

CEDAW AND THE LAW:

A Gendered and Rights-Based Review

of Vietnamese Legal Documents

through the Lens of CEDAW



United Nations Development Fund for Women



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Rea Abada Chiongson, September 2008

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ACRONYMS

ADR	Alternative Dispute Resolution
AIDS	Acquired Immune Deficiency Syndrome
ARVs	Anti-retroviral drugs
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CPRGS	Comprehensive Poverty Reduction and Growth Strategy
EMSB	Ethnic Minority Semi-boarding School
GBV	Gender-Based Violence
GR	General Recommendation
GSO	General Statistics Office
HEPR	Hunger Eradication and Poverty Reduction
HIV	Human Immunodeficiency Virus
IEC	Information and Education Communication
IUD	Intrauterine Device
LUC	Land-Use Certificate
MARD	Ministry of Agriculture and Rural Development
MTCT	Mother-to-Child Transmission
MOLISA	Ministry of Labour, Invalids and Social Affairs
MOET	Ministry of Education and Training
MOFA	Ministry of Foreign Affairs
MOH	Ministry of Health
MOJ	Ministry of Justice
MPS	Ministry of Public Security
NCFAW	National Committee for the Advancement of Women
NFE	National Fund for Employment
NGO	Non-Governmental Organization
SEDP	Socio-Economic Development Plan (2006-2010)
SEDS	Socio-Economic Development Strategy to 2010
SME	Small and Medium-Sized Enterprises
SPC	Supreme People's Court
SPP	Supreme People's Procuracy
STI	Sexually Transmitted Infection
UNAIDS	Joint United Nations Program on HIV/AIDS
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
VAW	Violence Against Women
VBARD	Viet Nam Bank for Agriculture and Rural Development
VBSP	Viet Nam Bank for Social Policies
VDG	Viet Nam Development Goal
VDHS	Viet Nam Demographic and Health Survey
VNHS	Viet Nam National Health Survey
VND	Vietnamese Dong
WHO	World Health Organization

ABBREVIATIONS

Circular on Female Labourers	<i>Circular No. 79/1997/Tt-Btc Of November 6, 1997 Guiding The Implementation Of Decree No. 23-Cp Of April 18, 1996 Of The Government Detailing And Guiding The Implementation Of A Number Of Articles Of The Labour Code Regarding Specific Provisions On Female Labourers</i>
Circular on Women Labour	<i>No.3-Ldtbxh/Tt Of January 13, 1997 Guiding The Implementation Of A Number Of Articles Of Decree No.23-Cp Of April 18, 1996 Of The Government With Specific Stipulations About Women Labour</i>
Civil Code	<i>Civil Code (No. 33/2005/QH11 of June 14, 2005) (unofficial translation)</i>
Civil Procedure Code	<i>Civil Procedure Code (No. 24/2004/QH11 of June 15, 2004)</i>
Combined Fifth and Sixth Periodic Report	Combined Fifth and Sixth Periodic Report of States Parties: Viet Nam. Consideration of reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/VNM/5-6. June 22, 2005
CPRGS	The Comprehensive Poverty Reduction and Growth Strategy (Document No. 2685/VPCP-QHQT of May 21, 2002)
Concluding Comments on Viet Nam 2001	Concluding Comments of Committee on the Elimination of Discrimination against Women: Viet Nam. 2001. CEDAW A/56/38
Concluding Comments on Viet Nam 2007	Concluding Comments of the Committee on the Elimination of Discrimination against Women: Viet Nam. Jan. 17, 2007. CEDAW/C/VNM/CO/6
Constitution	<i>Viet Nam Constitution (1992), as amended by Resolution No. 51/2001/QH10 of December 25, 2001</i>
Criminal Procedure Code	<i>Code of Criminal Procedure (No. 24/2003/QH11 of November 26, 2003)</i>
Decision on Families	<i>Decision No. 106/2005/QD-TTG of May 16, 2005 on Approving the Strategy on Building of Vietnamese Families in the 2005-2010 Period</i>
Decision on Health Insurance	<i>Decision No.139/2002/QD-TTG of October 15, 2002 on the Purchase of Health Insurance Care Funds for the Poor</i>
Decision on Leading Officials and Public Employees	<i>Decision No. 27/2003/QD-TTG of February 19, 2003 Promulgating the Regulation on Appointment, Reappointment, Shift, Resignation and Removal from Office of Leading Officials and Public Employees</i>

Decision on NCFAW	<i>Decision No. 114/2008/QĐ-TTĐ of August 22, 2008 on Strengthening the NCFAW</i>
Decision on Reproductive Health Care	<i>Decision No. 136/2000/QĐ-TTĐ of November 28, 2000 of the Prime Minister on Approving "National Strategy on Reproductive Health Care for 2001-2010 Period"</i>
Decision on SMEs 2004	<i>Decision No. 143/2004/QĐ-TTĐ Of August 10, 2004 Approving The Program On Human Resource Training Support For Small-And Medium-Sized Enterprises In The 2004-2008 Period</i>
Decision on Trafficked Women and Children	<i>Decision No. 17/2007/QĐ-TTĐ Promulgating the Regulation on Reception of, and Community Reintegration Support for, Trafficked Women and Children Home from Foreign Countries</i>
Decision on Trafficking 2005	<i>Decision 312/2005/QĐ-TTĐ of November 30, 2005, Approving the Projects under the Programme of Action against the Trafficking in Women and Children from 2005 to 2010</i>
Decree on Advertisement Ordinance	<i>Decree No. 24/2003/NĐ-CP of 13 March 2003 detailing the Implementation of the Ordinance on Advertisement</i>
Decree on Associations	<i>Decree No.88/2003/NĐ-CP of July 30, 2003 Providing for the Organization, Operation and Management of Associations</i>
Decree on Childbirth	<i>Decree No. 12/2003/NĐ-CP of February 12, 2003 on Childbirth by Scientific Methods</i>
Decree on Children Law	<i>Decree No. 36/2005/NĐ CP Detailing the Implementation of a Number of Articles of the Law on the Protection, Care and Education of Children</i>
Decree on Education Violations	<i>Decree No. 49/2005/NĐ-CP of April 11, 2005 on Sanctioning of Administrative Violations in Education</i>
Decree on Gender Equality Law	<i>Decree No. 70/2008/NĐ-CP of June 4 2008, Detailing the Implementation of a Number of Articles on the Law on Gender Equality</i>
Decree on Financial Regime	<i>Decree No. 10/2002/NĐ-CP of January 16, 2002 on Financial Regime Applicable to Public-Service Units with Revenues</i>
Decree on Health Violations	<i>Decree No. 45/2005/NĐ-CP of April 6, 2005 Providing for the Sanctioning of Administrative Violations in the Field of Health</i>

Decree on Labour Violations	<i>Decree No. 113/2004/ND-CP of April 16, 2004 Prescribing Administrative Sanctions against Acts of Violating Labour Legislation</i>
Decree on Land Law	<i>Decree No. 181/2004/ND-CP Of October 29, 2004 On The Implementation Of The Land Law</i>
Decree on Legal Aid Law	<i>Decree No. 07/2007/Nd-Cp Of January 12, 2007, Detailing And Guiding The Implementation Of A Number Of Articles Of The Law On Legal Aid</i>
Decree on Marriage and Family Law	<i>Decree No. 70/2001/Nd-CP Of October 3, 2001 Detailing The Implementation Of The Marriage And Family Law</i>
Decree on Marriage and Family Law (Ethnic Minorities)	<i>Decree No. 32/2002/Nd-Cp Of March 27, 2002 Prescribing The Application Of The Law On Marriage And Family To Ethnic Minority People</i>
Decree on Marriage Registration	<i>Decree No. 77/2001/ND-CP of October 22, 2001 detailing the Marriage Registration According to the National Assembly's Resolution No. 35/2000/QH10 on the Implementation of the Marriage and Family Law</i>
Decree on MOLISA	<i>Decree No. 186/2007/ND-CP of December 25, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Labour, War Invalids and Social Affairs</i>
Decree on Population Ordinance	<i>Decree No.104/2003/ND-CP of September 16, 2003 Detailing And Guiding The Implementation Of A Number Of Articles Of The Population Ordinance</i>
Decree on Press Law	<i>Decree No. 51/2002/ND-CP of April 26, 2002 Detailing the Implementation of the Press Law and the Law Amending and Supplementing a Number of Articles of the Press Law</i>
Decree on Prostitution Ordinance	<i>Decree 178/2004/ND-CP of December 15, 2004 detailing the Implementation of a Number of Articles of the Ordinance on Preventing and Combating Prostitution</i>
Decree on SMEs	<i>Decree No. 90/2001/ND-CP of November 23, 2001 on Support for Development of Small- and Medium-Sized Enterprises</i>
Decree on Statistics Law	<i>Decree No. 40/2004/ND-CP of February 13, 2004 Detailing and Guiding the Implementation of a Number of Articles of the Statistics Law</i>
Decree on Wages	<i>Decree No. 114/2002/ND-CP of December 31, 2002 Detailing and Guiding the Implementation of a Number of Labour Code's Articles on Wages</i>

Decree on Women Labourers	<i>Decree No.23-Cp Of April 18, 1996, Of The Government Providing Details, And Guidance For The Implementation Of A Number Of Articles Of The Labour Code On Women Labourers</i>
Directive on Gender Equality Law	<i>Directive No.10/2007/CT-TTG of May 3, 2007 of the Prime Minister of Viet Nam on the Implementation of the Law on Gender Equality</i>
Directive on HIV/AIDS	<i>Directive No. 02/2003/CT-TTG of February 24, 2003 by the Prime Minister on Strengthening Prevention and Combating of HIV/AIDS</i>
Directive on Sending Abroad	<i>Directive No. 766/1997/CT-TTG of September 17, 1997 on the Assignment of Responsibilities for Taking Measures Against the Illegal Sending of Women and Children Abroad</i>
Enterprise Law	<i>Enterprise Law (No. 60/2005/QH11 of December 25, 2001)</i>
Five Year Strategic Education Development Plan	Five Year Strategic Education Development Plan Ref: 6520/BGD&DT-KHTC of July 28, 2005
GR 3	CEDAW General Recommendation No. 3: Education and Public Information Campaigns (1987)
GR 9	CEDAW General Recommendation No. 9: Statistical Data concerning the Situation of Women (1989)
GR 12	CEDAW General Recommendation No. 12: Violence against Women (1989)
GR 13	CEDAW General Recommendation No. 13: Equal Remuneration for Work of Equal Value (1989)
GR 16	CEDAW General Recommendation No. 16: Unpaid Women Workers in Rural and Urban Family Enterprises (1991)
GR 17	CEDAW General Recommendation No. 17: Unremunerated Domestic Activities of Women (1991)
GR 19	CEDAW General Recommendation No. 19: Violence against Women (1992)
GR 21	CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations (1994)
GR 23	CEDAW General Recommendation No. 23: Political and Public Life (1997)
GR 24	CEDAW General Recommendation No. 24: Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women - Women and Health (1999)
GR 25	CEDAW General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures (2004)

Investment Law	<i>Investment Law (No. 59/2005/QH11 of December 25, 2001)</i>
Joint Circular on Marriage and Family Crimes	<i>Joint Circular No. 01/2001/TTLT-BTP-BCA-TANDTC-VKSNDTC issued September 25, 2001 Guiding the Application of the provisions in Chapter XV “Crimes Infringing upon the Marriage and Family Regimes” of the 1999 Penal Code</i>
Labour Code	<i>Labour Code (No.23 of June 1994) as amended on April 2, 2002 and November 29, 2006</i>
Land Law	<i>Law on Land (No. 13-2003-QH11 of November 26, 2003)</i>
Law on Associations	<i>Law No. 102/SL-L of May 20, 1957 on Enacting the Law on the Rights to Set up Association voted for by the National Assembly at the 6th Session</i>
Law on Children	<i>Law on the Protection, Care and Education of Children (No. 25/2004/QH11 of June 15, 2004)</i>
Law on Complaints and Denunciations	<i>Law on Complaints and Denunciations (No. 09/1998/QH10 of December 2, 1998) as amended in 2004 and 2005</i>
Law on Cooperatives	<i>Law on Cooperatives (No. 18/2003/QH11 of November 26, 2003)</i>
Law on Domestic Violence	<i>Law on Preventing and Combating Domestic Violence of November 21, 2007</i>
Law on Education	<i>Law on Education (No. 38/2005/QH11 of June 14, 2005)</i>
Law on Election to National Assembly 1997	<i>Law on Election of the Deputies of the National Assembly (15 April 1997) as amended by Law Amending and Supplementing a Number of Articles of the Law on Election of Deputies to the National Assembly, No. 31/2001/QH10 of December 25, 2001)</i>
Law on Election to National Assembly 2001	<i>Law on Election of Deputies to the National Assembly, No. 31/2001/QH10 of December 25, 2001)</i>
Law on Election to People’s Councils	<i>Law on the Election of Deputies to the People’s Councils (No. 12/2003/QH11 of November 26, 2003)</i>
Law on Gender Equality	<i>Law on Gender Equality (No. 73/2006/QH11 of November 29, 2006)</i>
Law on Government Organization	<i>Law on Organization of the Government (No. 32/2001/QH10 of December 25, 2001)</i>
Law on Guest Workers	<i>Law on Vietnamese Guest Workers (No. 72/2006/QH11 of November 29, 2006)</i>
Law on Health	<i>Law on Protection of People’s Health (Code 21 LCT/HDNN8 of June 30, 1989)</i>

Law on HIV/AIDS	<i>Law on Preventing and Combating HIV/AIDS (No. 64/2006/QH11 of June 29, 2006)</i>
Law on Legal Aid	<i>Law on Legal Aid (No. 69/2006/QH11 of June 29, 2006)</i>
Law on Legal Documents	<i>Law on the Promulgation of Legal Documents (December 11, 1996) as amended by Law Amending and Supplementing a Number of Articles of the Law on the Promulgation of Legal Documents (No. 02/2002/QH11 of December 16, 2002)</i>
Law on National Assembly Activities	<i>Law on Supervisory Activities of the National Assembly (No. 05/2003/QH11 of June 17, 2003) (Law on National Assembly Activities)</i>
Law on National Assembly Organization	<i>Law on Organization of the National Assembly (No. 30/2001/QH10 of December 25, 2001) amended on 2 April 2007</i>
Law on Nationality	<i>Law on Vietnamese Nationality (No. 07/1998/QH10 of May 20, 1998)</i>
Law on People's Procuracies	<i>Law on Organization of the People's Procuracies (No. 34/2002/QH10 of April 2, 2002)</i>
Law on Primary Education	<i>Law on Universalization of Primary Education (1991)</i>
Law on Publication	<i>Law on Publication (No. 30/2004/QH11 of 3 December 2004)</i>
Law on Residence	<i>Law on Residence, No. 81/2006/QH11 of November 29, 2006</i>
Law on Social Insurance	<i>Law on Social Insurance (No. 71/2006/QH11 of June 29, 2006)</i>
Law on Treaties	<i>Law on the Conclusion, Accession to and Implementation of Treaties (No. 41/2005/QH11 June 14, 2005)</i>
Law on Viet Nam Fatherland Front	<i>Law on Viet Nam Fatherland Front (No. 14/1999/QH10 of June 12, 1999)</i>
Marriage and Family Law	<i>Marriage and Family Law (No. 22/2000/QH10 of June 9, 2000)</i>
National Plan of Action Against Trafficking	National Plan of Action against Crime of Trafficking in Children and Women during the period of 2004-2010 (Decision No. 130/2004/QĐ-TTĐ of July 14, 2004 Decision of the Prime Minister)
National Strategy for the Advancement of Women	National Strategy for the Advancement of Vietnamese Women till 2010 (Decision No. 19/2002/QĐ-TTĐ of February 21, 2002)
National Strategy on HIV/AIDS	National Strategy on Preventing and Combating HIV/AIDS in Viet Nam till 2010 with a vision to 2020 (Decision No. 36/2004/QĐ-TTĐ of March 17, 2004)

National Strategy on Nutrition	National Strategy on Nutrition for the Period 2001-2010 (Decision No. 21/2001/QĐ-TTĐ of February 22, 2001)
National Strategy on Reproductive Health Care	National Strategy on Reproductive Health Care for the 2001-2010 Period (Decision No. 136/2000/QĐ-TTĐ on Approving "National Strategy on Reproductive Health Care for the 2001-2010 Period")
National Target Programme on Poverty Alleviation	National Target Programme on Poverty Alleviation in the 2006-2010 Period (Decision No. 20/2007/QĐ-TTĐ of February 5, 2007)
Optional Protocol to CEDAW	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Adopted October 6, 1999, Entered into force 22 December 2000
Ordinance on Administrative Violations	<i>Ordinance on Handling of Administrative Violations (No. 29/2006/PL-UBTVQH11 of April 5, 2006) amended in 2007</i>
Ordinance on Democracy	<i>Ordinance on Exercise of Democracy in Communes, Wards and Townships (No. 34/2007/PL-UBTVQH11 of April 20, 2007)</i>
Ordinance on Disabled Persons	<i>Ordinance of Disabled Persons (No. 06/ 1998 /PL-UBTVQH10 of July 30, 1998)</i>
Ordinance on Elderly People	<i>Ordinance on Elderly People (No.23/2000/PL-UBTVQH10 of April 28, 2000)</i>
Ordinance on Judges and Jurors	<i>Ordinance on Judges and Jurors of the People's Courts (No. 02/2002/PL-UBTVQH11 of October 4, 2002)</i>
Ordinance on Prostitution	<i>Ordinance on Preventing and Combating Prostitution (as per State President Order No. 10/2003/L-CTN of March 31, 2003)</i>
Ordinance on Public Employees	<i>Ordinance on Public Employees (No. 01/1998/PL-UBTVQH10 of February 26, 1998)</i>
Penal Code	<i>Penal Code (No.15/1999/QH10 of December 21, 1999)</i>
Plan of Action for the Advancement of Women	Plan of Action for the Advancement of Women in Viet Nam by 2005. (No. 26/2002/KH-UBOG of March 18, 2002)
Population Ordinance	<i>Population Ordinance (No.06/2003/PL-UBTVQH11 of January 9, 2003)</i>
Programme of Action against Trafficking	Programme of Action against Trafficking in Women and Children from 2005 to 2010 (Decision No. 312/2005/QĐ-TTĐ of November 30, 2005)

Programme on Law Dissemination and Education	Programme on Law Dissemination and Education 2003-2007 (Decision No. 13/2003/QĐ-TTĐ of January 17, 2003)
Regulation on Leading Officials and Public Employees	<i>Regulation on Appointment, Reappointment, Shift, Resignation and Removal from Office of Leading Officials and Public Employees</i>
Resolution on Penal Code	<i>Resolution No. 32/1999/QĐ10 of December 21, 1999 on the Enforcement of the Penal Code</i>
Resolution on Socialization	<i>Resolution No. 5/2005/NQ-CP of April 18, 2005 on Stepping Up Socialization of Educational, Healthcare, Cultural, Physical Training and Sport Activities</i>
Resolution on Work for Women	<i>Resolution 11-NQ/TW of the Political Bureau of the Communist Party of Viet Nam dated April 27, 2007 on the Work for Women in the Period of Accelerating Industrialization and Modernization</i>
Responses to Combined Fifth and Sixth Periodic Report	Responses to the List of Issues and Questions for Consideration of the Combined Fifth and Sixth Report of Viet Nam
Statistics Law	<i>Statistics Law (No. 04/2003/QĐ11 of June 17, 2003)</i>
Strategy for Protection and Care of People's Health	Strategy for the Protection and Care of the People's Health in the 2001-2010 Period (Decision No. 35/2001/QĐ-TTĐ of March 19, 2001)
Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime
Organized Crime Convention	United Nations Convention against Transnational Organized Crime

PREFACE

Gender inequality is at the root of discrimination, abuse and exploitation of women. Laws and policies that reinforce discrimination and exclusion exacerbate unequal power relations. Gender equality advocates have addressed this by pressing for a legislative environment that guarantees gender equality, and protects and promotes women's rights, and removal of discriminatory provisions in existing laws and policies to ensure compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other international human rights standards. To date, 185 countries had ratified the Convention and 96 have ratified its Optional Protocol. CEDAW represents international consensus on the fundamental rights of women, and is deemed the most comprehensive international human rights instrument addressing discrimination against women. CEDAW establishes norms and standards for laws and policies that should be put in place to eliminate discrimination against women.

States parties have *de jure* obligations and *de facto* obligations. To achieve *de jure* compliance, a State party must ensure that its constitution and legislation accords with substantive provisions of CEDAW, and that monitoring mechanisms are established to ensure the implementation of the Convention. This requires amendment or repeal of discriminatory laws, modification of existing laws, or enactment of new laws. The need for new laws to achieve *de jure* compliance has given rise to a trend to develop and enact gender equality laws - a different response to the traditional approach of incorporating gender equality provisions into existing legislation. As with any legal reform process however, serious attention must be paid to implementation and enforcement. *De jure* provisions of equality for women must be matched by *de facto* equality in everyday life.

In recent years many countries have initiated legislative reform, with the support of UNIFEM and other partners, helping to lay the foundation for advancing gender equality and women's rights. These reforms have included removal of discriminatory provisions in national and local legislation in areas such as employment, property ownership and inheritance, and the incorporation of new gender equality provisions into national constitutions. Success stories in efforts to integrate gender equality goals into national development have been documented. These efforts result in improvement of government accountability to women. These are critical in the context of aid effectiveness, where nationally-owned plans form the basis for international development support. Gender equality plans, policies and laws provide a basis upon which advocates can argue for increased attention to gender equality as a national priority.

Amidst the positive trend, the slow pace of implementation remains a profound concern within Southeast Asia and beyond. For example, legislative frameworks still include gender-discriminatory provisions, and have serious gaps in the area of protection of women's rights. Where new laws have been adopted, they often provide little or no enforcement measures, and include no provisions for redress. This is often the case with laws prohibiting violence against women.

Bold initiatives must be taken to ensure that commitment to international agreements are translated into concrete legal measures at national level to further the realization of women's human rights and gender equality in our region. Once adopted, moreover, these laws

will also equip women's rights advocates with frameworks to demand institutional accountability for their implementation.

Equally important is the need to strengthen capacities of women's groups and governments to undertake rights-based analyses of existing national laws, so that they can develop legislative change agendas that will truly advance women's rights. The judiciary needs greater support, not only to understand new gender equality laws, but also to develop a consciousness on gender issues that will allow them to effectively interpret the laws.

Viet Nam is no exception. Much remains to be done though the country has been making efforts for the past 27 years as pointed out by the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) on Viet Nam's 5th and 6th country report on its compliance with CEDAW in its Concluding Observations issued in February 2007. The CEDAW Committee has also provided suggestions to Viet Nam on how to improve the implementation of the Convention, including ensuring the alignment of existing laws with CEDAW provisions and the Law on Gender Equality.

This gender-sensitive and rights-based review of Vietnamese legal documents through the CEDAW lens conducted by Rea Abada Chiongson for UNIFEM 2007-2008, assesses the compliance of Vietnamese legal documents with CEDAW standards and points to the necessity for amendments, revisions, repeal or the issuance of new ones. We hope that this report will inform future reviews of Vietnamese legal documents, especially by the National Assembly, government ministries, mass organisations and local NGOs.

UNIFEM stands committed to supporting legal reforms for promoting and protecting the human rights of women. We encourage you to use this report towards this end.



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INTRODUCTION

RATIONALE

A gendered and rights-based review of Vietnamese legal documents is timely and most relevant for several reasons.

On 29 November 2006, the National Assembly of Viet Nam passed the Law on Gender Equality. This was hailed as a milestone in terms of enabling better enjoyment of equal rights and non-discrimination, particularly by women. The Law on Gender Equality was a comprehensive law that sought to ensure equality in all fields - politics, economy, labour, education and training, science and technology, culture, information, sport, public health, and family. It enumerated measures to ensure gender equality including: (a) promoting equality or applying temporary special measures; (b) mainstreaming gender equality in the legal normative system; (c) providing information, education and communication; (d) naming responsibilities of State agencies, including of the particular state management agency, and other agencies and organizations; and (e) identifying prohibited acts.

The Law on Gender Equality signaled the need to reconsider and review existing policies, laws and practices against it, and to evaluate the need for amendments, revisions or repeal, or the issuance of new legal documents. The Directive on Gender Equality Law was issued in 3 May 2007 affirming this need. This directive states that a review of legal normative documents has to be completed by 31 December 2007. Further, the Resolution on Work for Women of the Politburo was also promulgated, which provides for the following tasks and solutions, among the many tasks and solutions, to improve women's status especially in the era of accelerating industrialization and modernization: (a) successfully implementing the Law on Gender Equality; and (b) formulating, amending, adjusting and improving the legal system and policies to ensure better enjoyment of women's rights, especially in the area of labour, education, business, civil relations, land use, environment, social security, marriage and family, health care, and protection of mothers and children.

On 17 January 2007, Viet Nam engaged in a constructive dialogue with the CEDAW Committee on Viet Nam's Combined Fifth and Sixth Periodic Report on its compliance with the provisions of the CEDAW. As a result of this dialogue, the CEDAW Committee issued Concluding Comments on Viet Nam 2007 that provided suggestions to the State as to how to improve its implementation of CEDAW, including aligning existing laws with the provisions of CEDAW and the Law on Gender Equality.

The Law on Preventing and Combating Domestic Violence was also passed by the National Assembly in November 2007. This law provided a better framework for the protection of victims of violence, as well as warranting a review of numerous procedures, services and institutions to make them more responsive to the needs of victims.

Bearing these in mind, this legal review is responsive to the needs of the times.

OBJECTIVE

The objective of the review is to assess the compliance of Vietnamese legal documents with gender equality standards using a gendered and rights-based framework. It is hoped that the review will be able to highlight the gender dimensions in particular fields and to point out the necessary changes that need to take place in legal documents. It is also hoped that it will inform future reviews of Vietnamese legal documents, especially by legislative drafters in the Government. In this regard, this review takes particular notice of the Directive on Gender Equality Law, which mandated the assigned state management agency for the Law on Gender Equality - that is, MOLISA - to conduct a review of legal normative documents.

FRAMEWORK AND ANALYTICAL TOOL

In doing a gendered and rights-based review of Viet Nam's legal documents, CEDAW was chosen as the framework and analytical tool because it:

- is a human rights treaty;
- strongly advances a rights-based approach to claiming rights;
- has a conceptual framework that takes into account the social construction of gender;
- espouses a framework of equality that looks not only into equality of opportunities, but equality of benefits and results;
- provides for a framework of discrimination that addresses all forms of discrimination, especially indirect discrimination;
- focuses on the State as the primary holder of obligations to enable enjoyment of women's human rights and equality, hence enabling more comprehensive reforms;
- provides for a comprehensive guarantee of equality in all fields - civil, political, economic, social, cultural and other fields;
- lastly, as a treaty thereby being a legal document itself, is most compatible in discussions on law and legal reform.

LEGAL DOCUMENTS

The term 'legal documents' in Viet Nam in this review, as per Article 1 of the Law on the Promulgation of Legal Documents, covers:

- **Documents promulgated by the National Assembly and its Standing Committee:**
 - The Constitution, laws and resolutions of the National Assembly;
 - Ordinances and resolutions of the Standing Committee;
- **Documents issued by other competent State agencies at the central level:**
 - Orders and decisions of the State President;
 - Decisions and directives of the Prime Minister;
 - Resolutions and decrees of the Government;
 - Issues decisions, directives and circulars of Ministers, Heads of Ministerial-level

- agencies and Heads of agencies attached to the Government;
- Resolutions of the Justice Council of the Supreme People's Court;
- Decisions, directives and circulars of the Chairman of the Supreme People's Procuracy;
- Inter-agency resolutions and joint circulars between State agencies or between State agencies and socio-political organizations;
- **Documents promulgated by the People's Councils and People's Committees:**
 - Resolutions of the People's Councils;
 - Decisions and directives of the People's Committees.

The term 'legal normative documents' is preferred by some legal practitioners. For this review, however, the term 'legal documents' is used as it is the term found in official Vietnamese translations of laws referring to them; for example, in the Law on Legal Documents.

Focus was placed on legal documents issued by the National Assembly and its Standing Committee, primarily for their high legal authority and comprehensiveness of application. Second in line are documents issued by offices, ministries and agencies at the central level. There are numerous national plans and strategies that are also discussed. Although they may not be considered strictly as legal documents in many countries, in Viet Nam these plans and strategies are promulgated through legal documents. Hence, they are cited and considered in this review where relevant.

Since the drafting of legal documents is a continuous process, a cut-off period was placed to make the review manageable. This review considered legal documents issued until 30 October 2007. However, in many instances where a legal document is of importance to this review, such as the Law on Preventing and Combating Domestic Violence, the Decree on MOLISA or the Decree on Gender Equality (that identified MOLISA as the state management agency responsible for the implementation of gender equality), the review has noted and mentioned them.

OVERVIEW

The review is divided into six parts. Part I provides a brief overview on current developments in Viet Nam to enable an understanding of the context in which the review is based. Part II provides information on the political and legal framework of Viet Nam. The aim is to promote an understanding of the political structures in the country, as well as their powers and mandates. This part also lists what are considered as legal documents in the country and their authority. Part III discusses CEDAW, which is the treaty used as the framework and analytical tool for this review. This part provides not only basic information on CEDAW, but also explains the core principles of CEDAW without which a purely textual approach using the treaty would lack conceptual clarity and a sophisticated understanding of gender equality and non-discrimination. Part IV provides brief facts on Viet Nam's involvement with CEDAW, including dates of ratification, entry into force and submission of its reports. The substantive portion of the review is in Part V.

PART V

Part V is divided into the specific areas that follow Articles 1-16 of CEDAW. Each area will discuss the: (a) obligations under CEDAW; (b) selected indicators; and (c) relevant legal provisions in Vietnamese legal documents

In relation to the obligations under CEDAW, excerpts from the text of CEDAW, GRs and Concluding Comments on Viet Nam 2007 will be provided. These are the main provisions that will be used in the review. The original texts of these provisions are provided for easy referral and to be able to provide the reader a concrete text for their use and advocacy.

As to the selected indicators, as CEDAW is a comprehensive instrument that looks into all aspects of civil, political, economic, social, cultural and other spheres of life, there can be numerous indicators to measure compliance. A total of 117 indicators and 33 sub-indicators, which covered a wide range of issues, were used in the review. The term ‘indicators’ is used in a different sense in this review. The selected indicators are more in the nature of key questions or lines of inquiry to elicit information necessary for analysis rather than development programming indicators. They are utilized to provide guidance as to which issues are to be focused upon and answered. The selected indicators are in no way exclusive. For this review, they were chosen with special consideration to the: (a) gender equality situation in Viet Nam, in particular, issues and/or matters identified as priority by the State, academics and researchers, and NGOs; (b) issues of concern raised by the CEDAW Committee in Concluding Comments on Viet Nam 2007; and (c) extent of legal documents on the particular issues.

On the relevant legal provisions in Vietnamese legal documents, the following are discussed in an intertwined manner: (a) relevant legal provisions; (b) the situation of women in the particular area; (c) analysis of legal provisions and recommendations. In relation to relevant legal provisions, as explained earlier, the focus was placed primarily on legal documents from the National Assembly and its Standing Committee. Also considered were documents issued by offices, ministries and agencies at the central level, as well as national plans and strategies where relevant. In relation to the situation of women, reliance was placed on secondary sources. The purpose is to provide a brief context as to the situation of gender equality and women, so as to understand the legal provisions better. In some cases, information on the impact of legal provisions is not available, which makes it difficult to measure substantive equality or de facto equality. As to analysis and recommendations, they are provided based on the obligations under CEDAW and the legal framework, situation of gender equality, and feasibility and appropriateness of their application in Viet Nam. The analysis and recommendations also bear in mind the various kinds of legal documents in Viet Nam and Vietnamese practice of legislative drafting. A review of Vietnamese legal documents will show that what may be appropriate content of a Vietnamese legal document may not be so in legal documents of other countries. The author noted these in developing the recommendations. Also, it is obvious that not all solutions to equality and non-discrimination are legal. Hence, although most of the recommendations are for legal reform, there are several suggestions that do not relate to drafting, amending or repealing legal documents but will assist in its implementation and enforcement of gender equality provisions.

LIMITATIONS

There were several key limitations.

First, there were challenges relating to accessing legal documents. In many cases, English translations were not readily available. As a result, to obtain English versions, different sources of translations were used; for example, the Official Gazette, the MOJ law database, law firms, and donors, as well as unofficial working translations. There were still a number of legal documents without English translations. Translations of certain provisions were also inconsistent across legal documents or inaccurate - even those found in the official publications - that creates discrepancies with the Vietnamese texts and confusion for those who rely on English translations. Access to the legal documents was also challenging due the large volume of legal documents involved. This is due to the law-making practice of supplementing laws with subordinate laws, rather than laws fully providing all the necessary standards. Hence, many legal standards are found in subordinate laws rather than in the laws themselves.

Second, another limitation relates to accessing information on impact of particular provisions. In many cases, no such information is available. Where information is found, it is not sex-disaggregated or no gender analysis is provided as to existence of disparity or differences. This affected the use of CEDAW as an analytical tool. In espousing substantive equality, CEDAW requires an assessment of whether a law or intervention resulted in equality. Without the required information, such assessment cannot be made.

Third, this review was conducted in an initial time-frame of an estimated 30 working days over three months, which was later extended to six months due to the volume of the materials and the extent of time necessary to access them. The time-frame was identified based on the Directive on Gender Equality Law.

BENEFICIARIES

This review was drafted for those involved in the drafting and reform of legal documents. In keeping with the objective, this review seeks, in particular, to be useful to the drafters of the forthcoming government review as per the Directive on Gender Equality Law. Hence, the content and style of this paper is in many aspects technical and legal. Nevertheless, this review may also be useful for those monitoring compliance of Viet Nam - and other States - with its human rights and gender equality obligations.

Hanoi, September 2008

EXECUTIVE SUMMARY

A gendered and rights-based review of Vietnamese legal documents is timely and most relevant in Viet Nam. The passage of the Law on Gender Equality on 29 November 2006 and the review of the CEDAW Committee on 17 January 2007 signaled the need to review whether existing legal documents conform to gender equality standards and the necessity for amendments, revisions or repeal, or the issuance of new ones.

This review aims to assist in this process of evaluation and reform of legal documents. Hence, it hopes that it is useful to drafters of legal documents, as well as to advocates for gender equality who seek to transform the legal system into one that incorporates fully the principles of gender equality and non-discrimination.

In doing a gendered and rights-based review of Viet Nam's legal documents, CEDAW was chosen as the framework and analytical tool. This is because CEDAW is a human rights treaty and it strongly advances a rights-based approach to claiming rights. It is also a treaty that strongly espouses gender equality and non-discrimination in all fields. CEDAW emphasizes the obligation of State Parties to ensure enjoyment of equality. Lastly, as a treaty thereby being a legal document itself, CEDAW is most compatible in discussions on law and legal reform.

The structure of the review is based, therefore, on the substantive articles of CEDAW - that is, Articles 1-16 - that identify the specific areas and fields that need to incorporate equality. The review: (a) looks into the obligations under CEDAW, general recommendations (GRs) and Concluding Comments on Viet Nam 2007; (b) identifies the selected indicators to assess compliance with CEDAW obligations; (c) highlights the relevant legal provisions, bearing in mind the situation of women in particular fields; and (d) provides analysis and recommendations. The review is summarized under the headings below.

GENERAL UNDERTAKINGS TO ELIMINATE DISCRIMINATION AND ENSURE EQUALITY

(Articles 1-3 of CEDAW)

Articles 1-3 of CEDAW contain the general undertakings of State Parties. They require a comprehensive set of measures to be established to ensure gender equality. The selected indicators for these articles are divided into six areas: (a) guarantees of equality and non-discrimination; (b) prohibition of discrimination; (c) legal protection of women; (d) institutions and coordination mechanisms; (e) incorporation and application of treaties; and (f) GBV.

GUARANTEES OF EQUALITY AND NON-DISCRIMINATION

Article 2 of CEDAW requires that the principle of equality be embodied in the Constitution or laws. Article 1 provides the definition of discrimination. GR 25 highlights the elements of equality and non-discrimination that CEDAW espouses. Bearing these in mind, it is obvious that the definition and elements of equality and non-discrimination are one of the selected indicators to assess compliance with CEDAW. Therefore, the selected indicators focus on whether there is a clear definition of equality and non-discrimination that is compatible with CEDAW. They also inquire

into whether the guarantees of equality and discrimination include discrimination on the basis of sex or gender, as well as other grounds of discrimination such as ethnicity, disability, age, and sexual orientation. This will enable a more inclusive and responsive guarantee to cover the different disadvantages that women may face due to multiple grounds of discrimination.

Viet Nam guarantees of equality and non-discrimination on the basis of sex and gender in Articles 52 and 63 of the Constitution, and in legal documents such as the Article 5 of the Civil Code, Article 8 of Civil Procedure Code, Article 5 of the Criminal Procedure Code, Article 5 of the Labour Code, Article 2 of the Marriage and Family Law, and Article 3 of the Penal Code. Articles 5(3) and 5(5) of the Law on Gender Equality specifically provides a definition of both gender equality and gender discrimination. Articles 10, 40 and 41 of the law also explicitly states that it prohibits acts impeding the exercise of gender equality, gender discrimination in all its forms, and GBV.

Definition of gender equality and gender discrimination

The definition of gender equality and gender discrimination in the Law on Gender Equality, although promising, can still benefit from some improvements. For consistency with CEDAW, the definition of gender equality and gender discrimination must include and emphasize equal rights. The definition of gender discrimination must also clearly state that discrimination can be direct or indirect. A definition of indirect discrimination consistent with GR 25 is also recommended to be included preferably in the law to aid implementation. It is also suggested that provisions guaranteeing equality in legal documents other than the Law on Gender Equality must incorporate the definition of gender equality and gender discrimination; for example, this can be done by supplementing these laws with subordinate legal documents that contain a direct reference to the definitions in the Law on Gender Equality.

Grounds of discrimination

In the general provisions that guarantee equality and non-discrimination in Vietnamese laws (such as the Constitution and the Civil Code, Labour Code, Marriage and Family Law, and Penal Code), it can also be seen that many other grounds of discrimination, in addition to sex or gender, are recognized. These grounds include nationality, social status/class/position, belief, religion, educational level and occupation, and family background. Special laws provide specific protection to particular groups of people, such as the elderly, people with disabilities and people living with HIV/AIDS. What is noticeable, though, is that these grounds of discrimination are seen as separate from each other and are not always analysed or realized in an interconnected manner. Legal documents do not provide a mechanism on ways to address other forms of disadvantage in addition to gender in a systematic and simultaneous manner. On this note, it is suggested that the Law on Gender Equality be supplemented to include a provision recognizing the inter-relatedness of grounds of discrimination. In particular, it should provide explicitly that other grounds of discrimination - such as nationality, religion, belief, age, disability, sexual orientation, and social, economic, health and other status - may aggravate or compound gender discrimination. Hence, they must be addressed with gender discrimination in an interconnected manner.

It is also suggested that provisions in other laws must explicitly include non-discrimination on account of gender; for example, an explicit guarantee in the Ordinance on Elderly, Ordinance on Disabled Persons and Law on HIV/AIDS that discrimination on the basis of gender is one way to ensure that gender equality is not ignored and forms part of the application and monitoring of

these laws. Supplementary documents are also suggested to highlight areas of intersections of the grounds of discrimination and gender and ways to address them.

PROHIBITION OF DISCRIMINATION

Articles 2(b), 2(e) and 2(f) of CEDAW explicitly require the prohibition of discrimination. In line with this, the selected indicators focus on determining whether a comprehensive prohibition on discrimination is in place in legal documents. This prohibition should cover both public and private actors, as well as foreign and domestic persons, organizations, enterprises and other entities.

There are several provisions in the Constitution and laws - for example, the Law on Complaints and Denunciations, Law on Gender Equality and Penal Code - that can be used to prohibit discrimination by both public and private actors. However, in relation to sanctions, Article 42 of the Law on Gender Equality only provides general guidance on the handling of violations, and it does not provide sufficient notice as to the range and extent of penalties that will be applied for the violations. Aware of this, Paragraph II(b) of the Directive on Gender Equality Law requires the drafting of a decree that provides administrative fines against violations of gender equality. It is suggested that a decree that provides for sanctions against violations of gender equality must be issued as soon as possible bearing sanctions that are in proportion to the seriousness of the violation (and, therefore, providing a range of penalties that suit the violation, including criminal prosecution and penalties when necessary).

Provisions referring to the obligation of foreigners to abide by Vietnamese laws, including those prohibiting discrimination, exist. These can be found in the Constitution, Civil Code, Ordinance on Administrative Violations and Penal Code. However, Article 2 of the Law on Gender Equality only identifies the target group. The term target group creates confusion as it is unclear whether it refers to the beneficiaries of the law, duty-bearers, possible violators, or all of them. It is recommended that the Law on Gender Equality or its decree provide a clear statement that refers to the appropriate provisions for the handling of violations committed by foreign individuals and entities, including those committed by foreign individuals who are not legally residing in the country, as well as foreign organizations not operating in the territory of Viet Nam but subject to its jurisdiction.

LEGAL PROTECTION OF WOMEN

Article 2(c) of CEDAW requires State Parties to establish legal protection for women, including through national tribunals or public institutions. This protection includes the right to seek redress in cases of discrimination. It is not limited to women citizens, but includes all women within State Party jurisdiction. As a result, the selected indicators inquire into the existence of effective procedures for redress at the criminal, civil and administrative levels. They also look into whether support for accessing these remedies is in place, in particular legal aid. The impact of conciliation, mediation and negotiation procedures on seeking redress in cases of discrimination is also assessed. The selected indicators also inquire into whether legal protection is extended to foreign women in Viet Nam. They provide particular attention on the need for protection, confidentiality, privacy and support of women, especially of women victims/survivors of GBV as per GR 12 and GR 19.

Right to seek redress in cases of discrimination

Article 74 of the Constitution provides for the right to file complaints and denunciations against the illegal doings of State organs, economic bodies, social organizations, units of the peoples armed forces, or any individual. In addition to general provisions of law on redress (such as in the

Civil Code, Civil Procedure Code, Criminal Procedure Code, Law on Complaints and Denunciations and Penal Code), the right to seek redress in cases of discrimination is specifically provided in Article 37 of the Law on Gender Equality. In practice, however, the extent to which these general provisions are used to file gender-based discrimination complaints or denunciations is limited. On this point, it is recommended that legal education and awareness and educational campaigns be increased, especially targeting low-income earners and those living in rural or remote and mountainous regions on the guarantee of non-discrimination, their right to seek redress in cases of violation, and the appropriate institutions to access for redress.

Criminal procedure

There are no separate procedures for handling criminal cases involving women, whether as accused or victims of crimes. The general procedures for criminal cases in the Criminal Procedure Code are applicable. Nevertheless, these procedures can accommodate the following improvements to enable them to be gender-responsive.

Protection

The Criminal Procedure Code provides for the right to request procedure-conducting bodies to protect denouncers when they are intimidated, harassed or threatened. However, the protective measures provided are usually limited to deterrent measures put in place by the investigating bodies where there are grounds to believe that the accused will cause difficulties to the investigation, prosecution or adjudication; the accused will continue committing offences; or it is necessary to secure judgment execution such as arrest, custody, temporary detention, ban from travel outside ones own residence, guarantee, or deposit of money or valuable property as bail. As a recommendation, protective measures for the victim must include other measures of protection and be available immediately at any stage of the proceedings, especially in cases of violence. This may entail prohibiting the accused from approaching the victim or the victims family, being within the victims vicinity, or contacting the victim directly or indirectly. Also, victim protection programmes should be established that provide not simply protection to the victim, but other services that can address the victims needs such as medical treatment, counselling, shelter, or job or livelihood training depending on the circumstances of the case.

Privacy and confidentiality

Article 335 of the Criminal Procedure Code states the rights of denouncers including the right to request the confidentiality of their names, addresses and autographs. It is also provided, in Article 18 of the code, that courts will conduct trial in public except in certain cases. In this light, it is recommended that, in the code, an article provide that, at all stages of investigation, prosecution and trial of cases involving GBV, the investigating and prosecuting bodies as well as the courts must recognize the right to confidentiality and privacy of the denouncer and victim. In addition to the name, address and autograph being kept confidential, the personal circumstances of the victim or any other information tending to establish the identity of the victim should not be disclosed to the public at any time. In cases of GBV, on request when necessary to protect the identity of the victim or to ensure a fair and impartial proceeding, the trial should be held behind closed doors. In all cases, it should be mandatory for procedure-handling persons to inform denouncers and victims of their right to request confidentiality and to explain consequences relating to it.

Institution and termination of particular cases

It is suggested that rape and forcible sexual intercourse be taken off the list of crimes in Article 105 of the Criminal Procedure Code that can only be instituted at the victims request. An indispensable measure to accompany this is putting in place specific procedures on handling victims of rape, forcible sexual intercourse and other forms of sexual abuse. These procedures must be victim-friendly, including measures to protect safety and privacy and to address other needs such as medical treatment, counselling, legal assistance and rehabilitation. Procedures must also provide counselling and advice to family members of the victim.

Confrontation

Article 138 of the Criminal Procedure Code provides that investigators will conduct confrontation if there are contradictions in the statements of one or two persons in the course of their investigation. In cases of confrontation, it is suggested that the Criminal Procedure Code require that due diligence be exercised to ascertain the condition of the victim first. Where the victim is experiencing trauma or fear on account of the alleged offence, alternatives to face-to-face confrontation must be considered. They might include measures to separate the parties such as putting them in different rooms or using screens to shield one party from another, as well as allowing the presence of persons to support the victim.

Body searches and body examination

Articles 142 and 152 of the Criminal Procedure Code state that, in conducting body searches and examination of the body for traces of matters significant to the case, the search/examination of a person must be conducted by someone of the same sex and before a witness of the same sex. It is recommended that the code be amended to specify the responsibility of the police officer or examining physician to guarantee privacy in cases of examination. The code should provide that it is the duty of the police officer or examining physician to ensure that, except for those who are authorized to do the examination or reasonably expected to be present (for example, police escorts of the same sex in cases of the accused), only persons expressly authorized by the person being examined are allowed in the room where the examination is being conducted.

Custody

It is recommended that, in the case of pregnant women or a woman requiring special assistance (for example, a woman suffering from serious illness), the period for custody in Articles 86 and 87 of the Criminal Procedure Code be shortened; that is, shortening the time for sending the custody decisions to the procuracy and the maximum time of custody. Such cases should be given priority in the determination of the lawfulness of the custody.

Non-execution of the death penalty

Article 35 of the Penal Code provides that the death penalty does not apply to women who, at the time of committing crimes or being tried, are pregnant or nursing children aged up to 36 months. In these cases, the death penalty must be converted into life imprisonment. This is reinforced by Article 259 of the Criminal Procedure Code and Paragraph 3 of the Resolution on Penal Code. With policies now focusing on encouraging fathers to participate in the care and rearing of their children; and there are accused mothers who are non-nursing or replacing breast milk with milk substitutes before their children reach the age of 36 months, a continuous review of the Penal Code and Criminal Procedure Code must take place concerning the period of nursing that warrants the commutation of the death penalty. In this regard, it is strongly suggested that Viet Nam should review the possibility of abolishing the death penalty as a whole.

Postponement, temporary suspension or exemption of imprisonment penalty

Articles 61 and 62 of the Penal Code provide that women who are pregnant or nursing their children aged under 36 months are entitled to a postponement or temporary suspension of their imprisonment penalty until their children reach the age of 36 months. Further, Article 57(3) of the Criminal Procedure Code states that, if, during the postponement or suspension, such women have recorded great achievements, the court may decide to exempt them from serving their penalties (or the remainder of their penalties). The provisions of the Penal Code and Criminal Procedure Code should be extended to persons rearing children aged less than 36 months because, although nursing can be done only by women, child-rearing can be performed by both sexes. Appropriate monitoring procedures should be put in place to ensure that child-rearing is performed by the person who has been given a postponement or suspension.

Civil procedure

In relation to civil procedure, the following provisions are specific to women or affect women disproportionately.

Privacy and confidentiality

In Article 15 of the Civil Procedure Code, trials of public cases are carried out publicly, except in special cases where it is necessary to preserve the fine customs and practices of Viet Nam or to keep State, professional, business or personal secrets. In addition to this article, a clear provision on confidentiality and privacy must be drafted for cases where the publication of a party's identity will lead to danger to life or health or to stigmatization or trauma. The provision must require procedure-handling bodies to keep confidential not only names, addresses and autographs, but also all information concerning the identity of the party concerned. In all cases, it should be mandatory for procedure-handling persons to inform denouncers and victims of their right to request for confidentiality and explain the consequences relating to it.

Confrontation

Article 88 of the Civil Procedure Code provides that judges may conduct confrontations between the parties, among witnesses, and between parties and witnesses. Further, it states that in cases of confrontation in civil cases, due regard must be given to the condition of the parties/witnesses. Due diligence must be exercised to ascertain that no violence has been directed by one party or witness to another, especially in cases of family members. Where there is a finding that one party or witness has been subjected to violence or is experiencing trauma or fear, alternatives to face-to-face confrontation must be considered.

Provisional emergency measures

Articles 99 and 102 of the Civil Procedure Code provide for application of provisional emergency measures to deal with the urgent requests of the parties, to protect evidence, and to ensure judgment execution. It is suggested that the following emergency protection measures be expressly included in the list of provisional emergency measures: (a) prohibiting any forms of harassment or contact with a party and/or party's family members; (b) removal or exclusion of one party from a particular vicinity, including residence, place of work or education; and (c) prohibiting one party from threatening to use or using physical, emotional, psychological or sexual violence. It is also recommended that, where a request is made for emergency protection measures and there is extreme urgency so that delay in issuing the order will work to the extreme prejudice or harm of the requesting party, decisions be issued on the same day after *ex parte* determination, subject to the filing of a motion for its revocation by the other party if any.

Application of security measures

The Civil Procedure Code also provides that persons who request the courts to apply the provisional emergency measures prescribed in Clauses 6, 7, 8, 10 and 11 of Article 102 must deposit a sum of money or other valuable property or papers (equivalent to the property obligation to be performed by the obligor). This provision may have a disproportionate impact on women because they are less likely than men to have ownership, control or management of properties, including having their names in LUCs. It is suggested that research be conducted on the possible enabling conditions to be put in place to allow women access to such measures.

Law on Complaints and Denunciations

The Law on Complaints and Denunciations provides procedures for settlement of complaints and denunciations. In particular, there are articles on privacy and confidentiality in Articles 16, 57, 72 and 77 of the law. It is recommended that, in cases where serious harm, stigma or trauma would follow the disclosure of the victims identity, all identifying information must be kept confidential. Private receiving places must also be provided for the receipt of complaints and denunciations to ensure privacy and confidentiality.

Administrative procedure

In relation to administrative procedures, the following provisions will benefit from improvements.

Differential age

The differential age of application of administrative handling measures in Articles 23 and 25 of the Ordinance on Administrative Violations must be removed. More specifically, it is recommended that, in relation to these articles, the same age should apply to both men and women relating to whether they are subjected to sending to education establishments or to education at communes, wards and district towns.

Custody

It is recommended that, in the case of pregnant women or women requiring special assistance (for example, suffering from serious illness), the period for custody in Article 44 of the Ordinance on Administrative Violations must be shortened. Where possible, non-custodial measures should be preferred.

Postponement, exemption and temporary suspension of administrative handling measures

Articles 80, 81, 89, 90, 98 and 99 of the Ordinance on Administrative Violations provide that women who are pregnant or nursing children aged up to 36 months are exempt from serving the decision of being sent to reformatories. Such women can also request postponement of serving the decision of being sent to education establishments or to medical treatment establishments. A review of these articles must be initiated regularly in relation to the period of nursing that warrants exemption, temporary suspension and postponement of the execution of the decisions on administrative handling measures.

Legal aid

Legal aid is guaranteed by Article 132 of the Constitution and more specifically by the Law on Legal Aid and Decree on Legal Aid Law. Women are not explicitly included in the list of legal aid beneficiaries in Article 10 of the law, but there are several legal aid offices providing services exclusively for women. The law and decree also do not explicitly provide for any preferred or priority area of attention for women.

It is suggested that, in assessing eligibility for legal aid under the Law on Legal Aid, persons, especially women, who have no means of substantial income - even if the average family income is above the poverty line - must be considered poor and eligible for legal aid in cases where family support cannot be expected or family support is difficult to attain, such as in cases of domestic violence or marital disputes. It is also suggested that the law, Decree on Legal Aid Law or other legal documents identify explicitly discrimination cases as a priority areas for legal aid work. Consequently, in case of conflict of interest that may arise where persons applying for legal aid are opposing parties, priority should be given to cases of gender-based discrimination or GBV. It is recommended that appropriate guidelines for interviewing applicants/clients, legal aid counselling, participation in legal proceedings, and representation beyond legal proceedings be drafted, with gender-sensitive provisions incorporated into them. Persons performing legal aid should also accept cases provisionally, pending verification of the documents for eligibility, if they involve GBV where there is an immediate need for legal intervention or where there is danger of imminent violence to the applicant.

Conciliation, mediation and other forms of ADR

Articles 180-182 of the Civil Procedure Code, Article 3 of the Law on Complaints and Denunciations, Article 40 of the Decree on Legal Aid Law and Articles 158, 162 and 163 of the Labour Code discuss conciliation as a form of dispute resolution. It is suggested that, in cases of conciliation, mediation, reconciliation or other forms of ADR, it should be mandatory for the procedure-handling person to ascertain the voluntariness of the parties to participate. The procedure-handling person must proactively determine whether GBV is involved, the extent of such violence, and its influence on the decision to enter into conciliation and other forms of ADR as well as to affect the outcome of the proceedings. The application of reconciliation, conciliation and other forms of ADR must not be allowed where parties do not have equal power relations or one of the parties has been abused or subjected to violence that prevents independent choices, except for very pressing reasons and with appropriate safeguards.

INSTITUTIONS AND MECHANISMS FOR IMPLEMENTATION AND MONITORING¹

Articles 1-3 of CEDAW clearly require that States Parties take all appropriate means (including legislation) in all fields (in particular in the political, social, economic and cultural fields) to eliminate discrimination and to ensure the full development and advancement of women. This is supplemented by GR 9 and Concluding Comments on Viet Nam 2001, which recommend that effective national machinery or procedures be established or strengthened including providing existing national machinery with the necessary human and financial resources. Additionally, Concluding Comments on Viet Nam 2007 recommended that Viet Nam focus on setting clearly defined and time-bound targets, systematically collecting and analysing data, monitoring impact, and allocating sufficient human and financial resources for the effective enforcement of existing laws. As a result, the selected indicators for this aspect focused on whether a specific agency is responsible for coordinating and implementing efforts on gender equality and its corresponding mandate, powers and resources. The selected indicators also looked into whether legal documents require: (a) systematic collection and analysis of sex-disaggregated data and monitoring; (b) drafting and implementation of strategies and plans on gender equality; and (c) mechanisms to hold implementing agencies accountable (for example, supervisory functions over the agencies).

¹ The Decree on Gender Equality, Decree on MOLISA and the Decision on NCFW were adopted on June 4, 2008, December 26, 2007 and August 22, 2008 respectively and not included in this review. The review, although based on the context prior to the passage of the said legal documents, is still relevant in monitoring whether the recommendations provided were addressed in the new legal documents.

State management agency

A state management agency has to be designated to carry out the specific responsibilities in Articles 8, 9 and 26 of the Law on Gender Equality. In 25 December 2007 through the Decree on MOLISA, this Ministry was identified as the State management agency responsible for the implementation of gender equality. It is suggested that other responsibilities be explicitly required of MOLISA such as: (a) monitoring compliance with international treaties and commitments; (b) providing advice or technical assistance on gender equality matters to the Government; (c) arranging for provision of support services for victims of gender discrimination; (d) assisting and monitoring gender mainstreaming in Government ministries and State agencies and organizations, including budgetary allocations for gender equality; (e) working with NGOs, national and international, in the field of gender equality; and (f) leading and coordinating initiatives on information, education and communication on gender equality.

Responsibilities of various agencies.

The Law on Gender Equality provides generally for the responsibilities of Government ministries and State agencies and organizations. The Directive on Gender Equality Law provides some initial instructions to listed ministries and agencies. However, the list of ministries and agencies is limited. It is recommended that a list of all ministries, agencies and organizations, and each of their specific responsibilities relating to gender equality, be contained in a decree. This will assist implementation of the provisions of Articles 27 and 31 of the Law on Gender Equality as it will have specific tasks for each ministry or agency to perform, hence, showing clear accountability in cases of non-performance. It is also recommended that an interministerial mechanism on gender equality or a revised NCFW be established or retained respectively for the purpose of coordinating work on gender equality among ministries/agencies. This mechanism must be under the leadership of MOLISA.

Data collection and monitoring

Article 8 of the Law on Gender Equality requires the carrying out of statistical work, providing of information and reporting on gender equality. There are also provisions in the Law on Gender Equality that require the monitoring of impact, trends, progress and results for the interventions to be effective, such as Article 31(2)(a) or provisions relating to reporting such as Article 26(4). However, there is no specific mention as to what mechanisms should be used, procedures should be followed and criteria should be included to determine the real situation of women, nor is there any provision on the content of the reports.

The Statistics Law and Decree on Statistics Law contain no provisions on sex-disaggregated data or on gender analysis. Several national strategies/plans, including the Plan of Action for the Advancement of Women, are also in place. Although they are limited in their coverage of gender equality issues, they can assist in tracking progress. It is recommended that clearly defined guidelines for incorporation of gender in systematic data collection and analysis - including sex-disaggregated data, gender indicators and gender analysis - be provided to cover the work of GSO, other statistics offices, appropriate Government ministries and State agencies in their data collection and analysis work. It is also recommended that a gender equality monitoring mechanism be put in place that looks into monitoring and evaluating progress in the areas designated in CEDAW and the Law on Gender Equality (including in politics, economy, labour, education and training, science and technology, culture, information, sport, public health, and family), in particular the impact of legislation and interventions.

Article 36 of the Law on Gender Equality states that the National Assembly, Standing Committee, Council of Ethnic Minorities, committees of the National Assembly, Provincial National Assembly delegations, and National Assembly members have the function to oversee the implementation of the Law on Gender Equality. In this regard, the mechanism for this must be clearly stated in a decree implementing the Law on Gender Equality, rather than simply a reference to the National Assembly's monitoring duties and powers. Special provisions should be stipulated on procedures for communicating its recommendation to appropriate State agencies and monitoring compliance of the recommendations.

Strategies and plans

Legal bases for socio-economic strategies and plans can be found in the Constitution; for example, Articles 84(3), 120, and 122(4). Further, Articles 8 and 26 of the Law on Gender Equality provide that the state management agency – that is, MOLISA - will formulate and implement national strategies, policies and goals on gender equality. There are existing strategies and plans on women already formulated. Other strategies and plans are also in place, which address, to a certain extent, the protection and promotion of gender equality, such as CPRGS, SEDS and SEDP.

INCORPORATION AND APPLICATION OF TREATIES

The status of CEDAW in the domestic legal framework is one of the important aspects of CEDAW implementation. This is important to make the rights under CEDAW more accessible to women, as well as for CEDAW to operate in a complementary and supplementary way with domestic legal documents. Hence, the selected indicators look into CEDAWs status in the domestic legal framework and whether its provisions can be invoked directly in judicial or quasi-judicial proceedings as a source of actionable rights.

Both the Law on Gender Equality and the Law on Treaties state that, in cases where a legal document and a treaty to which Viet Nam is a party contains different provisions on the same matter, the provisions of the treaty shall prevail. Hence, based on this, CEDAW provisions will prevail over domestic legal documents in cases of conflict. However, there are no provisions in law relating to claiming rights guaranteed in the treaty directly in judicial or quasi-judicial proceedings. There are also no clear provisions in law stating that treaties are directly executable in Viet Nam unless a legal document is in place. Article 74 of the Law on Treaties states that the competence to interpret treaties rests with the Standing Committee or Government. Hence, it is not easily accessible to individuals whose rights under the treaty have been violated to request directly for interpretation or the application of the treaty prior to application.

It is recommended that legal documents providing individuals the right to claim directly human rights guaranteed in international treaties acceded or ratified by Viet Nam, in particular CEDAW, through domestic judicial and quasi-judicial proceedings must be promulgated. It is also suggested that Viet Nam ratifies the Optional Protocol to CEDAW, allowing women to claim their rights at the international level when all domestic remedies have been exhausted at the local level. Procedures for individuals to request for domestic interpretation or application of treaties to address their individual situations must also be provided.

GENDER-BASED VIOLENCE/VIOLENCE AGAINST WOMEN AND ITS MANIFESTATIONS

GRs 12 and 19 clearly highlight the obligation of the States Parties under CEDAW to address GBV, including domestic violence, rape and other forms of sexual assault, sexual harassment, forced and early marriage, trafficking and sexual exploitation. They strongly urge States Parties

to put in place a comprehensive range of measures to be able to address the violence and its various forms and manifestations. Paragraph 24 of GR 19 enumerates the recommendations of the CEDAW Committee relating to GBV to guide implementation. Concluding Comments on Viet Nam 2007 provided recommendations on measures that need to be undertaken in Paragraph 17 of GR 19, which include immediate means of redress, prosecution and punishment of perpetrators, further research on GBV, increase education programs, and establishment of crisis centres and shelters for victims.

In view of this, the selected indicators inquire on the definition of, sanctions against and measures on GBV. Particular focus is given to domestic violence, rape, incest and stalking. Other forms of GBV - such as trafficking, exploitation of prostitution, sexual harassment, forced and early marriage, and forced sterilization - are discussed in Articles 6, 10, 11, 12 and 16 of CEDAW.

Gender-based violence

A guarantee on the inviolability of the person is found in Article 71 of the Constitution. The Penal Code and other legal documents, such as the Civil Code, Law on Children and Marriage and Family Law define and prohibit acts of violence. Also, a prohibition on GBV is found in Article 10 of the Law on Gender Equality, but no definition is provided. In this regard, it is recommended that a definition and explanation of gender-based violence, drawing on GR 19, must be provided, preferably by law or in a decree implementing the Law on Gender Equality. However, for more pervasive manifestations of GBV - for example, domestic violence, trafficking in women or sexual harassment - separate legislation is necessary to address fully all its aspects.

A crucial observation on handling of violence or abuse cases in Viet Nam, whether it involves civil, criminal or administrative procedures, is the absence of social workers. It is recommended that social work be recognized as necessary in addressing gender discrimination, in particular GBV. The employment or involvement of trained social workers in agencies that addresses GBV must be mandatory. This should include their employment in state management agencies, hospitals, courts, schools, counselling centres, rehabilitation and reintegration centres. The legislation must also provide for the roles that they should play in these institutions.

Domestic violence²

There are provisions in the Civil Code, Law on Children, Marriage and Family Law, Penal Code and Law on Children that prohibit certain acts of domestic violence³.

Ideally, a Law on Preventing and Combating Domestic Violence must: (a) provide a comprehensive definition of domestic violence, which includes physical, sexual, emotional and economic violence, and explicitly prohibit domestic violence; (b) extend protection to those living together as spouses without the benefit of marriage and those involved in an intimate or dating relationship; (c) require mandatory reporting of cases involving domestic violence by health care providers, teachers, social workers and People's Committees to state management agencies or police. In these cases, appropriate procedures must be provided; (d) provide for the proper han-

² The Law on Preventing and Combating Domestic Violence was adopted by the National Assembly on 21 November 2007, and was not included in this review. The review, although based on the context prior to the passage of the law, is still useful to check whether recommendations provided were addressed in the new legal document

³ Civil Code, Article 31; Law on Children, Article 7; Marriage and Family Law, Articles 4, 21, 34(2), 35 and 49(1); Penal Code, Articles 93-94, 100, 103-104, 110-122, 146-148 and 150-152

dling of domestic violence by public officials; (e) require state management agencies, local government units and courts to have a professional social worker working full-time on domestic violence cases; (f) provide protection to victims of violence through emergency or temporary protection orders; (g) require the provision of mandatory services for victims of domestic violence, such as emergency shelter, skills training, livelihood development services or job referrals, psycho-social counselling, reintegration, medical assistance, and free legal assistance; (h) require that law enforcers, procurators, health service providers, legal aid providers, social workers and the courts that deal with domestic violence cases have comprehensive training on gender sensitivity and handling cases of domestic violence; and (i) require health service providers to document and report all cases of domestic violence. The law must also ensure that information relating to the identity of the victim be kept confidential at all times, unless disclosure is requested by the victim. Further, mediation or conciliation must not apply in cases of domestic violence where the victim cannot make choices independently or is traumatized from the violence.

Rape and other forms of sexual abuse

Rape and several forms of sexual assault are prohibited by Articles 111-116 of the Penal Code. It is, however, recommended that, in relation to Article 111 of the Penal Code (Rape), the clause unable for self-defence be revised to read unable to give valid consent, thus emphasizing that lack of consent is the deciding factor in prosecutions for rape and not lack of self-defence. The provisions on rape and other forms of sexual assault must be revised to include prohibitions on a range of sexual acts, including inserting: (a) a penis into a persons mouth or anal orifice; and (b) an instrument or object into a persons genital or anal orifice. Marital rape and the commission of obscene acts committed against adults must also be explicitly penalized.

In prosecutions for rape, rape against children, forcible sexual intercourse and forcible intercourse with children, under Articles 111-114 of the Penal Code, evidence of the victims past sexual conduct, opinions or reputation should not be admitted by the courts as evidence. It is also suggested that it must be explicitly provided in legal documents that the degree of resistance needed to establish the crime of rape must only be an overt physical act signifying resistance to the act of rape. No requirement of great physical resistance is necessary. Appropriate guidelines on assisting rape victims and handling cases of rape more sensitively should be issued. They should include: (a) providing rape victims with psychological, medical and health-care services; (b) assisting in securing legal assistance; (c) ensuring privacy and safety of rape victims; and (d) mandatory training of gender sensitivity, and rape and sexual assault cases, for those handling these offences.

Incest

Article 150 of the Penal Code penalizes the crime of incest. No specific forms of redress are provided for crimes of incest. It is recommended that strengthening access to justice by victims of incest must be a key policy measure for this issue. Legal documents must provide appropriate victim and family support where crimes of incest are detected. Mandatory services should be provided by state management agencies, such as: (a) emergency shelter; (b) skills training, livelihood development services or job referrals for the victim and victims family; (c) psycho-social counselling for the victim and victims family; (d) reintegration; (e) medical assistance; (f) free legal assistance; and (g) professional social worker assistance. Temporary protection orders should also be available for victims of incest. Further research on this issue must also be strongly urged to further law-making.

Stalking

The crime of stalking is not defined or penalized in Viet Nam's laws. It is recommended that information and data on stalking be obtained. Once obtained, appropriate measures for legal protection, including protection orders, should be available to victims.

TEMPORARY SPECIAL MEASURES AND MEASURES IN FAVOUR OF MATERNITY (Article 4 of CEDAW)

Temporary special measures and measures in favour of maternity are urged by Article 4 of CEDAW. GR 25 elaborates further on the nature of temporary special measures and the obligation to put them in place. Paragraphs 10 and 11 of Concluding Comments on Viet Nam 2007 point out the lack of apparent clarity on temporary special measures and the need to take concrete measures, including temporary special measures in all sectors. Bearing this in mind, the selected indicators for this article look into whether there are legal provisions that define temporary special measures and require their setting up. In this review, temporary special measures relating to specific fields - such as employment, health, political participation and education - are discussed in this review in the parts relating to those specific fields. An indicator also focused on what measures in favour of maternity are in place.

TEMPORARY SPECIAL MEASURES

Article 63 of the Constitution creates a framework for temporary special measures. The Law on Gender Equality calls these measures measures to promote gender equality. The law gives a definition as well as identifies what these measures are in relation to particular fields. A review of examples of measures to promote equality in Articles 11-14 and 19 of the Law on Gender Equality show that there is a need to understand better what temporary special measures are, especially in listing what temporary special measures are required by law. In line with Concluding Comments on Viet Nam 2007, it is recommended that the Law on Gender Equality and its subordinate legal documents should make clear distinctions between temporary special measures (measures to promote equality) and general social policies in favour of women. It is also recommended that the subordinate legal documents include in the enumeration other forms of temporary special measures or measures to promote equality, such as special budgetary allocations, outreach or support programmes, and preferential treatment. Temporary special measures in other fields must also be considered, such as in the field of science and technology, culture, information, sports, and public health.

MEASURES IN FAVOUR OF MATERNITY

See discussion on Articles 10, 11, 12 and 16 of CEDAW.

SOCIAL AND CULTURAL PATTERNS OF CONDUCT (Article 5 of CEDAW)

Article 5 of CEDAW and Paragraphs 12 and 13 of Concluding Comments on Viet Nam 2007 require a number of measures to be put in place to change practices that discriminate against women, including cultural practices, stereotypes and patterns of conduct. A number of focus areas are seen as critical to bring about change in this regard, including awareness-raising on gender equality, information dissemination on CEDAW and laws, translation of CEDAW and laws into ethnic minority languages, and laying down a role for the media. In view of this, the selected

indicators for this article look into the existence of legal provisions on modification of stereotypes and other practices that discriminate against women, whether measures are in place to provide information on gender and gender equality, and the role and responsibility of media to refrain from discriminatory conduct and contribute to achievement of equality. There are also a number of selected indicators that are relevant to Article 5 of CEDAW, but are placed as indicators under other CEDAW articles, such as those referring to sex-selective abortion (Art. 12), the common responsibility of men and women in the upbringing of their children (Article 16), and dissemination of information to ethnic minorities (Article 14).

MODIFICATION OF STEREOTYPES AND DISCRIMINATORY PRACTICES

There are several legal provisions relating to customs and traditions in Viet Nam that provide for the need to eliminate backward customs and habits, including those that hinder gender equality⁴. For example, Constitution, Articles 30 and 33; Civil Code, Article 8; Law on Gender Equality, Articles 7 and 40(6); and Marriage and Family Law, Article 3(1). It is suggested that, to enable conceptual clarity as to the reason for change or modification of a particular custom or practice, the term discriminatory be used to refer to those customs and practices that violate gender equality or that discriminate. This also will enable identification and eradication of discriminatory customs and practices within the general population.

INFORMATION ON GENDER EQUALITY

To address the need for information dissemination on gender and gender equality, the Law on Gender Equality and Programme on Law Dissemination and Education contain provisions on information, education and communications on gender equality and law dissemination for women respectively. It is suggested that the responsibility of information dissemination agencies to integrate gender within the scope of their own dissemination functions be clearly stipulated.

ROLE OF THE MEDIA

Particular legal documents prohibit the publication of obscenity, pornography, bad practices and social evils⁵. Decree on Advertisement Ordinance, Article 3; Decree on Press Law, Article 5; and Law on Publication, Article 10. There is no explicit prohibition, however, to cover all acts of gender discrimination. It may also be useful for a legal document to provide guidelines to the media for addressing gender equality issues, in particular GBV. Guidelines on what acts constitute discrimination in advertising activities should be drafted. The prohibited acts should include: (a) specifying the sex of the person required in relation to advertisement for services; (b) derogatory statements against one sex; and (c) advertisements that portray one sex as inferior or superior.

TRAFFICKING AND EXPLOITATION OF PROSTITUTION (Article 6 of CEDAW)

Article 6 of CEDAW requires States Parties to take all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women. The CEDAW Committee - in GR 19, GR 24 and Concluding Comments on Viet Nam 2007 - requires that specific preventive, punitive and rehabilitative measures must be in place to comply with States Parties obligations. The CEDAW Committee also emphasized the evolving forms of sexual exploitation such as sex

⁴ For example, Constitution, Articles 30 and 33; Civil Code, Article 8; Law on Gender Equality, Articles 7 and 40(6); and Marriage and Family Law, Article 3(1)

⁵ Decree on Advertisement Ordinance, Article 3; Decree on Press Law, Article 5; and Law on Publication, Article 10

tourism and organized marriages, as well as the need for special attention for vulnerable and disadvantaged groups of women especially women in prostitution. In relation to trafficking, Concluding Comments on Viet Nam 2007 is specific in its recommendations; that is, systematic data collection and analysis, increased information exchange, increased prosecution, improving the economic situation of women, measures for reintegration, non-penalization of trafficked women and ratification of the Trafficking Protocol. In relation to prostitution, Concluding Comments on Viet Nam 2007 expressed concern on rehabilitation measures for victims of prostitution such as administrative camps.

