office, and is continuing the reform process. Each of the chapters of this report will outline relevant laws and policies, as well as explore their impact on women and their implementation status.

### **The Social Context**

Vietnamese society is rooted in Confucianism, which strongly influences gender norms and reinforces traditional patriarchal concepts of gender inequality. Confucianism emphasizes the importance of patrilineal descent, patrilocal residence, male privilege and hierarchical relationships.<sup>8</sup> This perpetuates gender stereotypes which dictate the ways that women and men are supposed to behave. For example, women are associated with housework, procreation and the nurturing of male offspring to perpetuate the husband's family lineage, whereas men are associated with community and household decision-making. In relationships, women are expected to please their husbands by meeting their sexual demands. Cultural beliefs about masculinity and femininity greatly influence the ways in which people deal with anger.<sup>9</sup> Men are considered to be naturally angry and unable to control themselves, so violence to "correct" women's behaviour is considered acceptable or normal by individuals and communities.<sup>10</sup>

In addition to strict gender roles, the importance of family is emphasized in the culture, laws and policies of Viet Nam. The Constitution refers to the family as the fundamental and natural unit of society.<sup>11</sup> To bolster healthy families, progressive marriages and the well-being of the family, family members are to treat each other with respect and dignity. As a result, all Vietnamese

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<sup>8</sup> Gardsbane, D., Vu, H.S., Taylor, K., Chanthavysouk, K. (2010). Gender-based Violence: Issue Paper. Ha Noi: United Nations Viet Nam. See also: Viet Nam, General Statistics Office (2010). Results from the National Study on Domestic Violence against Women in Viet Nam: "Keeping silent is dying." Ha Noi. Women in rural areas (compared with women in urban areas) are more likely to support statements indicating that men were the decision-makers in the family, that women had to obey their husbands and that they could not refuse sex.

<sup>9</sup> Viet Nam, General Statistics Office (2010). Results from the National Study on Domestic Violence against Women in Viet Nam: "Keeping silent is dying." Ha Noi.

<sup>10</sup> *Ibid.*

<sup>11</sup> Viet Nam, National Assembly, Constitution of the Socialist Republic of Viet Nam, 15 April 1992: Article 64.

legislation is implemented within the context of promoting the idea of the “happy family.”<sup>12</sup> In cases of domestic violence, preservation of the family is often prioritized over the safety of the women in order to maintain family unity. Villages can receive “cultural village” awards with financial benefits for facilitating more successful reconciliations between couples and keeping families together.<sup>13</sup> The government’s campaigns to promote the “happy family” can send mixed messages. Though the campaigns seek to honour and respect women, in fact, they reinforce stereotypes of women as mothers, wives and daughters-in-law, while men are still considered to be the holders of privilege and power.<sup>14</sup> By prioritizing family unity, these policies prevent the fulfilment of individuals’, especially women’s, rights.

Viet Nam has made important progress in advancing women’s rights in some areas, for example, through economic growth. Since the late 1980s, Viet Nam has experienced high economic development due to the *doi moi* (open door) reforms, which shifted Viet Nam from a centrally-planned to a market-oriented economy. As a result, more women have entered the labour market, and currently make up 46.6% of the total labour force.<sup>15</sup> In some sectors, such as electronics, garments and shoe factories, women make up 70-80% of the labourers.<sup>16</sup> However, women are predominantly represented in informal occupations, where they earn 50% of men’s incomes and have less job security.<sup>17</sup> Additionally, the gender wage gap has increased since 2008, and women earn 13% less than men.<sup>18</sup> As a result, some studies suggest that women have not benefited equally from the *doi moi* reforms and they have actually increased women and girl’s vulnerability to abuse and exploitation at work and at home.<sup>19</sup> Women also continue to bear the traditional responsibility for care giving and domestic work, which places a double burden on women working in both the private and public sphere.

As these facts indicate, despite Viet Nam’s strong legal framework for gender equality, there is still much progress to be made. This is especially true within the criminal justice system, where

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<sup>12</sup> Gardsbane, D., Vu, H.S., Taylor, K., Chanthavysouk, K. (2010). *Gender-based Violence: Issue Paper*. Ha Noi: United Nations Viet Nam. Viet Nam, Decision on approving the Vietnam family development strategy through 2020, with a 2030 vision, No. 629/QD-TTg, 29 May 2012.

<sup>13</sup> “In Viet Nam, the family is seen as ‘a sweet home’, as the cornerstone of society, bringing happiness for each individual and stability for society”. United Nations Office on Drugs and Crime, Research Centre for Gender and Development in Ha Noi, European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on law enforcement practises and legal support to female victims of Domestic Violence in Viet Nam*. Working Paper.

<sup>14</sup> For a more detailed discussion of gender equality in the context of the “happy family” and for further references to specific research on this issue, see: Gardsbane, D., Vu, H.S., Taylor, K., Chanthavysouk, K. (2010). *Gender-based Violence: Issue Paper*. Ha Noi: United Nations Viet Nam.

<sup>15</sup> United Nations Fund for Gender Equality (2010). *Briefing Paper on Current Gender Equality Issues*. Ha Noi.

<sup>16</sup> United States Agency for International Development (2010). *Women’s Participation in Vietnam’s Economy: Agenda for Action*.

<sup>17</sup> *Ibid.*

<sup>18</sup> International Labour Organisation (2013). Despite high labour force participation rate for women, gender pay gap on the rise, 7 March. Available from:

[http://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS\\_206104/lang--en/index.htm](http://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_206104/lang--en/index.htm)

<sup>19</sup> Rushing’s and Piper’s studies are discussed in detail in: Gardsbane, D., Vu, H.S., Taylor, K., Chanthavysouk, K. (2010). *Gender-based Violence: Issue Paper*. Ha Noi: United Nations Viet Nam.

women are treated differently than men as survivors of crime, perpetrators of crime and as employees. This report delves into these issues and considers the many challenges that women face within criminal justice agencies. Chapter One will explore the experiences of women who have experienced violence, and propose several recommendations to improve the current situation. Chapter Two focuses on the experiences of women who come into conflict with the law, as suspects, offenders and prisoners, and identifies several areas for improvement. Lastly, Chapter Three highlights the experiences of women who work in the criminal justice system and outlines the challenges they face, before proposing some suggestions for further advancement.

## CHAPTER 1: WOMEN WHO EXPERIENCE VIOLENCE

### PART 1: OVERVIEW AND ANALYSIS

Globally, one in three women will experience some type of emotional, physical or sexual violence during their lifetimes.<sup>20</sup> Though there are no comprehensive statistics for violence against women in Viet Nam, the 2010 National Study on Domestic Violence in Viet Nam (2010 National Study) found that 58% of ever-married women experienced some type of emotional, physical or sexual domestic violence during their lives.<sup>21</sup> The vast majority of DV survivors do not report acts of violence to any official authority.<sup>22</sup> This chapter examines how women who experience VAW come into contact with the criminal justice system and evaluates criminal justice agencies' responses to violence against women from a gendered perspective. Despite recent legislative developments in Viet Nam which promote gender equality, the criminal justice lacks a strong institutional framework to combat VAW. Furthermore, gender stereotypes which contribute to the perpetuation of violence are embedded within Vietnamese culture and impact individuals who work in the criminal justice system.

#### The Normative Framework

Viet Nam is a signatory to numerous international instruments which aim to eliminate violence against women. The Government has incorporated many of these international obligations into the domestic legal system. Violence against women, which includes sexual violence, domestic violence, trafficking in women and girls, stalking/sexual harassment and forced/early marriage, is prohibited in the following laws: the Penal Code, the Law on Domestic Violence Prevention and Control (DV Law), the Law on Human Trafficking Prevention and Combat, Ordinance on Prostitution Prevention and Combat and the Labour Code.<sup>23</sup> The criminal justice system is therefore obligated to prevent and protect women from violence as well as pursue criminal charges against perpetrators of violence. However, as we will explore, many of the provisions of these laws are not properly implemented due to insufficient governmental guidance and gender stereotypes within criminal justice system which contribute to the attitude by violence against women is normal.

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<sup>20</sup> World Health Organisation (2013). *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*. Geneva.

<sup>21</sup> Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: "Keeping silent is dying."* Ha Noi.

<sup>22</sup> United Nations Viet Nam (2012). *Estimating the Costs of Domestic Violence against Women in Viet Nam*. Ha Noi.

<sup>23</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999. (Amended in 2009: Viet Nam, National Assembly, Law Amending and Supplementing a Number of Articles of the Penal Code, No. 37/2009/QH12, 29 June 2009.) Viet Nam, National Assembly, Law on Domestic Violence Prevention and Control, No. 02/2007/QH12, 5 December 2007. Viet Nam, Law on Human Trafficking Prevention and Combat, No. 66/2011/QH12, 29 March 2011. Viet Nam, Ordinance on Prostitution Prevention and Combat, No. 10/2003/PL-UBTVQH11, 17 March 2003. Viet Nam, National Assembly, Labour Code, No. 10/2012/QH13, 18 June 2012 (contains a provision prohibiting sexual harassment.)

In 2009, the Viet Nam government issued the Law on Amending and Supplementing a Number of Articles of the Penal code, so the Ministry of Justice (MOJ) is currently reviewing the Penal Code for final revision by 2015.<sup>24</sup> The Ministry of Labour, Invalids and Social Affairs (MOLISA: managing agency for the GE Law), the Ministry of Culture, Sports and Tourism (MOCST: managing agency for the DV Law) and the Viet Nam Women’s Union (VWU) will support the revision process to ensure that the new Code is in conformity with the various legal instruments that promote gender equality and protect women’s rights.<sup>25</sup> The recommendations in this report should provide useful feedback for the MOJ to incorporate into their review.

*Terminology:*

This report will utilize the terminology “violence against women” (VAW) instead of “sexual and gender based violence” (SGBV). According to the definition contained in the UN Declaration on the Elimination of Violence against Women, VAW is defined as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private.” This includes domestic violence (DV), marital rape, forced marriages, rape, sexual abuse, sexual harassment and intimidation, trafficking in women, forced prostitution, and violence in state institutions such as prisons and detention centres.

In addition to the laws that prohibit VAW, several other laws outline the means for enforcement. The Criminal Procedure Code, the Law on Handling Administrative Violations, and the Law on Judicial Examination outline the punishments for individuals who commit acts of violence.<sup>26</sup> The DV Law also outlines protection measures for survivors, including restraining orders.

Legally, there are three avenues for addressing incidents of VAW: criminally, administratively and through alternative reconciliation mechanisms. Acts of domestic violence are prosecuted differently according to the severity of the injury, which is determined by infirmity rate standards, and the type of violence. In order for an act of DV to be investigated as a criminal offense under the Penal Code, the survivor must have injuries above an 11% infirmity rate, as determined by a medical professional.<sup>27</sup> Such acts are investigated by the police and the

<sup>24</sup> Viet Nam, National Assembly, Resolution on the law- and ordinance-making program of the XIIIth National Assembly, No. 20/2011/QH13, 26 November 2011.

<sup>25</sup> MOLISA representative informed us during the meeting on November 15, 2012 that they will be submitting inputs in 2013 and likely the draft Penal Code will be submitted to the National Assembly in 2014. The Ministry of Justice representatives confirmed the revisions and suggested that the draft might be before the National Assembly by 2015.

<sup>26</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003. Viet Nam, Law on Handling of Administrative Violations, No. 15/2012/QH13, 20 June 2012 (came into force from 1 July 2013). Viet Nam, National Assembly, Law on Judicial Expertise, No. 13/2012/QH13, 20 June 2012.

<sup>27</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 104 provides 4 categories of infirmity rates and the Inter-Circular No 12/1995 provides infirmity rate standards used by forensic examiners. The Code therefore focuses on one incident of violence and the percentage of permanent physical harm. For example, scarring in lower parts of the throat, causing difficulties to speak and swallow (41-45%); throat injuries causing difficulties in swallowing (21-25%); loss of hearing in one ear (25%); loss of function in right thumb (30%); loss of function in left thumb (20%); fracture in the skull, which will heal but have long term consequences (21-25%); 3-5

Criminal Investigating Agency<sup>28</sup>, prosecuted by the Procuracy<sup>29</sup> and adjudicated by the Courts. Perpetrators of VAW as described in the Penal Code may receive a prison sentence. Acts of violence that result in less than 11% infirmity rate are prosecuted under administrative law. According to the Law on Handling Administrative Violations (which came into force on July 1, 2013), violations of administrative law are also investigated by the police and adjudicated by the Court. Previously, sanctions were determined by the Chair of the local People’s Committee. Lastly, incidents of DV that are considered to be less serious or a one-time occurrence are referred to grassroots reconciliation teams which mediate between the survivor and the perpetrator to arrive at a mutually agreed-upon resolution.<sup>30</sup> The Ordinance on Organization and Activities of Reconciliation at the Grassroots created community response mechanisms for this purpose.<sup>31</sup> They are intended to address only minor disputes. The Ordinance states that reconciliation can only be used as a solution when the survivor does not request or withdraws her request for prosecution, when the Procuracy or Court halts the proceeding of the case, or if the offender is not administratively sanctioned. The law clearly states that reconciliation is not appropriate if the incident is of a criminal or administrative nature.<sup>32</sup> Nevertheless, reconciliation is utilized as a solution to DV in the majority of cases<sup>33</sup>, which is a significant challenge for the prosecution of DV.

The current judicial system is structured to address incidents of violence at several different levels and provide survivors with numerous mechanisms for redress. However, the system is failing to address the needs of survivors of VAW and is not providing an effective pathway to pursue justice in many cases.

<b>Legal Prohibitions of VAW<sup>34</sup></b>	
Sexual violence	Definition: Rape, forcible sexual intercourse, molestation of children;

broken ribs with slight impacts on respiration (10-12%); broken nose without impacts on respiration / smelling (10%); and burn scars on feet, leading to difficulties in moving (21-24%). For further information see United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha Noi. Page 77.

<sup>28</sup> Viet Nam, National Assembly, Ordinance on organization of criminal investigations, No. 23/2004/PL-UBTVQH11, 20 August 2008. and its amended version in 2009.

<sup>29</sup> The Prosecutor’s Office.

<sup>30</sup> United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha Noi.

<sup>31</sup> Viet Nam, National Assembly, Ordinance on the organization and activities of reconciliation at the grassroots, No. 09/1998/PL-UBTVQH10, 25 December 1998. There is currently a draft Law on Grassroots Reconciliation under discussion in the National Assembly for adoption in 2013.

<sup>32</sup> This is reiterated in: Viet Nam, National Assembly, Law on Domestic Violence Prevention and Control, No. 02/2007/QH12, 5 December 2007: Article 12 on the principles of reconciliation in domestic violence cases.

<sup>33</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

<sup>34</sup> See Appendix 2 for further details on the specific provisions. All definitions are from: Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999.

	forced sex in marriage
	Articles: Penal Code (art 111, 113); Law on Domestic Violence Prevention and Control (art 2)
Domestic violence	Criminal offences: Intentionally inflicting injury, ill-treating or persecuting spouses, murder, humiliating other persons Administrative violations: beating, insulting, forced sex, destroying property, economic violence, turn family member outside house
	Articles: Penal Code (art 104, 151, 93, 121), Law on Domestic Violence Prevention and Control (art 2(1)(a) – (i))
Trafficking in women and girls	Definition: Trafficking in persons, trading in children
	Articles: Penal Code (art 119, 120); Law on Human Trafficking Prevention and Combat
Stalking / sexual harassment	Definition: Harassment, infringement upon women’s right to equality
	Articles: Labour Code (art 8), Penal Code (art 130)
Prostitution related offences / violations	Definition: Harboring prostitutes, procuring prostitutes, paid sexual intercourse with juveniles, buying and selling sex, organizing prostitution activities, forced prostitution
	Articles: Penal Code (art 254, 255, 256), Ordinance on Prostitution Prevention and Combat
Forced and early marriages	Definition: Forcible marriage; organizing underage marriage
	Articles: Penal Code (art 146, 148)

### The Social Context

Vietnamese culture maintains strict gender norms which classify women as submissive caregivers and men as decision-makers within the home. These gender stereotypes contribute to a fundamentally unequal system; violence is a result of this system as well as a contributing factor in its perpetuation. Conceptions of masculinity and femininity significantly influence perceptions of DV and VAW. Health care professionals, police officers and community leaders have been reported to blame the wife for inciting her husband’s anger and beating her, instead of helping to resolve the situation or supporting her.<sup>35</sup> According to the 2010 National Study, men are seen as “hot blooded” and pre-disposed to anger and violence, while women are viewed as submissive and needing to please their husbands. For example, research suggests that although marital rape is illegal, there has never been an investigation or prosecution for marital rape.<sup>36</sup> In fact, police routinely fail to identify wives as survivors of rape, since cultural norms dictate that women should never refuse their husbands’ sexual demands.<sup>37</sup> Such violence is

<sup>35</sup> Domestic Violence Prevention Network (2010). *Assessment report: the implementation of the law on domestic violence*. Ha Noi.

<sup>36</sup> Focus group discussion with police officers, 14 November 2012, Hai Duong and meeting with representatives from the Ministry of Justice, 16 November 2012, Ha Noi.

<sup>37</sup> United Nations Viet Nam (2012). *Estimating the Costs of Domestic Violence against Women in Viet Nam*, Ha Noi.

considered to be a normal part of family life.<sup>38</sup> Despite the development of recent laws on DV and human trafficking, investigators continue to question the credibility of survivors and society continues to judge the women who have experienced violence rather than the perpetrator. Additionally, because of the concept of the “happy family,” which promotes the idea that it is essential to maintain balance within the home, regardless of difficult circumstances or violence, survivors are discouraged from discussing their experiences with anyone outside the family. Domestic violence is therefore considered to be a private family matter into which others should not intervene, even health care providers or police.<sup>39</sup> As a result of these cultural norms, crimes of domestic violence and violence against women are not treated with the same professionalism or vigour devoted to other crimes and are frequently considered to be lower priority by criminal justice agencies. This results in significant deficiencies within the system, which will be further explored throughout the chapter.

## **A. Criminal Justice Responses to VAW**

### **Reporting Incidents of Violence**

Due in part to these societal conceptions of gender, rates of reporting violence against women are very low. According to the 2010 National Study, 87% of abused women surveyed never sought help from any formal service or authority.<sup>40</sup> Another study found that only 43% of all the DV cases disclosed in the study came to the attention of the police, and of those reported cases, 67% were reported by the survivors and the rest by family members or neighbours.<sup>41</sup> Some women who have experienced violence, due to cultural norms, do not view domestic violence as a crime,<sup>42</sup> while others may doubt the efficacy of this route for dealing with such violence since male authorities have a reputation for dealing with DV cases insensitively or blaming the survivor.<sup>43</sup> In keeping with the need to maintain a “happy family” and the financial incentive for villages to maintain a “cultural village” with low rates of DV or divorce, many women who have experienced violence also feel pressure from the community or their family to have the matter resolved within the community and not by the criminal justice system. Lastly, as is the case for

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<sup>38</sup> Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: “Keeping silent is dying.”* Ha Noi.

<sup>39</sup> Domestic Violence Prevention Network (2010). *Assessment report: the implementation of the law on domestic violence.* Ha Noi.

<sup>40</sup> Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: “Keeping silent is dying.”* Ha Noi.

<sup>41</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

<sup>42</sup> According to the UNODC research, only 37% interviewed saw DV as a crime, 54% though it was wrong but not a crime and 7% thought it was something that just happened UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

<sup>43</sup> See UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

DV survivors throughout the world, many fear retaliation by the perpetrator if they report the crime.

There is less data on the reporting of other types of VAW. Sex workers who are raped often do not report the incident because of societal stigma and because selling sex is an administrative violation according to the Ordinance on Prostitution Prevention and Combat. Trafficked women also face many barriers to reporting their situation due to restrictions on their movements or intimidation by their captors, lack of understanding of the Vietnamese legal system and language barriers, particularly if they are foreign or ethnic minority women. Additionally, though government officials reportedly encourage trafficking women to assist in the prosecution of their captors, they do not provide witness protection, so survivors may fear retaliation for reporting the crime.

As a result, the majority of VAW cases are never brought to the attention of any criminal justice system. However, women who reach out for help are confronted by a flawed system that cannot adequately address their needs.

### **Responses to Reported Cases**

After an incident of violence is reported, the first step is for the local police or first responder to visit the home, assess the situation and determine if the case is criminal, administrative or eligible for reconciliation.<sup>44</sup> However, this determination is at the discretion of the responder and is not conducted in a systematic way. Furthermore, research on domestic violence found that the police only visited the house of the woman who has experienced violence in 83% of reported cases<sup>45</sup>. Police also tended to assess only the current incident and failed to consider the fact that DV is usually a prolonged pattern of coercive acts.<sup>46</sup>

#### *Reconciliation*

The majority of DV cases that are reported to the police are diverted to reconciliation facilitators<sup>47</sup>, usually sponsored by the Women's Union or the head of the commune or village. The goal of the reconciliation is to persuade both sides to compromise in order to promote family harmony. Anecdotal evidence suggests that both survivors and perpetrators are required

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<sup>44</sup> The commune (rural) level police are semi-professional police. At the ward (urban) level the police are professional. At the village level (rural) there are no police. The head of the village is usually first responder and can advise or refer the matter to police. At the urban level it is the head of the neighbourhood. UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper

<sup>45</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper

<sup>46</sup> Focus group discussion with police officers, 14 November 2012, Hai Duong.

<sup>47</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

to sign an agreement that they will modify their behaviour as a result of the reconciliation.<sup>48</sup> If reconciliation fails and the violence continues, the perpetrator will have to defend his actions in front of a public hearing with local community leaders.<sup>49</sup> These meetings are recorded and the results reported to the civil servants in charge of justice. If the perpetrator continues to be abusive after this hearing, the police will intervene. According to the Ordinance on Organization and Activities of Reconciliation at the Grassroots, such reconciliation efforts should only be utilized if the incident is not criminal or administrative in nature. However, based on focal groups with police members, it is unclear if they systematically follow this provision, and consistently assess the nature of the incident or determine if the woman who has experienced violence is able to give informed and voluntary consent to participate in reconciliation before referring the survivor to the reconciliation team.<sup>50</sup>

There are a number of concerns about using reconciliation in cases of DV. Based on UNODC research, authorities appear to have a limited awareness of the inter-personal dynamics of violence and how they can impact the survivor's safety or her ability to consent to reconciliation proceedings. For example, the perpetrator will often intimidate the survivor before and during the reconciliation meetings, without the knowledge of the reconciliation teams. This can taint the reconciliation proceedings, since the survivor may agree to any terms in order to mollify the perpetrator. Reconciliation also appears to be used even in cases where there is a history of DV, which indicates that the method is not effectively changing behaviours and ending violence. According to UNODC research, 77% of reconciliation cases did not produce the expected outcome and violence continued.<sup>51</sup> As noted above, the grassroots reconciliation committee might also be concerned about how DV cases could impact the community's chances for receiving "cultural village" financial award, and so they may pressure couples to reconcile even when it goes against the interests of the women who have experienced violence. Ultimately, reconciliation cannot and does not address the root causes of domestic violence or provide a lasting solution for survivors of such violence.<sup>52</sup>

#### *Criminal and Administrative Investigations*

Some cases of domestic violence do move on to the investigation phase in order to begin the prosecution process for administrative sanctions or criminal charges. However, this process presents many challenges as well. In Viet Nam, the woman who has experienced violence is

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<sup>48</sup> Meetings with shelter staff and victims, 13 November 2012, Ha Noi.

<sup>49</sup> Viet Nam, Decree on detailing and guiding the implementation of a number of articles of the Law on Domestic Violence Prevention and Control, No. 08/2009/ND-CP, 4 February 2009. Decree 08 deals with counselling and advice, expressions of criticism in the communities, the application of forbidden contact decisions and shelters.

<sup>50</sup> Focus group discussion with police, 14 November 2012, Hai Duong.

<sup>51</sup> Viet Nam Ministry of Justice, United Nations Office on Drugs and Crime (2009). *Summary of the assessment of current practices of administrative punishment and the use of reconciliation/mediation teams when dealing with cases of DV in Viet Nam*. Ha Noi.

<sup>52</sup> Gardsbane, D., Vu, H.S., Taylor, K., Chanthavysouk, K. (2010). *Gender-based Violence: Issue Paper*. Ha Noi: United Nations Viet Nam.

responsible for initiating an investigation by submitting a complaint.<sup>53</sup> This is problematic for a variety of reasons. First of all, many women are not even aware of this provision and do not know how to submit a complaint, either because of lack of awareness about the process. In rural areas, women may not be able to travel the distance to a police station to submit a complaint. Women also often have heavier workloads at home and less time or access to financial resources to file a written complaint.<sup>54</sup> And since many women consider DV to be “normal” and believe that they should tolerate and endure such violence for the sake of family harmony, few women are willing to file a complaint at all.<sup>55</sup>

Once the police have received a written complaint and begin the investigation, the police need the consent of the survivor if the injury level is below a certain point, according to the Penal Code.<sup>56</sup> Some women withdraw their consent during the investigation for fear of repercussions by the abuser, which hinders the investigative process. In addition, acts of violence are often reported by witnesses, such as family members or Women’s Union representatives, and the survivor may refuse to give her consent to an investigation in this case. It should be noted that where the infirmity rate is over 31%, a serious physical assault has taken place which is clearly criminal in nature and the police are to proceed with an investigation even without the consent of the survivor.<sup>57</sup> In those situations where the consent of the survivor is required to lay a criminal charge, the police should conduct a professional evidence-based investigation and allow the survivor time to decide whether to proceed or not. Furthermore, the police should determine whether the circumstances meet the elements of other Penal Code offences that do not require the consent of the survivors, such as Article 151. This Article prevents “ill-treatment or prosecution” of family members which causes serious consequences or is persistent.<sup>58</sup> While this Article could be used to prosecute DV cases criminally, it is rarely utilized in this fashion. Additionally, administrative sanctions do not require the consent of the survivors and therefore might be an alternative to initiating a criminal investigation where the survivor will not consent.

According to international standards, the primary responsibility for initiating investigation and prosecuting a perpetrator lies with the police and the judicial system. The survivor should not be responsible for initiating an investigation, regardless of the level or type of injury.<sup>59</sup> International research has shown that over-reliance on the survivor’s statement or desire to pursue a

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<sup>53</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 52, Provision 1 and Article 101

<sup>54</sup> World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi.

<sup>55</sup> Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: “Keeping silent is dying.”* Ha Noi.

<sup>56</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 104.

<sup>57</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 104

<sup>58</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 151.

<sup>59</sup> United Nations, General Assembly (2011). *Resolution A/RES/65/228 Strengthening crime prevention and criminal justice responses to violence against women*. Available at:

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/65/228](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/228)

complaint can result in weak investigations.<sup>60</sup> The police need to build a case even when a survivor cannot or will not testify. In Viet Nam, this is a central reason why a significant number of allegations do not proceed beyond the investigation stage.

#### *Interactions with Police and Police Sensitivity to DV*

It is also valuable to examine the woman who has experienced violence's interactions with the police during this process. The police should provide the survivor with reassurance and support, especially during the initial response. According to research in Viet Nam, while most DV survivors considered the police to be polite and sympathetic, many were not satisfied with the result of the police work and thought that the measures taken by the police should have been stricter.<sup>61</sup> Most women who have experienced violence were dissatisfied because the police did not investigate the case or press charges against the perpetrator. The survivors said that they needed more information about the status of the case and what actions the police have taken against the perpetrator, as well as information about available services for their support. The support for survivors and expertise of the staff involved in the investigation of cases of VAW is crucial. International research demonstrates that improving survivor care and support throughout the investigative process in rape cases can result in lower attrition rates (when arrests fail to come to trial) and improved conviction rates.<sup>62</sup>

Anecdotally, the research team learned about instances of corruption, when bribes are paid to police or first responders by abusers. However, there is no detailed information as to how this contributes to attrition rates and challenges for the survivor.<sup>63</sup> Close relations between the officer and the perpetrator can be an obstacle to an adequate police response, especially in small communes and villages.<sup>64</sup> The police interviewed said if this occurs the survivor may complain to higher authorities who are obliged to study the case.<sup>65</sup> However a written document of the survivor is needed and, as explored above, many women who have experienced violence are not willing or able to write such documents by themselves.

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<sup>60</sup> Coordination Action on Human Rights Violations (2008). *Gendering Human Rights Violations: The case of interpersonal violence, Final report 2004-2007*. Luxembourg: Office for Official Publications of the European Communities.

<sup>61</sup> According to UNODC research, while most victims (65%) found it easy to report DV to the police and considered the police to be polite (76%) and sympathetic (72%), nevertheless, many were not satisfied with the result of the police work (47%) and thought that the measures taken by the police were not strict enough (54%) UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper

<sup>62</sup> Coordination Action on Human Rights Violations (2008). *Gendering Human Rights Violations: The case of interpersonal violence, Final report 2004-2007*. Luxembourg: Office for Official Publications of the European Communities.

<sup>63</sup> Raised by former seconded police officer to UNODC. United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha Noi.

<sup>64</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper

<sup>65</sup> Focus group discussion with police, 14 November 2012, Hai Duong.

### *Challenges for Police Response*

Currently, there are no specialized police units to handle VAW or DV investigations.<sup>66</sup> According to focus group discussions with police units, police are specifically train on how to handle DV, even officers at commune and ward levels, who are often the first responders in DV cases. Additionally, women who experience violence may prefer to deal with female police officers or criminal investigators, but there are very few women employed in these roles. International standards dictate that survivors should have the choice of speaking to a female officer.<sup>67</sup>

UNODC is currently implementing a capacity building project for law enforcement officials to address these gaps. However, the UN would like to broaden the scope of the assistance provided in order to include other relevant sectors of the criminal justice system such as prosecutors and judges.

According to in-depth interviews with police officers, another significant challenge for the prosecution of VAW cases is that the mechanisms for law implementation (both for the laws on DV and trafficking in persons) are not yet established. For example, the police is still waiting for guiding circulars and decisions on issuing forbidden contact orders, though the government is in the process of developing such mechanisms.<sup>68</sup> During the “Inter-Ministerial Conference on Challenges and Solutions to Effectively Respond to DV and Enhance the Protection of the Victims of this Form of Crime in Viet Nam” in December 2011, the participants developed several pertinent recommendations. They developed a standardized police protocol for dealing with DV cases, simplified the bureaucratic procedures to file complaints, and enhanced the reporting and filing system to maintain written evidence of all reported DV cases.<sup>69</sup> However, serious cases of violence are still the only ones recorded. These recommendations were echoed in recommendations made by the UN Expert Group Meeting on Good Practices in Legislation on Violence against Women held in 2008. Specifically, this group recommended that the legislation outline the duties of police officers to respond promptly to every request for assistance and protection in cases of VAW.<sup>70</sup> Furthermore, they stated that VAW cases should be assigned the same priority as calls concerning other acts of violence. As they do with other cases, upon receiving a complaint, the police should conduct a coordinated risk assessment of the crime scene and respond accordingly in a language understood by the complainant/survivor. Police should interview the parties and witnesses in separate rooms; record the complaint in detail;

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<sup>66</sup> From in-depth interviews in the UNODC research, and corroborated in discussions with police officers, 14 November 2012, Hai Duong.

<sup>67</sup> United Nations, General Assembly (2011). *Resolution A/RES/65/228: Strengthening crime prevention and criminal justice responses to violence against women.*

<sup>68</sup> Meeting with police officers, 14 November 2012, Hai Duong, and with a representative of VIET NAM Ministry of Public Security, 23 November 2012, Ha Noi.

<sup>69</sup> Findings and recommendations of the Inter-Ministerial conference on challenges and solutions to effectively respond to DV and enhance the protection of the victims of this form of crime in Viet Nam, 1-2 December 2011, Ha Long City, Viet Nam hosted by the Ministry of Public Security General Department of Anti-Crime Police.

<sup>70</sup> United Nations (2008). *Final report of the expert group meeting on good practices in legislation on violence against women.* Vienna.

advise the complainant of her rights; fill out and file an official report of the complaint; provide or arrange transport for the survivor to the nearest hospital or medical facility for treatment, provide or arrange transport for complainant and dependents to another location if required or requested; and provide protection to the survivor of the violence.<sup>71</sup>

*Decisions to prosecute* Once a criminal investigation has commenced, the Criminal Procedure Code provides that the Procuracy should decide to approve (or disapprove) the decision to institute criminal cases according to the request of the investigating bodies and supervise the investigation. Cooperation between the Procuracy and the police is therefore crucial if the prosecution of cases such as rape and domestic violence is to improve. It is unclear whether there is an agreement between these two organisations about how to handle these cases, though MOJ staff indicated that a circular is currently being drafted by the MPS, MOJ and SPP, SPC for domestic violence cases.<sup>72</sup> It was not possible to assess how often the Procuracy, in its role as supervising the investigations, reviewed the police's decision to proceed administratively rather than criminally. There are also no specific guidelines for prosecutors to deal with cases involving VAW. The Supreme People's Procuracy (SPP) did not indicate if it has policies to encourage prosecution of VAW when there is probable cause to believe that a crime has occurred.<sup>73</sup> Based on the available information, there does not appear to be a provision requiring the Procuracy to explain why they discontinue a case either. International research raises the concern that despite education and training, many members of prosecution services continue to believe that VAW does not constitute a crime and discontinue investigations for that reason.<sup>74</sup>

The research team was not able to conduct a full analysis of the charging of perpetrators of VAW to determine if criminal cases are only related to physical violence. Furthermore, no specific information was gathered as to how the decision to charge was communicated to the survivor.

## **Building the Case**

### *Gathering Evidence of VAW*

After the charge is determined and the investigation under way, rules of evidence and the manner in which they are applied also create hurdles for women who have experienced violence seeking justice. Any evidentiary measures should seek to restore and reinforce the women's sense of control, autonomy, self-respect and personal privacy and avoid re-victimizing the survivor. In Viet Nam, Chapter V of the Criminal Procedural Code sets out the evidentiary rules to be followed in all criminal cases. The law calls for evidence to be collected and preserved in a

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<sup>71</sup>*ibid.*

<sup>72</sup> Meeting with Ministry of Justice. See Appendix 3

<sup>73</sup> Meeting with SPP, 23 November 2012, Ha Noi. International standards recommend pro-prosecution policies should be provided for in legislation. See: United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations.

<sup>74</sup> United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations: 3.8.3.

timely manner and to be described in the case file.<sup>75</sup> The types of evidence include: exhibits, testimonies of witnesses, survivors, accused or anyone who has interests and obligations related to the cases (such as police, investigators), experts' conclusions, and minutes of investigation activities and other documents.<sup>76</sup> The minutes of investigating and adjudicating activities should include a record of the arrest, searches, and scene examinations. In order to collect evidence, the investigating bodies, Procuracies and courts may summon persons for searches, examinations, and request that they prepare statements or provide documents.<sup>77</sup> Each piece of evidence is then evaluated in order to determine its legality, authenticity and relevance to the case.<sup>78</sup> International standards note that diligent collection of all evidence is essential in VAW cases.<sup>79</sup> In Viet Nam, there are no specific guidelines for police and investigating bodies regarding evidence gathering for VAW cases nor has there been any study as to the gender sensitivity and survivor centeredness of the existing rules of evidence. Furthermore, there are no explicit national legislative obligations for the authorities to gather evidence in the least intrusive manner possible while protecting the dignity of the woman who has experienced violence.<sup>80</sup>

The Penal Code also places the evidentiary burden on the survivor instead of the perpetrator. This can make the prosecution process particularly challenging for survivors and prevent them from reporting crimes of VAW. In order to prove that rape occurred and the intercourse was non-consensual, the survivor must prove that the intercourse was "against their will." Based on conversations with police officers, this provision places the burden of proof on the survivor and makes the behaviour of the survivor central to the assessment of whether the sexual crime has been committed.<sup>81</sup> International experts assert that sexual assault laws should place the burden of proof on the accused to prove consent and not on the survivor.<sup>82</sup>

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<sup>75</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Articles 74-75.

<sup>76</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 64(2).

<sup>77</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 65.

<sup>78</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 66(1) ...The collected evidences must be sufficient for the successful settlement of criminal cases. (2) Investigators, procurators, judges and jurors shall identify and evaluate all evidences with a full sense of responsibility after studying generally, objectively, comprehensively and fully all circumstances of the cases.

<sup>79</sup> United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations.

<sup>80</sup> Having explicit obligations on authorities to protect the dignity of women in gathering evidence and for it to be gathered in least intrusive manner possible is seen as a good practice by the UN and has been enacted in the Kenyan guidelines to the Sexual Offences Act (2006) . Parliament of Kenya The Sexual Offences Act. No 3 of 2006. Available at [http://www.kenyalaw.org/family/statutes/download.php?file=Sexual Offences Act.pdf](http://www.kenyalaw.org/family/statutes/download.php?file=Sexual%20Offences%20Act.pdf)

<sup>81</sup> Discussion with police officers during the development of the UNODC training materials. See United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha Noi

<sup>82</sup> United Nations (2008). *Final report of the expert group meeting on good practices in legislation on violence against women*. Vienna. United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations. United Nations Entity for Gender Equality and the Empowerment of Women (2012). Virtual Knowledge Centre to End Violence Against Women and Girls, *Programming Module: Legislation*. Available at: <http://www.endvawnow.org/>

### *Survivors' Statements*

A survivor's statements can be used as evidence for the adjudication of a criminal case but is not enough to proceed with a charge.<sup>83</sup> Cases of DV are particularly difficult to investigate since the police usually arrive only after the violence has occurred and may find it difficult to obtain evidence to support the survivor's claim.<sup>84</sup> As discussed above, survivors are often not sure whether they want to officially report their case or they withdraw their complaint during the investigation process. The same issue arises with witnesses, who are often family members of the survivor and give vague statements or withdraw their statements because they consider family matters to be private. Police also frequently do not take comprehensive statements at the scene which presents challenges during later parts of the investigation.<sup>85</sup> For example, during preliminary investigations, only 2% of the women who have experienced violence were asked about sexual violence and 32% were asked about threats<sup>86</sup>.

According to international standards, legislation should provide for the possibility of prosecution in cases of violence against women where the survivor is not able or does not wish to give evidence.<sup>87</sup> In DV situations, some survivors call the police for the sole purpose of stopping that particular incident of violence and do not want to proceed with administrative or criminal charges against the perpetrator. As a result, some survivors might not cooperate fully and might not provide the information required for the police to make a full assessment of the situation. Some survivors also minimize the extent of the violence perpetrated against them or have difficulty providing information to police because of the trauma suffered or from fear of the abuser.<sup>88</sup> Guidelines for evidence gathering should promote a timely, gender-sensitive and survivor-centered process.

### *Medical and forensic evidence*

The law is significantly lacking in the protection of women who have experienced violence with regards to evidence gathering. The law does not ensure proper collection and submission of medical and forensic evidence to court, nor does it mandate the timely testing of collected medical and forensic evidence. According to the UNODC study, the police rarely assessed the injury level (5% of the time) or took photos of the injuries.<sup>89</sup> It is difficult for the police to

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<sup>83</sup> Focus group discussion with police officers, 14 November 2012, Hai Duong.

<sup>84</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

<sup>85</sup> *Ibid.*

<sup>86</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

<sup>87</sup> United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations: 3.9.5.

<sup>88</sup> Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: "Keeping silent is dying."* Ha Noi.

<sup>89</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam* Working paper.

identify different forms of violence (sexual, emotional), so the police mainly record cases of physical violence. Legally, incidents of violence that result in injuries above 11% of infirmity are classified as a criminal offence under Article 104 of the Penal Code and must be investigated. Therefore, all reported cases of violence should be assessed for injuries by a medical examination committee consisting of one or more persons to determine if there are grounds for opening an investigation and make sure the survivor receives adequate medical treatment. However, the evidence shows that this is not happening.<sup>90</sup> Another barrier is that most health care workers do not report to the authorities such as the police if they suspect a woman is the survivor of violence. There is a great need to improve the referral system between agencies and strengthen the collaboration between the law enforcement and health sectors because the police need to have all of the relevant medical evidence to pursue charges against the perpetrator. While the Government is strengthening the evidence process by passing the new Law on Judicial Expertise for example, there are inconsistencies in the legal framework. This law came into force on January 1, 2013 and outlines a detailed process for evidence gathering, with specific regulations on how to collect forensic evidence.<sup>91</sup> However, it is currently not aligned with all Articles of the Penal Code, such as Article 151, which does not require a medical certificate to pursue criminal charges for certain crimes.

Medical and forensic evidence is often crucial for prosecuting cases of DV, but must be collected in a timely and dignified manner that is free of cost and safe for the survivor, and without prejudice about the survivor's ability or willingness to participate in an investigation or prosecution.<sup>92</sup> It was not possible to visit sites where medical and forensic evidence is collected during this assessment, so the research team could not determine whether these services are conducted in a safe and confidential manner for female survivors. However, according to the 2012 study "Estimating the Cost of Domestic Violence Against Women in Viet Nam," survivors are charged for this service. The cost of a forensic exam can range from 850,000 VND to 3,500,000 VND, depending on the severity of the injuries.<sup>93</sup> Furthermore, police will often not proceed with the investigation if the woman who has experienced violence refuses the medical examination. On the other hand, survivors cannot access medical and forensic examinations if they choose not to report the crime to the police or otherwise cooperate with the criminal justice system.<sup>94</sup>

However, criminal investigation and prosecution does not need to rely solely on such evidence. According to international standards, laws should explicitly state that medical and forensic

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<sup>90</sup> *Ibid.*

<sup>91</sup> Viet Nam, National Assembly, Law on Judicial Expertise, No. 13/2012/QH13, 20 June 2012 (came into force on 1 January 2013.)

<sup>92</sup> United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations.

<sup>93</sup> UN Viet Nam (2012) *Estimating the Costs of Domestic Violence Against Women in Viet Nam*. Ha Noi.

<sup>94</sup> Focus group discussion with police officers, 14 November 2012, Hai Duong.

evidence are not required in order to convict a perpetrator.<sup>95</sup> This recognizes that it might not always be possible to get such evidence for criminal court for a variety of reasons. For example, in situations of sexual violence, the survivor might have bathed after the assault which can compromise the evidence, or might not have sought assistance immediately due to social biases.<sup>96</sup> There is also often a lack of available facilities or personnel trained in the collection of evidence in cases of VAW in a manner sensitive to the survivor.<sup>97</sup>

In Viet Nam, though the law does not require the medical certificate to proceed with the investigation, in practice, if the survivor refuses to be examined, the police will conduct a reconciliation session after requiring the survivor to sign a document that they will not commence any lawsuit against the police for failing to investigate.<sup>98</sup> Police training materials indicate that authorities should be mindful of the vulnerability of the survivor and encourage her to seek medical treatment even if she will later not want to proceed with criminal charges.<sup>99</sup> However, in fact, the absence of a medical certificate often prevents the police from continuing the investigation.<sup>100</sup>

### *Expert evidence*

Theoretically, the law allows for the submission of written evidence from experts for prosecution of a case, though the mission team was not able to review data to determine if experts are used in VAW cases.<sup>101</sup> International standards note that expert testimony on common behaviour for domestic violence or sexual assault survivors can provide valuable guidance when prosecuting such cases.<sup>102</sup> For example, judges might be sceptical of a rape survivor who did not fight off her perpetrator or waited a long time to report the crime. However, experts can explain that it is common for women who have experienced violence to be unable to protest the act of violence as it is occurring due to shock or fear and many

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<sup>95</sup> United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations: 3.9.5.

<sup>96</sup> Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: "Keeping silent is dying."* Ha Noi.

<sup>97</sup> *Ibid.*

<sup>98</sup> Focus group discussion with the police during the development of the UNODC training materials. See United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha Noi

<sup>99</sup> UNODC training materials for police officers on responding to DV. United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha Noi

<sup>100</sup> Focus group discussions with police. confirmed also by representatives from the VWU, during the development of the UNODC training materials. See United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha No

<sup>101</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 73 (2) In cases where the procedure-conducting bodies disagree with the expertise conclusions, they must clearly state the reasons, if such conclusions are unclear or incomplete, the procedure-conducting bodies shall decide to solicit additional expertise or re-expertise according to general procedures.

<sup>102</sup> United Nations Entity for Gender Equality and the Empowerment of Women (2012). Virtual Knowledge Centre to End Violence Against Women and Girls, *Programming Module: Legislation*. Available at: <http://www.endvawnow.org/>

survivors do not report the incident immediately because they are ashamed or want to pretend that it never happened.

### **Prosecution of VAW**

As illustrated above, there are many challenges during the evidence gathering process for the prosecution of cases of VAW. However, the challenges do not end once the evidence is gathered and the case goes to trial.

#### *Legal Aid*

Few survivors of VAW are properly equipped with the legal support to proceed with the process. Most cases are not brought to the attention of legal aid providers and many survivors are not eligible for government appointed legal aid. As determined by the 2006 Legal Aid Law, only individuals who fall under the following categories can receive legal aid: individuals who are poor, elderly, have disabilities, are veterans or veterans' family members or belong to an ethnic minority group with difficult socio-economic conditions<sup>103</sup>. Women whose family/household income is above the poverty line (400,000 VND/month in rural areas or 500,000 VND/month in urban areas) cannot access these services, even if they themselves cannot access the family income.<sup>104</sup> In an effort to specifically address VAW, the MOJ passed Circular No. 07 in 2011 which identifies categories of women that are to be prioritized by legal aid organizations when providing assistance. These groups include women who have experienced DV, human trafficking, exploitation, and sexual abuse. However, there is some confusion about the legal effect of this Circular since the Legal Aid Law has not been revised to include this provision. Therefore, the Circular is not being applied consistently throughout Viet Nam.

#### *Trial*

In Viet Nam, there are a number of special measures available for survivors of VAW to facilitate their participation in the trial. The court can designate a "closed trial" if the survivors' privacy needs to be protected.<sup>105</sup> Before the trial the judge can issue a decision to temporarily detain the accused if there are grounds to suggest that the accused has threatened or infringed on the survivor's life, honour, dignity or their relatives, which can hinder the trial process.<sup>106</sup> If the prosecutor is aware of such circumstances, they are obligated to bring the matter to the attention of the court. International standards recommend that cases of VAW should be closed to protect the identity of the survivor and to ensure a fair and impartial proceeding.<sup>107</sup> In all cases, the plaintiff should be informed of her right to request confidentiality during the trial. Other measures can be taken to ensure that the survivor does not need to come into contact with the perpetrator during the trial. For example, the survivor's seat can be arranged far from

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<sup>103</sup> Viet Nam, National Assembly, Law on Legal Aid, No. 69/2006/QH11, 12 July 2006: Article 10.