In view of this, the selected indicators focus on the existence of a prohibition on prostitution, its details and sanctions, as well as measures in place to address the needs of women in prostitution. They also look into whether there are legal guarantees in place to ensure that women in prostitution are not discriminated against in accessing their rights.

PROSTITUTION

Prostitution is prohibited in Viet Nam. Articles 254-256 of the Penal Code punish harboring prostitutes, procuring prostitutes and sexual intercourse with juveniles. Article 7 of the Law on Children prohibits any act of seduction, deceit, trickery, harbouring or force that leads children into prostitution. Article 4 of the Ordinance on Prostitution identifies the prohibited acts relating to prostitution. The ordinance also provides that women in prostitution must, depending on the nature and seriousness of their violations, be administratively sanctioned, subject to education at communes, wards or townships, or sent into medical treatment establishments. Foreign women in prostitution must, depending on the nature and seriousness of their violations, be administratively sanctioned in the forms of caution, fine and/or expulsion. In this regard, it is recommended that persons in prostitution must not be subjected to any form of sanction, penalty, involuntary rehabilitation or deprivation of liberty and movement.

In relation to children in prostitution, mandatory procedures should be in place when children are taken into custody, such as: (a) notifying immediately a designated social worker in the state management agency for the protection of the child's rights, counselling of the child, etc.; (b) escorting the child for immediate medical check-up; and (c) ensuring non-disclosure of the child's identity, especially by the media.

To ensure that women in prostitution are not discriminated in accessing basic services, provisions ensuring non-discrimination of these women must be specifically stipulated, especially in the areas of education, health care, labour and employment. In particular, it must be clearly ensured that rape and sexual assault cases against women in prostitution are not trivialized or ridiculed but pursued accordingly.

SEX TOURISM

Although there is no specific naming of sex tourism as an offence in Vietnamese legal documents, it may be covered by the provisions prohibiting trafficking and prostitution; for example, abusing the service business for prostitution activities, organizing prostitution activities, and organizing overseas tours to take Vietnamese women and children abroad for sex work or sale⁶. It is suggested that, to ensure that appropriate attention is given to sex tourism, it must be specifically defined and prohibited.

⁶ Ordinance on Prostitution, Article 25; Directive on Sending Woman and Children Abroad

TRAFFICKING⁷

Trafficking in women and children is prohibited in Articles 119 and 120 the Penal Code and in Article 8(6) of the Decree on Children Law. These laws do not define “trafficking” but the Resolution on Penal Code provides a definition of “trading in children”. Vietnamese laws, including the Labour Code, Law on Guest Workers and the Penal Code also have good coverage of offences that are committed in the course of trafficking and its many aspects. In July 2004, the National Plan of Action Against Trafficking was adopted and focuses on four major components that are fleshed out in the Decision on Trafficking: (a) communication and education; (b) fight against crime; (c) receipt and support of returning victims; and (d) development of legal framework on trafficking. The plan and projects are moves in the right direction. However, it must be noted that some of these interventions are best contained in legislation rather than in a plan and/or project document.

Some improvements are suggested. It is recommended that a definition of trafficking be provided in law consistent with Article 3 of the Trafficking Protocol. Consideration should also be given to supplementing the circumstances that aggravate trafficking in women and children. It is also recommended that explicit stipulation must be made that police, border guards, medical practitioners, procurators, the courts, social workers and other personnel who deal with trafficked victims, especially in key localities, must receive specialized training and assistance in handling trafficking cases and victims.

Further, while under Vietnamese laws trafficked persons are generally treated as victims rather than as criminals, the absence of an explicit provision that exempts these victims from prosecution may work to instill fear of prosecution and punishment, leading to non-reporting of cases. It is recommended, therefore, that an explicit provision excluding victims of trafficking from prosecution in relation to acts that are committed as a direct consequence of their situation of trafficking - for example, engaging in prostitution, use of illegal or forged documents, or illegal entry and exit - be stipulated.

Supplementary measures to address trafficking in women and children must be provided in legal documents, including: (a) protection orders that can be issued ex parte on the day requested (and People’s Committee’s heads and the court must be competent to issue such orders); (b) developing and strengthening witness protection programmes, and providing priority to trafficking victims and their families; (b) procedures on confidentiality; (c) repatriation of victims of trafficking regardless of their status and whether legally or illegally abroad; and (d) mandatory recovery and reintegration must include emergency shelters or appropriate housing, counselling, medical and psychological services, free legal services, educational assistance to trafficked children, livelihood and skills training, and assistance relating to nationality claims, residence certificates, birth certificates and other matters relating to civil status registration. It is suggested that the responsibilities of Vietnamese embassies and consulates must be stipulated in law, which should include a responsibility (to endeavor) to provide victims in a foreign country with: (a) emergency shelter; (b) protection and safety; (c) counselling and medical/ psychological assistance; and (d) legal assistance.

⁷ Decision on Trafficked Women and Children was issued. However, as no English version is available, this was not included in this legal review.

Lastly, it is recommended that in all extradition treaties, trafficking must at all times be explicitly included as an extraditable offence. It is also recommended that for cases falling under Articles 344(1)(a) and 344(1)(d) of the Criminal Procedure Code, despite refusal to extradite, investigation for prosecution for the offence must be initiated. Ratification of the Trafficking Protocol is also strongly urged.

POLITICAL AND PUBLIC LIFE **(Articles 7 and 8 of CEDAW)**

GR 23 states that the guarantee of equal participation in political and public life in Articles 7 and 8 of CEDAW covers the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The guarantee includes all aspects of public administration and the formulation and implementation of policy at the international, regional, national and local levels. Further, the concept of political and public life also involves many aspects of civil society, including public boards and local councils, and the activities of organizations such as political parties, trade unions, professional or industry associations, womens organizations, communitybased organizations, and other organizations concerned with public and political life. Thus, to fulfil the obligations under Articles 7 and 8, States Parties must ensure a reassessment of their whole systems of governance. GR 23 also highlights the need to address underrepresentation of women in political and public life. In this regard, it urges the setting up of temporary special measures as a necessary intervention, as well as other measures to bring about an environment conducive to women's participation. It proposes a minimum of 30-35 percent representation of women in political and public life, which is the critical mass that brings real change in political style and content of decisions, and hence, must be the goal aimed for. Concluding Comments on Viet Nam 2007 encourages the development of concrete measures, including temporary special measures at all levels, whether elected or appointed.

Bearing these in mind, the selected indicators focus on the rights to vote, to stand for election and to equal access to appointed positions, and the existence of temporary special measures to enable equal participation. They also look into access to leadership positions not only in State positions, but also in Communist Party of Viet Nam positions. The selected indicators also focus on equal participation of women in mass organizations, NGOs and civil society groups, as well as their participation at both the grassroots and international levels.

THE RIGHT TO VOTE AND THE RIGHT TO STAND FOR ELECTION

The Constitution, Law on Election to People's Councils, Law on Election to National Assembly 2001, and Law on Gender Equality provide guarantees to the equal rights to vote and to stand for elections.

The Law on Election to National Assembly 1997, Law on Election to People's Councils and Law on Gender Equality requires a proportion of women in elected positions. There are no provisions in these laws on the appropriate percentage of female deputies. However, national strategies and plans have identified specific targets on womens participation in elected positions. Practical measures to assist women to be elected are also being implemented by both the Viet Nam Women's Union and NCFW. Further suggestions on ensuring equality include: (a) the Law on Election to National Assembly 2001, Law on Election to People's Councils and Law on Gender Equality must provide that the proportion of female deputies in the National Assembly and

People's Councils should be not less than 30 percent; (b) it must be clearly stipulated that this is the minimum number for elected deputies, not simply candidates; (c) national strategies, plans and targets must also aim for a proportion that goes progressively higher than the 30 percent proportion of female candidates; and (d) in support of the 30 percent proportion of female deputies, election laws must clearly stipulate the supportive measures for women to increase their chances as a group of reaching the 30 percent target. These measures should be in place simultaneously and include: (a) increasing the number of female candidates to more than 30 percent of the total number of candidates; (b) providing skills building and empowerment trainings for female candidates; (c) raising awareness of the electorate to recognize the skills of female candidates and to not discriminate on account of gender through voters education workshops/consultations, mass campaign on electing female deputies, and so on; and (d) setting up funds or resources (for example, campaign spaces) to be utilized by female candidates. It is also suggested that the Law on National Assembly stipulate the percentage of women in National Assembly committees to be not less than 30 percent or in proportion to the total number of female deputies. It must also be stipulated that 30 percent committees must be headed by women. This should be similarly applied to People's Councils.

THE RIGHT TO PUBLIC POSITIONS

Article 63 of the Constitution and Article 11 of the Law on Gender Equality provide general guarantees on the right to participate equally in all fields, in particular in politics and state management. Strategies and plans have more specific targets on women's participation as public employees, either as leaders or staff. Despite the legal documents, within the public administrations central executive level, there are very few women in leadership positions. The situation of women's leadership at the local level is not very promising either.

In this light, it is recommended that age differentials in terms of recruitment and appointment must be explicitly prohibited. In keeping with the Law on Gender Equality, legal documents – such as the Decision on Leading Officials and Public Employees - must be amended to ensure that men and women have the same age for first-time appointments. It is also urged that equal retirement age must be stipulated for men and women, and appropriate amendments in the Labour Code and Law on Social Insurance must be made. All qualifications, including age, must be the same for both men and women.

It is also suggested that a clear proportion of women in leadership positions in State agencies, political and socio-political organizations of not lower than 30 percent be explicitly stipulated in law; that is, supplementing the Ordinance on Public Employees and other legislation on organization of State offices such as the Law on People's Procuracies and Ordinance on Judges and Jurors. State agencies and political and socio-political organizations must be mandated to draft a plan to enable progressive compliance with the 30 percent proportion.

To ensure that gender equality is not set aside, a guarantee on non-discrimination on the basis of gender be stipulated in the Ordinance on Public Employees and its supporting documents. An explicit prohibition of sexual harassment must also be clearly provided in a legal document for public employees. It is also recommended that gender equality courses and gender sensitivity be included as a mandatory subject in the contents of training and fostering programmes.

COMMUNIST PARTY OF VIET NAM LEADERSHIP

As Viet Nam is a one-party State where the Communist Party of Viet Nam provides leadership to the State and society, womens leadership and participation in the Communist Party of Viet Nam is an important component of their access to elected and appointed positions. Although Communist Party of Viet Nam documents are not legal documents, due to their high level of influence, it is encouraged that a Communist Party of Viet Nam document must clearly specify a concrete mechanism to enable womens participation to a minimum of 30 percent in all aspects of Communist Party of Viet Nam decision-making, policy formulation and implementation.

PARTICIPATION IN MASS ORGANIZATIONS, NGOS, CIVIL SOCIETY GROUPS AND IN AT GRASSROOTS LEVEL

Article 63 of the Constitution states that male and female citizens have equal rights in all fields, including in the political arena. Thus, it provides a general guarantee on equal participation in mass organizations, NGOs and other civil society groups. In relation to NGOs, local and international NGOs - including those working on womens issues - operate within considerable government constraints under the Law on Associations and Decree on Associations. It is suggested that a more favourable enabling environment, including more supportive legislation, be provided for the operation of NGOs, which include womens NGOs as well. Prohibition of non-discrimination on account of gender must be clearly stipulated in law, unless the association is clearly set up to cater to particular gender interests and needs.

As to direct participation of women in policymaking and implementation at the grassroots level, Article 11 of the Constitution and Articles 5, 10, 13, 15 and 19 of the Ordinance on Democracy provide for general guarantees. It is recommended that the Ordinance on Democracy ensure that it reaches women of all groups and in all sectors, especially ethnic minority women, to ensure their participation. To enable women to participate, specific measures must be stipulated in legal documents, including: (a) sex-disaggregated data on the number and level of their participation; (b) additional resources for outreach to women; (c) targeted consultations for women; (d) hiring of female workers to reach out to women; and (e) inclusion of gender interventions on this matter in the reports on grassroots democracy of local authorities. It is also suggested that Article 15 of the Ordinance on Democracy be revised to require only 50 percent of total number of voters for contents in Article 13 to be valid for implementation, thereby deleting 50 percent of voter-representatives of households as an option.

PARTICIPATION AT THE INTERNATIONAL LEVEL

MOFA has adopted its Plan of Action for the Advancement of Women, which sets the targets on womens participation in the diplomatic service. To improve its compliance with CEDAW, it is suggested that the proportion of women in leadership positions in State agencies, political and socio-political organizations must not be lower than 30 percent. MOFA must be required to draft a plan reflecting progressive compliance with the 30 percent proportion in both leadership and staff positions within a specific time-frame with monitoring and enforcement mechanisms and resources to ensure compliance, including sanctions for failure to abide by the plan for no justifiable reason. It is also recommended that further information be obtained on this area, especially in relation to whether women are in leadership positions in international organizations/activities, as well as whether women participate in a whole range of activities at the international level or are limited to areas considered as traditionally female fields.

NATIONALITY **(Article 9 of CEDAW)**

Article 9 of CEDAW requires equal rights to acquire, change and retain nationality, as well as equal rights to transmit it. GR 21 emphasizes that policies and laws on nationality must recognize women's choice in relation to nationality, and they should not simply treat women as extensions of their husbands. The selected indicators focus on equal rights to acquire, change, retain and transmit nationality. These are specifically guaranteed by Vietnamese laws, in particular the Law on Nationality. One specific recommendation in this field, though, relates to adopted children. It is suggested that, in relation to an adopted child's nationality where both parents have different nationalities, they can both transmit their nationality to the child without prejudice to the child's choice upon reaching the age of majority, instead of relegating this to common practices or agreement that can be discriminatory against women.

EDUCATION **(Article 10 of CEDAW)**

Article 10 of CEDAW requires that women enjoy equal access to education of all kinds and at all levels. It proceeds to illustrate that this covers all categories of education whether in rural or urban areas: pre-school, general, technical, professional or higher technical education, vocational training, adult and functional literacy programmes. A critical area to look into is ensuring that various courses or studies for a wide range of professions are open to women, especially those that are traditionally seen as for males only or are male-dominated. Women and girls also must have equal access to scholarships and study grants to assist them in accessing education. It is also critical to look into different groups of women to see whether they have equal opportunities to education. In this regard, there is a need to ensure equal access to education by rural and ethnic minority women. Article 10 also looks into whether women or girls have access to equal conditions of education. This involves having the same curricula, examinations, teaching staff with qualifications of the same standard, school premises and equipment of the same quality. In many cases, opportunities to participate in sports and physical education are limited for women and girls. Article 10 also looks at ensuring that education being provided has incorporated gender. In this regard, the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education is strongly urged. It also obligates that equal access to specific educational information to ensure health and well-being of families. This includes information on reproductive and sexual rights.

Concluding Comments on Viet Nam 2007 urges Viet Nam to address disparity in school enrolment rates and to ensure achievement of universal primary education for girls. It strongly encourages Viet Nam to address obstacles to girls continuing their education, to provide teacher training programmes, and to support education on the culture of ethnic minorities. Concluding Comments on Viet Nam 2007 also viewed with concern the lack of access to education by girls in rural and remote and mountainous regions.

In line with this, the selected indicators focus on: (a) equal access to education; (b) prohibition on access to education on account of pregnancy or maternity; (c) compulsory education; (d) access to education by rural and ethnic minority women; (e) equal conditions of education; (f) elimination of stereotypes; (g) review of textbooks and curricula; (h) non-discrimination by school administrators, personnel and teachers; and (i) sexual harassment.

ACCESS TO EDUCATION

The Law on Education provides many general guarantees related to education, including equality in learning opportunities regardless of ethnicity, religion, belief, gender, family background, social status or economic condition. It also mandates that the State must create conditions for everyone to get access to education, including children of ethnic minorities, children of families in the areas meeting with extreme socio-economic difficulties, beneficiaries of preferential policies, disabled and handicapped people, and beneficiaries of other social welfare policies. Further general guarantees are found in the Decree on Education Violations and Law on Children. The Law on Gender Equality provides the needed gender focus for the Law on Education with specific provisions applicable to women and girls.

Nevertheless, some suggestions are recommended to be able to comply with Article 10 of CEDAW. It is suggested that supporting legal documents to the Law on Education and Law on Gender Equality: (a) ensure not only equal age of entry for schooling, training and fostering courses, but also equal conditions or qualifications for entry as well; (b) provide further guarantees of equality in choosing a profession and occupation for learning and training. It is suggested that equal conditions for career and vocational guidance free from gender discrimination and stereotypes must be stipulated; and (c) put in place temporary special measures - such as targeted recruitment - to enable interest and access to courses that are traditionally the realm of either sex or are dominated by either sex. It is also recommended that an explicit guarantee of non-discrimination in education on account of sexual orientation and marital status be legislated.

COMPULSORY PRIMARY AND SECONDARY EDUCATION

The Law on Children and Decree on Children Law, Law on Education and Law on Primary Education provide that primary education and lower secondary education are now considered universal education levels, as well as highlight the responsibility of families and the State to ensure that children study and complete the universal education programme. These laws are gender-neutral. However, targets recently set on primary and secondary education look into eliminating the existing gender gap and ensuring equal access to primary and secondary education by both girls and boys. Some recommendations, however, are suggested. It is recommended that further sex-disaggregated research and gender analysis be done on enrolment and completion rates. In particular, the study should provide a gendered analysis on why a gender gap exists and the reasons behind it. The study should investigate whether the percentage is in favour of boys or girls and what is required is to discover the reasons behind non-completion on education, and it should provide the appropriate, though not necessarily the same, interventions for girls as well as for boys.

ETHNIC MINORITIES

One of the crucial concerns on education in Viet Nam is access to education by ethnic minorities, in particular ethnic minority girls. There are several legal documents and policies addressing access to education by ethnic minorities, although most are gender-neutral, such as the Constitution, Law on Education and Law on Primary Education. In providing recommendations, general improvements in access to education must benefit ethnic minority girls as they are the ones who are usually excluded where resources are limited. Hence, recommendations apply to general access issues and specifically to ethnic minority girls. It is suggested that a legal document be issued: (a) providing more transparent and detailed criteria for entitlement to scholarships, social subsidies and places/quotas; (b) introducing measures for reduction/exemption from non-tuition fees or facilitating students loans for payment of non-tuition fees, especially in cases

where students are entitled to free tuition; (c) ensuring the appropriate proportion of ethnic minority women and girls - starting from 30 percent and gradually moving to 50 percent of the total ethnic minority grantees - are qualified for scholarships, social subsidies, tuition subsidies and reductions, and other measures; and (d) exploring the possibility of credit facilities and allowances for ethnic minorities, which must be provided not only for the cost of education but also to alleviate the loss of income or help due to schooling of children, especially girls.

It is also suggested that guidelines for EMSBs be issued, and that legal documents: (a) ensure that scholarships, grants and allowances are provided to EMSB students to cover not only tuition fees and school fees, but also cost of living expenses, partially or fully; (b) require that 30 percent gradually moving up to 50 percent of scholarships and grants are provided to ethnic minority women and girls; and (c) guidelines on and standard for student accommodation; and (d) provide guidelines for onsite health service providers, social workers and counsellors, if possible of both sexes, so that they can adequately address concerns of both ethnic minority girls and boys as well.

PEOPLE WITH DISABILITIES

Articles 15-17 of the Law on Education and Articles 63 and 89 of the Ordinance for Disabled Persons mandate particular measures for people with disabilities, while the SEDP provides a target to have children with disabilities increasingly participate in the education system. Both these laws and the plan are gender-neutral and do not provide any gender-specific references to particular experiences by men or women. There is a significant gender imbalance in terms of accessing education by people with disabilities. It is recommended that clearer guidelines be provided to ensure that women and girls with disabilities are not overlooked. The guidelines should provide that data collection and information must always be sex-disaggregated and subject to appropriate gender analysis. Scholarships and subsidies for people with disabilities must ensure that women and girls amount to at least 30-50 percent of the grantees. Where this cannot be met, a plan must be drafted and resources allocated to build capacity of women and girls to be able to qualify in the next round for these scholarships/grants. This must be implemented in areas where significant gender imbalance exists. For persons with disabilities who go to official boarding schools and EMSBs, clear guidelines must be set for their reasonable accommodation and facilitation of their mobility. A system for monitoring that women and girls with disability benefit on an equal basis must be in place.

SOCIALIZATION

Article 12 of the Law on Education and the Resolution on Socialization pushed for the socialization of educational activities. In this regard, it is suggested that the socialization of education be monitored as to its impact on both sexes, including ensuring sex-disaggregated data and gender analysis. Stipulating that scholarships and subsidies are granted proportionately to women and girls is important to ensure their access to education.

EQUAL CONDITIONS OF EDUCATION

Article 10 of the Law on Education states that all citizens regardless of their ethnicity, religion, belief, gender, family background, social status or economic condition are equal in learning opportunities. Aside from this, there is no specific or express guarantee on equal conditions of education, such as the same curricula, examinations, teaching staff or facilities. Hence, it is recommended that an explicit provision guaranteeing the right to equal education conditions, including the same curricula, examinations, teaching staff and facilities be stipulated.

REVISION OF TEXTBOOKS AND CURRICULA

The norm of equality can be disseminated systematically through education. However, unless such is incorporated into textbooks, teaching guides and curricula, there can be no systematic inclusion of equality. The Law on Gender Equality and Plan of Action for the Advancement of Women contain provisions on these matters, including inclusion of gender equality in the education syllabus and prohibition on the compilation and dissemination of textbooks that contain gender prejudice. It is recommended that to carry out provisions of the Law on Gender Equality and Plan of Action for the Advancement of Women, a legal document that will operationalize revision of textbooks, curricula and teaching aids must be issued. Gender expertise must be involved to ensure that gender is incorporated appropriately in such revisions. The legal document must also specify that capacity of teaching staff on gender must also be increased to enable them to use the textbooks, teachings aids/materials and syllabus appropriately. It is also recommended that, in addition to addressing the textbooks, curricula and teaching aids, teachers must be instructed in handling or interacting with students in a gender-sensitive manner.

NON-DISCRIMINATION BY SCHOOL ADMINISTRATORS, TEACHERS AND OTHER PERSONNEL

Articles 16 and 72 of the Law on Education specify the roles and responsibilities of teachers and educational administrators. It is recommended that this law must clearly provide that educational administrators, teachers and other personnel must treat students in an equal manner and strictly prohibit any acts of discrimination in the education setting. It must provide that school charters, teachers and student manuals must prohibit and penalize acts of discrimination.

SEXUAL HARASSMENT

There is no provision in Vietnamese law that explicitly prohibits sexual harassment. Article 10 of the Law on Gender Equality prohibits GBV - which, under international standards, includes sexual harassment - and Article 75(1) of the Law on Education prohibits teachers offending the honour or dignity of, or physically abusing, students. However, without a clear legal document that includes sexual harassment, it is uncertain whether it is included in such prohibitions as well. It is recommended that sexual harassment legislation be issued. Sexual harassment in the education setting must be included as one of the prohibited acts. The definition of sexual harassment in GR 19 must be used, as applicable to the education setting. It is also recommended that educational establishments be required by law to promulgate their own sexual harassment guidelines and disseminate these guidelines to their staff and students to ensure knowledge and compliance. Failure to promulgate these guidelines or failure to address complaints of sexual harassment will make the establishment liable for damages or administrative sanctions.

EMPLOYMENT (Article 11 of CEDAW)

The obligations under CEDAW on employment are quite comprehensive. Article 11 of CEDAW mandates equal right to work and equal conditions of employment in all aspects. More specifically, it guarantees equality in relation to the right to work, which includes the right to equal employment opportunities, freedom of choice of profession, right to gain a living by work freely chosen or accepted, and the application of the same criteria for selection in matters of employment. In this light, Concluding Comments on Viet Nam 2007 also require interventions for the occupational segregation happening in Viet Nam. Also, it strongly urges Viet Nam to address sexual harassment. Article 11 also guarantees equal conditions of employment in relation to promotion, job

security, benefits and conditions of service, trainings and placement services, remuneration, evaluation, social security (especially in cases of retirement, unemployment, sickness, invalidity, old age and incapacity to work), and protection of health and safety in working conditions. It requires that interventions should be made to address discriminatory practices relating to maternity and pregnancy. The article obligates States Parties to review their protective legislation regularly and to make revisions to enable women to enjoy their rights fully. It also requires guarantees that women in particular sectors of work are protected; for example, domestic workers or migrant workers. The selected indicators, thus, focus on these issues.

Article 49 of the Civil Code and Article 5 of the Labour Code provide for the right to work without discrimination on account of sex/gender and other grounds. The Labour Code also contains further guarantees of equality and non-discrimination in relation to employment. See below.

EQUAL EMPLOYMENT OPPORTUNITIES

Both Article 5 of the Labour Code and Article 13 of the Law on Gender Equality provide particular guarantees in relation to equal employment opportunities; that is, the rights to choose freely the type of work or trade, to learn a trade, and to improve professional skill without being discriminated against on the basis of gender, race, social class, beliefs or religion, and equality in terms of qualifications and age in recruitment. However, provisions of the Labour Code - in particular Article 113 - and its supplementary legal documents prohibit the hiring of women in specified dangerous work. Hence, it limits their choice of profession and restricts their right to work. It is recommended that these provisions be reviewed. Almost all of the provisions listed as harmful to women are in the nature of protective legislation and must be repealed. Those listed as harmful to pregnant or nursing women must be subject to constant review in the light of new developments in occupational safety, health and technology. Employers must be required to put in place occupational health and safety measures for both male and female workers without discrimination.

Article 111 of the Labour Code states that an employer must give preference to women who satisfies all recruitment criteria for a vacant position that is suitable to both men and women in an enterprise. Article 13(3)(a) of the Law on Gender Equality also provides - among its measures to promote gender equality in the field of labour - the proportion of men and women to be recruited. It is recommended that Article 111 of the Labour Code apply to jobs, industries or positions that are male-dominated; that is, areas where *de facto* inequality exists, rather than to all jobs, industries and positions. Likewise, in jobs, industries or positions that are female-dominated, measures preferring males should also be considered. In relation to Article 13(3)(a) of the Law on Gender Equality, it is suggested that there be explicit stipulation that the proportion be applied only to jobs, industries or positions that are dominated by one sex. In such cases, plans must be in place to ensure that the proportion of one sex reaches 30 percent, thus providing the minority sex with sufficient representation. In this regard, ensuring an equivalent proportion of women in training centres must be in place as well.

PREFERENTIAL TREATMENT AND TAX REDUCTION

Article 110 of the Labour Code provides: "The State shall establish policies on preferential treatment and reduction of taxes for enterprises which employ a high number of female employees." This is further elaborated upon by the Circular on Female Labourers, Circular on Women Labour and Decree on Women Labourers. It is suggested that a review of Article 110 of the Labour Code and these subordinate documents be conducted. In relation to the items considered as tax reductions in the subordinate documents, it is recommended that tax reductions should not be made

simply on the basis that the company has a high proportion of women, rather they should be based on more relevant claims such as: (a) a 60-minute nursing break; (b) an allowance to women after childbirth; and (c) a one-hour break for women in their seventh month of pregnancy. In line with this, there is also a need to review the list of extra costs for hiring women in the subordinate documents as in many cases they are not costs due to women, but costs to improve general working conditions such as: (a) installation of anti-heat (cooling), noise-reducing or dust-absorbing systems; or (b) building of makeshift tents on construction sites, farms and other open-air work places. As to costs relating to setting up crèches and kindergartens, equipment for crèches and kindergartens and salaries to teachers of crèches and kindergartens, these costs must be allowed as a reduction for all enterprises, not only for those enterprises with a high proportion of women.

Article 113 of the Labour Code requires the transfer of women from heavy or dangerous work, or work in contact with toxic substances, to other suitable work after retraining. Expenses for retraining can be requested from the National Fund for Employment. It is suggested that, since men and women can freely choose their profession, instead of expenses for the retraining, tax reduction should be based on expenses for building capacity of women and to provide support for them in their present jobs, industries or positions, most especially if they are in jobs, industries or positions that are dominated by men and not for retraining expenses. Likewise, other preferential policies can be provided to enterprises that are putting in place these support and capacity-building measures, in place of the task of moving women from banned jobs into suitable ones.

EQUAL PAY FOR WORK OF EQUAL VALUE

Article 63 of the Constitution, Article 111 of the Labour Code, Article 13(1) of the Law on Gender Equality and Article 18 of the Decree on Wages, reiterate the principle of equal pay for equal work. There are, however, no legal documents specifically emphasizing equal pay for work of equal value. It is recommended that stricter enforcement of equal pay provisions be done. Also, more sex-disaggregated data and research is necessary to look into wage differentials of persons performing work of equal value across sectors.

EQUAL CONDITIONS OF WORK

Although guarantees for equal conditions of work are provided by both in Articles 109 and 111 of the Labour Code and Article 13(1) of the Law on Gender Equality, some recommendations to ensure compliance with CEDAW include the following:

Working regime for women

Article 109 of the Labour Code and its relevant subordinate legal documents set up a working regime for women based on flexible working hours, incomplete work day, incomplete work week and home work. It is suggested that this regime be: (a) applicable only to pregnant women in advanced stages of pregnancy, when certified as unable to carry out work during the normal working regime; (b) extended to men and women with frail health and men and women with difficult family situations; (c) supported by intensive behavioral change communication measures to enable shared responsibilities at work; and (d) supplemented guidelines on home work on conditions of work and other labour provisions.

Facilities

It is also recommended that Article 116 of the Labour Code be revised to stipulate that all enterprises with a sufficient number of employees must set up crèches or kindergartens or provide

support for the setting up of such facilities, rather than only enterprises with high proportion of women. A legal document can set down details as to the minimum number of employees for this provision to be mandatory.

Night work, overtime and rest breaks

Generally, there is no prohibition in the Labour Code for women to work at night or overtime. However, Article 115 of the Labour Code prohibits an employer from allowing a female employee who is pregnant or raising a child aged less than 12 months to work at night or overtime (or to go on business trips to distant locations). It is suggested that the removal - or, if not immediately possible, the gradual removal - of the category of women raising a child aged under 12 months from the coverage of this article 115 be effected; for example, the period of 12 months could be shortened to 6 months, with a clear time-frame for its eventual repeal.

Transfer to lighter duties

Article 112 of the Labour Code provides that a female employee who is employed in heavy work and is in her seventh month of pregnancy must be transferred to lighter duties or entitled to work one hour less every day and still receive the same wage. However, it is also recommended that there should be clear stipulation that, in cases of transfer to lighter duties, women will be re-assigned to former positions after pregnancy without loss of any benefits or seniority on account of pregnancy or maternity, except in cases of promotion.

Training

Article 14(5)(a) of the Law on Gender Equality provides, among its measures to promote equality, for the proportion of men and women participating in study and training. Article 110 of the Labour Code states: "State bodies shall be responsible for the expansion of various forms of training which are favorable to female workers in order to enable women to gain an additional skill or trade and to facilitate the employment of female workers suitable to their biological and physiological characteristics as well as their role as a mother." It is recommended that this article be amended by deleting the phrase suitable to their biological and physiological characteristics as well as their role as a mother. Additionally, the specific proportion of men and women required to participate in employment-related trainings must be provided. A 30-50 percent proportion must be targeted. Where it is not immediately possible, work plans must be drafted and submitted to show how this target can be progressively reached.

Article 14(4) of the Law on Gender Equality provides that female officials and public servants bringing along their children aged less than 36 months when participating in the training and fostering activities must be given assistance and support by the Government. In light of shared responsibilities for child-rearing now being encouraged, this article must be applicable to both male and female officials and public servants. It is also suggested that training institutions must include, among their training facilities and planning, crèches for children aged up to 36 months.

Leave

In relation to leave and social insurance in Article 24 of the Law on Social Insurance, it is recommended that parents who are both covered by social insurance must be allowed to take leave to take care of their sick children based on allowable number of leave days for each parent and they can take it simultaneously. The requirement in this article that one parent has to spend the whole period of leave before the other can be entitled to the regime must be removed.

Termination of employment

Articles 39 and 111 of the Labour Code contain specific provisions on termination of employment to ensure non-discrimination of female employees for reason of marriage, pregnancy, taking maternity leave or raising a child aged less than 12 months. A suggestion in this regard relates to putting up a clear provision prohibiting discrimination during retrenchment. Legal documents must also provide for close monitoring by the relevant state management agency of the proportion of men and women retrenched and from which positions.

Retirement age and social insurance

Article 145 of the Labour Code and Articles 50, 51 and 70 of the Law on Social Insurance provide for differential age of retirement for men and women. In this regard, these articles must be revised to ensure equal retirement age for men and women. Provisions relying on differential retirement ages of men and women - in particular those in Chapter III, Section 4 and Chapter IV, Section 1 of the Law on Social Insurance, as well as those relating to the survivorship regime in Articles 64(2)(b), 64(2)(c) and 123 of the Labour Code - must also be revised to reflect equal retirement ages. It is also suggested that wider coverage of voluntary insurance scheme must be in place to include a maternity regime.

Pregnancy and maternity regime

Articles 114 and 144 of the Labour Code and Articles 27-37 of the Law on Social Insurance provide for leave and other benefits in cases of pregnancy, maternity, miscarriage, abortion, fetocytosis, stillbirth, death of a newborn baby, adoption and sterilization. Although this is an extensive regime, some suggestions can be made. There should be a clear legal stipulation that, when availing themselves of the maternity regime, female labourers will not suffer from any loss of benefits or seniority. In relation to the Law on Social Insurance, parents who adopt children aged four months and above should also be entitled to take leave. The period of leave may be from 15-30 days, depending on the age of the child, to enable the parents to have sufficient preparation for the child's care.

Article 17(3) of the Law on Gender Equality provides that poor, ethnic minority women residing in remote and mountainous regions will be supported by the Government when giving birth to a child, excluding those who pay compulsory social insurance. This provision is broad enough to cover both workers and non-workers who are not subject to compulsory social insurance. More details are necessary to operationalize this provision.

COMBINING FAMILY AND WORK

Article 109 of the Labour Code has several provisions on combining family and work responsibilities. In many cases though, they are in the form of protective legislation. In some cases, the provisions focus only on women combining work and family life, and not on ensuring shared responsibilities between men and women. An added recommendation relates to paternity leave. There are no provisions in Vietnamese law for paternity leave for fathers to support or assist mothers in the care of newborn babies. It is recommended that paternity leave be stipulated in law, and be available to male employees in both the public and private sector.

SEXUAL HARASSMENT

There are no provisions specifically prohibiting sexual harassment in the employment setting in Vietnamese law. Hence, no definition of sexual harassment can be found in Vietnamese legal documents. General provisions may be found on damage to life, health, honour, dignity and GBV, such as Article 111 of the Labour Code, Article 10 of the Law on Gender Equality and Articles

104, 110, 121, 122 of the Penal Code, which can be of limited use against sexual harassment. One of the very few mentions of sexual harassment in legal documents is in Article 4 of the Decree on Health Violations. This decree penalizes as an administrative violation abusing the profession to commit acts of sexual harassment against patients. However, it does not apply to employer/employee relations, and a definition is not provided to assist in understanding sexual harassment. It is recommended that sexual harassment legislation be promulgated.

DOMESTIC OR HOUSEHOLD WORKERS

Articles 2 and 139 of the Labour Code applies to domestic or household workers. However, these provisions are very limited and do not regulate domestic work. In this regard, it is recommended that further stipulations be provided for domestic workers. In particular, conditions of work should be clearly legislated, including: (a) days off; (b) rest hours; (c) provision of adequate food and accommodation; (d) periodic and timely payment of wages; (e) prohibition of requiring household helpers to work in commercial, industrial or agricultural enterprises; and (f) causes for termination and compensation for unjust termination. Also, provisions for social insurance of domestic workers must also be explored.

VIETNAMESE MIGRANT WORKERS

The Law on Guest Workers is the main legislation on Vietnamese overseas migrant workers. It identifies forms of overseas work and provides regulations. Article 7 of the law also contains a list of prohibited acts. Nevertheless, some suggestions to make the law compliant with CEDAW are recommended. The Law on Guest Workers must prohibit explicitly: (a) contract substitution or alteration; (b) keeping the travel documents of the guest worker; (c) furnishing or publishing any false information or document in relation to recruitment or employment; (d) failing to reimburse immediately the applicant in a case where deployment does not take place; (e) recruiting or sending guest workers abroad without a licence; (f) forcing or intimidating guest workers to stay abroad; and (g) sending minors abroad for employment.

It must also be stipulated in legal documents that the licence issued to enterprises authorizing them to engage in the business of overseas migration must at all times be displayed clearly in the place of business. All materials issued, disseminated and published by the enterprise must cite the licence number of the enterprise.

It is also recommended that there should be a clear stipulation on the coverage of the overseas employment fund in Article 66 of the Law on Guest Workers. In particular, the fund should cover medical and health insurance for guest workers and their dependents, maternity coverage, travel insurance and other welfare assistance. It should also provide for emergency repatriation - for example, in cases of war, epidemics or natural disasters - without prejudice to claiming reimbursement from the enterprise that deployed the guest workers, counselling and rehabilitation measures, skills and livelihood trainings for returning guest workers, and orientation for returning guest workers. It must ensure that men and women benefit equally from such fund.

HEALTH (Article 12 of CEDAW)

Article 12 of CEDAW requires the elimination of all forms of discrimination in the field of health and to ensure women's equal access to health-care services. GR 24 elaborates further. It explains that the guarantee of health care must be applicable throughout a woman's life. Thus, protection covers from as early as sex-selective abortions to the protection of elderly women. The obligation under Article 12 specifically highlights the various areas of health care requiring attention, such as

those relating to access to health, maternity and pregnancy, HIV/AIDS and other STIs, sexual and reproductive health-care services and education, birth control and family planning methods, abortions, and the privatization of the health-care services. In view of these, the selected indicators focus on these areas.

GUARANTEES OF NON-DISCRIMINATION AND EQUAL ACCESS TO HEALTH CARE

There are numerous laws, plans and strategies in Viet Nam that address the equal right to access health-care services, including the Law on Health, Plan of Action for the Advancement of Women and Strategy for Protection and Care of People's Health. There is a need to supplement legal and policy documents through: (a) building or strengthening centres that specifically focus on health-care concerns of women, including diseases and infections that disproportionately affect them; (b) putting in place measures relating to GBV, establishing women's protection units in hospitals; (c) introducing targets for women's participation in leadership positions in the health sector; (d) ensuring that mobile teams that cater to women have a substantial proportion of female staff, are gender-sensitive, and are trained to address gender and women's health needs and concerns; (e) mandatory training on gender aspects of health care for health professionals; and (f) strengthening the institutionalization of professional social work in health care. In all these recommendations, special attention and mention must be made to prioritizing ethnic minority women, and women from remote and mountainous regions, who have been clearly disadvantaged in their right to access health care. Legal provisions should also be in place relating to gender budgeting.

ASSISTANCE TO POOR AND DISADVANTAGED WOMEN

User fees remain a major source of health financing and, in many ways, undermine equality of access to health care. To reduce the inequalities caused by user fees, the Government introduced a policy of exempting or privileging certain individuals from or in treatment fees, including war veterans, people with disabilities, orphans, ethnic minorities, the poor, children aged less than 6 years and individuals with particular illnesses. These exemptions may be found in relevant legal documents, such as the Decision on Health Insurance, Law on Children, Ordinance on Elderly People, Ordinance on Disabled Persons and Resolution on Socialization. They should be viewed in the context of Decree on Financial Regime, which reflects the Government's policy to spend less on public services and shift the burden to the consumer. The impact of these legal documents - and, in particular, the Decree on Financial Regime - must be further looked into, especially their effects on the disadvantaged sectors of society. Data must be sex-disaggregated to enable an analysis of the gender issues and impacts. To ensure that the appropriate standard of care is given to patients regardless of their gender and economic status, protocols on appropriate treatment and handling of patients must be drafted. Legal provisions that clearly prohibit and penalize direct and indirect forms of discrimination against disadvantaged groups in the field of access to health care, including those with health insurance cards, must be stipulated. These forms include: (a) patient skimming; (b) unnecessary referrals when treatment and care can be reasonably provided by the health-care establishment; (c) refusal of treatment when able to do so; and (d) providing less than the minimum standard of care.

PREGNANCY AND MATERNITY

There are a substantial number of laws, plans and strategies in place relating to pregnancy and maternity. A degree of progress has also been achieved in maternal health care. Nevertheless, women from remote and mountainous areas still receive inadequate maternal health care, due to cost, distance to health centres and traditional birth practices. Hence, it is suggested that a legal

document focusing on access to health, in particular maternal health care, by women in rural areas, women in remote and mountainous regions and ethnic minority women must be promulgated. It must: (a) intensify the work on establishing outreach health-care services, including mobile teams; (b) target infrastructure development, especially more accessible maternity and women's health centres for these regions and women; (c) designate a specific office to advise and provide technical skills on providing health-care services for the women in the rural areas, women in remote and mountainous regions and ethnic minority women; and (d) monitor and evaluate interventions consistently. It is also suggested that strategies on nutrition - in particular those ensuring family and child nutrition - should include fathers, without losing sight of the fact that, de facto, it is mothers who are entrusted with family care and nutrition.

HIV/AIDS AND OTHER STIS

Several laws address HIV/AIDS, including the Law on HIV/AIDS and Directive on HIV/AIDS, Law on Gender Equality, Law on Health and Decree on Health Violations, and Penal Code. In addition, there are several plans and strategies dealing with HIV/AIDS, primarily the National Strategy on HIV/AIDS. Nevertheless, some suggestions are made for their improvement. The Law on HIV/AIDS must explicitly provide that preventive care and treatment interventions must be provided to people living with HIV/AIDS regardless of gender, nationality, social, economic and other status. It must also state clearly that the guarantee of confidentiality and privacy extends to all identifying information, and this must be reflected in new protocols and guidelines. The Law on HIV/AIDS and Decree on Health Violations must also clearly stipulate that identifying information must be kept confidential during proceedings of any nature, whether administrative or judicial, and within the employment, education or other setting. Protocols and guidelines for handling of cases of HIV/AIDS must be drafted; for example, for health and medical workers, police officers, mass media, employers, heads of educational institutions and teachers. These protocols and guidelines must contain step-by-step instructions on how to protect and respect people living with HIV/AIDS in an appropriate manner, so as to ensure that no discrimination or stigmatization occurs. Appropriate support and resources must be provided to the carers according to the situation, which may include job placement that allows for work at home or flexible hours to enable the balancing of work and care.

ABORTION

Article 44 of the Law on Health provides that women have the right to an abortion on demand. The Penal Code punishes illegal abortion under Article 243. More specifically, Article 40(7) of the Law on Gender Equality identifies one of the violations on gender equality in the field of public health to be "choosing gender for the fetus under all forms or inciting and forcing other people to abort because of the fetus gender." Article 7 of the Population Ordinance and Article 10 of the Decree on Population Ordinance prohibits selecting the sex of unborn babies in any form.

It is suggested that explicit legal provisions ensure increased awareness of, availability of and accessibility to a wide range of contraceptive methods. This can lower the risk of unwanted pregnancies and frequent abortions. Further, both men and women should be targeted for family planning information, education and communication interventions. Laws must also ensure that post-abortion health care of good quality is available and accessible. As to sex-selective abortion, although the Penal Code currently prohibits it, there is a need to provide further guidelines to ensure the prohibition is implemented. It is suggested that a more detailed legal document be drafted on sex-selection in particular one elaborating or supplementing the Decree on Population Ordinance.

CONTRACEPTION

See section on Article 16.

SEXUAL HARASSMENT

Article 27(2)(h) of the Decree on Health Violations penalizes as a violation of professional and technical regulations abusing the medical or health profession to commit acts of sexual harassment against patients. Due to the limited scope of this decree, it is recommended that sexual harassment legislation be promulgated, with sexual harassment in the medical and health setting being one of the prohibited acts. It is also recommended that such legislation require administrators of hospital, health centres and clinics to: (a) draft internal rules on sexual harassment; (b) form committees to receive complaints on sexual harassment; and (c) provide appropriate remedies to the grievances of the victim-patient. The new law should also penalize failure to do such obligations, including making the hospital, health centre and clinics liable for damages when sexual harassment occurs within their establishment.

ECONOMIC AND SOCIAL LIFE (Article 13 of CEDAW)

Article 13 of CEDAW mandates equality in economic and social life. The selected indicators for this article focus on equal participation in business and enterprises, and the equal right to access credit. Other indicators of economic and social rights are discussed as well in relation to Articles 7, 8 and 10-16 of CEDAW, such as the rights to participate in social activities, to work, to own property including land, to inheritance, and to enter and conclude contracts.

The right to participate equally in business and enterprise and supportive rights for its exercise are guaranteed by the Constitution, Civil Code, Enterprise Law, Investment Law, Law on Cooperatives and Decree on SMEs. These laws are gender-neutral. Article 12 of the Law on Gender Equality, on the other hand, specifically provides: “Men and women are equal in setting up a business, carrying out business and production activities, managing business and are equal in accessing information, capital markets and labour sources.”

To ensure that a clear policy for gender equality and non-discrimination is carried into the field of business, and to prevent discriminatory stereotypes about businesswomen or female entrepreneurs, it is suggested that clear provisions on non-discrimination on account of gender in the field of business be stipulated in general laws on business, investment and enterprise; that is, the Enterprise Law, Investment Law, Law on Cooperatives and Decree on SMEs, and their supporting documents. Provisions defining and prohibiting sexual harassment in the field of business must be drafted as well, including those committed by clients as well as officials who demand sexual favors to perform their mandated tasks. Legal provisions should also be provided to encourage the setting up of day-care centres and crèches. Clear responsibility in legal documents must be stipulated for ensuring increased support for female entrepreneurs to access business information and skills, and personnel, financial and technical management and administration skills, especially ethnic minority women and those women who live in remote and mountainous regions. A target of 50 percent, with a minimum of 30 percent, should be progressively achieved to ensure women's participation in human resource capability development.

ACCESS TO CREDIT, LOANS AND FUNDS

The laws in Viet Nam do not formally prohibit women from accessing credit, loans and funds. There are several laws, plans and strategies that address women accessing credit including the

Law on Gender Equality, National Strategy for the Advancement of Women and Plan of Action for the Advancement of Women, and the the Socio-Economic Development Plan for 2006-2010 and National Target Programme on Poverty Alleviation. Preferential credit for the poor and farmers is also available, which women can utilize as well. However, in reality, women have less access to credit, loans and funds. One of the major impediments for women in accessing credit is the lack of any capital or property, especially land, to offer as collateral. For further discussions and recommendations, see Article 15 and 16 of CEDAW.

RURAL WOMEN **(Article 14 of CEDAW)**

Article 14 of CEDAW ensures that rural women are not discriminated against in the exercise and enjoyment of rights in all fields, especially in the areas of development, health, education, employment and economic benefits, including access to credit and property, protection from violence and living conditions. The term rural women is actually a broad term that covers not only women from the rural areas. The CEDAW Committee uses the term to look into situations of indigenous women, minority women, women farmers or women in agriculture, and women in remote and mountainous regions. Concluding Comments on Viet Nam 2007 called on Viet Nam to pay special attention to women in rural areas, women in remote and mountainous regions and ethnic minority women by ensuring that they have equal access to health care, education, social security, income generation opportunities and participation in decision-making. It also urged that the draft law on ethnic minorities be passed soon and that it integrates the Law on Gender Equality. The selected indicators relating to Article 14 focus on the rights of ethnic minority women and rural women to education, health, land policies and political participation. The rights of ethnic minority women to education and health have been previously discussed in relation to Articles 10 and 12. Land policies are discussed in relation to Article 15.

POLITICAL PARTICIPATION

In addition to guarantees of the equal right to political participation in Articles 7 and 8 of CEDAW, Article 10 the Law on Election to National Assembly 2001 and Article 14 of the Law on Election to People's Councils provide that a proportion of deputies must be from ethnic minorities. In addition to the recommendations for these articles, it is suggested that, to ensure clarity, the Law on Election to National Assembly and Law on Election to People's Councils must explicitly stipulate that the proportion of ethnic minority deputies should include no less than 30 percent female ethnic minority deputies with the aim of increasing progressively to a higher proportion.

EQUALITY BEFORE THE LAW **(Article 15 of CEDAW)**

Article 15 of CEDAW requires equality before the law. It states explicitly that women should be granted equal rights in all civil matters including the same legal capacity to men, and the equal right to enter into contracts and administer property. This article also provides for equal rights to movement, residence and domicile. As a result, the selected indicators are heavily based on these.

Article 52 of the Constitution - and provisions in others laws such as Article 8 of the Civil Procedure Code and Article 5 of the Criminal Procedure Code - guarantee equality before the

law. Articles 14, 16 and 19 of the Civil Code also guarantee all individuals the same civil capacity and capacity to act. It provides no distinction on the basis of sex as to the right to enter into contracts and to act as estate administrators. There are no explicit restrictions in law on the basis of sex. Legal documents also provide for the equal right to mobility, residence and domicile: Article 68 of the Constitution, Articles 48 of the Civil Code and Article 3 of the Law on Residence guarantee an individual's right to mobility and residence. Article 55 of the Civil Code, Article 15 of the Law on Residence, Article 20 of the Marriage and Family Law and Article 11 of the Decree on Marriage and Family Law (Ethnic Minorities) provide that residence is determined mutually by the husband and wife.

PROPERTY RIGHTS

As to property rights - that is, ownership, acquisition, management, administration, enjoyment and disposition – the legal documents in Viet Nam guarantee property rights, but they are generally gender-neutral.

The most discussed issue relating to property is the registration of LUCs. There are no impediments in law on the basis of gender relating to the registration of LUCs. In reality, however, land is registered mostly in the name of the husband. Article 48(3) of the Land Law, Article 43 of the Decree on Land Law, and Article 27 of the Marriage and Family Law and Article 5 of the Decree on Marriage And Family Law, require that the full names of both the husband and the wife be inscribed in the LUC, where it is the common property of the husband and wife. Goals, plans and strategies, including CPRGS, SEDP and VDGs have also urged the joint registration of newly issued certificates.

Some recommendations are suggested. It is recommended that more proactive strategies be put in place to encourage the registration of LUCs in the names of both husband and wife. These proactive strategies include: (a) legal awareness-raising campaigns on the need to request the joint registration of husbands and wives in the LUCs. Women, in particular, must be made aware of the value of having LUCs in their own names, such as its importance to access to credit; (b) targets by localities to re-grant previously issued LUCs in the names of both spouses; and (c) free or subsidized legal aid, especially legal counselling and advice, to provide assistance to women on procedures relating to reissuance of LUCs in the names of both spouses.

MARRIAGE AND FAMILY (Article 16 of CEDAW)

Article 16 of CEDAW, GR 19 and GR 21 look into ensuring equality in the realm of the family and marriage. They guarantee equal rights relating to entry into marriage, during marriage (whether it relates to property, children, inheritance) and on dissolution of marriage. They protect not only registered marriages, but also *de facto* marriages (that is, 'unions without marriage'). In relation to family life, their protection is provided for the whole life of women. In particular, women and girls are protected from violence, especially violence caused by harmful traditional practices such as early marriage, forced marriage, polygamy and domestic violence. GR 21 also states that there are various 'forms of the family'. Hence, the protection afforded should be expansive rather than restrictive. The selected indicators, therefore, focus on these aspects of Article 16 and these GRs. Further, Concluding Comments on Viet Nam 2007 focused, in particular, on calling Viet Nam to prevent underage marriages and urging it to set a minimum age of marriage at age 18 years. Selected indicators focus on these matters too.

PROTECTION FOR MARRIAGE AND FAMILY

Article 64 of the Constitution states: “The family is the cell of society. The State protects marriage and the family.” This is reflected in the Marriage and Family Law, Decree on Marriage and Family Law, and Decision on Families. One key recommendation in this regard is that further elucidation be provided on the definition of the family. This should specifically refer to the fact that families can be made up of divorced people, separated people, widowed people and single parents, and headed by women. Therefore, policies and interventions should ensure that women's concerns are considered and that women are not discriminated against.

ENTRY INTO MARRIAGE

Article 64 of the Constitution states: “Marriage shall conform to the principles of free consent, progressive union, monogamy and equality between husband and wife.” There are several legal provisions on entry into marriage, including the Civil Code, Marriage and Family Law, and Penal Code and their subordinate legal documents, that emphasize these principles and prohibit acts that violate them, including use of force or deception to secure consent to marriage, under-age marriage, hindering voluntary and progressive marriage, feigned marriage, deceiving other persons into marriage. Some recommendations on this topic include setting the same age of marriage for men and women at not less than age 18 years, as well as a review of the list of acts in Decree on Marriage and Family (Ethnic Minorities) that identifies explicitly the prohibited acts in the marriage practices of ethnic minorities.

REGISTRATION OF MARRIAGE

Registration of marriages is required by law, particularly by Article 11 of the Marriage and Family Law. It is recommended that education on the value of marriage registration must be increased, with particular emphasis on the consequences of non-registration of marriage. This education must be focused on ‘husband and wife relations’ that were established between 3 January 1987 and 1 January 2001 but that were not registered prior to 1 January 2003, as well as such relations that were established after 1 January 2001 but that are still unregistered. Legal documents must also urge the establishment of more proactive and institutionalized measures to ensure marriage registration, including legal awareness campaigns, free legal assistance on marriage registration, and mobile registration offices.

ADULTERY

The crime of adultery is penalized in many jurisdictions and it usually covers either sexual relations by a married person with someone other than his/her spouse or with a person knowing him/her to be married. One of the criticisms of the crime is that it impacts disproportionately on women, in particular because of societal tolerance of male sexual relations outside marriage, with cases most often filed against women. In Viet Nam, there is no crime of adultery per se. However, the provisions on bigamy or acts violating monogamy regime in Article 147 of the Penal Code criminalise acts amounting to adultery. There is a need for further research on this area in Viet Nam.

PROPERTY RIGHTS

Most of the legal provisions relating to the property rights of husband and wife are in Chapter III of the Marriage and Family Law. Recommendations are: (a) in transactions involving common real property, the agreement of both spouses must be in writing, whether or not registered in both of their names; and (b) legal documents should increase efforts to encourage joint registration of common real properties, including mandating legal literacy and awareness-raising campaigns on the value of registration of common real properties in the names of both spouses, and authorizing subsidized legal aid to provide legal advice and to assist in registration.

NUMBER AND SPACING OF CHILDREN

Article 43 of the Law on Health emphasizes that family planning is a duty for all people who have the right to choose family planning methods. Article 2 of the Marriage and Family Law also states that one of the basic principles of the marriage and family regime is that a husband and wife are obliged to implement the population and family planning policy. Article 10 of the Population and Article 17 of the Decree on Population also identify family planning as an obligation. Article 43(1) of the Law on Health, Article 17 of the Decree on Population, National Strategy on Reproductive Health Care and Resolution No. 47-NQ-TW of March 2005 affirm a policy that targets a fertility rate of two children for a woman of reproductive age. This policy is imposed especially on public sector employees, who are subject to higher health-care costs, reduced salary increases, and less access to employment benefits such as housing if they have more than two children. Article 21 of the Decree on Population emphasizes voluntary and knowledgeable use of contraceptives. In practice though, the range of available contraceptives is limited.

Article 23 of the Decree on Population also specifically requires the elimination of gender discrimination and the creation of conditions for women to take initiative in caring for their reproductive health and in practicing family planning. It also urged males to practice family planning. Article 18(3) of the Law on Gender Equality also contains a provision on gender equality and family planning that states: “Wife and husband are equal in discussing, deciding the choice and use of the appropriate family planning measures...” Article 2 of the Marriage and Family Law supplements this and states that husband and wife are obliged to implement the population and family planning policy. All attempts to obstruct family planning implementation are strictly prohibited by Article 43 of the Law on Health, Article 7 of the Population Ordinance and Articles 9-12 of the Decree of Population.

In relation to contraception, access to a wide range of contraception should also be one of the explicit rights relating to population work and family planning, and it must be guaranteed in the list of rights in Articles 4 and 10 of the Population Ordinance and Article 17 of Decree on Population. Specific guidelines should be given to health-care providers on providing information and counselling to users of contraception to enable their informed consent and to ascertain with them the best methods for their needs. Procedures to ensure that the patient has given informed consent prior to undergoing sterilization procedures must be in place. There is a need to review the moral and material incentives in legal documents for the use of particular forms of contraception as they may violate gender equality, in particular right to determine number and spacing of children.

It is also suggested that guidelines on the use of emergency contraception (or postcoital hormonal contraception used by women within a few days following unprotected sex to prevent a pregnancy), especially its immediate access by victims of rape or forced sexual intercourse, be drafted.

The policy of limiting family size to one or two children and providing incentives or penalties for conforming with or violating the policy must be repealed, as it works to penalize the valid exercise of a right. In lieu of repeal, it is suggested that further information and education, especially behavioral change communication, be put in place to ensure a more sustainable population policy than one that is government imposed.

In addition to the guarantee of gender equality, a guarantee of non-discrimination in access to family planning services, especially access to contraceptives, on other grounds to gender must also be explicitly guaranteed, especially equal access by disadvantaged groups of women such

as ethnic minority women, and poor or rural women. In particular, an explicit provision on the equal access by unmarried women to all family planning services must be stipulated. There should be a clear prohibition on discriminating against them on account of their unmarried status.

In relation to measures on education and information dissemination, the following are recommended: (a) a more detailed guideline on the contents of an appropriate education on the issues of population, family planning and reproductive rights; (b) increased education and behavioral change communication on family planning for men, including their use of contraceptives; and (c) specific guidelines on integrating information on population into the national education system in a systematic and consistent manner.

DE FACTO UNIONS

There is no special provision in Vietnamese legal documents governing property relations of 'unions without marriage' where there exists no legal impediment for a valid marriage. However, there are some provisions, such as Article 11 of the Marriage and Family Law on consequences of failure to register, that may apply to some instances of unions without marriage registration or without a legal marriage. It is suggested that explicit provisions be provided for *de facto* marriages, in particular in relation to property and custodial rights.

INHERITANCE RIGHTS

Vietnamese law guarantees equal inheritance rights in Article 676 of the Civil Code and Article 31 of the Marriage and Family Law. In practice, however, contravention of the law exists due to discriminatory customs and practices. Further study is recommended on incidences of indirect discrimination against women relating to inheritance rights. It is suggested that a system of reserved inheritance be put in place for a specific portion of the testators estate, which would be allotted for compulsory heirs that cannot be easily disregarded by the testator without justifiable reasons or by written agreement of heirs without appropriate safeguards, such as legal counselling on women's rights and the consequences of disclaiming their portion of the estate. This system must include provisions on collation of property back to the estate in cases of donations and alleged sales of property to male heirs that operate to take away property from, and to deprive women and girls of their share in, the estate.

CONCLUSION

As gender is a cross-cutting issue relevant in all sectors and arenas, legal reform to incorporate gender equality is a challenging process. This legal review seeks to contribute to this process as one of its building blocks. It is hoped that the recommendations in the review will assist not only in the immediate reform of legal documents, but also in the continuous process of analysing, monitoring, evaluating, revising, supplementing and drafting legal documents to ensure their compliance with the international standards on gender equality.

I. VIET NAM IN CONTEXT

Viet Nam is a country in South-East Asia with a population of 85,590,000 in 2007 of which 50.86 percent are female.⁸ It has 54 ethnic nationalities. The majority of Vietnamese are Kinh, representing 86.80 percent of the population. Vietnamese is the official language.⁹

Viet Nam has undergone impressive economic and social change since initiating *Doi Moi* (reform or renewal) in 1986. As a socialist-oriented market economy, its growth performance since the beginning of *Doi Moi* has been dramatic, with Gross Domestic Product increasing by more than 7 percent per year on average for more than a decade.¹⁰ With economic growth, there have been improvements in Viet Nam's social development. It ranks 105 out of 177 countries in the most recent United Nations Development Programme (UNDP) Human Development Index, placing it in a group of countries with medium human development.¹¹ Viet Nam prides itself as also having halved the number of people living in poverty in just a decade.¹² The country's key planning document is the 'Socio-Economic Development Plan (2006-2010)' (SEDP). The SEDP seeks to concretize the link between economic growth and social development; and, hence, make development more comprehensive and inclusive.¹³

In relation to gender equality, Viet Nam is now placed at 91 out of 157 countries on the UNDP Gender Development Index.¹⁴ Viet Nam has made progress in efforts on gender equality including: (a) good performance on education and health in terms of gender equality; (b) one of the highest proportions of women in parliament in the Asia-Pacific region; (c) the labour force participation of women is high; and (d) improved maternal and infant mortality.¹⁵ However, with dramatic changes, there are also areas of concerns as will be seen later in the review. In fact, *Resolution 11-NQ/TW of the Political Bureau of the Communist Party of Viet Nam dated April 27, 2007 on the Work for Women in the Period of Accelerating Industrialization and Modernization* (Communist Party Resolution on Women) stated: "The market mechanism and the industrialization have made positive effects on one side, but on the other side they have been creating more social problems related directly to women."

In the implementation of *Doi Moi*, a legal reform process has also been underway. As a result, many legal documents have been promulgated, revised, supplemented and repealed. The 'Strategy for Development and Improvement of Viet Nam's Legal System to the year 2010 and Directions for the Period Up to 2010' (Strategy for Legal System) is in place to provide guidance on legal development. The law reform is in line with Viet Nam's need to provide more predictability and transparency, and to ensure feasibility of its legal documents to newly emerging situations.

⁸ United Nations Economic and Social Commission for Asia and the Pacific, '2007 ESCAP Population Data Sheet', Bangkok, 2007

⁹ Combined Fifth and Sixth Periodic Report, p. 3

¹⁰ Wells, Melissa, 'Viet Nam: Gender Situation Analysis', Asian Development Bank, November 2005 (Wells), p. 9

¹¹ United Nations Development Programme, 'Human Development Report 2007/2008', UNDP, New York, 2007 (UNDP HDR), p. 230

¹² Wells, p. 11

¹³ World Bank, Asian Development Bank, Department for International Development and Canadian International Development Agency, 'Viet Nam Country Gender Assessment', The World Bank Group, December 2006 (World Bank Assessment), p. 17

¹⁴ UNDP HDR, p. 329

¹⁵ Wells. p. i-ii

II. THE POLITICAL AND LEGAL FRAMEWORK OF VIET NAM

II.1 STRUCTURES OF GOVERNANCE

Viet Nam's structure of government is provided for in the Vietnam Constitution (1992), as amended by *Resolution No. 51/2001/QH10 of December 25, 2001* (Constitution). The Constitution states: "The Socialist Republic of Viet Nam is a law-governed socialist State of the people, by the people and for the people."¹⁶ The Constitution further states: "Democratic centralism is the principle that governs the organization and activity of the National Assembly, the People's Councils and all other State organs."¹⁷

II.1.1 THE NATIONAL ASSEMBLY

The National Assembly is the highest representative body of the people as well as the highest organ of State power.¹⁸ It is a unicameral entity and its deputies are elected according to regional constituencies every five years.¹⁹ The number of deputies in the National Assembly is established by law.²⁰ Presently, it is composed of 493 deputies working on full-time or part-time bases. The number of full-time deputies must account for at least 25 percent of the total number of deputies.²¹ The National Assembly holds two sessions each year or when required by the State President, Prime Minister, one third of its total membership or the National Assembly itself.²²

The National Assembly is the only State organ vested with constitutional and legislative powers. It has the obligation and power to: (a) draft or amend the Constitution; (b) make and amend laws; (c) exercise supreme control over conformity of the laws and resolutions of the National Assembly with the Constitution; (d) abrogate all formal written documents issued by the State President, Standing Committee of the National Assembly (Standing Committee), Government, Prime Minister, Supreme People's Court (SPC) and Supreme People's Procuracy (SPP) that run counter to the Constitution or laws and resolutions of the National Assembly; (e) set up or abolish Government ministries and ministerial organs; (f) decide on fundamental external policies, including to ratify or denounce international treaties signed or acceded to by the President or at the President's proposal; and (g) elect or remove from office the State President, Vice State Presidents, Prime Minister, Chief Justice of the SPC and Director-General of the SPP.²³

¹⁶ Constitution, Article 2

¹⁷ Ibid., Article 6

¹⁸ *Constitution, Article 83; Law on Organization of the National Assembly* (No. 30/2001/QH10 of December 25, 2001) amended on 2 April 2007 (Law on National Assembly Organization), Article 1

¹⁹ Constitution, Article 85; Law on National Assembly Organization, Article 3

²⁰ Constitution, Article 85

²¹ Law on Organization of National Assembly, Article 45

²² Constitution, Article 85; Law on National Assembly Organization, Article 62

²³ Constitution, Article 84; Law on National Assembly Organization, Article 7

The Standing Committee is the permanent body of the National Assembly.²⁴ It is composed of the National Assembly Chairperson as its head, the Vice Chairpersons of the National Assembly as its deputy heads, and other members.²⁵ The members of the Standing Committee must work full-time, and they must not be concurrently a member of the Government.²⁶ The Standing Committee has, among others, tasks and powers to: (a) prepare and convene National Assembly sessions; (b) interpret the Constitution, law and ordinances; (c) enact ordinances on matters entrusted to it by the National Assembly; (d) exercise supervision and control over the implementation of the Constitution, laws and resolutions of the National Assembly and resolutions of the Standing Committee; (e) supervise the activities of the Government, SPC and SPP, including to suspend their formal written documents that contravene the Constitution and laws and resolutions of the National Assembly, and to submit such to the National Assembly for abrogation; and (f) supervise activities of the People's Councils, annul its resolutions where required, and disband them when they cause serious harm.²⁷

The National Assembly sets up a Council of Ethnic Minorities and other committees to assist it in its work.²⁸ The Council of Ethnic Minorities is specifically provided for in the Constitution and is tasked to: (a) make proposals on issues concerning nationalities; and (b) supervise the implementation of policies on nationalities and execution of programmes and plans for socio-economic development of the highlands and regions inhabited by national minorities.²⁹ The other committees of the National Assembly are the: (a) Law Committee; (b) Judicial Committee; (c) Economic Committee; (d) Finance and Budgetary Committee; (e) Defense and Security Committee; (f) Committee for Culture, Education, Youth and Children; (g) Committee for Social Affairs; (h) Committee for Science, Technology and Environment; and (i) External Relations Committee.³⁰

II.1.2 THE STATE PRESIDENT

The State President is the Head of State, is elected by the National Assembly and is responsible to it.³¹ The State President promulgates the Constitution, laws and decree-laws, and has overall command of the armed forces.³² The State President can, based on resolutions of the National Assembly, appoint or dismiss Deputy Prime Ministers, Ministers and other members of the Government, and propose to the National Assembly to elect, release from duty or remove from office the Vice President, Prime Minister, Chief Justice of the SPC and Director-General of the SPP.³³ The State President has the power to appoint and recall Viet Nam's ambassadors, accept foreign ambassadors, negotiate and conclude international agreements in the name of the State and to submit international agreements for ratification or decision when required.³⁴

²⁴ Constitution, Article 90; Law on National Assembly Organization, Article 6

²⁵ Constitution, Article 90; Law on National Assembly Organization, Article 6

²⁶ Constitution, Article 90; Law on National Assembly Organization, Article 6

²⁷ Constitution Article 91, Law on National Assembly Organization, Article 7

²⁸ Constitution, Articles 94 and 95

²⁹ Ibid., Article 94; Law on National Assembly Organization, Article 26

³⁰ Law on National Assembly Organization, Article 22

³¹ Constitution, Article 101

³² Ibid., Articles 103(1) and 103(2)

³³ Ibid., Article 103(3)

³⁴ Ibid., Article 103(10)

II.1.3 THE GOVERNMENT

The Government is the executive organ of the National Assembly and is the highest organ of State administration.³⁵ It is accountable to the National Assembly and it reports to it, the Standing Committee and State President.³⁶ The Government is composed of the Prime Minister, Vice Prime Ministers, Ministers and other members.³⁷ With the exception of the Prime Minister, the members of the Government are not necessarily members of the National Assembly.³⁸ The tenure of the Government is the same as that of the National Assembly.³⁹ However, it continues on until a new government is established by the new legislature.⁴⁰

Among the duties and powers of the Government are to: (a) direct the work of the Government ministries, other organs of government and the People's Committees at all levels; (b) build and consolidate the State administration from the centre to the grassroots; (c) ensure the implementation of the Constitution and laws; (d) present draft laws, decrees and other projects to the National Assembly and Standing Committee; and (e) organize and direct State inspection and control, and settle complaints and denunciations by citizens.⁴¹

The Prime Minister is the Head of Government and has duties and powers to: (a) direct the work of the Government, Government members and People's Councils at all levels; (b) chair Cabinet meetings; (c) propose to the National Assembly to establish or dissolve Government ministries and ministerial agencies; (d) suspend or annul decisions and directives of People's Councils and chairpersons of People's Committees when in contravention of the Constitution, laws and formal written documents of superior State organs; and (e) suspend the execution of resolutions of the People's Councils when in contravention of the Constitution, laws and formal written documents of superior State organs, and to propose to the Standing Committee to annul them.⁴²

The Law on Organization of the Government (No. 32/2001/QH10 of December 25, 2001) (Law on Government Organization) specifies further the tasks and powers of the Government, Prime Minister and Government ministries and ministerial agencies.

II.1.4 THE PEOPLE'S COURTS AND PEOPLE'S PROCURACY

The SPC, local People's Courts, Military Tribunals and other tribunals established by law are the judicial organs of the State.⁴³ The SPC is the highest judicial organ.⁴⁴ It supervises and directs the judicial work of local People's Courts and Military Tribunal.⁴⁵ The Chief Justice of the SPC is responsible to the National Assembly and reports to it.⁴⁶ The Chief Justice of the

³⁵ Ibid., Article 109

³⁶ Ibid.

³⁷ Ibid., Article 110

³⁸ Ibid.

³⁹ Ibid., Article 113

⁴⁰ Ibid.

⁴¹ Ibid., Article 112

⁴² Ibid., Article 114

⁴³ Law on Government, Article 127

⁴⁴ Constitution, Article 134

⁴⁵ Law on Government, Article 134

⁴⁶ Constitution, Article 135

local People's Court is responsible to the People's Council.⁴⁷ Judicial decisions by the courts are binding on a case-specific basis and are not subject to constitutional review.⁴⁸

The Constitution provides that the SPP must exercise the right to prosecution and control of judiciary activities.⁴⁹ The Director-General of the SPP is elected and can be removed from office by the National Assembly at the proposal of the State President.⁵⁰ The Director-General is subject to the supervision of the National Assembly and reports to it.⁵¹ The tenure of the Director-General is the same as the National Assembly.⁵² Local people's procuracies exercise the right in their localities.⁵³ The directors of the local people's procuracies are responsible to the People's Council.⁵⁴ Military procuracies exercise the right according to provisions of law.⁵⁵

II.1.5 THE PEOPLE'S COUNCILS AND PEOPLE'S COMMITTEES

Article 118 of the Constitution provides for the local administrative units of Viet Nam:

The country of divided into provinces and cities under direct central rule;

The province is divided into districts, provincial cities, and towns; the city under direct central rule is divided into urban districts, rural districts and towns;

The district is divided into communes and townlets; the provincial city and the towns are divided into wards and communes; the urban district is divided into wards.

In these administrative units, the local organ of State power is the People's Council.⁵⁶ Deputies to the People's Council are elected by the local people through election units.⁵⁷ Taking into account the Constitution, laws and formal written orders of superior State organs, the People's Council can pass resolutions on: (a) measures for the implementation at the local level of the Constitution and laws; (b) the plan for socio-economic development; (c) the execution of the budget; (d) national security and defense at the local level; and (e) measures on living conditions.⁵⁸

The executive body of the People's Council and the organ for local State administration is the People's Committee.⁵⁹ The People's Committee is elected by the People's Council and is responsible for the implementation of the Constitution, laws, formal written orders of Superior State organs and resolutions of the People's Council.⁶⁰

⁴⁷ Law on Government, Article 135

⁴⁸ Center for Reproductive Rights, 'Women of the World, Laws and Policies Affecting their Reproductive Lives: East and Southeast Asia', Center for Reproductive Rights, New York, 2005 (Center for Reproductive Rights), p. 210

⁴⁹ Constitution, Article 137; Law on Organization of the People's Procuracies (No. 34/2002/QH10 of April 2, 2002) (Law on People's Procuracies), Article 1

⁵⁰ Law on People's Procuracies, Article 9

⁵¹ Constitution, Article 139; Law on People's Procuracies, Article 9

⁵² Constitution, Article 138

⁵³ Ibid., Article 137; Law on People's Procuracies, Article 1

⁵⁴ Constitution, Article 140; Law on People's Procuracies, Article 9

⁵⁵ Constitution, Article 137; Law on People's Procuracies, Article 1

⁵⁶ Constitution, Article 119

⁵⁷ Law on the Election of Deputies to the People's Councils (No. 12/2003/QH11 of November 26, 2003) (Law on the Election to People's Councils), Article 10

⁵⁸ Constitution, Article 120

⁵⁹ Ibid., Article 123

⁶⁰ Ibid.

The Law on the Organization of People's Councils and People's Committee of November 26, 2003 specifies the responsibilities of these bodies. *The Law on the Election of Deputies to the People's Councils* (No. 12/2003/QH11 of November 26, 2003) (Law on Election to People's Councils) provides for qualifications, number, election and tasks of deputies to the People's Councils. Decentralization of State management from central to local authorities has also been taking place.⁶¹

II.1.6 THE COMMUNIST PARTY OF VIET NAM

The Communist Party of Viet Nam is highlighted in the Constitution, which provides that it is the “vanguard of the working class, the faithful representative of the rights and interest of the working class, the toiling people and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh thought, is the force leading the State and society.”⁶²

With this constitutional acknowledgment of the Communist Party of Viet Nam's key role in providing leadership to the State, with a membership of 2.5 million countrywide,⁶³ with almost all key and senior positions in State organs occupied by its members as well as its historical engagement in the running of the State, it is obvious that Communist Party of Viet Nam policies, resolutions, programmes and directions have foremost authority. In many cases, they are incorporated into or made the basis of legal documents. This is most significant in the light of Viet Nam being a one-party State.

The National Congress is the highest body of the Communist Party of Viet Nam, while at each level it is the Congress of Representatives. In between Congresses, the Central Committee is the leading body of the Communist Party of Viet Nam, while at each level it is the Party Organization Committee or Party Cell (Party Committee). Central Committee and Party Committee members are decided by the congresses of their corresponding levels.⁶⁴

The National Congress is normally convened every five years and it appraises the implementation of Communist Party of Viet Nam resolutions, elects the Central Committee and amends Communist Party of Viet Nam Political Programmes. The Central Committee elects the Political Bureau, and the General Secretary of the Communist Party of Viet Nam establishes the Secretariat. The Political Bureau monitors the execution of the resolutions of the National Congress and Central Committee, and the Secretariat exercises leadership over the Communist Party of Viet Nam's daily affairs, monitors resolutions and directs coordination of activities. At the local level, congresses are convened to discuss documents prepared by higher Party Committees, elect Party Committees and appraise implementation of resolutions.⁶⁵ The Communist Party of Viet Nam committees exercise leadership over the implementation of resolutions and instructions from higher levels.

⁶¹ For further details, see *Resolution No. 08/2004/NQ-CP of June 30, 2004 on Further Decentralisation of State Management from Central Government to Local Governments of Centrally-Affiliated Cities and Provinces* (Resolution on Decentralisation)

⁶² Constitution, Article 4

⁶³ Mekong Economics, Public Administration Reform Study: The Structure and Functions of Government in Viet Nam, (Mekong Economics Study), p. 20

⁶⁴ Ibid.

⁶⁵ Ibid., p. 21

II.1.7 THE VIET NAM FATHERLAND FRONT

The Viet Nam Fatherland Front is defined by the Constitution as a “political alliance and a voluntary union of political organizations, socio-political organizations, social organizations and individuals representing their social classes and strata, nationalities, religions, and overseas Vietnamese.”⁶⁶ The Viet Nam Fatherland Front and its member organizations “constitute the political base of the people’s administration.”⁶⁷ It operates under its own statute: *the Law on Viet Nam Fatherland Front (No. 14/1999/QH10 of June 12, 1999)* (Law on Viet Nam Fatherland Front). Member organizations must comply with the law, but they still retain independence from the Viet Nam Fatherland Front in pursuing their own directions.⁶⁸

The Viet Nam Fatherland Front inherited the historic role of the National United Front, which was founded and led by the Communist Party of Viet Nam.⁶⁹ Its members include the Communist Party of Viet Nam (which also leads the Viet Nam Fatherland Front), mass organizations (the Ho Chi Minh Communist Youth Union, Viet Nam Farmers Association, Viet Nam General Confederation of Labour, Viet Nam Women’s Union and Viet Nam War Veterans Association) and the Viet Nam Armed Forces.⁷⁰

The tasks of the Viet Nam Fatherland Front include to: (a) “rally and build up the entire people’s great solidarity bloc”; (b) enhance the political and unity of the people; (c) mobilize the people to bring about their mastery of policies and laws; (d) mobilize the people to observe policies and laws; (e) supervise the operations of State agencies and other public officials and employees; (f) gather the peoples’ opinions and petitions and report them to the State or Communist Party of Viet Nam; (g) participate in building the peoples’ administration; and (h) work with the State in protecting the peoples’ rights and interest.⁷¹

The Viet Nam Fatherland Front can also take part in legislative work to a certain degree, such as: (a) proposing to the Government or Standing Committee draft programmes as bases for laws and ordinances; (b) submitting to the National Assembly or Standing Committee bills and draft ordinances; and (c) joining competent State agencies in promulgating resolutions and circulars to guide implementation of law provisions that are within its responsibility to participate in State management.⁷²

II.1.8 CIVIL SOCIETY AND NGOS

Based on a very broad definition of ‘civil society’, the main categories of civil society organizations in Viet Nam are: (a) mass organizations, (b) professional associations and umbrella organizations; (c) non-governmental organizations (NGOs); and (d) community-based organizations.⁷³

⁶⁶ Constitution, Article 9

⁶⁷ Ibid.

⁶⁸ Law on Viet Nam Fatherland Front, Article 4

⁶⁹ Ibid., Preamble

⁷⁰ Norlund, Irene, Filling the Gap: The Emerging Civil Society in Viet Nam, Viet Nam Union of Science and Technology, SNV Netherlands Development Organization and UNDP, Ha Noi, January 2007 (Norlund), pp. 11-12

⁷¹ Law on Viet Nam Fatherland Front, Article 2

⁷² Ibid., Article 9

⁷³ Norlund, p. 11. The definition of civil society used by Norlund to identify the categories is broad; that is, the arena outside family, state and market where people associate to advance common interests.

The major mass organizations are the Ho Chi Minh Communist Youth Union, Viet Nam Fatherland Front, Viet Nam General Confederation of Labour, Viet Nam Peasant's Association, Viet Nam War Veterans Association and Viet Nam Women's Union. The Viet Nam Fatherland Front is also an umbrella organization for 29 organizations, including the other mass organizations. Membership in the mass organizations (excluding the Viet Nam Fatherland Front) is an estimated 32 million.⁷⁴ These mass organizations have a historical relationship with the Communist Party of Viet Nam and they are often given responsibilities in legal documents. For example, the Viet Nam Women's Union was the lead drafting agency for *the Law on Gender Equality (No. 73/2006/QH11 of November 29, 2006)* (Law on Gender Equality). Mass organizations are, in many ways, arms of the Communist Party of Viet Nam that address needs of their constituents as well as disseminate information on the Communist Party of Viet Nam and Government. The mass organizations have strong welfare projects and they do important work on service delivery relating to health, disaster relief, education and poverty alleviation.⁷⁵

The Viet Nam Women's Union is focused on women's advancement and gender equality. It led the drafting of the Law on Gender Equality. The Viet Nam Women's Union was established in 1930 to support the women's emancipation movement and to mobilize women to fight for an independent Viet Nam.⁷⁶ It operates at four levels: central, provincial, district and commune.⁷⁷ This organizational set-up ensures that the Viet Nam Women's Union has considerable outreach at the grassroots level. It has around 12 million members, which is about 50 percent of women aged 18 and over.⁷⁸ However, ethnic minority women who cannot speak Vietnamese might be poorly represented and serviced by the Viet Nam Women's Union.⁷⁹ The President is a member of the Communist Party of Viet Nam, as are many of its officers.⁸⁰

Generally, Viet Nam Women's Union programmes/projects are directed to poor women living in rural or remote and mountainous regions, and women in difficult or disadvantaged situations due to war or economic changes.⁸¹ Viet Nam Women's Union activities include savings and credit schemes for poor women, literacy classes and job-related training, training for the general population on reproductive health and HIV/AIDS, assistance for victims of trafficking, and promoting small and medium-sized enterprise (SME) development for women including business start-up and management skills. Much of its work might more appropriately belong to executive agencies, such as Ministry of Health (MOH), Ministry of Education and Training (MOET) and Ministry of Labour, Invalids and Social Affairs (MOLISA).⁸²

There is limited information on professional associations and umbrella organizations. They include varied types of organizations; for example, the Viet Nam Lawyer's Association, Viet Nam Red Cross, Viet Nam Union of Science and Technology Associations, Viet Nam

⁷⁴ Ibid.

⁷⁵ Kelly, Paula-Frances, 'Reflections on Social Work Development in Viet Nam: A Study of Save the Children Sweden's Support to Social Work 1993-2001', National Political Publishing House, Ha Noi, 2003 (Kelly), p. 82

⁷⁶ Wells, op. cit., p. 61

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid., pp. 61-62

⁸¹ Ibid., p. 62

⁸² Ibid., p. 61

Union on Art and Literature, religious organizations, sports associations and federations, economic organizations, and associations in the field of charity and humanitarian aid.⁸³

NGOs, on the other hand, are small organizations. The main types of NGOs are those: (a) delivering social services for government in health or education; (b) carrying out research; (c) carrying out social work; (d) working with marginalized groups; and (e) working as consulting companies for government or donors to assist in the implementation of strategies, plans and programmes.⁸⁴ There are many restrictions to working as an NGO: see Part V.5.3., Indicators 59 and 60.

There are also community-based organizations formed for purposes related to people's livelihoods, such as mutual assistance groups, cow-farming groups, groups taking care of festivals, old-age groups, neighborhood groups and cultural groups. There are estimated to be between 100,000 and 200,000 community organizations in Viet Nam.⁸⁵

Seventy-four percent of Viet Nam's population belongs to at least one organization.⁸⁶ However, despite the broad-based outreach of organizations, one of the key discussions relating to civil society in Viet Nam is whether it is truly independent from the State or Communist Party of Viet Nam.⁸⁷ However, continuous development of the legal framework for the operation of associations will, hopefully, bring about an improved environment for the growth and advancement of civil society groups. Although a legal framework is in place for particular organizations - for example, mass organizations that allowed a more flexible management - a draft Law on Associations is being reviewed by the National Assembly to improve the legal environment for other civil society organizations.⁸⁸

II.2 LEGAL FRAMEWORK

II.2.1 DOMESTIC SOURCES: LEGAL DOCUMENTS

'Legal documents' are defined as "documents promulgated by competent State agencies according to the laws prescribed procedures and order, containing common rules of conduct the implementation of which is guaranteed by the State and aims to regulate social relations along the socialist orientation".⁸⁹

⁸³ Norlund, op. cit., p. 12

⁸⁴ Ibid.

⁸⁵ Ibid., p. 13

⁸⁶ Ibid., p. 1

⁸⁷ Norlund, op. cit., pp. 8-9: In the mid-1990s, according to typical criteria, there was no civil society in Viet Nam, even if some organizations have the potential to constitute it; for example, many scholars did not consider mass organizations to be civil society organizations, but part of the Communist Party of Viet Nam. The status of Vietnamese NGOs as civil society organizations was also being questioned because many NGOs had no membership base and their leadership was drawn from state bureaucracy or the Communist Party of Viet Nam. By mid-2000, it was more broadly accepted among scholars, donors and organizations that there was a civil society operating in the country. Mass organizations, though set up in connection with the Communist Party of Viet Nam's establishment in 1931, changed forms in the 1980s with *Doi Moi*, receiving less support from the State, operating semi-independently of the Communist Party of Viet Nam, and expanding more dramatically in the 1990s. NGOs have begun asserting their independence too; for example, submitting reports that independently evaluate State compliance with CEDAW. (Ibid.)

⁸⁸ Norlund, op. cit., p. 9. See Decree No.88/2003/ND-CP of July 30, 2003 Providing for the Organization, Operation and Management of Associations (Decree on Associations)

⁸⁹ Law on the Promulgation of Legal Documents (December 11, 1996) as amended by Law Amending and Supplementing a Number of Articles of the Law on the Promulgation of Legal Documents (No. 02/2002/QH11 of December 16, 2002) (Law on Legal Documents, Article 1). From 1 January 2009, this law has been replaced by a new law - the Law on the Promulgation of Legal Documents (No. 17/2008/QH12 of June 3, 2008). However, this new law with new provisions is not covered under this review.

‘Legal documents’ in Viet Nam are the following:⁹⁰

- **Documents promulgated by the National Assembly and its Standing Committee:**
 - The Constitution, laws and resolutions of the National Assembly;
 - Ordinances and resolutions of the Standing Committee;
- **Documents promulgated by other competent State agencies at the central level:**
 - Orders and decisions of the State President;
 - Decisions and directives of the Prime Minister;
 - Resolutions and decrees of the Government;
 - Decisions, directives and circulars of Ministers, Heads of Ministerial-level agencies and Heads of agencies attached to the Government;
 - Resolutions of the Justice Council of the Supreme People’s Court;
 - Decisions, directives and circulars of the Chief Judge of the Supreme People’s Court and Chairman of the Supreme People’s Procuracy;
 - Joint resolutions and circulars between State agencies or between State agencies and socio-political organizations;
- **Documents promulgated by the People’s Councils and People’s Committees:**
 - Resolutions of the People’s Councils;
 - Decisions and directives of the People’s Committees.

The Constitution is the State’s fundamental law.⁹¹ All legal documents must conform to it. All legal documents issued by lower-level State agencies must conform to those legal documents of higher-level State agencies. Legal documents contrary to the Constitution and legal documents of higher-level State agencies will be annulled or suspended.

However, unless a legal document is annulled or suspended, it remains effective.⁹² In which case, if legal documents have different provisions on the same issue, the document of higher-level State agencies will apply.⁹³ If legal documents issued by the same agency on the same issue have different provisions, the later legal document will apply.⁹⁴

The Standing Committee has the competence to interpret laws and ordinances.⁹⁵ Agencies and organizations in Article 87 of the Constitution and National Assembly deputies have the right to request the Standing Committee to interpret laws and ordinances.⁹⁶ Depending on the nature and content of the issues requiring interpretation, the Standing Committee can assign the Government, SPC, SPP, Council of Ethnic Minorities or a National

⁹⁰ Law on Legal Documents, Article 1

⁹¹ Ibid., Article 2

⁹² Ibid., Article 77

⁹³ Ibid., Article 80(2)

⁹⁴ Ibid., Article 80(3)

⁹⁶ Ibid., Article 53

Assembly committee to draft a resolution to interpret a law or ordinance and to submit it to the Standing Committee for consideration, adoption and publication.⁹⁷

To understand legal documents and their application, it is important to note some of the areas of concern with the Viet Nam's legal system that have been earlier identified and that are currently being addressed:⁹⁸ (a) legal drafting agencies establish multi-ministerial or multi-agency drafting committees that enables the inputs from many stakeholders, but reflect sectional interests rather than broad policy considerations. This is exacerbated by limited time for discussions and a full government agenda for representatives in the drafting committee that they must also address; (b) controversial provisions or details from laws are removed from bills to enable their wide acceptance and consequent adoption; (c) legal regulation is tied to Communist Party of Viet Nam policy. As a result, fluctuations in subordinate legislation occur with the changes of policies despite laws; (d) the technical quality of subordinate laws requires improvement; and (e) a number of new legal documents revise or repeal prior legislation, but they do not specify which provisions or laws are revised or repealed, thus creating ambiguity.⁹⁹

To emphasize this, *the Resolution of the Politburo of the Communist Party of Viet Nam on Strategy for Development and Improvement of Viet Nam's Legal System to the year 2010 and Directions for the Period up to 2010. May 24, 2005* (Communist Party Resolution on Legal System) pointed out that after 20 years of implementing *Doi Moi*, although there has been much progress, in general, the Vietnamese legal system still has many shortcomings:

The system is still not comprehensive and consistent; its feasibility is still low and its implementation into the practice is still slow. Mechanisms for making and amending laws contain many shortcomings and are still not properly respected. Speed of law making activities is slow. Quality of laws is not high. There is lack of attention paid to the research and implementation of the international treaties to which Viet Nam is a member. Effectiveness of the legal dissemination and education is limited. Institutions for law implementation are still deficient and weak.

II.2.2 INTERNATIONAL SOURCES: TREATIES

Treaties, to a limited extent, are also sources of law in Viet Nam. In cases where a legal document and a treaty to which Viet Nam is a party contains different provisions on the same matter, the provisions of the treaty shall prevail.¹⁰⁰ Further, the promulgation of legal documents must be ensured that they do not obstruct the implementation of treaties to which Viet Nam is a party.¹⁰¹

However, the procedure for claiming rights under a treaty is not automatic.¹⁰² Upon conclusion or accession to a treaty, the recommending agency must submit a plan for implemen-

⁹⁷ Ibid.

⁹⁸ AusAID, 'Viet Nam: Legal and Judicial Development', Working Paper 3, Prepared for AusAID, April 2000, Commonwealth of Australia, Canberra, 2001 (AusAID Working Paper)

⁹⁹ Ibid., pp. 6-7

¹⁰⁰ Law on Treaties, Article 6

¹⁰¹ Ibid.

¹⁰² Ibid., Articles 71 and 73

tation of the treaty that contains recommendations on amendment, supplementation, cancellation or promulgation of legal documents for the implementation of the treaty. Once the plan is approved, the recommending agency executes it. If, in the course of execution, problems arise as to interpretation of the treaty, it can request for interpretation.

A treaty shall also be interpreted if there is a request by the foreign contracting party, by a concerned individual agency or organization, or whenever necessary.¹⁰³ The competence to interpret treaties rests with the Government or Standing Committee.¹⁰⁴ The Government can on its own initiative, or at the request of the recommending agency, decide on the interpretation of treaties, except those relating to treaties decided for ratification or accession by the National Assembly as well as those relating to legal documents of the National Assembly and Standing Committee. On its own initiative or upon proposal¹⁰⁵, the Standing Committee can decide on the interpretation of treaties that: (a) contain provisions that contravene, or have not yet been made into, legal documents of the National Assembly or Standing Committee; or (b) the implementation of which will require amendment, supplementing, canceling or promulgating legal documents of the National Assembly and Standing Committee¹⁰⁶. For further discussions on the incorporation of treaties in domestic legislation, see Part V.1.2.5.

Viet Nam has ratified the following international human rights treaties: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; and Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

¹⁰³ Ibid., Article 74

¹⁰⁴ Ibid., Article 76

¹⁰⁵ Proposals may be made by the State President, Government, SPC, SPP, Council of Ethnic Minorities, Committees of the National Assembly, Central Committee of the Viet Nam Fatherland Front, Viet Nam Fatherland Front members or National Assembly deputies.

¹⁰⁶ Law on Treaties, Article 76(2)

III. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

III.1 CEDAW: BASIC INFORMATION

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty. CEDAW aims to adopt measures required for the elimination of discrimination against women in all its forms and manifestations. It was adopted by the United Nations General Assembly on 18 December 1979 and it entered into force on 3 September 1981. At present, the CEDAW treaty has 185 State Parties.¹⁰⁷ Thus, it is one of the most highly ratified of the international human rights treaties.

III.1.1 TEXT OF CEDAW

CEDAW is composed of a Preamble and 30 Articles as follows:

- Articles 1-5 and 24 refer to general substantive provisions, including a definition of 'discrimination' and the general obligations of State Parties;
- Articles 6-16 refer to specific substantive areas of trafficking and exploitation of prostitution, political and public life, nationality, education, employment, health care, economic and social benefits, rural women, equality before the law, and marriage and family life;
- Articles 17-23 provide for the CEDAW Committee and reporting procedures;
- Articles 25-30 refer to administration, interpretation and other matters.

III.1.2 THE CEDAW COMMITTEE

Implementation of CEDAW is monitored by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee).¹⁰⁸ It is composed of 23 experts from various regions who are nominated by their respective governments and elected by States Parties for four years. They serve in their personal capacity. The experts exercise the function of monitoring by: (a) requiring States Parties to submit reports and engage in a constructive dialogue with the CEDAW Committee; (b) issuing Concluding Comments; and (c) drafting General Recommendations (GRs).

III.1.3 REPORTING PROCESS

States Parties to CEDAW are required to submit an initial report one year after ratifying or acceding to it, and a periodic report every four years after that.¹⁰⁹ After the submission of its

¹⁰⁷ This is as of September 2008

¹⁰⁸ CEDAW, Article 17(1)

¹⁰⁹ Ibid., Article 18

report, a delegation of a State Party is invited to a constructive dialogue with the CEDAW Committee to present the report, discuss its contents, exchange views on challenges to implementation, and provide recommendations. The dialogue was held during a CEDAW session in New York in the past; and, from 2008, will be held in Geneva and New York. In consideration of the report of States Parties, information - including alternative or shadow reports from NGOs and reports from specialized agencies - are welcomed by the CEDAW Committee.

III.1.4 CONCLUDING COMMENTS

Concluding Comments are observations and recommendations issued by the CEDAW Committee after its consideration of State Party reports and the constructive dialogue with a State Party delegation. They are issued specific to a country and its context. Concluding Comments were renamed Concluding Observations in 2008.

III.1.5 GENERAL RECOMMENDATIONS

GRs are authoritative interpretations of the CEDAW Committee on either specific articles of the treaty or contemporary or emerging issues. They were renamed General Comments in 2008.

The CEDAW Committee presently has issued 25 GRs:

- GR 1: Reporting (1986);
- GR 2: Guidelines on Reporting (1987);
- GR 3: Urges State Parties to adopt education and public information programmes (1987);
- GR 4: Reservations (1987);
- GR 5: Temporary Special Measures (1988);
- GR 6: Effective National Machinery and Publicity (1988);
- GR 7: Resources (1988);
- GR 8: Implementation of Article 8 of the Convention (1988);
- GR 9: Statistical Data concerning the Situation of Women (1989);
- GR 10: Tenth Anniversary of the Adoption of CEDAW (1989);
- GR 11: Technical Advisory Services for Reporting Obligations (1989);
- GR 12: Violence Against Women (1989);
- GR 13: Equal Remuneration for Work of Equal Value (1989);
- GR 14: Female Circumcision (1990);
- GR 15: AIDS (1990);
- GR 16: Unpaid Women Workers in Rural and Urban Family Enterprises (1991);
- GR 17: Unremunerated Domestic Activities of Women (1991);
- GR 18: Disabled Women (1991);
- GR 19: Violence Against Women (1992);

- GR 20: Reservations (1992);
- GR 21: Equality in Marriage and Family Relations (1994);
- GR 22: Amending Article 20 (Meetings of the CEDAW Committee) (1995);
- GR 23: Political and Public Life (1997);
- GR 24: Women and Health (1999);
- GR 25: Temporary Special Measures (2004).

III.2 CORE PILLARS OF CEDAW

There are three core pillars of CEDAW:

- Substantive equality;
- Non-discrimination;
- State obligation.

These pillars are the cornerstones on which the spirit of CEDAW rests. They also embody the conceptual framework behind CEDAW. Without an understanding of these pillars, CEDAW cannot be properly applied; and, in many cases, may result in violations to the right of equality found in CEDAW.

III.2.1 SUBSTANTIVE EQUALITY

While gender equality has been widely recognized in Constitutions, laws, other legal documents and international treaties, difficulty in its implementation exists because there are different interpretations of 'equality'.

Formal equality

The traditional and most common understanding of equality, especially in legal traditions or discourse, is 'treating similar classes of persons similarly, while treating different classes differently'.¹¹⁰ This is termed formal equality. In this approach, men and women are seen as similar; and, therefore, they will be provided with similar treatment without exceptions. As a result, differences based on biology, such as pregnancy or maternity, are ignored. Social and cultural differences - like social perceptions of women as weak, son-preference and overprotecting women - are also disregarded. By ignoring the differences, the particular needs of women are not addressed. Legislation that provides maternity leave for women, for example, will be seen by this approach as discriminatory as it allows for different treatment between similar classes of people. If women want to be equal, the view of the formal equality approach is that they should live up to the male standard; and, thus, not ask for maternity leave. The formal approach is clearly a single-standard. Historically, it only takes into account male experiences, so uses male standards and expects women to conform to them; and, as a result, it can put additional difficulties on women.¹¹¹

¹¹⁰ IWRAP Asia Pacific, 'Building Capacity for Change: A Manual on CEDAW', Unpublished, 2001 (IWRAP Manual)

¹¹¹ Ibid.

One common manifestation of a formal equality approach is the ‘gender-neutral provision’. These are provisions that do not distinguish between men and women and appear to be neutral at their face. However, they may be discriminatory in effect, if they fail to recognize differences between men and women; for example, a law that provides equal rights to access credit within a socio-cultural context where men are viewed as property holders and women are only seen as dependents of men (and are constantly being denied by culture or tradition their property and inheritance rights) will result in women having more difficulty in accessing credit than men. Hence, similar treatment cannot be said to provide gender equality.

Protectionist approach

Another approach to equality is protectionist in nature.¹¹² This approach sees men and women as different classes of people. However, it assumes that women are weaker; and, therefore, require protection. By protecting women, their rights are restricted and their choices are ignored; for example, a ban on women working at night, or a prohibition on women working in dangerous occupations, to keep them safe. In both of these cases, women are thus seen as the problem rather than the unsafe environment, which remains unaddressed. In relation to night work, women are blamed for their purported inability to protect themselves rather than the failure of public order and security measures. In relation to dangerous work, women are blamed for their alleged limitation in courage or strength rather than the lack of appropriate occupational health and safety measures. On the other hand, men are seen as not requiring any protection from danger or dangerous occupations. In most of these cases, the environment is dangerous for both men and women. However, a protectionist approach penalizes women for their perceived weakness. Instead of addressing the dangerous environment and facilitating the movement towards equality, the protectionist approach reinforces the inferiority of women.

Substantive equality

CEDAW mandates an approach to equality that benefits men and women equally. The approach is one that recognizes the differences, whether biological or socio-cultural, between men and women, and it addresses them appropriately. CEDAW espouses a ‘substantive approach to equality’ or substantive equality.¹¹³ This is its first core pillar. This approach focuses on both de jure and de facto equality. In other words, the substantive equality approach looks not simply at written guarantees of equality, but, more importantly, seeks to ensure equality of results. This means looking at whether women are able to experience equality in fact. The approach looks into impact of interventions, and not just whether equality provisions are in place; for example, simply providing equal opportunities for women and men to access credit if property is required for collateral is not enough. In a society where women cannot in reality control, manage or inherit property, the equal credit provisions cannot be enjoyed by women. What CEDAW requires is that the State Party guarantees that the effect or impact of their interventions result in equality.¹¹⁴ By failing to put in place interventions where women can in fact access credit, there can be no equality. Further measures are needed to correct the

¹¹² Ibid.

¹¹³ GR 25, Paragraphs 8 and 9

¹¹⁴ Ibid., Paragraph 9

environment that disadvantages women, to equalize the situation; and, hence, to secure the practical realization of their right.

Paragraph 8 of CEDAW General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures (2004) (GR 25) states: "In the Committee's view, a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming under-representation of women and a redistribution of resources and power between men and women."

III.2.2 NON-DISCRIMINATION

Non-discrimination is a core principle of CEDAW.¹¹⁵ Indeed, the title of the treaty says that 'all forms of discrimination' must be eliminated. A definition of 'discrimination' is provided in Article 1 of CEDAW:

... the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Direct and indirect discrimination

A key phrase in this definition of discrimination is 'effect or purpose', which makes it clear that CEDAW prohibits both direct discrimination and indirect discrimination. Direct discrimination refers to an action or omission that has the 'purpose' of discriminating against women; for example, terminating employment on the basis of marriage or pregnancy, unequal retirement age, unequal inheritance rights, and differential age of marriage. In the past, discrimination was more blatant and intention to discriminate was clearly visible.

Now, more subtle or hidden forms of discrimination has been increasingly recognized, which CEDAW prohibits through a guaranteed against indirect discrimination.¹¹⁶ Women can face many obstacles sanctioned by culture and religious practices, or by entrenched male interests in key institutions such as political parties, trade unions, religious institutions and the courts. Indirect discrimination targets the effect an action or omission. An act or omission may appear to be neutral towards or even beneficial, but its effect can be discriminatory. Thus, under Article 1, even if there was no intention to discriminate, if an action or omission has the 'effect' of discriminating, it is discriminatory. To emphasize this point, GR 25 provides:

¹¹⁵ Ibid., Paragraph 7; IWRAW Manual

¹¹⁶ Ibid., Paragraph 7

Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modeled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.¹¹⁷

Using the earlier example on access to credit (see Part III.2.1. Substantive Equality), despite the apparently neutral rights to access credit, in effect, women were discriminated.

Even legislation that appears to benefit women may, in fact, be discriminatory. An example is legislation that requires that 10 percent of all advertised land should be given to women provided there is a payment upfront of high collateral that is nonrefundable. In a context where women are generally poorer than men, many women cannot afford this amount and are, therefore, less likely to benefit from the policy. The law thus discriminates against women by failing to ensure their equal access to, and enjoyment of the land policy, even if on its face it seems to be pro-women.

Important notes

In addition to the concepts of and prohibitions on direct and indirect discrimination, there are a few important notes to bear in mind relating to the wider notion of discrimination.

First, it is important to recognize that discrimination can stem from sources other than present discrimination.¹¹⁸ Often past discrimination is not seen because the focus is on the more immediate or current action or omission; for example, a lack of women leaders is attributed to inexperience not a past discriminatory practice of not electing or hiring women. On this note, Paragraph 14 of GR 25 points out: "The Convention targets discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms."

Second, discrimination in one field can affect the enjoyment, exercise or recognition of a right in another field, so discrimination can be interrelated; for example, discrimination in access to education can result in discrimination in access to leadership positions. Another example that has been previously discussed is that discrimination in access to credit opportunities may be due to discrimination in the ownership of property, inheritance and the ability to enter into contracts, and it often results in lack of access to education and loss of opportunity for personal and professional development.

Third, gender discrimination may exist with other grounds of discrimination, such as on account of ethnicity, social status, religion or age.¹¹⁹ These other grounds must not be ignored. Rather, it is important to bear in mind that interventions should take into account all forms of

¹¹⁷ Ibid., Note 1

¹¹⁸ Ibid., Paragraph 14

¹¹⁹ Ibid., Paragraph 12

disadvantage to be able to address them appropriately. The CEDAW Committee emphasized this in Paragraph 12 of GR 25: “Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such multiple discrimination may affect these groups of women primarily, or to a different degree or in different ways than men.” Examples of women experiencing discrimination in addition to gender discrimination include elderly women, women with disabilities, rural women and ethnic minority women.

With CEDAW’s wide definition of ‘discrimination’, it is clear that it requires the monitoring of impact and effect. Putting in place measures, whether gender-neutral or pro-women, is not sufficient, if it does not result in equality.

III.2.3 STATE OBLIGATION

By ratifying or acceding to CEDAW, a State Party is obliged to eliminate discrimination in all of its forms.¹²⁰ This obligation is a State obligation. This means that, although the responsibility to ensure equality and eliminate discrimination must be observed by state and non-state actors, only the State is directly accountable to CEDAW. However, the meaning of ‘State’ is broad and refers to all instrumentalities or organs of, and encompasses executive, legislative, judicial and administrative structures as well as local units of, a State.¹²¹ Internal law, including internal divisions of powers between branches of government, cannot be invoked for non-compliance with CEDAW.¹²² General State Party obligations are in Articles 2-5 and 24 of CEDAW, while specific State Party obligations are in Articles 6-16 of CEDAW. General State Party obligations include the following:

- pursuing a policy of eliminating discrimination in all its forms, including embodying the principle of equality in Constitution and laws;¹²³
- prohibiting discrimination, including adoption of sanctions for violations;¹²⁴
- ensuring legal protection of the rights of women, including competent national tribunals and courts;¹²⁵
- eliminating discrimination by any person, enterprise or organization.¹²⁶ The State Party is accountable for acts and omissions of non-State actors when it fails to put in place measures to regulate them, to exercise due diligence in preventing violations or to provide effective remedies;

¹²⁰ CEDAW, Article 2

¹²¹ Chiongson, Rea, ‘The Right to Decide If, When and Whom to Marry: Obligation of the State under CEDAW and other International Human Rights Instruments’, IRAW Asia Pacific, Kuala Lumpur, 2005 (Chiongson), p. 5

¹²² Vienna Convention on the Law of Treaties, Article 27

¹²³ CEDAW, Article 2(a)

¹²⁴ Ibid., Article 2(b)

¹²⁵ Ibid., Article 2(c)

¹²⁶ Ibid., Article 2(e)

- modifying or abolishing existing laws, regulations, customs, practices and social/cultural patterns of conduct that constitute discrimination, including those that perpetuate superiority or inferiority of sexes and that are based on stereotypes;¹²⁷
- adopting temporary special measures to accelerate de facto equality;¹²⁸
- putting in place measures to address maternity.¹²⁹

In undertaking these obligations, taking into consideration the core principles of substantive equality and non-discrimination, it is clear that the State obligation demanded under CEDAW is both an obligation of means and results. A State Party undertakes to comply with the specific means of implementation in CEDAW (obligation of means), and it is also obligated to ensure that the measures chosen result in the elimination of discrimination (obligation of results).

III.2.4 USING CEDAW

In using CEDAW, whether in implementation, law-making and policymaking, research and analysis or monitoring and evaluation, it is critical to go beyond a strict textual approach. The three core pillars (substantive equality, non-discrimination and State obligation), the text of CEDAW and the interpretative documents (that is, the Concluding Comments and GRs) must complement and supplement each other.

¹²⁷ Ibid., Articles 2(f) and 5

¹²⁸ Ibid., Article 4(1)

¹²⁹ Ibid., Article 4(2)

IV. INITIAL FACTS ON CEDAW AND VIET NAM

Viet Nam ratified CEDAW in 17 February 1982. CEDAW's entry into force in relation to Viet Nam is 19 March 1982. By ratifying, Viet Nam became a State Party to CEDAW. As a result, it is legally bound to observe CEDAW. Ratification shows that Viet Nam recognizes that inequality against women exists and that there is a need for State action to eliminate discrimination.

Viet Nam has already submitted six State Party reports and it has engaged in a constructive dialogue with the CEDAW Committee three times on 13 March 1986, 1 July 2001 and 17 January 2007. Corresponding Concluding Comments have been issued by the CEDAW Committee pointing out positive aspects of implementation, areas of concern, and recommendations in relation to the Vietnamese context.

Viet Nam's latest State Party report, the Combined Fifth and Sixth Periodic Report of States Parties: Viet Nam. Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/VNM/5-6. June 22, 2005 (Combined Fifth and Sixth Periodic Report), was submitted in 2005. In 17 January 2007, Viet Nam was invited to a constructive dialogue with the CEDAW Committee at its 37th CEDAW session for the consideration of the Combined Fifth and Sixth Periodic Report. Vietnamese NGOs also submitted NGO reports to provide the CEDAW Committee with an alternative source of information on the status of CEDAW implementation.¹³⁰ On 2 February 2007, the CEDAW Committee issued Concluding Comments of the Committee on the Elimination of Discrimination against Women: Viet Nam. Jan. 17, 2007. CEDAW/C/VNM/CO/6 (Concluding Comments on Viet Nam 2007). It requested Viet Nam to respond to the concerns expressed in them and it invited Viet Nam to submit its Combined Seventh and Eight Periodic Report in March 2011.¹³¹

¹³⁰ See Report of Non-Governmental Organizations regarding Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Viet Nam, Ha Noi, 2006 (Viet Nam NGO Report)

¹³¹ Concluding Comments on Viet Nam 2007

V. REVIEW OF KEY LEGAL DOCUMENTS AND COMPLIANCE WITH CEDAW

V.1 GENERAL UNDERTAKINGS TO ELIMINATE DISCRIMINATION AND ENSURE EQUALITY (ARTICLES 1-3 OF CEDAW)

V.1.1 OBLIGATIONS UNDER CEDAW

V.1.1.1 *Text of CEDAW*

The first three articles of CEDAW are interrelated: Article 1 provides a definition of 'discrimination'; Article 2 provides for general measures to be undertaken to ensure the elimination of discrimination and the practical realization of equality; and Article 3 obligates State Parties to ensure the full development and advancement of women.

ARTICLE 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

ARTICLE 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

ARTICLE 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

V.1.1.2 General Recommendations

The following excerpts from GRs are relevant to Articles 1-3 of CEDAW:

GR 6: Effective National Machinery and Publicity

Recommends that States parties:

Paragraph 1

Establish and/or strengthen effective national machinery, institutions and procedures, at a high level of Government, and with adequate resources, commitment and authority to: (a) advise on the impact on women of all government policies; (b) monitor the situation of women comprehensively; (c) help formulate new policies and effectively carry out strategies and measures to eliminate discrimination;

Paragraph 2

Take appropriate steps to ensure the dissemination of the Convention, the reports of the States Parties under article 18 and the reports of the Committee in the language of the State concerned;

GR 9: Statistical Data concerning Situation of Women

Recommends that States parties should make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.

GR 10: Tenth Anniversary of the Adoption of CEDAW

Recommends that ... the States parties should consider:

Paragraph 1

Undertaking the programmes including conferences and seminars to publicize [CEDAW] in the main languages of and providing information on the Convention in their respective countries.

GR 12: Violence Against Women

Recommends to the States parties that they should include in their periodic reports to the Committee information about:

1. The legislation in force to protect women against incidence of all kinds of violence in every day life (including sexual violence, abuses in the family, sexual harassment in the workplace, etc.);

2. Other measures to eradicate this violence;
3. The existence of support services for women who are victims of aggression or abuses;
4. Statistical data on the incidence of violence of all kinds against women and on women who are victims of violence.

GR 18: Disabled Women

Recommends that States parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life.

GR 19: Violence Against Women

All provisions, in particular:

Paragraph 1

Gender based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

Paragraph 6

The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Paragraph 17

... Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace.

Paragraph 18

Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured 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 connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

Paragraph 19

States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

Paragraph 23

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies.

Paragraph 24

In the light of these comments, the Committee on the Elimination of Discrimination against Women recommends:

- (a) States parties should take appropriate and effective measures to overcome all forms of gender based violence, whether by public or private act;
- (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;
- (c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;
- (d) Effective measures should be taken to ensure that the media respect and promote respect for women;
- (e) States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence, and the effect of those measures;
- (f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women's equality (recommendation No. 3, 1987);
- (g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;
- (h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures, that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;
- (i) Effective complaints procedures and remedies, including compensation, should be provided;
- (j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;
- (k) States parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender based violence, including refuges, specially trained health workers, rehabilitation and counseling;
- (l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;

- (m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;
- (n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;
- (o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;
- (p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;
- (q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;
- (r) Measures that are necessary to overcome family violence should include:
 - *Criminal penalties where necessary and civil remedies in case of domestic violence;
 - *Legislation to remove the defense of honour in regard to the assault or murder of a female family member;
 - *Services to ensure the safety and security of victims of family violence, including refuges, counseling and rehabilitation programmes;
 - *Rehabilitation programmes for perpetrators of domestic violence;
 - *Support services for families where incest or sexual abuse has occurred.
- (s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;
- (t) That States parties should take all legal and other measures that are necessary to provide effective protection of women against gender based violence, including, *inter alia*:
 - *Effective legal measures, including penal sanctions, civil remedies, compensatory provisions to protect women against all kinds of violence, including, *inter alia*, violence and abuse in the family, sexual assault and sexual harassment in the workplace;
 - *Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
 - *Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;
- (u) That States parties should report on all forms of gender based violence, and that

such reports should include all available data on the incidence of each form of violence, and on the effects of such violence on the women who are victims;

- (v) That the reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

GR 21: Equality in Marriage and Family Relations

Paragraph 40

In considering the place of women in family life, the Committee wishes to stress that the provisions of General Recommendation 19 (Eleventh session) concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men. States parties are urged to comply with that general recommendation to ensure that, in both public and family life, women will be free of the gender based violence that so seriously impedes their rights and freedoms as individuals.

Paragraph 44

States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom ...

Paragraph 47

The Committee, in particular on the basis of articles 1 and 2 of the Convention, requests that those States parties make the necessary efforts to examine the de facto situation relating to the issues and to introduce the required measures in their national legislation still containing provisions discriminatory to women.

Paragraph 49

States parties should, where necessary to comply with the Convention, in particular in order to comply with articles 9, 15 and 16, enact and enforce legislation.

GR 25: Temporary Special Measures

Paragraph 7

Firstly, the States parties' obligation is to ensure that there is no direct or indirect discrimination against women and that women are protected against discrimination ...

Paragraph 8

In the Committee's view, a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at

overcoming under-representation of women and a redistribution of resources and power between men and women.

Paragraph 9

Equality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.

Note 1: Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently be modeled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men.

Note 2: Gender is defined as the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes.

V.1.1.3 Concluding Comments

The relevant paragraphs relating to Articles 1-3 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 8

While welcoming the adoption of the new Law on Gender Equality as an improvement of the legal regime and the implementation of the Convention as well as other legal and policy measures that have been put in place in different areas in recent years to eliminate discrimination against women and girls and to promote gender equality, the Committee regrets that the State party did not provide sufficient information or data on the actual impact of these laws and measures and the extent to which they have resulted in accelerating the advancement of women and girls and their enjoyment of their human rights in all areas covered by the Convention.

Paragraph 9

The Committee recommends that the State party focus on the implementation of existing laws and policies by: setting clearly defined and time-bound targets; systematically collecting and analysing data; monitoring impact, trends over time and progress towards realizing goals and objectives, and results achieved; and allocating sufficient human and financial resources for the effective enforcement of existing laws. With regard to the

Convention and the new Law on Gender Equality, the Committee encourages the State party to: ensure their wide dissemination within the country, including their translation into minority languages, in particular among policymakers across all sectors, mass organizations, civil society and the media; take measures towards the speedy harmonization of existing legislation with the objectives of the Convention and the Law on Gender Equality, particularly in the areas of employment, social security, education, the representation of women in political and decision-making bodies and within the public administration and health-care services; and report in its next periodic report on the progress made. With regard to the Land Law, the Committee calls upon the State party to take the necessary steps to remove any administrative obstacles that may prevent the issuance of joint land use certificates to husbands and wives, particularly in rural areas.

Paragraph 16

Although the Committee welcomes the drafting of a new bill on domestic violence, it continues to be concerned about the lack of information and data on all forms of violence against women and girls, the insufficient information on measures taken to prevent and combat violence against women, including services provided to victims, and the prosecution and punishment of perpetrators of all forms of violence.

Paragraph 17

In accordance with its general recommendation 19, the Committee reiterates its recommendation that the State party give high priority to putting in place comprehensive measures to address all forms of violence against women and girls, including through the speedy adoption of the law on domestic violence. Such measures should ensure that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and punished. The Committee urges the State party to conduct research on the prevalence, causes and consequences of all forms of violence against women, including domestic violence, to serve as the basis for comprehensive and targeted intervention. The Committee repeats its recommendation that the State party continue and increase the implementation of educational and awareness-raising measures aimed at law enforcement officials, the judiciary, health-care providers, social workers, community leaders and the general public, in order to ensure that they understand that all forms of violence against women and girls are unacceptable. It also recommends the establishment of a sufficient number of crisis centres, including shelters for victims of violence, in both urban and rural areas.

V.1.2 SELECTED INDICATORS

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Bearing in mind the obligations in Articles 1-3 of CEDAW as well as the context of Viet Nam, numerous selected indicators for Articles 1-3 were used in reviewing the relevant Vietnamese legal documents.

V.1.2.1 Guarantee of Equality and Non-Discrimination

Article 2(a) of CEDAW requires that the principle of equality be embodied in the Constitution and laws of State Parties. However, a guarantee of equality and non-discrimination is not enough. The guarantee of equality must be in line with the core pillar of substantive equality, elaborated in Paragraphs 8 and 9 of GR 25: see Part III.2.1. Further, the guarantee of non-dis-

crimination must be in accordance with the definition of ‘discrimination’ in Article 1 of CEDAW, as well as with the core pillar of non-discrimination: see Part III.2.2. This should be a guarantee against all forms of discrimination - whether direct, indirect or past discrimination - and bear in mind the interrelatedness of discrimination. Further, understanding of discrimination must be comprehensive to encompass all forms and manifestations of discrimination as well as address the intersections of other grounds of discrimination with gender discrimination.

The selected indicators for the guarantees of equality and non-discrimination are:

- Indicator 1** Is there a guarantee of equality and non-discrimination on the basis of sex or gender in the Constitution and/or legal documents?
- Indicator 2** Is there a definition of equality between men and women/gender equality and does it conform to substantive equality?
- Indicator 3** Is there a definition of discrimination/non-discrimination on the basis of sex and does it conform to Article 1 of CEDAW?
- Indicator 4** Do legal documents address the intersections of other grounds of discrimination with gender discrimination (such as discrimination on the basis of ethnicity, disability, age and sexual orientation)?

V.1.2.2 Prohibition on Discrimination

Article 2(b) of CEDAW requires that legislative and other measures be adopted to prohibit discrimination, including sanctions. The prohibition of discrimination must apply to both State and non-State actors.¹³² Public authorities must refrain from any act or practice of discrimination.¹³³ The State Party is obligated to ensure that appropriate measures are in place to eliminate discrimination by private persons, enterprises or organizations.¹³⁴ Sanctions for violations of the prohibition against discrimination must be put in place where appropriate.¹³⁵

The selected indicators for the prohibition on discrimination are:

- Indicator 5** Is there legislation in place that clearly prohibits gender discrimination by public authorities?
- Indicator 6** Is there legislation that prohibits gender discrimination by private persons, enterprises and organizations?
- Indicator 7** Are there sanctions in place for actions or omissions that result in discrimination? Are sanctions heavier if the discriminatory act is committed by a public official?
- Indicator 8** Is there legislation in place that prohibits gender discrimination by foreigners and foreign-owned and/or controlled entities?

V.1.2.3 Legal Protection of Women

Article 2(c) of CEDAW requires States Parties to establish legal protection for women, in par-

¹³² CEDAW, Articles 2(d) and 2(e), in particular

¹³³ CEDAW, Article 2(f)

¹³⁴ Ibid., Article 2(e)

¹³⁵ Ibid., Article 2(b)

ticular through national tribunals or public institutions. This includes a variety of measures to be undertaken to enable women to access justice and address acts of discrimination. Procedures must be in place for filing of cases of discrimination. Procedures must be women-friendly and ensure that effective remedies are provided. In this case, it is important to assess how conciliation or mediation is handled. These procedures must not work to discourage or deprive women of their right to an effective redress for violations of their rights. Remedies must address the whole range of needs of the victim or survivor. In many cases, a penal sanction for the accused is not the effective or sole remedy being sought by the victim or survivor; for example, a victim or survivor may require compensation, restitution, reparation, protection from harm, medical treatment, rehabilitation or counselling. CEDAW requires that this be addressed.

Legal assistance must be provided to women to enable them to access judicial or administrative institutions. Legal assistance must extend beyond representation in court to provide women with legal education and advice on their rights, remedies for violations, options available and consequences for choosing particular options.

Lastly, CEDAW does not provide any distinction between local and foreign women in its scope. Hence, both local and foreign women must be protected by the State Party from discrimination.

The selected indicators for the legal protection of women are:

- | | |
|---------------------|---|
| Indicator 9 | Is there a right to seek redress in cases of discrimination? |
| Indicator 10 | Are current criminal, civil and administrative procedures able to handle appropriately cases of gender discrimination? Are there legal documents that provide specific guidance in the handling of cases of discrimination? |
| Indicator 11 | Is there a guarantee of legal aid for cases of gender discrimination?
Is there a guarantee of legal aid for women? |
| Indicator 12 | Is conciliation, mediation or negotiation required by law to settle disputes in all cases? |
| Indicator 13 | Is protection against gender discrimination extended to foreigners? |

V.1.2.4 Institutions and Mechanisms for Implementation and Monitoring

CEDAW requires that public authorities and institutions conform to their obligation to refrain from discrimination.¹³⁶ It also requires that State Parties take all appropriate means in all fields, in particular in the political, social, economic and cultural fields, including legislation, to ensure the full development and advancement of women.¹³⁷

In relation to this, CEDAW General Recommendation No. 9: Statistical Data concerning the Situation of Women (1989) (GR 9) recommends that effective national machinery or pro-

¹³⁶ Ibid., Article 2(d)

¹³⁷ Ibid., Article 3

cedures be established or strengthened. These national machineries or procedures should be placed at a high Governmental level and with adequate resources, commitment and authority to: (a) advise on the impact of government policies on women; (b) help formulate government policies; (c) monitor women's situation; and (d) help carry out strategies and measures to eliminate discrimination.¹³⁸ In Concluding Comments of Committee on the Elimination of Discrimination against Women: Viet Nam. 2001. CEDAW A/56/38 (Concluding Comments on Viet Nam 2001), the CEDAW Committee commended Viet Nam on the development and strengthening of national mechanisms for advancement of women, inter alia, at the local level, and the linkage of these mechanisms with the Vietnamese Women's Union. It recommended that Viet Nam strengthen the existing national machinery to give it more visibility and the capacity to mainstream a gender perspective into all policies and programmes to promote the advancement of women. It also stated that the capacity of the national machinery should be assessed on a continuous basis and provided with the necessary human and financial resources.

In addition to national machineries, Concluding Comments on Viet Nam 2007 pointed out that the Combined Fifth and Sixth Period Report did not provide sufficient information or data on the actual impact of these laws and measures and the extent to which they have resulted in accelerating the advancement of women and girls and their enjoyment of their human rights.¹³⁹ As a result, the CEDAW Committee recommended that Viet Nam focus on "implementation of existing laws and policies by: setting clearly defined and time-bound targets; systematically collecting and analysing data; monitoring impact, trends over time and progress towards realizing goals and objectives, and results achieved; and allocating sufficient human and financial resources for the effective enforcement of existing laws".¹⁴⁰ In particular reference to the Law on Gender Equality, it urged the speedy harmonization of existing legislation with the objectives of CEDAW and the Law on Gender Equality; and, hence, procedures for this must be clearly stipulated.¹⁴¹

The selected indicators for the institutions and mechanisms for implementation and monitoring are:

¹³⁸ Supplementing CEDAW, the Beijing Platform for Action states that national machinery for the advancement of women is the central policy-coordinating unit inside government. The main task of national machinery is to support government-wide mainstreaming of a gender-equality perspective in all policy areas. The necessary conditions for an effective functioning of national machinery include: (a) the location at the highest possible level in the Government, falling under the responsibility of a Cabinet minister; (b) the institutional mechanisms or processes that facilitate, as appropriate, decentralized planning, implementation and monitoring with a view to involving NGOs and community organizations from the grass-roots upwards; (c) sufficient resources in terms of budget and professional capacity; and (d) opportunity to influence development of all government policies. (Beijing Platform for Action, Paragraph 201).

Concluding Comments on other countries have mentioned some recommendations relating to national machinery on women and/or gender equality as follows: (a) strengthening national machinery by providing clearly defined mandates and responsibilities, including of its various components and their enhanced coordination; (b) providing national machinery with adequate authority and/or decision-making power to carry out mandates and promote the advancement of women and gender equality effectively. This means sufficient power or location within the executive branch; (c) creating governmental supervisory bodies at all levels to monitor the implementation; and (d) ensuring that all current gender inequalities and problems faced by different categories of women, including women of the most vulnerable groups, may be considered and addressed effectively. See Chiongson, Rea Abada, 'Notes on Overview of International Standards under CEDAW, Beijing and other processes', Presented during the International Workshop on Implementation and Enforcement Mechanisms for Gender Equality Legislation, Organised by the National Committee for the Advancement of Women in Viet Nam (NCAFW) and The Embassy of Switzerland, Ha Noi, 12-13 December 2005

¹³⁹ Concluding Comments on Viet Nam 2007, Paragraph 8

¹⁴⁰ Ibid., Paragraph 9

¹⁴¹ Ibid.

- Indicator 14** Is there a specific agency responsible to coordinate measures to achieve gender equality or women's human rights? Is the agency provided with appropriate mandates, powers and resources to be able to promote gender equality and protect women's human rights?
- Indicator 15** Are there legal documents that clearly establish responsibilities of various State agencies (whether legislative, executive, judicial or administrative) to incorporate gender equality in their operations?
- Indicator 16** Are there legal documents that require systematic collection and analysis of sex-disaggregated data, monitoring impact of interventions as well as trends or progress in relation to gender equality?
- Indicator 17** Does legislation require that strategies and plans be put in place to ensure promotion and protection of gender equality?
- Indicator 18** Are there agencies, whether State or independent, that monitor or supervise State compliance with gender equality and/or CEDAW?

V.1.2.5 Incorporation and Application of Treaties

The status of CEDAW in the domestic legal framework is one of the indicators consistently asked by the CEDAW Committee members of State delegations during their constructive dialogue. This was also the case for Viet Nam when it appeared for its constructive dialogue before the CEDAW Committee on 17 January 2007.¹⁴² This is important to make the rights under CEDAW more accessible to women, as well as for CEDAW to operate in a complementary and supplementary basis with domestic legal documents.

The selected indicators for the incorporation and application of treaties are:

- Indicator 19** What is the status of CEDAW in the domestic legal framework?
- Indicator 20** Can CEDAW's provisions be invoked directly in judicial or quasi-judicial proceedings as a source of an actionable right?
- Indicator 21** In case of conflict between CEDAW and domestic legal documents, which will prevail?

V.1.2.6 Gender-Based Violence/Violence Against Women and its Manifestations

CEDAW General Recommendation No. 12: Violence against women (1989) (GR 12) and CEDAW General Recommendation No. 19: Violence against women (1992) (GR 19) clearly highlight the obligation of the States Parties under CEDAW to address GBV. GR 19 provides a definition of 'gender-based violence', examples of its forms and manifestations (such as family or domestic violence, rape and other forms of sexual assault, including marital rape, sexual harassment, forced and early marriage, trafficking and sexual exploitation). It strongly urges States Parties to put in place a comprehensive range of measures to be able to address the violence and its various forms and manifestations.

¹⁴² "New Law on Gender Equality will Greatly Improved Viet Nam's Legal Regime for Women's Advancement, Anti-Discrimination Committee Told", Department of Public Information, New and Media Division, UN New York (17 January 2007) at www.un.org/womenwatch/daw/cedaw/37sess.html (UN Press Article)

Paragraph 24 of GR 19 enumerates the recommendations of the CEDAW Committee relating to GBV to guide implementation. In Concluding Comments on Viet Nam 2007, the CEDAW Committee welcomed the bill on domestic violence, but expressed its concern on the lack of information on all forms of GBV experienced by women, the services being provided to victims, and prosecution for such offences.¹⁴³ The CEDAW Committee provided recommendations on measures that need to be undertaken in Paragraph 17 of GR 19, which include immediate means of redress, prosecution and punishment of perpetrators, further research on GBV, increase education programs, and establishment of crisis centres and shelters for victims.

In view of this, the selected indicators are:

Indicator 22 Gender-Based Violence

- Indicator 22(a)** Is GBV prohibited by law?
- Indicator 22(b)** How is 'gender-based violence' defined?
- Indicator 22(c)** What sanctions are in place for perpetrators?
- Indicator 22(d)** What measures are in place for victims of GBV?
- Indicator 22(e)** Does the law mandate inter-agency cooperation to address GBV? Is there a clear designation of coordinated and individual responsibilities of State agencies to address GBV?

Indicator 23 Domestic Violence

- Indicator 23(a)** Is domestic violence prohibited by law?
- Indicator 23(b)** How is 'domestic violence' defined?
- Indicator 23(c)** What measures are mandated by law to address the needs of victims of domestic violence? What interim or permanent measures are put in place for the protection of victims?
- Indicator 23(d)** What sanctions and/or measures are imposed against the perpetrator of domestic violence?
- Indicator 23(e)** Does the law encourage/require conciliation or mediation for domestic violence cases? Is there a duty to ascertain the presence/absence of domestic violence during conciliation or mediation? What procedures are in place if one party to conciliation or mediation is a victim of domestic violence?
- Indicator 23(f)** Is legal assistance available to victims of domestic violence?
- Indicator 23(g)** Does the law mandate inter-agency cooperation to address domestic violence? Is there a clear designation of coordinated and individual responsibilities of State agencies to address domestic violence?

¹⁴³ Concluding Comments on Viet Nam 2007, Paragraphs 16-17

Indicator 24 Rape and other Forms of Sexual Assault

- Indicator 24(a)** Are rape and other forms of sexual assault prohibited?
- Indicator 24(b)** How are 'rape' and 'other forms of sexual assault' defined? Do their definitions include broad range of sexual assault acts?
- Indicator 24(c)** Does consent of a child to sexual acts operate as a defence in the crimes of rape and other forms of sexual abuse?
- Indicator 24(d)** Is marital rape an offence?
- Indicator 24(e)** Are prosecutions for rape and other forms of sexual assault only possible if consented to by the victim? Are prosecutions for rape and other forms of sexual assault discontinued if the victim withdraws the complaint, forgives or marries the accused?
- Indicator 24(f)** Is there a prohibition on the use of prior sexual conduct to establish consent to sexual acts?
- Indicator 24(h)** Is there a requirement of corroboration to prosecute cases of rape and/or other forms of sexual assault?

Indicator 25 Incest

- Indicator 25(a)** Is incest prohibited?
- Indicator 25(b)** How is 'incest' defined?
- Indicator 25(c)** What forms of redress are provided to victims of incest?
- Indicator 25(d)** Are sanctions are in place for perpetrators?

Indicator 26 Stalking

- Indicator 26(a)** Is stalking prohibited?
- Indicator 26(b)** How is 'stalking' defined?
- Indicator 26(c)** What forms of redress are provided to victims of stalking?
- Indicator 26(d)** Are sanctions are in place for perpetrators?

In relation to other forms of GBV, such as trafficking, sexual harassment, forced and early marriage and forced sterilization, they are listed under their respective sections; for example, trafficking and exploitation of prostitution, employment and marriage and family life.

V.1.3 RELEVANT LEGAL PROVISIONS

V.1.3.1 Guarantee of Equality and Non-Discrimination

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|--------------------|---|
| Indicator 1 | Is there a guarantee of equality and non-discrimination on the basis of sex or gender in the Constitution and/or legal documents? |
|--------------------|---|

There are guarantees of equality and non-discrimination on the basis of sex and gender in the Constitution and/or legal documents.

Article 63 of the Constitution provides:

Article 63

Male and female citizens have equal rights in all fields - political, economic, cultural, social and family.

All acts of discrimination against women and all acts damaging women's dignity are strictly banned.

Men and women shall receive equal pay for equal work. Women workers shall enjoy a regime related to maternity. Women who are State employees and wage earners shall enjoy paid prenatal and post-natal leaves during which they shall receive all their wages and allowances as determined by law.

The State and society shall create necessary conditions for women to raise their qualifications in all fields and full play their roles in society; they shall see to the development of maternity so as to lighten housework and allow women to engage more actively in work and study, undergo medical treatment, enjoy periods of rest and fulfill their maternal duties.

Article 52 of the Constitution provides: "All citizens are equal before the law."

In furtherance of the Constitution, Article 7(1) of the Law on Gender Equality provides as one of the State policies: "To ensure gender equality in all fields of politics, economy, culture, society and family; to support and provide man and woman with conditions for them to bring into play their abilities; to give them equal opportunities to take part in the process of development and to benefit from the achievements of development." Articles 11-18 of the Law on Gender Equality affirm equality between men and women in the field of politics, economy, labour, education and training, science and technology, culture, information and sports, public health, and the family.

The Law on Gender Equality also provides that the following acts be strictly prohibited: "(1) acts impeding man and woman from exercising gender equality; (2) gender discrimination in all forms; (3) gender-based violence; (4) other acts that are strictly prohibited."¹⁴⁴ Further, Articles 40 and 41 of the Law on Gender Equality provides a list of violations in the fields of politics, economy, labour, education and training, science and technology, culture, information and sport, public health, and the family.¹⁴⁵

¹⁴⁴ Law on Gender Equality, Article 10

¹⁴⁵ Article 40: Violations against the law on gender equality in the fields of politics, economy, labour, education and training, science and technology, culture, information, sport, and public health

(1) Violations against the law on gender equality in the fields of politics include:

(a) Impeding man or woman from self-nominating as candidate and from nominating candidate to the National Assembly, People's Council, to leading agencies of the political organizations, socio-political organizations, socio-political and professional organizations, social organizations, social and professional organizations for gender preconception reasons;

(b) Not carrying out or impeding the appointment of man and woman to the post of manager, leader or professional titles for gender preconception reasons;

There are further equality and non-discrimination guarantees found in the laws of Viet Nam such as:

- Article 5 of *the Civil Code (No. 33/2005/QH11 of June 14, 2005)* (Civil Code) states: “In civil relations, the parties shall be equal and shall not invoke differences in ethnicity, gender, social status, economic situation, belief, religion, educational level and occupation as reasons to treat each other unequally.”

(c) Making and carrying out regulations that are discriminatory in terms of gender in village covenants and community conventions or in the regulations of the agencies and organizations.

(2) Violations against the law on gender equality in the field of economy include:

(a) Impeding or refusing man and woman from setting up a business, carrying out business activities for gender preconception reasons;

(b) Conducting commercial advertisements that cause adverse consequences to business owner or trader of one certain gender.

(3) Violations against the law on gender equality in the field of labour include:

(a) Applying different qualifications in recruiting male and female labourers to the same job that both male and female labourers are qualified and have the same level and ability to perform it, except for cases requiring the application of measures to promote gender equality;

(b) Refusing to recruit or limit recruitment of labourers, firing or dismissing labourers for gender reasons or because of her pregnancy, giving birth or raising their children;

(c) Implementing discriminatory allocation of job between man and woman leading to inequality in income or applying different pay levels for labourers of the same qualifications and capacity for gender reasons;

(d) Not carrying out specific provisions for female labourers in the law on labour.

(4) Violations against the law on gender equality in the field of education and training include:

(a) Laying down different ages for training and enrolling between man and woman;

(b) Agitating or forcing other people to leave school for gender reasons;

(c) Refusing to enroll those that are qualified for training and fostering courses for gender reasons or because of their pregnancy, raising newborns and children;

(d) Career-oriented education, compilation and dissemination of textbooks that contains gender preconception.

(5) Violations against the law on gender equality in the field of science and technology include:

(a) Impeding man and woman from participating in activities of science and technology;

(b) Refusing the participation of one gender in training courses on science and technology.

(6) Violations against the law on gender equality in the field of culture, information and sport include:

(a) Impeding man and woman from composing, literary and artistic criticism, performing and participating in other cultural activities for gender reasons;

(b) Composing, circulating, authorizing the publication of works under any genre or form to encourage, propagate gender inequality and gender preconception;

(c) Spreading thought, conducting by oneself or inciting other people to conduct backward manners and custom with gender discrimination nature under all forms.

(7) Violations against the law on gender equality in the field of public health include:

(a) Impeding, inciting or forcing other people not to participate in the activities of health education for gender preconception reasons;

(b) Choosing gender for the fetus under all forms or inciting and forcing other people to abort because of the fetus's gender.

Article 41: Violations against the law on gender equality in the family

(1) Impeding members in the family who have enough qualifications under the law from participating in the determination of assets of common proprietary of a family for gender reasons.

(2) Not allowing or impeding members in the family from contributing their opinion to the use of common assets of the family, from conducting income earning activities or satisfying other needs of the family for gender preconception reasons.

(3) Unequally treating family members for gender reasons.

(4) Constraining or forcing members in the family to leave school for gender reasons.

(5) Imposing the realization of family work and the conduct of contraceptive measures as responsibilities of members of certain gender.

- Article 2 of the *Marriage and Family Law (No. 22/2000/QH10 of June 9, 2000)* (Marriage and Family Law) states, among its basic principles: “Voluntary, progressive and monogamous marriage in which husband and wife are equal.” and “The State and society shall not accept the discrimination among children...”
- Article 3 of the *Penal Code (No. 15/1999/QH10 of December 21, 1999)* (Penal Code) states, as one of the handling principles: “All offenders are equal before the law, regardless of the sex, nationality, beliefs, religion, social class and status.”
- Article 5 of the *Civil Procedure Code (No. 24/2004/QH11 of June 15, 2004)* (Civil Procedure Code) guarantees that all citizens are equal before law, regardless of their nationality, sex, belief, religion, social strata and social position.
- Article 8 of the *Civil Procedure Code* states: “All citizens are equal before law and courts regardless of their nationalities, sexes, social status, beliefs, religions, educational levels and occupations. All agencies and organizations are equal regardless of their forms of organization, ownership and other matters.”
- Article 5 of the *Labour Code (No.23 of June 1994)* as amended on April 2, 2002 and November 29, 2006 (Labour Code) provides: “Every person shall have the right to work, to choose freely the type of work or trade, to learn a trade, and to improve his professional skill without being discriminated against on the basis of his gender, race, social class, beliefs, or religion.”
- Article 10 of the *Law on Education (No. 38/2005/QH11 of June 14, 2005)* (Law on Education) states: “All citizens, regardless of their ethnicity, religion, belief, gender, family background, social status or economic conditions, are equal in learning opportunities.”
- Article 4 of the *Law on the Protection, Care and Education of Children (No. 25/2004/QH11 of June 15, 2004)* (Law on Children) provides: “Children, whether female or male, born in or out of wedlock, biological or adopted, born to one or both parties of a marriage, and irrespective of their nationality, beliefs, religion, social background and position of their parents or guardians, shall be protected, cared for and educated, and shall enjoy their rights as prescribed by law.”

Although not technically legal documents but of high persuasive authority, pronouncements by the Communist Party of Viet Nam have provided impetus for the guarantees of equality and non-discrimination; for example, *the Resolution 11-NQ/TW of the Political Bureau of the Communist Party of Viet Nam dated April 27, 2007 on the Work for Women in the Period of Accelerating Industrialization and Modernization* (Resolution on Work for Women) emphasizes that the Communist Party of Viet Nam has always paid attention to directing the work for women and implementing the goal of gender equality, which is reflected in resolutions of the Communist Party of Viet Nam congresses, Central Committee’s meetings, Political Bureau and Secretariat. The Resolution on Work for Women enumerates key tasks aimed at addressing gender equality, including raising awareness, implementing the Law on Gender Equality, and improving the legal system to ensure women’s human rights. This gives a strong push for ensuring the guarantees of gender equality and non-discrimination.

Indicator 2	Is there a definition of equality between men and women/gender equality and does it conform to substantive equality?
Indicator 3	Is there a definition of discrimination/non-discrimination on the basis of sex and does it conform to Article 1 of CEDAW?

Despite the numerous appearances of the guarantee of equality and non-discrimination, it was only recently that a definition has been provided by law of the terms 'equality' and 'discrimination'. The Law on Gender Equality, which was adopted in 29 November 2006, defines them as follows:

Article 5: Interpretation of Terms

- (3) Gender equality indicates that man and woman have equal position and role; are given equal conditions and opportunities to develop their capacities for the development of the community, family and equally enjoy the achievement of that development.
- (5) Gender discrimination indicates the act of restricting, excluding, not recognizing or not appreciating the role and position of man and woman leading to inequality between man and woman in all fields.

Having a definition on both terms, though belated, is a welcome development. This is the first step towards a uniform and consistent understanding of 'equality' and 'non-discrimination'. It is evident, though, that the definition can benefit from some improvements.

Definition of 'gender equality'

In relation to 'gender equality', the definition in Article 5(3) is promising as it: (a) encompasses formal equality or a guarantee of equality in law, and opportunities; (b) includes provision of enabling environment by guaranteeing equal conditions; and (c) covers equality of results by explicitly stating the need for man and woman to enjoy equally the achievements of development. The definition indeed contains elements of substantive equality, especially if read in relation to Article 7(1) of the Law on Gender Equality.¹⁴⁶ However, equality is not simply equal roles, positions, conditions, opportunities, and enjoyment of achievements. Equality involves equal rights.

Recommendation: It is recommended that, for increased consistency with CEDAW, the definition of 'gender equality' in Article 5(3) of the Law on Gender Equality must include the term 'rights'; that is, 'man and woman have equal rights, positions and roles'. This emphasizes that equality involves equal rights and not simply equal positions and roles.

Definition of 'gender discrimination'

The definition of 'gender discrimination' in the Law on Gender Equality is not as comprehensive as the definition in Article 1 of CEDAW. The definition only covers the 'role and position' of women and men as the subject of restriction, exclusion or non-recognition. On the other

¹⁴⁶ Article 7(1) states as one of the State Policies on Gender Equality: "To ensure gender equality in all fields of politics, economy, culture, society and family; to support and provide man and woman with conditions for them to bring into play their abilities; to give them equal opportunities to take part in the process of development and to benefit from the achievements of development."

hand, the definition in Article 1 of CEDAW requires the recognition, enjoyment and exercise of women's human rights and fundamental freedoms, which shows that ensuring gender equality is more comprehensive than 'roles and position'.

Further, the definition of 'gender discrimination' in the Law on Gender Equality does not mention that discrimination can be direct or indirect. The definition in CEDAW clearly states that discrimination can occur if the 'effect or purpose' is discriminatory. The CEDAW Committee in Note 1 of GR 25 even provides a clear definition of 'indirect discrimination' to guide implementation.

Recommendation: To be consistent with the definition of discrimination in Article 1 of CEDAW, it is recommended that the definition of 'gender discrimination' in Article 5(5) of the Law on Gender Equality include the term 'rights', so that discrimination is not simply failure to appreciate roles and status but also covers violation of rights. The definition must also clearly state that discrimination can be direct or indirect. A definition of indirect discrimination consistent with Note 1 of GR 25 is also recommended to be included, preferably in the law itself, to aid implementation.

As mentioned earlier, there are guarantees of equality and non-discrimination in many laws. However, these laws, except for the Law on Gender Equality, do not contain any definition of 'gender equality' or 'gender discrimination', nor do they provide explicitly stated principles relating to the approach or model of equality used and whether the guarantee extends to indirect discrimination. With the coming into force of the Law on Gender Equality, there is a need to incorporate its definitions in the application, implementation and interpretation of the equality and non-discrimination provisions in the other laws.

Recommendation: Provisions guaranteeing equality in legal documents must incorporate the revised definitions of 'gender equality' and 'gender discrimination' as suggested, either by including similar definitions to, or by providing a direct reference to the definitions in, the Law on Gender Equality.

Definition of 'sex' and 'gender'

It is noticeable that in some legal documents, the term 'sex' is used and in others the term 'gender' is used. There may be a need to provide guidance to implementers on when it is appropriate to use one over the other. Article 5 of the Law on Gender Equality provides a definition for these terms:

Article 5: Interpretation of Terms:

- (1) Gender indicates the characteristics, positions and roles of man and woman in all social relationships.
- (2) Sex indicates biological characteristics of man and women.

In relation to the definition of 'sex', although the definition is on the right track, to sharpen it, it is recommended to emphasize the contrast between man and woman. Hence, the definition should be revised.

Recommendation: In relation to Article 5(2) of the Law on Gender Equality, it is suggested that the definition of 'sex' be further sharpened as follows: 'Sex refers to biological characteristics of being a man or a woman.'

As to the definition of ‘gender’ in Article 5(1) of the Law on Gender Equality, it is ambiguous as compared to the definition in Note 2 of GR 25. The definition does not clearly state that characteristics, positions and roles given to men and women are ‘socially constructed’, which is precisely the defining attribute of ‘gender’ as opposed to ‘sex’. Gender is not ‘the characteristics, positions and roles ... in social relationships’, rather it is the ‘socially constructed’ characteristics, positions and roles.

Recommendation: It is recommended that the definition of ‘gender’ in Article 5(1) of the Law on Gender Equality be amended or clarified to reflect that gender is socially constructed as follows: ‘Gender refers to socially constructed characteristics, positions and roles given to a man or a woman on account of his/her sex.’ The definition provided in Note 2 of GR 25 can also be used: ‘Gender is defined as social meanings given to biological sex differences.’

Indicator 4	Do legal documents address the intersections of other grounds of discrimination with gender discrimination (such as discrimination on the basis of ethnicity, disability, age, sexual orientation)?
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In the general provisions that guarantee equality and non-discrimination, it can be seen that many other grounds of discrimination, in addition to sex or gender, are recognized by Vietnamese laws. These include nationality, social status/class/position, belief, religion, educational level and occupation, and family background. This list is actually longer if it includes legal documents on the elderly,¹⁴⁷ people with disabilities¹⁴⁸ and HIV/AIDS.¹⁴⁹ What is noticeable, though, is that these grounds of discrimination are seen as separate from each other, and they are not always analysed in an interconnected manner; for example, although it has provisions on ethnic minority women or women in remote and mountainous regions,¹⁵⁰ the Law on Gender Equality does not provide a mechanism or provisions on ways to address other forms of disadvantage, in addition to gender, in a systematic and simultaneous manner.