<sup>104</sup> Centre for International Economics (2002). *Viet Nam Poverty Analysis*. Canberra. Available at: [http://www.usaid.gov.au/Publications/Documents/vietnam\\_poverty\\_analysis.pdf](http://www.usaid.gov.au/Publications/Documents/vietnam_poverty_analysis.pdf)

<sup>105</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 18.

<sup>106</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 80.

<sup>107</sup> Chiongson, Rea Abada (2009). *CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW*. Ha Noi: United Nations Fund for Gender Equality (UNIFEM).

the defendant's seat, or the court can arrange another room for the survivor, so that she only needs to come into the courtroom to give her testimony. The defendant can also be escorted out before the survivor enters the room to make sure they do not see each other in person. Statements will then be read in court. The court can ensure that the defendant does not ask questions that will embarrass the survivor and are not relevant to the case at hand.

However, it appears that these special measures are not automatically applied and survivors have to request them in advance of the trial. It was not possible to obtain data as to how often these measures are used for vulnerable survivors. It was also unclear if the judges or procurators were able to identify intimidated or vulnerable witnesses and if they had guidance for doing so. Some research in other countries noted that judges often deny special measures such as the use of screens in domestic violence cases on the basis that the accused and survivor already know each other.<sup>108</sup> This indicates that the judge might not appreciate the dynamics of domestic violence and the power and control that the accused can exercise over the survivor.

In addition to special measures during the trial, international experts recommend that the court provide separate child-friendly waiting areas for women survivors who have to bring their children with them to court.<sup>109</sup> This can reduce survivors' anxiety and help them to concentrate on providing their testimony to the court. The mission team was not able to visit any courthouses, so it was not possible to assess the infrastructure available for survivors.

#### *Evidentiary Issues during the Trial*

In some jurisdictions, evidentiary laws can be applied in a discriminatory way during VAW cases. For example, courts may allow information about a survivor's previous sexual history or make assumptions about the survivor if she delayed reporting the crime. Information on how the evidentiary rules in the Criminal Procedure Code are implemented in VAW cases was not available and therefore it was not possible to assess whether all relevant evidence comes before the court in Viet Nam. In its review of the legislation, UN experts recommended that in prosecutions for rape, rape of children, forcible sexual intercourse and forcible intercourse with children, evidence of the survivors past sexual conduct, opinions or reputation should not be admitted by the courts as evidence.<sup>110</sup> Anecdotal information suggests that courts do not allow the introduction of the survivor's sexual history as they view it as irrelevant.<sup>111</sup>

No data was available to determine whether courts draw any adverse inference from a delay of any length between the alleged act of violence and the reporting thereof. However from anecdotal information, it would appear that such cases will not proceed to trial since the delay between the time of the incident and the reporting reduces the possibility of obtaining forensic

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<sup>108</sup> Commission on Women and the Criminal Justice System (2009). *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

<sup>109</sup> United Nations Entity for Gender Equality and the Empowerment of Women (2012). Virtual Knowledge Centre to End Violence Against Women and Girls. Available at: <http://www.endvawnow.org/>

<sup>110</sup> Chiongson, Rea Abada (2009). *CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW*. Ha Noi: United Nations Fund for Gender Equality (UNIFEM).

<sup>111</sup> Meeting with the representatives from the Ministry of Justice. See Appendix 3

evidence, and there is an over reliance on forensic examinations as key evidence.<sup>112</sup> Although the law technically does not require forensic examinations to provide corroborating evidence in support of the survivor’s statement, police officers suggested that without corroboration, the investigation and prosecution will not proceed.<sup>113</sup> However, due to the difficulty of obtaining such evidence, international experts recommend corroboration should not be required in cases of sexual violence.<sup>114</sup>

Like police officers and procurators, judges are also influenced by societal conceptions of VAW, which can affect their assessment of the credibility of a witness. For example, judges may not consider trafficked women to be reliable sources for specific information because they are often kept in isolation and prevented from gaining access to certain information. In cases of rape, judges may be biased against sex workers, or believe that use of alcohol makes the survivor responsible for the incident. Such biases, which are based in societal gender stereotypes, could be mediated by providing judges with clearer guidance on how to assess the evidence objectively.<sup>115</sup> Interviews from the study, “Estimating the Cost of Domestic Violence Against Women in Vietnam” indicated that none of the court officials interviewed received specialized training on domestic violence issues.<sup>116</sup>

### *Sentencing and Convictions*

Ultimately, the issues with the investigation and prosecution process result in a high attrition rates (when the arrest does not come to trial or result in a conviction) and low conviction rates for cases of VAW. In a review of DV cases, a UNODC research found that only 8 out of 46<sup>117</sup> cases that were brought to the court, led to a conviction.<sup>118</sup> This means that only 1 in 100 reported cases of domestic violence led to a conviction in court. The assessment team did not have sufficient data to analyze the reasons why cases are dropped, or at what stage in the process this occurs (at the time of reporting, investigating, or prosecuting), or who is responsible for the attrition (the police or the Procuracy) but the numbers are significant. Data was not available to

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<sup>112</sup> From discussions with police officers in Hai Duong, meeting with the Ministry of Justice, SPP and SPC during the development of the UNODC training materials. See United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha No

<sup>113</sup> From discussions with police officers during the development of the UNODC training materials. See United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha No

<sup>114</sup> United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations: 3.9.7.

<sup>115</sup> Chiongson, Rea Abada (2009). *CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW*. Ha Noi: United Nations Fund for Gender Equality (UNIFEM).

<sup>116</sup> UN Viet Nam (2012) *Estimating the Cost of Domestic Violence Against Women in Viet Nam*. Ha Noi.

<sup>117</sup> This data come from interviews conducted in 2009 as part of the following working paper: UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam*” Working paper.

<sup>118</sup> UNODC in collaboration with the Research Centre for Gender and Development in Ha Noi and the European Institute for Crime Prevention and Control (HEUNI) (2011) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam*”Working paper

the mission team on cases of rape, sexual violence, human trafficking in persons, forced marriages, and forced prostitution to analyze conviction rates for those crimes, but anecdotal evidence suggests that very few rape and sexual violence cases come before the criminal courts.<sup>119</sup> This is similar to international trends, according to the International Violence Against Women Survey.<sup>120</sup>

Women who have experienced violence need to have confidence in the Procuracy before they can be confident in reporting crime and pursuing a legal case.<sup>121</sup> Conviction rates indicate the responsiveness of the criminal justice system to certain cases. Convictions for crimes against women can deter perpetrators as well as encourage survivors to have confidence in the justice system. As previously noted, no data was available to examine the sentencing policies and procedures that apply to VAW crimes. Therefore it was not clear whether sentencing in Viet Nam meets the international standards of holding the offender accountable, denouncing and deterring VAW, stopping violent behaviour, ensuring safety of the survivor, providing reparations for harm caused, and promoting rehabilitation and reintegration of the perpetrator.<sup>122</sup>

### **Other Support Mechanisms for Survivors**

As explored throughout this chapter, women survivors confront many challenges within the criminal justice system. This section will briefly explore the availability of other support services in addition to the criminal justice responses.

The DV Law determines which government agencies are responsible for organizing counselling centres and survivor support centres. There are some healthcare support services piloted by UNFPA and NGOs to provide counselling for survivors but these are inconsistently available throughout Viet Nam and particularly absent in rural areas.<sup>123</sup> Additionally, there is currently no governmental shelter system to provide survivors with safety and protection services.

Survivors of DV especially require timely access to health care and support services to respond to acute injuries and protect them from further violations, as well as to address their longer-term needs. In Viet Nam, such services have only recently been mandated by law through the DV Law. As a result, they are often provided by the VWU or NGOs with limited financial means and with unpredictable funding from Government. As a consequence, many women who have

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<sup>119</sup> Interview with police officers and SPC, 14 November 2012, Hai Duong.

<sup>120</sup> Johnson, H., Ollus, N., Nevela, S. (2008) *Violence Against Women: An International Perspective*. Helsinki: European Institute for Crime Prevention and Control (HEUNI).

<sup>121</sup> Commission on Women and the Criminal Justice System (2009). *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

<sup>122</sup> These objectives are set out in: United Nations, General Assembly (2011). Resolution A/RES/65/228: Strengthening crime prevention and criminal justice responses to violence against women. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/65/228](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/228)

<sup>123</sup> United Nations, Population Fund (2012). *Domestic Violence Prevention and Response in Viet Nam: Lessons Learned from the Intervention Model in Phu Tho and Ben Tre Provinces*. Ha Noi.

experienced violence do not receive support services, or receive services that are insufficient.<sup>124</sup> The State needs to ensure that gender-specific, survivor-centred, empowering and comprehensive support is available to women survivors of violence either through state institutions or CSO women's organizations.<sup>125</sup> UNFPA is supporting a project to develop a minimum intervention package for DV survivors, including health care services, referral systems and primary interventions.

### *Shelters*

In Viet Nam there are two shelters for DV survivors and nine shelters and reception centres for trafficking women that provide food, accommodation, medical care, counselling, vocational training and legal aid.<sup>126</sup> Health facilities can also allow survivors to stay in the hospitals for a couple of days to prevent further violence. However, survivors still have few options for governmental shelter. As a result, 20% of women who have experienced DV leave their homes after a violent incident with nowhere to go and must return to an abusive situation.<sup>127</sup> Shelters are operated by the VWU and NGOs and supported by MOLISA and international donors. Based on the available information, it appears that the shelters have primarily been funded by international donors. Given the current international economic climate, there is a concern about the shelters' financial sustainability.<sup>128</sup>

### *Health services*

Women who experience domestic violence utilize health care services more than women who do not experience violence.<sup>129</sup> However, health care services are not consistently available throughout Viet Nam.<sup>130</sup> The main barrier that prevents survivors from accessing health care services is cost. Survivors are charged for receiving health care services and forensic examinations.<sup>131</sup> The study, "Estimating the Cost of Domestic Violence in Viet Nam," found that, of the study's sample, an average of 65,124,000 VND was spent by women for health services following a DV incident.<sup>132</sup> As mentioned above, the cost of forensic examinations can range

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<sup>124</sup> 87% of victims never sought for support from formal services or local duty bearers. Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: "Keeping silent is dying."* Ha Noi.

<sup>125</sup> United Nations, Population Fund (2012). *Domestic Violence Prevention and Response in Viet Nam: Lessons Learned from the Intervention Model in Phu Tho and Ben Tre Provinces.* Ha Noi.

<sup>126</sup> Viet Nam, Inter-Ministerial Circular Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad, No. 03/2008/TTLC-MPS-MOD-MOFA-MOLISA, 8 May 2008. Viet Nam, Decision on promulgating the regulation on reception of, and community reintegration support for, trafficked women and children home from foreign countries, No. 17/2007/QD-TT, 29 January 2007. Viet Nam, Ministry of Justice, Circular on guiding the realization of gender equality in legal aid personnel and activities, 31 March 2011. Viet Nam, National Plan of Action Against Crime of Trafficking in Children and Women during 2004-2010 (Attachment to Decision No. 130/2004/QD-TTg), 14 July 2004.

<sup>127</sup> Viet Nam, General Statistics Office (2010). *Results from the National Study on Domestic Violence against Women in Viet Nam: "Keeping silent is dying."* Ha Noi.

<sup>128</sup> Information obtained from meeting with the representatives of the VWU, the staff at Peace House in Hanoi and meeting with international donors. See Appendix 3.

<sup>129</sup> UN Viet Nam (2012). *Estimating the Cost of Domestic Violence Against Women in Viet Nam.* Ha Noi.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

from 850,000 to 3,500,000 VND. In 2009, the Ministry of Health (MOH) issued Circular No. 16 in order to guide the health care system in its provisions of health care, treatment, counselling, screening and reporting in situations of domestic violence.<sup>133</sup> This Circular mandates a budget for DV treatment, but hospitals are responsible for assigning funds and have not prioritized this aspect of their work. As a result, some hospitals have relied on support from UNFPA and the Ford Foundation to implement the provisions in Circular No. 16. However, this type of funding is unsustainable and is restricted a small number of hospitals that are implementing a pilot system.<sup>134</sup>

### *Counselling*

According to the Law on Legal Aid, Viet Nam should have a network of counselling centres available for survivors. Some centres are available on hospital premises or work in collaboration with hospitals at other sites. Civil society organisations have also organized self-help groups.<sup>135</sup> Another means of providing counselling in Viet Nam is through emergency telephone hotlines, which provide psychological counselling and legal support.<sup>136</sup> However, because these telephone hotlines are operated by NGOs and are not nationalized, survivors have limited access to the service. There is a need for more information on the availability and use of medical and psychological assistance for survivors and whether survivors access or know of these services. It is also unclear how the counselling services are connected with the criminal justice system for DV cases.

## **PART II: NEEDS, GAPS AND RECOMMENDATIONS**

Based on the review of available data, this report offers several recommendations for the government to improve the criminal justice systems' response to VAW and provide better protection, prevention and remedy for survivors of VAW.

### **1. Strengthen Legal Provisions for VAW cases and Revise the Penal Code**

Since the Penal Code is currently under review, the following section provides some suggestions for consideration for redefining offences that can be used to ensure effective investigation, prosecution and punishment of perpetrators and to provide justice for the survivors of specific forms of VAW.<sup>137</sup> It also examines several other gaps in the current legislation and suggests areas for improvement.

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<sup>133</sup> Viet Nam, Ministry of Health, Circular on providing guidance to the health care system on screening, counseling, treatment and reporting of domestic violence victims, No. 16/2009/TT-BYT. September 22, 2009.

<sup>134</sup> United Nations, Population Fund (2012). *Domestic Violence Prevention and Response in Viet Nam: Lessons Learned from the Intervention Model in Phu Tho and Ben Tre Provinces*. Ha Noi.

<sup>135</sup> Interview with CSAGA. See Appendix 3.

<sup>136</sup> The VWU informed the mission team that they support hotlines in some localities and that there are some hotlines managed by NGOs. They recognize the need for a national hotline. See Appendix 3.

<sup>137</sup> A more in-depth analysis to assist the Penal Code revision exercise is one of the proposed possible future interventions discussed at the end of this Chapter.

### *Rape and other sexual violence*

Rape and forcible sexual intercourse are criminalized in Viet Nam.<sup>138</sup> However, as discussed above, the current legal framework places the evidentiary burden on the survivor instead of the perpetrator since the survivor has to prove that the sexual encounter was against her will. The UN Expert Group Meeting on Good Practices in Legislation on Violence against Women in 2008 recommended that sexual assault laws focus on the provision of consent, not the use of force or violence in prosecuting sexual crimes.<sup>139</sup> According to this group, the accused should be responsible for proving that the survivor provided “unequivocal and voluntary agreement” to the sexual encounter. The accused should provide proof steps taken to ascertain whether the complainant provided consent. The onus is therefore on the perpetrator to prove his or her innocence, instead of on the survivor. Furthermore, sexual assault laws should remove any requirement of proof of penetration and focus instead on a broad range of sexual acts in order to recognize that survivors may engage in sexual acts unwillingly but do not protest because of power differentials between the survivor and perpetrator. In 2009 UNIFEM commissioned a review of Vietnamese laws in 2009 and the report suggested that the definition of rape and other forms of sexual assault should prohibit a range of sexual acts.<sup>140</sup> Currently in the Penal Code, non-consensual intercourse is the only type of sexual crime that can occur to women and girls over 16 years old, which prevents women from being able to receive justice for other types of sexual crimes.<sup>141</sup> Sexual molestation is only considered a crime if it is perpetrated against children under 16 years of age.<sup>142</sup> The experts also suggested that Viet Nam specifically criminalize sexual assault within a relationship and marital rape.<sup>143</sup> While there is no explicit exclusion in the Penal Code for marital rape, due to the prevailing cultural attitudes about a husband’s entitlement to sex, marital rape has never been prosecuted criminally. Marital rape is classified as an administrative violation in the DV Law, but the inclusion of marital rape in the Penal Code would help shift cultural attitudes and promote legal enforcement of prosecution of this type of crime.<sup>144</sup>

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<sup>138</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 111 (rape); Article 113 (forcible sexual intercourse); Article 112 (rape against children); Article 114 (forcible sexual intercourse against children); Article 115 (sexual intercourse with children).

<sup>139</sup> The Expert Group Meeting on Good Practices on VAW legislation United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women (2010). *Handbook for Legislation on Violence Against Women*. New York: United Nations. United Nations Entity for Gender Equality and the Empowerment of Women (2012). Virtual Knowledge Centre to End Violence Against Women and Girls. Available at: <http://www.endvawnow.org/>

<sup>140</sup> Chiongson, Rea Abada (2009). *CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW*. Ha Noi: United Nations Fund for Gender Equality (UNIFEM).

<sup>141</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 116.

<sup>142</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 116.

<sup>143</sup> United Nations (2008). *Final report of the expert group meeting on good practices in legislation on violence against women*. Vienna.

<sup>144</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 111 (rape); Article 113 (forcible sexual intercourse); Article 112 (rape against children); Article 114 (forcible sexual intercourse against children); Article 115 (sexual intercourse with children).

### *Domestic Violence*

Domestic violence (DV) is not explicitly defined as a crime in the Penal Code. Incidents of physical violence are only considered criminal if the incident inflicts a certain level of physical harm.<sup>145</sup> As discussed above, forensic examiners must provide a medical certificate that assesses the physical infirmity rate to be above 11% for the assault to be considered a crime, unless there were aggravating circumstances (such as an attack on a pregnant woman).<sup>146</sup> The survivor must consent to proceed with a criminal investigation where the infirmity rate is under 31%. If the infirmity rate is more than 31%, the police, investigating officers and procurators can proceed with criminal charges without the survivor's agreement.

It is not easy to fit the typical pattern of DV that causes different types of harm into the offence of intentionally inflicting injury unless one incident of violence has caused a serious and permanent injury. However, repeated acts of DV (involving all or some physical, psychological, sexual or economic abuse) may be criminalized under the offence of ill treatment or persecution if it causes serious consequences<sup>147</sup>. This is a useful definition for DV as it can cover those cases where there has been a pattern of repeated and persistent abuse, and the abuse can be a range of acts, not just physical violence. It also does not require the survivor's consent to proceed with a charge nor a medical certificate. There appears no need to prove that the accused intended to cause injury or health damage. However, this provision is not often used and perhaps further guidance is needed for police and procuracy to apply this offence. The prohibited range of acts from physical, sexual, psychological and economic as defined in the Law on Domestic Violence Prevention and Control do not create penal offences but rather administrative violations.

### *Trafficking in women and girls*

The recently passed Human Trafficking Law expands the definition of trafficking in persons to include forms of trafficking prohibited in the Penal Code under articles 119 (trafficking in persons) and 120 (trading in, fraudulently exchanging or appropriating children).<sup>148</sup> In order to hold perpetrators accountable for trafficking crimes prohibited under the new law, the

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<sup>145</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 104.

<sup>146</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 104 provides 4 categories of infirmity rates. Inter-Circular No 12/1995 provides infirmity rate standards used by forensic examiners. The Code therefore focuses on one incident of violence and the percentage of permanent physical harm. For example, scarring in lower parts of the throat, causing difficulties to speak and swallow (41-45%); throat injuries causing difficulties in swallowing (21-25%); loss of hearing in one ear (25%); loss of function in right thumb (30%); loss of function in left thumb (20%); fracture in the skull, which will heal but have long term consequences (21-25%); 3-5 broken ribs with slight impacts on respiration (10-12%); broken nose without impacts on respiration / smelling (10%); and burn scars on feet, leading to difficulties in moving (21-24%).

<sup>147</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 151.

<sup>148</sup> United States of America, Department of State (2012). *Trafficking in Persons Report 2012*. Washington, DC. Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 119 prohibits trafficking in persons; Article 120 prohibits trading in, fraudulently exchanging or appropriating children; Articles 266-268, 284 defines other offences that could be applied to the process of trafficking and crimes relating to document fraud; Article 251 prohibits laundering of proceeds of crime; Article 257 prohibits coercing other persons to stay in foreign countries.

government must issue detailed instructions establishing the criminal or administrative penalties for these crimes. The United States Department of State 2012 Trafficking in Persons Report raised the concern that judicial officials may interpret the Penal Code provisions to apply only to cases that involve a third party exchange of payment.<sup>149</sup> Additionally, the report noted that some trafficking cases are being criminally prosecuted as human smuggling, while other cases are administratively punished under the country's labour laws, which do not carry criminal penalties. This inconsistency can detract from the effectiveness of the law, since there are no significant penalties for trafficking, and thus, no effective deterrent to prevent perpetrators from committing this crime.<sup>150</sup> While the Penal Code refers to the trafficking of women, these laws are inadequate to prosecute perpetrators. Additionally, since the government does not provide witnesses with witness protection, survivors often fear retaliation for reporting and are unlikely to report such crime, which allows such behaviour to continue. The Penal Code should thus comprehensively criminalize all forms of trafficking and establish adequate punishment for perpetrators.

#### *Stalking and sexual harassment*

Stalking and sexual harassment are not defined or criminalized in any Vietnamese legislation, but clearly they affect the health, safety and well-being of many women. The recently revised Labour Code prohibits sexual harassment in the workplace but does not provide a clear definition for such acts.<sup>151</sup> The revision of the Penal Code should include a definition of sexual harassment and stalking in order to protect women. The 2008 UN Expert Group Meeting on Good Practices in Legislation on Violence against Women and the CEDAW committee both suggest comprehensive definitions which could be useful for Vietnamese policy makers. The Expert Group defined sexual harassment as *“unwelcome sexually determined behaviour in both horizontal and vertical relationships, including in employment (including the informal employment sector), education, receipt of goods and services, sporting activities and property transactions.”*<sup>152</sup> Unwelcome sexually determined behaviour includes, *“physical conduct and advances; a demand or request for sexual favour; sexually colored remarks; displaying sexually explicit pictures, posters or graffiti; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.”*<sup>153</sup> Alternatively, the CEDAW committee defines sexual harassment as *“unwelcome sexually determined behaviour [such] as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in*

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<sup>149</sup> United States of America, Department of State (2012). *Trafficking in Persons Report 2012*. Washington, DC.

<sup>150</sup> *Ibid.*

<sup>151</sup> Viet Nam, National Assembly, Labour Code, No. 10/2012/QH13, 18 June 2012: Article 8.

<sup>152</sup> United Nations (2008). *Final report of the expert group meeting on good practices in legislation on violence against women*. Vienna.

<sup>153</sup> *Ibid.*

*connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”<sup>154</sup>.*

Either of these definitions could help clarify existing laws on sexual harassment and ensure that such behaviours are not tolerated.

#### *Other Legislative Changes*

There are a number of provisions of the criminal procedure, legal aid, and evidentiary laws that should be revised to ensure a more effective investigation, prosecution and punishment of perpetrators and to provide better justice for the survivors of VAW.

These include:

- Reinforcing the prohibition of mediation in criminal VAW cases.
- Legal provisions to encourage timely and expedited proceedings in cases of VAW.
- Legal provision stating that the primary responsibility for initiating investigation and prosecution lies with the police and the Procuracy and does not rest with the survivor.
- Free legal aid for survivors of VAW. There is a need to address the confusion over the Circular No. 7 and the Legal Aid Law.
- Further elaboration of the rights of survivors during the criminal justice process (special measures to facilitate survivors’ testimony, right to speak to female officer, etc).
- Clarification of issues relating to the collection and submission of evidence, particularly the need for a medical certificate and the use of experts and allowing for “survivor absent” prosecutions.
- Further clarification of laws is needed for the application and provision of forbidden contact orders.
- Legal provisions to clearly define the duties of the police, Procuracy and courts in VAW cases.