It must be borne in mind that CEDAW’s core pillar of non-discrimination requires that other grounds of discrimination must not be ignored. Rather, interventions must take into account all forms of disadvantage to be able to address them appropriately. In many cases, experiencing discrimination on two or three grounds aggravates or compounds experiencing one form of discrimination. By recognizing more grounds of discrimination, analysis of disadvantage becomes sharper and legal documents more appropriate to the real situation; for example, by recognizing both gender and disability as grounds of discrimination, legal documents are able to provide for appropriate interventions for women with disabilities.

Recommendation: It is suggested that the Law on Gender Equality be supplemented to include a provision recognizing the interrelatedness of grounds of discrimination. It is also suggested that the recognized grounds for discrimination also include age, sexual orientation, disability, economic status, health status (which includes people living with HIV/AIDS and STIs) and other status. A suggested text is: ‘Other grounds

¹⁴⁷ Ordinance on Elderly People (No.23/2000/PL-UBTVQH10 of April 28, 2000) (Ordinance on Elderly People)

¹⁴⁸ Ordinance of Disabled Persons (No. 06/ 1998 /PL-UBTVQH10 of July 30, 1998) (Ordinance on Disabled Persons)

¹⁴⁹ Law on HIV/AIDS Prevention and Control (No. 64/2006/QH11 of June 29, 2006) (Law on HIV/AIDS)

¹⁵⁰ Law on Gender Equality, Articles 7(5) and 17(3)

of discrimination, such as on account of nationality, religion, belief, age, disability, sexual orientation, and social, economic, health and other status, may aggravate or compound gender discrimination, and must be addressed, with gender discrimination, in an interconnected manner.’ A list of examples where these grounds intersect may be useful in a supplementary legal document to assist implementation. Some examples are intersection of gender and disability (addressing the needs of women with disabilities as separate from men with disabilities), gender and age (addressing the needs of elderly women as separate from elderly men), and gender and economic status (addressing the needs of poor women as distinct from poor men).

It is also suggested that provisions in other laws must explicitly include non-discrimination on account of gender. An explicit guarantee in the Ordinance on Elderly People (No.23/2000/PL-UBTVQH10 of April 28, 2000) (Ordinance on Elderly), Ordinance of Disabled Persons (No. 06/ 1998 /PL-UBTVQH10 of July 30, 1998) (Ordinance on Disabled Persons) and Law on HIV/AIDS Prevention and Control (No. 64/2006/QH11 of June 29, 2006) (Law on HIV/AIDS) that discrimination on the basis of gender must be incorporated is one way to ensure that gender equality is not ignored and forms part of the specific law’s application and monitoring.

Laws that provide general clauses on equality must contain explicit statements that the experience of two or more grounds of discrimination may aggravate or compound discrimination; and, therefore, they need to be taken into account in the application of the laws at all times. It is also suggested that subordinate legal documents be issued on these laws on examples of the intersections of their grounds of discrimination and gender and ways to address them.

These suggestions will hopefully lead to an opening up of analysis to encompass recognition of more grounds of disadvantage; and, hence, appropriate and more responsive interventions can be made.

Therefore, there is obvious need to provide continuous conceptual clarity on the guarantee of gender equality and gender non-discrimination. By doing so, it will enhance implementation and application of the law.

Recommendation: In addition to legal reforms suggested, there is obvious need for capacity-building - especially for drafters and implementers of legal documents - to ensure that both the spirit and text of CEDAW becomes evident in general guarantees of equality and non-discrimination.

V.1.3.2 Prohibition of Discrimination

Indicator 5	Is there legislation in place that clearly prohibits gender discrimination by public authorities?
Indicator 6	Is there legislation that prohibits gender discrimination by private persons, enterprises and organizations?
Indicator 7	Are there sanctions in place for actions or omissions that result in discrimination? Are sanctions heavier if the discriminatory act is committed by a public official?

There are several provisions in the Constitution and laws that can be applied to ensure that prohibition of discrimination applies to both public and private actors.

First, Article 12 of the Constitution states: “All State organs, economic and social bodies, units of the people’s armed forces, and all citizens must seriously observe the Constitution and the laws, strive to prevent and oppose all criminal behavior and all violations of the Constitution and the law. All infringements of State interests, of the rights and legitimate interests of collectives and individual citizens shall be dealt with in accordance with the law.” Further, Article 22 of the Constitution states: “Production and trading enterprises belonging to all components of the economy must fulfill all their obligations to the State...” When read with Article 63 of the Constitution, which guarantees gender equality and bans acts of discrimination against women, a whole range of public and private actors are prohibited from discriminating.

Second, the Penal Code also contains a prohibition that applies to both public and private individuals under Article 130. It states that those who use violence or commit serious acts to prevent women from participating in political, economic, scientific, cultural and social activities will be subject to warning, non-custodial reform for up to one year, or a prison term of between three months and one year. That the Penal Code only covers individuals is understandable as legal entities/persons are not subject to criminal liability; rather, it is the persons behind them that are held accountable.

Third, Article 10 of the Law on Gender Equality prohibits discrimination and acts impeding gender equality. Further, Articles 40 and 41 of the Law on Gender Equality specifically states violations of the law in terms of specific areas, which have a broad range of target groups including: “State institutions, political organizations, socio-political organizations, socio-political and professional organizations, social organizations, social and professional organizations, economic organizations, non-productive units, units of people’s armed forces, families and Vietnamese citizens (hereinafter referred to as agencies, organizations, families and individuals)...”¹⁵¹

By using the term ‘target groups’, ambiguity is created as to whether these are the beneficiaries or duty-bearers in relation to the law. However, by invoking that complaints and denunciations for violations of the Law on Gender Equality are carried out in accordance with *the Law on Complaints and Denunciations (No. 09/1998/QH10 of December 2, 1998) as amended in 2004 and 2005* (Law on Complaints and Denunciations), there is a clearer notion as to who are prohibited, and hence, against whom complaints and denunciations can be filed. The Law on Complaints and Denunciations provides:

Article 1:

- (1) Citizens, agencies and organizations are entitled to complain about administrative decisions and/or administrative acts of State administrative bodies and/or competent persons therein when having grounds to believe that such decisions and/or acts have contravened laws and infringed upon their legitimate rights and interests. Officials and pub-

¹⁵¹ Ibid., Article 2(1)

lic servants are entitled to complain about disciplinary decisions of competent persons when having grounds to believe that such decisions have contravened laws and infringed upon their legitimate rights and interests.

- (2) Citizens are entitled to denounce to competent agencies, organizations or individuals illegal acts committed by any agencies, organizations and/or individuals, which cause damage or threaten to cause damage to the interests of the State and/or the legitimate rights and interest of citizens, agencies and/or organizations.

It is evident from the Law on Gender Equality that both public and private actors are prohibited from discriminating and are covered by it.

Fourth, in relation to sanctions, Article 42 of the Law on Gender Equality states:

Article 42: Forms of handling with violations against the law on gender equality

- (1) Those who commit any violation of gender equality, depending on the nature and level of the violation, shall be subject to the sanctions, or administration fines or criminal procedure.
- (2) Agencies, organizations, individuals whose violations of gender equality law have caused damages shall have to compensate for the damages in compliance with the law.

These are very general provisions and they do not provide sufficient notice and guidance as to the range and extent of penalties that will be applied for the violations. Aware of this, the *Directive No. 10/2007/Ct-TTG of May 3, 2007 on the Implementation of the Law on Gender Equality (unofficial translation)* (Directive on Gender Equality Law) required the drafting of a decree that will identify administrative fines against violations of gender equality.¹⁵²

Fifth, as to compensation for damage, these can be claimed under Articles 604-612 of the Civil Code. There are also specific laws that have guarantees against discrimination (see Part V.1.3.1) and provide for sanctions when violated; for example, Article 107 of the Marriage and Family Law and Article 192 of the Labour Code. In both the Penal Code¹⁵³ and *Ordinance on Handling of Administrative Violations* (No. 29/2006/PL-UBTVQH11 of April 5, 2006) amended in 2007 (Ordinance on Administrative Violations)¹⁵⁴ abuse of power and position operates as an aggravating circumstance, hence a heavier punishment is imposed.

Recommendation: It is suggested that sanctions be clearly provided to the violations listed in the Law on Gender Equality, although it is preferable that the sanctions are provided in, or as an amendment or supplement to, the Law on Gender Equality, bearing in mind Viet Nam's practice of making legal documents. See Part II.2.1.

A decree that provides for sanctions for violations of gender equality must be issued as soon as possible bearing sanctions that are in proportion to the seriousness of the violation; and, therefore, providing a range of penalties that suits the violation, including criminal prosecution and penalties when necessary. The decree must reaffirm

¹⁵² Directive on Gender Equality Law, Part II(2)(b)

¹⁵³ Penal Code, Article 48(c)

¹⁵⁴ Ordinance on Administrative Violations, Article 9(5)

that abuse of position and power will be considered as an aggravating circumstance. A specific reference to the operation of Articles 604-612 of the Civil Code on damages must be made.

It is also recommended that the decree explicitly provides who are subject to be administratively, civilly or criminally handled for violations to ensure clarity of application, bearing in mind that Article 2 of CEDAW requires States Parties to prohibit discrimination by both public and private actors (whether a person, enterprise or organization).

Indicator 8	Is there legislation in place that prohibits gender discrimination by foreigners and foreign-owned and/or controlled entities?
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Provisions referring to the obligation of foreigners to abide by Vietnamese laws, including those prohibiting discrimination, exist. First and foremost, Article 81 of the Constitution states: “Foreigners residing in Vietnam must obey the Constitution and laws of Viet Nam; they shall receive protection with regard to their lives, possession and legitimate interest in accordance with provisions of Vietnamese laws.”

Article 5 of the Penal Code provides that the Penal Code applies to all acts of criminal offences committed in the territory of the country. It also provides that, in a case of a foreigner who commits an offence within Viet Nam’s territory but who is entitled to diplomatic immunities or consular privileges or immunities under Vietnamese laws, treaties or international practices, criminal liabilities will be settled through diplomatic channels. Article 6 of the Penal Code also states that, since Vietnamese citizens who commit offences outside the territory of the country may be examined for penal liability in Viet Nam, likewise foreigners who commit offences outside Viet Nam’s territory may be examined for penal liability in Viet Nam, if there are such provisions in international treaties to which Viet Nam is a State Party.

Article 6(1)(c) of the Ordinance on Administrative Violations provides: “Foreign individuals and organizations that commit administrative violations within the territory, the exclusive economic zone and/or continental shelf of the Socialist Republic of Viet Nam shall be administratively sanctioned according to the provisions of Vietnamese laws, except otherwise provided for by international treaties which the Socialist republic of Viet Nam has signed or acceded to.”

Other laws also point out that foreigners have the obligation to comply with Vietnamese laws, unless there is a treaty to the contrary. For example, Article 759 of the Civil Code states that the provisions of civil law of Viet Nam apply to relations involving ‘foreign elements’, unless otherwise provided by the Civil Code or a treaty signed or acceded to by Viet Nam. The Marriage and Family Law also provides that provisions of its law apply to relations involving ‘foreign elements’; and, in particular, it provides that, in marriage and family relations with Vietnamese citizens, foreigners enjoy the same rights and obligations as Vietnamese citizens, unless otherwise provided by law.¹⁵⁵

As to the Law on Gender Equality, Article 2 states as a target group: “Foreign agencies and organizations, international organizations operating in the territory of Viet Nam, foreign

¹⁵⁵ Marriage and Family Law, Articles 7 and 100

individuals legally residing in Viet Nam.” The term ‘target groups’ again creates confusion as it is unclear whether they are beneficiaries of the law, duty-bearers or possible violators, or all of these. However, Articles 37 and 38 of the Law on Gender Equality make reference to the Law on Complaints and Denunciations as well as the use of administrative and criminal laws. These laws cover foreigners and foreign entities committing violations as subject to Vietnamese laws.

The text in Article 2(2) of the Law on Gender Equality, however, does not include foreign individuals who are not legally residing in Viet Nam or foreign organizations not operating in the territory of Viet Nam but subject to its jurisdiction. The extent of responsibility of these must be also specified. It is evident that they, too, should not discriminate on the basis of gender.

Recommendation: It is recommended that the term ‘target group’ in Article 2 of the Law on Gender Equality be clarified. It is also recommended that all foreign agencies, organizations and individuals that or who are subject to Viet Nam’s jurisdiction be covered by the Law on Gender Equality.

In relation to sanction, as the jurisdiction to take cognizance of a particular violation varies according to whether it is criminal, civil or administrative, it is recommended that the Law on Gender Equality or its decree clarify who are considered possible offenders and make a clear statement of referral to appropriate provisions of the applicable sanctioning laws; for example, Article 5 of the Penal Code or Article 6(1) of the Ordinance on Administrative Violations.

V.1.3.3 Legal Protection of Women

Indicator 9 Is there a right to seek redress in cases of discrimination?

The Constitution provides a right to file complaints and denunciations. Article 74 states: “The citizen has the right to lodge complaints and denunciations with the competent State authorities against the illegal doings of State organs, economic bodies, social organizations, units of the people’s armed forces, or of any individual...The person who has suffered loss and injury shall be entitled to damages for any material harm suffered and his reputation rehabilitated...”

The right to seek redress in cases of discrimination is specifically provided in Articles 37 and 38 of the Law on Gender Equality:

Article 37: Complaint and handling with complaints

- (1) Agencies, organizations, individuals have the right to complain about decisions and acts of agencies, organizations and individuals where they have reasons to believe that these decisions or acts violate law on gender equality and their legitimate rights and interests.
- (2) The complaints on gender equality shall be handled with in accordance with the law on complaint and denunciation.

Article 38: Denunciation and handling of denunciations against violations of the law on gender equality

- (1) Individuals have the right to denounce any violations of the law on gender equality.
- (2) The denunciations and handling of denunciations against violations of the law on gender equality is carried out in accordance to the law on complaint and denunciation.

There are general provisions of law that provide a right to seek redress when there are violations of rights and interests. First, Article 1 of the Law on Complaints and Denunciations defines who has the right to file complaints and denunciations in cases of violations of their rights and interests.

Article 1

- (1) Citizens, agencies and organizations are entitled to complain about administrative decisions and/or administrative acts of State administrative bodies and/or competent persons therein when having grounds to believe that such decisions and/or acts have contravened laws and infringed upon their legitimate rights and interests. Officials and public servants are entitled to complain about disciplinary decisions of competent persons when having grounds to believe that such decisions have contravened laws and infringed upon their legitimate rights and interests.
- (2) Citizens are entitled to denounce to competent agencies, organizations or individuals illegal acts committed by any agencies, organizations and/or individuals, which cause damage or threaten to cause damage to the interests of the State and/or the legitimate rights and interest of citizens, agencies and/or organizations.

Second, the following articles in the Criminal Procedure Code provide:

Article 7: Protection of life, health, honour, dignity and property of citizens.

Citizens have the right to have their life, health, honour, dignity and property protected by law. All acts of infringing upon the life, health, honour, dignity and/or property shall be handled according to law.

Article 101: Denunciations and information on offenses

Citizens may denounce offenses to investigating bodies, procuracies, courts or other bodies, organizations...

Article 325: Persons with the right to complain

Agencies, organizations and individuals shall have the right to complain about procedural decisions and acts of bodies and persons with procedure-conducting competence when they have grounds to believe that such decisions or acts are contrary to law, infringe upon their legitimate rights and interests.

Article 334: Persons with the right to denounce

Citizens shall have the right to denounce to competent bodies or individuals law violation acts of any persons with procedure-conducting competence, which cause damage or threaten to cause damage to the interests of the State, the legitimate rights and interests of citizens, agencies or organizations.

Third, Article 24 of the Civil Procedure Code states:

Article 24: Assurance of the right to complaints and denunciations in civil procedures

Individuals, agencies and organizations shall have the right to complain about, individuals shall have the right to denounce, illegal acts of persons conducting the civil procedures or of any individuals, agencies or organizations in civil proceedings.

Fourth, Article 9 of the Civil Code provides that all the civil rights of individuals and legal persons must be respected. In cases where it has been infringed, the persons have the right to protect such rights in accordance with the Civil Code or request competent agencies or organizations to: (a) recognize civil rights; (b) order the termination of the act of violation; (c) order a public apology or rectification; (d) order performance of civil obligations; or (e) order compensation for damage.

Fifth, and in addition to these provisions, the Penal Code obligates denunciations. Article 314 of the Penal Code provides: "Those who have full knowledge of one of the crimes defined in Art. 313 of this Code, which is being prepared, is being or has been committed, but fail to denounce it, shall be subject to warning, non-custodial reform for up to three years or a prison term of between three months and three years.... Persons who have failed to denounce offenses but acted to dissuade the offenders from committing the offense or to limit the harms done thereby, may be exempt from penal liability or penalties." Article 313 of the Penal Code enumerates some cases of GBV, which is considered a form of discrimination under CEDAW.¹⁵⁶

In practice, however, the extent to which these provisions are used to file gender-based discrimination is limited. Over the past three years, there were very few administrative cases filed by women for the reason of gender-based discrimination.¹⁵⁷

In a survey conducted in 2004, awareness in Viet Nam of the key legal and institutional frameworks in place for the protection of rights, such as the courts, legal aid centres and grass-roots mediation groups, was found to be low.¹⁵⁸ However, there was relatively high level of awareness about people's committees and the police.¹⁵⁹ Access to judicial institutions, such as the courts and procuracy, is relatively low, while access to people's committees and the police is higher, which places a significant responsibility on these institutions.¹⁶⁰ People's access to legal information is limited.¹⁶¹ Legal awareness, access to legal information and judicial institutions is lower with low-income groups and those living in rural and remote and mountainous regions.¹⁶² These findings show that, although legal documents are in place on the right

¹⁵⁶ Article 313 states: "Those who without prior promise conceal one of the offense defined in the following articles shall be sentenced to non-custodial reform for up to three years or between six months and five years imprisonment." The articles of the Penal Code that are referred to by Article 313 include the following: Article 93 (Murder); Clauses 2-4 of Article 111 (Rape); Article 112 (Rape against children); Article 114 (Forcible intercourse with children); Clauses 2 and 3 of Article 116 (Obscenity against children); Article 119 (Trafficking in women); Article 120 (Trading in, fraudulently exchanging or appropriating children); and Article 256 (Having paid sexual intercourse with children).

¹⁵⁷ Combined Fifth and Sixth Periodic Report, p. 9

¹⁵⁸ United Nations Development Programme, 'Survey from a People's Perspective: Access to Justice in Viet Nam', United Nations Development Programme, Ha Noi, May 2004 (UNDP Survey), p. i

¹⁵⁹ Ibid.

¹⁶⁰ Ibid., pp. 12-13. There are many reasons stated in the UNDP Survey for why the Vietnamese judicial system, particularly the courts, is not widely accessed. Courts, lawyers, legal aid centres and grass-roots mediation groups are seen as last resort. There is low awareness of the courts. It could be that people turn to police and people's committees because they deal more directly with matters related to day-to-day concerns of the people. The cadres and officials of these institutions live close to the people in the area under their management and they are seen to understand better the issues the people experience. On whether to initiate proceedings, time and cost were rated as important factors relating to initiating proceedings before the judicial institutions or government authorities. As many as 47 percent of interviewees stated that it is costly to pursue litigation in court. Cost is indeed perceived as a restricting factor.

¹⁶¹ Ibid., p. i

¹⁶² Ibid., p. 19

to file complaints and denunciations, in practice there is limited use of them owing to lack of legal awareness and access to key institutions.¹⁶³

Recommendation: *It is recommended that legal education and awareness and educational campaigns be increased, especially targeting low-income groups and those living in rural and remote and mountainous regions, on their right against non-discrimination, their right to seek in cases of violation, and on the appropriate institutions to access for redress of their grievances.*

Indicator 10 Are current criminal, civil and administrative procedures able to handle appropriately cases of gender discrimination? Are there legal documents that provide specific guidance in the handling of cases of discrimination?

There are no separate procedures for handling cases involving women. However, general procedures for criminal, civil and administrative procedures are in place.

In September 2006, when asked about administrative prosecutions and gender-based discrimination cases brought to courts, Viet Nam replied that there is a low number of administrative prosecutions on grounds of gender discrimination because the Ordinance on Administrative Violations does not specifically stipulate whether these cases are under the administrative court's jurisdiction.¹⁶⁴ The reply also stated that there are no comprehensive statistics on this.

However, with the enactment of the Law on Gender Equality in November 2006, there is now sufficient guidance and authority to address confusion as to whether discrimination cases are subject to general procedures. Article 42 states:

Article 42

- (1) Those who commit any violation of the law on gender equality, depending on the nature and level of the violation, shall be subject to disciplinary measures, administration sanctions or criminal prosecutions.
- (2) Agencies, organizations, individuals whose violations of the law on gender equality have caused damage shall have to compensate for the damages in compliance with the law.

The following are the key legal documents relating to the general handling of cases: (a) Civil Procedure Code; (b) Criminal Procedure Code; (c) Law on Complaints and Denunciations; (d) Ordinance on Administrative Violations; and (e) Penal Code. In these legal documents, there are provisions on procedure that are specific to women or have a substantial impact on women, including those victims of discrimination, particularly GBV. Further, under Articles 37-39 and 42 of the Law on Gender Equality, cases of violations of the Law on Gender Equality are subject to these legal documents.

Criminal procedure

Under criminal procedure, these provisions are:

¹⁶³ Ibid.

¹⁶⁴ Response to the List of Issues and Questions for Consideration of the Combined Fifth and Sixth Report to the CEDAW Committee 37th session. CEDAW/C/VNM/Q/6/Add.1. September 2006 (Report Response), Reply to Question 2

Protection

The right to request procedure-conducting bodies to protect denouncers when they are intimidated, harassed or revenged is guaranteed in Article 335(1)(b) of the Criminal Procedure Code. Article 33 of the code identifies procedure-conducting bodies as investigating bodies, procuracies and courts. In particular, investigating bodies must apply necessary measures to protect the offence denouncers.¹⁶⁵

This right is very important in cases of GBV where there is fear of retribution or further violence for the institution of a case. In relation to this, there should be a wide range of protective measures available to victims, most especially women victims. Protective measures must go beyond deterrent measures, which are put in place by the investigating bodies, when there are grounds to show that the accused will cause difficulties to the investigation, prosecution or adjudication, or would continue committing offences, or when necessary to secure judgment execution. These deterrent measures are limited to arrest, custody, temporary detention, ban from travel outside one's own residence, guarantee, and deposit of money or valuable property as bail.¹⁶⁶

Also, victim protection programs should be established that provide not simply protection to the victim, but other services that can address the victim's needs, such as medical treatment, counselling, shelter, and job or livelihood training, depending on the circumstances of the case. This is because in many cases where victims experience violence, the need for protection is not limited to protection of bodily integrity alone.

Recommendation: Protective measures for the victim must go beyond the deterrent measures elaborated in Articles 79-94 of the Criminal Procedure Code. Protective measures must include other measures of protection and be immediately available at any stage of the proceedings, especially in cases of violence. This may entail prohibiting the accused from approaching the victim or the victim's family, being within the victim's vicinity, or contacting the victim directly or indirectly. A victim protection program should also be established, which in addition to protection, must also provide services needed by the victim of violence, such as medical treatment, counselling and shelter. See recommendations in Part V.1.3.6 and Part V.4.3.

Privacy and confidentiality

The guarantees of privacy and confidentiality are important, especially for those who are subjected to GBV. In addition to protecting victims from harm or retribution, these guarantees also avoid re-victimization of victims due to stigmatization of women by society. Article 335 of the Criminal Procedure Code provides, as among the rights of denouncers, the right to request the confidentiality of names, addresses and autographs. It must be kept in mind that in certain circumstances, such as in cases of GBV, it may also be necessary not only to keep the names, addresses and autographs confidential, but also other information concerning the identity of the denouncer or victim.

¹⁶⁵ Criminal Procedure Code, Article 105

¹⁶⁶ Ibid., Article 79

It is provided that courts conduct trials in public.¹⁶⁷ However, in special cases where State secrets or the parties' secrets (upon their legitimate request) should be kept secret or the fine national customs/traditions should be preserved, the courts must conduct trials behind closed doors but judgments must be pronounced publicly.

Recommendation: It is recommended that the Criminal Procedure Code provides that, at all stages of investigation, prosecution and trial of cases involving GBV, the investigating and prosecuting bodies as well as the courts must recognize the right to confidentiality and privacy of the denouncer and/or victim. In addition to names, addresses and autographs being kept confidential, the personal circumstances of the victim or any other information tending to establish the identity of the victim must not be disclosed to the public at any time. In cases of GBV, upon request and when necessary to protect the identity of the victim, or to ensure a fair and impartial proceeding, the trial can held behind closed doors. In all cases, it should be mandatory for procedure-handling persons to inform denouncers and victims of their right to request for confidentiality and to explain consequences relating to it. See recommendations in Part V.1.3.6, Indicators 22-26 and their Sub-indicators.

Institution and termination of particular cases

Article 105 of the Criminal Procedure Code states:

Article 105: Institution of criminal cases at victims' requests

- (1) The cases involving the offenses prescribed in Clauses 1 of Articles 104, 105, 106, 108, 109, 111, 113, 121, 122, 131 and 171 of the Penal Code shall only be instituted at the requests of victims or lawful representatives of victims who are minors or persons with physical or mental defects.
- (2) In cases where the criminal case institution requesters withdraw their requests before the opening of court sessions of first-instance trial, the cases must be ceased. Where exist grounds to determine that the institution requesters have withdrawn their requests against their own will due to force or coercion, the investigating bodies, procuracies or courts may, though such institution requesters have withdrawn their requests, still continue conducting the procedure for the cases.

Victims who have withdrawn their criminal case institution requests shall have no right to file their requests again, except for cases where their withdrawal is due to force or coercion.

This provision does not show strong intent on the part of the State to prosecute the crimes it lists,¹⁶⁸ in particular rape and forcible sexual intercourse that affect women. The crimes of rape and forcible sexual intercourse must be removed from the list of crimes that can be instituted only with the victim's consent. In some cases, victims themselves cannot institute

¹⁶⁷ Ibid. Article 18

¹⁶⁸ They are: Articles 104-106, 108-109 (Inflicting Injury); Article 111 (Rape); Article 113 (Forcible Sexual Intercourse); Articles 121 and 122 (Humiliating, and Slander); and Articles 131 and 171 (Infringement of Copyright, and Industrial Property Rights)

the case due to fear or shame. Consequently, procedures must be ‘victim-friendly’; that is, they must protect the victim’s safety and privacy, and they must address the victim’s concerns and needs. See Part V.1.3.6, Indicator 24.

Recommendation: *In relation to Article 105 of the Criminal Procedure Code, it is suggested that rape and forcible sexual intercourse be removed from the list of crimes that can only be instituted at the victim’s request. Specific procedures on handling victims of rape, forcible sexual intercourse and other forms of sexual abuse are an indispensable measure to accompany this and must be put in place. These procedures must be ‘victim-friendly’, including measures to protect safety and privacy and address other needs, such as medical treatment, counselling, legal assistance and rehabilitation. Procedures must also provide counselling and advice to family members of the victim.*

Confrontation

The Criminal Procedure Code provides that investigators must conduct ‘confrontation’ if there are contradictions in the statements of one or two persons in the course of their investigation.¹⁶⁹ During the confrontation, investigators can ask about the relationships between the persons participating in the confrontation, inquire about the circumstances that require clarification, and put further questions if necessary. Investigators may also allow persons participating to ask each other question. Prosecutors, in cases of necessity, can also conduct confrontation.

Recommendation: *In cases of confrontation under Article 138 of the Criminal Procedure Code it is suggested that a legal document require that due diligence be exercised to ascertain the condition of the victim. Where the victim is experiencing trauma or fear on account of the alleged offence, alternatives to face-to-face confrontation must be considered. These include measures to separate the parties, such as putting them in different rooms or using screens to shield one party from another, as well as allowing the presence of persons to support the victim.*

Body searches and body examination

The Criminal Procedure Code states that, in conducting body searches, the search of a person must be conducted by a police officer and before a witness of the same sex.¹⁷⁰ This also applies to examination of the body, including forensic examinations, to detect traces of the offence or traces of matters significance to the case.¹⁷¹ In cases of necessity, medical doctors may participate in body examination.¹⁷²

Recommendation: *It is recommended that Article 152 of the Criminal Procedure Code be amended to provide clear responsibility of the police officer and examining physician as follows: It shall be the duty of the police officer or examining physician, who is of the same sex as the offending party, to ensure that, except those who are authorized to do the examination and those who are reasonably expected to be pres-*

¹⁶⁹ Criminal Procedure Code, Article 138

¹⁷⁰ Ibid., Article 142

¹⁷¹ Ibid., Article 152

¹⁷² Ibid.

ent, only persons expressly authorized by the examinee shall be allowed in the room where the examination is being conducted.

Custody

Articles 86 and 87 of the Criminal Procedure Code provide that a person can only be held in custody for a maximum period of three days. This applies to persons arrested in urgent cases or through a pursuit warrant, caught 'red-handed', or who have confessed or surrendered. Within 12 hours from the issuance of a custody decision, the decision must be sent to the procuracy to determine whether the custody is necessary or with basis.¹⁷³

Recommendation: It is recommended that, in the case of pregnant women or those requiring special assistance (for example, suffering a serious illness), the period for custody in Articles 86 and 87 of the Criminal Procedure Code be shortened; for example, shortening the time for sending the custody decisions to the procuracy, or the maximum time that they are held in custody. These cases should be provided priority in the determination of the lawfulness of their custody.

Temporary detention

Article 88 of the Criminal Procedure Code states that where the accused or defendants are women who are pregnant or nursing children aged less than 36 months and having clear residences, they cannot be detained. Instead, other deterrent measures will be applied, except where the accused or defendants: (a) escaped but then were arrested under pursuit warrants; (b) were already subjected to other deterrent measures, but then continued committing offences or intentionally seriously obstructing the investigation, prosecution or adjudication; or (c) committed offences of infringing upon national security and there are sufficient grounds to believe that, if they are not detained, they will be detrimental to national security.

This provision shows strong intent of the State to protect maternity as well as to show consideration for the well-being of newborn babies. Non-custodial measures will enable pregnant women and nursing mothers to access proper health-care services for before, during and after their pregnancy, as well as to ensure the health and care of the foetus or newborn baby.

Penalties

There are several provisions on criminal procedure pertaining to pregnant women and women who are nursing children aged up to 36 months and applicable penalties to them.

Non-execution of the death penalty

Article 35 of the Penal Code states that the "[d]eath penalty shall not apply to ... pregnant women and women nursing children up to 36 months old at the time of committing crimes or being tried." It further provides that the death penalty will be converted into life imprisonment.

Reaffirming this, Article 259 of Criminal Procedure Code provides: "Where the convicts are women, before issuing decisions to execute the judgments, the presidents of the courts

¹⁷³ Ibid., Article 86(3)

which have conducted first-instance trials shall have to examine the conditions for non-application of death penalty, prescribed in Article 35 of the Penal Code. If there are grounds that the convicts meet the conditions prescribed in Article 35 of the Penal Code, the presidents of the courts ... shall not issue decisions to execute the judgments and report such to the President of the Supreme People's Court for consideration and commutation of the death penalty to life imprisonment for the convicts." Further, this article provides: "Before executing women convicts, the judgment-executing councils shall, apart from checking their identity cards, have to check the documents related to the conditions for non-application of the death penalty prescribed in Article 35 of the Penal Code." Finally, Article 259 provides: "Where the judgment-executing councils detect that the convicts meet the conditions prescribed in Article 35 of the Penal Code, they shall postpone the execution and report such to the presidents of the courts ... for reporting to the President of the Supreme People's Court for consideration and commutation of the death penalty to life imprisonment for the convicts."

Resolution No. 32/1999/QH10 of December 21, 1999 on the Enforcement of the Penal Code (Resolution on Penal Code) states: "(a) Capital punishment shall not apply when adjudicating persons who commit offenses for which the capital punishment is done away with by this Penal Code, to pregnant women, to women who are nursing their children of under 36 months old by the time of committing the offense or being adjudicated; (b) The capital punishment already handed down to person mentioned in Point a, this Section, but not yet executed, shall not be enforced and commuted to the highest penalties prescribed by this Penal Code for such offenses; when the new law provisions still retain the capital punishment, the capital punishment already handed down to pregnant women or women who are nursing their children of under 36 months shall be commuted to the life imprisonment."

Many see this as a form of protective legislation in favor of pregnant women and nursing mothers and subject to controversy. However, the beneficiary of this special treatment is not simply the mother, but more importantly the child. By ensuring the non-execution of the death penalty, the child can be born as well as benefit from breastfeeding.

In some comparative jurisdictions, the death penalty is simply suspended until after the pregnancy or nursing time. In this case, however, there is commutation to life imprisonment. With the policies now of encouraging men to participate in the care and rearing of their children, the fact that there are women who are non-nursing (either due to medical reasons or not), or the practice of women replacing breast milk with milk substitutes at a period earlier than 36 months, a continuous review of this legislation is needed.

Recommendation: A review of Article 35 of the Penal Code and Article 259 of the Criminal Procedure Code must be initiated regularly concerning the period of nursing that warrants the commutation of the death penalty. Viet Nam should also review the possibility of abolishing the death penalty as a whole.

Pregnancy as an extenuating and aggravating circumstance

In addition to being exempted from the death penalty, Article 46 of the Penal Code identifies pregnancy as a circumstance that extenuates penal liability. On the other hand, Article 48 of the Penal Code states that offences committed against pregnant women will aggravate penal liability.

Postponement, temporary suspension or exemption of imprisonment penalty

Articles 61 and 62 of the Penal Code provide that women who are pregnant or nursing their children aged under 36 months be entitled to a postponement or temporary suspension of their imprisonment penalty until their children reach the age of 36 months. Article 57 of the Penal Code also states that, in relation to the women who are entitled to the postponement or temporary suspension, if, during the postponement or suspension they have recorded 'great achievements', the court may decide to exempt them from serving their penalties (or the remainder of their penalties). This leniency is only applicable, however, when women are sentenced to imprisonment for less serious crimes.¹⁷⁴ These provisions are reaffirmed by Articles 261, 262 and 268 of the Criminal Procedure Code.

These provisions provide special consideration to women on account of their pregnancy and child nursing. It is also suggested that they also recognize the extra burden that women carry in terms of child-rearing, and they extend the coverage to those rearing children aged under 36 months. Although nursing can be done by women exclusively, child-rearing can be performed by both sexes. Appropriate checks, though, should be placed to monitor that child-rearing is being performed by the person convicted and sentenced.

Recommendation: The provisions of Articles 57(30, 61 and 62 of the Penal Code should be extended to persons rearing children aged up to 36 months. Appropriate monitoring procedures should be put in place to ensure that child-rearing is performed by the person who has been convicted and sentenced, but given a postponement or suspension.

Civil procedure

In relation to civil procedure, the procedures specific to women or that affect women disproportionately are:

Privacy and confidentiality

In Article 15 of the Civil Procedure Code, trials of public cases are carried out publicly, except in special cases where it is necessary to preserve the 'fine customs and practices' of Viet Nam or to keep State, professional, business or personal secrets.

Recommendation: In addition to Article 15 of the Civil Procedure Code, a clear provision on confidentiality and privacy must be drafted for cases where the publication of a party's identity will lead to danger to life or health and/or to stigmatization or trauma. The provision must require procedure-handling bodies to keep confidential, not only names, addresses and autographs, but also all information concerning the identity of the party concerned. In all cases, it should be mandatory for procedure-handling persons to inform denouncers and victims of their right to request for confidentiality and explain consequences relating to it.

¹⁷⁴ Ibid., Articles 57(3) and 57(4)

Confrontation

In civil cases, Article 88 of the Civil Procedure Code states that judges may conduct confrontations between the involved parties, among witnesses and between involved parties and witnesses. This can be done at the request of the parties or when contradictions exist in the testimonies.

Although confrontations are a means of resolving contradictions in evidence, it is important to ensure that one party to the confrontation is not subjected to violence, unduly influenced or coerced by the other party. Where one party had been subjected to violence, especially domestic violence, by the other party, alternatives to face-to-face confrontation may be explored to ensure a fair and impartial confrontation.

Recommendation: In cases of confrontation in civil cases under Article 88 of the Civil Procedure Code, due regard must be given to the condition of the parties/witnesses. Due diligence must be exercised to ascertain that no violence has been exercised by one party/witness on another, especially in cases of family members. Where there is a finding that one party/witness has been subjected to violence and/or is experiencing trauma or fear, alternatives to face-to-face confrontation must be considered. They include measures to separate the parties, such as putting them in different rooms or using screens to shield one party from another, as well as allowing the presence of other persons for support.

Provisional emergency measures

Article 99 of the Civil Procedure Code provides for the right to request for the application of 'provisional emergency measures' to deal with the urgent requests of the involved parties, to protect evidence and to ensure judgment execution. This can be done simultaneously with the filing of applications to initiate the lawsuits in court.¹⁷⁵ The courts can also, on their own motion, apply provisional emergency measures in Articles 102(1) and 102(5) of the Civil Procedure Code.¹⁷⁶ Decisions for provisional emergency measures must be given within 48 hours from receipt of the written request.¹⁷⁷

¹⁷⁵ Ibid., Article 99(2)

¹⁷⁶ Ibid., Article 102. Article 102 provides:

Article 102: Provisional emergency measures

- (1) Assigning minors to individuals or organizations to look after, nurture, take care of and educate them;
- (2) Forcing the prior performance of part of the alimony obligation;
- (3) Forcing the prior performance of part of the obligation to compensate for damage to individuals whose lives and/or health have been infringed upon;
- (4) Forcing the employers to advance wages, remunerations or compensations, allowances for labor accidents or occupational diseases incurred by employees;
- (5) Suspending the execution of decisions on dismissing employees;
- (6) Distraining [that is, seizing] the disputed properties;
- (7) Prohibiting the transfer of property right over the disputed properties;
- (8) Prohibiting the change of the current conditions of disputed properties;
- (9) Permitting the harvesting, sale of subsidiary food crops or other products, commodities;
- (10) Freezing accounts at banks or other credit institutions, State treasury; freezing properties at places of their deposit;
- (11) Freezing properties of the obligor;
- (12) Prohibiting involved parties from performing, or forcing them to perform certain acts;
- (13) Other provisional emergency measures provided for by law.

¹⁷⁷ Civil Procedure Code, Article 117

Recommendation: Provisional emergency measures are beneficial to women. However, it is suggested that ‘emergency protection measures’ be expressly included in the list of provisional emergency measures. These measures include: (a) prohibiting any forms of harassment of or contact with a party and/or family members; (b) removal or exclusion of one party from a particular vicinity, including the other party’s residence, or place of work or education; and (c) prohibiting one party from threatening or committing to use physical, emotional, psychological or sexual violence. It is also recommended that, where request is for emergency protection measures and there is extreme urgency so that delay in issuing the order will work to the extreme prejudice or harm of the requesting party, decisions be issued on the same day after ex parte determination, subject to the filing of a motion for its revocation by the other party.

Application of security measures

Article 120 of the Civil Procedure Code also provides that persons who request the courts to apply the provisional emergency measures in Articles 102(6), (7), (8), (10) and (11) of the code must deposit a sum of money, other valuable property or papers equivalent to the property obligation to be performed by the obligor. This provision presently may have a disproportionate impact on women, as women are less likely than men to have ownership, control or management of properties, including having their names singularly or jointly in LUCs. See Part V.12.3, Indicator 105.

Recommendation: In relation to Article 120 of the Civil Procedure Code, it is suggested that research be conducted on possible enabling conditions to be put in place to allow women to request for the application of the security measures in Articles 102(6), (7), (8), (10) and (11) of the Civil Procedure Code. See Part V.12.3, Indicator 105.

Law on Complaints and Denunciations

The Law on Complaints and Denunciations provides procedures for settlement of complaints and denunciations.

In relation to complaints, Article 30 of the Law on Complaints and Denunciations states that the complainants must first complain with persons/bodies who have issued the administrative decisions. Hence, complaint settlement agencies have competence to settle complaints about administrative decisions and acts of their own officials and employees at the first instance. The law provides that first-time complaint settlers must meet and talk directly with the complainants and the complained¹⁷⁸ to clarify the contents of the claims and propose solutions to settling the complaint.¹⁷⁹ This may also be done by second-time complaint settlers.¹⁸⁰ Complaint settlement decisions will contain the right to lodge the complaint or initiate an administrative lawsuit before the courts.¹⁸¹

In relation to denunciations, Article 60 of the law states that “denunciations of law-breaking acts which are related to the state management of any agencies shall be settled by such

¹⁷⁸ That is, the person who is the subject of the complaint

¹⁷⁹ Law on Complaints and Denunciations, Article 37

¹⁸⁰ Ibid., Article 45

¹⁸¹ Ibid., Articles 38(8) and 45(2)(i)

agencies. Denunciations of criminal acts shall be settled by agencies engaged in legal proceedings according to the criminal procedure legislations.”

The Law on Complaints and Denunciations also contains provisions on privacy and confidentiality. Article 57 of the law guarantees the right of denunciators to request the confidentiality of names, addresses and autographs, and Articles 16, 72 and 77 of the Law prohibit the disclosure of the names, addresses and autographs of denunciators. This is, however, not enough. It is suggested that, where the disclosure of the denunciator’s identity will lead to serious harm, stigmatization or trauma, confidentiality and non-disclosure must be applied to all identifying information.

Recommendation: In relation to the Law on Complaints and Denunciations, it is recommended that, in cases where serious harm, stigma or trauma will result in disclosure of the victim’s identity, all identifying information must be kept confidential. Articles 16, 57, 72 and 77 of the Law on Complaints and Denunciations must be amended in light of this. Private receiving places must also be provided for when receiving complaints and denunciations to ensure privacy and confidentiality.

Administrative procedure

In relation to administrative procedures, the following are some of the relevant provisions in the Ordinance on Administrative Violations on women or affecting women disproportionately.

Pregnancy as an extenuating circumstance

Article 8 of the Ordinance on Administrative Violations states that, where the violations are committed by pregnant women, pregnancy will be considered an extenuating circumstance.

Differential age of application of administrative handling measures

Women above the age of 55 years and men above the age of 60 years who have committed offences listed in Article 25(2) of the Ordinance on Administrative Violations¹⁸² are not subject to the administrative handling measure of sending to educational establishments; rather, the measure to be applied is education at communes, ward and district towns.¹⁸³

Recommendation: It is recommended that, in relation to Articles 23 and 25 of the Ordinance on Administrative Violations, the same age should apply to both men and women relating to whether they are subjected to sending to education establishments or to education at communes, wards and district towns.

Custody

Article 44 of the Ordinance on Administrative Violations provides for custody as a measure to prevent administrative violations and to ensure the handling of violations. The custody of peo-

¹⁸² Article 25(2) states that: “Subjects to whom the measure of sending to educational establishments shall apply are persons who have committed acts of infringing upon the properties of domestic or foreign organizations, the properties, health, honour and/or dignity of citizens or foreigners, breaking social order and safety regularly but not to the extent of being examined for penal liability, and who have been subject to the application of measure of education at communes, wards or district towns or not yet subject to the application of this measure but have no given residence places.”

¹⁸³ Ordinance on Administrative Violations, Articles 23 and 25

ple is applied to prevent or to stop immediately acts of causing public disturbance, causing injury to other persons or necessary to gather and/or verify important circumstances that serve as bases for deciding on the handling of administrative violations.¹⁸⁴

Recommendation: It is recommended that, in the case of pregnant women or those requiring special assistance (for example, suffering a serious illness), the period for custody as provided in Article 44 of the Ordinance on Administrative Violations must be shortened. Where possible, non-custodial measures should be preferred.

Body search

Body searches are conducted by men in the case of men and by women in the case of women and must be witnessed by persons of the same sex.¹⁸⁵

Postponement, exemption and temporary suspension of administrative handling measures

Women who are pregnant or nursing children up to 36 months of age are exempt from serving the decision of being sent to **reformatories**.¹⁸⁶ When persons serving such decisions become ill and they are sent back to their families for treatment, the service of the decision is temporarily suspended, but the medical treatment duration is counted as time served. If the remaining duration of time to be served is less than six months, women who are found to be pregnant are exempt from serving the remaining duration.

Women who are pregnant or nursing children up to 36 months of age can request postponement of serving the decision of being sent to **education establishments**.¹⁸⁷ When persons serving such decisions become ill and they are sent back to their families for treatment, the service of the decision is temporarily suspended, but the treatment duration is counted as time served. If the remaining duration of time to be served is less than three months for women who are found to be pregnant, the execution is temporarily suspended until their children are aged 36 months or, if they exhibit 'good record', they will be exempt from serving the remaining duration.

Women who are pregnant or nursing children up to 36 months of age may postpone the execution of the decision of sending to medical treatment establishments.¹⁸⁸ When persons serving such decisions become ill and they are sent back to their families for treatment, the service of the decision is temporarily suspended, but the treatment duration is counted as time served. If the remaining duration is less than three months, the execution is temporarily suspended, for women who have children aged less than 36 months, until their children are aged 36 months or, if they exhibit good record, they will be exempt from serving the remaining duration.

¹⁸⁴ Ibid., Article 44(1)

¹⁸⁵ Ibid., Article 47(4)

¹⁸⁶ Ibid., Articles 80-81

¹⁸⁷ Ibid., Articles 89-90

¹⁸⁸ Ibid., Articles 98-99

As earlier mentioned there are new developments that need to be taken into account and may warrant a regular review of these provisions, such as policies now encouraging men to participate in the care and rearing of their children, women who are non-nursing (either due to medical reasons or not), and the percentage of women replacing breast milk with milk substitutes at a period earlier than 36 months, a continuous review of this legislation is needed.

Recommendation: A review of the provisions of Articles 80, 81, 89, 90, 98 and 99 of the Ordinance on Administrative Violations must be initiated regularly in relation to the period of nursing that warrants exemption, temporary suspension and postponement of the execution of the decisions on administrative handling measures.

Indicator 11 Is there a guarantee of legal aid for cases of gender discrimination?
Is there a guarantee of legal aid for women?

Legal aid is guaranteed under Article 132 of the Constitution, which provides that an organization of barristers will be set up to help the defendant and other parties in a case to defend their rights and interests.

Article 10 of the *Law on Legal Aid (No. 69/2006/QH11 of June 29, 2006)* (Law on Legal Aid) provides a list of legal aid beneficiaries. Women are not explicitly included in the list of legal aid beneficiaries: (a) poor people; (b) people with meritorious services to the revolution; (c) lonely elderly people, disabled people and helpless children, and (d) ethnic minority people permanently residing in areas with exceptionally difficult socio-economic conditions. This is supplemented by Article 2 of the *Decree No. 07/2007/Nd-Cp Of January 12, 2007, Detailing And Guiding The Implementation Of A Number Of Articles Of The Law On Legal Aid (Decree on Legal Aid Law)*.

However, there are several legal aid offices providing services for women, such as the five legal aid offices under the National Legal Aid Agency of the Ministry of Justice (MOJ) and a legal counselling office under the Viet Nam Women's Union.¹⁸⁹ The latter was a result of a cooperation agreement on legal information and education and legal aid for women between MOJ and Viet Nam Women's Union. From 2000 to 2002, ethnic minorities and women accounted for 23.0 percent and 42.9 percent of the beneficiaries of legal assistance respectively.¹⁹⁰

The Law on Legal Aid and its decree do not explicitly state that legal aid is available for cases of discrimination. In fact, they do not provide for any preferred or priority area of attention. Article 5 of the Law on Legal Aid only states: "Legal aid cases must be related to legitimate rights and interest of legal aid beneficiaries and must not fall into business or commercial domains." The Decree on Legal Aid Law provides for domains of legal aid, and has a comprehensive listing of laws including: (a) penal and criminal laws; (b) civil laws; (c) Family and Marriage Law; (d) Ordinance on Administrative Violations and Law on Complaints and Denunciations; (e) *Law on Land (No. 13-2003-QH11 of November 26, 2003)* (Land Law); (f) laws on labour and insurance; (g) laws on preferential treatment or social preferences; (h) laws related to national target programs on hunger eradication, poverty alleviation or directly relat-

¹⁸⁹ Combined Fifth and Sixth Periodic Report, p. 7

¹⁹⁰ Ibid.

ed to fundamental rights and obligations of citizens.¹⁹¹ Decree No. 70/2001/Nd-CP Of October 3, 2001 Detailing The Implementation Of The Marriage And Family Law (Decree on Marriage and Family Law) also provides for free counselling on marriage and family by agencies and organizations to their members and by State-run legal assistance centres.¹⁹²

Recommendation: *In relation to the beneficiaries of legal aid in Article 10 of the Law on Legal Aid, it is suggested that, in assessing the application for legal aid, persons, especially women, who have no means of substantial income (even if the average family income is above the poverty line), be considered poor and eligible for legal aid in relation to cases where no family support can be expected or family support is difficult to attain, such as in cases of domestic violence or marital disputes.*

It is also suggested that the Law on Legal Aid, its decree or other legal documents identify discrimination cases explicitly as a priority area for legal aid work. In this regard, cases involving gender-based discrimination and GBV, especially domestic violence and trafficking in women and children, will, therefore, be considered among its priority cases. Consequently, in case of conflict of interest that may arise where persons applying for legal aid are opposing parties, priority should be given to the person alleging gender-based discrimination and/or GBV.

Further, it is recommended that appropriate guidelines for interviewing applicants/clients, legal aid counselling, participation in legal proceedings and representation beyond legal proceedings be drafted, with gender-sensitive provisions incorporated in them, including: (a) provision of same-sex interviewers or legal aid providers when requested and available, especially in the case of GBV; (b) when listening, the person performing legal aid must look for possible signs of confusion, shock, trauma, other emotional or psychological manifestations, or violence; (c) where GBV and trauma are evident in the client-victim, alternatives to face-to-face negotiation or conferences with the accused must be considered.; and (d) the person performing legal aid must address life-threatening aspects of GBV and immediately consider options with the client's participation on how to minimize risks.

The Law on Legal Aid provides general procedures for the provision of legal aid services. For example, it provides for legal aid counselling, participation in legal proceedings, representation beyond legal proceedings, and other legal aid services. The Law on Legal Aid does not, however, have specific provisions for provisional acceptance of cases for immediate assistance, especially in situations where there is imminent danger to the life or health of the applicant, pending verification of documents for eligibility. On this note, women victims of GBV, including those suffering from domestic violence, would benefit if there were procedures for a provisional acceptance of the case.

Recommendation: *It is recommended that persons performing legal aid must accept cases provisionally, pending verification of the documents for eligibility, if they involve GBV where there is an immediate need for legal intervention or where there is danger of imminent violence to the applicant.*

¹⁹¹ Decree on Legal Aid, Article 34

¹⁹² Decree on Marriage and Family Law, Article 2

There are legal provisions to widen access of the poor to legal support. Article 8 of the Law on Lawyers, No. 65/2006/QH 11 of 29 June 2006 (Law on Lawyers) and Article 10(2) of the decree guiding its implementation¹⁹³ provide that lawyers' offices, law firms and individually practicing lawyers be encouraged to give *pro bono* legal aid or to exempt or reduce fees for the poor and policy beneficiaries. Further, legal consultancy centres provide free legal consultancy to the poor and policy beneficiaries who enjoy free legal assistance pursuant to the Law on Legal Aid.¹⁹⁴

Indicator 12 Is conciliation, mediation, negotiation or other forms of dispute resolution required by law to settle disputes?

Article 3 of the Law on Complaints and Denunciations provides: "The State encourages the conciliation of disputes among population before they are settled by competent agencies, organizations and/or individuals in order to restrain complaints arising from the grassroots." Even once complaints are instituted, the procedure for complaint settlement appears to favor a conciliatory approach, where dialogue is done and solutions are proposed.¹⁹⁵ It is also of importance to note that Article 2(16) of the Law on Complaints and Denunciations clearly defines legally effective complaint settlement decisions as "first-time complaint settlement decisions and second-time complaint settlement decisions about which the complainants do not further appeal or initiate an administrative lawsuit before the court within the time prescribed by law."

The Civil Procedure Code also contains explicit provisions on conciliation. Article 180 of the code provides that the courts must, during the period of preparation for the first-instance trial of cases, carry out conciliations for the involved parties to reach an agreement for the resolution of cases. It explicitly states that conciliation must be carried out with "[r]espect for the voluntary agreement of the involved parties, non-use of force or non-threat to use force to compel the involved parties to reach agreements against their will." The article further provides that contents of agreements as a result of conciliation must not contravene law and social ethics. When conducting conciliations, the judges must brief the involved parties on relevant provisions of law relating to their rights and obligations, as well as legal consequences of successful conciliation, to assist the parties in voluntarily reaching agreements for the resolution of the cases.¹⁹⁶

Under Article 181 and 182 of the Civil Procedure Code, claims for compensation for damage caused to State assets, and civil cases arising from transactions that are contrary to law or social ethics, must not be conciliated. Further, cases where the defendants are intentionally absent though having been duly summoned twice by courts, the involved parties cannot take part in the conciliation for plausible reasons, or the involved parties being wives or husbands in divorce cases who have lost their civil act capacity, cannot be conciliated.¹⁹⁷

¹⁹³ Decree No. 28/2007/ND-CP of February 26, 2007, Detailing and Guiding the Implementation of a Number of Articles of the Law on Lawyers

¹⁹⁴ Decree 65/2003/ND-CP of June 11, 2003 on Legal Consultancy Organization and Activities, Article 9

¹⁹⁵ Law on Complaints and Denunciations, Articles 37 and 39

¹⁹⁶ Civil Procedure Code, Article 185

¹⁹⁷ Ibid., Article 182

Several days after making the records on successful conciliation, the judge who presides over the conciliation session, if no parties change their opinions, will issue a decision recognizing the agreement of the involved parties.¹⁹⁸ Such agreement will be valid only for the persons present in the conciliation, unless it is accepted in writing by the parties that are absent from the conciliation session.¹⁹⁹

Provisions exist also in Article 40 of the Decree on Legal Aid, which provides:

Article 40: Reconciliation in legal aid

- (1) As requested or agreed by one or several parties, the legal aid-providing organization shall appoint a legal aid-providing person to act as an intermediary to analyze details of the case, explain legal provisions and guide the involved parties to negotiate and agree on the method of settling the case without bringing the case to the court or competent agency, to voluntarily withdraw their petitions, settle disputes by themselves and abide by the results of settlement of the case.
- (2) Reconciliation is also conducted when it is necessary to preserve community solidarity, maintain social order and safety, and protect legitimate rights and interests of involved parties, except for cases where reconciliation is not permitted by law.
- (3) Reconciliation must be recorded in writing. A written reconciliation record must clearly state the result of the reconciliation process, opinions of the legal aid-providing person and involved parties on the case and signatures of the parties to indicate that they will voluntarily implement the reconciliation result. Written reconciliation records shall be kept in the dossiers of legal aid cases.

Recommendation: In cases of conciliation, mediation, reconciliation or other alternative dispute resolution (ADR), it should be mandatory for a procedure-handling person to ascertain the voluntariness of the party to undergo such procedure. The procedure-handling person must also determine whether there is GBV exerted by one party against the other, the extent of such violence and its influence on the decision to enter into conciliation and other (ADR) as well as to affect the outcome of the proceedings. These suggestions must be explicit in legal documents to ensure its obligatory nature.

The application of reconciliation, conciliation and other forms of (ADR) must not be allowed where parties do not have equal power relations, or one of the parties has been abused or subjected to violence as to render her unable to make her own independent choices, except for very pressing reasons and with appropriate safeguards; for example, non-face-to-face and separate meetings, measures to assure the safety of victims, etc. See Part V.1.3.6, Indicator 22(e).

Any form of complaint or denunciation handling, whether through the court or (ADR), including conciliation or reconciliation, should be considered legally effective or successful if the complaint or denunciation does not lead to an appeal or a lawsuit.

¹⁹⁸ Ibid., Article 187(1)

¹⁹⁹ Ibid., Article 187(3)

Added criteria relating to protection of rights of the parties, rights and law-based decisions, and provision of more appropriate remedies, even if it does not result in settlement, must be considered as basis of good efforts at conciliation. Otherwise, there is a tendency to overlook rights over settling proceedings quickly.

In relation to labour disputes, the Labour Code states that a labour dispute will be resolved on the basis of the following principles: (a) direct negotiation and conciliation between the disputing parties; (b) conciliation and arbitration on the basis of mutual respect of rights and benefits, general social benefits, and compliance with the law; (c) publicly, objectively, and in a timely manner; (d) the trade union organization of the enterprise and the representative of the employer must participate in the resolution process of the labour dispute.²⁰⁰ To resolve individual labour disputes the following have competence: (a) the labour conciliatory council of an enterprise, (b) a labour conciliator of the body in charge of State administration of labour of the town, district or provincial city in cases where there is no labour conciliatory council; and (c) the people's court.²⁰¹ Article 166 of the Labour Code provides for the disputes that may go directly to the court without undergoing conciliation first.

A labour conciliatory council of an enterprise shall be established in enterprises that have a trade union or a provisional executive committee of trade union, and consist of an equal number of representatives of the employees and the employer.²⁰² The number of members in the council shall be agreed by the enterprise and trade union.

Recommendation: In relation to the labour conciliatory council, the proportion of women members must not be less than 30 percent in enterprises that have at least 30 percent women employees. Where the proportion is less than 30 percent, the number of women members must reflect the proportion of women in the enterprise, but under no circumstances should be less than one member.

Indicator 13 Is protection against gender discrimination extended to foreigners?

The protection against gender discrimination in Vietnamese legal documents is extended to foreigners. Article 81 of the Constitution provides: "Foreigners residing in Viet Nam ... shall receive protection with regard to their lives, possession and legitimate interests in accordance with the provision of Vietnamese laws." The Penal Code makes no distinction as to the nationality of the victim of the crime, and it points out that it applies to all acts of criminal offences committed in the territory of Viet Nam.²⁰³ In relation to civil matters, the provisions of civil law apply to civil relations involving foreign elements, unless there is a treaty to the contrary.²⁰⁴ This includes matters relating to marriage and family, labour, and property rights.

V.1.3.4 Institutions and Mechanisms for Implementation and Monitoring²⁰⁵

²⁰⁰ Labour Code, Article 158

²⁰¹ Ibid., Article 162

²⁰² Ibid., Article 163

²⁰³ Penal Code, Article 5.

²⁰⁴ Civil Code, Article 759

²⁰⁵ The Decree on Gender Equality, Decree on MOLISA and the Decision on NCFW were adopted on June 4, 2008, December 26, 2007 and August 22, 2008 respectively and not included in this review. The review, although based on the context prior to the passage of the said legal documents, is still relevant in monitoring whether the recommendations provided were addressed in the new legal documents.

Indicator 14 Is there a specific agency responsible to coordinate measures to achieve gender equality or women's human rights? Is the agency provided with appropriate mandate, powers and resources to be able to promote gender equality and protect women's human rights?

With the adoption of the Law on Gender Equality, a specific state management agency is to be designated. The law states that:

Article 9: State management agency on gender equality

- (1) The government shall have function of unified state management on gender equality.
- (2) The ministry or the ministerial-level agency assigned by the Government shall be responsible before the Government in implementing the state management on gender equality.
- (3) Ministries, ministerial-level agencies, within their mandate, shall have responsibility to coordinate with the state management agencies specified in section 2 of this Article to exercise state management on gender equality.
- (4) People's Committees at all levels exercise the state management on gender equality within their localities as devolved by the Government.

Article 8: Contents of state management on gender equality

- (1) To formulate and implement national strategies, policies and targets on gender equality.
- (2) To promulgate and implement legal normative documents on gender equality.
- (3) To promulgate and implement measure aimed at promoting gender equality.
- (4) To propagate, disseminate policies and law on gender equality.
- (5) To build, train and foster the cadres working on gender equality.
- (6) To inspect, examine the implementation of the law on gender equality; to deal with complaints, denunciations and to handle violations against the law on gender equality.
- (7) To carry out statistical work, provision of information and report on gender equality.
- (8) To conduct international cooperation on gender equality.

Article 26: Responsibility of state management agency of gender equality

- (1) To develop and submit to the Government on the promulgation of national strategy, policies, and target program on gender equality.
- (2) To develop and submit to the Government on the promulgation or to promulgate or to give guidelines on develop legal normative documents on gender equality within its competence.
- (3) To participate in assessing the incorporation of gender equality issue into development of legal normative documents.
- (4) To synthesize and report to the Government on the implementation of the national target on gender equality.

- (5) To play the key role in coordinating with the ministries, ministerial-level agencies in exercising state management function on gender equality.
- (6) To examine, inspect and handle violations, complaints and denunciation against violation of gender equality.

Article 35: To inspect the implementation of law on gender equality

- (1) The state management agency on gender equality exercises the specialized inspection function on gender equality.
- (2) Duties and authority of the inspection function on gender equality include:
 - (a) To inspect the implementation of law on gender equality;
 - (b) To inspect the implementation of the national target program of gender equality, and measures to ensure gender equality;
 - (c) To function tasks of handling with complaints and denunciation on gender equality in accordance with this law and the law on complaint and denunciation;
 - (d) To handle with violations of law on gender equality under the provisions of the law on handling with administrative violations;
 - (e) To recommend measures to ensure implementation of the law on gender equality, and recommend adjustment, supplementations of laws and policies on gender equality;
 - (f) To function other tasks as stipulated by laws.

After the passage of the law, Directive on Gender Equality Law was issued mandating the development of a decree to provide details to the Law on Gender Equality, including assigning an agency in charge of State management of gender equality. After the finalization of this review, *Decree No. 186/2007/ND-CP of December 25, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Labour, Invalids and Social Affairs (Decree on MOLISA)* and *Decree No. 70/2008/ND-CP of June 4, 2008 Detailing the Implementation of a Number of Articles of the Law on Gender Equality (Decree on Gender Equality)* identified MOLISA as the state management agency responsible for the implementation of gender equality.

In relation to resources, Article 24 of the Law on Gender Equality provides that financial resources for gender equality activities include: (a) State budget, (b) voluntary contribution of organizations and individuals; and (c) other sources of legal incomes.

Recommendation: It is suggested that other responsibilities be provided to the state management agency, such as: (a) monitor compliance with international treaties and commitments; (b) provide advise or technical assistance on gender equality matters to the Government; (c) arrange for provision of support services for victims of gender discrimination; (d) assist and monitor gender mainstreaming in ministries and State agencies and organizations, including budgetary allocations for gender equality; (e) work with NGOs, national and international, in the field of gender equality, and (f) lead and coordinate initiatives on information, education and communication on gender equality.

With the passage of the Law on Gender Equality and the assignment of MOLISA as the state management agency, the status and role of National Committee for the Advancement of Women (NCAFW) must be clarified. *The Prime Minister's Decision 92/2001/QĐ-TTĐ of June 11, 2001 on Consolidating the National Committee for the Advancement of Vietnamese Women* (Decision on NCAFW) sets out four tasks for NCAFW: (a) assisting the Prime Minister in making laws and policies on women, cooperating with relevant agencies in supervising and promoting the implementation of legislation and policies on women; (b) working with relevant agencies to carry out communication and educational activities regarding the implementation of legislation and policies on women and CEDAW; (c) preparing national reports on the implementation of CEDAW; and (d) coordinating international cooperation activities on gender equality and women's advancement. NCAFW is an inter-ministerial committee composed of 18 leaders from different ministries and mass organizations that function through a secretariat. It has established a network of Committees for the Advancement of Women (CAFW) in all ministries/agencies and in all 63 provinces of Viet Nam, which theoretically function as gender focal points in their ministries/agencies and/or provinces but in practice, although there are some successes - such as gender mainstreaming in Ministry of Agriculture and Rural Development (MARD) - there is lack of consistency in achieving good results.²⁰⁶

The tasks allocated to NCAFW are more appropriate in a state management agency. However, the inter-ministerial nature of the committee is one of its strengths as it provides a mechanism for inter-ministerial coordination. After the finalization of this review, *Decision No. 114/2008/QĐ-TTĐ of August 22, 2008 on Strengthening the NCAFW* (Decision on NCAFW) was adopted.

Recommendation: It is recommended that an inter-ministerial mechanism on gender equality or a revised NCAFW be retained for the purpose of coordinating work on gender equality among ministries/agencies. This mechanism must be under the leadership of the state management agency on gender equality.

Indicator 15 Are there legal documents that clearly establish responsibilities of various State agencies (whether legislative, executive, judicial or administrative) to incorporate gender equality in their operations?

The Law on Gender Equality provides for the responsibilities of ministries, State agencies and organizations in the following articles:

Article 25: Responsibility of the Government

- (1) To promulgate national strategies, policies and targets on gender equality and to annually report to the National Assembly on the implementation of national targets on gender equality.
- (2) To submit to the National Assembly, the Standing Committee for the promulgation or to promulgate legal normative documents on gender equality within the extent of its competence.

²⁰⁶ Wells, op. cit., p. 60: Reasons for this inconsistency include: (a) strategic coordination between NCAFW and CAFWs is generally weak; (b) members of CAFWs are also responsible for other activities and do not always prioritize CAFW activities; (c) there is no clear objective, work plan and allowances for this extra-duty; and (d) there is need to build gender expertise to enable technical advice to be provided to other ministries.

- (3) To direct and conduct the incorporation of gender equality in the development of legal normative documents within its competence.
- (4) To implement the laws on gender equality; to direct and to conduct the inspection and examination of observance of laws on gender equality.
- (5) To publicize national information on gender equality; to regulate and direct to implement the criteria for gender classification in the state statistical data.
- (6) To coordinate with the Viet Nam Fatherland Front and the Viet Nam's Women Union; and to direct relevant agencies in propagandizing, disseminating and educating the laws and in raising the awareness of gender equality for the entire people.

Article 27: Responsibility of the ministries, ministerial-level agencies

Within the scope of their duties and authorities, ministries and ministerial-level agencies have the following responsibilities:

- (1) To check current legal normative documents to amend, supplement, annul or promulgate within their competence or to submit to the competent agencies on amendment, supplement, annulment and promulgation of legal normative documents to ensure gender equality in their field;
- (2) To carry out researches and recommend the competent state agencies to promulgate measures to promote gender equality;
- (3) To coordinate with state management agencies on gender equality to assess the situation of gender equality in their field; to inspect, examine and handle violations against the law on gender equality.

Article 28: Responsibility of the People's Committee at all levels

- (1) To develop plan to implement the national target on gender equality at the locality.
- (2) To submit to the people's councils to promulgate or promulgate the legal normative documents on gender equality within its competence.
- (3) To implement law on gender equality at the locality.
- (4) To inspect, examine and handle with violations against the law on gender equality within its competence.
- (5) To organize and conduct the propaganda and education on gender and law on gender equality for the local people.

Article 31: Responsibility of state agencies, political organizations, socio-political organizations in implementation of gender equality within their own agencies and organizations

- (1) In the task of organization and personnel, state agencies, political organizations, socio-political organizations have the responsibility:
 - (a) To ensure that male and female officials, civil servant and public employees are equal in employment, training, promotion, appointment and enjoyment of welfare;
 - (b) To ensure that officials, civil servant and public employees shall be assessed basing on the principle of gender equality;

- (2) In their operation, state agencies, political organizations, socio-political organizations have the responsibility:
- (a) To identify the real situation of gender equality; to develop and ensure the implementation of gender equality targets within their agencies, organizations and to annually report;
 - (b) To ensure the participation of male and female officials, civil servant and public employees in law development and implementation, in programs, plans and projects on development of economy, culture and society, unless otherwise provided by law.
 - (c) To educate about gender and law on gender equality for officials, civil servants and public employees under their management;
 - (d) To establish measures to encourage officials, civil servant and public employees to exercise gender equality within agencies, organizations and families;
 - (e) To facilitate the development of social welfare establishments, housework relief services.

The Directive on Gender Equality Law provides some initial instructions to particular ministries and agencies.

Recommendations: A list of all ministries, agencies and State organizations and each of their specific responsibilities relating to gender equality must be contained in a decree. This will assist implementation of the provisions of Articles 27 and 31 of the Law on Gender Equality as it will have specific tasks named making accountability of ministries and agencies clear in cases of non-performance.

Indicator 16 Are there legal documents that require systematic collection and analysis of sex-disaggregated data, monitoring impact of interventions as well as trends or progress in relation to gender equality?

One of the contents of State management listed in Article 8 of the Law on Gender Equality is to carry out statistical work, provision of information and report on gender equality. There are also provisions in the Law on Gender Equality that require the monitoring of impact, trends, progress and results for the interventions to be effective, such as Article 31(2) (a) relating to reporting. However, there is no specific mention on how to determine the real situation of women (for example, procedures or mechanisms) nor is there any provision on the content of the reports.

The *Statistics Law (No. 04/2003/QH11 of June 17, 2003)* (Statistics Law) and *Decree No. 40/ 2004/ND-CP of February 13, 2004 Detailing and Guiding the Implementation of a Number of Articles of the Statistics Law* (Decree on Statistics Law) provide for statistical activities, use of statistical information, system of indices, classification lists, statistical reporting, and statistical surveys. However, neither legal document contains provisions on sex-disaggregated data or on gender analysis.

There is available information that is disaggregated by sex.²⁰⁷ However, it is limited - and,

²⁰⁷ See, for example, GSO, NCFW, UNDP and RNE, 'Viet Nam Gender Statistics in the Early Years of 21st Century', Women's Publishing House, Ha Noi, 2005 (GSO Statistics)

in many cases, no sufficient gender analysis is provided. Hence, although disparity can be seen between the sexes, there is limited information or analysis on the causes or reasons for such disparity. Sex-disaggregated data and gender analysis will enable measurement of the impact of legislation or interventions, which is critical for monitoring performance of obligations under CEDAW.

There are several national strategies/plans that can assist in tracking progress. In relation to gender equality, the 'National Strategy for the Advancement Women' and 'Plan of Action for the Advancement of Women in Viet Nam by 2005. (No. 26/2002/KH-UBOG of March 18, 2002)' (Plan of Action for the Advancement of Women) are the key policy documents.

The overall objective of 'National Strategy for the Advancement Women' is to improve the quality of women's material and spiritual life, as well as establish the conditions necessary for women to experience their fundamental rights and to fully and equally participate in and benefit from all aspects of political, economic, cultural and social life. It contains 5 specific objectives with 20 specific targets in the following priority areas: (a) employment; (b) education; (c) health; (d) participation and leadership; and (e) strengthening the machinery for the advancement of women. The National Strategy for the Advancement of Vietnamese Women till 2010 (Decision No. 19/2002/QĐ-TTĐ of February 21, 2002) (National Strategy for the Advancement of Women) is a sectoral strategy under the Government's primary planning documents, the SEDS and SEDP. Each of the 64 provinces also develops their own plan of action for the advancement of women and socio-economic development plan reflecting local circumstances.²⁰⁸

The National Strategy for the Advancement of Women and 'Plan of Action for the Advancement of Women' provide direction as well as monitoring mechanisms within which progress can be measured. However, the 'Plan of Action for the Advancement of Women' is limited as a monitoring tool. It is limited to only the five objectives or areas of concern: labor and employment, education, health care, leadership and participation, and machinery for the advancement of women. It is more quantitatively oriented. It does not measure comprehensively impact on women of interventions. It also does not focus enough on emerging issues and challenges. Hence, there is a need for a more appropriate monitoring system on gender equality.

Other strategies and plans, in particular the SEDP and Comprehensive Poverty Reduction and Growth Strategy (Document No. 2685/VPCP-QHQT of May 21, 2002) (CPRGS) also work as monitoring tools on gender equality, to a certain extent. See Indicator 17.

Recommendation: It is recommended that clearly defined guidelines for incorporation of gender in systematic data collection and analysis, including sex-disaggregated data, gender indicators and gender analysis, be provided to cover the work of GSO, other statistics offices, appropriate State agencies and ministries in their data collection and analysis work.