## **2. Improve implementation and monitoring and evaluation of existing laws and policies on VAW**

Viet Nam has made significant progress in enacting legislation to prohibit VAW, which demonstrates the Government’s strong commitment to eliminating such violence. However, these laws have not been fully implemented. In order to effectively implement legislation on VAW, it is essential to build the capacity of law enforcement agencies in this area. There are currently programs in place to train local police and representatives from the VWU, but the Government should expand training programs for other criminal justice professionals, particularly prosecutors and judges, and consider a pilot model with specialized police officers or units to address VAW. The Government should also institute a comprehensive monitoring and evaluation system in order to ensure accountability, and develop performance

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<sup>154</sup> United Nations, Committee on the Elimination of Discrimination Against Women (1992). *CEDAW General Recommendations No. 19: Violence Against Women*. Available at: <http://www.refworld.org/docid/453882a422.html>

measurement indicators to measure criminal justice agencies' responses to VAW. The UN is working with the government to develop standard minimum intervention packages for women who experience violence but should provide additional support to enhance legal protection mechanisms and improve coordination between the criminal justice system and other sectors.

### **3. Conduct further research and analysis to develop evidence-based policies and programmes**

One of the major challenges to completing this assessment was the lack of comprehensive information on VAW and the criminal justice system in Viet Nam. Additionally, much of the data that does exist is not available to the public. While recent studies have focused on the prevalence and nature of DV, there is little information about other forms of VAW, such as rape and sexual violence, forced prostitution and sexual harassment. It is essential to collect sex-disaggregated data in a systematic way and make it available in order to fully analyze the prevalence of VAW and evaluate current responses to violence in order to develop effective solutions and prevention strategies.

Specifically, it would be valuable to conduct further research on police responses to VAW and the practices of the Procuracy and the courts in VAW cases and how the criminal law, criminal procedural law and evidentiary issues are implemented in such cases. This information would be especially useful to analyze attrition rates for VAW cases and determine why and when such cases are dropped in order to suggest improvements to the system and ensure that justice is served for survivors of VAW. Further information is needed about support services for female survivors of violence (referrals by police, legal aid, Procuracy, courts, or self-referral, public dissemination) and about the accessibility of these services for women who choose not to report to the police or pursue legal processes in order to improve the service provision process. It would also be helpful to collect information about levels of public awareness and public attitudes of VAW cases and survivors in order to understand which crime prevention strategies will be effective in Viet Nam. More information is required regarding the use of administrative sanctions and reconciliation and how this fits into underreporting and attrition rates. Additionally, since the government recently established statistical departments in all ministries, it is essential to utilize this mandate to collect comprehensive and sex disaggregated statistical data about VAW throughout the country. The UN Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly in December 2010, can provide guidance to develop and strengthen mechanisms for systematic and coordinated data collection on VAW.<sup>155</sup>

## **CONCLUSION**

Based on this assessment, it is clear that the criminal justice system needs to be improved to provide women who have experienced violence with justice and protection. Viet Nam should consider adopting these recommendations to improve the system for women and improve the

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<sup>155</sup> See Section IX: United Nations, General Assembly (2011). *Resolution A/RES/65/228: Strengthening crime prevention and criminal justice responses to violence against women*. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/65/228](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/228)

experience of women survivors in the criminal justice system. The next chapter will explore the experience of women who come into conflict with the law. Though these two groups of women interact with the criminal justice system for very different reasons, the overarching themes of gender discrimination and inequality persist.

## CHAPTER 2: WOMEN IN CONFLICT WITH THE LAW

### PART I: OVERVIEW AND ANALYSIS

As discussed in the previous chapter, women's experiences with the justice system both as survivors and perpetrators of crimes, are different from men's. This is because of gender inequality and gender-based discrimination which is rooted in social norms and stereotypes. In some cases the justice system itself reinforces socially assigned roles and stereotypes about women being the "weaker sex," and can be gender blind when it comes to women's specific needs. This section provides a preliminary overview of issues of concern to women who are in conflict with criminal and administrative law, from the point at which they enter the justice system as accused, to incarceration and reintegration into the community. It then outlines some of the key provisions of laws (national and international) specifically related to women held in custody or detention.

The information in this chapter is based on a desk review of relevant Vietnamese laws and sub-laws, and selected international research on experiences and needs of women offenders. Additional information is drawn from interviews with members of the Supreme People's Procuracy (the Procuracy), the Department of Supervision of Custody, Detention, Correction and Rehabilitation of Prisoners (Department 4), prison staff, and some women prisoners (see Appendix 5: Mission to Phu Son 4 Prison).

#### The Normative Framework

Viet Nam is signatory to various international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR),<sup>156</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>157</sup> and the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>158</sup> Viet Nam has not yet ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>159</sup> In 2010, the UN General Assembly adopted the Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)<sup>160</sup>. These rules supplement the Standard Minimum Rules for the Treatment of Prisoners (Standard

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<sup>156</sup> United Nations, General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p.171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>

<sup>157</sup> United Nations, General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations Treaty Series, vol. 993, p.3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>

<sup>158</sup> United Nations, General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 14 December 1990, A/RES/45/124, available at: <http://www.refworld.org/docid/3b00efe914.html>

<sup>159</sup> United Nations, General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p.85, available at: <http://www.refworld.org/docid/3ae6b3a94.html>

<sup>160</sup> United Nations, Economic and Social Council, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, 22 July 2010, E/RES/2010/16, available at: <http://www.refworld.org/docid/4d92e5392.html>

Minimum Rules)<sup>161</sup> and are the first comprehensive international guidelines for addressing the range of needs specific to women prisoners, detainees and those subject to non-custodial security measures.

The Constitution of Viet Nam stipulates that everyone is equal before the law, regardless of sex.<sup>162</sup> The Penal Code defines criminal offences and sets out respective punishments, and the Criminal Procedure Code (CPC) governs the procedures related to investigation, prosecution and adjudication of crimes. The rights and obligations of prisoners in Viet Nam are provided under the 2010 Law on Execution of Criminal Judgements; and the Law on Special Amnesty and Decree No. 117/2011/ND-CP.

### **The Social Context**

As illustrated in Chapter One, Viet Nam still remains a patriarchal society with strict conceptions of gender norms. These attitudes apply to women who commit crimes as well. In many countries, including Viet Nam, crimes committed by women are perceived as a less serious societal problem than crimes committed by men.<sup>163</sup> Women are considered survivors who are “pushed” to commit crime due to their situation or that they are only ever accomplices to crime, and therefore “their motivation is not similar to that of men and bear[s a] less vile nature.”<sup>164</sup> According to anecdotal evidence, women in Viet Nam do commit fewer crimes. A focus group discussion with police officers suggested that women accused and/or convicted of crimes make up just 10% of all cases.<sup>165</sup> According to stakeholders interviewed for this study, in most cases women are charged with crimes related to drug trafficking;<sup>166</sup> the sex industry (eg. running brothels, harbouring sex workers, or transmitting HIV/AIDS to buyers of sex);<sup>167</sup> human trafficking;<sup>168</sup> and economic crimes such as corruption, fraud and trading in prohibited goods.<sup>169</sup> However, no verifiable data was provided to substantiate these claims about the types of offences committed by women, or the number of women accused and/or convicted of crime in Viet Nam.

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<sup>161</sup> United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at: <http://www.refworld.org/docid/3ae6b36e8.html>

<sup>162</sup> Viet Nam, National Assembly, Constitution of the Socialist Republic of Viet Nam, 15 April 1992: Article 52.

<sup>163</sup> United States of America, Department of Justice, National Institute of Justice (2000). *Research on Women and Girls in the Justice System: Plenary Papers of the 1999 Conference on Criminal Justice Research and Evaluation – Enhancing Policy and Practice through Research*, Vol. 3. Washington, DC. Mahony, Tina (2011). *Women and the Criminal Justice System*. Ottawa: Statistics Canada.

<sup>164</sup> JOPSO, NH Quang & Associates (2008). *Survey Report on Assurance of Gender Equality in the Court System in Viet Nam and in Adjudicating Activities*. Ha Noi.

<sup>165</sup> Focus group discussion with police officers, 14 November 2012, Hai Duong.

<sup>166</sup> Interview with NLAA and focus group discussions with police officers, 14 November 2012, Hai Duong.

<sup>167</sup> Interviews with Dr. Tran Huy Lieu, Director of the NLAA under Ministry of Justice, 12 November 2012, Ha Noi; Ms. Ta Thi Minh Ly of the Association for Judicial Support Against Poverty (VIJUAP), 13 November 2012, Ha Noi.

<sup>168</sup> Interviews with NLAA and VIJUSAP. See Appendix 3

<sup>169</sup> Interview with NLAA and focus group discussions with police officers, 14 November 2012, Hai Duong.

Women are a minority of the prison population (about 10% of the total) and 15.5% of pre-trial prisoners who have not yet been convicted and sentenced.<sup>170</sup> Available data shows an increase in the number of women prisoners from 9,586 in 2011 to 10,807 in 2012 and a slight decrease to 10,722 in 2013.<sup>171</sup> The research team was not able to determine the reasons for these fluctuations. Of the total women currently incarcerated, 7.1% are serving prison sentences of up to two years, 23.6% two to five years, 36.3% five to ten years, 26.2% ten to twenty years, and 4.8% are serving life sentences.<sup>172</sup> Long-term demographic trends on the prison population in Viet Nam are difficult to assess due to lack of data. Records show that 32 women and 407 men have ever been sentenced to the death penalty in Viet Nam.<sup>173</sup> Data on the number of women in custody, temporary detention or administrative detention was not available to the research team.

The prison infrastructure and regime in Viet Nam was not designed with women prisoners in mind. There are no women-only prisons in Viet Nam, and it is not known how many women-only units there are within the correctional facilities that house both women and men. As a result, the system may overlook the needs of female prisoners. Furthermore, the majority of people working in the criminal justice sector are men (only 12.2% of staff in prisons are women<sup>174</sup>) and this creates a gendered dynamic apparent in the handling of cases involving women accused. The implications of this dynamic have not yet been fully explored but can potentially impact the experiences of female offenders.

## **A. Women Accused of Crime**

### ***Procedures for handling criminal cases***

Basic legal protections during criminal investigation, prosecution and adjudication procedures are afforded to everyone, regardless of sex, and are generally outlined in neutral language. For example, the Criminal Procedure Code (CPC) specifies that all detainees, accused and defendants have the right to counsel of their choosing or to defend themselves,<sup>175</sup> to have trials conducted in public (except for special cases),<sup>176</sup> and to present their evidence before the court.<sup>177</sup> Certain provisions of the CPC and other associated decrees are more gender sensitive; for example, body searches and examinations of the body must be conducted by someone of

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<sup>170</sup> ASEAN Expert Meeting on Implementation of United Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 19-21 March 2013. National Questionnaire-Vietnam: Appendix 4.

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

<sup>173</sup> See Appendix 4.

<sup>174</sup> Official answer from Ministry of Public Security at ASEAN Expert Meeting on Implementation of United Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 19-21 March 2013. National Questionnaire-Vietnam: Appendix 4.

<sup>175</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 11.

<sup>176</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 18.

<sup>177</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 19.

the same sex and before a witness of the same sex.<sup>178</sup> A 2009 report commissioned by UNIFEM recommended amending Viet Nam's CPC to also specify that police officers and examining physicians are responsible for guaranteeing privacy, and ensuring that only authorised examiners or those who are reasonably expected to be present, or who are expressly authorised by the examinee, are permitted to be in the room where an examination of a woman is taking place.<sup>179</sup>

### ***Custody and temporary detention***

In Viet Nam, men and women who are arrested may be subject to short periods of custody pending review by prosecutors<sup>180</sup> or to lengthier periods of temporary detention.<sup>181</sup> The CPC explicitly states that temporary detention need not apply to situations involving women accused/defendants who are pregnant or nursing children under the age of 36 months. In these cases, other deterrent measures<sup>182</sup> are to be used, except in certain circumstances.<sup>183</sup> The UN has previously recommended that this exception for pregnant or nursing women also be applied to custody decisions, but this is not the current practice.<sup>184</sup>

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<sup>178</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Articles 142, 152.

<sup>179</sup> Chiongson, Rea Abada (2009). CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW. Ha Noi: United Nations Fund for Gender Equality (UNIFEM).

<sup>180</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 86(1) Custody may apply to persons arrested in urgent cases, offenders caught red-handed, offenders who confessed or surrendered themselves or persons arrested under pursuit warrants; (3) Within 12 hours after their issuance, the custody decisions must be sent to the procuracies of the same level... Custody decisions must clearly state the custody reasons and the custody expiry dates, and one copy must be handed to the persons kept in custody.

<sup>180</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 87(1) The custody time limit must not exceed three days, counting from the time the investigating bodies receive the arrestees; (2) In case of necessity, the custody decision issuers may extend the custody time limit but for no more than three days. In special cases, the custody decision issuers may extend the custody time limit for the second time but for no more than three days. All cases of extension of the custody time limit must be approved by the procuracies of the same level; within 12 hours after receiving the extension requests and documents related to the custody time limit extension, the procuracies must issue decisions to approve or disapprove such requests.

<sup>181</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 88(1) Temporary detention may apply to the accused or defendants in the following cases: a/ The accused or defendants have committed especially serious offenses or very serious offenses; b/ The accused or defendants have committed serious or less serious offenses punishable under the Penal Code by imprisonment for over two years and there are grounds to believe that they may escape or obstruct the investigation, prosecution or trial or may continue committing offenses.

<sup>182</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 88 deals with temporary detention; Article 79 lists various deterrent measures, such as guaranty, deposit of money or valuable property as bail or ban from traveling.

<sup>183</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 88(2) The accused or defendants being women who are pregnant or nursing children aged under thirty six months, being old and feeble people, or suffering from serious diseases and having clear residences shall not be detained but be applied other deterrent measures, except for the following cases: a/ The accused or defendants who escaped but then were arrested under pursuit warrants; b/ The accused or defendants who were subject to other deterrent measures but then continue committing offenses or intentionally seriously obstruct the investigation, prosecution or adjudication; c/ The accused or defendants who committed offenses of infringing upon national security and there are sufficient grounds to believe that if they are not detained, they shall be detrimental to national security.

<sup>184</sup> Chiongson, Rea Abada (2009). CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW. Ha Noi: United Nations Fund for Gender Equality (UNIFEM). With respect to custody decisions of the Procuracy, UN experts recommends that, in the case of pregnant women or a woman

Evidence from international research seems to suggest that women are likely to have a more negative experience of custody/detention than men due to gender based discrimination, and risk of violence, amongst other reasons.<sup>185</sup> Women detainees also often experience considerable anxiety over whether their children are being looked after in their absence, by family or social services.<sup>186</sup> In the focus group discussion with police officers, the police were of the opinion that women did not endure detention as well as men because they are more emotional about their children.<sup>187</sup> Given that Vietnamese women are usually the primary caregivers within families, they face particular difficulties if they are arrested or detained. Typically, they must rely on the assistance of friends and other family members to take on the caring role, but when this support is not available, alternative options are very limited. In some countries, this situation has been seen to exacerbate the risk of self-harm by the prisoner, decrease women’s cooperation with authorities, and affect their ability to negotiate the legal processes.<sup>188</sup> The law in Viet Nam provides that the bodies who have issued the custody order should assign someone, usually a relative, to care for the dependents of persons in custody or temporary detention, including children under fourteen years old and elderly, sick or disabled relatives. If no relative is available, then the bodies will “assign such persons to the administrations of the places where they live for care.”<sup>189</sup>

Broader social issues, such as violence against women, may also potentially impact upon women’s experiences of custody/detention, and therefore safety for women in the prison environment is of concern. It is unclear how this issue is managed at the present time. For example, as previously stated, while the regulations require that female suspects be searched by female officers, the research team could not determine if female officers only are working in the custody area, and whether female detainees have easy access to female members of staff. Certainly in Viet Nam, there are very few female front line police officers, criminal investigators or prison staff (this will be discussed further in Chapter Three).<sup>190</sup>

<b>Decree No. 89 Promulgating the Regulations on Temporary Custody and Detention</b> <sup>191</sup>	
<b>Article 15</b>	provides that detention and keeping in custody shall be sectorised and classified according

requiring special assistance, such as a woman suffering from serious illness, the period of custody in Articles 86 and 87 of the Code of Criminal Procedure be shortened. Such cases should be given priority in the determination of the lawfulness of the custody.

<sup>185</sup> Commission on Women and the Criminal Justice System (2009). *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

<sup>186</sup> *Ibid.*

<sup>187</sup> Focus group discussion with police officers in Hai Duong November 14, 2012

<sup>188</sup> Commission on Women and the Criminal Justice System (2009). *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

<sup>189</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 90.

<sup>190</sup> Interviews with NLAA, AJSAP and focus group discussions with police officers during the development of the UNODC training materials. See United Nations, Office on Drugs and Crime (2011). *Preventing and Responding to Domestic Violence: Training manual for Law Enforcement and Justice Sectors in Viet Nam (2nd Edition)*. Ha No

<sup>191</sup> Viet Nam, Decree on promulgating the regulations on temporary custody and detention, No. 89/1998/ND-CP, 7 November 1998.

	to various categories of which women is one.
<b>Article 16</b>	provides that body check of female detainees shall be made by female officials and shall be effected in private rooms.
<b>Article 26</b>	provides that women temporarily kept in custody and female detainees shall be granted additionally a sum worth 2 kg of rice (by market current prices in each locality) to buy sanitary napkins.

### ***Legal counsel and legal aid***

All suspects have the right to legal counsel (including legal aid) or to defend themselves, and should be provided with information on these rights.<sup>192</sup> In practice, defence lawyers first need to obtain permission from the person conducting the case (such as the investigator or prosecutor) in order to visit their client, and to gain access to the case file. In Viet Nam, relationships and networks play an important role in obtaining this information and permission,<sup>193</sup> and thus the sex of the defence lawyer can be a factor when dealing with the male dominant investigating body. For female defence lawyers who might have less opportunity to develop their networks, this can have serious consequences for their clients. Another concern for accused persons is that lawyers who are appointed in mandatory cases are appointed and paid by the police, prosecutors or the courts,<sup>194</sup> and that these bodies might coerce suspects into signing away their right to counsel, although it is unclear how extensive this practice is and how it might be different according to gender.

As mentioned in Chapter One, eligibility for legal aid is based on household income, which must be below a certain threshold, as opposed to an individual's ability to access such economic resources. Due to embedded gender roles, Vietnamese women may experience difficulty in accessing household income, especially if they are accused of an offence against another member of the household. This means that women may be at a disadvantage in terms of their ability to access appropriate legal advice, to which they have a legal right, which in turn may have negative consequences for the adjudication of their case. One interviewee raised the concern that lack of or poor legal advice may be particularly disadvantageous for women who were trafficked or forced into prostitution and may result in them pleading guilty to criminal charges.<sup>195</sup> Anecdotal information suggests that most women applicants for legal aid are survivors of violence or applicants for divorce, rather than defendants in criminal cases.<sup>196</sup>

### ***Sentencing principles***

Vietnamese law permits a relativist approach to sentencing. This means that the courts can take into account personal and mitigating circumstances when determining a sentence. For example, one judge who was interviewed for this research said that she gives suspended sentences if the

<sup>192</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 58.

<sup>193</sup> Interview with Lawyer Nguyen Hung Quang, 15 November 2012, Ha Noi.

<sup>194</sup> Interview with Lawyer Nguyen Hung Quang, 15 November 2012, Ha Noi.

<sup>195</sup> Interview with Ms Ta Minh Ly of VIJUSAP, 13 November 2012, Ha Noi.

<sup>196</sup> Interview with NLAA, 12 November 2012, Ha Noi.

accused is a “good” person, he or she is a caregiver, and if the crime was not serious.<sup>197</sup> Another circumstance that can extenuate penal liability is when women offenders are pregnant.<sup>198</sup> The process by which judges access this sort of information, however, is unclear. Additional data was not available to the research team about sentencing practices disaggregated by sex, ethnicity, previous convictions, mitigating circumstances, and aggravating factors.

A history of abuse could also be seen as a circumstance extenuating penal liability.<sup>199</sup> Indeed, the relationship between offending and histories of violence and abuse has received increased attention internationally over the past few years.<sup>200</sup> For example, one in three women prisoners in the UK reported previous sexual abuse, and more than half reported domestic abuse.<sup>201</sup> According to the Penal Code in Viet Nam, individuals are entitled to defend themselves but they must use appropriate force; women who kill their abusive partners<sup>202</sup> are not considered to have acted in self-defence. In some justice officials’ opinion, Vietnamese women have stronger endurance than women from other countries and therefore killing an abusive spouse is still condemned in this society.<sup>203</sup> Authorities indicated that they do not always know who to charge in cases of DV where the woman has assaulted her husband in response to his abusive behaviour.<sup>204</sup> There are no policies or training for relevant authorities on making primary aggressor assessments in these situations.<sup>205</sup>

Also it is not known whether there are gender-specific options available for alternative sentencing or non-custodial measures in Viet Nam. Legislation regulating community service has been recently rescinded as this law viewed community service broadly requiring all Vietnamese citizens to engage in compulsory community work<sup>206</sup>. With the rescinding of this law, it appears that judges might no longer have available the sentencing alternative of community service. It was also not clear whether non-custodial measures include programmes to address the common problems leading to women’s contact with the criminal justice system, such as

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<sup>197</sup> Interview with District level judge, 14 November 2012, Hai Duong.

<sup>198</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999: Article 46.

<sup>199</sup> *Ibid.* One of the circumstances listed as extenuating penal liability include crimes committed in cases where it is beyond the limit of legitimate defense.

<sup>200</sup> United States of America, Department of Justice, National Institute of Justice (1998). *Women Offenders: Programming Needs and Promising Approaches*. Washington, DC.

<sup>201</sup> Commission on Women and the Criminal Justice System (2009). *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society. (Statistics are from the Bromley Briefings, December 2008).

<sup>202</sup> Sometimes referred to as “battered women syndrome” – footnoted in: United Nations, General Assembly (2011). *Resolution A/RES/65/228: Strengthening crime prevention and criminal justice responses to violence against women*. Available at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/65/228](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/228)

<sup>203</sup> Meeting with officials from the Ministry of Justice on 16 November 2012, Ha Noi.

<sup>204</sup> Focus group discussion with police, 14 November 2012, Hai Duong.

<sup>205</sup> A “predominant” or “primary aggressor” is the party who is the most significant or principal aggressor. Police must determine which party is the predominant aggressor in order that the true victim can effectively seek safety, and so that offenders are held accountable. In order to identify the predominant aggressor, the police must understand the dynamics of domestic violence and consider the context of the act of violence by identifying controlling behaviour in the predominant aggressor and fear in the victim. The Advocates for Human Rights (2010). *Determining the predominant aggressor*. Available at: [http://www.stopvaw.org/determining\\_the\\_predominant\\_aggressor](http://www.stopvaw.org/determining_the_predominant_aggressor)

<sup>206</sup> Meeting with representatives from the VWU on November 20, 2012.

counseling, therapy, education, etc. International research shows the prevalence of mental health problems among female defendants remains a major cause of concern and notes the need to foster relationship between the courts and mental health facilities<sup>207</sup>.