²⁰⁸ Wells, op. cit., p. 62

It is also recommended that a gender equality monitoring mechanism be put in place that looks into monitoring and evaluating progress in the areas designated in CEDAW and the Law on Gender Equality (including politics, economy, labour, education and training, science and technology, culture, information, sport, public health, and family), in particular the impact of legislation and interventions. It should also generate more data on women in disadvantaged groups; for example, women with disabilities, women living with HIV/AIDS, women caring for people living with HIV/AIDS, poor women, women in the informal economy, rural women, and women in remote and mountainous regions. It should specify clearly what will be monitored, evaluated and reported on, as well as the coordination/cooperation system necessary to have a comprehensive understanding of impact, results, trends and progress. Benchmarks and indicators must be improved on all aspects of gender equality to enable better measurement of progress. Indicators must also be improved to reflect emerging issues and trends. This mechanism can input into assessment/review of the National Strategy for the Advancement of Women, 'Plan of Action for the Advancement of Women' and CEDAW State Party Reports, as well as monitoring the implementation of the Law on Gender Equality pursuant to Article 36 of this law.

Indicator 17 Does legislation require that strategies and plans be put in place to ensure promotion and protection of gender equality?

The Law on Gender Equality provides that the state management agency will formulate and implement national strategies, policies and goals on gender equality.²⁰⁹ This is also one of the contents of State management and responsibility of the state management agency. The 'National Strategy for Advancement of Women' and 'Plan of Action for Advancement of Women', the key policy documents relating to gender equality and women's rights, were formulated by NCFW as part of the tasks assigned to it. See Indicator 16.

Other strategies and plans are also in place, which focus to a certain extent on protection and promotion of gender equality, such as the CPRGS, SEDS and SEDP. The basis for socio-economic strategies and plans can be found in the Constitution.²¹⁰ In contrast to the SEDS, which does not give prominence to gender issues, the SEDP contains explicit mention of gender equality.²¹¹ Gender equality is one of the eight main tasks under the SEDP. In the list of main targets to be achieved, two targets explicitly relate to women: (a) create 8.0 million jobs for labourers (1.6 million annually), 50 percent of whom are women; and (2) reduce maternal mortality to fewer than 60 per 100,000 live births.²¹²

The SEDP contains a section on the development orientation of all sectors and fields in the five years from 2006 to 2010. One section of 21 sectors is the implementation of gender equality, empowerment of women and children's rights protection. It contains a long list of measures to achieve gender equality and protect children, which are based on the CPRGS.

²⁰⁹ Law on Gender Equality, Articles 8 and 26

²¹⁰ See Constitution, Articles 84(3), 120 and 122(4)

²¹¹ Wells, op. cit., p. 65

²¹² Ibid.

In a matrix on 'Major Policies and Measures to Achieve the Goals and Target of the SEDP 2006-2010', the policies/actions relating to gender equality identified are: (a) implement the 'National Strategy for Advancement of Women'; (b) improve awareness of gender issues; (c) complete policies and regulations for female labourers, implement training and training for female officials; (c) implement CEDAW; (d) implement measures to ensure women's equitable access to health care, education, employment, etc.; (e) focus on investment in family-serving technologies; (f) encourage women's participation in social and economic activities. The following expected results are listed: (a) better access to educational and health-care services; (b) jobs provided to women account for 50 percent of total employment created; (c) eradicate illiteracy for all women aged under 40 years; (d) women enjoy equality in health care, culture, society and employment; (e) increase by 3-5 percent the number of women working in administrative agencies, People's Councils at all levels, the National Assembly, and elected bodies at all levels.

The CPRGS is an action plan for realizing economic growth and poverty reduction objectives and is closely linked to the SEDS. It reflects three broad objectives: (a) completing the transition to a market economy; (b) enhancing equitable, socially inclusive and sustainable development; and (c) adopting a modern public administration, legal and governance system. One of the major policies and measures to ensure sustainable growth and poverty reduction under the CPRGS is to narrow the social development gap, including through realizing gender equity and the advancement of women. The CPRGS has identified targets on gender equality.²¹³ It has also close to 30 measures to implement gender equality, including land titling, training, overcoming gender stereotypes in textbooks, reproductive health care and family planning.

The CPRGS also incorporates the Viet Nam Development Goals (VDGs), which specify the following goals: (a) reduce gender imbalance at primary and secondary education levels in areas with large ethnic minority groups; (b) increase the number of women in elective bodies at all levels; (c) increase the participation of women in agencies and sectors at all levels by an additional 3-5 percent in the next 10 years; (d) execute regulations on requiring that the names of both husband and wife appear on all LUCs by 2005; (e) reduce the vulnerability of women to domestic violence; (f) reduce maternal mortality by 60 per 100,000 live births, paying special attention to difficult areas; and (g) improve mother's postpartum health.

²¹³ The CPRGS targets on gender equality, empowering women and ensuring children's rights include:

- Improve the quality of women's spiritual and material lives; improve the professional skills for women. Create conditions for women to participate in and benefit fully and equally from all aspects of life: political, economic, cultural and social. Increase the participation of women in agencies, sectors and enterprises at all levels by more than 3-5 percent in the next 10 years.
- Ensure the rights of women to benefit from household assets by allowing them to register as co-owner of assets; ensure that the names of both husband and wife appear on LUCs before 2005.
- Encourage families to build cultured families based on enhancing the role of women as a master in the family; adopt necessary measures to help women alleviate their burden in domestic work (preparation of food/meals for families, transport, child care, etc.). Reduce domestic violence towards women and female children at family and society levels.
- Create favourable conditions for the implementation of policies on child care and protection, enforcement of children's rights to ensure that children are able to live in a safe and healthy environment, to develop harmoniously in terms of physical strength, intellect and ethics, and that orphans and disabled children who live under difficult situation are provided with opportunities for study and entertainment.

A gender analysis of the CPRGS concluded that important gender issues are incorporated in it, especially in the areas of agriculture and rural development, education and health care.²¹⁴ The policies and measures in these areas meet, to some extent, the immediate needs of poor women. Nonetheless, the CPRGS has not integrated gender issues in the discussions of the reform of State-owned enterprises, culture and information, financial policies, legal support, public administration reform, environmental protection, or resource allocation for economic growth and poverty reduction.²¹⁵

Indicator 18 Are there agencies, whether State or independent, that supervise State compliance with gender equality and/or CEDAW?

Article 36 of the Law on Gender Equality provides:

Article 36: Monitoring the implementation of law on gender equality

- (1) The National Assembly, National Assembly's Standing Committee, Council of Ethnic Minorities, the Committees of the National Assembly, Provincial National Assembly delegations and National Assembly members, within their extent of duties and powers, have the responsibility to oversee the implementation of law on gender equality.
- (2) People's Councils and its members, within their extent of duties and powers, have the responsibility to oversee the implementation of law on gender equality at local levels.

The Law on Gender Equality also provides that one of the responsibilities of the Viet Nam Fatherland Front and its members is to participate in the overseeing of the implementation of the Law on Gender Equality.²¹⁶ The Viet Nam Women's Union, one of the member organizations of the Viet Nam Fatherland Front, is closely involved with gender equality.

Recommendation: *In connection to the monitoring function of the National Assembly, the mechanism for this must be clearly stated in a decree implementing the Law on Gender Equality rather than simply a reference to the National Assembly's duties and powers; for example, that the monitoring function is subject to National Assembly's supervisory powers, including making a clear reference in it to the Law on Supervisory Activities of the National Assembly (No. 05/2003/QH11 of June 17, 2003) (Law on National Assembly Activities). Special provisions should be stipulated on procedures for communicating its recommendation to appropriate agencies and monitoring compliance of the recommendations.*

V.1.3.5. Incorporation and Application of Treaties

Indicator 19 What is the status of CEDAW in the domestic legal framework?

Indicator 20 Can CEDAW's provisions be invoked directly in judicial or quasi-judicial proceedings as a source of an actionable right?

Indicator 21 In case of conflict between CEDAW and domestic legal documents, which will prevail?

²¹⁴ Wells, op. cit., p. 64

²¹⁵ Ibid., p. 65

²¹⁶ Law on Gender Equality, Article 29

Both Article 3 of the Law on Gender Equality and Article 6 of the *Law on Conclusion, Accession to and Implementation of Treaties* (No. 41/2005/QH11 June 14, 2005) (Law on Treaties) state that in cases where a legal document and a treaty to which Viet Nam is a party²¹⁷ contain different provisions on the same matter, the provisions of the treaty prevail. Hence, based on this, CEDAW provisions will prevail over domestic legal documents in cases of conflict. They provide that, in the promulgation of legal documents, it must be ensured that the legal documents do not obstruct the implementation of treaties to which Viet Nam is a State Party. However, there are no provisions in Vietnamese law relating to claiming rights guaranteed in a treaty directly in judicial or quasi-judicial proceedings. There are also no clear provisions stating that treaties are or are not directly executable in Viet Nam unless a legal document is in place.

After conclusion or accession to a treaty, the recommending agency must submit a plan for implementation of the treaty that contains recommendations on amendment, supplementation, cancellation or promulgation of legal documents for the implementation of the treaty.²¹⁸ Once the plan is approved, the recommending agency executes it.²¹⁹

If, in the course of execution, problems arise as to interpretation of the treaty, the recommending agency can request for interpretation.²²⁰ These cases arise when, for example, a treaty contravenes legal documents, or it has not yet been made into legal documents.²²¹ The competence to interpret treaties rests with the Government or Standing Committee.²²² A treaty can also be interpreted if there is a request by the foreign contracting party, by a concerned individual agency or organizations, or whenever necessary.²²³ On its own initiative or upon proposal,²²⁴ the Standing Committee can decide on the interpretation of treaties that contain provisions that contravene or have not yet been made into legal documents of the National Assembly or Standing Committee, or treaties the implementation of which will require amendment, supplementing, canceling or promulgating legal documents of the National Assembly and its Standing Committee.²²⁵ The Government can, on its own initiative or at the request of the recommending agency, also decide on the interpretation of treaties, except those relating to treaties decided for ratification or accession by the National Assembly as well as those relating to legal documents of the National Assembly and Standing Committee.²²⁶

From the provisions above, it is obvious that interpretation of the treaties' provisions is centralized. It is not easily accessible to individuals whose rights under the treaty have been violated to request for interpretation or the application of the treaty prior to application.

²¹⁷ Law on Treaties, Articles 2(1) and 2(12). This refers to treaties being in force in relation to Viet Nam. These treaties must be in the name of the State or Government regardless of titles.

²¹⁸ Ibid., Article 71

²¹⁹ Ibid., Article 73

²²⁰ Ibid.

²²¹ Ibid., Articles 2, 3, 4 and 73

²²² Ibid., Article 76

²²³ Ibid., Article 74

²²⁴ Ibid., Article 76. Proposals may be made by the State President, Government, Supreme People's Court, Supreme People's Procuracy, Council of Ethnic Minorities, Committees of the National Assembly, Viet Nam Fatherland Front and its members, and/or National Assembly deputies.

²²⁵ Ibid., Article 76(1)

²²⁶ Ibid., Article 76(2)

Articles 98 and 99 of the Law on Treaties discuss: (a) the responsibilities to draft legal documents for treaty implementation. The responsibility of MOFA is to coordinate the drafting of legal documents relating to the conclusion, accession to and implementation of treaties. The responsibility of the recommending agencies is to take initiatives in recommending the completion of legal procedures for treaties; and (b) responsibility of MOFA and the recommending agency to popularize and disseminate treaties to which Viet Nam is a party. The National Assembly and its committees and deputies exercise supervision powers on the conclusion, accession to and implementation of treaties, which includes review of reports of the State President or Government on the conclusion, accession to and implementation of treaties.²²⁷ On the basis of supervision results, the National Assembly can require other State agencies to issue documents guiding the implementation of treaties.²²⁸

In looking into the domestic application of CEDAW in Viet Nam, particular references are sometimes made to the newly adopted *Ordinance on Conclusion and Implementation of International Agreements No. 33/2007/PL-UBTVQH11 of April 20, 2007* (Ordinance on International Agreements). This reliance is misplaced as it does not cover treaties. This ordinance applies only to an international agreement, which it defines as “a written agreement on international cooperation concluded in the name of a central state agency, a provincial level agency or an organization's central body within the scope of its functions, tasks and powers with one or more than one foreign party”, but it excludes from its coverage those dealing with citizen's fundamental rights and obligations.²²⁹ The international agreements that are the subjects of this ordinance may be signed as an agreement, memorandum of understanding, minutes of agreement, minutes of exchange, cooperation program or cooperation plan.²³⁰ Such an international agreement is only binding on the Government ministry or State agency concluding it; hence, it does not give rise to international legal rights and obligations for the State or Government.²³¹ The law governing treaties - and, therefore, governing CEDAW - is the Law on Treaties.

Recommendation: Legal documents providing individuals the right to claim directly human rights guaranteed in international treaties acceded or ratified by Viet Nam, in particular CEDAW, through judicial and quasi-judicial proceedings must be promulgated. It is also suggested that Viet Nam ratifies the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women,²³² allowing women to claim their rights at the international level when all domestic remedies have been exhausted at the local level.

Procedures for individuals to request for interpretation or application of treaties to address their individual situations must also be provided. Further, popularization and information dissemination of treaties and their application must be heightened espe-

²²⁷ Ibid., Article 100

²²⁸ Ibid., Article 103

²²⁹ Ordinance on International Agreements, Article 2(1)

²³⁰ Ibid., Article 2(2)

²³¹ Ibid., Article 4

²³² <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>. It was adopted on October 6, 1999 and entered into force on December 22, 2000

cially for those implementing them. In relation to CEDAW, it must be clearly mandated that the State management agency on gender equality, MOLISA, must have enhanced knowledge about CEDAW and its application. Otherwise, the application of articles of legal documents, stating that treaties prevail over domestic law is useless, without knowledge of the treaty itself.

V.1.3.6 Gender-Based Violence/ Violence Against Women and its Manifestations

Indicator 22	Gender-Based Violence
Indicator 22(a)	Is GBV prohibited by law?
Indicator 22(b)	How is GBV defined?
Indicator 22(c)	What sanctions are in place for perpetrators?

A guarantee of the inviolability of the person is found in Article 71 of the Constitution: “The citizen shall enjoy inviolability of the person and the protection of the law with regard to his life, health, honour and dignity... It is strictly forbidden to use all form of harassment and coercion, torture, violation of his honour and dignity, against a citizen.” This provides an overall framework for the protection against GBV. A more specific prohibition of GBV is found in Article 10 of the Law on Gender Equality. Aside from this prohibition, there is no definition or explanation found relating to the use of the term ‘gender-based violence’ in the law, nor is there further mention of the term in the law. It is obviously important for GBV to be defined and explained to enable proper implementation as well as provide fair notice to everyone as to what behavior is prohibited exactly.

Under the Law on Gender Equality, the handling of GBV is in accordance with Article 42:

Article 42: Forms of handling with violations against the law on gender equality

- (1) Those who commit any violation of gender equality, depending on the nature and level of the violation, shall be subject to the sanctions, or administration fines or criminal procedure.
- (2) Agencies, organizations, individuals whose violations of gender equality law have caused damages shall have to compensate for the damages in compliance with the law.

There are several provisions in Vietnamese criminal, civil and administrative legal documents that can be used to address GBV and its manifestations. These are as follows.

Murder

Article 93 of the Penal Code penalizes those who commit murder to 12-20 years imprisonment, life imprisonment or death when it is committed in particular cases, including: (a) murder of women who are known by the offender to be pregnant; (b) murder of a grandfather, grandmother, father, mother, fosterer and/or teacher; and (c) murder to take organs from the victim’s body. Those not falling under the particular circumstances will be sentenced to 7-15 years imprisonment.²³³

Infanticide

Article 94 of the Penal Code states that any mother who, due to strong influence of backward

²³³ Penal Code, Article 93(2)

ideology or special objective circumstances, kills her newborn baby or abandons it to death, will be sentenced to non-custodial reform for up to two years, or to between three months and two years imprisonment.

Threatening to murder

Article 103 of the Penal Code states that those who threaten to murder other persons will be subject to non-custodial reform for up to two years, or sentenced to between three months and three years imprisonment.

Forced suicide

Article 100 of the Penal Code states that those who treat cruelly, intimidate constantly, ill-treat or humiliate a dependent person inducing the dependent person to commit suicide, will be sentenced to between two to seven years imprisonment.

Intentionally inflicting injury on or causing harm to the health of other persons

Article 104 of the Penal Code provides that those who injure intentionally or cause harm to the health of other persons will be punished based on the injury inflicted measured by infirmity rates. The penalty is higher when committed against a pregnant woman, a grandfather, grandmother, father, mother or fosterer.

Ill-treating other persons

Article 110 of the Penal Code states that those who treat cruelly dependent persons will be subject to warning, non-custodial reform for up to one year, or imprisonment of between three months and two years. It also states that if the dependent person is elderly, children, pregnant or disabled, the sentence is one to three years imprisonment.

Ill-treating or persecuting grandparents, parents, spouses, children, grandchildren and/or fosterers

Article 151 of the Penal Code provides that those who ill-treat or persecute their grandparents, parents, spouses, children, grandchildren or fosterers, thus causing serious consequences, or those who have already been administratively sanctioned for such acts but repeat their violations, will be subject to warning, non-custodial reform for up to three years, or a prison term of between three months and three years.

To elaborate further on Article 151, *Joint Circular No. 01/2001/TTLT-BTP-BCA-TANDTC-VKSNDTC issued September 25, 2001 Guiding the Application of the provisions in Chapter XV “Crimes Infringing upon the Marriage and Family Regimes” of the 1999 Penal Code* (Joint Circular on Marriage and Family Crimes) explained that acts of ill-treatment and persecution are usually understood as maltreatment in terms of food, clothing, accommodation in daily life, activities against relatives such as scolding, forcible abstention from eating or drinking, forcible stand of coldness, worn out clothing in abnormal ways, or acts of violence against victims such as beating, detention or making the victims suffer from physical and spiritual pains.²³⁴ It further states that the crime in Article 151 can only be examined where it is an act of ill-treatment persecution causing serious consequences, namely making the ill-treated or persecuted persons always tormented, sentimentally hurt their honour, undergo spiritual sufferings, get injured, or damage to their health.²³⁵ If the act leads to death, suicide or injury,

²³⁴ Joint Circular on Marriage and Family Crimes, Paragraph 7.1

²³⁵ Ibid., Paragraph 7.2

the perpetrator of ill-treatment will be prosecuted for murder, intentionally inflicting injury or forcing suicide (that is, Articles 104, 93 and 100 of the Penal Code).

Rape and other forms of sexual assault

Articles 111-116 of the Penal Code punish rape, rape against children, forcible sexual intercourse, forcible sexual intercourse with children, having sexual intercourse with children, and obscenity against children. See Indicators 24 and 25.

Spreading HIV to other persons

Article 117 of the Penal Code states that those who know that they are infected with HIV and intentionally spread the disease to other persons will be sentenced from one to three years imprisonment.

Intentionally spreading HIV to other persons

Article 118 of the Penal Code penalizes those who intentionally spread the disease to others in cases other than those under Article 117.

Trafficking in women and exploitation of prostitution

See Part V.4.3.

Humiliating other persons

Article 121 of the Penal Code states that those who seriously infringe upon the dignity or honour of other persons will be subject to warning, non-custodial reform for up to two years, or a prison term of between three months and two years.

Slander

Article 122 of the Penal Code states that those who trump up or spread stories knowing them to be fabricated to infringe the honour or damage the legitimate rights and interests of other persons, or make up a story that other persons commit crimes and denounce them before the competent agencies, will be penalized. The imposable penalty is increased when particular circumstances are present, such as when committed against a grandfather, grandmother, father or mother.

Organizing underage marriage, entering into underage marriage

Article 148 of the Penal Code states that those who commit the following acts, or have already administratively sanctioned or such acts but repeat their violation, will be subject to warning, non-custodial reform for up to two years, or a prison term of between three months and two years: (a) organizing marriage of under age persons; and (b) deliberately maintaining the illegal conjugal relationship with underage persons (though the court has already decided the termination of such relationship).

Forcible marriage, prevention of voluntary and progressive marriage

Article 146 of the Penal Code states that those who force other persons into marriage against their will, or prevent other persons from entering into marriage or maintaining voluntary and progressive marriage, through persecution, ill-treatment, mental intimidation, property claim or other means, or who have already been administratively sanctioned for such acts but repeat their violation, will be subject to warning, non-custodial reform for up to three years, or a prison term of between three months and three years.

Bigamy

Article 147 of the Penal Code prohibits married persons who marries or lives with another person like husband or wife or any unmarried person who marries or lives with another person known to be a married person, thus causing serious consequences, or who have been administratively sanctioned for such acts but repeat the violation, will be subject to warning, non-custodial reform for up to one year, or a prison term of between three months and one year. 'Serious consequences' include break up the family of one or both parties thus leading to divorce, then suicide by the husband, wife or child.

Polygamy

Under *Decree No. 32/2002/ND-CP of March 27, 2002 Prescribing the Application of the Law on Marriage and Family to Ethnic Minority People* (Decree on Marriage and Family Law (Ethnic Minorities)), polygamy is prohibited.²³⁶

Incest

Article 150 of the Penal Code states: "Those who have sexual intercourse with other persons of direct blood lines, with sisters or brothers born of common parents, with half-brothers or half-sisters shall be sentenced to between six months and five years of imprisonment."

Refusing or evading the obligation to provide financial support

Article 152 of the Penal Code states that those who have the obligation to provide financial support and have the actual capability to provide the financial support for the persons they are obliged to do so according to the provisions of law, but who deliberately refuse or evade the obligation to provide financial support, thus causing serious consequences, or who have already been administratively sanctioned for such acts but repeat their violations, will be subject to warning, non-custodial reform for up to two years, or a prison term of between three months and two years.

Use of a picture without consent

Article 31 of the Civil Code states that the use of a picture of an individual must have his/her consent. It is strictly forbidden to use pictures of other persons to infringe upon their honour, dignity and/or prestige.

Acts of marriage and divorce

Article 4(2) of the Marriage and Family Law provides that underage marriage, forcing marriage, hindering voluntary and progressive marriage, feigned marriage, deceiving other persons into marriage or divorce, forcing divorce, feigned divorce, and property demand for wedding are all forbidden. It also states that a married person is forbidden to marry or live with another person as husband or wife and an unmarried person is forbidden to marry or live with a married person as husband or wife. Ill-treatment and persecution of grandparents, parents, spouses, children, grandchildren, siblings or other family members is forbidden.²³⁷

²³⁶ Decree on Marriage and Family Law (Ethnic Minorities), Article 2(2) and Appendix B(II)(1)

²³⁷ Marriage and Family Law, Article 4(2)

Obligations and rights of husband and wife

Article 21 of the Marriage and Family Law includes the following obligations and rights: (a) a husband and wife must respect each other and preserve each other's honour, dignity and prestige; and (b) a husband and wife are strictly forbidden to commit acts of ill-treating, persecuting or hurting the honour, dignity or prestige of each other.

Obligations and rights of parents

Article 34(2) of the Marriage and Family Law provides that parents must not treat discriminatorily, ill-treat or persecute their children, hurt their honour, abuse the labour of their minor children, incite or compel their children to act against law and social morality.

Obligations and rights of children

Article 35 of the Marriage and Family Law states that children have the obligation and right to care for and support their parents. Children are strictly forbidden to ill-treat, persecute or hurt the honour, of their parents.

Relations among family members

Article 49(1) of the Marriage and Family Law obliges co-habiting family members to care for and help one another, together care for their family life, contribute labour, money and other property to maintain their common life in proportion to their actual incomes and capabilities.

Crimes against children

Article 7 of the Law on Children identifies strictly prohibited acts, which include: (a) abandonment of children by parents or guardians; (b) seduction or enticement of children towards a life on the streets and abuse of street children for personal gain; (c) leading children to buy, sell, transport, store or use illegal drugs, or to gamble; (d) leading children into prostitution or sexually abusing children; (e) torture, maltreatment, grievous disrespect, appropriation, kidnapping, trafficking and fraudulent exchange of children, and abuse of children for personal gain; (f) abusive child labour, and use of children in heavy, dangerous jobs; (g) barring children from study; and (h) measures that offend or lower the honour and dignity of children, and application corporal punishment for children in conflict with the law.

See Part V.1.3.6, Indicators 23 – 26 and their Sub-indicators, and Part V.4.3, Indicators 34-52.

Recommendation: A definition and explanation of GBV, drawing on GR 19, must be provided in the Law of Gender Equality or in a decree implementing the Law on Gender Equality. It must state that GBV refers to violence that can only be experienced by a person because of her/his gender; violence directed against a person because of her/his gender; or violence that affects a particular sex disproportionately.

The definition or explanation must state that GBV includes: (a) physical violence; (b) sexual violence; (c) emotional violence; and (d) economic or financial violence. Further, to assist in understanding GBV, any definition/explanation must provide examples of its various manifestations: domestic violence, trafficking, rape, sexual harassment, stalking, etc. These manifestations must also be defined and explained. It is also critical to state that GBV is experienced mostly by women, although men can also be subjected to GBV.

In addition to these suggestions, for more pervasive manifestations of GBV, separate legislation is necessary to address fully all its aspects. This will enable focused attention to victims of the violations, identification of clear responsibilities of ministries and agencies to address the problem, and specific sanctions to offenders. Pervasive manifestations of GBV include domestic violence, trafficking in women, exploitation of prostitution, and sexual harassment.

Indicator 22(d)	What measures are in place for victims of GBV?
Indicator 22(e)	Does the law mandate inter-agency cooperation to address GBV? Is there a clear designation of coordinated and individual responsibilities of State agencies to address GBV?

Specific measures for victims of GBV are available in Articles 37 and 38 (which provide for the right to complain and denounce) and Article 42 (which states that violations will be subject to sanctions, administration fines, criminal procedure and compensation for damages) of the Law on Gender Equality. Criminal, civil and administrative sanctions as pointed out in Indicators 22(a), 22(b) and 22(c) are also in place.

Procedures and mechanisms on gender equality as discussed in Part V.1.3.3 and Part V.1.3.4 are also procedures and mechanisms for GBV.

A crucial observation on handling of violence or abuse cases in Viet Nam, whether it involves civil, criminal or administrative procedures, is the absence of social workers. In many jurisdictions, social workers play a very important role in terms of counselling, removing a person from an unsafe or abusive environment, preparing case studies to assist in the determination of the psychological, emotional or mental state of a person, the fitness of the home environment and of persons to take care of children, medical or treatment regime needed, necessity and appropriateness of rehabilitation and reintegration work. There is some work on professionalizing social work and utilizing social work in relation to child abuse, neglect and exploitation.²³⁸ However, there is a dire lack of social workers in the area of gender equality work.

Recommendation: It is recommended that social work be recognized as necessary in addressing gender discrimination, in particular GBV. It is true that there is still a lot of work needed to professionalize social work and to build capacity of individuals to be fully fledged social workers in the realm of gender equality. However, the employment or involvement of trained social workers in agencies that addresses GBV must be mandatory. This should include their employment in MOLISA, in hospitals, in courts, schools, counselling centres, and rehabilitation and reintegration centres. The legislation must also provide for the roles that they should play in these institutions, including drafting of case studies to provide a comprehensive and appropriate programs for victims of GBV, assisting in the determination of the environment from which abuse or violence was perpetrated, assisting in the determination of fitness of persons to be awarded custody of children, inspecting and helping evaluate environment of victims and whether there is a need to put in place measures to protect them, providing counselling in cases of abuse, assisting in the detection of abuse (for example, in schools and hospitals) and facilitating its reporting to appropriate authorities.

²³⁸ See Kelly, op. cit., generally, but in particular pp. 51-52

Indicator 23 Domestic Violence

- Indicator 23(a)** Is domestic violence prohibited by law?
- Indicator 23(b)** How is domestic violence defined?
- Indicator 23(c)** What sanctions and/or measures are imposed against the perpetrators of domestic violence?
- Indicator 23(d)** What measures are mandated by law to address the needs of victims of domestic violence? What interim or permanent measures are put in place for the protection of victims?
- Indicator 23(e)** Does the law encourage/require conciliation or mediation for domestic violence cases? Is there a duty to ascertain the presence/ absence of domestic violence during conciliation or mediation? What procedures are in place if one party to conciliation or mediation is a victim of domestic violence?
- Indicator 23(f)** Is legal assistance available to victims of domestic violence?
- Indicator 23(g)** Does the law mandate inter-agency cooperation to address domestic violence? Is there a clear designation of coordinated and individual responsibilities of State agencies to address domestic violence?

The Law on Domestic Violence Prevention and Control and Decree No. 185/2007/ND-CP (Law on Domestic Violence) identifying the MCST as the state management agency for the domestic violence law was adopted on November 21, 2007 and, hence, was not included in this review. The review, although based on the context prior to the passage of the law, is still useful to check whether recommendations provided were addressed in the new legal document.

There are provisions that prohibit a range of gender-neutral acts that constitute domestic violence in the Civil Code, Law on Children, Marriage and Family Law and Penal Code, in particular those enumerated in Part V.1.3.6, Indicators 22(a) to 22(c). These provisions have attached penalties or obligations based on the acts committed.

Despite these provisions, prosecution for domestic violence is limited. Many factors contribute to this, including: (a) although believed to be widespread in Viet Nam, domestic violence is often not spoken about or just accepted by both men and women;²³⁹ (b) women, especially those who living in remote and mountainous regions, are not fully aware of their legitimate rights and interests;²⁴⁰ (c) abuse in the family is in many cases still considered to be a private matter;²⁴¹ (d) addressing domestic violence is not part of local socio-economic development policies; (e) in many areas, it is a topic only for Viet Nam Women's Union with the goal being reconciliation even where there are serious violations;²⁴² (f) the degree of ill-treatment is usually required to

²³⁹ Wells, op. cit., p. 49

²⁴⁰ Combined Fifth and Sixth Periodic Report, pp. 53-54

²⁴¹ UN Press Article

²⁴² Viet Nam NGO Report, p. 17

be quite high before a case is taken seriously;²⁴³ (g) in some cases, police believe that serious domestic violence should be mitigated and smaller incidents be ignored to preserve the village's reputation;²⁴⁴ and (h) more importantly, the lack of a definition and identification of domestic violence as a particular offence and guidance on the handling of these cases, have seriously affected its recognition and the resulting attention, including prosecution.

The unavailability of comprehensive data is often pointed out as the reason behind the lack of legislation. While there is no comprehensive national data, there is increasing research and information on the issue leading to growing acknowledgment of the problem. Evidence from several non-representative studies and consultations provides a glimpse of the phenomenon that requires further attention, research and intervention.²⁴⁵ Some consistently note domestic violence as a problem.²⁴⁶ One study conducted in Thai Binh, Lang Son and Tien Giang provinces by Viet Nam Women's Union showed that 40 percent of women said they had been hit by their husbands.²⁴⁷ Domestic violence was cited as a justification in 66 percent of all divorces²⁴⁸

A recent nationwide survey found lower rates of beating, about 6 percent, but rates for verbal abuse is at 21 percent in a 12-month period.²⁴⁹ A Population Council report found that domestic violence occurred in families from all education and socio-economic levels.²⁵⁰ A large-scale survey in the country found two important and interrelated factors associated with domestic violence are economic hardship and alcohol consumption.²⁵¹ It was pointed out, though, that domestic violence in Viet Nam also exists because of socially and culturally prescribed roles for men and women.²⁵² Domestic violence also sometimes occurs when cultural stereotypes are challenged.²⁵³ A Ministry of Public Security (MPS) report states that one victim of domestic violence dies every two to three days and, in 2005, 14 percent of murders were related to domestic violence.²⁵⁴ A report by the Health Department for the Mekong Delta noted that in 2005, 1,011 of 1,319 patients were suicides from domestic violence.²⁵⁵

The Combined Fifth and Sixth Periodic Report cited that in a research 80 percent of women suffered some types of domestic violence, and more than 15 percent have been beaten by their husbands.²⁵⁶ A Viet Nam Women's Union report pointed out that domestic violence

²⁴³ Wells, op. cit., p. 49

²⁴⁴ Viet Nam NGO Report, p. 17

²⁴⁵ World Bank Assessment, p. 54

²⁴⁶ Wells, op. cit., p. 48. Examples are the Socialist Republic of Viet Nam, 'Viet Nam Achieving the Millennium Development Goals', Ha Noi, 2005 and Ministry of Health and General Statistics Office, 'Survey Assessment of Vietnamese Youth 2003', Ha Noi: Ministry of Health, General Statistics Office and UNIFEM, 2005

²⁴⁷ World Bank Assessment, p. 54

²⁴⁸ Ibid.

²⁴⁹ Ibid. citing Viet Nam Academy of Social Sciences, 'Household Survey on Men and Women in Viet Nam', Ha Noi, Viet Nam Academy of Social Sciences, Forthcoming (VASS Survey)

²⁵⁰ Kabeer, Naila, Tran Thi Van Anh and Vu Manh Loi, 'Preparing for the Future: Forward-looking Strategies to Promote Gender Equity in Viet Nam,' A UN/World Bank Thematic Discussion Paper,, World Bank Group and United Nations – Viet Nam, Ha Noi, December 2005 (Kabeer, et al.), p. 28

²⁵¹ Ibid.

²⁵² Wells, op. cit., p. 48

²⁵³ Ibid.

²⁵⁴ Viet Nam NGO Report, p. 13

²⁵⁵ Ibid.

²⁵⁶ Combined Fifth and Sixth Periodic Report, p. 53

is experienced primarily as beatings, ill-treatment and other forms of physical violence, as well as mental violence such as scolding, insulting, neglect, and irresponsible actions.²⁵⁷ There is very limited information on violence exerted against those in situations of cohabitation without the benefit of marriage and those in intimate and dating relationships.

Encouragingly, the VASS Survey contains some questions on domestic violence that may be a useful starting point for planned interventions and as a baseline to measure changes in domestic violence in Viet Nam.²⁵⁸ Reducing family violence is included in the VDGs, CPRGS, and 'Strategy on Building of Vietnamese Families in the 2005-2010 Period'. The National Assembly is drafting a domestic violence law which is scheduled to be adopted in November 2007. A law on domestic violence that contains a comprehensive definition and scope as suggested above will enable better recognition of these cases, leading to appropriate interventions to address them.

Measures under law for victims of domestic violence are limited. Remedies under the present laws, which are mentioned in Part V.1.3.3 and Part V.1.3.6, are mostly focused on punishing the perpetrator and providing compensation. As such, there are inadequate measures in law designed to address the needs of victims of domestic violence.

It is also noteworthy to mention that there are several projects that target interventions for victims that have been initiated. Many of them are promising, although they have limited resources and geographical scope, technical expertise of staff needs improvement, and efforts lack coordination with other initiatives. Examples are: (a) care workers in a hospital in Gia Lam district in Ha Noi are undergoing specific training to address victims of domestic violence, the Women's Refuge set up by Ha Noi Health Services, a government hotline in Ha Noi for family violence, and setting up of domestic violence task force in one province;²⁵⁹ and (b) a film by Viet Nam Women's Union and Viet Nam Television (VTV) on violence against women.²⁶⁰

As to conciliation or mediation, there are no procedures relating to domestic violence or to the handling of cases where domestic violence exists. There are, however, general provisions on this matter. To view them, see Part V.1.3.3, Indicator 12.

In relation to whether there is a law that mandates an inter-agency mechanism to address domestic violence, there is no such mechanism specific to domestic violence. However, mechanisms established for gender equality can obviously be used, as GBV is a form of gender discrimination. For more information, see Part V.1.3.4, Indicator 1. During the finalization of this review, the Decree on MCST has identified MCST as the state management agency for the domestic violence law.

Recommendation: The adoption of a Law on Domestic Violence is necessary. The law must:

²⁵⁷ Viet Nam Women's Union, 'Review Report: 10-year Implementation of the Beijing Platform for Action by Viet Nam Women's Union', September 2005 (Viet Nam Women's Union Report), p. 34

²⁵⁸ Wells, op. cit., p. 50 citing VASS Survey

²⁵⁹ Kabeer, et al., op. cit., pp. 29

²⁶⁰ Viet Nam Women's Union Report, p. 37

- (a) provide for a comprehensive definition of ‘domestic violence’, which includes physical, sexual, emotional and economic violence and explicitly prohibit domestic violence;*
- (b) extend protection to those living together as spouses without the benefit of marriage, and those involved in an intimate or dating relationship;*
- (c) in relation to detection, there should be mandatory reporting of cases involving domestic violence by health providers, teachers, social workers, and People’s Committees to the state management agency or to the police. In these cases, appropriate procedures must be provided;*
- (d) provide for the proper handling of domestic violence by public officials, especially the People’s Committee or the police, such as: (i) upon being informed of the act of violence to verify immediately the information or to respond immediately to request for assistance; (ii) interview the victim, if possible away from the presence of the alleged offender; (iii) if necessary, escort the victim to a safe place or require the alleged offender to leave the dwelling; (iv) advise the victim of the remedies available; (v) assist the victim to access a health provider for medical examination; (vi) refer the victim to a social worker in the locality, and (vii) arrest the offender and confiscate any deadly weapons in plain view;*
- (e) require the State management agency, the local government units and the courts to have a professional social worker working full time on domestic violence cases;*
- (f) provide protection to victims of violence through emergency or temporary protection orders. These protection orders must be available to victims of domestic violence independent of the filing of a case. These orders must be easily accessible to victims of domestic violence and, hence, competence to issue these orders must rest with the head of the People’s Committees as well as with the People’s Courts. The orders can be issued ex parte, and they must be issued on the same day as the application. The orders must be valid for at least 10-15 days, and they may include: (i) prohibit the alleged offender from committing any further acts of violence; (ii) prohibit the alleged offender from contacting or harassing the victim; (iii) remove the alleged offender from the dwelling of the alleged offender, regardless of ownership; (iv) direct the alleged offender from contacting any of the family members of the victim; (v) direct the temporary payment of support for the victim; (vi) decide on the temporary custody of children; and (vii) direct reimbursement of medical expenses;*
- (g) require the provision of mandatory services for victims of domestic violence, which includes: (i) emergency shelter; (ii) skills training, livelihood development services or job referrals; (iii) psycho-social counselling; (iv) reintegration and after-care work; (v) medical assistance; and (vi) free legal assistance;*
- (h) require that law enforcers, procurators, health providers, legal aid providers, social workers, and the courts that deal with domestic violence cases have a comprehensive training on gender sensitivity and on handling cases of domestic violence;*

- (i) require health providers to document and report all cases of domestic violence. When requested, to provide a medical report on the examination free of charge in public hospitals and clinics, and on a socialized fee in private hospitals and clinics;**
- (j) information relating to the identity of the victim must be kept confidential at all times, unless disclosure is requested by the victim;**
- (k) when the victim is applying for a protection order, the People's Committee or the court must not unduly discourage pursuit of it;**
- (l) mediation or conciliation must not apply in cases of domestic violence where the victim cannot make choices independently or is traumatized from the violence;**
- (m) provide for inter-agency coordination to address domestic violence;**
- (n) enumerate the responsibilities of each ministry or agency in addressing domestic violence.**

As point out, the review, although based on the context prior to the passage of the law, is still useful to check whether recommendations provided were addressed in the new legal documents.

Indicator 24	Rape and other Forms of Sexual Assault
Indicator 24(a)	Are rape and other forms of sexual assault prohibited?
Indicator 24(b)	How are 'rape' and 'other forms of sexual assault' defined? Does it include broad range of sexual assault acts?
Indicator 24(c)	Does consent of a child to sexual acts operate as a defence in the crime of rape and other forms of sexual abuse?
Indicator 24(d)	Is marital rape an offence?

Rape and other forms of sexual assault are prohibited by law as follows:

Rape

Article 111 of the Penal Code states that those who use violence, threaten to use violence or take advantage of the victims' state of being 'unable for self defense' or resort to other tricks to have sexual intercourse with the victims against the latter's will be sentenced to between two and seven years imprisonment. The penalty is increased to 7-15 years in the following particular circumstances: (a) being of an incestuous nature; (b) making the victim pregnant; and (c) committing the crime where the offenders know that they are living with HIV/AIDS.

Rape against children

Article 112 of the Penal Code states that those who rape children aged between 13 and under 16 years will be sentenced to 7-15 years imprisonment. The imposable penalty is increased in the following particular circumstances: (a) being of an incestuous nature; (b) making the victim pregnant; and (c) committing the crime where the offenders know that they are living with HIV/AIDS. All cases of sexual intercourse with children under 13 years old are considered rape

against children and the offender is sentenced to between 12 and 20 years imprisonment, life imprisonment or capital punishment.

Forcible sexual intercourse

Article 113 of the Penal Code states that “those who employ trickery to induce persons dependent on them or persons being in dire straits to have sexual intercourse with them against their will shall be sentenced to between six months and five years of imprisonment.” The imposable penalty is increased in the following particular circumstances: (a) being of an incestuous nature; (b) making the victim pregnant; and (c) committing the crime where the offenders know that they are living with HIV/AIDS.

Forcible sexual intercourse with children

Article 114 of the Penal Code states that those who have forcible intercourse with children aged 13-15 years will be sentenced to 5-10 years imprisonment. The imposable penalty is increased in particular circumstances: (a) being of an incestuous nature; (b) making the victim pregnant; and (c) committing the crime where the offenders know that they are living with HIV/AIDS.

Having sexual intercourse with children

Article 115 of the Penal Code states that any adult having sexual intercourse with children aged 13 up to 16 years will be sentenced to one to five years imprisonment. The imposable penalty is increased in the following particular circumstances: (a) being of an incestuous nature; (b) making the victim pregnant; and (c) committing the crime where the offenders know that they are living with HIV/AIDS.

Obscenity against children

Article 116 of the Penal Code provides that adults who commit obscene acts against children will be sentenced from six months to three years imprisonment.

As for the crime of rape, one of the circumstances for its commission is that the victim is in a state of unable to defend themselves. This language is awkward, so it is preferable to use the phrase ‘unable to give consent’. This shifts the focus from defence to consent, since lack of consent is the crucial factor in the crime of rape and not lack of defence. Lack of defence is simply a manifestation of lack of consent.

Recommendation: It is recommended that in relation to Article 111 of the Penal Code (Rape) the phrase where the victim is ‘unable for self-defense’ be revised to read where the victim is ‘unable to give valid consent’, thus emphasizing that lack of consent is the deciding factor in prosecutions for rape and not lack of self defence.

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It is also obvious that Vietnamese law rape and other forms of sexual assault focuses only on the following elements: (a) sexual intercourse, which is the act involved in Articles 111-115 of the Penal Code; and (b) obscene acts against minors, which is in Article 116 of the Penal Code. There is no definition or explanation provided as to what ‘sexual intercourse’ is, and if it includes not only the insertion of a penis into a vagina but also the following acts: (a) inserting a penis into a mouth or anal orifice; or (b) inserting an instrument or object into the genital or anal orifice of another person. Further, obscene acts committed against adults are not penalized.

In relation to marital rape, the provisions above do not identify whether the offender and victim are married to each other. However, in practice, the absence of an express prohibition against marital rape only serves to show the lack of recognition given to this form of violence as rape. In many cases, it is deemed absurd that a husband can be charged for raping his wife.

Recommendation: The provisions on rape and other forms of sexual assault (Articles 111-116 of the Penal Code) must be revised to include a prohibition of a range of sexual acts, including the following: (a) inserting a penis into a mouth or anal orifice; and (b) inserting an instrument or object into the genital or anal orifice of another person. Marital rape and the commission of obscene acts committed against adults must also be explicitly penalized.

Indicator 24(e) Is prosecution for rape and/or other forms of sexual assault only possible if consented to by the victim? Is prosecution for rape and/or other forms of sexual assault discontinued if the victim withdraws the complaint, forgives the alleged perpetrator or marries the alleged perpetrator?

See Part V.1.3.3, Indicator 10.

Indicator 24(f) Is there prohibition on the use of prior sexual conduct to establish consent to sexual acts?

Indicator 24(g) What is the degree of resistance required to establish a finding of rape or sexual assault?

Indicator 24(h) Is there a requirement of corroboration to prosecute cases of rape and/or other forms of sexual assault?

There is no prohibition on the use of prior sexual conduct to establish consent to sexual acts. In many cases, this kind of evidence is presented to stigmatize the victim and destroy her reputation. For example, the defence would present evidence to show that, since a woman has a 'loose reputation' when a man rapes her it is excusable, or since the victim is engaged in prostitution, even when she resists, she is deemed to have consented by being engaged in such occupation. The crimes in Articles 111-116 of the Penal Code are based on whether consent was given to the specific act that constitutes the crime, and not past acts, opinions or reputation.

Recommendation: In prosecutions for rape, rape against children, forcible sexual intercourse and forcible intercourse with children (Articles 111-114 of the Penal Code), evidence of the victim's past sexual conduct, opinions or reputation must not be admitted by the courts as evidence; that is, they are inadmissible. This kind of evidence is irrelevant to the crime. Prior sexual conduct or reputation is not a guarantee or expression of consent to sexual intercourse. This should be in a legal document to provide guidance in the handling of these cases and to operate as a right of the victim.

There are also no provisions in law relating to degree of resistance required to prosecute rape. It must be emphasized that, for rape to exist, it is not necessary that the force or intimidation be so great that it cannot be resisted. What is important is that the force or intimidation is sufficient to accomplish the rape. In particular jurisdictions, resistance to rape must be so great so as to produce severe physical injuries. Physical injury is not the only evidence of resistance to a rape. Peculiarities of each situation must be borne in mind in assessing

degree of resistance; for example, the victim was unconscious, tied, or in a state of shock. Further, the degree of resistance necessary must only be an overt physical act signifying resistance to the act of rape.

As to whether corroboration is necessary to prosecute cases under Articles 111-116 of Penal Code, no such provision is found in Vietnamese legal documents.

See Part V.13.3, Indicator 115 on discussion and recommendations on emergency contraception.

Recommendation: It must be explicitly provided in a legal document that the degree of resistance needed to establish the crime of rape must only be an overt physical act signifying resistance to the act of rape. No requirement of great physical resistance is necessary.

Appropriate guidelines on assisting rape victims and handling cases of rape more sensitively should be issued. This should include: (a) providing rape victims with psychological, medical and health-care services; (b) assisting in securing legal assistance; (c) ensuring privacy and safety of rape victims, including closed-door investigations, prosecutions and trials; (d) mandatory training on gender-sensitivity and rape and sexual assault cases for those handling these offences, including law enforcers, police officers, health service providers, counsellors, social workers; and (e) documentation of rape cases. Guidelines concerning the availability and use of emergency contraception must also be provided. See Part V.13.3, Indicator 115.

Indicator 25	Incest
Indicator 25(a)	Is incest prohibited?
Indicator 25(b)	How is incest defined?
Indicator 25(c)	What forms of redress are provided to victims of incest?
Indicator 25(d)	Are sanctions are in place for perpetrators?

Article 150 of the Penal Code states: “Those who have sexual intercourse with other persons of direct blood lines, with sisters or brothers born of common parents, with half-brothers or half-sisters shall be sentenced to between 6 months and 5 years of imprisonment.”

‘Incest’ means the sexual intercourse between the following categories: (a) fathers or mother and children; (b) grandfathers or grandmothers and their grandchildren; (c) siblings of the same parents; and (d) between half-brothers and half-sisters.²⁶¹ Where the act constitutes rape, rape with children, forcible intercourse or forcible intercourse with children, the penal liability will apply for those offences.²⁶²

No specific forms of redress are provided for crimes of incest. Remedies under the present laws, which are mentioned in Part V.1.3.3 and in Part V.1.3.6, Indicators 9 and 10, are available for victims of incest.

Incest is a hidden issue in Viet Nam. Victims are reluctant to come forward. In other jurisdictions, incest is difficult to detect and prosecute for many reasons such as: (a) feelings of

²⁶¹ Joint Circular on Marriage and Family, Paragraph 6.2

²⁶² Ibid., Paragraph 6.2

guilt over the prosecution of a family member; (b) lack of economic support if the offender, who contributes to the support of the family, is prosecuted; (c) fear of being judged at fault; (d) fear of stigmatization by the community; and (e) feelings of not wanting to bring shame on the family. One of the critical discussions on incest is whether imposing very high penalties or even seeking justice is a good strategy, as this may discourage victims from reporting cases to avoid penalizing a close family member (who, in some instances, is also the primary breadwinner in the family). Bearing in mind Viet Nam's context, and the international standards, it is suggested that best approach is to ensure accessibility of justice remedies, but couple it with strengthened support for victims and their families.

This issue is also rarely addressed in research or studies in Viet Nam. Available statistics do not show the relationship of the offender to the victim of sexual assault cases. Further research will assist more responsive law-making on this area.

Recommendation: Strengthening access to justice by victims of incest must be a key policy measure for this issue. Legal documents must provide appropriate victim and family support where crimes of incest are detected. Mandatory services should be provided by the state management agency such as: (i) provision of emergency shelter (ii) skills training, livelihood development services or job referrals for the victim or family; (iii) psycho-social counselling for the victim and family; (iv) reintegration and after-care work; (v) medical assistance; (vi) free legal assistance; and (vii) provision of a professional social worker for assistance. Temporary protection orders should also be available for victims of incest, as discussed in Part V.1.3.6., Indicator 2(g). Further research on this issue must also be strongly urged to further law-making.

Indicator 26	Stalking
Indicator 26(a)	Is stalking prohibited?
Indicator 26(b)	How is stalking defined?
Indicator 26(c)	What forms of redress are provided to victims of stalking?
Indicator 26(d)	Are sanctions are in place for perpetrators?

The crime of stalking is not defined or penalized in Viet Nam's laws. 'Stalking' can be defined as an intentional act committed by a person who, without lawful justification, follows another person or places the latter under surveillance directly or indirectly. This is a form of harassment and affects the health and mental integrity of its victims. In comparative jurisdictions, this is a crime experienced disproportionately by women.

There is no available data on this subject in Viet Nam, although some accounts of its occurrences are heard. No specific forms of redress under penal laws are provided for stalking unless it falls under any of the offences enumerated in Part V.1.3.3, Indicator 22. As to a civil action, Article 609 of the Civil Code on damage caused by infringement upon health can be used, but it is only limited to reasonable expenses for treatment, loss of income, etc.

Recommendation: It is recommended that information and data on stalking be obtained. Once obtained, appropriate measures for protection should be available to victims. For this, see Part V.1.3.6, Indicator 23 and Part V.1.3.3, Indicator 10.

V.2 TEMPORARY SPECIAL MEASURES AND MEASURES IN FAVOUR OF MATERNITY (ARTICLE 4 OF CEDAW)

V.2.1 OBLIGATIONS UNDER CEDAW

V.2.1.1 Text of CEDAW

ARTICLE 4

- (1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
- (2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

V.2.1.2 General Recommendations

The following excerpts from GRs are relevant to Article 4 of CEDAW:

GR 23: Political and Public Life

Paragraph 15

While removal of de jure barriers is necessary, it is not sufficient. Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men. Under article 4, the Convention encourages the use of temporary special measures in order to give full effect to articles 7 and 8. Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies. The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life. In order, however, to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, encouragement which must be led by States parties to the Convention, as well as by political parties and public officials. States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.

GR 25: Temporary Special Measures

All provisions, in particular:

Paragraph 15

There is a clear difference between the purpose of the “special measures” under article 4, paragraph 1, and those of paragraph 2. The purpose of article 4, paragraph 1, is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation. These measures are of a temporary nature.

Paragraph 16

Article 4, paragraph 2, provides for non-identical treatment of women and men due to their biological differences. These measures are of a permanent nature, at least until such time as the scientific and technological knowledge referred to in article 11, paragraph 3, would warrant a review.

Paragraph 18

Measures taken under article 4, paragraph 1, by States parties should aim to accelerate the equal participation of women in the political, economic, social, cultural, civil or any other field. The Committee views the application of these measures not as an exception to the norm of non-discrimination, but rather as an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms. While the application of temporary special measures often remedies the effects of past discrimination against women, the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination. The Committee considers that States parties that adopt and implement such measures under the Convention do not discriminate against men.

Paragraph 19

States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures.

Paragraph 20

Article 4, paragraph 1, explicitly states the “temporary” nature of such special measures. Such measures should therefore not be deemed necessary forever, even though the meaning of “temporary” may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.

Paragraph 22

The term “measures” encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems. The choice of a particular “measure” will depend on the context in which article 4, paragraph 1, is applied and on the specific goal it aims to achieve.

Recommendations to States parties:

Paragraph 25

Reports of States parties should include information on the adoption, or lack thereof, of temporary special measures in accordance with article 4, paragraph 1, of the Convention, and States parties should preferably adhere to the terminology “temporary special measures”, to avoid confusion.

Paragraph 26

States parties should clearly distinguish between temporary special measures aimed at accelerating the achievement of a concrete goal of women’s de facto or substantive equality, and other general social policies adopted and implemented in order to improve the situation of women and the girl child. States parties should bear in mind that not all measures which potentially are or would be favourable to women qualify as temporary special measures.

Paragraph 27

States parties should analyse the context of women’s situation in all spheres of life, as well as in the specific, targeted area, when applying temporary special measures to accelerate achievement of women’s de facto or substantive equality. They should evaluate the potential impact of temporary special measures with regard to a particular goal within their national context and adopt those temporary special measures which they consider to be the most appropriate in order to accelerate the achievement of de facto or substantive equality for women.

Paragraph 31

States parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measures. The Committee reminds States parties that legislation, such as comprehensive anti-discrimination acts, equal opportunities acts or executive orders on women’s equality, can give guidance on the type of temporary special measures that should be applied to achieve a stated goal, or goals, in given areas. Such guidance can also be contained in specific legislation on employment or education. Relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.

Paragraph 32

The Committee draws the attention of States parties to the fact that temporary special measures may also be based on decrees, policy directives and/or administrative guidelines formulated and adopted by national, regional or local executive branches of govern-

ment to cover the public employment and education sectors. Such temporary special measures may include the civil service, the political sphere and the private education and employment sectors. The Committee further draws the attention of States parties to the fact that such measures may also be negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organizations, institutions and political parties.

Paragraph 33

The Committee reiterates that action plans for temporary special measures need to be designed, applied and evaluated within the specific national context and against the background of the specific nature of the problem which they are intended to overcome. The Committee recommends that States parties provide in their reports details of any action plans which may be directed at creating access for women and overcoming their under representation in certain fields, at redistributing resources and power in particular areas, and/or at initiating institutional change to overcome past or present discrimination and accelerate the achievement of de facto equality. Reports should also explain whether such action plans include considerations of unintended potential adverse side effects of such measures as well as on possible action to protect women against them. States parties should also describe in their reports the results of temporary special measures and assess the causes of the possible failure of such measures.

Paragraph 38

States parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women. Temporary special measures should also be implemented in the areas of credit and loans, sports, culture and recreation, and legal awareness. Where necessary, such measures should be directed at women subjected to multiple discrimination, including rural women.

V.2.1.3 Concluding Comments

The relevant paragraphs relating to Article 4 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 10

The Committee is concerned about the State party's apparent lack of clarity about the difference between temporary special measures that are aimed at accelerating de facto or substantive equality of women, as called for under article 4, paragraph 1, of the Convention, and general social policies that are adopted to implement the Convention.

Paragraph 11

The Committee recommends that the State party take concrete measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation 25, in all sectors, with a view to accelerating the practical realization of the goal of women's de facto or substantive equality with men in all areas of the Convention.

V.2.2 SELECTED INDICATORS

The obligation to put in place temporary special measures in Article 4(1) of CEDAW and measures in favour of maternity in Article 4(2) of CEDAW are part of a necessary strategy to achieve substantive equality. Hence, they are not discriminatory even if they entail different treatment. Paragraphs 15 and 16 of CEDAW General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures (2004) (GR 25) distinguishes these two measures. GR 25 provides the elements of a temporary special measure are provided as well. Emphasis is placed on the fact that not all social measures in favour of women are temporary special measures. The latter are measures that are put in place for a certain period of time to achieve *de facto* equality. The duration of a temporary special measure is not measured by a specific time limit, but only when the result of substantive equality has been achieved and sustained. Examples of temporary measures are provided in Paragraph 22 of GR 25. Specific recommendations to State Parties are in Paragraphs 25-39 of the same GR.

Bearing in mind Article 4 of CEDAW, GR 25 and Paragraphs 10 and 11 of Concluding Comments on Viet Nam 2007, the following selected indicators will be used to review Vietnamese legal documents in light of temporary special measures and measures in favour of maternity:

- Indicator 27** Do the Constitution and laws contain provisions that allow the setting of temporary special measures to accelerate *de facto* equality?
- Indicator 28** Is there a definition of ‘temporary special measures’ in legislation?
- Indicator 29** Is there a procedure for the implementation of temporary special measures?
- Indicator 30** Is there legislation that provides for special measures in favour of maternity?

Temporary special measures relating to specific fields - such as in employment, health, political participation and education - are discussed in this paper in the parts relating to those specific fields.

V.2.3 RELEVANT LEGAL PROVISIONS

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|---------------------|--|
| Indicator 27 | Do the Constitution and laws contain provisions that allow the setting of temporary special measures to accelerate <i>de facto</i> equality? |
| Indicator 28 | Is there a definition of ‘temporary special measures’ in legislation? |
| Indicator 29 | Is there a procedure for the implementation of temporary special measures? |

Article 63 of the Constitution provides: “[The] State shall create all necessary conditions for women to raise their qualifications in all fields”, which creates a basis for temporary special measures. Specific focus on temporary special measures can be found in Article 5(6) of the Law on Gender Equality, but it is termed ‘measures to promote gender equality’. The law defines ‘measures to promote equality’ as:

Article 5: Interpretation of Terms

- (6) Measure to promote gender equality is the measure aimed at ensuring substantial gender equality, set forth by the authorities in cases there remains considerable disparity between man and woman concerning the roles, positions, conditions, and opportunities for man and woman to bring into play all their capacities and to enjoy the achievement of the development where the application of equal regulations for man and woman can not remove this disparity. The measure to promote gender equality is to be implemented for a certain period of time and shall end when the target on gender equality has been achieved.

Article 6 of the Law on Gender Equality also emphasizes that using measures to promote gender equality is not discrimination. The law further elaborated on 'measures to promote gender equality' by stating:

Article 19: Measures to promote gender equality

- (1) The measures to promote gender equality include:

- (a) To provide for the proportion of male and female or to ensure appropriate female to participate and benefit;
- (b) To train, foster to improve the ability of man or woman;
- (c) To support in providing the conditions and opportunities for woman or man;
- (d) To provide for specific criteria and conditions for woman or man;
- (e) To provide that woman has the right to be selected where woman has the equal qualifications and criteria with man;
- (f) Measures to promote gender equality provided in Article 11 section 5, Article 12 section 2, Article 13 section 4, Article 14 section 5 of this Law.

- (2) The National Assembly, the National Assembly Standing Committee, the Government have the authority to stipulate measures to promote gender equality as provided in section 1 of this Article, have the responsibility to review the implementation of measures to promote gender equality and to decide to end these measures when the goals of gender equality has been achieved.

Article 11: Gender Equality in the Field of Politics

- (5) Measures to promote gender equality in the field of politics include:

- (a) To ensure the appropriate proportion of the National Assembly female members and people's committees female members in accordance with the national gender equality goals.
- (b) To ensure the appropriate proportion of women in appointing officials to hold titles in the professions in state agencies in accordance with the national gender equality goals.

Article 12: Gender Equality in the Field of Economy

- (2) Measures to promote gender equality in the field of economy include:

- (a) Enterprises employing many female workers shall be given tax and financial preferential treatment according to the regulations of the law.
- (b) Female workers in rural areas shall be given credit aid, encouraged to expand agriculture, forestry and fishery according to the law.

Article 13: Gender Equality in the Field of Labour

- (3) Measures to promote gender equality in the field of labour include:
 - (a) To provide for proportion of man and woman to be recruited;
 - (b) To train and enhance capacity and capability for female workers;
 - (c) Employers create safe and hygienic working condition for female workers in some hard and dangerous professions and occupations or those that have direct contact with harmful substances.

Article 14: Gender Equality in the Field of Education and Training

- (5) Measures to promote gender equality in the field of education and training include:
 - (a) To provide for the proportion of man and woman participating in the study and training;
 - (b) To assist female workers in rural areas in vocational training under the law.

The Law on Gender Equality thus provides clarity as to what ‘measures to promote equality’ are. It would have been preferable to term the measures ‘temporary special measures’ to avoid confusion with other measures that promote equality that are not of a temporary character. The definition in Article 5(6) of the law, though, has substantial similarity to what is provided for in GR 25.

It must be noted, however, that the concept of ‘temporary special measures’ requires that the focus of temporary special measures is not simply on ‘roles, positions, conditions and opportunities’. As temporary special measures seek to ensure substantive equality, they should also look into disparities in ‘rights’ as well as in ‘benefits’ or ‘impact’. The latter is highlighted by international documents (especially CEDAW and GR 25) when saying that temporary special measures should ensure de facto or substantive equality, hence focusing on impact or effect and not simply on legal equality.

Recommendation: It is recommended that the definition of measures to promote equality in Article 5(6) of the Law on Gender Equality include ensuring equality in ‘rights’ and ‘benefits’ or ‘impact’.

Further, the examples of ‘measures to promote equality’ in Articles 11-14 and 19 of the Law on Gender Equality show that there is a need to understand better what temporary special measures are, especially in listing what temporary special measures are required. For example, Article 13(3)(c) - i.e. creating safe and hygienic working conditions for women workers in some hard, dangerous professions or those involving contact with harmful substances - should not be considered a temporary special measure. It is the obligation of the workplace to provide safe and hygienic working conditions for its employees, whether men or women, on a permanent and not a temporary basis. See also Part V.8.3, Indicator 72 for more discussion on this issue.

Recommendation: *In line with Concluding Comments on Viet Nam 2007, the Law on Gender Equality and its subordinate legal documents should clearly make distinctions between temporary special measures (measures to promote equality) and general social policies in favour of women. The distinction must be clearly pointed out to avoid confusion in implementation. Guidance from GR 25 is useful in crafting this distinction. The legal document must highlight that temporary special measures are temporary in nature and in place to accelerate de facto equality, as opposed to general social policies that are of a more permanent nature and address the environment to enable women and in many cases, men as well, to enjoy their rights.*

It is also recommended that the implementing decrees on the Law on Gender Equality also include in the enumeration other forms of temporary special measures/ or measures to promote equality, such as special budgetary allocations, outreach or support programs, preferential treatment. Temporary special measures in other fields must also be considered, such as in the field of science and technology, culture, information, sports, and public health.

Indicator 30 Is there legislation that provide for special measures in favour of maternity?

Article 63 of the Constitution provides:

Article 63

... Women workers shall enjoy a regime related to maternity. Women who are State employees and wage earners shall enjoy paid prenatal and post-natal leaves during which they shall receive all their wages and allowances as determined by law.

The State and society shall create necessary conditions for women to raise their qualifications in all fields and full play their roles in society; they shall see to the development of maternity so as to lighten housework and allow women to engage more actively in work and study, undergo medical treatment, enjoy periods of rest and fulfill their maternal duties.

Article 6(4) of the Law on Gender Equality also emphasizes that policies aimed at protecting and supporting the mother are not considered gender discrimination. Article 7 of the law reiterates that one of the State policies is to protect and support the mother during pregnancy, giving birth and child-raising to facilitate man and woman in sharing housework.

For more discussions and recommendations, see Part V.7.3, Indicator 65(b); Part V.8.3, Indicators 71, 75, 76, 78-80; and Part V.9.3, Indicator 87.

V.3 SOCIAL AND CULTURAL PATTERNS OF CONDUCT (Article 5 of CEDAW)

V.3.1 OBLIGATIONS UNDER CEDAW

V.3.1.1 Text of CEDAW

ARTICLE 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 5 of CEDAW must be read with Article 2(f) of CEDAW at all times because they are interrelated. To recall, Article 2(f) provides that States Parties undertake to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women...”

V.3.1.2 General Recommendations

The following excerpts from GRs are relevant to Article 5 of CEDAW:

GR 19: Violence against Women

Paragraph 11

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.

Paragraph 12

These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender based violence.

GR 23: Political and Public Life*Paragraph 10*

In all nations, the most significant factors inhibiting women's ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.

Paragraph 11

Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities. Women's economic dependence on men often prevents them from making important political decisions and from participating actively in public life. Their double burden of work and their economic dependence, coupled with the long or inflexible hours of both public and political work, prevent women from being more active.

Paragraph 12

Stereotyping, including that perpetrated by the media, confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution. The low involvement of women in the professions from which politicians are recruited can create another obstacle. In countries where women leaders do assume power this can be the result of the influence of their fathers, husbands or male relatives rather than electoral success in their own right.

Paragraph 20

Factors which impede these rights include the following:

- (c) In many nations, traditions and social and cultural stereotypes discourage women from exercising their right to vote. Many men influence or control the votes of women by persuasion or direct action, including voting on their behalf. Any such practices should be prevented;

GR 21: Equality in Marriage and Family Relations*Paragraph 15*

While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to enforce these laws in reality contravene the Convention.

Paragraph 44

States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn.

Paragraph 50

Assisted by the comments in the present general recommendation, and as required by

articles 2, 3 and 24, States parties should introduce measures directed at encouraging full compliance with the principles of the Convention, particularly where religious or private law or custom conflict with those principles.

V.3.1.3 Concluding Comments

The relevant paragraphs relating to Article 5 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 12

The Committee reiterates its concern about the persistence of patriarchal attitudes and deep-rooted stereotypes, including the preference for male offspring, regarding the roles and responsibilities of women and men within the family and society at large. These stereotypes present a significant obstacle to the implementation of the Convention, are a root cause of violence against women and put women in a disadvantaged position in a number of areas, including in the labour market and in political and public life.

Paragraph 13

The Committee recommends that the State party take measures to bring about changes in traditional patriarchal attitudes and in gender-role stereotyping. Such measures should include awareness-raising and public educational campaigns addressing women and girls as well as men and boys, with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention. Special attention should be given to the role of the media in perpetuating such stereotypes, as well as their role in contributing to a social and cultural change towards an environment that is supportive of gender equality. The Committee recommends, in particular, that the Convention be translated into those ethnic minority languages with their own alphabets and that radio programmes in the languages of ethnic minorities, among other forms of media, be used in regularly disseminating information on the Convention and on gender equality.

V.3.2 SELECTED INDICATORS

CEDAW, - and, in particular Concluding Comments on Viet Nam 2007 - requires a number of measures to be put in place to change practices that discriminate against women, including cultural practices, stereotypes, and patterns of conduct. A number of focus areas is seen as critical to bring about change in this regard, including awareness raising on gender equality, information dissemination on CEDAW and laws, translation of CEDAW and laws into ethnic minority language, and laying down a role for the media.

The selected indicators for social and cultural patterns of conduct are:

- | | |
|---------------------|---|
| Indicator 31 | Is there legislation that requires the modification of stereotypes and other practices that discriminate against women? |
| Indicator 32 | Are there measures in place to provide information on gender and gender equality? |
| Indicator 33 | Is there legislation addressing the role and responsibility of media to refrain from discriminatory conduct and to contribute to achievement of equality? |

There are also a number of selected indicators that are relevant to Article 5 of CEDAW, but they are placed as selected indicators for other articles. It may be useful to look at them as well; for example, the selected indicators referring to sex-selective abortion under Article 12 of CEDAW, for interventions, including dissemination of information to ethnic minorities under Article 14 of CEDAW, and for common responsibility of men and women in the upbringing of their children under Article 16 of CEDAW.

V.3.3 RELEVANT LEGAL PROVISIONS

Indicator 31	Is there legislation that requires the modification of stereotypes and other practices that discriminate against women?
Indicator 32	Are there measures in place to provide information on gender and gender equality?

There are a number of provisions in Vietnamese legal documents relating to customs and traditions.

First, Article 30 of the Constitution provides: “The State and society ... inherit and promote values of cultures of all nationalities, in Viet Nam... The State ... prohibits the popularization of reactionary and depraved thoughts and cultures, and eliminates superstition and bad customs.” Article 33 states: “The State shall strictly ban all activities in the fields of culture and information that are detrimental to national interests, and destructive of the personality, morals and fine lifestyle of the Vietnamese.”

Second, Article 7 of the Law on Gender Equality provides as one of the State Policies on Gender Equality: “To apply appropriate measures to eliminate backward customs and habits hindering the implementation of gender equality objective.” Article 40(6) identifies as a violation against the Law on Gender Equality in the field of culture, information and sports the “spreading thought, conducting oneself and inciting other people to conduct backward manners and custom with gender discrimination nature under all forms.”

Third, Article 8 of the Civil Code provides that the establishment and performance of civil rights and obligations must ensure the preservation of national identities, respect and promote good customs, practices and traditions, solidarity, mutual affection and cooperation, the principle of every individual for the community and the community for every individual, and the noble ethical values of ethnicities living together on Vietnamese soil.

Fourth, Article 3(1) of the Marriage and Family Law states that the State adopts policies and measures to mobilize people to abolish backward customs and practices related to marriage and family, but to promote fine traditions, customs and practices embodying the identity of each nationality.

Fifth, the Decree on Marriage and Family Law (Ethnic Minorities), which elaborates on the Marriage and Family Law, states in Article 2 that, in relation to the application of customs and practices on marriage and family, the fine customs and practices of the ethnic minorities will be respected and promoted, while the backward marriage and family customs are either strictly prohibited and/or to be eradicated through mobilization. The decree identifies ‘fine practices’ and ‘backward practices’. ‘Fine practices’ include monogamy, equal treatment of children

regardless of gender, and freedom to choose their spouses.²⁶³ 'Backward practices' include underage marriage, forced marriages, polygamy, snatching wives, string binding, and asking for expensive wedding presents of a commercial nature.²⁶⁴

In addition to this, under the Decree on Marriage and Family Law (Ethnic Minorities), it is the responsibility of the Peoples' Committees of the provinces and centrally run cities to direct the Committee for Ethnic Minorities and provincial/municipal Justice Services and Culture-Information Services to coordinate with the provincial/municipal Viet Nam Fatherland Front Committees as well as socio-political organizations in the localities to elaborate and submit the following lists to the provincial/municipal People's Council for approval: (a) the list of fine customs and practices on marriage and family of various ethnic minority groups that are to be encouraged for promotion in the localities; and (b) the list of backward customs and practices on marriage and family of various ethnic minority groups, which are to be eradicated through mobilization.²⁶⁵

Sixth, the *Decision No. 124/2003/QĐ-TTĐ of June 17, 2003 Approving the Scheme on Conservation and Development of Vietnamese Ethnic Minority Group' Culture* in Article 1(6)(c) states that, among the contents of conservation and promotion of the values of traditional cultural heritages of ethnic minority groups, is the preservation and promotion of cultural activities related to traditional rituals as well as healthy customs and practices of ethnic minority groups.

It is obvious from these provisions that culture or tradition is not protected if it is 'backward'. Further, it can be deduced that, by and large, discriminatory customs and practices will be considered backward.

The Decree on Marriage and Family Law (Ethnic Minorities) provides a good model for identifying what are fine and backward practices in the area of marriage and family law. It is recommended that, in other fields, similar identification must be undertaken. This will guide implementation of Article 5 of CEDAW. Also, it should be borne in mind that backward and/or discriminatory customs and practices are found not only in ethnic minorities. There are discriminatory practices in marriage and family law that are generally practiced are based from general stereotypes, such as letting women do household chores and care work or thinking that women are not qualified to be leaders.

Further, in these provisions, the term 'backward customs and practices' is used to denote those customs and practices that are to be modified or eradicated. It is suggested that, to enable conceptual clarity as to the reason for change or modification of a particular custom or practice, the term 'discriminatory' be used to refer to those customs and practices that violate gender equality or that result in gender discrimination. This also will enable identification and eradication of discriminatory customs and practices within the general population.

To address the need for information dissemination on gender and gender equality, the Law on Gender Equality, provides:

²⁶³ Decree on Marriage and Family Law (Ethnic Minorities), Article 2(1) and Appendix A

²⁶⁴ Ibid., Article 2(2) and Appendix B

²⁶⁵ Ibid., Article 27(1)

Article 23: Information, education, communications on gender and gender equality

- (1) The information, education, communications on gender and gender equality are the important measures to enhance the awareness of gender and gender equality issues.
- (2) The information, education, communications on gender and gender equality must be included in the education syllabus in schools, in activities of agencies, organizations and community.
- (3) The information, education, communications on gender and gender equality are conducted through the education programs, publications, broadcasts and television programs and other forms.

Article 25: Responsibility of the Government

- (5) To publicize national information on gender equality...
- (6) To coordinate with the Viet Nam Fatherland Front and the Viet Nam's Women Union; and to direct relevant agencies in propagandizing, disseminating and educating the laws and in raising the awareness of gender equality for the entire people.