<b>Penal Code</b> <sup>208</sup>	
<b>Article 45</b>	sets out that when deciding penalties, the courts shall base themselves on the provisions of the Penal Code, taking into consideration the nature and extent of danger posed to society by the acts of offense, the personal records of the offenders, and any circumstances that extenuate or aggravate the penal liability.
<b>Law on Execution of Criminal Judgments</b> <sup>209</sup>	
<b>Article 4</b>	sets out that the principles of execution of criminal judgments which includes (4) Combination of punishment and education and reform in the execution of judgments; application of educational and reform measures must be based on the nature and seriousness of crimes committed, age, gender, educational level and other personal characteristics of sentenced persons.

## **B. Women Prisoners**

### **The Bangkok Rules**

This section outlines key provisions of the Bangkok Rules and Vietnamese laws relating to women prisoners. It has been increasingly recognized that women and men have different needs as prisoners either due to biological differences (eg. pre- and post-natal care, hygiene needs) or socially assigned roles and experiences (women as primary caregivers, survivors of gender based violence). The Bangkok Rules are intended to ensure better and safer conditions for women in prison settings, and to provide for gender-sensitive care. The Bangkok Rules recognize that any consideration of the needs of women offenders should take into account that women are not a homogenous group and will have different needs according to their experiences and identities. They are based upon the principle of equity which requires that women and men prisoners be treated fairly and appropriately according to their different needs.

Some countries have developed their own rules for the treatment of women prisoners. For example, when conducting an initial risk assessment on detainees, some countries have introduced mandatory inclusion of questions relating to care arrangements when dealing with

<sup>207</sup> The Final Report of the Commission on Women and the Criminal Justice System, Engendering Justice – from Policy to Practice: Final Report of the Commission on Women and the Criminal Justice System” (Fawcett Society: May 2009).

<sup>208</sup> Official answer from Ministry of Public Security at ASEAN Expert Meeting on Implementation of United Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 19-21 March 2013. National Questionnaire-Vietnam.

<sup>208</sup> ASEAN Expert Meeting on Implementation of United Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 19-21 March 2013. National Questionnaire-Vietnam: Appendix 4.

<sup>208</sup> Viet Nam, National Assembly, Penal Code, No. 15/1999/QH10, 21 December 1999. (Amended in 2009: Viet Nam, National Assembly, Law amending and supplementing a number of articles of the Penal Code, No. 37/2009/QH12, 29 June 2009.)

<sup>209</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010.

women with dependent children<sup>210</sup>. In addition they have also developed women-specific guidance documents and training modules for dealing with women for police and other bodies authorized to issue custody and temporary detention orders<sup>211</sup>.

A number of pertinent aspects of the Bangkok Rules will be outlined below, although the research team was not able to fully determine how Viet Nam is complying with them.

### **Gender-specific healthcare**

The Vietnamese legal framework sets out certain provisions regarding women’s specific hygiene and reproductive healthcare needs (see Appendix 1). The Bangkok Rules provide women prisoners should have health screenings upon admission and periodically to determine primary needs and specific medical conditions of prisoners such as sexually transmitted diseases, mental health care needs, reproductive health history, drug dependency and previous sexual abuse and violence. However, the right to medical confidentiality and not to undergo screening in relation to reproductive health history is to be respected.<sup>212</sup> The Bangkok Rules further provide that if a woman prisoner requests it, then a female physician or nurse should be made available to examine or treat her, except for situations requiring urgent medical intervention. If a male practitioner conducts the medical examination contrary to the wishes of the prisoner, a female staff member should also be present during the examination. This Rule is important for women prisoners especially those who have experienced violence and abuse. No information was available to the research team to assess the implementation of this Rule in Viet Nam.

<b>Law on Execution of Criminal Judgments</b> <sup>213</sup>	
<b>Article 43</b>	provides that female inmates shall be additionally provided with necessary articles for women’s hygiene.
<b>Article 45</b>	deals with regime for female inmates who are pregnant or nursing children under 36 months. (1) Pregnant female inmates, unless they are allowed to postpone the serving of prison sentences, shall be placed in reasonable cells, are entitled to regular or irregular maternity checks and medical care when necessary; they are entitled to a shorter working time and a food and drink regime suitable to their health.
<b>Article 132</b>	provides that women in reform centres are to be provided additional items necessary for their personal hygiene.
<b>Decree No. 117 Promulgating the Management of Prisoners and Their Food, Clothing, Accommodation, Daily Activities and Health Care</b> <sup>214</sup>	
<b>Article 8</b>	provides for food rations for prisoners, with additional food for women prisons and their

<sup>210</sup> For further information see: Northern Ireland Prison Service. *Gender-specific Standards for Working With Women Prisoners* (2010). Available at [http://www.dojni.gov.uk/index/ni-prison-service/nips-publications/policy\\_reports/gender\\_specific\\_standards\\_for\\_working\\_with\\_women\\_prisoners.pdf](http://www.dojni.gov.uk/index/ni-prison-service/nips-publications/policy_reports/gender_specific_standards_for_working_with_women_prisoners.pdf)

<sup>211</sup> Reilly, Michael (2011). *Inspector of Prisons: Standards for the Inspection of Prisons in Ireland – Women Prisoners’ Supplement*. Ireland: Office of the Inspector of Prisons.

<sup>212</sup> United Nations, Economic and Social Council, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, 22 July 2010, E/RES/2010/16: Rules 6-18.

<sup>213</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010.

<sup>214</sup> Viet Nam, Decree on promulgating the management of prisoners and their food, clothing, accommodation, daily activities and health care, No. 117/2011/ND-CP, 12 December 2011.

	children. A female prisoner who gives birth to a child in prison will be supplied with 7 m of ordinary cloth for use as diapers. Also provides that prisoners' children staying with them will be supplied with clothing, towels, soap, etc.
<b>Article 9</b>	(2) provides that for prisoners with children staying together, the bed/bedroom will be larger and better.
<b>Article 16</b>	(1) provides for food rations for prisoner's children.
<b>Decree No. 89 Promulgating the Regulations on Temporary Custody and Detention</b> <sup>215</sup>	
<b>Article 26</b>	provides that women temporarily kept in custody and female detainees shall be granted additionally a sum worth 2 kg of rice (by market current prices in each locality) to buy sanitary napkins.

### ***Allocation and separation of prisoners***

Rule 4 of the Bangkok Rules provides that women should be allocated to prisons close to their homes.<sup>216</sup> No data was available to the mission team regarding the number of women held in prisons outside their home region in Viet Nam. The Law on Execution of Criminal Judgements also requires separation of prisoners according to length of sentence, sex and age. As previously mentioned, there are no women-only prisons in Viet Nam, but each prison compound has separate units for women and men. It is unclear how the women's units are further separated according to seriousness of the offence, and age (adults/juveniles).

The Bangkok Rules 40-47 provide that prison administrators are to develop and implement methods for classification of women prisoners,<sup>217</sup> for example by doing a gender-sensitive risk assessment that takes into account the generally lower risk posed by women prisoners to others, and the particular harm of isolation.<sup>218</sup> The mission team was not able to assess whether this is done in Vietnamese prisons.

<b>Law on Execution of Criminal Judgments</b> <sup>219</sup>	
<b>Article 27</b>	deals with organizing prison sectors for inmates according to over or under 15 year imprisonment provides that female inmates shall be held separately. It further provides that female inmates in detention camps shall also be separated.
<b>Article 51</b>	provides that minor inmates shall be incarcerated under a separate regime suitable to their health, gender and personal characteristics. (3) provides that for juvenile prisoners, wardens shall organize work suitable to their age groups, gender and health conditions. These prisoners shall not be employed to perform heavy or hazardous jobs on the list of jobs banned from employment of minor labourers.
<b>Decree No. 117 Promulgating the Management of Prisoners and Their Food, Clothing, Accommodation, Daily Activities and Health Care</b> <sup>220</sup>	
<b>Article 7</b>	(2) provides that for prisoners' children who follow their fathers or mothers into the

<sup>216</sup> United Nations, Economic and Social Council, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, 22 July 2010, E/RES/2010/16: Rule 4.

<sup>217</sup> United Nations, Economic and Social Council, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, 22 July 2010, E/RES/2010/16: Rules 40-47.

<sup>218</sup> United Nations, Economic and Social Council, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, 22 July 2010, E/RES/2010/16: Rule 41.

<sup>219</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010.

<sup>220</sup> Viet Nam, Decree on promulgating the management of prisoners and their food, clothing, accommodation, daily activities and health care, No. 117/2011/ND-CP, 12 December 2011.

prison, their birth certificates are required. If they are available, the prison authorities have to register births in accordance to the law on birth registration.
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### **Family contact**

Vietnamese regulations provide for all prisoners to meet their relatives once a month at a reception house in the prison for a visit not exceeding one hour. These visits can be extended to three hours as a reward for good behaviour.<sup>221</sup> Conjugal visits, where wives or husbands are allowed to stay overnight with the prisoner, are permitted as a privilege and take place in the “Happiness House.” Telephone calls are permitted once a month for not more than five minutes, and prisoners are entitled to send two letters per month.<sup>222</sup> It appears that there are no specific regulations that might offset disadvantages faced by women detained in facilities located far from their homes, or whether visits with children take place in an environment that allows open and extended contact between mother and child. Nor does it appear that the regulations include a procedure where the women prisoners are consulted about who is allowed to visit them. Such a provision recognizes that women prisoners might have previously experienced violence, particularly perpetrated by an intimate partner.<sup>223</sup>

### **Pregnant women, breastfeeding mothers, and mothers with dependent children**

The Bangkok Rules provide that decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. In the majority of cases, Vietnamese law delays imprisonment of pregnant and breastfeeding women. However, in situations where pregnant women and mothers with children under 36 months are subject to imprisonment,<sup>224</sup> the Law on Execution of Criminal Judgements outlines a set of guidelines for prison authorities. At present 66 children are living with their mothers in prison in Viet Nam.<sup>225</sup> Women prisoners who have their children with them in prison are to be “provided with the maximum possible opportunities to spend time with their children.” In Phu Son 4 Prison, children live with their mothers in a separate house within the prison complex and mothers can spend their free time (when they are not working) and weekends with their children. The mission team observed that the facility was basic but clean and more spacious than regular prison cells.

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<sup>221</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010: Article 46(1).

<sup>222</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010: Article 46(3).

<sup>223</sup> United Nations, Economic and Social Council, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, 22 July 2010, E/RES/2010/16: Rules 26-28.

<sup>224</sup> Viet Nam, National Assembly, Law on Criminal Procedure, No. 19/2003/QH11, 26 November 2003: Article 88(2) The accused or defendants being women who are pregnant or nursing children aged under thirty six months, being old and feeble people, or suffering from serious diseases and having clear residences shall not be detained but be applied other deterrent measures, except for the following cases: a/ The accused or defendants who escaped but then were arrested under pursuit warrants; b/ The accused or defendants who were subject to other deterrent measures but then continue committing offenses or intentionally seriously obstruct the investigation, prosecution or adjudication; c/ The accused or defendants who committed offenses of infringing upon national security and there are sufficient grounds to believe that if they are not detained, they shall be detrimental to national security.

<sup>225</sup> East Asia-Pacific Regional Meeting on Implementation of United Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), February 2013. National Questionnaire-Vietnam: Appendix 4.

<b>Law on Execution of Criminal Judgments</b> <sup>226</sup>	
<b>Article 45</b>	<p>deals with regime for female inmates who are pregnant or nursing children under 36 months.</p> <p>(1) Pregnant female inmates, unless they are allowed to postpone the serving of prison sentences, shall be placed in reasonable cells, are entitled to regular or irregular maternity checks and medical care when necessary; they are entitled to a shorter working time and a food and drink regime suitable to their health.</p> <p>(2) Pregnant female inmates are entitled to maternity leave before and after delivery under the Labour Code. During maternity leave, they shall be provided with food rations as prescribed by assistant doctors or doctors, as well as food and necessary items for nursing their babies. Female inmates nursing children under 36 months old shall be given appropriate time to care for and nurse their children.</p> <p>(3) Prisons, detention camps and criminal judgment execution agencies of district-level police officers shall carry out procedures to request birth registration for inmates' children. Commune-level Committees of the places in which inmates serve their sentences shall register and grant birth certificates to these children.</p> <p>(4) When their children reach 36 months, female inmates shall send them to their relatives for rearing. If no relatives receive to rear such children, the [authorities] shall request the provincial department of labour, invalids and social affairs of the place in which the inmate serves her sentence to designate a social relief centre to receive and rear the child. After completely serving her prison sentence, the inmate is entitled to receive back her child from the social relief centre.</p> <p>(5) Prison shall organize a nursery outside the incarceration sector to care for and rear children of inmates who are under 36 months old or children of inmates who are 36 months or older pending admission to social relief centre.</p>

### **Disciplinary measures**

The law in Viet Nam does not apply certain disciplinary measures, such as having legs put in stocks, to women or juveniles.<sup>227</sup> Other punitive measures such as prohibition of family contact or solitary confinement of pregnant or breast-feeding women or women with infants are not provided in the law.<sup>228</sup>

### **Complaints and inspection**

In Viet Nam, Department Four of the SPP is responsible for the oversight of custody, detention, correction and rehabilitation of prisoners, including handling complaints and inspections. The Department has female staff members who monitor the conditions and treatment of women prisoners, including the prison infrastructure, accommodation, and labour conditions. They have the power to submit written petitions to relevant authorities to revise the laws regarding female prisoners. They can also assist women prisoners to apply for a reduction of sentence when they are severely ill. Women prisoners can report abuse by filing a petition to legal aid or to the warden of the prison. The Bangkok Rules stipulate that those who do report abuse are to be

<sup>226</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010.

<sup>227</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010: Article 38.

<sup>228</sup> United Nations, Economic and Social Council, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, 22 July 2010, E/RES/2010/16: Rules 22-24 of the Bangkok Rules prohibit both of these as gender sensitive disciplinary rules.

provided immediate protection, support and counselling, and the case is to be confidentially investigated by independent and competent authorities.

### ***Parole, release and social reintegration***

Although women face many problems similar to those of men when they are released from prison, the intensity and multiplicity of their post-release needs can be very different. Women are likely to suffer particular discrimination after release from prison, due to gender stereotypes. They might be rejected by their families or lose their parental rights due to social stigmatisation. If they have left a violent relationship, women will have to establish a new life, which is likely to entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison.

Women have different experiences than men if the family breaks-up due to the prison term. Obtaining accommodation and jobs, accessing benefits and regaining custody of their children might be more difficult for women than men. Former female prisoners might need additional support following release, such as psychological, medical, legal and practical help to ensure their successful social reintegration. A major concern for women when transitioning back into the community is reunification with their children. In terms of provision of such support, the Viet Nam Women's Union mentioned that, if requested, they assist former female prisoners when they are back in their community.<sup>229</sup> The Swedish NGO X-CONS and the Viet Nam Lawyers Association (VLA) have launched a Centre for Reintegration of Ex-Prisoners into the Society (CRES), which is expected to provide legal and employment advice, although it is not known whether there are any women-specific programmes.<sup>230</sup>

While a general requirement to apply individual treatment according to the needs of prisoners is enshrined in Rule 69 of the UN Standard Minimum Rules on the Treatment of Prisoners, pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the gender-specific needs of women offenders. The National Target Programme on Crime Prevention and Suppression for the Period of 2012-2015 (Crime Prevention Programme) has a target to have at least 60% of persons who violate criminal law or are granted special reprieves to be released on bail, supported, converted and educated at residential communities.<sup>231</sup> Decisions regarding parole shall take into account women prisoners' caregiving responsibilities as well as their specific social reintegration needs. One of the objectives of Project Five of the Crime Prevention Programme is to expand and improve the quality and effectiveness of vocational training provided to prisoners. The plan is to provide annual training to 28,600 prisoners, in vocational areas which match social demand: civil construction, civil carpentry, industrial repair, wool and mattress weaving, industrial and

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<sup>229</sup> Meeting with representatives from the VWU, 20 November 2012, Ha Noi.

<sup>230</sup> This is a project to support ex-prisoners both in Sweden and VN to set up their lives appropriately after being released from prisons and eventually become good citizens who do not commit crimes again. The Centre in Ha Noi opened on 27 April 2012, and the project will run for two years from Oct 2011 to Sept 2013.

<sup>231</sup> Viet Nam, Decision on.PM Decision "Approval of the National Target Programme on Crime Prevention and Suppression for the Period of 2012-2015

handmade sewing, office computing.<sup>232</sup> In Viet Nam there is a clear tendency for women prisoners to be offered a restricted range of work and vocational training opportunities, which are considered “feminine” and therefore appropriate for women, such as tailoring, knitting, handicrafts, fine arts or weaving.<sup>233</sup>

<b>Law on Execution of Criminal Judgments</b> <sup>234</sup>	
<b>Article 29</b>	(2) provides that female inmates shall be assigned jobs suitable to their gender, health and age; it is prohibited to assign them heavy and hazardous jobs on the list of jobs banned from employment of female labourers.
<b>Article 51</b>	provides that minor inmates shall be incarcerated under a separate regime suitable to their health, gender and personal characteristics. (3) provides that for juvenile prisoners, wardens shall organize work suitable to their age groups, gender and health conditions. These prisoners shall not be employed to perform heavy or hazardous jobs on the list of jobs banned from employment of minor labourers.
<b>Decree No. 80 on Measures to Assure Community Re-integration for Persons having Completely Served their Prison Sentence</b> <sup>235</sup>	
<b>Article 7</b>	provides counselling for inmates who are going to completely serve their prison sentence.
<b>Article 8</b>	addresses vocational orientation, raising of job seeking ability for inmates who are going to completely serve their prison sentences.
<b>Law on Special Amnesty</b> <sup>236</sup>	
<b>Article 10</b>	provides for special amnesty when the prisoner has well observed the regulations and rules of prisons and served more than 1/3 of their term and that they are being in exceptionally difficult family circumstances, being the only work-hands in their families, with certification of commune-level People’s Committee of localities where their families reside.

### C. Women Accused of Administrative Violations

Sex work is a gendered and highly contested issue in many societies. Laws related to the sex industry are often applied in a way that discriminates against women and perpetuates gender biases while stigmatising women.<sup>237</sup> In Viet Nam, sex workers are considered to be perpetrators of social evils, and are heavily stigmatised as a result.<sup>238</sup> To date, there has been a dearth of research and gender analysis on the prosecution of offences related to prostitution (both criminal and administrative), particularly with respect to who is prosecuted and whether women who sell sex are discriminated against.

<sup>232</sup> *Ibid.*

<sup>233</sup> See Appendix 4

<sup>234</sup> Viet Nam, National Assembly, Law on Execution of Criminal Judgements, No. 53/2010/QH12, 29 June 2010.

<sup>235</sup> Viet Nam, Decree on providing measures to assure community re-integration for persons having completely served their prison sentences, No. 80/2011/ND-CP, 16 September 2011.

<sup>236</sup> Viet Nam, National Assembly, Law on Special Amnesty, No. 07/2007/QH12, 5 December 2007.

<sup>237</sup> United States of America, Department of Justice, Office of Juvenile Justice and Delinquency Prevention (2010). *Causes and Correlates of Girls’ Delinquency*. Washington, DC.

<sup>238</sup> Viet Nam, Ordinance on Prostitution Prevention and Combat, No. 10/2003/PL-UBTVQH11, 17 March 2003:

In Viet Nam, prostitution-related criminal offences, such as harbouring or procuring prostitutes and paid sexual intercourse with juveniles, are set out in articles 254-256 of the Penal Code. The Ordinance on Prostitution Prevention and Combat (The Ordinance on Prostitution) states that women accused of selling sex will be administratively sanctioned. Up until 1 July 2013, women accused of selling sex, depending on the nature and seriousness of their violations, were subject to education at communes, wards or townships, or compulsory detention in medical treatment establishments known as “05 Centres.” However, according to the Resolution on the implementation of the Law on Handling Administrative Violations (The Law on Administrative Violations, adopted in July 2013) this practice has been abolished.<sup>239</sup> This development is welcomed and represents a significant step in the Government’s efforts to reduce stigmatisation of women involved in the sex industry. From the available information it appears that as part of the implementation process of the Law on Administrative Violations, the MPS is now drafting Decree 06 to regulate sanctions including for women accused of selling sex.<sup>240</sup> At present, the Decree on Detailing the implementation of a number of articles of the Ordinance on Prevention and Combating Prostitution establishes fines from 100,000 to 1,000,000 VND as administrative sanctions for women accused of selling sex.<sup>241</sup> However, it is not yet known how a gendered perspective will be applied in the forthcoming management of administrative sanctions for women involved in the sex industry, including in terms of regulation and standardisation of fines for buyers and sellers of sex, the ability of accused sellers of sex to pay fines, and reintegration of former detainees into communities.

The Centre for Studies and Applied Sciences in Gender, Family, Women and Adolescents (CSAGA) has conducted preliminary research to better understand the issues that women involved in the sex industry face and the support that they will need to reintegrate into their communities.<sup>242</sup> These women may experience vulnerability for a range of reasons, including previous experiences of violence, exploitation, and drug dependency (which may be the result of forced drug use in brothels). They may also be at greater risk of returning to the sex industry or being trafficked for this purpose.<sup>243</sup> MOLISA has developed a model for harm reduction and social support for reintegration of women involved in the sex industry, including vocational training, reintegration support, job creation opportunities, and education programs, which is currently being piloted in 44 of Viet Nam’s 63 provinces.<sup>245</sup> The Ministry is in the process of

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<sup>239</sup> Article 2: From the date of promulgation of the Law on Handling of Administrative Violations: 1. The measures of educational communes, wards or townships and consignment to medical treatment establishment shall not be applied to prostitutes. Persons who commit acts of prostitution shall be administratively sanctioned in accordance with the law. National Assembly. Order No. 17/2012/LCTN Resolution on the implementation of the Law on Handling of Administrative Violations. July 2012. –

<sup>240</sup> Prime Minister “Decision to promulgate an implementation plan and list of decrees on implementation of administrative sanctions” No. 1473/QĐ-TTg. Oct. 2012 .

<sup>241</sup> Please ensure this is the correct translation: Article 18 Handling of Administrative Violations of sex acts specified in the Article 23 of the Ordinance on Prostitution Prevention and Combat: Those who commit acts of prostitution shall be subject to warning or fine of VND 100,000 to 300,000. A fine between VND 300,000 and 500,000 in case of sex for many people at once. A fine between VND 500,000 and 1,000,000 in case of sex of depraved nature.

<sup>242</sup> Meeting with CSAGA, 19 November 2012, Ha Noi.

<sup>243</sup> *Ibid.*

developing new policies targeting women involved in the sex industry and drug users.<sup>246</sup> The VWU currently provides counselling for women involved in the sex industry and drug users, and assists them to develop skills and find jobs. They are now seeking instructions from the government on how to further assist the 900 former detainees of “05 Centres” that will be released from 1 July 2013. It remains to be seen how the closing of the “05 Centres” will impact the experiences of women involved in the sex industry within and outside of the criminal justice system.

## **PART II: NEEDS, GAPS AND RECOMMENDATIONS**

### **1. Conduct further research and analysis to develop evidence-based gender-sensitive policies and programmes**

One of the major challenges in undertaking this assessment was the lack of comprehensive data on women in conflict with the law in Viet Nam. Additionally, much of the data that does exist is not available to the public. Without access to quality data the situation of women in conflict with criminal and administrative law cannot be fully understood and appreciated.

Therefore, the first recommendation is to collect qualitative and quantitative information about how procedures, including the Bangkok Rules, are applied to and experienced by women in conflict with the law throughout their interactions with the justice system (criminal and administrative). This may include how arrests are conducted, access to legal counsel and legal aid, sentencing practices including non-custodial measures, risk assessments, women’s safety in custodial settings, and reintegration into communities upon release. The data should be robust, verifiable and sex-disaggregated, and analysed from a gendered perspective to understand women’s experiences at each stage of the justice process, and to assess how existing laws and policies are being implemented in practice. The resulting analysis should be used to inform the development of gender sensitive laws, policies and programmes that ensure fair and appropriate treatment of women in conflict with the law, as well as a relevant future research agenda to address knowledge gaps. Further gender analysis of the relevant existing legal framework is also recommended.

This recommendation could extend to learning from international best practices for dealing with women in conflict with the law, and adapting them to the Vietnamese context. For example, the UK’s “Gender Specific Standards for Women’s Prisons” is a comprehensive document providing guidance on the different needs of different women (women who are young, elderly, ethnic minority, women with disabilities, women with children, foreign nationals, women serving life sentences) in custodial environments.<sup>247</sup> Another example is the “Women Prisoners’

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<sup>245</sup> MOLISA. Report on the situation and achievement of implementation of prostitution prevention and combat for 2012 and plan for 2013. January 24, 2013.

<sup>246</sup> Meeting with MOLISA, 15 November 2012, Ha Noi.

<sup>247</sup> Commission on Women and the Criminal Justice System (2009). *Engendering Justice – from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System*. London: Fawcett Society.

Supplement to the Standards for the Inspection of Prisons in Ireland” which is designed to guide the Irish Prison Service and management on best practice in relation to the detention of women prisoners and the management of women’s prisons.<sup>248</sup> Gender-specific guidance documents and practical tools can be extremely useful for criminal justice sector authorities, and to promote accountability for good practices.

## **2. Improve implementation of existing policies and laws**

Due to the lack of available data, the research team was not able to comprehensively assess the implementation of existing laws and policies. Building an evidence base (as recommended above) is the first step to determining whether there are gaps between policy and practice, and how to address these, for example through training, awareness-raising, capacity-building for staff in the justice sector and allocation of adequate resources. It is recommended that priority be given to strengthening the capacity of personnel within the criminal justice system, including prison staff and inspectorates, to take a gender sensitive approach, and to apply the relevant international standards and norms, including CEDAW and the Bangkok Rules.<sup>249</sup> This could include ensuring that gender is mainstreamed in the curricula of the MOJ Judicial Academy and other relevant training institutes.

The implementation of laws and policies governing the criminal justice system should be properly monitored and evaluated, and this information should be shared with relevant stakeholders.

## **3. Ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (CAT)**

The mission team understood that the Government of Viet Nam is already considering ratifying the CAT.

## **4. Support reintegration of former prisoners and detainees into their communities**

In the prison environment, it is essential to develop social reintegration programmes that recognise and understand the gendered dynamics of Vietnamese society. Further, vocational training offered to women prisoners should avoid reinforcing gender stereotypes by offering skills development in all areas, not just those traditionally considered appropriate for women.

Comprehensive measures need to be put in place to allow effective reintegration into society of the former detainees of the compulsory rehabilitation centres known as “05 Centres.” The Government, in cooperation with the VWU and civil society organizations, should consider establishing a management plan or developing community support for the women who will be released.

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<sup>248</sup> Reilly, Michael (2011). *Inspector of Prisons: Standards for the Inspection of Prisons in Ireland – Women Prisoners’ Supplement*. Ireland: Office of the Inspector of Prisons.

<sup>249</sup> UNODC has previously organized meetings in 2013 to sensitise relevant national authorities in the East Asia and Pacific region to the Bangkok Rules.

## **CONCLUSION**

This assessment shows that accepted gender norms can impact upon women's experiences of the criminal justice system. A gender-sensitive approach is necessary to ensure that the specific needs of women in conflict with the law are met – throughout their interactions with the criminal justice system. The Government of Viet Nam is to be commended for closing the so-called "05 centres" which affected women involved in sex work. Although the research team could not fully determine the Government's compliance with the Bangkok Rules, it is recommended that Viet Nam take the Rules into consideration for further modifications to the prison system. The next chapter will consider the experiences of women working within the criminal justice system.

## CHAPTER 3: WOMEN WORKING IN THE CRIMINAL JUSTICE SYSTEM

### PART I: OVERVIEW AND ANALYSIS

As the previous two chapters explored, women's experiences in the criminal justice system, both as survivors and perpetrators, are affected by gender norms and stereotypes due to the patriarchal nature of Vietnamese society. Women who work in the criminal justice sector are not exempt from such challenges. Women employees are a minority in this sector, and face many barriers in the workplace, from a lack of opportunities for advancement to sexual harassment. Most of the women working in this sector hold lower level positions, and thus have limited ability to influence decision-making. Yet women have the legal right to equal opportunity,<sup>250</sup> and should be fairly represented in all professions. Furthermore, the people who come into contact with the criminal justice system, whether they are suspects, offenders, survivors or witnesses, are very diverse, and the staff should be reflective of this diversity. This chapter will explore some of the key challenges facing women working in the criminal justice system and the reasons for the lack of female leadership in this sector, before submitting recommendations to improve the situation of women in this field.

#### The Normative Framework

Viet Nam is signatory to many international treaties, including the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>251</sup> and the Convention Concerning Discrimination in Respect of Employment and Occupation (Convention No.111).<sup>252</sup> Viet Nam has also passed a number of domestic laws and policies to promote gender equality. The 2006 Law on Gender Equality specifies measures to advance gender equality and imposes a clear legislative obligation for government authorities to adopt equality measures in their institutional structures and activities.<sup>253</sup> This Law established the Gender Equality Department within MOLISA to coordinate implementation of the law, and the National Strategy and National Programme of Action on Gender Equality.<sup>254</sup> The National Strategy and the Programme of Action set targets for women's participation in leadership and management.<sup>255</sup> Decree No. 48 provides further elaboration on the law, and states that women should account for at least 30% of the

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<sup>250</sup> United Nations, General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 14 December 1990, A/RES/45/124: Article 7 provides for the elimination of discrimination against women in public and political life. Both CEDAW and ICCPR state that women shall enjoy human rights and fundamental freedoms on a basis of equality with men.

<sup>251</sup> United Nations, General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 14 December 1990, A/RES/45/124.

<sup>252</sup> International Labour Organization, *Discrimination (Employment and Occupation) Convention, C111*, 25 June 1958, C111, available at: <http://www.refworld.org/docid/3ddb680f4.html>

<sup>253</sup> Viet Nam, National Assembly, Law on Gender Equality, No. 73/2006/QH11, 12 December 2006: Article 19(1)(e).

<sup>254</sup> The National Strategy on Gender Equality 2011-2015 was approved in 2011, as well as an associated National Programme of Action on Gender Equality 2011-2020.

<sup>255</sup> World Bank (2006). *Viet Nam: Country Gender Assessment*. Ha Noi.

workforce.<sup>256</sup> The Ministry of Home Affairs is responsible for coordinating with relevant ministries and branches to promulgate regulations on the proportion of women in leadership.

The National Strategy sets the following targets for women's political participation: a) 30% of National Assembly Deputies and members of People's Councils at all levels should be women for the tenure 2011-2015, and more than 35% for the term 2016-2020; b) 25% of Party committee at all levels should be women for the term 2016-2020; and c) Government bodies and organizations are to maintain at least 30% of female leadership.<sup>257</sup> The National Programme also includes a specific activity area on strengthening women leaders at the administrative and legislative levels, and women candidates for the 2016 elections.<sup>258</sup> There are also several Communist Party Politburo Resolutions that provide direction on implementation and monitoring of these laws, including Resolution No. 11 dated 27 April 2007, which sets a minimum target of 35% to 40% women in the National Assembly and People's Councils by 2020.

Since the criminal justice sector is made up of government institutions, it should follow these targets and seek to fulfil the quotas outlined above. Each of the criminal justice institutions or agencies has a Committee for the Advancement of Women (CAW) which formulates and guides the implementation of the laws and plans of action to promote the advancement of women at all levels in their respective sectors. These CAWs are coordinated by the National Committee for the Advancement of Women (NCAW), the formal state machinery responsible for promoting gender equality which reports directly to the Prime Minister. In addition, each state agency has a working group for women's affairs which is connected to the Viet Nam Women's Union and promotes gender equality.

Gender equality sometimes necessitates the provision of special measures to help women overcome structural inequality.<sup>259</sup> While the legislative framework does not provide a great deal of guidance on what this type of substantive equality might mean in Viet Nam, and how it differs from formal legal equality, some measures recognize that gender inequalities are so persistent and institutionalized that treating men and women in the same way may reproduce disadvantages and perpetuate discrimination. As such, the 2006 Law on Gender Equality and Decree No. 48 include some "special measures" to help women advance in the workplace. For

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<sup>256</sup> Viet Nam, Decree on providing measures to assure gender equality, No. 48/2009/ND-CP, 19 May 2009: Article 16.

<sup>257</sup> Viet Nam, Decision of the Prime Minister approving the 2011-2020 national strategy for gender equality, No. 2351/QD-TTg, 24 December.

<sup>258</sup> Viet Nam, Decision of the Prime Minister approving the national program on gender equality during 2011-2015, No. 1241/QD-TTg dated, 22 July 2011.

<sup>259</sup> The UN Human Rights Committee has recognized that "[...] principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the [International] Covenant [on Political and Civil Rights]. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant." United Nations, Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <http://www.refworld.org/docid/453883fa8.html>

example, one provision mandates that women be selected and prioritized for a position when “they meet all conditions and criteria like men,” while another provides specific capacity building training for women, and supports women who have young children to enable them to attend training courses.<sup>260</sup> However, the legislation does not provide clear guidance on how Viet Nam should address the needs of women already in the workforce who have the primary responsibility of childcare and household work, and how recruitment and promotion criteria can be redefined to ensure that women are not disadvantaged.

Each criminal justice agency has developed their own policies and action plans, for example:
SPP’s Decision No. 438 to promote gender equality within the Procuracy sector <sup>261</sup>
<p>This decision sets out targets in management and leadership positions for 2015:</p> <ul style="list-style-type: none"> <li>• Increasing the participation of women in the party leadership to more than 25%.</li> <li>• Ensuring that 90% of the total number of units subordinated to the SPP will have promoted women into management and leadership positions.</li> <li>• Requiring that at least 30% of the total procurators are women.</li> </ul> <p>The decision also sets out targets to improve the quality of female human resources by 2015:</p> <ul style="list-style-type: none"> <li>• 25-30% of the total female cadres and civil servants will have post graduate education.</li> <li>• At least 40% of all participants in training courses will be women.</li> </ul> <p>It also calls for studying the regulations such as recruitment, training, promotion and evaluation, to consider the gendered impact and then to revise and develop a master plan to address any negative impact on women.</p>
Circular No. 07 on ensuring gender equality in personnel structures and activities of legal aid <sup>262</sup>
<p>State management agencies of legal aid shall be responsible:</p> <ul style="list-style-type: none"> <li>• To recruit and attract people who have proper ability to ensure that there are both man and women in the leaders, legal aid officials and other legal aid staff of PLACs as well as its Branches.</li> <li>• To develop measures to encourage and attract legal aid collaborators for gender balance.</li> </ul> <p>Regarding training:</p> <ul style="list-style-type: none"> <li>• There should be annual training on gender equality awareness.</li> <li>• Men and women are to have equal opportunities and facilities to participate in training courses.</li> <li>• Female staff, especially ethnic minority women, should have priority in such training courses.</li> <li>• In cases where men and women are at the same level and the portion of women is lower than men, women shall be assigned to participate in such courses.</li> </ul> <p>Annual reporting of GE results:</p> <ul style="list-style-type: none"> <li>• Structure of leaders, legal aid officials and legal aid collaborators divided by gender.</li> <li>• Evaluate the capacity of legal aid providers on providing legal aid cases relating to GE.</li> </ul>

<sup>260</sup> Viet Nam, National Assembly, Law on Gender Equality, No. 73/2006/QH11, 12 December 2006: Article 19(1)(e). Viet Nam, Decree on providing measures to assure gender equality, No. 48/2009/ND-CP, 19 May 2009: Article 16.

<sup>261</sup> Gender Equality 2011-2015 for the Procuracy Sector (Issued under the Decision No. 438/QD-VKSTC dated 29/9/2011 by Prosecutor General of SPP).

<sup>262</sup> Circular No. 07/2011/TT-BTP “On ensuring gender equality in personnel structures and activities of legal aid organizations.”

## The Social Context

Despite the improved legal and policy developments and legislated targets to promote women’s employment and leadership, implementation of these laws in the criminal justice sector remains unsatisfactory. While inroads have been made, particularly at lower levels, the higher positions and sectors such as police, procurators and judges remain strongly male dominant. International research suggests that a critical mass of women is needed in order to challenge existing gender-inequitable practices.<sup>263</sup> Achieving gender parity, particularly at policy and decision-making levels, is an important element for any substantial change in approaches to justice. Quotas provide minimum targets for Viet Nam to meet and should be seen as special affirmative action measures to address the persistent discrimination against women in criminal justice institutions. However, there also needs to be an appreciation of the challenges and barriers faced by women employees in order to transform the systems. One such significant challenge to women’s career development is men’s attitudes. A study by the Institute of Family and Gender Studies (IFGS) notes that women need the support of their families, especially their husbands, in order to pursue a promotion. For example, many men are unhappy if their wives hold higher positions than them or “outdo” them, because society assigns the role of breadwinner or head of household to men. Men do not face the same challenges to their career advancement.<sup>264</sup>

NUMBER OF WOMEN WORKING IN THE CRIMINAL JUSTICE SECTOR
Judges <sup>265</sup>
SPC Leaders: 0 Departments: 25% (according to SPC meeting for 2012 this figure is 10%) Judges: 29% (according to SPC meeting for 2012 this figure is 27%)
Provincial level Chief Justice: 6% (according to SPC meeting this figure remains the same in 2012) Vice-Chief Justice: 16% Judges: 33% (according to SPC meeting this figure was 18-19% in 2012)
District level Chief Justice: 16% (this figure remains the same in 2012) Vice-Chief Justice: 24% Judges: 33% (according to SPC meeting this figure was 25% in 2012)
Procuracy <sup>266</sup>
SPP Leaders: less than 12% Senior prosecutors: 10% Staff: more than 30%
Provincial level Prosecutors: 10-12%

<sup>263</sup> Hunt, Swanee (2003). The critical role of women waging peace. *Columbia Journal of Transnational Law*, Vol. 41, No.3, p.562.

<sup>264</sup> Institute for Family and Gender Studies (2008). *Result of nation-wide survey on the family in Viet Nam 2006*. Ha Noi: MOCST and UNICEF.

<sup>265</sup> Data is from 2007 and taken from: JOPSO, NH Quang & Associates (2008). *Survey Report on Assurance of Gender Equality in the Court System in Viet Nam and in Adjudicating Activities*. Ha Noi. The figures for 2012 were provided orally during a meeting with SPC, 15 November 2012, Ha Noi.

<sup>266</sup> Figures were provided orally during a meeting with SPP, 20 November 2012, Ha Noi.

Technical / professional staff: 22-25%
Police <sup>267</sup>
Criminal investigators: less than 1% Front line community police: very few Students enrolled in the police academy: 10%
General Department of Anti-Crime Police Number of employees: 10% (7% are professionals and 3% are supporting staff)
Prison staff <sup>268</sup>
Prison staff: 12.2% (1,087 female staff) <sup>269</sup> Division heads: 5%
Lawyers <sup>270</sup>
Lawyers: 30%
Legal Aid <sup>271</sup>
National Legal Aid Director and Deputy Directors: 0 Division heads: 60% Staff: 66%
Provincial Level Staff: varies from 30% to 50%

## A. Barriers Experienced by Women Working in the Criminal Justice Sector

### ***Gender Stereotypes***

As noted above, gender stereotypes are pervasive and dictate understandings of what is acceptable work for women. This contributes to the disregard for or devaluing of women's capacity and qualifications, which in turn limits women's access to leadership and decision-making positions. The idea that women are "weak" and require special treatment is widespread in Viet Nam and reflects a protectionist attitude. A Ministry of Justice Paper for the recent Policy Dialogue on Gender Mainstreaming, highlighted the number of legal provisions which stipulate special treatment for female employees, such as maternity leave, stating, "there are many other legal documents which pay special care to the weak in the society, of which women create a large proportion." This statement also illustrates that the conception of women as "weak" is prevalent throughout government agencies. However, it is essential to recognize that while women may require some special treatment because of their biological role in reproduction (eg. maternity leave and breastfeeding) and historical structural discrimination, this is not a weakness and such classification perpetuates sexist notions in society.

<sup>267</sup> The data was provided orally during a meeting with Ministry of Public Security, 23 November 2012, and interviews with police officers, 14 November 2012, Hai Duong.

<sup>268</sup> Most of information provided during meeting with SPP Department 4, 23 November 2012, Ha Noi.

<sup>269</sup> ASEAN Expert Meeting on Implementation of United Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), 19-21 March 2013. National Questionnaire-Vietnam: Appendix 4.

<sup>270</sup> NH Quang & Associates (2011). *Appointed Counsels in Vietnamese criminal laws and practice*. Ha Noi: United Nations Development Program (UNDP). Out of 5076 lawyers, 1516 are female according to Viet Nam Bar Federation.

<sup>271</sup> Statistics provided from interview with the National Legal Aid Agency. According to statistics provided by the National Legal Aid Agency in June 2013, C c tr ng và c c Phó c c tr ng chi m.....%

As a result of these conceptions, women are pigeonholed into particular criminal justice departments or jobs based on their sex without consideration of their individual capabilities. This is ostensibly to “protect women” from the heavier jobs. For instance, many female police recruits are assigned to office tasks including filing, production of identity cards, vehicle registration, logistical work and organisation of conferences instead of field positions, such as responding to emergency calls or interrogating suspects.<sup>272</sup> Many officers view this practice as preferential or special treatment. However, pigeonholing women in this way prevents them from being able to advance professionally, and as a result, higher level positions are held predominantly by men. Notably, less than 1% of the criminal investigators in Viet Nam are women,<sup>273</sup> there are no female prison managers and very few female deputy managers. Procurators who conduct on-site visits to crime scenes and supervise prisons and rehabilitation centres are also predominately men. This finding supports the World Bank report which noted that within the Government of Viet Nam, men overwhelmingly dominant the committees of law, justice, economics, foreign affairs and finance (between 85-92%) while women are relegated to the “softer” departments of culture, education, youth and children and social affairs (but still only between 28 and 37%).<sup>274</sup> There is considerable resistance to the idea that women have the capacity to perform such jobs, but in fact, women and men are equally capable.

### ***Male-Defined Standards***

Male dominance in the criminal justice agencies leads to men defining the principles of conduct, including in terms of recruitment and promotion for women workers. The ability to perform a job is frequently judged by men against perceived male standards rather than focusing on the competencies required to do the job. For example, the assessment team was told that the reason why there are few to no women criminal investigators is that the job is considered “too heavy” or “too tough” for women.<sup>275</sup> This focus on masculine, physical strength rather than the actual requirements of the role, such as the ability to gather and analyse evidence, interview survivors and witnesses, and interrogate suspects, makes it more difficult for women to prove their competency. Interviewed judges voiced similar attitudes about women’s ability to serve as judges, stating that women could not handle the pressure of the position or do not have the correct appearance to be taken seriously as judges<sup>276</sup>. Some judges also said that they believe women are more sensitive, and therefore female judges would be emotionally vulnerable to societal criticisms of their judgements<sup>277</sup>. Similar to police officers, some male judges said that the current workload of adjudicating tasks is “too heavy” for female judges in some courts. They

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<sup>272</sup> Interview with police officers, 14 November 2012, Hai Duong.

<sup>273</sup> Data was provided orally during a meeting with Ministry of Public Security, 23 November 2012, and interviews with police officers, 14 November 2012, Hai Duong.

<sup>274</sup> World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi.

<sup>275</sup> *Ibid.*

<sup>276</sup> Interview with Supreme Court Judges See Appendix 3

<sup>277</sup> Interview with Supreme Court Judges See Appendix 3

suggested that work should be allocated to judges based on their sex<sup>278</sup>. However, these views are sexist and female judges are fully capable of performing all of the tasks of the position.

Attitudes such as those shared by police and judges illustrate entrenched gender stereotypes that impact female workers' experiences in the workplace and can also impede their job performance in other ways. As mentioned in Chapter Two, lawyers must have strong relationships with individuals within the criminal justice system to obtain all the necessary documentation in order to defend their client, obtain case files, or get permission to visit their client. They often rely on personal networks and relationships with investigators and procurators to do so. Female defence lawyers are at a disadvantage in this system because they often lack these networks and personal relationships and thus may be prevented from doing their jobs effectively.<sup>279</sup> A survey about gender equality in the court system illustrates how household obligations for women also limit female judges' ability to develop "social capital" which is needed to advance in the Communist Party, and in the courts.<sup>280</sup> Because women do more unpaid work in the home in addition to regular hours worked, they do not have the same opportunities as men to develop "social capital" by networking during off-duty hours.

The unequal treatment of women workers is unfortunate, since women often bring unique perspectives and skills to the criminal justice system. For example, the presence of female police officers can improve the response of law enforcement agencies to sexual crimes and domestic violence since female survivors are often more comfortable speaking with female officers.<sup>281</sup> Female police officers are also often required to join domestic violence investigation teams in order to conduct physical examinations.

Studies have shown that increasing the proportion of women in law enforcement agencies, especially at senior levels, can also change the climate and culture of the organization, and reduce the prevalence of discrimination against female police officers, as well as their underutilization.<sup>282</sup> The risk of sexual harassment is also reduced. These improvements create a less hostile work environment that benefits both male and female police officers, and ultimately women and men who come into contact with the criminal justice system.

### ***Childcare and household responsibilities***

In addition to gender stereotypes, gender roles in Viet Nam are deeply institutionalised and assign primary responsibility for childcare and household work to women<sup>283</sup> who are also expected to build a well-off and happy family. There is a belief that if children are naughty,

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<sup>278</sup> Interview with Supreme Court Judges See Appendix 3

<sup>279</sup> Interview with Mr. Nguyen Hung Quang, 20 November 2012, Ha Noi.

<sup>280</sup> JOPSO, NH Quang & Associates (2008). *Survey Report on Assurance of Gender Equality in the Court System in Viet Nam and in Adjudicating Activities*. Ha Noi.

<sup>281</sup> UN Women (2011). *2011-2012 Progress of the World's Women: In Pursuit of Justice*. New York.

<sup>282</sup> United Nations Development Program (2007). *Primers in Gender and Democratic Governance #2: Gender Equality and Justice Programming: Equitable Access to Justice for Women*. New York.

<sup>283</sup> World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi.

mothers are to blame, and as previously mentioned, husbands may discourage their wives from pursuing their careers.<sup>284</sup> In this way, women are expected to concentrate on motherhood instead of developing a career.