Article 31: Responsibility of the state agencies, political organizations, socio-economic organizations in the implementation of gender equality within their own agencies and organizations

- (2) In their operation, state agencies, political organizations, socio-political organizations have the responsibility:
 - (c) To education about gender and law on gender equality for officials, civil servants and public employees under their management;...

Article 32: Responsibility of other Agencies and Organizations

- (4) Depending on their capacities and circumstances, agencies and organizations shall be actively conduct or to coordinate in conducting the following activities to promote gender equality:
 - (a) to organize activities to propagate knowledge about gender and law on gender equality;

The 2003-2007 Programme on Law Dissemination and Education, pursuant to *Decision No. 13/2003/QĐ-TTĐ of January 17, 2003, Approving the 2003-2007 Programme on Law Dissemination and Education* (Programme on Law Dissemination and Education) has as one of its objectives the timely and full dissemination of the contents of legislation to people as a means and tool to protect their rights and interests as well as to raise official and public consciousness and active observance of the laws. The programme specifically provides that, for women, law dissemination and information must concentrate on those related to women's rights, obligations in the field of marriage and family, child protection, care and education, and equality between men and women. There is an obvious bias towards educating women on family, marriage and child matters. As for other groups of people - like peasants, ethnic minorities, officials and public employees - laws on women's rights are not specifically assigned for their education and information.

Decree No. 187/2007/ND-CP of December 27, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Information and Communication and Decree No. 185/2007/ND-CP, defining the functions, tasks, powers and organizational structure of the

Ministry of Culture, Sports and Tourism are outside the scope of this review. The review, although based on the context prior to the passage of the law, is still useful to check whether recommendations provided were addressed in the new legal document.

Recommendation: Legislation must provide for clear responsibility on the part of the relevant state management agency/agencies to perform a range of measures to modify discriminatory practices or stereotypes. This would include awareness-raising, public education campaigns, attention to role media, and dissemination of information to ethnic minorities. Guidelines that identify which practices are backward and/or discriminatory in addition to the Decree on Marriage and Family Law (Ethnic Minorities) - and which, therefore, need to be prohibited or eradicated through active mobilization - must be named in all fields, such as economic, education and health. In this case, the identification of backward or discriminatory customs and practices should not be limited to those from ethnic minorities, but must include customs and practices of the general population as well. It is also suggested that the term 'backward' be replaced by 'discriminatory', when appropriate, to ensure conceptual clarity on the reason for the need for revision or eradication.

In relation to dissemination and information measures, responsibility of information dissemination agencies to integrate gender within the scope of their own competence must be clearly stipulated. This will enable a wider outreach of gender issues. See also Part V.7.3, Indicators 67 and 68.

Indicator 33 Is there legislation addressing the role and responsibility of media to refrain from discriminatory conduct and to contribute to achievement of equality?

It is evident that the media has a huge role to play in modifying discriminatory practices and stereotypes. There are particular legal documents that may cover discriminatory media activities. Article 5 of *Decree No. 51/2002/ND-CP of 26 April 2002 Detailing the Implementation of the Press Law and the Law Amending and Supplementing a Number of Articles of the Press Law* (Decree on Press Law) identifies matters that must not be informed in the press, including work that opposes the State or undermines the people's unity bloc, obscene acts, acts of slaughter, pornographic pictures, articles that badly affect people's lives, and reports or articles that disseminate bad practices or superstition. Violations are subject to administrative or penal liabilities, whichever is applicable.²⁶⁶ Prohibited acts in publication activities are in Article 10 of *the Law on Publication (No. 30/2004/QH11 of 3 December 2004)* (Law on Publication), which include propagating obscene and depraved lifestyles, social evils, superstition, undermining fine traditions and customs. In relation to advertisements, there are several prohibited acts in advertising activities under Article 3 of *the Decree No. 24/2003/ND-CP of 13 March 2003 detailing the Implementation of the Ordinance on Advertisement* (Decree on Advertisement Ordinance). However, gender discrimination is not one of them.

Recommendation: It may also be useful to provide guidelines to the media on how to address gender equality issues, in particular GBV. Clear rules must prohibit, in cases

²⁶⁶ For administrative penalties, see *Decree No. 31/2001/ND-CP of 26 June 2001 on Sanctioning Administrative Violations in the Culture-Information Field*, Article 9

of GBV, publishing information that will identify the victim without prior informed consent after a briefing of the consequences of such disclosure. In interviewing victims of GBV for media, gender-sensitive language and behavior must be used to lessen trauma on the victim.

In relation to advertisements, it is suggested that the Ordinance on Advertisement and its decree prohibit gender discrimination in advertising activities. Guidelines on what acts constitute discrimination in advertising activities should be drafted. The prohibited acts should include: (a) specifying the sex of the person required in relation to advertisement for services; (b) derogatory statements against one sex; and (c) advertisements that portray one sex as inferior or superior.

V.4 TRAFFICKING AND EXPLOITATION OF PROSTITUTION (ARTICLE 6 OF CEDAW)

V.4.1 OBLIGATIONS UNDER CEDAW

V.4.1.1 Text of CEDAW

ARTICLE 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

V.4.1.2 General Recommendations

The following excerpts from GRs are relevant to Article 6 of CEDAW:

GR 19: Violence Against Women

Paragraph 13

States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

Paragraph 14

Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

Paragraph 15

Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

Paragraph 16

Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Paragraph 24

In light of these comments, the Committee on the Elimination of Discrimination against Women recommends:

(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures, that have been taken to protect women engaged in prostitution or subject to trafficking and

other forms of sexual exploitation. The effectiveness of these measures should also be described;

GR 24: Equality in Marriage and Family Relations

Paragraph 6

While biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

Paragraph 18

The issues of HIV/AIDS and other sexually transmitted diseases are central to the rights of women and adolescent girls to sexual health. Adolescent girls and women in many countries lack adequate access to information and services necessary to ensure sexual health. As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. Women in prostitution are also particularly vulnerable to these diseases. States parties should ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality.

See excerpts of GR 12 and GR 19 under Part V.1.1.2.

V.4.1.3 Concluding Comments

The relevant provisions relating to Article 6 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 18

The Committee welcomes a number of measures, including the Ordinance on the Prevention and Suppression of Prostitution, bilateral and multilateral agreements and the Action Plan for the Prevention and Suppression of Trafficking in Women and Girls, but is concerned about the persistence of trafficking in women and girls and the exploitation of prostitution, both within the country and to other countries. The Committee is also concerned about the low rates of prosecution and conviction of traffickers and of others who exploit the prostitution of women. The Committee also notes with concern reports that trafficked women and girls face problems in enjoying their citizenship rights when returning to Viet Nam, as well as in conveying citizenship to their children born abroad. It is also concerned about reports that rehabilitation measures, such as administrative

camps, may stigmatize girls and young women victims of prostitution and deny them due process rights. In addition, the Committee is concerned about the lack of systematic data collection on the phenomenon of trafficking and exploitation of prostitution.

Paragraph 19

The Committee urges the State party to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime, and to intensify its efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation on the phenomenon. The Committee further calls upon the State party to increase its efforts at international, regional and bilateral cooperation to address more effectively the causes of trafficking, and to improve its efforts to prevent trafficking through information exchange. The Committee urges the State party to collect and analyse data from the police and international sources, prosecute and punish traffickers and ensure the protection of the human rights of trafficked women and girls. It urges the State party to pursue a holistic approach aimed at addressing the root causes of trafficking and improving prevention. Such efforts should include measures to improve the economic situation of women and girls and to provide them with educational and economic opportunities, thereby reducing and eliminating their vulnerability to exploitation and traffickers. It should also facilitate the reintegration into society of women and girls who are victims of exploitation and trafficking, including children born to Vietnamese women abroad, by ensuring that they are neither criminalized nor penalized and fully enjoy their human rights. It should also enhance rehabilitation, social integration and economic empowerment programmes.

V.4.2 SELECTED INDICATORS

Comprehensively addressing trafficking in women and exploitation of prostitution is an obligation under Article 6 of CEDAW. GR 19 requires that specific preventive, punitive and rehabilitative and others measures must be in place to comply with State Party obligations.²⁶⁷ It also pointed out that poverty and unemployment increases women's vulnerability to trafficking and prostitution, so they must be addressed promptly.²⁶⁸ GR 19 also emphasized the evolving forms of sexual exploitation, such as sex tourism and organized marriages; hence, measures to address them must also be evolving and up-to-date as well.²⁶⁹ CEDAW General Recommendation No. 24: Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women - Women and Health (1999) (GR 24) raises the need for special attention for vulnerable and disadvantaged groups of women, especially women in prostitution.

Concluding Comments on Viet Nam 2007 are very specific as to recommendations on Viet Nam. In Paragraph 19, it recommends systematic data collection and analysis, increasing information exchange, increased prosecution, improving the economic situation of women,

²⁶⁷ GR 19, Paragraphs 24(g), 24(h) and 24(t)

²⁶⁸ Ibid., Paragraph 15

²⁶⁹ Ibid., Paragraph 14

measures for reintegration, and non-penalization of trafficked women. More importantly, Concluding Comments on Viet Nam 2007 urged that Viet Nam ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime (Trafficking Protocol).²⁷⁰ It endorses the standards in the Trafficking Protocol, which provide as follows.

A definition of 'trafficking'

Article 3

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph(a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Criminalization of trafficking

Article 5 of the Trafficking Protocol requires that trafficking in persons be criminalized, including attempts to commit it, participating as an accomplice in the offence, and organizing/directing the commission of the offence.

Measures for assistance and protection of victims of trafficking in persons

Articles 6-8 of the Trafficking Protocol provide for measures for assistance and protection that include: (a) protect the privacy and identity of trafficked persons, including making legal proceedings confidential; (b) provide information on court and administrative proceedings to trafficked persons; (c) provide for the physical, psychological and social recovery of trafficked persons, in particular the provision of appropriate housing, counselling, medical, psychological and material assistance, and employment, educational and training opportunities; (d) offer compensation for damage suffered by trafficked persons; (e) allow trafficked persons to remain in the territory in appropriate cases; and (f) repatriate trafficked persons.

Prevention, cooperation and other measures

Articles 9-13 of the Trafficking Protocol state that State Parties must: (a) establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons

²⁷⁰ Concluding Comments on Viet Nam 2007, Paragraph 19

and to protect victims of trafficking in persons, especially women and children, from re-victimization; (b) engage in research, information and mass media campaigns and social and economic initiatives; (c) alleviate factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity; (d) put in place educational, social or cultural measures to discourage the demand leading to trafficking in persons; (e) strengthen information exchange among and training for law enforcement, immigration or other relevant authorities; (f) strengthen border controls; and (g) ensure security and control of travel documents.

Extradition

Article 16 of the Organized Crime Convention provides that offences covered in the Organized Crime Convention are included in any existing extradition treaty between State Parties and as extraditable offences in future extradition treaties. State Parties to the Organized Crime Convention that do not make extradition conditional on the existence of an extradition treaty must recognize the offences covered as extraditable between themselves. In relation to its own nationals, if a State Party does not extradite an alleged offender solely because of nationality, it must, on request of the other State Party seeking extradition, begin an immediate investigation for the purpose of prosecution.

In consideration of Article 6 of CEDAW and the Trafficking Protocol, which was endorsed by the CEDAW Committee for ratification by Viet Nam,²⁷¹ the following selected indicators were chosen for this article:

V.4.2.1 Trafficking

- Indicator 34** Is trafficking of women prohibited?
- Indicator 35** Is there a definition of 'trafficking' in legislation?
- Indicator 36** What sanctions are in place for commission of trafficking?
- Indicator 37** Is there legislation protecting would-be brides from being victimized by traffickers? Is mail order bride system prohibited?
- Indicator 38** Are trafficked women penalized?
- Indicator 39** Does legislation put in place measures to combat trafficking?
- Indicator 40** What legislative measures are in place to address needs of victims of trafficking and their families?
- Indicator 41** Are there interim and permanent protective measures required by law for the protection of the victim/survivor of trafficking?
- Indicator 42** Does legislation exist ensuring that women who have been trafficked and their children are able to claim citizenship, residency and other rights?
- Indicator 43** Is inter-agency cooperation to address trafficking mandated by law? Is there a clear designation of responsibilities of ministries and agencies to eliminate trafficking?

²⁷¹ Ibid.

Indicator 44 What measures are provided by legislation concerning responsibilities of embassies abroad for protection of victims of traffickers?

Indicator 45 Is trafficking an extraditable offense?

V.4.2.2. Exploitation of Prostitution

Indicator 46 Is prostitution considered an offense? If yes, how is it committed and who are considered offenders?

Indicator 47 Are there sanctions in place?

Indicator 48 Is sex tourism prohibited?

Indicator 49 Are there measures required by law to address the needs of women exploited for prostitution?

Indicator 50 Is inter-agency cooperation to address prostitution mandated by law? Is there in legislation a clear designation of responsibilities of ministries and agencies to eliminate prostitution?

Indicator 51 Are women in prostitution given equal protection of the law in relation to crimes of rape or sexual assault?

Indicator 52 Is there legislation to ensure that women in prostitution are given equal access and benefits to health care, education and other basic services?

V.4.3 RELEVANT LEGAL PROVISIONS

V.4.3.1 Trafficking

The trafficking of women and children is a significant problem in Viet Nam. Women and children are trafficked both within Viet Nam and internationally for sexual and labour exploitation, forced marriage, and domestic servitude.²⁷² It is difficult to get an accurate estimate of the number of women and children being trafficked. Among the various statistics and information on trafficked women are as follows. During the last 10 years at least 10,000 Vietnamese women and children were trafficked to Cambodia and China.²⁷³ A Border Guard Command report indicates that between 2000 and 2004 the border guard force discovered 196 trafficking cases, arrested 403 traffickers, uncovered 53 networks of cross-border trafficking in women and children, rescued 641 women, and coordinated with functional authorities in receiving 3,667 trafficked Vietnamese women and children.²⁷⁴ On Viet Nam's southwestern border with Cambodia, from 2000 to December 2004, there were 217 cases involving 1,395 women and children who were trafficked or entered illegally.²⁷⁵ Women and children were taken to Cambodia to work as sex workers in restaurant, hotels and brothels, or sold to foreigners for marriage, brokerage or child adoptions.²⁷⁶ Along Viet Nam's northern border with China, from 2000 to December 2004, 2,917 persons were returned by Chinese authorities, of whom 947 had been trafficked and

²⁷² Wells, op. cit., p. 50

²⁷³ Ibid., p. 51

²⁷⁴ The Programme of Action against Trafficking in Women and Children from 2005 to 2010, Decision No. 312/2005/QĐ-TTg of November 30, 2005 (Programme of Action against Trafficking), Project on Communication and Education in Communities on Prevention and Combat of Trafficking in Women and Children from 2005 to 2010, Paragraph I.1

²⁷⁵ Ibid.

²⁷⁶ Ibid.

1,970 had entered illegally.²⁷⁷ Women and children are sold to China mostly as wives or prostitutes.²⁷⁸

It must be noted that the number of returning victims of trafficking account for a small percentage of trafficked women and children. According to the results of surveys conducted in some localities, the number only accounts for 7.9 percent.²⁷⁹ Therefore, a large number of victims have not yet been identified. Statistics from the SPP indicate that cases filed before the courts are declining despite the belief that trafficking incidences are on the rise.²⁸⁰ Similarly, despite the seriousness of trafficking of women in some localities such as the provinces of Lang Son, Quang Ninh, Thanh Hoa, Nghe An, Thai Binh, Nam Ha, An Giang, Kien Giang, Tay Ninh and Dong Thap, the number of cases brought to the courts in these localities is low.²⁸¹

Poverty and extreme hardships were identified as causes behind trafficking. It was noted that the victims are not necessarily the poorest, but they seek a better life for themselves or their families. Many women and children and their families have moved to seek jobs in the cities or foreign countries.²⁸² In the Programme of Action on Trafficking, it was stated that the most vulnerable groups to trafficking are women aged 18 and 35 years and teenage girls.²⁸³ It also pointed out that the most vulnerable women live in rural and remote and mountainous regions, they have low educational levels and limited social knowledge, they lack information and are credulous, they have unstable jobs and live in poor economic conditions, they have unhappy marriages or family problems, or they want to increase their incomes.²⁸⁴ Trafficked children are mostly street children, children lacking in due attention, education and management of their families.²⁸⁵ They are abandoned, abducted or seduced and sold by means of deception or fraud.²⁸⁶

The Programme of Action against Trafficking also identifies some of the difficulties faced in addressing trafficking, including: (a) low public awareness of the issue; (b) inadequate awareness of the issue by local administration agencies at all levels; (c) communication on prevention and combat of trafficking has neither received due attention and investment nor is carried out regularly, intensively or extensively, except in some key localities and only when

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Programme of Action against Trafficking, Project on Reception and Support of Women and Children Victims of Trafficking Returning from Abroad in the 2005 to 2010, Paragraph I.1

²⁸⁰ GSO Statistics, p. 73 citing Criminal Statistics Department, People's Supreme Procuracy. In 2000, there were 179 cases of trafficking involving 303 defendants. In 2001, there were 107 cases of trafficking with 184 defendants. In 2002, there were 115 cases with 183 defendants; in 2003, there were 115 cases with 62 defendants.

²⁸¹ GSO Statistics, p. 73. In Lang Son it was reported that 4,390 women left the country, mostly trafficked, but in 2000-2003, only 28 cases were tried with 39 defendants. Likewise, in Thai Binh, a survey found that 2,514 women were trafficked, but only three cases were tried with four defendants.

²⁸² Wang, Yi, 'Trafficking in Women and Children from Viet Nam to China: Legal Framework and Government Responses', Anti-trafficking Programme in Viet Nam, Oxfam Quebec, Ha Noi, August 2005 (Wang), p. 6; and ActionAid International Viet Nam, 'Synthesis Report: The Trafficking of Vietnamese Women and Children', ActionAid International Viet Nam, Ha Noi, 2005 (ActionAid International Viet Nam), pp. 19-20

²⁸³ Programme of Action against Trafficking, Project on Communication and Education in Communities on Prevention and Combat of Trafficking in Women and Children from 2005 to 2010, Paragraph I.1

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

anti-trafficking drives are launched; (d) coordination among ministries, branches and mass organizations fails to bring about synchronized and uniform direction of communication efforts; (e) functional agencies, such as the police and border guards, need more skills in detecting and investigating the crime of trafficking in women and children; (f) lack of cooperation and facilitation of foreign functional authorities; (g) officials have limited capability in taking professional preventive measures; (h) no specialized force to combat this crime; (i) the system of legal documents is incomplete and inconsistent; (j) inadequate coordination between executive agencies and functional authorities of neighboring and regional countries; and (k) criminal judicial assistance remains limited.²⁸⁷

The Plan of Action for Advancement of Women is in place with one of its indicators being to strive to decrease by 50 percent the crime of trafficking in women and children and to do so by 20 percent in key areas, as well as to provide treatment and vocation training to at least 50 percent of identified trafficked women and children.

Indicator 34	Is trafficking of women prohibited?
Indicator 35	Is there a definition of 'trafficking' in legislation?
Indicator 36	What sanctions are in place for commission of trafficking?
Indicator 37	Is there legislation protecting would-be brides from being victimized by traffickers? Is mail order bride system prohibited?

Trafficking in women and children is prohibited in Viet Nam through the following legal documents.

Trafficking in women

Article 119 of the Penal Code states that those who traffic women will be sentenced to between two and seven years imprisonment. It also provides that the impossible penalty is increased from 5 to 20 years imprisonment when the crime is committed in particular circumstances such as: (a) trading in women for the purpose of prostitution; (b) in an organized manner; (c) being of 'professional character'; (d) for the purpose of sending them overseas; (e) trafficking in more than one person; and (f) trafficking more than once. Offenders are also subject to fine of between VND 5 million and VND 50 million, to probation, or a residence ban for one year to five years.²⁸⁸

Trading in, fraudulently exchanging or appropriating children

Article 120 of the Penal Code states that those who trade in, fraudulently exchange or appropriate children in any form will be sentenced to between 3 and 10 years of imprisonment. The impossible penalty is increase from 10 to 20 years when committed in particular circumstances such as: (a) in an organized manner; (b) being of professional character; (c) for 'despicable motivation'; (d) trading in, fraudulently exchanging or appropriating more than one child; (e) for the purpose of sending them abroad; (f) for use for inhumane purposes; (g) for use for prostitution purposes; (h) dangerous recidivism; and (i) causing serious consequences.²⁸⁹

²⁸⁷ Ibid.Paragraph I.2(b)

²⁸⁸ Penal Code, Article 119(3)

²⁸⁹ Ibid., Article 120(2)

Article 48 of the Penal Code also provides for circumstances that may generally aggravate penal liability, which include abusing position and power, and committing a crime against children, pregnant women, aged persons, persons unable to defend themselves, or persons dependent on offenders (for materials, moral conditions, work or others).

Acts of infringing upon children's rights

Article 8(6) of the *Decree No. 36/2005/ND CP Detailing the Implementation of a Number of Articles of the Law on Child Protection, Care and Education* (Decree on Children Law) prohibits trafficking in children in any form.

There is no definition of 'trafficking' provided in legal documents. Some guidance can be found in *Resolution No. 04/HDTP by the Judicial Council of Supreme People's Court of 29 November 1986 on Guidelines for applying a number of provisions in the Penal Code* (Resolution on Penal Code). The resolution provides that 'trading in children' means "the buying or selling of a child for personal profit, even buying a child from the stealer or the parents. The act of buying a child knowing that the child is stolen shall also be regarded as a crime of trading in children."

The Trafficking Protocol requires criminalization of all aspects of trafficking. Vietnamese laws have a good coverage of offences that are committed in the 'course of trafficking'. These include prostitution, labour exploitation, violence, sexual assault, illegal entry and exit, organizing or forcing others to run away for abroad, and illegal marriages. The crime of prostitution is already penalized under the Penal Code (see Part 4.2.1). As to labour exploitation, Articles 227 and 228 of the Penal Code punish violations of labour safety and hygiene conditions and violations of provisions of child labour. Further, hard and dangerous work, and work that exposes one to hazardous substances, are covered by legal documents promulgated by MOLISA. Article 19 of the Labour Code also punishes and provides administrative sanctions for "any conduct which is intended to deceive workers or to use an employment service as a means of breaching the law is strictly prohibited, including forms of enticement, false promises, or false advertising."

Chapter XII of the Penal Code deals with crimes of infringing upon human life, health, dignity and honor. These can be used to penalize particular offences committed in the course of trafficking. These include: murder;²⁹⁰ forced suicide;²⁹¹ inciting or assisting other persons to commit suicide;²⁹² refusal to rescue people from a life-threatening situation;²⁹³ threatening to murder;²⁹⁴ intentionally inflicting injury on or causing harm to the health of other persons;²⁹⁵ rape;²⁹⁶ rape of children;²⁹⁷ forcible sexual intercourse;²⁹⁸ forcible sexual intercourse with chil-

²⁹⁰ Ibid., Article 93

²⁹¹ Ibid., Article 100

²⁹² Ibid., Article 101

²⁹³ Ibid., Article 102

²⁹⁴ Ibid., Article 103

²⁹⁵ Ibid., Article 104

²⁹⁶ Ibid., Article 111

²⁹⁷ Ibid., Article 112

²⁹⁸ Ibid., Article 113

dren;²⁹⁹ having sexual intercourse with children;³⁰⁰ obscenity towards children;³⁰¹ spreading HIV to other persons;³⁰² and intentionally spreading HIV to other persons.³⁰³ See Part V.1.3.6 for text of most of these provisions.

The Penal Code, further, has provisions that protect the integrity of passports, travel documents, and others. These are: amending and/or using certificates and papers issued by agencies and/or organizations;³⁰⁴ forging seals and/or documents of agencies and/or organizations;³⁰⁵ and appropriating, trading in, or destroying seals and/or documents issued by State agencies and/or social organizations;³⁰⁶ and forgery in the course of employment.³⁰⁷

Provisions on marriage in the Penal Code can also be used to penalize certain acts of trafficking, such as: forcible marriage or prevention of voluntary and progressive marriage;³⁰⁸ bigamy;³⁰⁹ organizing underage marriage, or entering into underage marriage;³¹⁰ and registering an illegal marriage.³¹¹

Preparation for crime commission and incomplete commission of a crime bears criminal liabilities as per Articles 17 and 18 of the Penal Code. Articles 20 and 53 of the Penal Code state that organizers, executors, instigators and helpers of crime commission all bear penal liability.

The Law on Vietnamese Guest Workers (No. 72/2006/QH11 of November 29, 2006) (Law on Guest Workers) provides for procedures and penalties concerning activities for sending workers abroad (see Part V.8.3, Indicator 84 for the appropriate provisions). The Penal Code also punishes breaching regulations on border regions,³¹² illegally leaving or entering the country,³¹³ illegally staying abroad or in Viet Nam;³¹⁴ and organizing and/or coercing other persons to flee abroad or to stay abroad illegally.³¹⁵ *The Directive No. 14/2004/CT-TTG of April 2, 2004 on Handling and Prevention of Vietnamese Citizen's Illegal Exit, Entry and Residence in Foreign Countries* also requires the handling and prevention of illegal exit and entry that involve: (a) people with "no exit and entry papers and were deceived or dragged by evil persons to illegally cross the border to some foreign countries where they searched jobs or used fake passports and papers to further travel to other countries"; and (b) legal exit from Viet Nam and legal entry into a foreign country, but later stays on for illegal residency or labour.

²⁹⁹ Ibid., Article 114

³⁰⁰ Ibid., Article 115

³⁰¹ Ibid., Article 116

³⁰² Ibid., Article 117

³⁰³ Ibid., Article 118

³⁰⁴ Ibid., Article 266

³⁰⁵ Ibid., Article 267

³⁰⁶ Ibid., Article 268

³⁰⁷ Ibid., Article 284

³⁰⁸ Ibid., Article 146

³⁰⁹ Ibid., Article 147

³¹⁰ Ibid., Article 148

³¹¹ Ibid., Article 149

³¹² Ibid., Article 273

³¹³ Ibid., Article 274

³¹⁴ Ibid.

³¹⁵ Ibid., Article 275

Article 67 of the Marriage and Family Law strictly forbids the abuse of child adoption for labour exploitation, sexual abuse, trafficking in children and other purposes. Article 105 of the Marriage and Family Law also states that this prohibition applies to child adoption involving a foreign element. *The Decree No. 68/2002/ND-CP of July 20, 2002 on Marriage and Family Relationships with Foreign Elements* prohibits the use of marriage and adoption as covers for the trafficking in, exploitation and sexual abuse of women and children for material gain. There are no specific provisions prohibiting a mail-order bride system.

Indeed, many aspects of trafficking are covered by Vietnamese laws already. However, in many cases, these offences may be committed outside of the country's jurisdiction, so prosecution is difficult; for example, crimes against Vietnamese women and children relating to prostitution, murder, ill-treatment and sexual assault as mostly committed abroad. A clear definition of the offence of 'trafficking' will ensure that all acts that may be part of the process of trafficking are covered, prohibited and penalized by Vietnamese law; and, hence, allow interventions to be more reflective of the real situation of trafficking.

Recommendation: It is recommended that a definition of 'trafficking' be provided in law. The definition must be consistent with Article 3 of the Trafficking Protocol. In particular, the definition must include the various acts that may constitute trafficking (that is, recruitment, transportation, transfer, harbouring and receipt), the means used (that is, threats, use of force, coercion, abduction, fraud, deception, or abuse of power or position of vulnerability) and the various forms of exploitation (for example, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs).

In relation to Article 119 of the Penal Code, the definition of 'trafficking' recommended above is sufficient. However, as to Article 120 of the Penal Code, an additional provision on trafficking in children is necessary as the provision does not encompass 'trafficking in children'.

Consideration should also be given to supplementing the circumstances that aggravate trafficking in women and children. Among the circumstances that must aggravate it are when: (a) trafficking is effected through adoption; (b) the offender is an ascendant, descendant, parent, sibling, guardian or a person exercising authority over the victim; (c) the trafficking victim dies or is severely injured; (d) when the trafficking victim becomes infected with HIV.

It is also recommended that explicit stipulation must be made that the police, border guards, medical practitioners, procurators, the courts, social workers and other personnel who deal with trafficked victims, especially in key localities, must receive specialized training and assistance in handling trafficking cases and its victims.

Indicator 38 Are trafficked women penalized?

Under Vietnamese laws, trafficked persons are generally treated as victims rather than as criminals. Those who are involved in certain violations as a direct consequence of their situation as trafficked persons may be subject to certain liabilities, but this is mainly to ensure their reintegration into the society rather than to punish them.³¹⁶ Nevertheless, the absence of

an explicit provision that exempts these victims from prosecution may work to instill fear of prosecution and punishment, leading to the non-reporting of cases. This does not preclude prosecution of trafficking victims where they have also been active and willing offenders of trafficking laws, with due regard to their experiences as a trafficking victim for humane reasons, where relevant.

Recommendation: It is recommended, therefore, that an explicit provision excluding victims of trafficking from prosecution in relation to acts that are committed as a direct consequence of their situation of trafficking - for example, engaging in prostitution, use of illegal or forged documents, or illegal entry and exit - be stipulated.

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|---------------------|---|
| Indicator 39 | Does legislation put in place measures to combat trafficking? |
| Indicator 40 | What legislative measures are in place to address needs of victims of trafficking and their families? |
| Indicator 41 | Are there interim and permanent protective measures required by law for the protection of the victim/survivors of trafficking? |
| Indicator 42 | Does legislation exist ensuring that women who have been trafficked and their children are able to claim citizenship, residency and other rights? |

After the approval of the *Directive No. 766/1997/CT-TTG of 17 September 1997 on the Assignment of Responsibilities for Taking Measures Against the Illegal Sending of Women and Children Abroad* (Directive on Sending Abroad) and Resolution 09/1998/NQ-CP of 31 July 1998, there is more attention provided to the issue of trafficking. In July 2004, the National Plan of Action against Crime of Trafficking in Children and Women during the period of 2004-2010 (Decision No. 130/2004/QĐ-TTĐ of July 14, 2004 Decision of the Prime Minister) (National Plan of Action Against Trafficking) was adopted. The National Plan of Action Against Trafficking supplemented the Directive on Sending Abroad and *Resolution 09/1998/NQ-CP of July 31, 1998* as well provided more focused attention to the issue. The National Plan of Action Against Trafficking has four major components: (a) communication and education; (b) fight against crime; (c) receipt and support of returning victims; and (d) development of legal framework on trafficking.

In the *Decision 312/2005/QĐ-TTĐ of November 30, 2005, Approving the Projects under the Programme of Action against the Trafficking in Women and Children from 2005 to 2010* (Decision on Trafficking 2005), the four components of the National Plan of Action Against Trafficking are fleshed out as four concrete projects under the Programme of Action against Trafficking, the contents of which are:

- Project 1: Communication and Education in Communities and Combat of Trafficking in Women and Children;³¹⁷

³¹⁶ UNICEF, Department of Criminal and Administrative Laws (Ministry of Justice) and United Nations Office on Drugs and Crime, 'Assessment of the Legal System in Viet Nam in Comparison with the United Nations Protocol on Trafficking in Persons and Smuggling of Migrants, Supplementing the United Nations Convention against Transnational Organized Crime' Justice Publishing House, Ha Noi, April 2004 (UNICEF Assessment), p. 28

³¹⁷ The objectives of the project are: (a) to raise awareness of women, children and all people about the tricks used to effect, causes and consequences of trafficking in women and children, focusing on women aged between 18 and 35 and juvenile girls; and (b) to build capacity for officials, communicators and collaborators in terms of knowledge about trafficking in women and children, including laws and policies and skills on communication and education. The key implementing agency is the Viet Nam Women's Union.

- Project 2: Combat of Trafficking in Women and Children;³¹⁸
- Project 3: Reception of and Support for Returning Women and Children Victims of Trafficking;³¹⁹
- Project 4: Formulation and perfection of the System of Legal Documents concerning Prevention and Combat of Trafficking in Women and Children.³²⁰

The National Plan of Action Against Trafficking and four Projects in the Decision on Trafficking 2005 are moves in the right direction. However, it must be noted that it is best to contain many of these interventions in legislation rather than in a plan and/or project document, especially one that only is applicable until 2010. In this regard, there is a need to re-emphasize in legislation interventions in these plan and projects.

Vietnamese laws also have specific procedures on protection, confidentiality, institution and termination of cases, confrontation, and provisional emergency measures that are relevant to cases of trafficking. For the relevant laws and recommendations, see Part V.1.3.3, Indicator 10. Focusing on these measures is important to prevent victims being 're-victimized'

³¹⁸ Project implementation includes: (a) mapping the situation (for example, basic surveys, database, exchange of info); (b) Preventing (including mobilizing the masses, paying attention to women and children in difficult circumstances, building close coordination between people and administration, especially police and border guard in grassroots areas); (c) investigating and handling of cases of trafficking in women and children (including to raise the effectiveness of investigation and prosecution and trial of trafficking crimes, to take comprehensive professional and legal measures to detect and investigate trafficking, and to pursue and arrest traffickers); (d) raising the legal capabilities of officials, police, border guards, Procuracies, and People's Courts in investigation, prosecution and trial of criminal cases of trafficking (including to compile training materials, to conduct trainings, and to build police forces specialized in combating crime in central level and in key areas); and (e) international cooperation (including enhanced cooperation on sharing information, granting papers, detecting forged papers). Key Implementing agencies are MPS and Border Guard Command.

³¹⁹ The contents of the Project include: (a) reception and initial assistance for returning women and children victims of cross border trafficking, including staying in the first place of reception for 15 days to carry out initial procedures such as create reception records, check personal belongings, compile personal files, and conduct initial medical exam and treatment; (b) classification and handing over of victims. Those identified as: (i) sex workers or drug addicts will be sent for medical treatment, education, or social labour centers where they will enjoy regimes like those sent to State-funded medical treatment centers; and (ii) identified as traffickers will be subject to investigation and prosecution; (c) financial support for returning victims including lodging expenses, initial medical examination and treatment, clothes, travel expenses and meals until they return to their communities; and (d) coordinated implementation when they return to their communities, including: (i) access to support and education regimes to resettle and reintegrate into their communities, (ii) assistance in getting identity cards, registering residence, receiving anti-illiteracy education, securing birth certificates and receiving education for their children; (iii) depending on circumstances, maybe receiving land for farming or support for building houses; (iv) providing jobs for victims; (v) facilitating access to loans through the Viet Nam Women's Union at all levels; and (vi) provide allowances for returning women and children to reintegrate into their communities. The key implementation agency is MOLISA.

The Project proposal points out that prior to the National Plan of Action Against Trafficking, there was no systematic way of addressing reception of victims. In some areas, border guards have taken some initiative, such as providing meals, shelters in border gates, travel fares to places of residence, conditions for getting people's identity cards and registering permanent residences, support for building dwelling houses. The Viet Nam Women's Union provided guarantee in form of pledge of trust for victims to borrow capital, but the number of victims who receive this assistance is still small. The system of policies and laws on reception and assistance to returning women and children trafficked cross-border is almost zero.

³²⁰ The activities of the Project include to: (a) review and assess the current legal system concerning trafficking in women focusing on: investigation, prosecution and trial of traffickers; protection, repatriation and reintegration into communities of victims of trafficking; prevention of trafficking; and international and regional cooperation against trafficking; (b) survey practical enforcement of laws on prevention and combat of trafficking in women and children; (c) organize workshops on perfecting laws against trafficking; (d) amend, supplement and promulgate legal documents on trafficking against women and children, in particular to: (i) supplement and criminalize acts of trafficking, (ii) add aggravating circumstances to trafficking, (iii) provide a uniform definition of the crime of 'trafficking in women and children'; (iv) guide the protection of the witnesses, crime denouncers, and victims; (v) handle illegal exits, illegal employment of minor labourers or brokerage and organization of illegal sending of Vietnamese labourers to work abroad; (vi) repatriate and reintegrate victims; (vii) introduce policies and regimes for returning victims; (viii) remove difficulties and obstacles in legal procedures for civil status registration and application for birth certificates for trafficked women and their children when they return to their communities; and (ix) enhance management of marriages and families involving foreign elements; (e) study and update information on international law, including accelerate the ratification of the United Nations Convention against Transnational Organized Crime and sign the Trafficking Protocol. The key implementing agency is MOJ.

by an insensitive legal process and to assist in their rehabilitation and reintegration into their communities.

Recently, *Decision No. 17/2007/QD-TTG Promulgating the Regulation on Reception of, and Community Reintegration Support for, Trafficked Women and Children Home from Foreign Countries* was issued. However, as no English version is available, this was not included in this legal review.

Recommendation: Supplementary measures to address trafficking in women and children must be provided in legal documents, which should include:

- ***consistent with the suggestions on GBV, the protection of the victim is most important. Protection orders that can be issued ex parte on the day requested must be made available. People's Committee's heads and the courts must be competent to issue such orders. Developing and strengthening witness protection programmes, and providing priority to trafficking victims, must be stipulated. Protection orders must include protection for the victim's family, whenever necessary;***
- ***procedures on confidentiality must also be set in a legal document. At any stage of the investigation, prosecution, trial or other handling procedures, law enforcement officers, procurators, judges, court personnel, medical practitioners, social workers, media practitioners, as well as parties to the case, must recognize the right to privacy of the trafficked persons. Whenever necessary to ensure a fair and impartial proceeding or to protect the identity of the victim, closed-door investigations and trials must be held;***
- ***in medical examinations, in addition to the medical examiner, the law enforcement officers and other persons reasonably expected to be present, only persons expressly authorized by the person being examined should be allowed in the room;***
- ***it should be unlawful for law enforcement officers, procurators, judges, health providers, and media practitioners and their corresponding personnel, as well as parties to the case, to disclose any information that will establish the identity of the victim;***
- ***regardless of their status, whether legally or illegally abroad, repatriation of victims of trafficking must be ensured. MOFA through embassies/consulates abroad has the primary responsibility of negotiating for the repatriation of trafficked victims and its implementation, unless repatriation will expose the victim to greater risks. In which case, it must make representations with the foreign country for appropriate residency or other measures as necessary for protection of the victim;***
- ***for recovery and reintegration, mandatory services for victims of trafficking must be provided, including: (a) emergency shelter or appropriate housing; (b) counselling; (c) medical and psychological services; (d) free legal services, which must include information about the victim's rights and the procedure for filing complaints, claiming compensation, other remedies and services available to them; (e) educational assistance to trafficked child; (f) livelihood and skills training; and (g) assistance relating to nationality claims, residence certificates, birth certificates and other matters relating to civil status registration;***
- ***ratification of the Trafficking Protocol.***

Additionally, the recommendations in Part V.1.3.3 and Part V.1.3.6 must be taken into account, especially the inclusion of professional social workers in interventions for victims of violence against women.

Indicator 43 Is inter-agency cooperation to address trafficking mandated by law? Is there a clear designation of responsibilities of ministries and agencies to eliminate discrimination?

In a number of instruments on trafficking - such as the Directive on Sending Abroad, Resolution 09/1998/NQ-CP of 31 July 1998 and National Plan of Action Against Trafficking - responsibilities of ministries and agencies are stipulated.

The National Plan of Action Against Trafficking' set up a National Steering Committee chaired by MPS. Its members include MOFA, MOJ, MOLISA, Viet Nam Women's Union, Commission on Population, Family and Children, Ministry of Planning and Investment and Ministry of Finance. The responsibilities of each member agency of the steering committee are stipulated in the National Plan of Action Against Trafficking, as well as those of other public bodies, People's Committees, SPC and mass organizations.

Further, in the National Plan of Action Against Trafficking, key implementing agencies have been specifically named for each programme component, with references for coordination to other relevant agencies relating to a specific area of their work. The Decision on Trafficking 2005 and Programme of Action against Trafficking concretized what needs to be done, by which ministry/agency for a particular time frame. (See discussions in Indicators 39-42 for more details). This is, indeed, a good approach for better implementation.

Indicator 44 What measures are provided by legislation concerning responsibilities of embassies abroad for protection of victims of traffickers?

As extensions of the State in foreign countries, embassies and consulates play a critical role in the fight against trafficking. In the National Plan of Action Against Trafficking, a number of responsibilities designated to MOFA will be carried out through Vietnamese embassies and consulates. The responsibilities designated include: (a) cooperating with foreign countries to prevent and combat trafficking; (b) updating situation and number of trafficked children living abroad; (c) establishing appropriate policies to work with international organizations and countries involved with illegal sending of Vietnamese women and children; and (d) cooperating with mass organizations and people to mobilize and take advantage of assistance from international NGOs in handling this issue. In the Programme of Action on Trafficking, MOFA was also tasked to coordinate in relation to its particular area of work with the key implementing agencies.

Recommendation: It is suggested that the responsibilities of Vietnamese embassies and consulates must be stipulated in law, which should include endeavoring to provide the victims in the foreign country with: (a) emergency shelter, (b) protection and safety; (c) counselling and medical/psychological assistance; and (d) legal assistance. The embassies and consulates must make representations for the repatriation of the victim, when necessary, or when the victim is required to assist in the prosecution of the traffickers in the foreign country, to ensure the victim's protection and well-being.

Indicator 45 Is trafficking an extraditable offence?

The Criminal Procedure Code contains provisions on extradition:

Article 343: Extradition in order to examine penal liability or execute judgments

Basing themselves on the international agreements which the Socialist Republic of Viet Nam has signed or acceded to on the principle of reciprocity, the bodies with procedure-conducting competence of the Socialist Republic of Viet Nam may:

- (1) Request the foreign authorities with corresponding competence to extradite persons who have committed criminal acts or convicted under legally valid judgments to the Socialist Republic of Viet Nam for being examined for penal liability or serving their penalties.
- (2) Extradite foreigners who have committed criminal acts or convicted under legally valid judgments, who are being in the territory of the Socialist Republic of Viet Nam, to the requesting nations for being examined for penal liability or serving their penalties.

Article 344: Refusal to extradite

- (1) The bodies with procedure-conducting competence of the Socialist Republic of Viet Nam may refuse to extradite persons in one of the following cases:
 - (a) The persons requested to be extradited are citizens of the Socialist Republic of Viet Nam;
 - (b) Under the provisions of the laws of the Socialist Republic of Viet Nam, the persons requested to be extradited cannot be examined for penal liability or serve penalties as the statute of limitations therefore has expired or for other lawful reasons;
 - (c) The persons requested to be extradited for penal liability examination have been convicted by the courts of the Socialist Republic of Viet Nam under legally valid judgments for the criminal acts stated in the extradition requests or the cases have been ceased under the provisions of this Code;
 - (d) The persons requested to be extradited are residing in Viet Nam for reasons of being possibly ill treated in the extradition-requesting countries on the grounds of racial discrimination, religion, nationality, ethnicity, social status or political views.
- (2) The bodies with procedure-conducting competence of the Socialist Republic of Viet Nam may refuse to extradite in one of the following cases:
 - (a) Under the criminal legislation of the Socialist Republic of Viet Nam, the acts taken by the persons requested to be extradited do not constitute offenses;
 - (b) The persons requested to be extradited are being examined for penal liability in Viet Nam for the acts stated in the extradition requests.
- (3) The bodies with procedure-conducting competence of the Socialist Republic of Viet Nam which refuse to extradite under the provisions of Clause 1 and Clause 2 of this Article shall have to notify such to the foreign authorities with corresponding competence, which have sent the extradition requests.

Recommendations: To comply with the standard in the Trafficking Protocol, it is recommended that, for cases falling under Article 344(1)(a) and Article 344(1)(d) of the Criminal Procedure Code, despite refusal to extradite, investigation for prosecution for the offence must be initiated. In all extradition treaties, trafficking must be at all times explicitly included as an extraditable offence.

V.4.3.2 Exploitation of Prostitution

The number of women reported in prostitution was estimated to be 30,600 in 2003, of which 12,912 were on file; that is, undergoing administrative handling measures.³²¹ Previous figures showed significantly higher numbers: in 2000, 36,995 women were reported as engaged in prostitution and 13,923 women were on file;³²² while in 2002, there were 50,833 women reported and 17,098 women on file. Incidences of child prostitution were also identified, mostly involving girls and seldom boys.³²³

Indicator 46 Is prostitution considered an offence? If so, how is it committed and who are considered offenders?

Indicator 47 Are there sanctions in place?

Prostitution is prohibited in Viet Nam. Articles 254-256 of the Penal Code punish the crimes of 'harboring prostitutes', 'procuring prostitutes', and 'sexual intercourse with juveniles'.

Harbouring prostitutes

Article 254 of the Penal Code provides for the crime of 'harbouring prostitutes'. It states that those who harbor prostitutes will be sentenced to between one and seven years of imprisonment. The imposable penalty is increased to 5-15 years of imprisonment if the offense is committed with the following circumstances: (a) in an organized manner; (b) coercing other persons into prostitution; (c) more than once; (d) against those aged between 16 and 18 years of age; (e) causing serious consequences; or (f) constituting a case of dangerous recidivism.³²⁴ The imposable penalty is further raised to 12-20 years of imprisonment if the offense is committed against a child aged 13 to 16 years of age or if causing 'very serious consequences'. Life imprisonment is imposed if the offense causes 'particularly serious consequences'.³²⁵

Procuring prostitutes

Article 255 of the Penal Code punishes the crime of 'procuring prostitutes'. It states that those who entice or procure prostitutes will be sentenced to between six months and five years of imprisonment. Article 255 states that, when the offenders commit the offense with the following circumstances, they will be sentenced to between three and ten years of imprisonment: (a) against those between 16 to 18 years of age; (b) in an organized manner; (c) in a professional

³²¹ GSO Statistics, p. 72

³²² Ibid., p. 73

³²³ See, for example, Le, Bach, Duong, 'Children in Prostitution in Ha Noi, Hai Phong, Ho Chi Minh City and Can Tho: A Rapid Assessment', Investigating the Worst Forms of Child Labour No. 16, International Labour Organization, International Programme on the Elimination of Child Labour (IPEC), Geneva, July 2002; and Social Work Centre for Youth of Viet Nam Central Youth Association and Radda Barnen, Children in the 'Shadows', National Political Publishing House, Ha Noi, 1999

³²⁴ Penal Code, Article 254(2)

³²⁵ Ibid., Articles 254(3) and 254(4)

manner; (d) more than once; (e) constituting a case of dangerous recidivism; (f) against more than one person; or (g) causing other serious consequences. The imposable penalty is increased to seven to fifteen years imprisonment if committed against a child aged 13 to 16 years of age or if causing 'very serious consequences'.³²⁶ If the offense causes 'particularly serious consequences', then the penalty is between 12 and 20 years of imprisonment.

Sexual intercourse with juveniles

Article 256 of the Penal Code states that those who have paid for 'sexual intercourse with juveniles' aged between 16 and 18 years will be sentenced to between one and five years of imprisonment. It states that, if committed under any of the following circumstances, the imposable penalty is increased to three to eight years imprisonment: (a) committing the offense more than once; (b) having paid sexual intercourse with children aged between 13 and 16 years; (c) causing harm to the victim's health with an infirmity rate of between 31% and 60%. Article 256 also states that the imposable penalty is raised to between 7 and 15 years if: (a) the offense is committed more than once against children aged between 13 and 16; (b) committed when the offender knows s/he has been infected by HIV; and (c) harms the health of the victim with an infirmity rate of 61% or higher.

Article 7 of the Law on Children prohibits "any act of seduction, deceit, trickery, harbouring or force or that leads children into prostitution."

The most focused legal document on prostitution is *the Ordinance on Prostitution Prevention and Combat (as per state president Order No. 10/2003/L-CTN of March 31, 2003)* (Ordinance on Prostitution). Article 4 of the Ordinance on Prostitution enumerates prohibited acts relating to prostitution as follows: (a) buying sex; (b) selling sex; (c) harboring prostitution; (d) organizing prostitution activities; (e) forcing prostitution; (f) brokering prostitution; (g) protecting prostitution; (h) abusing the service business for prostitution activities; and (i) other acts related to prostitution activities as prescribed by law. Article 3 of the Ordinance on Prostitution defines the terms it uses as follows:

- 'prostitution' means acts of selling and buying sex;
- 'buying sex' means a person paying money or other material benefits to a prostitute for having sexual intercourse with such person;
- 'selling sex' means a person having sexual intercourse with another for pay with money or other material benefits;
- 'prostitution harboring' means any acts of using, renting, leasing, borrowing or lending venues and/or means for buying and selling sex;
- 'organization of prostitution activities' means acts of making arrangements for buying and selling sex;
- 'prostitution coercion' means acts of using violence or threatening to use violence or using tricks to force other persons to sell sex;
- 'prostitution protection' means acts of abusing one's position, powers, prestige or using violence or threatening to use violence to protect and maintain prostitution activities.

³²⁶ Ibid., Article 255(3)

Sanctions are provided for violation of the prohibited acts in the Ordinance on Prostitution as follows:

Article 22: Handling of Sex Buyers

- (1) Sex buyers shall depending on the nature and seriousness of their violations be administratively handled in the form of caution or fine.
- (2) Those who buy sex with minors or who, though being aware of their HIV infection, deliberately transmit the disease to other persons shall be examined for penal liability.

Article 24: Handling of persons committing prostitution-related acts

- (1) Those who protect prostitution, contribute capital for use for prostitution purposes shall depending on the nature and seriousness of their violations, be administratively sanctioned or examined for penal liability.
- (2) Those who act as go-between for prostitution, harbor prostitution, coerce prostitution, organize prostitution, traffic in women and/or children in service of prostitution activities shall be examined for penal liability.

Article 25: Handling of organizations and individuals abusing the service business for prostitution activities

- (1) If service business establishments abuse service business activities to carry out prostitution activities, they shall be fined and depending on the nature and seriousness of their violations, subject to the confiscation of material evidences and means directly related to prostitution activities, and the deprivation of the right to use permits and/or practicing certificates.
- (2) If the heads of the service business establishments let prostitution activities occur in their establishments due to their irresponsibility, they shall be administratively sanctioned and, if serious consequences are entailed, be examined for penal liability.

Article 26: Handling of organizations and individuals disseminating storing and/or circulating products with pornographic contents and forms

- (1) If agencies, organizations and individuals operating in the domains of culture, cultural services, posts and/or telecommunications commit acts of disseminating, storing, and/or circulating pictures, articles, products and/or information with depraved pornographic, sex-stimulating content and forms, they shall be fined and, depending on the nature and seriousness of their violations, be stripped of the right to use permits or practicing certificates or banned from conducting activities stated in their permits or practicing certificates.
- (2) Those who commit acts of violating the provisions of Clause 1 shall, depending on the nature and seriousness of their violations, be administratively sanctioned or examined for penal liability.

Additional penalties are imposed by the Ordinance on Prostitution on public employees who are in violation as follows:

Article 27: Handling of officials, public employees, people's armed force personnel who violate the legislation on prostitution prevention and combat

- (1) Officials, public employees and/or people's armed force personnel who commit acts of violating the provisions in Articles 22, 23, 24, 25 and 26 shall apart from being handled under the provision of these Articles, have their acts notified to the heads of their competent managing agencies; organizations or units for education and disciplining.
- (2) Officials, public employees and/or people's armed force personnel who violate the legislation on prostitution prevention and combat shall, during the period of being disciplined, not be appointed nor stand for election to people-elected agencies, political organizations or socio-political organizations nor be appointed or re-appointed, appointed to equivalent or higher posts in the State agencies or people's armed forces.

Article 28: Handling of persons committing acts of law violation while performing the prostitution prevention and combat tasks

If those who have the task of directly participating in the prostitution prevention and combat commits acts of protecting prostitution, tolerating, covering up prostitution activities or failing to handle them promptly so that such activities occur in the localities under their management, they shall, depending on the nature and seriousness of their violations, be disciplined, transferred to other jobs or examined for penal liability; if any damage is caused, the agencies where such persons work shall have to pay compensations therefore and the damage-causing persons shall have to pay indemnities according to law provisions.

Article 29: Handling of persons committing acts of covering up or failing to discipline promptly persons who violate the legislation on prostitution prevention and combat

- (1) If those who have positions and powers commit acts of covering up for failing to promptly discipline their subordinates who commit acts of prostitution or related to prostitution activities, they shall be disciplined.
- (2) If those who have positions and powers commit acts of covering up their subordinates who commit acts of violation the provisions in Article 28 of this Ordinance, they shall depending on the nature and seriousness of their violations, be disciplined or examined for penal liability.

For more particulars on Articles 22 and 24-29 of the Ordinance on Prostitution, see Article 18 of the *Decree 178/2004/ND-CP of 15 December 2004 detailing the Implementation of a Number of Articles of the Ordinance on Prostitution and Combat* (Decree on Prostitution Ordinance).

Recommendations: Recommendations for Indicators 46 and 47 are discussed together with recommendations for Indicator 49 below.

Indicator 48 Is sex tourism prohibited?

Sex tourism – that is, programs organized by travel and tourism-related establishments and individuals that consist of tourism packages or activities, utilizing and offering sexual services as enticement for tourists - is one of the newer modes of exploitation of women for prostitution. There is no specific naming of this offence in Vietnamese legal documents. However, it may be covered by specific provisions in the Ordinance on Prostitution; for example, abusing the service business for prostitution activities or organizing prostitution activities.

Also, in the Directive on Sending Abroad, the Ministry of Trade (MT) and General Department of Tourism (GDT) were tasked to supervise and punish service establishments that organize overseas tours to take Vietnamese women and children abroad to for sex work or to sell them to foreigners. This was reiterated in *Decision 130/2004/QĐ-TTĐ of 14 July 2004 Decision of the Prime Minister for Approval of the National Plan of Action against Crime of Trafficking in Children and Women during the period of 2004-2010* as a responsibility of MPS.

Recommendation: It is suggested that, to ensure that appropriate attention is given to sex tourism, it must be specifically defined and prohibited.

Indicator 49 Are there measures required by law to address the needs of women exploited for prostitution?

The handling of violations of the prohibitions on prostitution is provided for as follows:

Article 23: Handling of Prostitutes

- (1) Prostitutes shall, depending on the nature and seriousness of their violations, be administratively sanctioned, applied with the measure of education at communes, wards or townships or sent into medical treatment establishments. Foreign prostitutes shall depending on the nature and seriousness of their violations, be administratively sanctioned in the forms or caution, fine and/or expulsion.
- (2) Prostitutes who, though being aware of the HIV infection deliberately transmit the disease to other persons shall be examined for penal liability.

The provision on handling of prostitutes is supposedly aimed at rehabilitation of women who are in prostitution. The application of the measures of education at communes, wards and district towns is applicable to those women engaged in prostitution aged 14 years or older with given residence places and it has a duration of three to six months.³²⁷ It is put in place to educate and manage these women at their residence places.³²⁸ In executing the decision, depending on the person involved, a meeting will be called with representatives of the Viet Nam Fatherland Front, police, Viet Nam Women's Union, Viet Nam Farmers' Association and Viet Nam Youth Union in the locality, and school and family of the person subject to education. After such meeting, the agencies or organizations are assigned to manage and educated these women and encourage them in their life, and to help them find jobs or propose conditions for women to find jobs.³²⁹ Once a month the agencies/organizations assigned will report to the commune-level People's Committee.³³⁰

As to the measure of sending into medical establishments, it is to labour, and to received general education, job learning and medical treatment.³³¹ Also, per Article 20 of the Ordinance on Prostitution: "Medical treatment establishments set up under the Ordinance on Handling Administrative Violations shall have to: (1) Organize study and education on ethics and lifestyle; organize job training, productive labour, and vocational guidance; provide medical

³²⁷ Ordinance on Administrative Violations, Article 23(2)(c)

³²⁸ Ibid., Article 23(1)

³²⁹ Ibid., Article 72

³³⁰ Ibid.

³³¹ Ibid., Article 26

treatment and health rehabilitation and respect the honor, dignity, life and properties of prostitutes brought into their establishments". This is applicable to women in prostitution aged 16 or older, who have been subject to the application of education at communes, wards and district towns or have not yet been subject of this measure but have no given residences.³³² Procedures for the execution of this are provided in Articles 93-101 of the Ordinance on Administrative Violations.

Article 10 of the Decree on Prostitution Ordinance provides that particular socio-economic measures must be put in place: "(2) To organize medical treatment, education, vocational training and to create jobs for reformed sex sellers; to provide difficulty allowances or create conditions for them to borrow capital, to advise and guide them on production and/or business methods so that they can have stable incomes. (3) To apply financial and tax preference policies for establishments which provide medical treatment, job training or create jobs for sex sellers or business establishments where reformed sex sellers work."

The Viet Nam Women's Union at all levels from 1997 to 2001 has been involved in the monitoring and management of 7,375 women who were in prostitution. Loans were provided to 5,737, and jobs were created for 1,058, of the women. From 2002 to May 2004, 2,345 women were given loans or provided employment.³³³

Although not specifying children in prostitution, Article 40 of the Law on Children identifies sexually abused children as 'children in special circumstances'. Their care is primarily organized by their families or alternative families, otherwise by child support establishments.³³⁴

The tasks of the child support establishments include counselling, medical examinations and treatment, detoxification services, rehabilitation, physical and mental health-care services, moral education, integrated education, special education and vocational training, employment services, social, cultural, sport and recreational services, and care and nurture.³³⁵

Women who are exploited through prostitution are subjected to many forms of abuse, whether physical, emotional, psychological or financial. Hence, a broad range of procedures and services for these women is needed to be able to address fully their needs.

Recommendation: It is recommended that persons in prostitution, especially women in prostitution, must not be subjected to any form of sanction, penalty, involuntary rehabilitation or deprivation of liberty and movement. Placement in institutions, including education or rehabilitation facilities, must always be voluntary and subject to the person in prostitution giving prior informed consent to the placement, as well as to an assessment of her needs by a social worker.

It is also recommended that clearer criteria for distinguishing which acts are subject to administrative sanctions and to criminal liability be provided. A review of legal documents shows that child prostitution-related offences do not at all times reflect the gravity of the offence being committed against a child, as distinguished from adults, engaged in prostitution. In this regard, it is suggested that in aggravated sanctions, in particular, criminal liability be considered in all cases that involve child prostitution.

³³² Ibid.

³³³ Viet Nam Women's Union Report, p. 38

³³⁴ Law on Children, Article 41

³³⁵ Ibid., Article 48

In relation to legal protection for persons in prostitution, many of the recommendations under Part V.1.3.3 and Part V.1.3.6 are applicable, especially provisions on confidentiality, protection, body searches and examinations, incorporating social workers in State management and procedure handling works. In particular, the following protection is essential: (a) the right to privacy and confidentiality must be maintained during administrative handling of cases. It must be provided by law that details on the identity of women in prostitution must not be divulged with specific administrative sanctions for violations. Proceedings must be held behind closed doors, upon request; (b) protection orders and witness protection must be available for these women. If necessary, orders for protection must be issued on the same day as the request; (c) social workers must be called during the administrative proceedings to provide assessment on the appropriateness of the measures to be imposed, to make further recommendations to enable rehabilitation and reintegration of these women, and for continuous counselling; (d) in relation to children in prostitution, mandatory procedures should be in place on custody of these children, such as to notify immediately a designated social worker in the state management agency for the protection of the child's rights, counselling, etc., to escort the child for immediate medical check up, and to ensure non-disclosure of the child's identity, especially by the media.

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| Indicator 50 | Is inter-agency cooperation to address prostitution mandated by law? Is there in legislation a clear designation of responsibilities of ministries and agencies to eliminate prostitution? |
| Indicator 51 | Are women in prostitution given equal protection of the law in relation to crimes of rape or sexual assault? |
| Indicator 52 | Is there legislation to ensure that women in prostitution are given equal access and benefits to health care, education and other basic services? |

The Ordinance on Prostitution designates MOLISA as having the primary responsibility for State management on prostitution prevention and combat, in coordination with MPS. The State management work of MOLISA includes: (a) promulgating and organizing the implementation of undertakings, policies, laws and plans on prostitution prevention and combat; (b) organizing the apparatus for managing, training, fostering and raising the capability of personnel engaged in the prostitution prevention and combat work; (c) organizing and managing the establishments that provide medical treatment, job training and creation for prostitutes; (d) gathering statistics on prostitution prevention and combat; mobilizing, managing and utilizing resources, and concluding scientific research and application; (e) organizing the prevention and combat of crimes and other laws violations related to prostitution; (f) propagating legislation on prostitution prevention and combat; (g) international cooperation; (h) and supervising, inspecting, settling complaints and denunciations about, and handling violation of the legislation on, prostitution prevention and combat.³³⁶

³³⁶ Ordinance on Prostitution, Articles 30 and 31

Specific responsibilities are also provided by further articles in the Ordinance on Prostitution:

- Article 10 provides for propagation and education on prostitution prevention and combat. Curricula includes: education on the cultural and ethical traditions; healthy lifestyles; harms of prostitution; and policies, measures, experiences and laws regarding prostitution prevention and combat combined with the propagation and education on drug and HIV/AIDS infection prevention and combat;
- Article 14 identifies socio-economic measures to prevent and combat prostitution, which states that State agencies in coordination with mass organizations, provide: (a) training and creating jobs for income generation, poverty alleviation and hunger reduction; (b) organizing medical treatment, education, job training and creation for reintegration of women in prostitution; and (c) helping those in prostitution integrate into the community;
- Article 15 states that hotels, rest houses, restaurants, dancing halls, karaoke, massage and sauna parlours and other services likely to be abused for prostitution activities must sign labour contracts with labourers, make labour registration with local labour management agencies, refrain from employing those aged under 18 years in jobs that will affect their development, and organize regular health check ups for labourers;
- Article 16 provides that agencies, organizations and individuals must not produce, circulate, transport, store, trade in, export, import and/or disseminate pictures, articles, products and/or information with depraved, pornographic and/or sex-stimulating contents and forms. This applies to press and publication activities, cultural and information services;
- The further responsibilities of MOLISA, MPS, MCI,³³⁷ MOH, Ministry of Transport, MOET, National Administration of Tourism (NAT) and People's Committees are also provided in Articles 32-35.

Nevertheless, there are no specific measures in the Ordinance on Prostitution explicitly providing equal treatment of women in prostitution in relation to protection from rape and other sexual assault cases, which they are highly vulnerable to because of their work. There are also no particular provisions ensuring non-discrimination against these women in provision of basic services and in their access to rights. As these women are generally stigmatized, an explicit provision on these will highlight the need to ensure non-discrimination.

Additionally, there is no re-emphasis on the rights of women in prostitution. In many cases as these women are stigmatized or marginalized, there is a need to re-state their rights. In identifying the curricula for propagation and education – for example, in Articles 4 and 6 of the Decree on Prostitution Ordinance - the rights of women in prostitution must be re-emphasized. This should include basic human rights, such as the right to health-care services, the right to education, and specific rights due to their situation; for example, special assistance relating to filing cases, protection of privacy and confidentiality.

³³⁷ Now MCST

Recommendation: Provisions ensuring non-discrimination of women in prostitution must be specifically stipulated, especially in the areas of education, health care, labour and employment. In particular, the provisions must be clearly ensured that rape and sexual assault cases against women in prostitution are not trivialized or ridiculed but pursued effectively. In education and propagation of issues relating to prostitution prevention and combat, the right of women who are in prostitution, or those formerly in such situation, must be clearly stated to ensure non-discrimination and proper understanding. This is should include basic human rights such as the right to health-care services, the right to education and specific rights due to their situation; for example, special assistance relating to filing cases, protection of privacy and confidentiality.

V.5 POLITICAL AND PUBLIC LIFE (ARTICLES 7 AND 8 OF CEDAW)

V.5.1 OBLIGATIONS UNDER CEDAW

V.5.1.1 Text of CEDAW

ARTICLE 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ARTICLE 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

V.5.1.2 General Recommendations

The following excerpts from GRs are relevant to Articles 7-8 of CEDAW:

GR 8: Implementation of Article 8 of the Convention

Recommends that States parties take further direct measures in accordance with article 4 of the Convention to ensure full implementation of article 8 of the Convention and to ensure to women on equal terms with men and without discrimination the opportunities to represent their Government at the international level and to participate in the work of international organizations.

GR 23: Political and Public Life

All provisions, in particular:

Paragraph 5

...The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community based organizations and other organizations concerned with public and political life.

Paragraph 10

In all nations, the most significant factors inhibiting women's ability to participate in pub-

lic life have been the cultural framework of values and religious beliefs, the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.

Paragraph 11

Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities. Women's economic dependence on men often prevents them from making important political decisions and from participating actively in public life. Their double burden of work and their economic dependence, coupled with the long or inflexible hours of both public and political work, prevent women from being more active.

Paragraph 12

Stereotyping, including that perpetrated by the media, confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution. The low involvement of women in the professions from which politicians are recruited can create another obstacle. In countries where women leaders do assume power this can be the result of the influence of their fathers, husbands or male relatives rather than electoral success in their own right.

Paragraph 15

While removal of de jure barriers is necessary, it is not sufficient. Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men. Under article 4, the Convention encourages the use of temporary special measures in order to give full effect to articles 7 and 8. Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies. The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life. In order, however, to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, encouragement which must be led by States parties to the Convention, as well as by political parties and public officials. States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.

Paragraph 16

The critical issue, emphasized in the Beijing Platform for Action, is the gap between the

de jure and *de facto*, or the right as against the reality of women's participation in politics and public life generally. Research demonstrates that if women's participation reaches 30 to 35 per cent (generally termed a "critical mass"), there is a real impact on political style and the content of decisions, and political life is revitalized.

Paragraph 25

Article 7(b) also requires States parties to ensure that women have the right to participate fully in and be represented in public policy formulation in all sectors and at all levels. This would facilitate the mainstreaming of gender issues and contribute a gender perspective to public policy making.

Paragraph 26

States parties have a responsibility, where it is within their control, both to appoint women to senior decision making roles and, as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests.

Paragraph 27

States parties have a further obligation to ensure that barriers to women's full participation in the formulation of government policy are identified and overcome. These barriers include complacency when token women are appointed, and traditional and customary attitudes that discourage women's participation. When women are not broadly represented in the senior levels of government or are inadequately or not consulted at all, government policy will not be comprehensive and effective.

Paragraph 28

While States parties generally hold the power to appoint women to senior cabinet and administrative positions, political parties also have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success. States parties should also endeavour to ensure that women are appointed to government advisory bodies on an equal basis with men and that these bodies take into account, as appropriate, the views of representative women's groups. It is the Government's fundamental responsibility to encourage these initiatives to lead and guide public opinion and change attitudes that discriminate against women or discourage women's involvement in political and public life.

Paragraph 35

Under article 8, Governments are obliged to ensure the presence of women at all levels and in all areas of international affairs. This requires that they be included in economic and military matters, in both multilateral and bilateral diplomacy, and in official delegations to international and regional conferences.

Paragraph 36

From an examination of the reports of States parties, it is evident that women are grossly under represented in the diplomatic and foreign services of most Governments, and particularly at the highest ranks. Women tend to be assigned to embassies of lesser importance to the country's foreign relations and in some cases women are discriminated against in terms of their appointments by restrictions pertaining to their marital sta-

tus. In other instances spousal and family benefits accorded to male diplomats are not available to women in parallel positions. Opportunities for women to engage in international work are often denied because of assumptions about their domestic responsibilities, including that the care of family dependants will prevent them accepting appointment.

Paragraph 37

Many Permanent Missions to the United Nations and to other international organizations have no women among their diplomats and very few at senior levels. The situation is similar at expert meetings and conferences that establish international and global goals, agendas and priorities. Organizations of the United Nations system and various economic, political and military structures at the regional level have become important international public employers, but here, too, women have remained a minority concentrated in lower level positions.

Paragraph 38

There are few opportunities for women and men, on equal terms, to represent Governments at the international level and to participate in the work of international organizations. This is frequently the result of an absence of objective criteria and processes for appointment and promotion to relevant positions and official delegations.

Paragraph 42

States parties are under an obligation to take all appropriate measures, including the enactment of appropriate legislation that complies with their Constitution, to ensure that organizations such as political parties and trade unions, which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in articles 7 and 8.

Paragraph 43

States parties should identify and implement temporary special measures to ensure the equal representation of women in all fields covered by articles 7 and 8.

Paragraph 45

Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to:

- (a) Achieve a balance between women and men holding publicly elected positions;
- (b) Ensure that women understand their right to vote, the importance of this right and how to exercise it;
- (c) Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;
- (d) Assist women experiencing such disadvantages to exercise their right to vote and to be elected.

Paragraph 46

Under article 7, paragraph (b), such measures include those designed to ensure:

- (a) Equality of representation of women in the formulation of government policy;

- (b) Women's enjoyment in practice of the equal right to hold public office;
- (c) Recruiting processes directed at women that are open and subject to appeal.

Paragraph 47

Under article 7, paragraph (c), such measures include those designed to:

- (a) Ensure that effective legislation is enacted prohibiting discrimination against women;
- (b) Encourage non governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.

Paragraph 48

When reporting under article 7, States parties should:

- (a) Describe the legal provisions that give effect to the rights contained in article 7;
- (b) Provide details of any restrictions to those rights, whether arising from legal provisions or from traditional, religious or cultural practices;
- (c) Describe the measures introduced and designed to overcome barriers to the exercise of those rights;
- (d) Include statistical data, disaggregated by sex, showing the percentage of women relative to men who enjoy those rights;
- (e) Describe the types of policy formulation, including that associated with development programmes, in which women participate and the level and extent of their participation;
- (f) Under article 7, paragraph (c), describe the extent to which women participate in non governmental organizations in their countries, including in women's organizations;
- (g) Analyse the extent to which the State party ensures that those organizations are consulted and the impact of their advice on all levels of government policy formulation and implementation;
- (h) Provide information concerning, and analyse factors contributing to, the under representation of women as members and officials of political parties, trade unions, employers' organizations and professional associations.

Paragraph 50

When reporting under article 8, States parties should:

- (a) Provide statistics, disaggregated by sex, showing the percentage of women in their foreign service or regularly engaged in international representation or in work on behalf of the State, including membership in government delegations to international conferences and nominations for peacekeeping or conflict resolution roles, and their seniority in the relevant sector;
- (b) Describe efforts to establish objective criteria and processes for appointment and promotion of women to relevant positions and official delegations;

- (c) Describe steps taken to disseminate widely information on the Government's international commitments affecting women and official documents issued by multilateral forums, in particular, to both governmental and non governmental bodies responsible for the advancement of women;
- (d) Provide information concerning discrimination against women because of their political activities, whether as individuals or as members of women's or other organizations.

V.5.1.2 Concluding Comments

The relevant paragraphs relating to Articles 7-8 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 14

The Committee acknowledges the improvement of the representation of women in Parliament, which is among the highest in Asia, and takes note of the 2001 Law on the Election of National Assembly Deputies and the 2003 Law on the Election of Members of the People's Council, which established a quota system for female deputies, as well as the targets set by the State party for women's representation in public bodies at different levels. The Committee remains concerned about the under-representation of women in appointed public decision-making bodies, particularly at the district and commune/ward levels.

Paragraph 15

The Committee calls upon the State party to regularly review its targets for women's participation in public life and decision-making. It encourages the State party to develop concrete measures, with specific timelines, including the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, to accelerate women's full and equal participation in political life at all levels, in specially appointed and elected positions, including leadership positions in mass organizations and at commune/ward level. The Committee recommends that the State party implement training programmes and awareness-raising campaigns, with a special focus on mass organizations, on the right of women to full and equal participation at all levels of decision-making. It also calls on the State party to monitor the impact of measures taken, track trends over time, take necessary corrective measures and provide detailed information about results achieved in its next report.

V.5.2 SELECTED INDICATORS

It is important to reemphasize the statement in CEDAW General Recommendation No. 23: Political and Public Life (1997) (GR 23) on what Article 7 and 8 of CEDAW entails. GR 23 points out that the political and public life' of a country is a broad concept as it refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers.³³⁸ 'Political and public life' includes all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels.³³⁹ Further, the concept also involves many aspects of civil society, including pub-

³³⁸ GR 23, Paragraph 5

³³⁹ Ibid.

lic boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community based organizations and other organizations concerned with public and political life.³⁴⁰ Thus, to fulfil the obligations under Articles 7-8 of CEDAW, State Parties must ensure a reassessment of their whole 'system of governance'. As CEDAW requires not simply formal equality, State Parties must look into measures to enable real enjoyment and exercise of the political guarantees and monitor these measures periodically.