Research shows that women in Viet Nam bear the double burden of both household (reproductive) and income generating (productive) work, whereas men are not expected to do housework.<sup>285</sup> This double burden hinders women's career progression because working in the criminal justice system often requires long hours, shift work, on-call duties or travel to the fiThi. For example, working overtime to process an arrest or being called to the scene of a crime is more difficult for anyone responsible for childcare. In Viet Nam, this is the reality for women more so than men. These beliefs about women's roles in the family can impact women's employment prospects.

### ***Quotas, Leadership and Decision-Making***

Despite strong legal and policy guidelines, Viet Nam has not reached its own targets for women's employment and leadership. Efforts have been made to invest in areas where there are fewer women employed, such as senior levels of local government, state enterprises, trade unions, the police, military and other social sectors but they have not been fully successful. Even though there is a target of 30-35% women, most local authorities have difficulty finding enough women who match the criteria. A police officer interviewed for this study gave an example of how quotas might be used to the detriment of women workers: some units of the police that have already met their quota of women workers (10%) such as the economic unit, limited the applicants to male candidates only when advertising for new recruits. Qualified female candidates were not considered.<sup>286</sup> This type of tokenistic inclusion of women is likely to have little impact. Merely mandating quotas without addressing institutional sexism will not ensure gender equality.<sup>287</sup>

Women who are in decision-making positions are mainly in charge of sectors considered to be "feminine," such as education, health, social issues, youth or ethnic minorities, while their presence in sectors such as the economy, budgets, security or defence is minimal. Women's participation at the local level is also limited, although less than that at national level.

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<sup>284</sup> "Regarding women, it is necessary to well implement legislation and policies on GE to foster, train profession, to enhance their schooling; to formulate mechanism and policies for women to participate more in leading and managing bodies at different levels and different lines; to take care and protect the health of mothers and children; to facilitate women to well perform maternal functions; to build their family well off, equal, progressive and happy" Proceedings of 9<sup>th</sup> National Congress of the Communist Party of Vietnam (2001).

<sup>285</sup> The labour force participation rate for women: more than 85% of urban women and 95% for rural women. One third to nearly half of urban men (age 25-64) report not doing any housework. Rural men are slightly more likely than urban men to do housework. World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi.

<sup>286</sup> Interview with female police officer, 14 November 2012, Hai Duong.

<sup>287</sup> A common concern about quotas is the argument that women might be appointed without the right qualifications and this will be detrimental to the advancement of women in the long term. Quotas alone can generate negative perceptions amongst women and leaders while failing to address the root cause of inequality. This concern about quotas was raised in: *2010 NGO Report on CEDAW Implementation in Viet Nam*. Ha Noi: Gender and Community Development Network (GENCOMNET).

Furthermore, women's positions in government at local levels are not strategic and they are not given the same responsibilities as those provided to men in equivalent roles. As a result, women's voices and influence in the policy and decision-making processes across the criminal justice sector continue to be limited.

### **Retirement Age**

In Viet Nam, the Labour Code<sup>288</sup> and the Law on Social Insurance<sup>289</sup> govern retirement age, which is different for men and women (55 and 60, respectively). This policy was introduced in recognition of women's contribution to work and family life, especially as early retirement is seen as a reward and compensation for women's multiple burdens. However, in practice, the policy has negative impacts on working women. The requirement that women retire earlier than men not only prematurely terminates women's careers, but also has consequences for training and promotional opportunities during their careers.<sup>290</sup> The gap in retirement age, and the fact that women tend to marry younger than men and have greater responsibilities for family and childcare, compresses the period of time that women have to gain the experience and qualifications necessary to advance to senior positions. Employers may also be reluctant to hire women who have a shorter working tenure. Thus, not only do men have a longer working life in which to develop their own capacities, at the final stages of their careers there are very few female competitors. As a result, there is a shortage of female candidates for many senior posts. It is clear that the differential retirement age constitutes direct discrimination against women, and is inadmissible under CEDAW norms.

### **Career Advancement**

The differential retirement age has a significant impact on women's chances for promotions, but several other factors mentioned above also influence women's opportunities for advancement. Women who have less opportunity for training and skills development are less likely to be in higher level positions, and thus the pool of women with the qualifications to compete against men for senior position is also reduced.<sup>291</sup> World Bank research suggests that preconceptions and gender stereotypes can undermine performance assessments of female staff.<sup>292</sup> Rather than applying objective professional criteria, female staff are generally judged more harshly than men, and according to male-defined standards. Promotions usually necessitate enrolment in a special course after gaining the requisite work experience and appropriate education. The culture of long working hours might be perceived as an implicit requirement for promotion. All

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<sup>288</sup> Viet Nam, National Assembly, Labour Code, No. 10/2012/QH13, 18 June 2012.

<sup>289</sup> Viet Nam, National Assembly, Law on Social Insurance, No. 71/2006/QH11, 12 July 2006.

<sup>290</sup> World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi. Also discussed in: *2010 NGO Report on CEDAW Implementation in Viet Nam*. Ha Noi: Gender and Community Development Network (GENCOMNET). For instance, the Decree No. 04/2006/QD-BNV dated Jan 2006 stipulates "each person after their overseas training and further education must work for state agencies for at least 10 years," which means that the permitted age for women to participate in those training courses or education must be below 40, whereas for men, it is below 45 years. This is again because women's retirement age is 5 years earlier than that of men's. As a result, women's right to equal opportunity in political participation has been violated.

<sup>291</sup> *Ibid.*

<sup>292</sup> World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi.

of these criteria can discriminate against women. For example, due to socially assigned gender roles, women who have young children may not be able to attend the course if it requires them to spend time away from the home. Since many women are pigeonholed into certain jobs, they also might not have the appropriate work experience required for promotion. Furthermore, women are not awarded “merits” – which are accrued for continuous service – during maternity leave and may not be able to gain sufficient merits for promotion.

Some criminal justice professions also require Communist Party membership, so advancement can be linked to professional performance as well as Party politics. Leading positions in government organizations are largely drawn from the Communist Party membership. Therefore how women fare within the Party has important implications for how they fare in leadership positions more generally.<sup>293</sup> According to the World Bank Assessment Report, there is an overall decline of women in leadership positions, with those holding ministerial and equivalent posts down from 12% in 2007-2011 to 4.5% in 2011-2016. The trends are somewhat more positive for lower level elected bodies but women in leadership positions remain low. The World Bank Assessment also notes that women’s education level is generally higher than male party leaders at commune level, suggesting women need higher levels of education than men to gain support of local party members for equivalent roles.<sup>294</sup>

### ***Sexual harassment***

Sexual harassment and other forms of gender based discrimination disproportionately affect women and reduce women’s opportunities, as well as impinging upon their fundamental rights at work. A rapid needs assessment by ILO and MOLISA<sup>295</sup> indicated that sexual harassment in the workplace is widespread in Viet Nam and affects mostly women. It is now prohibited under the recently revised Labour Code,<sup>296</sup> and the ILO and the Government are planning to develop and implement guidelines which will apply to the criminal justice sector as well.<sup>297</sup> However, the Code does not provide an adequate definition of sexual harassment, and is not universally understood to be a problem. For example, available information shows that sexual harassment is not widely reported either in the Procuracy or the Supreme People’s Court (SPC) and these agencies see no need to have internal regulations prohibiting such behaviour. Though the research team could not obtain information about the extent and nature of sexual harassment in the criminal justice sector specifically, it is unlikely that this sector would be significantly different from other workplaces in Viet Nam.

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<sup>293</sup> Viet Nam Academy of Social Sciences (2009) as cited in: World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi.

<sup>294</sup> World Bank (2011). *Viet Nam: Country Gender Assessment*. Ha Noi.

<sup>295</sup> Viet Nam Ministry of Labour, Invalids and Social Affairs, International Labour Organisation (2013). *Sexual Harassment at the Workplace in Viet Nam: An overview of the legal framework*. Ha Noi.

<sup>296</sup> Viet Nam, National Assembly, Labour Code, No. 10/2012/QH13, 18 June 2012: Article 8.

<sup>297</sup> International Labour Organisation (2012). *Viet Nam Decent Work Country Programme 2012-2016*. Ha Noi.

## **PART II: NEEDS, GAPS AND RECOMMENDATIONS**

### **1. Conduct further research and analysis to develop evidence-based gender-sensitive policies and programmes**

The majority of information contained in this Chapter of the report is anecdotal and was obtained from interviews with representatives from some departments of the courts, Procuracy, police and legal aid. Therefore, it is recommended to undertake systematic collection of sex-disaggregated data about women's and men's experiences of working at all levels of the criminal justice sector. This may include information such as job descriptions, performance appraisals, and recruitment and promotion criteria, as well as attitudes and practices of senior management in particular. More detailed information would enable a deeper analysis of the root causes and specific barriers to the participation of women among the senior levels of the judiciary, the legal profession, the police, the Procuracy, and the prisons, as illustrated in this chapter.

The problem of "sexual harassment" is still not widely discussed or acknowledged in the criminal justice system. However, the recently revised Labour Code provides a space to openly discuss sexual harassment and the institutionalised nature of sexism across the criminal justice sector, including gender based discrimination (for example, due to pregnancy). More information is needed about the nature and extent of sexual harassment experienced by women working in the criminal justice system, as well as the ways in which it is being addressed by management structures. This could include reviewing incidents that have occurred, as well as assessing organisational Codes of Conduct and disciplinary measures for perpetrators. This could include developing a comprehensive understanding of sexual harassment and researching international best practices about effective prevention and response.

### **2. Improve implementation of existing laws and policies**

There continues to be a gap between policy and practice in Viet Nam. The legal framework to promote gender equality, such as the Law on Gender Equality and the subsequent decrees, circulars and decisions, has been in place for a number of years, yet the results to date show slow translation of the policies into practice. Gender parity is far from being achieved in the criminal justice professions, and women are still not sufficiently represented on the front line of law enforcement. The targets that have been set have assisted women in making inroads at the lower levels in some of the professions, but this has not translated into significant numbers of women reaching senior positions and certain jobs, such as criminal investigators and prison wardens, remain dominated by men. Efforts need to be made by the government to make the special measures (affirmative action policies) more effective for women.

There is also a need to focus not just on numbers of female staff, but increasing efforts to build the capacity of women to thrive as leaders. The Government should review the criteria for

recruitment and promotion in each criminal justice agency, and revise definitions of merit and capabilities to remove gender biases that value male-defined standards. Again, it could be useful to review international good practices.

The assessment team was not able to review the existing curricula of institutions such as the MOJ Judicial Academy or the respective colleges for police, judges, procurators or lawyers. However, good practice suggests that gendered perspective should be incorporated into all training courses for both women and men. Efforts must go beyond a gender neutral approach which maintains the status quo, and should enhance the skills and capacities of women. The participation of women should be understood as a way of challenging male dominance and shifting the current discriminatory mindset. Therefore, it is essential to implement comprehensive monitoring and evaluation frameworks to ensure that the laws and policies are being properly implemented, and that the State and its criminal justice authorities are being held accountable to their obligations regarding gender equality.

### **3. Equalise the retirement age for women and men**

The current law on retirement age is an example of protective legislation in Viet Nam that requires review and revision. It is clear that the differential retirement age constitutes direct discrimination against women, and is inadmissible under CEDAW norms.

### **4. Address gender discrimination and promote cultural change**

As this chapter explored, many of the challenges confronting women workers in the criminal justice system stem from unequal gender norms in Vietnamese society. Further concerted efforts by the Government are required, as outlined in Article 5 of CEDAW,<sup>298</sup> to shift norms that enable and perpetuate women's disadvantage. For example, shared responsibility amongst men and women for childcare and household work would reduce the burden on women and facilitate women's equal participation in the workforce.

Changing socially assigned gender roles will take time. In the meantime, the Committees for the Advancement of Women could take the lead to ensure that flexible working arrangements are in place for employees who are caregivers, and that women are not disadvantaged because they take maternity leave. Finally, the Government should explore options for provision of childcare to alleviate women's burden.

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<sup>298</sup> United Nations, General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 14 December 1990, A/RES/45/124: Article 5.

## **CONCLUSION**

Women working in the criminal justice sector thus confront many challenges on a daily basis. Gender stereotypes limit women's opportunities and prevent them from being able to work in all sectors of criminal justice. Even legal measures to "protect" women can result in discriminatory practices. Furthermore, laws such as the retirement age prevent women from obtaining promotions or accessing higher level positions which would enable them to contribute to decision making processes. Though Viet Nam's laws and quotas intend to eliminate this discrimination, evidence indicates that many prejudicial practices are still in place.

## **FINAL CONCLUSION**

This assessment has provided a preliminary insight into the experiences of women in the criminal justice system, focusing on three areas: women as survivors of crime, women in conflict with the law, and women working in the criminal justice sector. In each situation the analysed data suggested that women could encounter structural inequalities due to deep-rooted power differentials and socio-cultural norms that privilege men over women. This may have the effect of limiting women's access to justice, especially when violence is perpetrated against them. It also could have particular implications to the specific needs of women who are in conflict with, and that women working in criminal justice could not have access to the same opportunities as men and are therefore not equally represented at all levels of the sector. Although there are important national and international legal frameworks to which Viet Nam is committed and which apply to women in the criminal justice system, this assessment has shown that they are not always gender sensitive or adequately implemented. Furthermore, dominant attitudes and beliefs that discriminate against women can actually reinforce gender inequalities and undermine efforts at the policy level.

### **This assessment makes three broad recommendations:**

- 1) to conduct further research and analysis to develop evidence-based gender-sensitive policies and programmes;
- 2) to improve implementation of existing laws and policies on VAW and gender equality; and
- 3) to promote cultural change for gender equality.

The current review of the Penal Code and Criminal Procedure Code presents an opportunity to work towards eliminating violence against women. The recent closure of the so called "05 Centres" is a significant step by the Government to reduce the stigmatisation of women involved in the sex industry and it will be important to ensure the former detainees are well-supported as they transition back into their communities. The Government of Viet Nam has a responsibility under CEDAW, and its own national legislation, to enable women to obtain full equality with men and to access all of their rights. This requires comprehensive action, and may necessitate certain special measures to be taken across the criminal justice sector to overcome existing structural inequalities between women and men.

## APPENDIX 1. LEGAL FRAMEWORKS

### *The Penal Code*

<b>Physical violence</b>	
<b>Intentionally inflicting injury on or causing harm to the health of other persons</b>	<p><b>Article 104</b> There are 4 levels of injury that can be considered criminal, each specific level attracts different sentences.</p> <p>(1) Where the infirmity rate is under 11% and an aggravating factor is present, such as: using a dangerous weapon; causing minor permanent injury to the victims; committing the crime more than once against the same person; committing the crime against pregnant women, being of hooligan character or dangerous recidivism – non-custodial reform for up to 3 years or between 6 months and 3 years of imprisonment.</p> <p>(2) Where the infirmity rate is between 11-30% - non-custodial reform for up to 3 years or between 6 months and 3 years of imprisonment.</p> <p>(3) Where infirmity rate is between 31-60% or 11-30% with an aggravating factor as listed above – between 2-7 years of imprisonment.</p> <p>(4) Where infirmity rate is above 61% or between 31-60% with an aggravating factor as listed above – between 5-15 years of imprisonment.</p>
<b>Ill-treating or persecuting of spouses, etc</b>	<p><b>Article 151</b> -there are 2 main elements. (1) ill treatment or persecution of family member and (2) either causing serious consequences or having already been administratively sanctioned for acts but repeating their violations.</p> <p>The Inter-circular No. 01/2001 provides that “ill treatment and persecution” are understood as the maltreatment in terms of food, clothing, accommodation in daily life activities against relatives, such as scolding, forcible abstention from eating, drinking, forcible standing in the cold, worn-out clothing in abnormal ways or acts of violence against victims, such as beating, detention, thus making the suffer from physical and spiritual pains.</p>
<b>Ill-treating other persons</b>	<p><b>Article 110</b> provides those who cruelly treat persons dependent on them shall be subject to warning non-custodial reform for up to one year or imprisonment between 3 months and 2 years</p>
<b>Murder</b>	<p><b>Article 93</b> “those who commit murder in one of the following cases shall be sentenced to between 12 and 20 years of imprisonment, life imprisonment or capital punishment... (b) murder of women who are known by the offender to be pregnant</p>
<b>Sexual violence</b>	
<b>Rape</b>	<p><b>Article 111</b> “those who use violence, threaten to use violence or take advantage of the victim’s state of being unable for self-defence or resort to other tricks in order to have sexual intercourse with the victim against the latter’s will shall be sentenced to between 2 and 7 years of imprisonment.</p> <p>Sentence is to be higher in certain circumstances, including forcible sexual intercourse more than once; making the victim pregnant; causing harms to the victim’s health with an infirmity rate of between 31% to 60%.</p>
<b>Forcible sexual</b>	<p><b>Article 113</b> “those who employ trickery to induce persons dependent on them or person being in dire straits to have sexual intercourse with them against</p>

<b>intercourse</b>	their will shall be sentenced to between 6 months and 5 years of imprisonment.”
<b>Forcible marriages</b>	<b>Article 146</b> “those who force other persons into marriage against their will or prevent other persons from entering into marriages or maintaining voluntary and progressive marriage bonds through persecution, ill-treatment, mental intimidation, property claim or other means, and who have already been administratively sanctioned for such acts but repeat their violations, shall be subject to warning, non-custodial reform for up to 3 years or a prison term of between 3 months and 3 years.
<b>Organizing underage marriage, entering into underage marriage</b>	<b>Article 148</b> “those who commit one of the following acts, have already been administratively sanctioned but repeat their violation, shall be subject to warning, non-custodial reform for up to two years or a prison term of between 3 months and 2 years: (a)organizing marriage for under age persons; (b)Deliberately maintaining the illegal conjugal relationship with underage persons though the court has already decided the termination of such relationship.
<b>Psychological violence</b>	
<b>Ill-treating or persecuting of spouses</b>	See <b>Article 151</b> above. The Inter-circular No. 01/2001 provides that “mental intimidation” means threatening to harm the lives, health, honor, property or legitimate interests of the intimidated persons, causing them to have grounds to be scared, hence having to be subdued and includes threatening to set fire to the house, kill relatives, disclose personal lives of the intimidated persons, parents or family members, threaten to commit suicide. “Serious consequences” means always tormenting sentimentally, hurting their honor, undergoing spiritual suffering or getting injured, damaging their health.
<b>Threatening to murder</b>	<b>Article 103</b> “those who threatened to kill other persons, in circumstances such as to make the latter believe that such threats shall be realized, shall be subject to non-custodial reform for up to 2 years or sentenced to between 3 months and 3 years of imprisonment”.
<b>Forced suicide</b>	<b>Article 100</b> “any person who cruelly treats, constantly intimidates, ill-treats or humiliates a person dependent on him or her, inducing the latter to commit suicide, shall be sentenced to between 2 and 7 years of imprisonment”.
<b>Humiliating other persons</b>	<b>Article 121</b> has a threshold which is serious infringe on the dignity or honor of other persons.
<b>Trafficking</b>	
<b>Trafficking in women</b>	<b>Article 119</b> “those who traffic people shall be sentenced to between 2 and 7 years of imprisonment”. Aggravating circumstances include (a) trading in women for the purpose of prostitution
<b>Trading in, fraudulently exchanging or appropriating children</b>	<b>Article 120</b> “those who trade in, fraudulently exchange or appropriate children in any form shall be sentenced to between 3 and 10 years of imprisonment.
<b>Prostitution related offences</b>	

<b>Harboring prostitutes</b>	<b>Article 254</b> “those who harbor prostitutes shall be sentenced to between 1 and 7 years of imprisonment. Aggravating circumstances include coercing other persons into prostitution as well as involving children and juveniles
<b>Procuring prostitutes</b>	<b>Article 255</b> “those who entice or procure prostitutes shall be sentenced to between 6 months and 5 years of imprisonment.
<b>Sexual intercourse with juveniles</b>	<b>Article 256</b> “those who have paid sexual intercourse with juveniles”
<b>Other</b>	
<b>Infringement upon women’s right to equality</b>	<b>Article 130</b> provide that those who use violence or commit serious acts to prevent women from participating in political, economic, scientific, cultural and social activities shall be subject to warning, non-custodial reform for up to 1 year or prison term of between 3 months and 1 year.

***The Law on Domestic Violence Prevention and Control, 2007***

The Law on Domestic Violence Prevention and Control, 2007 lists a number of acts as DV in article 2(1). Decree 110/2009/NĐ-CP covers acts of DV as defined by the DV Law that are required to be administratively sanctioned.

<b>Defines domestic violence and lists nine categories of acts that amount to domestic violence:</b>	
2(1)(a)	Corporal beating, ill-treatment, torturing or other purposeful acts causing injuries to one’s health and life
2(1)(b)	Insulting or other intended acts meant to offend one’s human pride, honor and dignity
2(1)(c)	Isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences
2(1)(d)	Preventing the exercise of the legal rights and obligation in the relationship between grandparents and grandchildren, between parents and children, between husbands and wives as well as among brothers and sisters
2(1)(đ)	Forced sex
2(1)(e)	Forced child marriage, forced marriage or divorce and obstruction to freewill and progressive marriage
2(1)(g)	Appropriating, demolishing, destroying or other purposeful acts to damage the private properties of other family members, or the shared properties of family members
2(1)(h)	Forcing other family members to overwork or to contribute more earnings than they can afford; controlling other family members’ income to make them financially dependent
2(1)(i)	Conducting unlawful acts to turn other family members out of their domicile
<b>Sets out principles and measures for prevention and control:</b>	
23-29	Support services (medical services, counseling, legal advice)
20–21	Forbidden contact orders. Victims can apply to the Chairperson of the commune People’s Committee (3 day order) or to the courts (4 month order)
12	Reconciliation principles

***The Law on Human Trafficking Prevention and Control***

The Law expands the list of prohibited acts to include article 119 and 120 of the Penal Code; includes provisions for receipt, verification and protection of and support for survivors; international cooperation; and responsibilities of government ministries, sectors and others.

<b>Prohibited acts include:</b>	
i.	transferring or receiving persons for sexual exploitation, forced labor or removal of human organs or other inhuman purposes
ii.	recruiting, transporting or harboring persons for sexual purposes, etc.
iii.	forcing others to commit such acts
iv.	acting as a broker for others to commit such acts
v.	taking revenge or threatening to take revenge on victims, witnesses, reporting persons, denunciators or their relatives or persons stopping the acts
vi.	taking advantage of human trafficking prevention and combat activities for self-seeking purposes or for committing unlawful acts
vii.	obstructing the reporting, denunciation and handling of the acts
viii.	stigmatizing or discriminating against victims
ix.	disclosing information on victims without their consent or their lawful representatives'
x.	impersonating victims
xi.	committing other violations of this Law

***Ordinance on Prostitution Control and Combat***

Defines "selling sex" as having sexual intercourse with another for pay with money or other material benefits.

<b>Prohibited acts include:</b>	
buying sex; selling sex; harboring prostitutes; organizing prostitution activities; forcing prostitution; brokering prostitution; protecting prostitution; abusing the service business for prostitution activities; and other acts related to prostitution activities as prescribed by law.	
Art 22	handling of sex buyers with administrative punishment in the form of caution or fine
Art 23	handling of prostitutes with administrative punishment in form of education in communes, wards or townships or sent into medical treatment establishments. Prostitutes who being aware of their HIV infection deliberately transmit the disease will be subject to penal liability.

## APPENDIX 2. NATIONAL STATISTICS ON DOMESTIC VIOLENCE

### **Domestic violence**

Physical violence is the most frequently reported type of VAW in Viet Nam, with 16 to 37 % of women reporting that they have experienced physical abuse; however, some studies also indicate that emotional violence also occurs at high rates (19 to 55%).<sup>299</sup> Sexual violence in the family, particularly marital rape is not often reported. The small scale NGO studies show that DV can happen in any family, any social community and any area.

Physical	Sexual	Emotional	Economic
<i>From the National Study on DV against women in Viet Nam 2010</i>			
-32% ever married women have experienced physical violence in their life -6% had experienced physical violence in the past 12 months -Results show that physical violence starts early in relationships and lessons with age	-as much as 10% of ever-married women reported in the interviews that they experienced sexual violence in their lifetime -4% in the past 12 months. - women who report sexual violence almost always also report physical violence	- 54% of all women report lifetime emotional abuse -25% report current emotional abuse	-the prevalence rate of economic abuse for lifetime is 9%
<i>From MPS (reported in 2006)</i>			
-Nationwide every 2-3 days a person was killed in a case related to DV. -In 2005, 14% of homicide cases were related to DV (151/1113 cases). -In the first 3 months of 2006, this rate was 30.5% (26/77 cases).			
<i>National Study of the family (MOCST, GSO, UNICEF, IFGS: 2008)</i> 21.2% of married couples had experienced at least one form of DV			
Mai et al study of 465 couples -50% of men said they beat their wives, while 37% of women reported being abused (illustrates under-reporting)	2006 survey by National Assembly Office's Department of Social Affairs -30% of women from the survey said they were forced into unwanted sex by their husbands	Hai Phong study -19.6% of women in the study were emotionally abused by their husbands Vung et al study -55% prevalence rate of psychological abuse	Duc Giang counseling centre -11% of clients suffered from economic abuse
UNODC and HEUNI supported research (Research Centre for Gender and Development of the Hanoi University of Social Science and Humanities, together with GSO and VWU) studies 900			

<sup>299</sup> Vung et al 2008, Luke et al 2007, UNFPA 2007, Loi et al 1999 cited in the Issues Paper.

female survivors of DV			
83% - threatening to hurt physically 69%-throwing something or hit with something that hurts or frightens 64% - pushing, grabbing, twisting arm or pulling hair in a way that really hurts or scares 90% - slapping, kicking, biting or hitting with a fist 29% - strangling, trying to suffocate, burning or scalding 37% - using or threatening to use a knife/sword/gun 38% - using physical violence some other way	36% - Forcing or attempting to force to have sexual intercourse 20% - Touching sexually against the will	90% - suffered depression, fear, panic attacks and sleeping disorders 33% - Harming or threatening to harm or kill children or someone close 91% had been called names and other insults 59% - damaging or destroying possessions or property 39% - trying to limit the woman's contact with family and friends	32%-Exploiting economically

Statistics from other government agencies also provide information of the extent of DV.

- Regarding the percentage of divorce cases that cite DV as the main cause for divorce, the SPC statistics report from 2000-05 finds 53% of the court cases. The National Assembly's Department of Social Affairs reported in 2006 a rate of 60%.
- Regarding health sector data, a report from the Health Department in Cuu Long (Mekong River Delta) indicates that in 2005, 1011 patients (out of 1319) attempted or committed suicide due to DV, resulting in 30 deaths.
- A report from the Health Department in Tay Nguyen indicates that among 3944 patients, 715 people attempted or committed suicide, resulting in 27 deaths.
- According to the stats from the Depart of Burns in Cho Ray hospital, for the period of 1994 to 1997, they received 114 cases of burns due to acid splashes of which 90% cases concerned marital and family problems.
- Statistics provided by 18 provinces and cities for the period 2002-2007 indicate that in these localities 11,630 cases of DV occurred and needed intervention from the local government agencies or legal aid office. Most of these cases concerned violence by the husbands against their wives or by adults against their children. Some cases concerned violence among other family members, such as adult children against their elderly parents, members of the family-in-law against their daughters-in-law (see Le Thi Quy 2007, 19-20).

The consequences of the violence can be very severe, resulting in death. According to the National Study, 26% of women who had been physically or sexually abused by husbands reported having been injured as a direct result of the violent act. Among these, 60% reported

that they had been injured more than once and 17% had been injured many times. Women who have experienced partner violence were consistently more likely to report “poor” or “very poor” health. Women who had children between 6 years old and 11 years old and who had experienced partner violence were consistently more likely to report that these children had behavioral problems (such as nightmares, bedwetting, aggressive behaviors and low performance at school) compared with women who had not experienced violence. Almost 1 in 4 women with children less than 15 years old report that these children have been abused physically by her husband. More than half of the women who experienced physical violence by husbands also report that their children witnessed it at least once. Women who experience partner violence are twice as likely as other women to have had a mother who was beaten. They are 3 times as likely to have a husband whose mother was beaten or who was himself beaten as a child. The childhood experience of the husband is an important risk factor with respect to him being a perpetrator later in life.

### ***Rape and sexual violence***

There is little research on rape and sexual violence in the community. The National Study on Domestic Violence Against Women compared partner and non-partner violence and found that women in Viet Nam are three times more likely to have experienced violence by partners rather than by someone else. About 10% of women reported physical violence by someone other than a husband since they were 15 years old. Only 2% of all women reported sexual violence since they were 15 years old. Most women reported that the perpetrators were strangers and boyfriends and only rarely were family members. There is evidence from small qualitative studies that show sex workers frequently experience violence from the regular partners, their clients, pimps or brothel owners.<sup>300</sup>

### ***Sexual harassment***

Sexual harassment in the workplace, as well as in family settings is mentioned in interviews for the Issue Paper but little research has been done to understand the prevalence in Viet Nam. CSAGA reported that from 1997 to 2003 only 338 of the 231,873 calls to their hotline related to sexual harassment. CSAGA also studied sexual harassment in schools and found that 15.6% of pupils were fondled, touched or kissed on parts of their body by other people, which made them feel uncomfortable or afraid.<sup>301</sup>

### ***Trafficking in women and girls***

Data is particularly hard to find, although some reports suggest thousands of women and girls are trafficked, particularly to China and Cambodia for sexual exploitation.<sup>302</sup>

- National Action Plan on Trafficking Report shows that from 2004 to 2009, 1568 cases of trafficking were prosecuted, 4008 individuals were trafficked nationwide and 2888 human traffickers were detained. Of the individuals trafficked, over 60% were trafficked to China and 11% to Cambodia.
- UN Women study illustrates that the trafficking recruitment process varies greatly, from women migrating through legal channels using legitimate employment or marriage

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<sup>300</sup> UNSW, HMU 2009; Do Van Quan 2009; Rosenthal and Oanh 2006) as cited in the Issues Paper.

<sup>301</sup> Study of 314 pupils at 3 high schools conducted by CSAGA, the Institute for Social Development Studies and Action Aid, cited in the Issues Paper.

<sup>302</sup> Regional Thematic Working Group 2008:105 as cited in the Issues Paper.

brokering networks but them diverted by corrupt brokers to illegal channels to migration, relying on networks of friends, family or neighbours.

- From the UNIAP website, it notes that there is a specialized counter-trafficking police unit under the MPS General Department of Anti-Crime Police and selected provinces. During 2004-2009 there were 1586 human trafficking cases over the country with 2888 criminals and 2935 survivors (of which there were 1218 women trafficking cases, 191 children and 177 women and children cases). 748 cases have gone to trial and 1367 criminals have been convicted of trafficking women and children. The majority of traffickers are prosecuted under art 119, 120 and 275 of Penal Code, dealing with trafficking for commercial sexual exploitation.

### ***Forced prostitution***

Little is known about forced prostitution. Prostitution itself is viewed as a social evil and the State views the sex worker as an offender. More will be discussed in the section on women in conflict with the law.

### APPENDIX 3. UNODC-UN WOMEN MISSION....

Ha Noi, 12-23 November 2012

#### Assessment Team:

1. Ms. Claudia Baroni, UNODC Drug Control and Crime Prevention Officer
2. Ms. Eileen Skinnider, UNODC Consultant
3. Mr. Vu Ngoc Binh, UN Women Human Rights Consultant

#### Schedule

Date	Time	Name	Position/Organisation
12 Nov	<b>UNODC</b>		
	09.00-12.00	Ms. Zhuldyz Akisheva	Country Manager
	<b>UNFPA</b>		
	12.30-14.00	Ms. Mandeep K. Obrien	Deputy Representative
	<b>National Legal Aid Agency, Ministry of Justice (MOJ)</b>		
	14.00-16.00	Mr. Tran Huy Lieu	Director
13 Nov	<b>Vietnam Justice Support Association for the Poor</b>		
	08.00-10.00	Ms. Ta Thi Minh Ly	Chairwoman
	<b>“Peace Shelter” (under the Viet Nam Women’s Union) for Survivors of Domestic Violence</b>		
	10.30-12.00	Visit and discussion with staff and survivors	
	<b>UNDP</b>		
	12.15-13.30	Mr. Nicholas Booth, Policy Advisor	
	<b>Delegation of the European Union to Viet Nam (EU)</b>		
	13.30-15.00	Mr. Bryan Fornari	Deputy Head of Cooperation and Development (Governance and Economic Cooperation)
Mr. Jean-Pierre Bardoul		Programme Officer, Institutional Support and Governance	
<b>Justice Partnership Programme (JPP), funded by the EU, Sweden and Denmark</b>			
15.00-16.30	Mr. Jacob Gammelgaard	Chief Technical Advisor	
14 Nov	<b>Visit to Hai Duong province to interview local police officers, judges and members of Viet Nam Women’s Union</b>		
15 Nov	<b>Ministry of Labour, Invalids and Social Affairs (MOLISA)</b>		
	09.00-11.00	Mr. Nguyen Van Thanh (former judge)	Programme Officer, Department of Legislation
	<b>Canadian Embassy</b>		
	12.00-13.30	Ms. Deborah Chastis	Canadian Ambassador
	<b>Supreme People’s Court (SPC)</b>		
16.00-17.30	Mr. Le Van Minh (Judge)	Director, Department of General Statistics	
	Ms. Nguyen Thi Tam	Programme Officer, Department of General Statistics	
	Ms. Bui Thi Nhan	Senior Specialist, Department of International Cooperation	
	<b>Embassy of the State of Israel</b>		

Date	Time	Name	Position/Organisation
16 Nov	09.00-11.00	Ms. Meirav Elon Shaha	Ambassador
	<b>General Statistics Office (GSO)</b>		
	13.30-15.00	Ms. Nguyen Thi Viet Nga	Statistician, Social and Environmental Statistician Department
	<b>Ministry of Justice (MOJ)</b>		
	15.30-17.00	Mr. Tran Van Dung	Deputy Director, Criminal Law Division, Department of Administrative and Criminal Laws
Mr. Tran Van Dung		Deputy Director, Criminal Law Division, Department of Administrative and Criminal Laws	
Mr. Pham Hong Quang		Specialist in Constitutional Law, Department of Administrative and Criminal Laws	
		Ms. Vu Thi Thanh Thuy	Specialist in Administrative Law, Department of Administrative and Criminal Laws
17 Nov	<b>Centre of Study on Gender-Family and Community Development (GFCD)</b>		
	09.30-12.00	Ms. Nguyen Ngoc Anh	Director
		Ms. Nguyen Thi Hien	Programme Officer
19 Nov	<b>Family and Society Newspaper (Ministry of Health)</b>		
	09.00-10.00	Mr. Nguyen Van Nam	Deputy Editor-in-Chief
	<b>Centre for Studies and Applied Sciences in Gender-Family-Women and Adolescents (CSAGA)</b>		
	14.00-16.00	Ms. Nguyen Van Anh	Chairwoman
		A survivor of domestic violence	
20 Nov	<b>Supreme People's Procuracy (SPP)</b>		
	09.30-11.30	Ms. Hoang Thi Thuy Hoa	Section Chief, Department of International Cooperation
	<b>Viet Nam Women's Union (VWU)</b>		
	14.00-15.00	Ms. Nguyen Thi Hoai Linh	Director, Department of International Cooperation
		Ms. Pham Thi Thoa	Deputy Director, Department of Family and Social Affairs
Ms. Nguyen Thi Thanh		Programme Officer, Department of Laws and Policies	
		Ms. Nguyen Thi Kim Ngan	Programme Officer, Department of International Cooperation
<b>NHQUANG &amp; ASSOCIATES</b>			
	15.30-16.30	Mr. Nguyen Hung Quang	Managing Partner
21 Nov	<b>Policy Dialogue Workshop on Multi-Sectoral Coordination on DVPC in Response to the International Day of Elimination of Violence against Women (25 November) organized by the Ministry of Culture, Sports and Tourism (MOCST)</b>		
	08.30-13.30		
	<b>Ha Noi Lawyer Association</b>		
	14.00-15.00	Ms. Le Thi Ngan Giang	Lawyer
<b>Ministry of Culture, Sports and Tourism (MOCST)</b>			
	15.00-16.30	Mr. Pham Quoc Nhat	Programme Officer, Family Department
22 Nov	<b>JUDGE Project Wrap-up Meeting on "Sharing and Celebrating Success" organized by the Ministry of Justice and the JUDGE Project</b>		
	08.30-13.30		

Date	Time	Name	Position/Organisation
	<b>Spanish Agency for International Development and Cooperation (AECID)</b>		
	14.00-16.00	Ms. Silvia Vaca Satomayor	Programme Director
		Ms. Pepa Rubio Pueyo	Programme Officer for the "Peace House" for victims of domestic violence
	<b>Justice Partnership Programme (JPP)/EU</b>		
	15.00-16.30	Ms. Jennifer Khor	Technical Advisor for Support to the Viet Nam Bar Federation
23 Nov	<b>Legal Policy Dialogue on Court Governance organized by the Ministry of Justice and UNDP to interview</b>		
	08.30-13.30		
	<b>General Department of Crime Prevention and Suppression, Ministry of Public Security (MPS)</b>		
	14.00-15.00	Ms. Nhu Thi Minh Nguyet (Senior lieutenant colonel)	Deputy Director, Political-Logistic Department/Head of Women's Union Chapter
	<b>Supreme People's Procuracy (SPP)</b>		
	15.30-16.30	Ms. Nguyen Thi Yen	<ul style="list-style-type: none"> <li>• Director, Department of Prosecution and Supervision of Criminal Trials (Department 3)</li> <li>• Deputy Director, SPP Committee for the Advancement of Women</li> </ul>
Ms. To Thi Minh Tam		<ul style="list-style-type: none"> <li>• Deputy Director, Department of Supervision of Custody, Detention, Correction and Rehabilitation of Prisoners (Department 4)</li> <li>• Member, SPP Committee for the Advancement of Women</li> </ul>	

#### **APPENDIX 4. Mission to Phu Son 4 Prison, Thai Nguyen Province**

UNODC –UN Womena mission to Phu Son 4 Prison in Thai Nguyen Province, Viet Nam took place In early February 2013 in order to assess the situation of women in Phu Son prison.

The UN officials were hosted and guided by Phu Son 4 Prison Director, other senior staff and by the Deputy Director of MPS Department for Education, Rehabilitation and Social Re-integration. During the visit the UN officials could verify the following:

##### Food, accommodation, work, recreation and disciplines

- Phu Son 4 Prison had the capacity to keep 4-5,000 prisoners who are sentenced from 6 months to life imprisonment. There were foreign prisoners held in this prison but not under administrative detention provisions;
- There were 1,000 female prisoners sentenced for different crime, mainly for drug trafficking (65%), as well as for economic crimes (e.g. financial fraud), involvement into human trafficking and robbery. Representatives of ethnic minorities accounted to 15-20% of the entire prison population with few female being among them.
- The prison has separate areas for female and male prisoners, as well as for Juvenile prisoners up to 16 years old. Standard cell accommodates 30-50 prisoners with a sleeping area of 3m<sup>2</sup> assigned for female and juvenile prisoners and 2m<sup>2</sup> for male prisoners.
- Female prisoners were allowed to keep personal possession;
- The female prisoners did not do heavy or hazardous jobs listed as jobs banned from employment of female and minor laborers. They worked in the workshop producing garment, woodwork, crafts, jute and wool carpet, or in tea plantations and vegetable gardens under guard.
- Like all other prisoners, female prisoners worked in the day as part of their rehabilitation and were locked in their sleeping quarters between 7 pm and 5 am.
- All facilities, including the sleeping quarters, kitchens and toilets, appeared well ventilated, clean and tidy.
- Food, according to the nation-wide established standards, was supplied by the prison authority and prepared by prisoners. They could supplement this with vegetables they grow.
- The recreation and reading room, although bare, appeared to be in good order.
- The prisoners were allowed to periodically receive gifts and money from relatives.
- The prisoners who broke prison regulations would be first counseled, then cautioned, and finally separated from the rest. However, disciplinary measures of having legs put in stocks would not apply to females or juveniles. There were no disciplinary measures that include prohibition of family contact, nor imposing solitary confinement of a pregnant or a breast-feeding women or a women with an infant as punished.

### Pregnancy, motherhood and health care

- Pregnant prisoners are entitled to pre and post-natal leaves as public employees under the Labour Code. Accordingly, the prison has breastfeeding facilities although female would be sent to local hospital in cases of the baby delivery. It also applies the special supply provisions for female, which include 2 towels, 2 pair of slippers, 2 cloth sets and items for personal hygiene.
- Women, similar to men, were entitled for meeting their spouses in the so-called “happy rooms”. Condoms were provided by the administration to avoid unexpected pregnancy. In case of pregnancy, a woman would be sent to the hospital for abortion.
- The team visited a small ‘kindergarten’ with 10 children up to 3 years old, whose mothers were imprisoned in Pgu Son. The ‘kindergarten’ was located in a small separate building within the prison compound. It is basic, but clean.
- The delegation visited the infirmary, where a female doctor was in attendance, and met several patients who are old women. No information/complaints were received from hospitalized prisoners on the treatment and quality of services.

### Female prison staff

- Overall, women working in prisons in Viet Nam are under-represented while those penal institutions remain strongly male dominant as prison management is classified as a dangerous and tough job not to be performed by women. Similar situation was observed in Phu Son 4 prison, which had only few female professional staff in the prison dealing with the female prisoners.

### **The immediate needs identified by the administration of the prison and female prisoners.**

#### Administration:

- More training for the prison staff on HIV and drug use prevention and treatment
- More female professional staff in prisons trained in special needs of female prisoners
- More vocational training for inmates

#### Female prisoners:

- Targeted vocational training and assistance in reintegration (e.g. job opportunities)
- Assistance in renovation of prison cells

**APPENDIX 5. ASEAN Expert Meeting on the Implementation of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Bangkok, February 2013.**

**NATIONAL QUESTIONNAIRE – VIETNAM**

Question		Answer
1	How many women prisoners do you currently have in your country?	Number: <u>10,722</u>
2	What were the figures for the previous two years?	Number: 2012: <u>10,807</u> Number: 2011: <u>9,586</u>
3	What type of non-custodial measures or sanctions do you have (e.g. fines, bail, suspended sentences, etc.)	<i>List types of sanctions here:</i> In Vietnam, non custodial measures (for both female and male offenders) include: warning, fines, non-custodial reform (re-education without detention), deportation (expulsion) and suspended sentence. In addition, one or a number of supplementary forms of punishment may be imposed such as Ban from holding certain posts, practicing certain occupations or doing certain jobs; Ban on residence; Probation; Deprivation of some civic rights; Confiscation of property; Fine, when it is not applied as a principal penalty; Expulsion, when it is not applied as a principal penalty. Judicial measures can be imposed: confiscation of objects and money directly related to crimes, Return of property, repair or compensation for damage; compelling to make public apologies, Compulsory medical treatment. Judicial measures for juveniles include education in offender's commune/ward; sending to an education institute (juvenile correctional institute).
4	How many women offenders are currently undergoing a non-custodial sanction or measure in your country?	Number: <u>(We don't have enough data at the moment)</u>
5	What percentage of women in prison has not yet been convicted and sentenced (i.e. pre-trial prisoners)?	Percentage: <u>15.51%</u>

6	<p>What were the offences for which women offenders have been convicted in the last 3 years?</p>	<p><i>List offences here: (Please indicate proportion or number of women against each offence)</i></p> <p>We don't have data at the moment (answered by MPS)</p>
7	<p>What were the sentences received by women offenders for the last three years ?</p> <p><b>Non-custodial sanctions</b> (Please indicate number or proportion of women for each non-custodial sanction such as fines, suspended sentences, community service etc)</p>	<p>We don't have data at the moment (answered by MPS)</p>
8	<p><b>Prison sentences</b> (Please indicate number or proportion of women for different lengths of sentences. If your statistics are arranged in a different way than indicated, please provide your own statistical information, if necessary using an additional sheet)</p>	<p>Length of prison sentences:  Up to 2 years: __7.14%_____  2 to 5 years: __23.6%_____  5 to 10 years: __36.29%_____  10 to 20 years: __26.23%_____  Life sentences: __4.81%_____</p>
9	<p><b>Death penalty</b></p>	<p>Number: __439 people including 32 women_____</p>
10	<p>How many staff do you have working in women's prisons or sections of prisons where women are held?</p>	<p>Number: __8,908_____</p>
11	<p>What is the gender of staff working in women's prisons or sections of prisons where women are held?</p>	<p>No. of female staff:  __1,087_____  No. of male staff:  __7,821_____</p>
12	<p>What positions do staff working in women's prisons or sections of prisons where women hold? (Please indicate number against each position)</p>	<p>Female staff positions: __ medical staff, financial staff, logistics staff, education officers, counselling officers,</p>

		skills training officers, educator-wardens for female prisoners, security guards, staff on-duty (for female prisoners' sections)._____ Male staff positions: _ ensuring security, maintaining order, carrying out security checks, security guards, staff on duty, counseling, education officers, educator-wardens, prisoner escort officers. _____
13	Until which age can dependent children stay in prison with their mothers, if at all?	_____3_ years of age (36 months)
14	How many children are living with their mothers in prison at the current time?	Number: ___66_____
15	Are there any rehabilitation programmes which are gender specific – i.e. designed specifically to assist women offenders / prisoners to rebuild their lives in a positive way?	Yes X            No (delete as appropriate)
16	If yes, please provide examples of such programmes and the number of women participating, if possible. <i>(Please use an extra sheet if the space provide for answer below is too limited).</i>	
	Programme: Education programmes and programmes with additional contents for women such as: education on women's rights, sex, sexual, reproductive health, sexually transmitted diseases, family affairs, life skills training, skills to find jobs, skills to cope with difficulties and challenges in life... with participation from thousands of female inmates.	No. of women participating: Thousands of inmates
	Programme	No. of women participating
	Programme	No. of women participating
17	What are the rates of recidivism among former women prisoners in the last three years?	Percentage rates: _(At the moment, Vietnam is undertaking the national survey and the data will be available by end of June)_____
18	How does this compare to rates of recidivism among former male prisoners?	Percentage rates: _____as above_____
19	What are the rates of recidivism among former women offenders who have completed a non-custodial sentence for the	Percentage rates: _____as above_____

	last three years?	
20	How does this compare to rates of recidivism among former male offenders who completed a non-custodial sentence?	Percentage rates: _____ as above _____
21	What proportion of women pre-trial detainees have access to lawyers?	Percentage: __100%_____
22	How many foreign national women prisoners do you have in your country?	Number: __54_____
23	How many ethnic and racial minority or indigenous women prisoners do you have in your country?	Number: __1,890_____
24	How many juvenile female prisoners do you have in your country?	Number: __39_____

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