GR 23 also highlights the need to address underrepresentation of women in political and public life. In this regard, it urges the setting up of temporary special measures as a necessary intervention as well as other measures to bring about an environment conducive to women's participation.³⁴¹ It proposes that 30-35 percent representation of women, which is the 'critical mass' that brings real change in political style and content of decisions, must be the goal aimed for.³⁴²

Bearing in mind, Articles 7 and 8 of CEDAW, as well as CEDAW General Recommendation No. 8: Implementation of Article 8 of the Convention (1988) (GR 8) and GR 23, the selected indicators for political and public life are:

- Indicator 53** Is the equal right to vote guaranteed by the Constitution or law?
- Indicator 54** Is there equal eligibility for election for all publicly elected bodies?
- Indicator 55** Are there legislative provisions for temporary special measures, especially minimum quotas of women in elections at all levels? Does legislature clearly specify measure to support the quotas?
- Indicator 56** Is there equal eligibility for appointment to public positions?
- Indicator 57** Is there legislative provision for temporary special measures, especially minimum quotas of women in appointed public positions at all levels? Does legislation clearly specify measures to support the quotas?
- Indicator 58** Are women able to access leadership positions in the Communist Party of Viet Nam?
- Indicator 59** Do women have an equal right to participate in mass organizations, NGOs and other civil society groups?
- Indicator 60** Is there legislation regulating registration and mobilization of NGOs to promote the advancement of women?
- Indicator 61** Are these legal provisions on female participation in policymaking and implementation at the grassroots level?
- Indicator 62** Do women have equal opportunity to represent government at the international level and participate in work of international organizations?

³⁴⁰ Ibid.;

³⁴¹ Ibid., Paragraph 15

³⁴² Ibid., Paragraph 16

Other selected indicators, such as sharing of household responsibilities and addressing stereotyping, are placed at discussions on Articles 5 and 16 of CEDAW respectively.

V.5.3 RELEVANT LEGAL PROVISIONS

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| Indicator 53 | Is the equal right to vote guaranteed by the Constitution or law? |
| Indicator 54 | Is there equal eligibility for election for all publicly elected bodies? |
| Indicator 55 | Are there legislative provisions for temporary special measures, especially minimum quotas of women in elections at all levels?
Does legislature clearly specify measure to support the quotas? |

Right to vote and the right to stand for election

In addition to a general guarantee in Article 63 of the Constitution that male and female citizens have equal rights in the political field, Article 54 of the Constitution guarantees equal rights to vote and be voted on: “The citizen, regardless, of nationality, sex, social background, religious belief, cultural standard, occupation, time of residence shall, upon reaching the age of eighteen, have the right to vote, and upon reaching the age of twenty one, have the right to stand for election to the National Assembly and the People’s Councils in accordance with the provisions of the law.” This is restated in Article 2 of *the Law on Election of the Deputies of the National Assembly (1997) as amended by Law Amending and Supplementing a Number of Articles of the Law on Election of Deputies to the National Assembly, No. 31/2001/QH10 of December 25, 2001* (Law on Election to National Assembly 1997), as well as in Article 2 of the Law on Election to People’s Councils.

Article 11 of the Law on Gender Equality also specifically emphasizes the equal rights of men and women in relation to nominations or self-nomination of candidates to the National Assembly and People’s Council, as well as to agencies of political organizations, socio-political organizations, socio-political and professional organizations, social organizations, social and professional organizations. Those who impede this are subject to the applicable administrative or penal sanctions.³⁴³

In addition to a general guarantee of women’s right to be voted on as candidates to be deputies of the National Assembly and People’s Committees, the following particular laws provide for proportion of women in elected positions.

First, *the Law on Election of Deputies to the National Assembly, No. 31/2001/QH10 of December 25, 2001* (Law on Election to National Assembly 2001) was passed in 2001 and Article 10(a) provided: “The number of female National Assembly deputies shall be proposed by the National Assembly Standing Committee at the suggestion of the Presidium of VWU [Viet Nam Women’s Union] Central Committee, thus ensuring that the number of female deputies is appropriate”. Earlier, the Law on Election to National Assembly 1997 provided that the number of ethnic minority National Assembly deputies will be proposed by the Standing Committee at the suggestion of the Council of Ethnic Minorities of the National Assembly to ensure that the appropriate number of different ethnic minorities is in the National Assembly.³⁴⁴ It also pro-

³⁴³ Law on Gender Equality, Articles 40(1)(a) and 42

³⁴⁴ Law on Election to National Assembly 1997, Article 10

vides that consultative conferences be organized to negotiate on the proportion, composition, and number of people of central agencies, organizations and units to be elected as National Assembly deputies on the basis of a proposition forwarded by the Standing Committee.³⁴⁵

Second, the Law on Election to People's Councils provides:

Article 14

On the basis of the number of the deputies to be elected to the People's Councils, after consulting with the Standing Board of Viet Nam Fatherland Front Central Committee and the People's Committees of the same levels, at least ninety five days before the election day:

- (1) The standing bodies of the provincial- and district-level People's Councils shall make the proposition on the proportion, composition and number of People's Council deputies to be elected from political organizations, socio-political organizations, social organizations, economic organizations, people's armed force units and State agencies of the same levels and administrative units of lower levels, ensuring *the appropriate number of female deputies to the People's Councils*; for localities with many ethnic minority groups, it is necessary to ensure the appropriate number of People's Council deputies being ethnic minority people.
- (2) The standing bodies of the commune-level People's Councils shall make proposition on the proportion, composition and number of People's Council deputies to be elected from political organizations, socio-political organizations, social organizations, economic organizations, people's armed force units and State agencies of the same levels as well as hamlets and villages (hereinafter referred collectively to as hamlets), population groups, populations quarters and clusters (hereinafter referred collectively to as population groups) in their respective localities, *ensuring the appropriate number of female deputies to the People's Councils*; for localities with many ethnic minority groups, it is necessary to ensure the appropriate number of People's Council deputies being ethnic minority people. (emphasis added)

Third, Article 11 of the Law on Gender Equality states that one of the measures to promote gender equality in the field of politics is to ensure the appropriate proportion of the female National Assembly members and female People's Committees' members in accordance with national gender equality target. Article 19(2) of the Law on Gender Equality provides that the National Assembly, Standing Committee and Government have the authority to stipulate other measures to promote gender equality, to review implementation, and to decide when the measures will end.

There are no provisions in all these laws of the appropriate percentage of female deputies. However, strategies and plans have identified specific targets on women's participation in elected positions. Indicators 2 and 3 (Objective 4) of the National Strategy for Advancement of Women provide: (a) the proportion of female members in the National Assembly will be at least 30 percent in the 11th National Assembly and 33 percent in the 12th National Assembly; (b) the proportion of women members of People's Councils at the

³⁴⁵ Law on Election to National Assembly 2001, Article 30

city/provincial level will reach 28 percent in the term 2004-2009 and 30 percent in the next term; at the district level, it will reach 23 percent in the term 2004-2009 and 25 percent in the next term; and, at the commune level, it will reach 18 percent in the term 2004-2009 and 20 percent in the next term. The Plan of Action for Advancement of Women provides that at least 30 percent of the female deputies in the 12th National Assembly; and, that in the term 2009-2014, the percentage of female deputies in the provincial, district and commune levels is 23 percent, 25 percent and 27 percent respectively.

The CPGRS identifies as one of its objectives/targets the increase of participation of women in agencies and sectors at all levels by an additional 3-5 percent. Among its monitoring indicators is the percentage of female representatives in the National Assembly and people's elected agencies. The SEDP enumerates - as one of its expected results in relation to Major Policies and Measures to Achieve Goals and Targets of the SEDP 2006-2010 - the increase by 3-5 percent of women in the National Assembly, People's Councils at all levels, and elected bodies. This is also reiterated in the Poverty Reduction and Social Development Targets of Viet Nam by 2010.

However, as Viet Nam is a one-party State, increasing women's participation in elected bodies is closely linked to their extent of leadership and participation in the Communist Party of Viet Nam. For example, in the recently concluded National Assembly elections of 2007, non-Communist Party of Viet Nam members won 43 seats or 8.72 percent.³⁴⁶ (See discussions in Indicator 58.) Further, as mass organizations play a critical role in nominating candidates for elections, the leadership and participation of women in them increases opportunities for women's participation as candidates.

In the recent 2007 elections for the 12th National Assembly, female deputies made up 25.76 percent of the total National Assembly deputies.³⁴⁷ Although this is a good result, it shows a decline from the figures from the 10th National Assembly and 11th National Assembly, which had 26.22 percent and 27.31 percent of female deputies respectively.³⁴⁸ Note, though, that this result has not met the targets set in the National Strategy for Advancement of Women, Plan of Action for Advancement of Women, CPGRS, SEDP and Poverty Reduction and Social Development Targets of Viet Nam by 2010. Further, it has also not met the 30-35 percent goal set by the CEDAW Committee in GR 25.

As for the People's Council, the election in 2004 brought about an increase in female deputies at the provincial, district and commune levels from 22.3 percent, 20.1 percent and 16.6 percent respectively (in the term 1999-2004) to 23.8 percent, 23.0 percent and 19.5 percent respectively (in the term 2004-2009).³⁴⁹ Female representation at the provincial People's Council has not met the target set in the National Strategy for Advancement of Women, although it has at the district and commune levels. Monitored against the CPGRS and SEDP, all levels have not met the target increase of 3-5 percent. More importantly, the figures are still distant from the goal urged by the CEDAW Committee in GR 25 of 30-35 percent representation.

³⁴⁶ Viet Nam Women's Union, 'Women of Viet Nam Review No 2/2007', Viet Nam Women's Union, Ha Noi, 2007 (Viet Nam Women's Union Review)

³⁴⁷ Ibid;

³⁴⁸ Combined Fifth and Sixth Periodic Report, p. 23

³⁴⁹ World Bank Assessment, p. 33

Practical measures to assist women to be elected are being implemented by both the Viet Nam Women's Union and NCFW. Measures include a media campaign and training of women candidates.³⁵⁰ However, despite these initiatives, the Combined Fifth and Sixth Periodic Report identified some constraints on increasing the number of women in elected bodies, such as: (a) limited awareness of the society on the importance of female participation; (b) absence of mechanisms and favorable conditions for women to stand for elections; and (c) women lack self-confidence and family support.³⁵¹ Distrust in the abilities of women and stereotyped thinking about women also hinders their advancement.³⁵² Another factor in greater female representation may be that the 30 percent goal is seen as a minimum quota for female candidates rather than a quota for female deputies. In negotiation on the number of female candidates during the consultative conferences, negotiations must strive to go beyond 30 percent female candidates to increase women's likelihood of being elected.

Bearing in mind, the obligations in Articles 7 and 8 of CEDAW, it is obvious that simply providing a proportion does not ensure election of women; hence, measures to support the proportion set by law must be in place.

Recommendation: It is recommended that the Law on Election to National Assembly and its amending legal documents, Law on Election to People's Councils and Law on Gender Equality provide that the proportion of female deputies in the National Assembly and People's Councils should be not less than 30 percent. It must be clearly stipulated in the laws that this is the minimum number for elected deputies, not candidates. Appropriate adjustments must be made to increase the number of female candidates to more than 30 percent so as to achieve the 30 percent target for female deputies. National strategies, plans and targets must also aim for a proportion that goes progressively higher than 30 percent female candidates.

In support of the 30 percent proportion of female deputies, these election laws must clearly stipulate the supportive measures for women to increase their chances as a group in reaching the 30 percent target for the different bodies. These measures should be in place simultaneously and they should include: (a) increasing the number of female candidates to more than 30 percent of the total number of candidates; (b) providing skills building and empowerment trainings for female candidates; (c) raising awareness of the electorate to recognize the skills of female candidates and not to discriminate on account of gender through, for example, a series of voter education workshops/consultations, mass campaign on electing female deputies, etc.; (d) setting up funds or resources (for example, campaign spaces) to be utilized by female candidates.

A critical observation relating to the 11th National Assembly was that women were well represented in committees that focus on 'soft' issues such as social affairs, culture, education, youth and ethnic minorities, and poorly represented in 'hard' issues such as budget and economics, defense or security.³⁵³

³⁵⁰ Wells, op. cit., p. 54

³⁵¹ Combined Fifth and Sixth Periodic Report, p. 23

³⁵² GSO Statistics, p. 69

³⁵³ World Bank Assessment, p. 32

Recommendation: *It is suggested that the Law on National Assembly Organization stipulate the percentage of women in National Assembly committees be not less than 30 percent or in proportion to the total number of female deputies. It must also be stipulated that 30 percent committees must be headed by women. This should be similarly applied to People's Councils. This recommendation will ensure the participation of women in all aspects of law-making, policymaking and supervision.*

Indicator 56 Is there equal eligibility for appointment to public positions?

Indicator 57 Is there legislative provision for temporary special measures, especially minimum quotas of women in appointed public positions at all levels? Does legislation clearly specify measures to support the quotas?

Article 63 of the Constitution states that male and female citizens have equal rights in all fields, including in the political arena; and, thus, provides a general guarantee on equal eligibility on appointments to public positions. This is specified by the Law on Gender Equality:

Article 11: Gender equality in the field of politics

- (1) Man and woman are equal in participating in the state management and social activities.
- (2) Man and woman are equal in participating in the formulation and implementation of village codes, community regulations, agencies and organizations regulations.

Article 40: Violations of the law on gender equality in the fields of politics, economy, labour, education and training, science and technology, culture, information, sport, and public health

- (1) Violations against the law on gender equality in the fields of politics include:

- (b) Not carrying out or impeding the appointment of man and woman to the post of managers, leaders or professional titles for gender preconception reasons;

Further, Article 11 of the Law on Gender Equality provides that one of the measures to promote gender equality in the field of politics includes ensuring the appropriate proportion of women in the appointment of cadres to hold titles in State agencies in accordance with national gender equality target. Article 19(2) of the Law on Gender Equality gives authority to the National Assembly, Standing Committee and Government to stipulate other measures to promote gender equality, to review implementation, and to decide when the measures will end. There are no provisions in the Law on Gender Equality on the exact proportion of female cadres.

Strategies and plans have more specific targets on female participation as public employees, either as leaders or staff. Indicator 4 of the National Strategy for Advancement of Women states that 50 percent of the State agencies, as well as political and socio-political organizations, at both central and local levels, will have female leaders by 2010. In the Plan of Action for Advancement of Women, one indicator is to have at least one female leader in every Ministry, central agency (where appropriate) and People's Committee at any level, and to strive to increase by 15 percent of female leaders at directional and division levels. The CPGRS identifies as one of its objectives/targets the increase of participation of women in agencies and sectors at all level by an additional 3-5 percent. Among its monitoring indicators is the percentage of female leaders in Government ministries and central agencies and insti-

tutions. The SEDP enumerates - as one of its expected results in relation to Major Policies and Measures to Achieve Goals and Targets of the SEDP 2006-2010 - the increase by 3-5 percent of female staff in all agencies and sectors at all levels. This is also reiterated in the Poverty Reduction and Social Development Targets of Viet Nam by 2010.

The Ordinance on Public Employees (No. 01/1998/PL-UBTVQH10 of February 26, 1998) (Ordinance on Public Employees) provides guidance relating to the regime of public employees, including their duties and interests, election, recruitment, job conditions, retirement and management. This was later amended by Ordinance Amending and Supplementing a Number of Articles of the *Ordinance on Officials and Public Employees (No. 11/2003/PL-UBTVQH11 of April 29, 2003)*. The Ordinance on Public Employees is couched in gender-neutral language and contains no specific guarantees on gender equality or non-discrimination on the basis of gender. There is one provision in it referring in particular to female workers; that is, the applicability of selected provisions of Chapter X of the Labour Code to female civil servants.³⁵⁴ Earlier, in relation to recruitment of public employees, a male applicant must be aged 18-40 years while a female applicant must be aged 18-35 years.³⁵⁵ This was amended in 2000 stating that the age range for both male and female appointments is 18-40 years, thus eliminating the age differential.³⁵⁶

In 2003, *the Regulation on Appointment, Reappointment, Shift, Resignation and Removal from Office of Leading Officials and Public Employees* (Regulation on Leading Officials and Public Employees) - promulgated by *the Decision No. 27/2003/QĐ-TTĐ of February 19, 2003 Promulgating the regulation on Appointment, Reappointment, Shift, Resignation and Removal from Office of Leading Officials and Public Employees* (Decision on Leading Officials and Public Employees) - stated that for 'first-time appointments',³⁵⁷ official and public employees must not be over age 55 years for men or age 50 years for women, except for the posts of deputy-head and head of sections in urban and rural districts or equivalent posts.³⁵⁸ The age differential is clearly to ensure consistency with the mandatory retirement age for men and women set by Article 60 of the Labour Code and Article 55 of *the Law on Social Insurance (No. 71/2006/QĐ11 of June 29, 2006)* (Law on Social Insurance) respectively. (See Part V.8.3, Indicator 77.) However, Article 11(4) of the later Law on Gender Equality clearly stipulates: "Man and woman are equal in term of professional qualifications and age when they are promoted or appointed to the same posts of management and leadership in agencies and organizations."

Despite these legal documents, within the public administration's central executive level, there are very few women in leadership positions. In 2005, only 12 percent of Ministers (or its

³⁵⁴ Ordinance on Public Employees, Article 9(5)

³⁵⁵ Decree No. 95/1998/ND-CP of 17 November 17, 1998 on the Recruitment, Employment and Management of Public Servants, Article 6(2)

³⁵⁶ Decree No. 56/2000/ND-CP of 12 October 12, 2000 Amending Clause 2, Article 6 of the Government's Decree No. 95/1998/ND-CP of 17 November 17, 1998 on Recruitment, Employment and Management of Public Servants, Article 1

³⁵⁷ Decision on Leading Officials and Public Employees, Article 2(1) defines appointment as that the "heads of competent agencies issues decisions to appoint officials and public employees to leading posts for definite terms in the agencies or units".

³⁵⁸ Regulation on Leading Officials and Public Employees, Article 3. For the posts of deputy-head and head of sections in urban and rural districts or equivalent posts, the age for first-time appointment must not exceed age 45 years for both men and women.

equivalent), and only 9 percent of Deputy Ministers (or its equivalent), were women.³⁵⁹ Further, only 6 percent of Department Directors (or its equivalent), only 14 percent of Deputy Department Directors (or its equivalent), and only 33 percent of Deputy Division Directors (or its equivalent), were women. In 1992-2002, there was very little progress on women's leadership at the central executive level.³⁶⁰ There is one female Minister out of 22 Ministers in the current Government.

The situation at the local level is not very promising as well. From 1999 to 2004, the percentage of female Chairpersons and Vice Chairpersons in People's Committees at the commune, district and province levels was 2.72 percent, 6.85 percent and 7.07 percent respectively. In 2004-2009, there is an improvement in female representation for the same positions to 8.94 percent, 12.20 percent and 9.60 percent respectively. In State-owned enterprises, only 4 percent of General Directors or Deputy General Directors were women.³⁶¹

By contrast, women account for 68.70 percent of civil servants.³⁶² A survey of civil servants in MARD found several factors constraining the promotion of women including: (a) male leaders do not believe in the capacity of female staff and their available time for duties in higher positions; (b) a lack of motivation and inferiority complex of women; (c) many women do not want to be promoted to avoid disagreements with husbands and trouble in family life; and (d) the lower promotion age for women (age 50 years compared to age 55 years for men) and early retirement age (age 55 years compared to age 60 years for men³⁶³) restricts the pool of women suitable for promotion.³⁶⁴ Reforms of the public administration system are currently underway in line with the Public Administration Reform Master Programme 2001-2010. A review of the Overall Program on State Administrative Reform in the 2001-2010 - under Decision No. 136/2001/QĐ-TTĐ of September 7, 2001 Approving the Overall Programme on State Administrative Reform the 2001-2010 period - shows that gender is not integrated, systematically and consciously, into the Overall Programme on State Administrative Reform; for example, downsizing, which can reduce inefficiencies in public administration, but impact disproportionately on women as they often have more difficulty finding a new job.³⁶⁵ In reviewing the participation of women in public administration, measures must be in place to address obstacles to women's participation in public administration as well as their ability to access leadership positions.

One of the guarantees that must be in place is freedom from sexual harassment. There are almost no studies on this in Viet Nam. However, comparative situations from other coun-

³⁵⁹ GSO Statistics, p. 68

³⁶⁰ Party Organization Commission, 'Improving Female Cadres' Capacity for Leadership in the Political System', National Political Publishing House, Ha Noi, 2007 (Party Organization Commission), p. 335. In Reports from the Communist Party of Viet Nam show that in 1994-1999 the percentage of women Ministers, Deputy Ministers, Department Directors and Deputy Department Directors was 11.9 percent, 7.3 percent, 13.0 percent, 12.1 percent and 4.0 percent respectively. In 1999-2004, the figures were 12.5 percent, 12.85 percent, 12.1 percent and 8.10 percent respectively (World Bank Assessment, p. 33). For other statistics on this, although more dated, see Viet Nam Women's Union, 'Proceeding of the 9th National Congress of the Vietnamese Women', Women's Publishing House, Ha Noi, 2002.

³⁶¹ Party Organization Commission, p. 336. See also, Wells, op. cit., p. 55, for earlier data.

³⁶² Combined Fifth and Sixth Periodic Report, p. 24

³⁶³ See Indicator 77

³⁶⁴ Wells, op.cit., p. 55

³⁶⁵ Ibid., p. 57

tries show that this is an occurrence in many employment settings, whether private or public. Hence, appropriate legislation on this must be in place.

Recommendation: *It is recommended that age differentials in terms of recruitment and appointment must be prohibited. In keeping with the Law on Gender Equality, the Decision on Leading Officials and Public Employees must be amended to ensure that men and women have the same age for first-time appointments. In relation to this, it is also urged that equal retirement age must be stipulated for men and women and appropriate amendments in the Labour Code and Law on Social Security must be made. All qualifications, including age, must be the same for both men and women.*

It is also suggested that a clear proportion of women in leadership positions in State agencies, political and socio-political organizations, of not lower than 30 percent, be explicitly stipulated in law; that is, as a supplement to the Ordinance on Public Employees and to other legislation on organization of State offices (for example, the Law on People's Procuracies, etc.). State agencies, political and socio-political organizations must be mandated to draft a plan to enable progressive compliance with the 30 percent proportion within a specific time frame with monitoring and enforcement mechanisms and resources to ensure compliance, including sanctions for failure to abide by the plan for no justifiable reasons.

To ensure that gender equality is not set aside, a guarantee on non-discrimination on the basis of gender must be stipulated in the Ordinance on Public Employees and its supporting documents.

An explicit prohibition of sexual harassment must also be clearly provided in a legal document for public employees. See Part V.8.3, Indicators 81-82 for recommended definition, coverage and other details. Provisions relating to access to working conditions, maternity and social insurance, which are recommended in Part V.8.3, Indicators 71-79, are also suggested to cover public employees.

It is also recommended that gender equality courses and gender sensitivity be included as a mandatory subject in the contents of training and fostering programs.

The Ordinance on Judges and Jurors of the Peoples Committee (No. 02/2002/PL-UBTVQH11 of October 4, 2002) (Ordinance on Judges and Jurors) provides that all Vietnamese citizens regardless of sex have the right to participate in State management. However, in relation to the judiciary, female participation has been decreasing.³⁶⁶ In 2001, the percentage of women in the SPC, provincial courts and district courts was 22 percent, 27 percent and 35 percent respectively, but, in 2003, the percentage declined significantly to 16 percent, 24 percent and 22 percent respectively.³⁶⁷

Recommendation: *It is also recommended that temporary special measures or measures to promote equality be put in place relating to increasing the number of female judges. The Ordinance on Judges and Jurors must be in revised or supplement-*

³⁶⁶ World Bank Assessment, p. 34

³⁶⁷ Ibid.

ed to require the setting up of a mechanism to enable a proportion of 30 percent female judges. This mechanism can be a concrete plan with steps to reach the 30 percent proportion within a specific time frame, with monitoring and enforcement mechanisms and resources to ensure compliance, including sanctions for failure to abide by the plan for no justifiable reasons. Temporary special measures, such as capacity-building activities for women to qualify as judges and targeted recruitment, must also be put in place.

Indicator 58 Are women able to access leadership positions in the Communist Party of Viet Nam?

Viet Nam is a one-party State where the Communist Party of Viet Nam provides leadership to the State and society. (See Part II.1.6 for further details on the Party.) Women's leadership and participation in the Communist Party of Viet Nam is an important component to their eligibility to elected and appointed positions. In the recently concluded 12th National Assembly elections, non-Communist Party of Viet Nam members won 43 seats or 8.72 percent of seats, while the Communist Party of Viet Nam won 91.28 percent of seats.³⁶⁸ This shows that female participation and leadership within the Communist Party of Viet Nam can greatly influence the number of winning candidates in the elections. Further, Communist Party of Viet Nam members are in key government positions that make decisions on appointments or recruitment of other important government officials.

There are a number of Communist Party of Viet Nam documents supporting women's representation and leadership, including Directive No. 49/CT-TW (1991), Directive No. 31-CT-TW (2003) and *Directive No.37/2004/CT-TW of November 8, 2004 Keeping the Implementation the Decree No. 09/1998/ NQ-CP and the National Programme on Prevention, Combat against Criminals until 2010* issued by the Party Central Secretariat focusing on the work of female cadres in the new situation with six key measures to increase women's potential. In 2007, Resolution on Work for Women was issued to improve in all aspects women's potential, including more participation in social activities and equality in the light of the period of accelerating industrialization and modernization. In particular, under Item 3.4 of the Resolution on Work for Women, one of the tasks of the Communist Party of Viet Nam and the State is to "build a team of highly skilled female scientists, leaders, managers to meet the demands from pushing up the industrialization and modernization." Further, it states the following under this item:

- it is "necessary to ensure the percentage of female participants in the training courses at the political training schools, public administration courses of over 30%. Carrying out the selection of female cadres for training among the ethnic minorities, religious groups and other areas that have low percentage of women";
- "efforts [are] to be made so that by year 2020, the percentage of female participants in the party committees will reach 25% or over; female members in the National Assembly and People's Council at different levels will reach 35% to 40%. Agencies and organizations having 30% or more women must have women among their leaders. The high ranking agencies of the Party, the National Assembly, and the Government have an appropriate percentage of women relative to the goal of gender equality.";

³⁶⁸ Viet Nam Women's Union Review

- among the policies for the development of female cadres are the following: formulating, amending and implementing policies for the development of female cadres in the scientific research, administration and management. There should be specific policies for training, promoting and rotating female cadres, especially those who are intellectuals, workers, ethnic minorities, and religious women;
- the “generation of new female cadres needs to be placed in the national strategy for human resource development. Priority should be given to women recruitments with educational qualifications for college, university or post graduate degrees. Paying attention to the training and development of talented women.”;
- the “Women’s Union at different levels, female cadres and party members need to be more active and creative in advising, recommending and creating more sources of female cadres or introducing outstanding women to become party members. Reducing the attitude of accepting the statu

Therefore, policy directions for the participation and leadership of women in the Communist Party of Viet Nam and the State are available. In the Resolution on Work for Women, the Communist Party of Viet Nam strongly endorsed female leadership, especially by setting proportion of women in the Central Committee, as well as in State legislative and executive offices.

Nevertheless, female leadership within the Communist Party of Viet Nam is low.³⁶⁹ Female participation in the Central Committee has declined from 10.6 percent in the 8th Congress (1996-2000) to 8.0 percent in the 9th Congress (2001-2005) and to 7.5 percent in the 10th Congress (2006-2010). Female participation at the provincial level executive committee was 11.3 percent in 1996-2000 and 11.32 percent in 2001-2005 and 11.75 percent in 2006-2010. At the district level executive committee, female representation was 11.68 percent in 1996-2000, 12.89 percent in 2001-2005 and 14.74 percent in 2006-2010. In the Political Bureau, in 8th Tenure (1996-2000), there was one female member amounting to 5.3 percent of members. In the 9th Tenure (2001-2005) and 10th Tenure (2006-2010), there was no female member. Hence, despite the earlier pronouncements, there are few female leaders in the Communist Party of Viet Nam. Total female membership in the Communist Party of Viet Nam in 2000 is 19.74 percent of total membership, which impacts heavily on the choice of female leaders for the branches of the State. Therefore, the Communist Party of Viet Nam’s will to increase female participation and leadership must be reflected in increased female participation and leadership in key bodies.

Recommendation: Although Communist Party of Viet Nam documents are not legal documents, it is encouraged that a Communist Party of Viet Nam document must clearly specify a concrete mechanism to enable female participation to a minimum of 30 percent in all aspects of decision-making, policy formulation and implementation. This mechanism can be a concrete plan with steps to reach the 30 percent proportion within a specific time frame, with incentives or disincentives for non-compliance, especially in the committees at all levels, with monitoring and enforcement mechanisms and

³⁶⁹ See Party Organization Commission, p. 330

resources must be also in place to ensure compliance, including sanctions for failure to abide by the plan for no justifiable reasons. In the identification of candidates for elections, at least 30 percent of candidates must be women. More intensive attention and resources must be focused on capacity-building training for female cadres to enable them to take up leadership positions.

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| Indicator 59 | Do women have an equal right to participate in mass organizations, NGOs and other civil society groups? |
| Indicator 60 | Is there legislation regulating registration and mobilization of NGOs to promote the advancement of women? |
| Indicator 61 | Are these legal provisions on female participation in policymaking and implementation at the grassroots level? |

Article 63 of the Constitution states that male and female citizens have equal rights in all fields, including in the political arena; and, thus, provides a general guarantee on equal participation in mass organizations, NGOs, and other civil society groups.

Mass organizations are an important source of political influence. They are given many State management functions by the State, including law drafting. Generally, female membership in the Central Committee of the Ho Chi Minh Communist Youth Union, Viet Nam Fatherland Front and Viet Nam Peasants Association is around 20 percent.³⁷⁰ There are very few women in leadership positions.³⁷¹

The key mass organization relevant to gender equality is Viet Nam Women's Union, with a membership of 13 million (all women) in 2007. The Viet Nam Women's Union is an important organization that provides a way for women's issues to be heard by State agencies. *The Decree No. 19/2003/ND-CP of 7 March 2003 Prescribing the Responsibility of State Administrative Agencies of Various Levels for Ensuring the Participation in the State Management by Viet Nam Women's Union of Various Levels* instructs all levels of government to facilitate the Viet Nam Women's Union's participation in State management, such as: (a) inviting representatives of the Viet Nam Women's Union to join discussions or give comments on formulation of legal documents; (b) inviting representatives of the Viet Nam Women's Union to advise State administrative agencies on matters related to women and children; (c) joining inspection teams on matters related to women and children; and (d) holding working sessions with the Viet Nam Women's Union on the implementation of laws and policies biannually. In reality, however, the Viet Nam Women's Union tends only to be consulted on issues that specifically mention women, such as quotas for women in elected organizations or on traditional women's interest areas such as education and health.³⁷² The mass organizations are not entirely independent of the Government and they are expected to abide by and promulgate government decisions.³⁷³ (See Part II.1.8. for further details on mass organizations).

In relation to NGOs, local and international NGOs, including those working on women's issues, operate within considerable government constraints. *The Law No. 102/SL-L of May 20,*

³⁷⁰ Wells, op. cit., p. 58

³⁷¹ Ibid.

³⁷² Wells, op. cit., p. 58

³⁷³ Ibid.

1957 on Enacting the Law on the Rights to Set up Association voted for by the National Assembly at the 6th Session (Law on Associations) requires permits to set up associations.³⁷⁴ The Decree on Associations states that associations are “voluntary organizations of citizens, organizations of Vietnamese of the same professions, the same hobbies, the same genders for the common purposes of gathering and uniting members, regular activities, non-self seeking, aiming to protect members’ legitimate rights and interests, to support one another for efficient activities, contribute to the country’s socio-economic development, which are organized and operate according to this Decree and other relevant legal documents.”³⁷⁵ Chapter III of the Decree on Associations describes the conditions for the establishment of associations.

Registration as an independent NGO remains a difficult process.³⁷⁶ Some local NGOs, regardless of registration difficulties, have developed as official ‘clubs’ whereby they cannot receive funds, or as a ‘group’ under an existing ‘umbrella’ NGO so they can function within the law but funds are transmitted via the umbrella NGO. There are efforts to move for the redrafting of the Law on Associations to provide more guidelines as to the registration, work and autonomy of NGOs.

Recommendation: It is suggested that a more supportive environment, including less restrictive laws, be provided for the operation of NGOs, which include Women’s NGOs as well. Prohibition on non-discrimination on account of gender must be clearly stipulated in law for application in the operation of NGOs, unless the association is clearly set up to cater to a particular gender’s interests and needs.

As to direct participation of women in policymaking and implementation at the grassroots level, Article 11 of the Constitution provides: “The citizen exercises his right to mastery at the grassroots by participating in State and social affairs; he is duty bound to help protect public property, legitimate civil rights and interests, maintain national security and social order, and organize public life.” Further, Article 69 of the Constitution states: “The citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed, and the right to assemble, forms associations and hold demonstrations in accordance with the provisions of the law.”

The mandate for citizen’s participation in local decision-making draws its inspiration from a quote of Ho Chi Minh: “The people know, the people discuss, the people do and the people monitor.”³⁷⁷ This is elaborated in the *Ordinance on Exercise of Democracy in Communes, Wards and Townships (No. 34/2007/PL-UBTVQH11 of April 20, 2007)* (Ordinance on Democracy),³⁷⁸ which provides for the contents to be publicized, discussed, decided, commented on and supervised by the people as follows:

Article 5: Contents to be publicized

³⁷⁴ Law on Associations, Article 4

³⁷⁵ Decree on Associations, Article 2.1

³⁷⁶ Kelly, op. cit., p. 82

³⁷⁷ Wells, op. cit., p. 55

³⁷⁸ Previous legal documents on this matter include: *Decree No. 79/2003/ND-CP of July 7, 2003 Promulgating the Regulation on the Exercise of Democracy in Communes*; *Decree No. 29/1998/ND-CP of May 11, 1998 Promulgating the Regulation on the Exercise of Democracy in Communes*; and *Directive No. 22/1998/CT-TTG of May 15, 1998 on the Implementation of the Exercise of Democracy in Communes*

- (1) Plans on socio-economic development; schemes on economic restructuring and annual budget estimates and settlement of the communal level.
- (2) Investment projects and works and the priority order, implementation schedules, schemes on compensation and support for ground clearance and resettlement related to projects and works in communal-level localities. Detailed land use plans and adjustment schemes and planning on population quarters in communal-level localities.
- (3) Tasks and powers of communal-level officials and public servants, who directly handle the people's affairs.
- (4) The management and use of assorted funds, investments, financial aids under programmes or projects for communal level; contributions mobilized from people.
- (5) Undertaking and plans on borrowing capital for people to develop production, eliminate hunger and reduce poverty; modes and results of considering poor households entitled to loans for production development, social relief, construction of charity houses, grant of medical insurance cards.
- (6) Schemes on establishment, merger, division of administrative units, adjustment of administrative boundaries directly related to the communal level.
- (7) Results of inspecting, examining and settling negative and corruption cases of communal officials or public servants, village officials, street population group officials, results of votes of confidence on Chairmen and Vice Chairmen of People's Councils, presidents and vice presidents of People's Committees of the communal level.
- (8) Contents and results of acceptance of people's opinions on matters falling under the deciding competence of the communal-level which have been put up by communal level administrations for people's comments as provided for in Article 19 of this Ordinance.
- (9) Payors and collection levels of assorted charges and fees as well as other financial obligations directly collected by communal-level administrations.
- (10) Legal provisions on administrative procedures for settlement of matters related to people, which are carried out directly by communal level administrations.
- (11) Outer contents prescribed by law, requested by competent state bodies or considered necessary by communal level administrations.

Article 10: Contents to be directly discussed and decided by people

People directly discuss and decide on undertakings and levels of contributions to the construction of infrastructures, public facilities within the scope of communes, villages, population groups, to which people fully or partially contribute funds, and other matters within population communities in accordance with the provisions of law.

Article 13: Contents to be discussed and voted on by people

- (1) Rules or conventions of villages or street population groups.
- (2) Election, relief from duty, removal from office, of village chiefs, street population group leaders.

- (3) Election and removal from office of members of the People's Inspection Boards, the Community Boards for Investment Supervision.

Article 19: Contents to be commented by people

- (1) Draft plans on socio-economic development at the communal level; economic and production-restructuring options; schemes on sedentary farming, resettlement and new economic zones and production and business line development options of the communal level.
- (2) Draft detailed land use planning and plans and adjustment schemes; the management and use of land areas of the communal level.
- (3) Draft plans on implementation of programmes and projects in communal-level localities; undertakings and schemes on ground clearance compensation and supports, infrastructure construction, resettlement; schemes on population quarter planning.
- (4) Draft schemes on establishment, merger, division of administrative units, adjustment of administrative boundaries, directly related to communal-level localities.
- (5) Other contents, which need people's comments as required by law, requested by competent state bodies or considered necessary by communal-level administrations.

Article 23: Contents to be Supervised by people

People supervise the materialization of the contents specified in Articles 5, 10, 13 and 19 of this Ordinance.

The Ordinance on Democracy also provides that, in relation to Article 5 of the ordinance, communal-level People's Committees will formulate and adopt plans for materialization of the publicized contents and of contents to be discussed and decided by the people.³⁷⁹ Written records on the results of the contents discussed and decided by the people will be made.³⁸⁰ The Ordinance on Democracy requires coordination with the Viet Nam Fatherland Front and its members, which includes the Viet Nam Women's Union, so this allows some level of participation from women.³⁸¹

Article 15 of the Ordinance on Democracy states that the contents of Article 13 of the ordinance must be agreed upon by 50 percent of the total number of voters or voter-representatives of households to be valid for implementation. By providing for 50 percent voter-representative of household instead of simply voters, there is a tendency to leave women out, as it is mostly men who are considered as heads of households.

Hence, although inclusive of many things, the Ordinance on Democracy is couched in mostly gender-neutral language with no specific provisions in favor of women. There are no guarantees of female participation or participation of other disadvantaged groups in this process. As a result, there is a possibility that they will be overlooked.

On the other hand, the Law on Gender Equality provides:

³⁷⁹ Ordinance on Democracy, Article 9(1) and 17(1)

³⁸⁰ Ibid., Articles 9(2) and 17(2)

³⁸¹ See Ordinance on Democracy, Articles 12, 17 and 24

Article 11: Gender equality in the field of politics

(1) Man and woman are equal in participating in the state management and social activities.

(2) Man and woman are equal in participating in the formulation and implementation of village codes, community regulations, agencies and organizations regulations.

This gives notice on the need to ensure the equal participation of women in the exercise of grassroots democracy.

Recommendation: *It is recommended that the Ordinance on Democracy ensure that it reaches women of all sectors, especially ethnic minority women, and ensure their participation. To enable women to participate, specific measures must be stipulated in legal documents, including sex-disaggregated data on the number and level of their participation, additional resources for outreach to women, targeted consultations for women, hiring of female workers to reach out to women, and inclusion of gender interventions in the reports on grassroots democracy of local authorities. It is also suggested that Article 15 of the ordinance be revised by amending it to require only for 50 percent of total number of voters for contents in Article 13 to be valid for implementation, thereby deleting 50 percent of voter-representatives of households as an option.*

Indicator 62 Do women have equal opportunity to represent the Government at the international level and participate in work of international organizations?

MOFA has adopted a Plan of Action for Advancement of Women, which sets these targets: (a) the proportion of women in the whole diplomatic service will be 30 percent; (b) women in key positions will be 11-20 percent; (c) female Heads of Representative Missions will be 20 percent and higher; and (d) one female Minister Assistant. At present, the percentage of women in the diplomatic service accounts for 28 percent, of which 28 percent is working abroad.³⁸² The proportion of female students passing the entrance exam to gain admission to the Institute for International Relations has been fluctuating between 35 to 51 percent (from 2000 to 2003).³⁸³

From 2000 to 2003, the number of women appointed as Directors and Deputy Directors in the diplomatic service increased from 10 to 15 women.³⁸⁴ There are now 11 female Heads of Divisions. In total, the number of women in leadership positions in the diplomatic service is one female Department Director (out of 22 Department Directors), five female Deputy Directors (out of 57 Deputy Directors), two female Heads of Divisions (out of 22 Heads of Division), and nine female Deputy Heads of Divisions (out of 32 Deputy Heads of Division). Although progress can be seen, in all cases, this falls behind the 30 percent criterion set by CEDAW for all levels and sectors.³⁸⁵

³⁸² Combined Fifth and Sixth Periodic Report, p. 26

³⁸³ Ibid. The figures for the Term 26 (Year 2000), 27 (Year 2001), 28 (Year 2002) and 29 (Year 2003) were 137/55, 129/66, 154/68 and 169/60 which is 40 percent, 51 percent, 44 percent and 35 percent of women out of the total examinees.

³⁸⁴ Ibid.

³⁸⁵ GR 23, Paragraph 16

Recommendation: It is also suggested that the proportion of women in leadership positions in State agencies, political and socio-political organizations must not be lower than 30 percent. MOFA must be required to draft a plan reflecting progressive compliance with the 30 percent proportion in both leadership and staff positions within a specific time-frame with monitoring and enforcement mechanisms and resources to ensure compliance, including sanctions for failure to abide by the plan for no justifiable reasons.

In the Combined Fifth and Sixth Period Report, it was mentioned that the proportion of women working for international organizations is on the rise, averaging over 50 percent of the total workforce.³⁸⁶ In 2002-2003, the figures were 56.00 percent and 56.55 percent respectively. Around 40 percent of project officers and assistants of international organizations are women; and, in 2002, the figure was 50.86 percent. The percentage of women holding other positions, such as secretary and interpreter, was over 35 percent, even reaching 45 percent in 2000 but declining afterwards. The proportion of women doing supporting work at project offices of international organizations remains low, averaging 17 percent and tends to drop.

The Combined Fifth and Sixth Period Report proceeds to state that in international level activities, many women working for government agencies, people's friendship associations and mass organizations had opportunities to represent the Government at international forums and external activities. Depending on the nature of the activities, the increase of female participation ranges between 40 and 50 percent in the activities. Many female officials had the opportunity to accompany leaders of the State, Communist Party of Viet Nam and Government in visits to foreign countries or international conferences. Many women hold key positions in important bilateral and multilateral negotiations, including those for Viet Nam's World Trade Organization (WTO) accession.³⁸⁷

The degree and level of female involvement must be further analysed. First, are women provided leadership roles in their participation in international organizations and international level activities? Second, in what fields do women participate at the international levels? Are they consigned to 'soft' areas or areas that are viewed as 'female fields', such as women's rights, health and education, or have they been included in 'hard' areas such as issues relating to security, trade and finance?

Recommendation: There is a need to obtain further information on this area, especially in relation to whether women are in leadership positions in international organizations or international level activities, as well as whether women participate in a whole range of activities at the international level or are limited to areas considered as traditionally 'female fields'. Increased capacity-building activities must be in place to enable women to take up responsibilities in a wider field of international level activities, especially in those areas that are predominantly male-dominated.

³⁸⁶ Combined Fifth and Sixth Periodic Report, p. 27

³⁸⁷ Combined Fifth and Sixth Periodic Report, p. 27

V.6 NATIONALITY (ARTICLE 9 OF CEDAW)

V.6.1 OBLIGATIONS UNDER CEDAW

V.6.1.1 Text of CEDAW

ARTICLE 9

- (1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- (2) States Parties shall grant women equal rights with men with respect to the nationality of their children.

V.6.1.2 General Recommendations

The following excerpt from CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations (1994) (GR 21) is relevant to Article 9 of CEDAW:

GR 21: Equality in Marriage and Family Relations

Paragraph 6

Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

V.6.2 SELECTED INDICATORS

As stated clearly by Paragraph 6 of GR 21, nationality is critical to full participation in society. Policies and laws on nationality must recognize women's choice in relation to nationality and not simply treat women as extensions of husbands or as spouses. Also, women must be able to transmit their nationality to their children, on an equal basis as men.

Bearing in mind the obligations under CEDAW, the selected indicators for nationality are:

Indicator 63 Do women have an equal right to acquire, change or retain their nationality? (Does marriage to a non-national or change of a husband's nationality affect a wife's nationality?)

Indicator 64 Do women have equal right to transmit their nationality to their children?

V.6.3 RELEVANT LEGAL PROVISIONS

Indicator 63 Do women have an equal right to acquire, change or retain their nationality? (Does marriage to a non-national or change of a husband's nationality affect a wife's nationality?)

Indicator 64 Do women have equal right to transmit their nationality to their children?

The Law on Vietnamese Nationality (No. 07/1998/QH10 of May 20, 1998) (Law on Nationality) states that marriage, divorce or annulment of an unlawful marriage between a Vietnamese and a foreigner will not alter the Vietnamese nationality of the Vietnamese party as well as their minor children.³⁸⁸ Loss of nationality by the husband or wife does not alter the nationality of the other spouse.³⁸⁹ Additionally, foreign and stateless persons can be granted Vietnamese nationality if they are spouses, offspring or parents of Vietnamese citizens.³⁹⁰ Persons who have lost their Vietnamese nationality can apply for restoration if their spouses, offspring or parents are Vietnamese.³⁹¹ Therefore, the law makes no distinction as to the sex of the spouse, offspring or parent.

Under Vietnamese laws, the mother can transmit nationality to her child; for example:

- In relation to children, a child born to parents, one of whom is Vietnamese and the other is a foreigner, will hold Vietnamese nationality if so agreed in writing by the parents at the time of the registration of their child's birth;³⁹²
- Where one parent is Vietnamese and the other is stateless, or if the mother is Vietnamese and the father is unknown, the child will hold Vietnamese nationality whether or not born within Vietnamese territory;³⁹³
- In relation to adopted children, the nationality of adopted children will be determined according to their natural parents' nationality. In cases where their natural parents belong to two different nationalities, a child's nationality will be determined by the nationality of the natural father or mother according to the common practices or agreement between the natural father or mother. Where the natural parents of adopted children cannot be identified, an adopted child's nationality will be determined according to the adoptive parents nationality; if the adoptive parents belong to two different nationalities, the adopted child's nationality will be determined according to the nationality of the adoptive father or adoptive mother according to the common practices or agreement between the adoptive father and mother.³⁹⁴ One note is that, although the term 'common practices' appear to be neutral, there must be a clear safeguard in the law that it is not patriarchal and does not discriminate against the adoptive mother's right to transmit her nationality to her adopted child. In this case, instead of relying on common practice, a better option would be to allow both adoptive parents to transmit their nationality to the child without prejudice to the child's choice on reaching the age of majority.

In cases where there is a change in the nationality of parents due to the granting, relinquishment or restoration of Vietnamese nationality, the nationality of minor children will be decided on the basis of written consent from their parents.³⁹⁵ If the children are aged 15 years and older, their agreement will be sought in writing.³⁹⁶

Recommendation: It is suggested that, in relation to an adopted child's nationality, where both parents have different nationalities, they can both transmit their nationality to the child without prejudice to the child's choice upon reaching the age of majority.

³⁸⁸ Law on Nationality, Article 9

³⁸⁹ Ibid., Article 10

³⁹⁰ Ibid., Article 20

³⁹¹ Ibid., Article 21

³⁹² Ibid., Article 17(2)

³⁹³ Ibid., Article 17(1)

³⁹⁴ Decree on Marriage and Family Law, Article 22

³⁹⁵ Law on Nationality, Article 28(2)

³⁹⁶ Ibid., Article 28(3)

V.7 EDUCATION (ARTICLE 10 OF CEDAW)

V.7.1 OBLIGATIONS UNDER CEDAW

V.7.1.1 Text of CEDAW

ARTICLE 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

V.7.1.2 General Recommendations

The following excerpt from CEDAW General Recommendation No. 3: Education and Public Information Campaigns (1987) (GR 3) is relevant to Article 3 of CEDAW:

GR 3: Urges State Parties to Adopt Education and Public Information Programmes

Urges all States Parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.

Provisions that relate to education and other thematic issues are discussed in the thematic sections, such as those dealing with job trainings, education on health, education on the family, trainings on rural extension programs, and reproductive rights, which relate to Articles 11, 12, 13 and 16 of CEDAW respectively.

V.7.1.3 Concluding Comments

The relevant paragraphs relating to Article 7 in Concluding Comments on Viet Nam 2007 are:

Paragraph 20

While noting progress towards reaching high levels of literacy in the country, the Committee notes with concern that a high proportion of girls still drop out of school and that girls in rural and remote areas do not have full access to education.

Paragraph 21

The Committee urges the State party to take all appropriate measures to eliminate the disparity in school enrolment rates and to achieve universal primary education for girls in accordance with article 10 of the Convention, the strategic objectives and actions of the Beijing Declaration and Platform for Action and Millennium Development Goals 2 and 3. It urges the State party to address effectively the obstacles that prevent girls from continuing their education, such as family responsibilities and the cost of education. It also recommends that teacher training programmes at all levels integrate the principles of gender equality and non-discrimination on the grounds of sex. The Committee also calls on the State party to support education programmes on the culture of ethnic minority groups.

V.7.2 SELECTED INDICATORS

The right of women to education is an important right as it affects women's enjoyment of other rights. The right to education can be broken down into key areas: (a) equal access to education; (b) equal conditions of education; (c) developing non-discriminatory education and training; (d) securing sexual and reproductive rights through education; and (e) access to education by rural and/or ethnic minority women.

Article 10 of CEDAW requires that women enjoy equal access to education of all kinds and at all levels. It proceeds to illustrate that this covers all categories of education, whether in rural or urban areas; for example, pre-school, general, technical, professional or higher technical education, vocational training, adult and functional literacy programmes. A key concern in this area is reducing female drop-out rates and putting in place programmes that will keep girls in school.³⁹⁷ Another area to look into is ensuring that various courses or studies for a wide range of trade and professions are open to women, especially for trades and professions that are traditionally seen as 'for males only' or are male-dominated.³⁹⁸ Women and girls also must have equal access to scholarships and study grants to assist them in accessing education.³⁹⁹ It is also critical to look into different groups of women and whether they have equal opportunities to education.⁴⁰⁰ In this regard, there is a need to ensure equal access to education by rural and ethnic minority women.

³⁹⁷ CEDAW, Article 10(f)

³⁹⁸ Ibid., Article 10(a)

³⁹⁹ Ibid., Article 10(d)

⁴⁰⁰ Ibid., Articles 10 and 14(2)(d)

Article 10 of CEDAW also looks into whether women and girls have access to equal conditions of education. This involves having the same curricula, examinations, teaching staff with qualifications of the same standard, school premises, and equipment of the same quality.⁴⁰¹ In many cases, opportunities to participate in sports and physical education are limited.⁴⁰²

Article 10 of CEDAW also looks at ensuring that education being provided has incorporated gender. In this regard, the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education is strongly urged.⁴⁰³

Finally, Article 10 also obligates that equal access to specific educational information to ensure health and well-being of families.⁴⁰⁴ This includes information on reproductive and sexual rights.

Based on the obligations under CEDAW, GR 3 and Paragraphs 20-21 of Concluding Comments on Viet Nam 2007, the selected indicators for education are:

Indicator 65 Equal Access to Education

- Indicator 65(a)** Is there a guarantee of equal access to education by women and girls?
- Indicator 65(b)** Is there a legislative prohibition against non-enrolment or expulsion from school based on pregnancy and maternity?
- Indicator 65(c)** Is there compulsory primary and secondary education for girls and boys? Are both girls and boys able to access equally such compulsory education?
- Indicator 65(d)** Is there legislation on ensuring access to education of disadvantaged groups, especially ethnic minority women and girls and women and girls with disabilities?
- Indicator 66** Is there legislation to ensure equal conditions of education; for example, same curricula, examinations, teaching staff, facilities, and opportunities to participate in sports?
- Indicator 67** Is there legislation on eliminating stereotyped roles of men and women in all forms of education?
- Indicator 68** Is there legislation requiring the periodic review of textbooks and curricula to ensure gender sensitivity?
- Indicator 69** Are there legal documents ensuring that school administrators, personnel and teachers do not discriminate on the basis of gender and are gender sensitive?
- Indicator 70** Is sexual harassment prohibited in educational and training institutions?

⁴⁰¹ Ibid., Article 10(b)

⁴⁰² Ibid., Article 10(g)

⁴⁰³ Ibid., Article 10(c)

⁴⁰⁴ Ibid., Article 10(h)

V.7.3 RELEVANT LEGAL PROVISIONS

Indicator 65 Equal Access to Education

Indicator 65(a) Is there a guarantee of equal access to education by women and girls?

Indicator 65(b) Is there a legislative prohibition against non-enrolment or expulsion from school based on pregnancy and maternity?

The Law on Education states that the national education system is composed of the following areas or levels of education: (a) pre-school education; (b) general education, which is comprised of primary, lower secondary and upper secondary levels; (c) professional education, which includes professional secondary and vocational education; and (d) undergraduate and postgraduate education, which includes college, university, masters and doctoral degrees⁴⁰⁵. It further states that the State must adopt policies to develop continuing education, which will be reflected in the following programs: (a) illiteracy eradication and post-literacy education programmes; (b) educational programmes to meet learners' needs, update their knowledge and skills, and technology transfer; (c) programmes on training, fostering and raising professional qualifications; and (d) programmes on education to obtain diplomas of the national education system.⁴⁰⁶

Article 10 of the Law on Education states that learning is a right and obligation of citizens: "All citizens regardless of their ethnicity, religion, belief, gender, family background, social status or economic condition are equal in learning opportunities." It further states that the State must create conditions for everyone to get access to education, including children of ethnic minorities, children of families in the areas meeting with extreme socio-economic difficulties, beneficiaries of preferential policies, disabled and handicapped people, and beneficiaries of other social welfare policies.⁴⁰⁷ *The Decree No. 49/2005/ND-CP of April 11, 2005 on Sanctioning of Administrative Violations in Education* (Decree on Education Violations) prohibits a number of acts that prevent access to education, including hindering students of universalized levels from going to school,⁴⁰⁸ disciplining learners by forcing them to drop their schooling,⁴⁰⁹ and enrolling in excess of quotas.⁴¹⁰

Article 28 of the Law on Children provides for the responsibility to ensure the child's right to study:

Article 28: Responsibility to ensure children's right to study

(1) Families and the State are responsible for ensuring children exercise their right to study and complete the universal education programme, and for creating conditions that allow children to continue their studies at higher levels.

(2) Schools and other educational establishments are responsible for providing

⁴⁰⁵ Law on Education, Article 4

⁴⁰⁶ Ibid., Articles 44 and 45

⁴⁰⁷ Ibid., Article 9

⁴⁰⁸ Ibid., Article 21

⁴⁰⁹ Ibid., Article 20

⁴¹⁰ Ibid., Article 11

comprehensive moral, intellectual, aesthetic, physical and vocational education for children, and for working closely with families and society to ensure the protection, care and education of children.

- (3) Preschools and general education establishments must meet necessary conditions relating to teachers, material foundations for education and teaching facilities, to ensure a high quality of education.
- (4) Those representing the Ho Chi Minh Young Pioneers Organisation at schools must be professionally trained, in good health and of high moral standing; they must embrace their jobs and be given adequate means to fulfill their tasks.
- (5) The State shall adopt policies for the development of preschool and general education, as well as policies for the exemption and reduction of school fees, the granting of scholarships and the provision of social support to realise social equity in education.

Education is clearly valued in Viet Nam and the State has given it its required importance. Over the last decade, the spending for education has steadily risen to 16.7 percent of the total spending in 2002.⁴¹¹ To emphasize its focus on education, the Government has drafted its National Strategy on Education for All, as well as included education as one of the five objectives under the National Strategy for Advancement of Women. In the Plan of Action for Advancement of Women, the education targets are to: (a) strive for eradication of illiteracy for at least 95 percent of women under the age of 40 years and increase the proportion of literate ethnic minority women; (b) increase the proportion of women holding post-graduate degrees to over 35 percent of women; (c) increase the proportion of female officials among those trained in professional and technical skills, information technology and foreign languages to the proportion of women involved in professional and technical services in all sectors; (d) strive for 100 percent of girls aged 11-14 years to finish primary education and enter the sixth grade; and (e) increase the proportion of girls at junior and senior secondary schools to over 90 percent and 50 percent respectively, with special attention to remote and mountainous and ethnic minority areas. The National Plan of Action on Education for All (2003-2015) sets gender equality as a priority with concrete goals of “eliminating gender inequality in primary and secondary education by 2005, achieving gender equality in education by 2015 with guarantee of female students’ full and equal access to education and of their completion of education with good quality”.

The State has also explicitly included education in the Law on Gender Equality, which contains specific provisions on girls and women’s access to education:

- Articles 14(1) and 40(4)(a) explicitly guarantee equal age for schooling, training and fostering courses and prohibits laying down different ages for men and women for training or enrolment;
- Article 14(2) provides that men and women are equal in terms of choosing what professions or occupations to learn and train for;

⁴¹¹ Wells, *op. cit.*, p. 29

- Article 14(3) states that men and women are equal in accessing and benefiting from the policies on education, training, and fostering of professional knowledge and skills;
- Article 40(4)(b) prohibits agitating or forcing people to leave school on account of gender;
- Article 40(4)(c) forbids refusing to enroll those that are qualified for training and fostering courses on account of their gender, including for reasons of pregnancy, raising newborns and children;
- Article 14(5)(a) places responsibility on the State to provide for the proportion of men and women participating in the study and training as one of the measures to promote equality.

Although the Law on Education provides equality of learning opportunities, the rest of its provisions are gender-neutral and make no specific references to girls or women. Hence, the Law on Gender Equality provides the much-needed gender focus for the Law on Education. Nevertheless, the specific stipulations on equal access to education in the Law on Gender Equality are very limited. Article 14(1) of the Law on Gender Equality only provides that the age of access to education must be equal, without stipulating that conditions and other qualifications for entry must also be the same. However, Article 14(3) of the Law on Gender Equality may be given an expansive interpretation to allow it to address wider access issues, such as conditions or qualifications for entry, reduction of drop-out rates, equal enrolment and completion rates. The Law on Gender Equality forbids non-enrolment or expulsion on account of pregnancy and maternity, but not on account of sexual orientation or marital status.

It is also obvious that there are courses that are considered traditionally for 'men only' or 'women only'. There are also courses that are dominated by males or females respectively. Article 14(2) of the Law on Gender Equality seeks to address this, however, by temporary special measures such as targeted recruitment, which may be useful to elicit more enrolments of the non-traditional or non-dominant sex.

It is often argued that, as the Law on Education already has a general guarantee of equality, there is no need for further legislation on the matter. However, implementation of gender equality requires guidance; hence, the Law on Gender Equality, as well as legal documents on the Law on Education, must be able to elaborate further on what are discriminatory practices in education and ways to address them.

Recommendation: It is suggested that supporting legal documents to the Law on Gender Equality and Law on Education: (a) provide not only equal age of entry for schooling, training and fostering courses, but also equal conditions or qualifications of entry as well; (b) guarantee equality further in choosing a profession and occupation for learning and training, such as by stipulating that equal conditions for career and vocational guidance free from gender discrimination and stereotypes; and (c) put in place temporary special measures, such as targeted recruitment, to enable interest and access to courses that are traditionally the realm of either sex or is dominated by either sex.

It is also recommended that an explicit guarantee of non-discrimination in education on account of sexual orientation and marital status be also legislated.

Indicator 65(c) Is there compulsory primary and secondary education for girls and boys? Are both girls and boys able to access equally such compulsory education?

The Law on Universalization of Primary Education (1991) (Law on Primary Education) implemented a policy of compulsory primary education from the first to fifth form for all Vietnamese children between the ages of 6 and 14 years.⁴¹² In 2005, the Law on Education expanded the coverage and provided that primary education and lower secondary education be considered universal education levels.⁴¹³ On this basis, the State will decide on plans and assure conditions for the universalization of education in the country. Also, the Law on Children specifically provides that it is the responsibility of families and the State to ensure that children study and complete the universal education program, and to create conditions that allow children to continue their studies at higher level.⁴¹⁴ Further, it also provides that children be entitled to study at public education establishments free-of-charge.⁴¹⁵

The Decree on Children forbids obstructing children studying in Article 10, which might include: (a) using force or threat of force, materials or powers to compel children to give up their studies; (b) seducing, enticing children to give up their studies; and (c) forcing children to give up their studies to cause pressure, initiate lawsuits or join demonstrations.

These laws are gender-neutral. However, targets recently set on primary and secondary education look into eliminating the existing gender gap and ensuring equal access to primary and secondary education by both girls and boys; for example, the VDGs include the elimination of the gender gap in primary and secondary education by 2005 and the gap among ethnic minorities in primary and secondary education by 2010. The indicator is the net enrolment rate at primary, secondary and tertiary education levels by gender. The SEDP identifies one of the Poverty Reduction and Social Development Targets of Viet Nam by 2010 as the eradication of the gender imbalance at primary and secondary education levels in areas with large ethnic minorities. The Plan of Action for Advancement of Women also has targets on this matter; that is, to strive for 100 percent of girls aged 11-14 years to finish primary education and enter the sixth grade, and to increase the proportion of girls at junior and senior secondary schools to over 90 percent and 50 percent respectively.

Reflective of the emphasis placed by the State on education, Viet Nam has virtually achieved universal primary education and is on track to achieve universal lower secondary education.⁴¹⁶ A few areas of concerns are emerging though.

The gross enrolment rate of boys and girls at primary education is high and tends to be on the increase. Completion rates in 2002-2003 for primary school were 82.7 percent for girls and 78.9 percent for boys.⁴¹⁷ However, girls had lower gross enrolment rates than boys in 2003-2004 for lower secondary education at 86.5 percent for girls and 90.2 percent for boys.

⁴¹² Law on Primary Education, Articles 8 and 10

⁴¹³ Law on Education, Article 11(1)

⁴¹⁴ Law on Children, Article 28(1)

⁴¹⁵ Ibid., Article 16

⁴¹⁶ Wells, op. cit., p. 29

⁴¹⁷ GSO Statistics, p. 58

In some localities, the gender gap is even wider; for example, in Ca Mau province, the gap is 9.3 percent in 2003-2004 and 14 percent in 2003-2004.⁴¹⁸

The data on completion rates though can differ. For example, MOET data reveals that more boys are dropping out than girls at all levels of schooling.⁴¹⁹ Other reports state that most school drop-outs are girls.⁴²⁰ Further sex-disaggregated research is needed on this matter and the reasons behind dropping out of school to be able to come up with more appropriate interventions.

Recommendation: It is recommended that further sex-disaggregated research and gender analysis be done on enrolment and completion rates. In particular, it should provide a gendered analysis on why a gender gap exists and the reasons behind it. Whether the percentage is in favor of boys or girls, what is required is to discover the reasons behind non-completion and provide the appropriate, though not necessarily the same, interventions for girls as well as for boys.

Indicator 65(d)	Is there legislation on ensuring access to education of disadvantaged groups, especially ethnic minority women and girls and women and girls with disabilities?
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Ethnic minorities

One of the crucial concerns on education in Viet Nam is access to education by ethnic minorities, in particular girls. The Survey Assessment of Vietnamese Youth 2003 showed that an alarming 19 percent of young women from ethnic minorities have never attended school.⁴²¹ Additionally, there is a tendency in Viet Nam to lump together all ethnic minority groups, except those of the dominant Kinh ethnicity, under the term 'ethnic minorities', but this ignores the many differences between groups. It may be useful to differentiate between ethnic minority groups, especially in relation to education. Gender disparities appear in certain ethnic minority groups; for example, in lower secondary school, there appear to be more Nung, Chinese, Muong and Tay girls enrolled than boys, while the opposite is true for Khmer, Xo-dang and Hmong.⁴²² Hence, further disaggregation of data by ethnic minority groups and sex will reveal more accurate data on education.

Recommendation: It is recommended that legal documents require disaggregation of data and information by ethnic minority groups and sex so that interventions can be appropriately provided.

There are several laws and policies addressing access to education by ethnic minorities, although most are gender-neutral.

First, Article 36 of the Constitution states: "The State adopts the priority policy to ensure the educational development in mountainous areas, regions inhabited by ethnic minority people and regions encountering exceptional difficulties."

⁴¹⁸ Ibid., p.58

⁴¹⁹ Wells, op. cit., p. 32 and GSO Statistics, p. 60

⁴²⁰ Wells, op. cit., p. 32

⁴²¹ Ibid.

⁴²² Ibid., p. 31

Second, Article 6 of the Law on Primary Education provides that the State will ensure the necessary conditions for carrying out primary education in ethnic minority areas, in mountainous and remote regions, on islands, and in areas encountering special difficulties.

Third, the Five-Year Strategic Education Development Plan 2006-2010 (Ref: 6520/BGD&DT-KHTC of July 28, 2005) lists specific objectives and targets, including:

- General Education: Focus on generalization of primary education at the right age in the ethnic, remote and mountainous, and disadvantaged areas. Increase the rate of boarding ethnic minority pupils to 1.75% a year in the lower secondary school level and 2.22% in the upper secondary school level;
- University Education: Create favourable conditions for ethnic minority children in disadvantaged areas to access to the same education as other areas.

Fourth, the elimination of the gender gap in primary and secondary education by 2005, and the gap among ethnic minorities in primary and secondary education by 2010, is one of the VDGs. The indicator is the net enrolment rate at primary, secondary and tertiary education levels by gender.

Fifth, the SEDP also identifies in the Poverty Reduction and Social Development Targets of Viet Nam by 2010 the eradication of the gender imbalance at primary and secondary education levels in areas with large ethnic minorities by 2010.

Sixth, the Plan of Action for Advancement of Women has targets to: (a) strive for eradication of illiteracy for at least 95 percent of women aged under 40 years and to increase the proportion of literate ethnic minority women; and (b) increase the proportion of women at junior and senior secondary schools to over 90 percent and 50 percent respectively, with special attention to remote and mountainous and ethnic minority areas.

Seventh, the Resolution on Work for Women highlights as one of the tasks and solutions of the Communist Party of Viet Nam and the State the putting in place policies to support and create favorable conditions for ethnic minority women in remote and mountainous regions for the eradication of illiteracy, universalization of primary education, vocational training, poverty reduction, information access and cultural enjoyment.

Eighth, the Law on Education emphasizes a number of measures to address ethnic minority disparity in accessing education as follows:

- Article 61 provides for boarding general education schools, semi-boarding general education schools and pre-university schools for ethnic minorities. These schools must be given priority in the allocation of teachers, material foundations, equipment and budget;
- Article 89 mentions scholarships and social subsidies. The law provides that the State will adopt policies for the grant of scholarships to students enrolled through nomination, those in boarding schools for ethnic minorities, vocational training schools for war invalids, and disabled and handicapped people;
- Article 89 further requires the State to adopt policies on tuition subsidy and reduction/exemption for learners who are social policy beneficiaries, ethnic minorities in 'areas meeting with extraordinary socio-economic difficulties', orphans,

disabled and handicapped people with economic difficulties, and people who overcome their exceptional economic difficulties to gain excellent study results;

- Article 90 provides that students from areas meeting with extraordinary socio-economic difficulties will be enrolled by the State into colleges, universities or professional secondary schools through nomination to train officials and public employees for these areas. The State will set aside nomination quotas for this purpose. The provincial-level People's Committees will propose nomination quotas, allocate nomination quotas according to appropriate fields and disciplines, send the selected persons for study, and assign jobs to the nominees after their graduation;
- Article 91 states that preferential credit policies regarding interest rates will be adopted by the State to enable learners from low-income families to study;
- Article 92 provides that students will enjoy charge reduction or exemption when using public services in transportation, entertainment and visits to museums, historical relics and cultural works.

Although these provisions open up opportunities for ethnic minorities, there is a need for further guidance on implementation of these provisions generally and along gender-sensitive lines. An assessment carried out on the situation of education affecting women and children of ethnic minorities in five provinces (Lai Chau, Ha Giang, Kon Tum, Nghe An and Soc Trang) pointed to areas requiring further attention, including: (a) a chronic shortage of classroom space; (b) a lack of dormitory space in boarding schools resulting in students living in temporary bamboo shelters; (c) very high drop-out rates compared to the national average, and drop-out rates for girls were almost twice as high;⁴²³ (d) prolonged absences, especially for traditional festivals, celebrations and customary rituals; (e) women aged over 30 years had only completed third grade and majority of the women aged above 40 years were illiterate; and (f) a lack of textbooks and notebooks.⁴²⁴

The Committee for Ethnic Minorities Assessment also showed that, although students were not made to pay school fees as part of a government program for ethnic minorities, their families had to make small contribution to school upgrades and pay annual fees.⁴²⁵ If these are not paid, students can be held back from higher grades or drop out because of shame. The Committee for Ethnic Minorities Assessment also pointed out that, although priority admission to universities, colleges and technical training schools was granted to students from disadvantaged areas, places were awarded based on an emphasis on availability and quality of student applications.⁴²⁶ In 2001, for example, the number of students granted places was less than the number of places allocated for almost all provinces. There was lack of

⁴²³ Several reasons were provided for the high drop out rates including: (a) taking children out of school to help with farming duties or household chores; (b) nomadic nature of child's family; (c) large family with other sibling already attending school; (d) feeling of embarrassment when they are much older than their classmates; (e) not enough warm clothes for winter; and (d) cannot afford boat fares. As for girls, some parents see school as an obstacle to marriage, and when boys spend time for temples retreats between 3 months to 3 year, girls are made to stop schooling to take their place in the fields.

⁴²⁴ See generally, Committee for Ethnic Minorities and UNICEF, 'Reaching out for Change: A qualitative assessment of government healthcare and education policies affecting the women and children of ethnic minorities', Ha Noi, 2003 (Committee for Ethnic Minorities Assessment)

⁴²⁵ Committee for Ethnic Minorities Assessment, p. 21

⁴²⁶ Ibid., p. 25

information on the selection process. With the push to fill up the quotas, many also claim that those who qualify are not very well prepared.

There have also been concerns about the ethnic minority semi-boarding school (EMSB) system.⁴²⁷ EMSBs are spread across mountainous areas of some 30 provinces of Viet Nam and they provide education to an estimated 68,000 students.⁴²⁸ In contrast with ethnic minority boarding schools, EMSBs are set up as regular primary or lower secondary schools, but they became boarding schools over time.⁴²⁹ More than 60 percent of EMSB students have homes from 8 km away or over.⁴³⁰ As they were not originally set up as boarding schools, there are no official guidelines for their management, in particular the living conditions of students.⁴³¹ Many students live in unsafe residences and eat meals meeting only minimal dietary requirements.⁴³² Policies for aid and support for the students remained ad hoc, mostly coming from their families, the community or local government.⁴³³ It was also pointed out that even in EMSBs there is a serious gender enrolment imbalance, with Hmong girls accounting for only 10-35 percent of Hmong students.⁴³⁴ In some cases, it is common for children of ethnic minorities, especially Dao and Hmong children, to get married while still in school. Hence, girls often drop out.⁴³⁵ Supervising single girls of marrying age is also an issue considered sensitive in EMSBs.

Recommendation: In providing recommendations, general improvements in access to education must benefit ethnic minority girls as they are the ones usually excluded where resources are limited. Hence, recommendations apply to general access issues and specifically to ethnic minority girls. It is suggested that a legal document be issued for: (a) provision of more transparent and detailed criteria for entitlement to scholarships, social subsidies and places/quotas; (b) putting in place measures for reduction of/exemption from non-tuition fees or to facilitate students loans for payment of non-tuition fees, especially in cases where students are entitled to free tuition; (c) ensuring the appropriate proportion of ethnic minority women and girls, starting from 30 percent and gradually moving to 50 percent of the total ethnic minority grantees, are qualified for scholarships, social subsidies, tuition subsidies and reductions, and other measures; and (d) exploring the possibility of credit facilities and allowances for ethnic minorities being provided to meet the cost of education and to alleviate the loss of income or help due to schooling of their children, especially girls.

⁴²⁷ This assessment of EMSBs is published in Committee for Ethnic Minorities and UNICEF, 'Getting on Board', Ha Noi, 2006 (Committee for Ethnic Minorities Report). This was done in 16 schools of 8 districts in four provinces that is, Son La, Ha Giang, Quang Nam and Dak Lac.

⁴²⁸ Committee for Ethnic Minorities Report, p. 6

⁴²⁹ Ibid., p. 12

⁴³⁰ Ibid., p. 41

⁴³¹ Ibid., p. 12

⁴³² See Ibid., pp. 33, 35 and 36

⁴³³ Committee for Ethnic Minorities Report, pp. 12 and 14

⁴³⁵ Ibid., p. 31

It is suggested that guidelines for EMSBs be issued, in addition to those suggested above to: (a) ensure that scholarships, grants and allowances are provided to EMSB students to cover not only tuition fees and school fees but also cost of living expenses, partially or fully; (b) ensure that 30 percent and gradually moving up to 50 percent of scholarships and grants are provided to ethnic minority women and girls; and (c) provide guidelines on student accommodation; for example, to regulate those renting out premises for students lodging an accreditation system can be developed, and to require on-site health services, social workers and counselors, if possible of both sexes, so they can adequately address concerns of both ethnic minority girls and boys as well.

People with disabilities

The Ordinance on Disabled Persons strictly forbids any act of discrimination or maltreatment against 'disabled persons'.⁴³⁶ In relation to education, the Ordinance on Disabled Persons provides:

Article 15

Students who are disabled shall be considered by the schools for reduction or exemption of school fees and other contributions to the school shall receive social allowances and shall be considered for the granting of scholarships according to State regulations.

Article 16

- (1) Education for disabled children shall be organized and carried out in the forms of integration schooling at general schools or specialized schools for the disabled, nursing homes for the disabled and at the family.
- (2) Disabled children with special gifts are given priority in the admission to the corresponding schools for such gifts.
- (3) Teachers teaching at special schools and classes for disabled persons shall enjoy the regime of preferential allowances as provided for by the Government.

Article 17

- (1) Students who are disabled boarders at educational and nursing establishments shall enjoy the regimes and policies prescribed by the Government.
- (2) The State shall create favorable conditions for organizations and individuals to open schools and classes specifically reserved for disabled persons.
- (3) The State encourages foreign organizations and individuals and Vietnamese settlers abroad to adopt programs and projects to provide financial, professional and technical assistance to the education combined with functional rehabilitation of disabled persons in Vietnam.

The Law on Education also provides particular measures for people with disabilities. Article 63 states that the State must establish and encourage organizations and individuals to

⁴³⁶ Ordinance on Disabled Persons, Article 9

establish schools and classes for people with disabilities to restore their functions or to provide them with education or vocation training to assist them in integrating into the society. It also provides that priority will be provided by the State in allocating teachers, material foundations, equipment and budget to schools and classes for people with disabilities established by the State. The State will adopt preferential policies towards these schools established by organizations and individuals. Further, Article 89 of the Law on Education provides that the State will adopt policies for the granting of scholarships to pupils in vocational training schools for people with disabilities, as well as adopt policies on tuition subsidy and reduction of/exemption from tuition fees for learners who are disabled and handicapped people with economic difficulties.

The five-year Strategic Education Development Plan 2006-2010 provides as a target to have children with disabilities join the education system at the rate of 50 percent of the total number in 2005 and 70 percent in 2010.

Both these laws and the Strategic Education Development Plan are gender-neutral and do not provide any gender-specific references to the particular experiences of men or women. There is a significant gender imbalance in terms of accessing education.⁴³⁷ The illiteracy rate among women with disabilities is 49 percent, as opposed to the 23 percent illiteracy rate among men with disabilities. In Central Highlands, the imbalance in illiteracy is more pronounced with 62 percent of women, and 34 percent of men, with disabilities being illiterate. Another area where the gender imbalance is glaring is in access to lower secondary education. Only 11 percent of women with disabilities completed the ninth grade, compared to 28 percent of men with disabilities. As to upper secondary school, 8 percent of men with disabilities had access to it as opposed to 3 percent of women with disabilities. Overall, the level of access to education for both men and women with disabilities is very low, but women have even lesser access.

Recommendation: It is recommended that clearer guidelines be provided to ensure that women and girls with disabilities are not overlooked. The guidelines should provide that data collection and information must always be sex-disaggregated and with appropriate gender analysis. Scholarships and subsidies must ensure that girls and women amount to at least 30-50 percent of the grantees. Where this cannot be met, a plan must be drafted and resources allocated to build capacity of women and girls to be able to qualify in the next round for these scholarships/grants. This must be implemented in areas where significant gender imbalance exists.

For persons with disabilities attending official boarding schools and EMSBs, clear guidelines must be set on their reasonable accommodation, facilitation of their mobility, and a system of monitoring that women and girls with disabilities benefit on an equal basis, must be in place.

Socialization

The Resolution No. 5/2005/NQ-CP of April 18, 2005 on Stepping Up Socialization of Educational, Healthcare, Cultural, Physical Training and Sport Activities (Resolution on

⁴³⁷ Ministry of Labour, Invalids and Social Affairs, 'Situational Analysis on Children with Disabilities in Viet Nam', Labour and Social Publishing House, Hanoi, 2004 (MOLISA Analysis), p. 121

Socialization) pushes for the socialization of educational activities. It states that the orientation relating to education and training must be to renew fundamentally the school fee regime.⁴³⁸ Apart from the State's support depending on the budget capability, school fees should be enough to cover regular expenses including necessary teaching and learning expenses and accumulations for investment in school development.⁴³⁹ The Resolution on Socialization also provides that the State will adopt policies to subsidize school fees or provide scholarships for pupils of general education, learners who are policy beneficiaries or live in difficult areas, and the poor and excellent learners whether their schools are public or non-public.⁴⁴⁰

The objectives of the Resolution on Socialization include to: (a) shift most of public job training, teaching establishments, and some of educational establishments that do not have general education tasks to operate under the service provision mechanism; (b) transform all semi-public establishments into people-founded or private ones; (c) ensure that children in non-public nurseries and kindergartens account for 80 percent or 70 percent respectively; (d) ensure that pupils in non-public senior secondary schools, intermediate professional schools and vocational training establishments account for 40 percent, 30 percent and 60 percent respectively; and (e) ensure that students in non-public universities and colleges account for 40 percent.⁴⁴¹

Article 12 of the Law on Education also mentions the socialization of the cause of education: "To develop education and to build a learning society are the responsibilities of the State and the entire population. The State plays the leading role in developing the cause of education; diversify school types and educational forms; encourage, mobilize and create conditions for organizations and individuals to take part in the development of education..."

Recommendation: It is suggested that the socialization of education be monitored as to its impact on both sexes, including ensuring sex-disaggregated data and gender analysis. Stipulating that scholarships and subsidies be proportionately granted to women and girls is important to ensure their access to education.

Indicator 66 Is there legislation to ensure equal conditions of education; for example, the same curricula, examinations, teaching staff, facilities, and opportunities to participate in sports?

The Law on Education states that learning is a right and obligation of citizens: "All citizens regardless of their ethnicity, religion, belief, gender, family background, social status or economic condition are equal in learning opportunities."⁴⁴² It further states that the State will create conditions for everyone to get access to education⁴⁴³. Aside from this, there is no specific guarantee on equal conditions of education, such as the same curricula, examinations, teaching staff and facilities. Many are quick to point out that, since the law does not distinguish between a man and a woman, then no distinction as to education conditions be made. However, in practice, girls may be taught more housekeeping skills while boys are

⁴³⁸ Resolution on Socialization, Paragraph III(1)(c)

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid., Paragraph III(1)(f)

⁴⁴² Law on Education, Article 10

⁴⁴³ Ibid.

encouraged to exert more on physical education and on skills seen as ‘men’s work’. It is recommended that a clear statement on equality of work conditions be made to avoid any confusion and to ensure its emphasis.

Recommendation: It is recommended that an explicit provision guaranteeing the right to equal education conditions, including the same curricula, examinations, teaching staff, and facilities be stipulated.

Indicator 67 Is there legislation on eliminating stereotyped roles of men and women in all forms of education?

Indicator 68 Is there legislation requiring the periodic review of textbooks and curricula to ensure gender sensitivity?

The norm of equality can be disseminated systematically through education. However, unless the norm is incorporated into textbooks, teaching guides and curricula, there can be no systematic dissemination.

All this has been taken into consideration already in the Plan of Action for Advancement of Women. Among the measures that need to be undertaken as pointed out in the Plan of Action for Advancement of Women is the introduction of gender in textbooks and curricula at all educational levels. In this regard, MOET must: (a) integrate gender and eliminate gender bias in the curricula and teaching materials at all levels; and (b) provide direction to education administrators’ school and teachers’ training colleges to integrate gender into fostering and training programmes for teachers and managers in all sectors at all levels. The Plan of Action for Advancement of Women also provides that Government ministries, sectors, central agencies and provincial-level People’s Committees must provide direction to integrate gender into the education programmes of all schools and professional training institutions for officials at all levels.

The Law on Gender Equality has specific provisions on this matter as well: (a) it states that gender equality must be included in the education syllabus;⁴⁴⁴ and (b) it prohibits compilation and dissemination of textbooks that contains gender prejudice.⁴⁴⁵

It must also be noted that Article 20 of the Law on Education also has a provision that forbids the abuse of educational activities to: (a) distort State guidelines, policies or laws; (b) oppose Viet Nam; and (c) disrupt the national unity bloc, provoke violence, propagate aggressive war, undermine the fine traditions and customs, disseminate superstitious beliefs and bad customs, or attract learners into social evils. Under this provision, the norm of equality and elimination of particular stereotyped role or discriminatory cultural and the practices can be disseminated.

Furthermore, the Decree on Education Violations penalizes acts of teaching or disseminating contents not included in the prescribed curricula, textbooks or teaching courses for the purpose of distorting educational contents.⁴⁴⁶ Although it is doubtful that steps by teachers to incorporate gender will fall under this, it may be used as an excuse if there is no

⁴⁴⁴ Law on Gender Equality, Article 23(2)

⁴⁴⁵ Ibid., Article 40(4)(d)

⁴⁴⁶ Decree on Education Violations, Article 10(2)

clear legal provision or intervention incorporating it into the curricula, textbooks and teaching guides.

As to teacher's trainings, one suggestion for consideration is that teachers must be provided instructions on how to handle students in a gender-sensitive manner; for example, teachers requesting only girls to carry out household chores at school because they are girls are perpetuating a stereotype. (A further example is teachers discouraging girls to play sports because playing sports is for boys.) Teachers should be provided with clear guidelines on how to ensure gender-sensitivity in their interactions with students.

Recommendation: It is recommended that, to carry out provisions of the Plan of Action for Advancement of Women and Law on Gender Equality, a legal document that will operationalize revision of textbooks, curricula and teaching aids must be issued. Gender expertise must be involved to ensure that gender is appropriately incorporated in such revisions. The legal document must also specify that capacity of teaching staff on gender must also be increased to enable them to use the textbooks, teachings aids/materials, and syllabus appropriately.

It is also recommended that, in addition to addressing the textbooks, curricula and teaching aids, teachers must be instructed in handling or interacting with students in a gender-sensitive manner.

Indicator 69 Are there legal documents ensuring that school administrators, personnel and teachers do not discriminate on the basis of gender and are gender sensitive?

The Law on Education specifies the roles and responsibilities of teachers, pointing out also that teachers must constantly set a good example for learners⁴⁴⁷. Article 72 of the law lists the duties of a teacher. Absent from the list, however, is the duty to treat students equally and without discrimination, including on the basis of gender. Article 75 of the Law on Education enumerates prohibited acts of teachers, but the discriminatory treatment of students is not included.

The roles and responsibilities of educational administrators are provided in Article 16 of the Law on Education, which states that educational administrators must improve themselves constantly in terms of moral standards, professional qualifications, managerial capability and personal responsibility. There are no explicit provisions that prohibit discrimination by educational administrators. However, Article 86 of the Law on Education clearly provides for the rights of learners to be respected and for learners to be treated equally by schools or other educational institutions.

Recommendation: It is recommended that the Law on Education must clearly provide that educational administrators, teachers and other school personnel must treat students in an equal manner and strictly prohibit any acts of discrimination in the education setting. The Law on Education must provide that school charters, and teachers or student manuals, clearly prohibit and penalize acts of discrimination.

⁴⁴⁷ Law on Education, Article 72(3)

Indicator 70 Is sexual harassment prohibited in educational and training institutions?

There is no provision in the Law on Children, Law on Education, and Law on Gender Equality that explicitly prohibits sexual harassment. However, Article 10 of the Law on Gender Equality prohibits GBV, which, using international standards, includes sexual harassment. But, in the absence of any definition of the term ‘sexual harassment’ by any Vietnamese legal document, it is uncertain if sexual harassment is included in such prohibition.

Article 75(1) of the Law on Education prohibits teachers offending the honour or dignity of learners or physically abusing them. However, without a clear legal document that includes sexual harassment, it is uncertain whether it is included in such prohibition as well. Although not specifically defined in relation to education, the definition of ‘sexual harassment’ provided in Paragraph 18 of GR 19 can be used as a possible model for a definition of sexual harassment in Vietnamese laws.

Recommendation: It is recommended that sexual harassment legislation be issued. Sexual harassment in the education setting must be included as one of the prohibited acts. The definition of ‘sexual harassment’ in GR 19 must be used, as applicable to the education setting. It is also recommended that educational establishments be required by law to promulgate their own sexual harassment guidelines and disseminate these guidelines to their staff and pupils to ensure knowledge and compliance. Failure to promulgate these guidelines or failure to address complaints of sexual harassment will make the establishment liable for damages or administrative sanctions.

V.8 EMPLOYMENT (ARTICLE 11 OF CEDAW)

V.8.1 OBLIGATIONS UNDER CEDAW

V.8.1.1 Text of CEDAW

ARTICLE 11

- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment..., in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- (2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
 - (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
- (3) Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

V.8.1.2 General Recommendations

The following excerpts from GRs are relevant to Article 11 of CEDAW:

GR 13: Equal Remuneration for Work of Equal Value

Recommends to the State Parties to the Convention on the Elimination of All Forms of Discrimination against Women that:

Paragraph 2

They should consider the study, develop and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate and they should include the results achieved in their reports to the Committee on the Elimination of Discrimination against Women.

Paragraph 3

They should support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.

GR 16: Unpaid Women Workers in Rural and Urban Family Enterprises

Recommends that States parties:

Paragraph (b)

Collect statistical data on women who work without payment, social security and social benefits in enterprises owned by a family member, and include these data in their report to the Committee.

Paragraph (c)

Take the necessary steps to guarantee payment, social security and social benefits for women who work without such benefits in enterprises owned by a family member.

GR 17: Unremunerated Domestic Activities of Women

Recommends that States parties:

Paragraph (a)

Encourage and support research and experimental studies to measure and value the unremunerated domestic activities of women...

Paragraph (b)

Take steps ... to quantify the domestic activities of women in the gross national product.

GR 19: Violence Against Women

Paragraph 17

Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

Paragraph 18

Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured 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 connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

Paragraph 24(j)

States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace.

V.8.1.3 Concluding Comments

The relevant paragraphs relating to Article 11 in Concluding Comments on Viet Nam 2007 are:

Paragraph 22

The Committee expresses concern that insufficient information was provided about women's de facto situation in the formal and informal labour markets. It is also concerned at the concentration of women in the informal economy, which negatively affects their eligibility for social security and other benefits, including health care. The Committee continues to be concerned about the occupational segregation between women and men in the labour market and the persistent high gap in wages between women and men.

Paragraph 23

The Committee urges the State party to adopt effective measures in the formal labour market to eliminate occupational segregation, both horizontal and vertical, and to narrow and close the wage gap between women and men. It also encourages the State party to ensure the enforcement of regulations of the Labour Code for the benefit of women working in export processing zones, with a particular focus on women's access to social security and health-care services. Efforts to develop guidelines and regulations to provide women in the informal economy with access to such benefits and services should also be enhanced. The Committee requests the State party to assess the impact of economic restructuring processes on women, including women belonging to ethnic minorities and living in rural and remote areas. It requests the State party to ensure that all poverty reduction programmes and strategies are gender sensitive and also to provide targeted support to disadvantaged groups of women. The Committee invites the State party to monitor the impact of measures taken and trends over time and to report to the Committee on results achieved in its next report.

V.8.2 SELECTED INDICATORS

The obligations under Article 11 of CEDAW on employment are quite comprehensive. It mandates equal right to work and equal conditions of employment in all aspects. It requires that interventions should be made to address discriminatory practices relating to maternity and

pregnancy. It also obligates States to review their protective legislations regularly and to make revisions to enable women to enjoy their rights fully. (For information on what qualifies as protective legislation, see Part III.2.1.)

As to the right to work, Article 11 guarantees equality in relation to the right to work, which includes the right to equal employment opportunities, free choice of profession, the right to the opportunity to gain a living by work freely chosen or accepted, and application of the same criteria for selection in matters of employment. Concluding Comments on Viet Nam 2007 also require interventions for occupational segregation happening in Viet Nam.⁴⁴⁸ Also, GR 19 strongly urges the State to address sexual harassment, which is a form of GBV and seriously hinders women's right to work.⁴⁴⁹

Article 11 also guarantees these equal conditions of employment: (a) equality in promotion; (b) equality in job security; (c) equality in benefits and conditions of service; (d) equality in vocational training, retraining, including apprenticeships, technical and vocational guidance, and placement services; (e) equal remuneration and equal treatment for work of equal value; (f) equality of treatment in the evaluation of work; (g) equal right to social security, especially in cases of retirement, unemployment, sickness, invalidity, old age, and incapacity to work; (h) equal right to paid leave; (i) equal right to protection of health and safety in working conditions; and (j) equal right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay.

GR 13: Equal Remuneration for Work of Equal Value (1989) (GR 13), GR 16: Unpaid Women Workers in Rural and Urban Family Enterprises (1991) (GR 16) and GR 17: Unremunerated Domestic Activities of Women (1991) (GR 17) urge that the State value the unremunerated work of women⁴⁵⁰ and conduct research and data collection on women who work without payment and their conditions, including work in family enterprises⁴⁵¹ and those who do unremunerated domestic work.⁴⁵² GR 16 also urged the State to take steps to guarantee social security and other social benefits for these women in family enterprises.⁴⁵³ Women in the informal sector is also a concern for CEDAW; for example, Concluding Comments on Viet Nam 2007 in particular urge the State to develop guidelines and regulations to provide women in the informal economy with access to social benefits and services, including health-care services.⁴⁵⁴

Article 4(2) of CEDAW clearly provides that measures to address maternity are not discriminatory. Article 11 of CEDAW provides some of the basic rights for married and pregnant women as well as mothers in relation to their employment including the right: (a) not to be dismissed on account of marriage, pregnancy and maternity; (b) to receive maternity leave with pay without loss of employment, seniority and social allowances; (d) to receive support services to combine family and work; and (d) to be protected against work harmful to them during their pregnancy.⁴⁵⁵

⁴⁴⁸ Concluding Comments on Viet Nam 2007, Paragraph 23

⁴⁴⁹ GR 19, Paragraph 18

⁴⁵⁰ GR 13, Paragraph 2

⁴⁵¹ GR 16, Paragraph (b)

⁴⁵² GR 17, Paragraph (a)

⁴⁵³ GR 16, Paragraph (c)

⁴⁵⁴ Concluding Comments on Viet Nam 2007, Paragraphs 22 and 23

⁴⁵⁵ CEDAW, Article 11(2)

More importantly, Article 11 mandates that protective legislation must be reviewed periodically and revised accordingly when necessary. This requires an understanding that a protective approach to equality is not the model of equality being espoused by CEDAW, but rather it is substantive equality. For more details on this matter, see Part III.2.1.

Based on the obligations under CEDAW and the present situation in Viet Nam, the selected indicators for employment are:

- Indicator 71** Does legislation guarantee equality and non-discrimination in employment on the grounds of sex, marital status and pregnancy? Does this apply to both public and private sectors?
- Indicator 72** Do women have the same employment opportunities as men? Does legislation provide for the same criteria for selection? Are there restrictions on women's choice of employment?
- Indicator 73** Does legislation contain an equal pay for work of equal value provision?
- Indicator 74** Does legislation provide for equal conditions of work, including job security, benefits, evaluation and promotions?
- Indicator 75** Does legislation ensure special protection for women's health during pregnancy?
- Indicator 76** Does the legislation provide reasonable nursing time during working hours?
- Indicator 77** Does legislation provide for an equal retirement age?
- Indicator 78** Does legislation provide protection from dismissal on account of marriage, pregnancy or maternity leave?
- Indicator 79** Does the legislation provide paid maternity leave for a reasonable period of time without loss of seniority and other benefits?
- Indicator 80** Does legislation provide for support services to enable parents to combine family obligations with work responsibilities, including ensuring childcare facilities by the employer or the State?
- Indicator 81** Does the legislation provide sexual harassment protection from employers and co-workers?
- Indicator 82** Is there a definition of 'sexual harassment' that includes a comprehensive list of unwelcome acts?
- Indicator 83** Are there regulations governing work conditions of domestic workers?
- Indicator 84** Is there legislation for the protection of Vietnamese overseas migrant workers?

V.8.3 RELEVANT LEGAL PROVISIONS

A vast majority of the working-age population in Viet Nam works. Labour market participation rates are among the highest in the world.⁴⁵⁶ In 2002, 85 percent of men and 83 percent of women between the ages of 15 and 60 years were active economically.⁴⁵⁷

Article 55 of the Constitution emphasizes that “the citizen has both the right and the duty to work. The State and society shall work out plans to create ever more employment for the working people.” As a consequence, “[t]he State shall enact policies and establish regimes for the protection of labour.”⁴⁵⁸ In relation to this, the “State shall establish working times, wage scales, regimes of rest and social insurance for State employees and wage earners; it shall encourage and promote other forms of social insurance for the benefit of the working people”.⁴⁵⁹

Indicator 71 Does legislation guarantee equality and non-discrimination in employment on the grounds of sex, marital status and pregnancy? Does this apply to both public and private sectors?

Both the Labour Code and Civil Code provide for the right to work. Article 5 of the Labour Code states that every person has the right to work, to choose freely the type of work or trade, to learn a trade, and to improve professional skills without being discriminated against on the basis of gender, race, social class, beliefs, or religion. Article 49 of the Civil Code states that individuals have the right to work, the freedom to choose a job or occupation without being discriminated against on the ground of ethnicity, sex, social status, belief or religion.

The Labour Code contains further guarantees of equality and non-discrimination relating to work. First, Article 2 states that it applies to “all workers, and organizations or individuals utilizing labour on the basis of a labour contract in any sector of the economy and in any form of ownership.” This article also applies to trade apprentices, domestic servants, and other forms of labour stipulated in the Labour Code.

Second, Article 109 specifically provides that the right to work of women is equal in all aspects to that of men. It states that the State “shall establish policies to encourage employers to create conditions for women to work on a regular basis and apply widely the regime of flexible working time, part-time and casual employment and working from home.” Article 109 further stipulates: “The State shall progressively establish policies and implement measures to expand employment opportunities, improve working conditions, increase professional level, improve health, and strengthen the material and spiritual welfare of female workers for the purposes of assisting female workers to achieve their professional potential effectively and to combine harmoniously work and family life.”

⁴⁵⁶ Wells, op. cit., p. 15

⁴⁵⁷ Ibid.

⁴⁵⁸ Constitution, Article 56

⁴⁵⁹ Ibid., Article 56

Further elaborating on Article 109, *Decree No.23-CP Of April 18, 1996, Of The Government Providing Details, And Guidance For The Implementation Of A Number Of Articles Of The Labour Code On Women Labourers* (Decree on Women Labourers) guarantees: “Women have the right to equality with men in the labour relations between the employers and labourers in all organizations, between all individuals and in all economic sectors, in the following areas: recruitment, employment, training, pay raise, promotion, reward, social insurance, health insurance, labour conditions and safety, and material and spiritual welfare and health care.”⁴⁶⁰

Third, Article 7 also provides that the State will “stipulate a labour regime and a social policy aimed at protecting female workers and occupations having special characteristics.” In this regard, Chapter X of the Labour Code has separate provisions on female employees.

Fourth, Article 111 states that employers are strictly prohibited from conduct that is discriminatory towards a female employee or conduct that degrades the dignity and honour of a female employee. This is further elaborated by the Decree on Women Labourers, which imposes bans on employers: (a) issuing regulations that are not more use to women labourers than the provisions of law; (b) restraining the capabilities to absorb women labourers into employment; and (c) encroaching on the honour and dignity of women labourers during work.⁴⁶¹ These acts are specifically penalized in Article 15(1)(e) of the Decree No. 113/2004/ND-CP of April 16, 2004 Prescribing Administrative Sanctions against Acts of Violating Labour Legislation (Decree on Labour Violations).

The Labour Code is applicable to both public and private sectors.⁴⁶² With the growing prominence of the private sector and the declining importance of the State as an employer, the challenge is to ensure that workers rights are enforced in the private sector.⁴⁶³ However, it is observed that the application of the Labour Code is only widespread across government departments and State enterprises. However, oversight of the implementation of the Labour Code in enterprises is not effective.⁴⁶⁴ Hence, ensuring application of labor laws in the private sector is necessary.

Recommendation: There is a need to ensure the application of labour laws in the private sector.

Indicator 72 Do women have the same employment opportunities as men?
Does legislation provide for the same criteria for selection? Are there restrictions on women’s choice of employment?

Every person has the right to choose freely the type of work or trade, to learn a trade, and to improve professional skills without being discriminated against on the basis of gender, race, social class, beliefs, or religion.⁴⁶⁵ To guarantee this, an employer must implement the principle of equality of males and females in respect of recruitment. The Law on Gender

⁴⁶⁰ Decree on Women Labourers, Article 2

⁴⁶¹ Ibid., Article 9

⁴⁶² See Labour Code, Articles 2 and 4

⁴⁶³ Wells, op. cit., p. 19

⁴⁶⁴ Combined Fifth and Sixth Periodic Report, p. 35

⁴⁶⁵ Labour Code, Article 5

Equality also provides that men and women are equal in terms of qualifications and age in recruitment.⁴⁶⁶ A look into the situation of employment in Viet Nam, however, shows that horizontal segregation exists in Viet Nam; that is, certain jobs/industries are dominated by one sex.⁴⁶⁷ Farming is the most common occupation in Viet Nam, with 46 percent of men and 53 percent of women identifying farming as their main form of employment. Wage employment is identified by more men (39.0 percent) than women (24.5 percent) as their main job: construction, mining and transport for men and light manufacturing for women. On the other hand, more women (23 percent) than men (16 percent) identify working in their own household enterprise as their main form of employment – for women this includes grocery shops and handicraft work, and for men this includes a motorbike taxi or vehicle repair business. Many also combine farming with working in their own household business or wage employment.

The Enterprise Survey 2003 shows that more men than women are employed in State enterprises and non-State enterprises. On the other hand, far more women than men are employed in foreign investment enterprises.⁴⁶⁸ The Enterprise Survey of 2003 further reveals that male-dominated industries include fishing, mining and quarrying, electricity, water and gas provision, and transport and communications.⁴⁶⁹ Female-dominated industries include manufacturing, and health and social work. However, the concentration of women in female-dominated industries is not as pronounced as the concentration of men in male-dominated industries.

This horizontal segregation can be the result of various reasons, but it may be due in large part to notions that a particular job/industry is better suited to one sex. In this regard, it is assumed that women are weak and cannot take on jobs that are hard, dangerous or toxic, or jobs that interfere with their household or childcare functions; for example, jobs requiring night work or travel. There are provisions in the Labour Code that prohibit hiring women for specified dangerous work. They limit women's choices of profession and contribute to the notion that women are weaker or less able than men. In particular, Article 113 of the Labour Code provides:

Article 113

- (1) An employer must not assign a female employee to heavy or dangerous work, or work requiring contact with toxic substances, which has adverse effects on her ability to bear and raise a child, in accordance with the list issued by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health. Enterprises which currently employ female employees for the above work must formulate plans to train and gradually transfer those female employees to other suitable work. These enterprises must also carry out measures to protect the health of female workers, improve working conditions, or reduce the number of working hours.
- (2) Irrespective of her age, an employer must not employ a female to work regularly in mines or in deep water.

⁴⁶⁶ Law on Gender Equality, Article 13

⁴⁶⁷ Wells, op. cit., p. 15

⁴⁶⁸ Ibid., p. 17

⁴⁶⁹ Ibid., p. 16

To implement this provision, a number of legal documents were issued. First, the Decree on Women Labourers provides:

Article 4

The enterprises which employ women laborers have to study and determine the occupations which are not suitable for women to work till their retirement, and to plan the training of reserve skills for women laborers as provided for in Article 11, Decree No 90-CP of December 15, 1995 of the Government which details stipulations and guidance for implementation of a number of Articles of the Labour Code on vocational training.

Article 11

The enterprise which is employing women laborers in jobs banned to women labourers as prescribed by the Ministry of Labour, War Invalids and Social Affairs and the Ministry of Health, shall have to design a plan to move the women labourers to other jobs as provided for in Article 113 of the Labour Code, and Item 2, Article 6, of this Decree. In the course of designing this plan, the enterprise has to take the following measures:

- (1) With regard to especially heavy or noxious jobs, the work hours must be reduced in accordance with the provisions of law;
- (2) Measures to improve the working conditions must be applied;
- (3) The working time must be arranged appropriately so as to allow women labourers conditions to learn new trades or improve their professional skills.

Second, the *Circular No. 3-LDTBXH/TT of January 13, 1997 Guiding the Implementation of a Number of Articles of Decree No. 23-CP of April 18, 1996 of the Government with Specific Stipulations about Women Labour* (Circular on Women Labour) provides:

III. On Training Woman Labourers in Reserve Occupations

A reserve occupation is an occupation different from the one a woman labourer is practicing which shall be used when she can no longer continue this job until she reaches retirement age as prescribed by State regulations.

1. Determining reserve occupations for women labourers:

Basing itself on the field of activity, the production and business conditions of the enterprise and the particularities of women labour, the enterprise shall discuss with the trade union to determine what occupations need reserve occupations for women labour and write them down in the collective labour bargain.

2. Organizing training women labour in reserve occupations

Basing itself on the number of women labourers who need to train in reserve occupations, the enterprise should pay adequate attention to their job-training desire in order to draw up a plan for training in reserve occupations. Depending on the specific conditions of the enterprise, it may organize the training itself or sign training contracts with job training centers to carry out this plan.

VII. Transferring Women Labourers from Jobs Banned to Women Labour to Suitable Jobs

In the transfer of women labour from the jobs banned to women labour to other and suitable jobs under Article 11 of Decree No.23-CP of April 18, 1996 of the Government the enterprise shall have to undertake the following:

1. To inventorize and classify the women labourers who are doing jobs banned to women labour (see Form No.3 attached to this Circular).
2. To draw up a plan to move this women workforce to other and suitable jobs. In case the enterprise is meeting with financial difficulties and is qualified for the policy of package financial support from the National Fund for Employment, the provisions in Clause 2, Section V of this Circular shall apply.
3. While drawing up its plan, the enterprise must carry out immediately a number of measures stipulated in Inter-ministerial Circular No.03/TT-LB of January 28, 1994 of the Ministry of Labour, Invalids and Social Affairs and the Ministry of Health in order to arrange an appropriate work timetable for the women labourers so that they might learn a trade and familiarize themselves with the new job.

Third, the Decree on Labour Violations provides the penalty for employing female labourers in heavy or hazardous jobs, or jobs in contact with noxious matters (in Article 113 and Clause 3 of Article 124 of the Labour Code), is a fine of VND 1 million to VND 5 million.⁴⁷⁰

Fourth, to protect the health, reproductive and nursing functions of female workers, based in the working conditions of each profession, MOLISA and MOH issued an inter-ministerial circular, Circular NO. 03/TT-LD, which identified the occupations and conditions in which women are not allowed to work.⁴⁷¹ A total of 83 occupations (as per the list attached to the circular) are off limits to women and pregnant or nursing women. Further, women are prohibited from working in the following eight harmful working conditions: (a) places where air pressure is higher than atmospheric pressure; (b) inside pits; (c) high and dangerous places; (d) places not suitable for women's 'mentality and psychology'; (e) work constantly done in water or contaminated water with high risks of infection; (f) exhausting labour; (g) in contact with radioactive substances; and (h) in direct contact with chemicals that can alter gene structure. Five harmful working conditions were identified as unfit for pregnant or breast-feeding women.

Article 113 of the Labour Code and its supplementing documents must be reviewed. They are in the nature of protective legislation restricting women's right to work. Unless appropriate occupational health and safety standards or a safe working environment specific to each job/profession are in place, employers must not hire or assign either men or women to heavy or dangerous work or work requiring contact with toxic substances, including substances that affect their capacity to bear children. However, in the case of Viet Nam, the 'protection' is only extended to women; and, hence, restrictions to the right to work is only applicable to women as well. Many justify this, without sufficient basis in biology, as women being unable to perform tasks due to their weak constitution. It is doubtful that women are

⁴⁷⁰ Decree on Labour Violations, Article 15(1)(e)

⁴⁷¹ Combined Fifth and Sixth Periodic Report, p. 18

biologically incapable of working in most of the professions listed as harmful to women. In any event, in all of these cases, the work is harmful to both men and women.

Any distinction between the sexes must be subject to a gendered analysis; for example, by asking are women disproportionately affected by a particular toxic substance and thus requiring special protection? It is also obvious that distinctions must be made on account of pregnancy or maternity as this requires special care. However, it should be noted that not all women are pregnant or nursing and, hence, reasonable application of such protection is required. Lastly, it should always be borne in mind that restricting women's right to work is the exception rather than the rule, and this exception is subject to strict examination and scrutiny. On this note, Article 13(3)(c) of the Law on Gender Equality also provides: "Employers create safe and hygienic conditions for female workers in some hard and dangerous professions and occupations or those that have direct contact with harmful substances." Although this appears to be a step on the right direction, there should be conceptual clarity in the application of this provision. This provision should allow women to participate in all occupations and professions in the same way as men, subject to occupational health and safety measures for both men and women.

Recommendation: Article 113 of the Labour Code and its supplementing documents must be reviewed. Almost all of the provisions listed as harmful to women are in the nature of protective legislation and must be repealed. Those listed as harmful to pregnant or nursing women must be subject to constant review in the light of new developments in occupational safety, health and technology. Where women are disproportionately affected, and restrictions to the right to work are necessary, this must be on the basis of a gendered analysis and subject to strict scrutiny, a well-defined time-frame and regular review. These guidelines have to be incorporated into provisions that limit women's participation in specific fields of work, so as to continuously take into account developments in occupational health and safety and State action to guarantee their right to work and to dispel harmful stereotypes of women, especially of work inferiority. It is also recommended to avoid confusion as to the application of Article 13(3)(c) of the Law on Gender Equality that a legal document provides further clarity as to its application. This provision should not be deemed to prevent women from working in hard, dangerous or harmful occupations or professions, rather it should be read as providing women the same work opportunities as men, but require employers to put in place occupational health and safety measures for both men and women workers.

There are several other measures in favour of women relating to their access to employment. Article 111 of the Labour Code states that an employer must give preference to a woman who satisfies all recruitment criteria for a vacant position that is suitable to both males and females in an enterprise. This provides a preference to women. However, this is best suited for jobs, industries or positions that are male-dominated rather than to all jobs, industries or positions, because de facto inequality exists only in particular jobs, industries and occupations. In like manner, in jobs, industries or positions that are female-dominated, measures preferring males should also be considered.

Article 13(3)(a) of the Law on Gender Equality also provides, in the measures to promote gender equality in the field of labour, the proportion of men and women to be recruited. This

is also a good measure. However, its application should be limited to areas where de facto inequality exists. As such, it is suggested that it be applied to jobs, industries, or positions that are dominated by one sex or traditionally perceived as appropriate for a certain sex only. The proportion of one sex should not be less than 30 percent of workers.

Recommendation: It is recommended that Article 111 of the Labour Code applies to jobs, industries or positions that are male-dominated - that is, areas where de facto inequality exists - rather than to all jobs, industries and positions. Likewise, in jobs, industries or positions that are female-dominated, measures preferring males should also be considered.

In relation to Article 13(3)(a) of the Law on Gender Equality, it is suggested that there be explicit stipulation that such measures be applied only to jobs, industries or positions that are dominated by one sex. In such cases, plans must be in place to ensure that the proportion of one sex reaches 30 percent of workers. In this regard, ensuring an equivalent proportion of women in training centres should be in place as well.

It has been suggested that the entitlements accorded to women may sometimes act as a disincentive to hiring and promoting women. Hence, Articles 138 and 110 of the Labour Code provide particular incentives to encourage the employment of women. Article 138 states: “An employer which employs less than ten (10) employees must still provide its employees with the basic rights and benefits stipulated in this Code but shall be considered for a reduction of or exemption from a number of criteria and procedures stipulated by the Government.” To encourage employment of women and provision of their basic entitlements, Article 110 provides: “The State shall establish policies on preferential treatment and reduction of taxes for enterprises which employ a high number of female employees.”

Article 110 is further elaborated on. First, Article 5 of the Decree on Women Labourers states that enterprises are considered as having a high proportion of women in their work force where they regularly employ: (a) from 10 to 100 women labourers and have women labourers accounting for 50 percent or more of their total regular workforce; and (b) over 100 women labourers and have women labourers accounting for 30 percent or more of their regular workforce.⁴⁷² Further, such enterprises are entitled to preferential policies as per Article 6: (a) in case of special difficulty, they are allowed to take low-interest loans from the National Fund for Employment; (b) in case of financial difficulty that makes it impossible for the enterprise to move its female labourers from banned jobs to permitted jobs, they are allowed to set up a project to request a single budget assistance from the National Fund for Employment; and (c) they are given priority in using part of their total annual investment to cover the improvement of the working conditions for female labourers. Finally, such enterprises are eligible for consideration for tax reduction, as per Article 7, as follows: (a) the profit taxes will be reduced, but the reduction will not be lower than the extra expenses incurred by the high employment of women, which is calculable; (b) the money yielded by the reduction of tax will be managed and used by them to cater to female labourers; and (c) where they have a high proportion of female labourers and they are not profitable, the extra expenses due to the high employment

⁴⁷² Decree on Women Labourers, Article 5

of women will be considered legitimate expenses. A regime of reporting must be observed by such enterprises on the implementation of regimes and policies for female labourers as required by MOLISA.⁴⁷³

Second, the Circular on Women Labour elaborates further on the preferential policies in favor of enterprises with high proportion of women, in particular relating to the policy of granting low interest loans and non-refund package support from the National Fund for Employment.⁴⁷⁴ Also, the circular provides for the following items that are considered as extra costs for the high employment of women and are the basis for tax reduction: (a) the 60-minute break per day during the period of nursing a child aged under 12 months converted into money equivalent; (b) a supplementary allowance to female labourers having children in the age bracket for crèches and pre-school classes; (c) the purchase of equipment and appliances for crèches and pre-school classes organized by the enterprise; (d) the 30-minute break for sanitation of female labourers converted into money equivalent; (e) one hour of working time less per day for pregnant women labourers up to the seventh month converted into money equivalent; (f) the allowance to women labourers after childbirth; (g) hiring teachers to open a crèche or pre-school class organized by the enterprise; (h) the purchase of additional labour protection equipment (besides that under the common regime) to suit the working conditions of female labourers; (i) building separate bathrooms and toilets for female labourers; (j) organizing health checks for female labourers (periodically annually); and (k) organizing anniversaries of women.⁴⁷⁵

The Circular No. 79/1997/Tt-Btc Of November 6, 1997 Guiding The Implementation Of Decree No. 23-Cp Of April 18, 1996 Of The Government Detailing And Guiding The Implementation Of A Number Of Articles Of The Labour Code Regarding Specific Provisions On Female Labourers (Circular on Female Labourers) elaborates further on Article 6 of the Decree on Women Labourers that stipulates that enterprises are allowed to use part of their total annual investment to improve the working conditions for female labourers. The Circular on Female Laborers states that the maximum spending is 10 percent, if the total annual investment is VND 500 million or more, but the spending amount must not exceed VND 500 million.⁴⁷⁶ The maximum spending rate is 15 percent of the total annual investment, if the total annual investment is below VND 500 million.⁴⁷⁷ The circular lists items that are considered to be necessary for the working conditions of female labourers: (a) installation of anti-heat (cooling), noise-reducing or dust-absorbing systems; (b) building makeshift tents on construction sites, farms and other open-air work places; (c) building women's fixed bathrooms and toilets at workshops, factories or mobile ones at open-air work places; and (d) building, repair and procurement of non-durable properties for nurseries and kindergartens of enterprises.⁴⁷⁸

⁴⁷³ Ibid., Article 12

⁴⁷⁴ Circular on Women Labour, Part V

⁴⁷⁵ Ibid., Part VI

⁴⁷⁶ Circular on Female Labourers, Paragraph 1.2

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid., Paragraph 1.3

In relation to Article 7 of the Decree on Women Labourers, the Circular on Female Labourers states that the following additional expenses incurred by enterprises as a result of employing a large number of female labourers will be factored into the costs of business operations: (a) additional expenses on job-retraining for female labourers if their current jobs are no longer suitable so that they can undertake other jobs according to enterprise development planning; (b) salaries and allowances for female teachers of nurseries and kindergartens under enterprise management; (c) expenses on medical check-up in a year (apart from the prescribed number of medical check-ups) for the examination of occupational, chronic or gynecological diseases often suffered by female labourers; (d) expenses on allowances for female labourers after their first or second childbirth; (e) overtime pay for a mother who does not breastfeed her newborn baby and keeps working for the enterprise; and (f) other expenses.⁴⁷⁹

Although Article 110 of the Labour Code takes note of costs spent by the employer and tries to ease the burden of such costs, in some of these cases the items that are said to be extra costs due to high proportion of women are not really costs for women; rather, they are items that should be invested in to ensure a good working environment for both sexes. Stating that this is a cost due to hiring women creates a negative image that hiring women has extra costs. One example is that costs relating to setting up crèches and kindergartens, equipments for crèches and kindergartens, and salaries to teachers of crèches and kindergartens should be a cost not only for enterprises with high proportion of women. As men and women are encouraged to take equal responsibilities in the rearing of their children, enterprises with a low proportion of women should be encouraged to set up crèches and kindergartens because both fathers and mother might wish to use them. Hence, these costs should be allowed as a reduction not only for enterprises with high proportion of women.

A second example is that, in relation to expenses on job-retraining for female labourers who are to be transferred because their current jobs are no longer suitable, based on the above recommendations on modifying this protectionist provision, it is better to provide for tax reduction for costs to build capacity of women and to provide support for them when they are in jobs, industries or positions that are dominated by men. Likewise, preferential policies can be provided to enterprises that are putting in place these support and capacity-building measures, in place of the task of moving women from banned jobs into suitable ones.

A third example is that, as to costs relating to installation of anti-heat (cooling), noise-reducing or dust-absorbing systems, and building of makeshift tents on construction sites, farms and other open-air work places, these costs must be general costs for the improvement of general working conditions and not due to hiring extra proportion of women.

A fourth example is that, as to building of women's fixed bathrooms and toilets at workshops, factories or mobile ones at open-air work places, this is not really a cost due to hiring high proportion of women. Employers are required to provide separate bathroom and toilets facilities to both sexes under Article 116 of the Labour Code. A legal document should specify how many bathrooms and toilet facilities should be provided in proportion to the number of employees per sex. Hence, enterprises, regardless of the proportion of men or

⁴⁷⁹ Ibid., Paragraph 2.1

women, are obligated to provide separate bathroom and toilet facilities for women and men. The incentive for tax reduction in this case must be to encourage those with high proportion of employees of one sex to construct bathroom and toilet facilities for the other sex, and not to simply build women's bathroom and toilet facilities.

Recommendation: *It is suggested that a review of Article 110 of the Labour Code and its subordinate documents be conducted. It is suggested that tax reductions relating to the following should not be made simply on the basis that the company has a high proportion of women: (a) the 60-minute nursing break, (b) the allowance to women after childbirth, and (c) the one-hour break for women in their seventh month of pregnancy.*

There is also a need to review the list of extra costs for hiring women as in many cases they are not costs due to women but costs to improve general working conditions; for example, (a) installation of anti-heat (cooling), noise-reducing or dust-absorbing systems; and (b) building of makeshift tents on construction sites, farms and other open-air work places. As to costs relating to setting up of crèches and kindergartens, equipments for crèches and kindergartens, and salaries to teachers of crèches and kindergartens, these costs must be allowed as a reduction for all enterprises, not only for those with a high proportion of women. Further, in relation to the costs of building women's bathrooms and toilets, it is suggested that a legal standard set the number of bathrooms and toilets necessary for the number of employees of each sex to further ensure that separate bathroom and toilet facilities are provided for both sexes, unless the total number of employees is minimal so that shared facilities will suffice.

In relation to expenses on job-retraining for female labourers if their current jobs are no longer suitable, it is suggested that, since men and women can freely choose their profession, instead of expenses for the retraining, reduction should be based on expenses for building capacity of women and to provide support for them in their present jobs, industries or positions, most especially if they are in jobs, industries or positions that are dominated by men. Likewise, preferential policies can be provided to enterprises that are putting in place these support and capacity-building measures, in place of the task of moving women from banned jobs into suitable ones.

Indicator 73	Does legislation contain an equal pay for work of equal value provision?
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Article 63 of the Constitution provides: "Men and women shall receive equal pay for equal work." Article 111 of the Labour Code states: "An employer must implement the principle of equality of males and females in respect of... wage increases and wages." This is elaborated in Article 18 of the *Decree No. 114/2002/ND-CP of 31 December 2002 Detailing and Guiding the Implementation of a Number of Labour Code's Articles on Wages* (Decree on Wages) which provides for the same wage for both male and female labourers if they are doing the same job. Article 13(1) of the Law on Gender Equality requires that men and women be treated equally in workplaces regarding wages. There are no legal documents relating to equal pay for work of equal value.

A view of the de facto situation in Viet Nam, however, proves otherwise. Women on average

earn less than men.⁴⁸⁰ Wages for women are lower than wages for men across all sectors of the economy. According to Viet Nam Household Living Standard Survey of 2004 (VHLSS), the average wage for women is 85 percent of the average wage for men.⁴⁸¹ The largest disparities between wages for women and men are in agriculture, forestry and fisheries, where women earn wages that are, on average, 33 percent less than the men's wages.⁴⁸² In industry, commerce and services sectors, the average disparity in wages between women and men is 18 percent, 20 percent and 25 percent respectively.⁴⁸³ The wage differential between men and women is also greatest for the poorest and richest 'living standard groups'; that is, gender inequality in wages appears to be more pronounced at the income extremes.⁴⁸⁴

Recommendation: It is recommended that stricter enforcement of equal pay provisions be done. Also, more sex-disaggregated data and research is necessary to look into wage differentials of persons performing work of equal value across sectors.

Indicator 74	Does legislation provide for equal conditions of work, including job security, benefits, evaluation and promotions?
Indicator 75	Does legislation ensure special protection for women's health during pregnancy?
Indicator 76	Does the legislation provide reasonable nursing time during working hours?

Article 111 of the Labour Code provides that employers are strictly prohibited from discriminatory conduct toward female employees or conduct that degrades their dignity and honour. Article 109 of the Labour Code states: "The State shall ensure that the right to work of women is equal in all aspects." The Decree on Women Labourers also provides that women have the right to equality with men in the labour relations between employers and labourers in all organizations, all individuals and in all sectors in recruitment, employment, training, pay raise, promotion, reward, social insurance, health insurance, labour conditions and safety, material and spiritual welfare, and health. Article 13(1) of the Law on Gender Equality also provides that men and women must be treated equally in workplaces regarding work, wages, pay, bonus, social insurance, labour conditions, and other working conditions.

Working regime for women

Article 109 of the Labour Code provides:

Article 109

- (1) The State ... shall establish policies to encourage employers to create conditions for women to work on a regular basis and apply widely the regime of flexible working time, part time and casual employment and working at home.
- (2) The State shall progressively establish policies and implement measures to expand employment opportunities, improve working conditions, increase professional level,

⁴⁸⁰ Wells, op. cit., p. 15

⁴⁸¹ Ibid., p. 18

⁴⁸² Ibid.;

⁴⁸³ Ibid.

⁴⁸⁴ Ibid., p. 14

improve health and strengthen the material and spiritual welfare of female workers for the purposes of assisting female workers to achieve their professional potential effectively and to combine harmoniously work and family life.

Subsequent legal document provides further elaboration. First, Article 3 of the Decree on Women Labourers states: "Proceeding from the character, working conditions and nature of work of the enterprises, the employers of women labourers shall take initiative to discuss with the trade union organizations the plan to assign women labourers to flexible time tables, shorter work day, and shorter work week, and to assign them jobs that can be done at home so as to create conditions for women labourers to be employed on a regular basis, according to their legitimate aspirations."

Second, the Circular on Women Labour describes the different regimes in the working regimes for women: (a) the 'flexible working regime' is the assignment and use of female labourers according to a time schedule (starting and ending times) different to the time schedule commonly applied at the agency or unit; (b) the 'regime of incomplete working day' is the use of female labourers for a lesser number of working hours in a day than commonly applied at the agency or unit; (c) the 'regime of incomplete working week' is the use of female labourers for a lesser number of days in a week than commonly applied at the agency or unit; (d) the 'regime of at-home work' is the assignment of jobs to be done at home (the family) by female labourers, provided this does not affect the requirements of production and business.⁴⁸⁵

The Circular on Women Labour also provides principles for the application of the regime: (a) the enterprise must determine what working regime is best suited to female labour but in no case should the working time exceed eight hours in a day and 48 hours in a week; (b) the working regime must not be used to discipline female labourers who violates labour discipline; and (c) the 'flexible working regime' must not be misused to assign women for night-shift work in contravention of the current laws.⁴⁸⁶

The enterprise and trade union, subject to discussion with the labourers, will decide on the jobs and the forms and organization of the work. These conditions will be recorded in the collective labour bargaining agreement. Women will register for these jobs with the form of work of their choice. Priority will be given to pregnant women for three months or more, women nursing babies aged less than 12 months, women with frail health, and women with difficult family situation.⁴⁸⁷

These provisions, although cognizant of women's multiple burden, do not address its cause and only provide temporary solutions. By doing so, they make women less competitive in the labour market. This is another form of protectionist legislation that, on its face, benefits women but, in the end, disadvantages them due to loss of job and employment opportunities.

Recommendation: A review of the working regimes for women, in particular flexible hours, incomplete working day, incomplete working week and home work must be undertaken for its revision as follows: (a) the regimes must be applicable only to pregnant women in advance stages of pregnancy, when certified as unable to carry out

⁴⁸⁵ Circular on Women Labour, Part II.1

⁴⁸⁶ Ibid., Part II.2

⁴⁸⁷ Ibid., Part II.3

work during the normal working regime; (b) in relation to women with frail health and women with difficult family situation, instead of simply focusing on women, persons with frail health and difficult situation whether man or woman, must be allowed to avail of such regimes; (c) intensive behavioral change communication measures must be put in place to enable shared responsibilities at work; and (d) stipulation on home work must be drafted providing clear guidelines as to conditions of work and other labour provisions.

Facilities

Article 116 of the Labour Code provides that those who employ women must ensure that certain facilities are available for their use: (a) female changing rooms, shower facilities and toilets; and (b) where there is a high number of female employees, childcare centres and kindergartens or assistance with a portion of the costs of female employees with children of nursing or kindergarten age. The Decree on Labour Violations penalizes failing to make locker rooms, shower rooms and toilets for female labourers with a fine of VND 1 million to VND 5 million.⁴⁸⁸

Concerning female changing rooms, shower facilities and toilets, see discussions and recommendations in Indicator 2 on bathroom and toilet facilities. As to the provision of childcare centres and kindergartens in enterprises with high proportion of women, see discussions and recommendations in Indicator 2 as well.

As child-rearing is a responsibility of both men and women, this should be reflected in labour policies without disregard to the current situation that women are the ones who are held responsible for childcare. All enterprises with a sufficient number of employees must set up crèches or kindergartens or provide support for the setting up of such facilities, rather than only enterprises with high proportion of women. A legal document can set down details as to the number of employees for this provision to be mandatory.

Recommendation: All enterprises with a sufficient number of employees must set up crèches or kindergartens or provide support for the setting up of such facilities, rather than only enterprises with high proportion of women. A legal document can set down details as to the minimum number of employees for this provision to be mandatory.

Night work, overtime and rest breaks

Generally, women are allowed to work at night and overtime. Article 115 of the Labour Code, however, prohibits an employer from allowing a female employee who is seven months or more pregnant, or raising a child aged under 12 months, to work at night or overtime or to go on business trips to distant locations.

This is another example of protective legislation in the Labour Code. Although this provision is reasonable as to women who are in such advance stage of pregnancy, the provision relating to women raising a child aged under 12 months must be repealed. It must be borne in mind that women are entitled to maternity leave and, hence, they will be able to

⁴⁸⁸ Decree on Labour Violations, Article 15(1)(a)

provide appropriate preparation for the care of the child after returning to work. The recommendation takes into account the de facto situation that women are the ones left with the care of their children, but also to ensure women can equally enjoy the right to work.

Recommendation: It is suggested that the clause in Article 115 of ‘women raising a child aged under 12 months’ be deleted. The period of 12 months could first be shortened to six months, with a clear period for its eventual repeal.

Article 115 of the Labour Code provide for rest breaks for women for the same wage during: (a) menstruation, a female employee is entitled to a break of 30 minutes every day; and (b) the period of raising a child aged under 12 months, a female employee is entitled to a break of 60 minutes every day. The Decree on Labour Violations provides penalties for violations of these provisions.⁴⁸⁹ In relation to (b), this provision is in place not simply to enable women to provide care to the child, who in many cases crèches and kindergartens can do, but to ensure that women are provided opportunities for breastfeeding.

Transfer to lighter duties

Article 112 of the Labour Code provides that, where there is a doctor’s certificate stating that continued employment would adversely affect the health of the foetus, pregnant women have the right to unilaterally terminate their labour contracts and they are not liable for compensation. This is elaborated in Article 10 of the Decree on Women Labourers, which states that an employer has to move immediately pregnant women who are working on assignments that carry risks to the health of their foetus to another job within the enterprise that is suitable, when there is a written certificate by a doctor. If the employer is unable to do so, pregnant women have the right to unilaterally terminate the labour contract.⁴⁹⁰ Lastly, female employees who are employed in heavy work and in the seventh month of pregnancy must be transferred to lighter duties or entitled to work one hour less every day and still receive the same wage.⁴⁹¹

Recommendation: It should be clearly stipulated that, in cases of transfer to lighter duties, except in cases of promotion, after pregnancy, women will be reassigned to their former positions without loss of any benefits or seniority on account of their pregnancy or maternity.

Training

Article 14(5)(a) of the Law on Gender Equality provides as one of the measures to promote equality the provision proportion of men and women participating in study and training.⁴⁹²

Article 110 of the Labour Code states: “State bodies shall be responsible for the expansion of various forms of training which are favourable to female workers in order to enable women to gain an additional skill or trade and to facilitate the employment of female workers suitable to their biological and physiological characteristics as well as their role as a mother”.

⁴⁸⁹ Ibid., Article 15(1)(c) and Article 15(1)(d)

⁴⁹⁰ Decree on Women’s Labourers, Article 10

⁴⁹¹ Labour Code, Article 115

⁴⁹² Law on Gender Equality, Article 14(5)(a)

Recommendation: It is recommended that this provision be amended by deleting the phrase ‘suitable to their biological and physiological characteristics as well as their role as a mother’. Additionally, the specific proportion of men and women participating in employment-related trainings must be provided. A 30-50 percent proportion must be targeted. Where it is not immediately possible, work plans must be drafted and submitted to show how this target can be reached progressively.

Article 14(4) of the Law on Gender Equality provides that female officials and public servants who bring along their children aged less than 36 months when participating in the training and fostering activities must be given assistance and support by the Government.

Recommendation: In light of the shared responsibilities for child-rearing being encouraged, Article 14(4) of the Law on Gender Equality must be applicable to both male and female officials and public servants. It is also suggested that training institutions must include among its training facilities and planning crèches for children aged 36 months or below.

Leave

When taking leave of absence for the following reasons, a female employee will be entitled to social insurance benefits or to be paid by the employer amount equal to the social insurance benefits to: (a) attend pregnancy examinations; (b) carry out family planning programmes; (c) have medical treatment for miscarriage; (d) attend to a sick child under seven years of age; and (e) adopt a newborn baby.⁴⁹³

In Article 22 of the Law on Social Insurance, taking care of a sick child under seven years of age is covered by the compulsory sickness regime. Article 24 of the Law on Social Insurance states that the period for leave is 20 days if the child is aged below three years, and 15 days if the child is aged between three and under seven years. However, Article 24 makes no distinction as to the sex of the employee. It further states that where both parents are covered by social insurance, if their child is still sick after either of them has used the whole period, the other parent is entitled to the regime. Thus, the wording of Article 24 implies that one parent has to use the period before the other parent is entitled to. It is suggested that each individual employee must be allowed to take leave to take care of sick children based on allowable number of days for each parent, rather than allowing one parent having to use the whole period, before the other parent is entitled to.

Recommendation: In relation to Article 24 of the Law on Social Insurance, parents who are both covered by social insurance must be allowed to take leave to take care of their sick children based on allowable number of days for each parent. It can be taken simultaneously. The requirement that one parent has to use the leave before the other parent is entitled to the sickness regime must be removed.

Consultation

Article 118 of the Labour Code provides: “In enterprises where a high number of female employees are employed, a member of management of the enterprise must be assigned the duty of monitoring all issues relating to female employees. Where a decision is made which

⁴⁹³ Labour Code, Article 117

affects the rights and benefits of females or children, the representative of the female employees must be consulted.” Failing to consult representatives of female labourers is penalized by the Decree on Labour Violations.⁴⁹⁴

Termination of employment

The Labour Code contains provisions on termination on employment.

First, Article 17 of the Labour Code provides for unemployment as a result of organizational restructuring or technological changes. When an employee who has been employed in the business for a period of 12 months or more becomes unemployed, the employer is responsible for re-training and assigning the employee to a new job, otherwise the employer must pay an allowance for loss of work.⁴⁹⁵ Where retrenchment is applicable to a number of employees, it must be based on business requirements, seniority, skill, family conditions, and other factors of each employee in consultation with the executive committee of the trade union and on notification to the local state management agency.⁴⁹⁶ There are no provisions providing a clear guarantee that retrenchment is made without discrimination. The term ‘family conditions’ as a basis for continued employment is vague and may be abused to discriminate against women on the basis of their stereotyped role of performing care work for their families. Hence, it is recommended that the term be removed as a basis of consideration for future employment or clearly defined.

To avoid any indirect discrimination during a retrenchment, the local state management agency must carefully monitor the proportion of men and women retrenched and from which positions. Sex-disaggregated data on this matter is necessary.

Recommendation: It is suggested that a clear provision prohibiting discrimination during retrenchments must be provided. It is also recommended that family conditions be removed as a basis for considering who will be retrenched. Legal documents must also provide for close monitoring by state management agency of the proportion of men and women retrenched and from which positions. Sex-disaggregated data on this matter must be required from enterprises.

Second, unilateral termination of a labour contract⁴⁹⁷ by an employee prior to expiry is allowed by law in the case of a female employee who is pregnant and must cease working on the advice of a doctor.⁴⁹⁸ The employee is not liable for payment of compensation to the employer. The period of notice to the employers depends on the advice of the doctor.⁴⁹⁹ (See also discussion above on transfer to lighter duties).

Third, an employer is prohibited from dismissing, or unilaterally terminating the labour contract of, a female employee for reason of marriage, pregnancy, taking maternity leave or raising a child aged under 12 months, unless the enterprise ceases its operations.⁵⁰⁰

⁴⁹⁴ Decree on Labour Violations, Article 15(1)(b)

⁴⁹⁵ Labour Code, Article 17(1)

⁴⁹⁶ Ibid., Article 17(2)

⁴⁹⁷ This refers to a definite term labour contract with a duration of 12-36 months or a labour contract for a seasonal or specific job with a duration of under 12 months.

⁴⁹⁸ Labour Code, Article 37

⁴⁹⁹ Ibid., Article 111

⁵⁰⁰ Ibid., Articles 39 and 111

Fourth, during pregnancy, maternity leave or raising a child aged under 12 months, a female employee is entitled to postponement of unilateral termination of her labour contract or to extension of the period of consideration for labour discipline, except when the enterprise ceases its operation.⁵⁰¹

Although not gender-specific, in addition to administrative penalties imposed on violation of provisions of the Labour Code, Article 128 of the Penal Code provides that those who, for their own benefits or other personal motivation, illegally force labourers or public employees to leave their jobs, causing serious consequences, will be subject to warning, non-custodial reform for up to one year, or a prison term of between three months and one year.

Indicator 77 Does legislation provide for an equal retirement age?

Retirement age is governed by the Labour Code and the Law on Social Insurance. In both laws, a differential age of retirement for men and women is provided.

Labour Code

Article 15 of the Labour Code states that an employee, 60 years of age in the case of a male and 55 years of age in the case of a female, having paid social insurance contributions for a period of 20 years or more is entitled to pension benefits.⁵⁰² It provides that male employees who are 60 years of age and who have paid social insurance contributions for 30 years, and female employees who are 55 years of age and who have paid social insurance contributions for 25 years, be entitled to the same maximum rate of monthly pension.

A lower rate of pension is provided where: (a) an employee, 60 years of age in the case of a male, and 55 years of age in the case of a female, have paid social insurance contributions for a period of 15 years to below 20 years; (ii) a male employee who is at least 50 years of age, or a female employee who is at least 45 years of age, with an accumulated social insurance contribution of at least 20 years, and is reduced in his or her capacity to work by 61 percent or more; and (a) an employee who has worked in an extremely heavy or harmful job as stipulated by the Government and is reduced in his or her capacity to work by 61 percent or more.⁵⁰³

Law on Social Insurance

The Law on Social Insurance elaborates further on the retirement pension under the compulsory social insurance retirement regime. Article 50 of the law provides that specified persons - that is, (a) persons working under contracts of indefinite term or contracts of a term of full three months or longer, (b) cadres, officials, public servants, (c) defense workers, police workers, and (d) persons working overseas for a definite term who previously paid compulsory social insurance premiums - are entitled to a retirement pension if they have paid social insurance premiums for twenty years or more and they are: (a) aged 60 years for men and aged 55 years for women; or (b) aged between 55-60 years for men or between 50-55 years

⁵⁰¹ Ibid., Article 111

⁵⁰² The retirement age of an employee who has worked in heavy or toxic jobs, or in mountainous regions, in border regions or on offshore islands, and in a number of other special cases, will be determined by the Government

⁵⁰³ Labour Code, Article 145(2)

for women, and they have performed heavy, hazardous or dangerous occupations or jobs for 15 years, or have worked in regions with regional allowance coefficient of 0.7 or more for 15 years.

Article 50 of the Law on Social Insurance also provides that other specified persons – that is, (a) officers and professional personnel of the people's army, (b) professional officers and non-commissioned officers, (c) technical officers and non-commissioned officers of the people's police, and (d) persons engaged in cipher work and enjoying salaries like the army or police - are entitled to a retirement pension if they have paid social insurance premiums for twenty years or more are entitled and that are: (a) aged 55 years for men or 50 years for women, unless otherwise provided for by the Law on Officers of the Viet Nam People's Army or Law on People's Police, or (b) aged between 50-55 years for men or between 45-50 years for women and they have performed heavy, hazardous or dangerous occupations or jobs for 15 years, or have worked in regions with regional allowance coefficient of 0.7 or more for 15 years.

Article 51 of the Law on Social Insurance provides for conditions for enjoying retirement pension on 'decrease of working capacity'. Those who have paid social insurance premiums for at least 20 years and whose working capacity is decreased by at least 61 percent, are entitled to retirement pensions if they: (a) are aged 50 years for men or 45 years for women; or (b) have performed especially heavy, hazardous or dangerous occupations or jobs for 15 years or more. The retirement pension is lower in amount than that which is provided in Article 50.

The Law on Social Insurance also provides elaboration on the retirement pension under the 'voluntary social insurance retirement regime'.⁵⁰⁴ Article 70 of the Law on Social Insurance states that, labourers covered by the voluntary social insurance retirement regime, being aged at least 60 years for men or at least 55 years for women, and having paid social insurance premiums for at least 20 years, are entitled to a retirement pension. It also states that men who are aged 60 years and women who are aged 55 years, and who have failed to have 20 years of paying social insurance premiums, are entitled to a lump sum social insurance benefit.

Article 70 of the Law on Social Insurance is linked to Article 148 of the Labour Code, which provides: "Enterprises in agricultural, forestry, fishing, and salt-making industries shall have the responsibility to participate in the forms of social insurance which are appropriate to the production characteristics and labour usage of their industry in accordance with regulations of the Government." These industries are dominated by women. In most cases, agricultural work is not covered by the compulsory retirement regime. However, it is covered by the voluntary insurance regime.⁵⁰⁵ The voluntary insurance regime is in place to reach out to those in the informal labour economy as well and urged them to participate. However, the cost of the premiums may act as a disincentive.

Differential age of retirement is unwarranted. This differential age 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 multiple burdens of women. However, in practice, it

⁵⁰⁴ Law on Social Insurance, Article 2(5)

⁵⁰⁵ See Law on Social Insurance, Part IV

has negative impacts on working women. In particular, employers may be reluctant to hire women who have a shorter working life, and the early retirement can limit chances for promotion.⁵⁰⁶ This is another example of protective legislation in Vietnamese law that requires review and revision.

This is one of the more controversial issues relating to gender equality. During the drafting of the Law on Gender Equality, there was much discussion on whether a revision of differential age of retirement is needed. However, no resolution was reached in the discussions on this issue during the drafting of the Law on Gender Equality. Hence, it was decided that the Law on Gender Equality would contain no provision relating to retirement age, and that any revisions should be made directly in the Labour Code and Law on Social Insurance.

Recommendation: The Labour Code and Law on Social Insurance must be revised to ensure equal retirement age for men and women. This refers in particular to Article 145 of the Labour Code and Articles 50-51, 70 and 73 of the Law on Social Insurance. No distinction on account of sex must be made relating to retirement age. Provisions relying on differential retirement ages of men and women - in particular those in Chapter III, Section 4 and Chapter IV, Section 1 of the Law on Social Insurance, as well as those relating to the survivorship regime (that is, Articles 64(2)(b), 64(2)(c) and 123 of the Labour Code) - must also be revised accordingly. It is also suggested that wider coverage of voluntary insurance scheme be in place to include a maternity regime.

It should be pointed out, though, that, although social insurance is available to both public and private employees - by 2002, about 4.4 million people had bought social insurance, of which 3.8 million were from the public sector and accounted for 86.4 percent of the total buyers⁵⁰⁷ - only 22 percent of private domestic enterprises contributed to social insurance, health insurance, and trade union funds in 2003.⁵⁰⁸ The Enterprise Survey 2003 revealed that private foreign-invested enterprises have better participation at 87 percent.⁵⁰⁹ The number of female workers buying social insurance is very high at 50.5 percent, 52.2 percent of which belong to the public sector.⁵¹⁰ The main reasons cited for the low participation of private domestic enterprises is that employers do not strictly abide by the law, and the authorities concerned do not conduct frequent inspections and promptly deal with violations.⁵¹¹

Recommendation: Stricter enforcement and better monitoring is needed to ensure that more workers are covered by the social insurance regime, which includes the retirement and maternity regimes.

Indicator 78	Does legislation provide protection from dismissal on account of marriage, pregnancy or maternity leave?
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⁵⁰⁶ Wells, op. cit., p. 20

⁵⁰⁷ Combined Fifth and Sixth Periodic Report, p. 34

⁵⁰⁸ Wells, op.cit., p. 19

⁵⁰⁹ Ibid.

⁵¹⁰ Combined Fifth and Sixth Periodic Report, p. 34

⁵¹¹ Ibid.

Article 111 of the Labour Code prohibits dismissal or unilateral termination by the employer on account of marriage, pregnancy, taking maternity leave or raising children aged under 12 months, except when the enterprise ceases its operations. During pregnancy, maternity leave, or raising a child aged under 12 months, female employees are also entitled to postponement of the unilateral termination of their labour contracts. The Decree on Labour Violations provides a penalty of a fine of between VND 5 million and VND 10 million for dismissing or unilaterally terminating labour contracts in these circumstances.⁵¹²

Indicator 79 Does the legislation provide paid maternity leave for a reasonable period of time without loss of seniority and other benefits?

The maternity regime has a wide coverage. The Law on Social Insurance states that the maternity regime covers: (a) pregnancy; (b) giving birth; (c) adoption of children aged under four months; and (d) intrauterine devices (IUDs) or sterilization procedures.⁵¹³

In relation to pregnancy and giving birth, under Article 114(1) of the Labour Code, female employees are entitled to maternity leave prior to and after the birth of their children for a total period of four to six months. Where required and with the agreement of the employer, female employees may take additional leave without pay.⁵¹⁴ Mothers who give birth to more than one child at one time are entitled to an additional 30 days leave for every additional child.⁵¹⁵ During maternity leave, female employees who have paid social insurance are entitled to a social insurance allowance equal to 100 percent of their wages and an additional allowance of one month's wage.⁵¹⁶

Article 114(2) of the Labour Code also states that female employees may return to work prior to the expiry of their maternity leave if they have at least two months rest after birth and a doctor's certificate confirming that early resumption of work will not affect their health. Returning female employees need to provide notice to their employers. In this case, they are to be provided maternity leave allowance as well as the normal wages for the days worked.⁵¹⁷

The Law on Social Insurance elaborates on the maternity regime.

Coverage

Article 27 of the Law on Social Insurance provides that the maternity regime covers: (a) persons working under contracts of indefinite term or contracts of a term of at least three months; (b) cadres, officials, public servants; (c) defense workers, police workers; and (d) officers and professional personnel of the people's army, professional officers and non-commissioned officers, technical officers and noncommissioned officers of the people's police, and persons engaged in cipher work and enjoying salaries like army men or policemen. The maternity regime is under the compulsory social insurance regime. It is not subject to voluntary social insurance.

⁵¹² Decree on Labour Violations, Article 15(2)(a)

⁵¹³ Law on Social Insurance, Article 28

⁵¹⁴ Labour Code, Article 114(2)

⁵¹⁵ Ibid., Article 114(1)

⁵¹⁶ Ibid., Article 144

⁵¹⁷ Ibid., Article 114

Prenatal check-ups

Article 29 of the Law on Social Insurance provides that pregnant female labourers are entitled to take leave for five prenatal check-ups. One day is allotted for each check-up. If they live far from medical establishments or have pathological signs or abnormal pregnancies, pregnant female labourers are entitled to a two-day leave for each prenatal check-up.

Miscarriage, abortion, fetocytosis and stillbirth

Article 30 of the Law on Social Insurance provides that, when pregnant female labourers are having an abortion or experiencing miscarriage, fetocytosis or stillbirth, and if the pregnancy is:

- under one month - they are entitled to 10 days of leave;
- between one month to three months - they are entitled to 20 days of leave;
- between three to below six months - they have 45 days of leave;
- six months or more - they are entitled to 50 days of leave.

After birth

Article 31 of the Law on Social Insurance provides that the period of leave for female labourers after giving birth is:

- four months - if they perform occupations or jobs under normal working conditions;
- five months - if they perform heavy, hazardous or dangerous occupations, work under the 'three-shift regime', work regularly in regions with a regional allowance coefficient of 0.7 or more or are army or police women;
- six months - if they are persons with disabilities;
- thirty days extra - for each newborn baby in case of giving birth to baby twins or more.

Regardless of whether one parent is or both parents are covered by social insurance, where the mother dies in childbirth, the father or the person directly nursing the newborn baby is entitled to the maternity regime until the child is aged four months.⁵¹⁸

Death of a newborn baby

Article 31 of the Law on Social Insurance provides that, if a newborn baby dies aged: (a) before 60 days, the mother is entitled to take leave for 90 days counting from the date of childbirth; and (b) 60 days or more, the mother is entitled to take leave for 30 days counting from the date her child dies, but the leave period under the maternity regime must not exceed the period allotted for leave after giving birth.

Adoption

Article 32 of the Law on Social Insurance provides that labourers adopting a child aged under four months are entitled to take leave for enjoying the maternity regime until the child is aged four months.

⁵¹⁸ Law on Social Insurance, Article 31

Contraceptive measures

Article 33 of the Law on Social Insurance provides that when: (a) being implanted with IUDs, labourers are entitled to a seven-day leave; and (b) subjected to sterilization measures, labourers are entitled to a 15-day leave.

Health rehabilitation after birth

Article 37 of the Law on Social Insurance provides that, if female labourers remain weak after the situations in cases where Articles 30-31 of the law operate, they may take leave for convalescence and health rehabilitation of between 5 and 10 days annually.

In cases where Articles 29-33 of the Law on Social Insurance operate, labourers are entitled to 100 percent of the average of the monthly remuneration of the six months preceding the leave on which social insurance premiums are based.⁵¹⁹ Also, female labourers after giving birth, or labourers adopting a child aged under four months, are entitled to a lump-sum allowance equivalent to two months common minimum salary for each child.⁵²⁰ When only the father is covered by social insurance and the mother dies in childbirth, the father is entitled to a lump-sum allowance equivalent to two months common minimum salary for each child.⁵²¹

In cases where Article 37 operates, female labourers are entitled to 25 percent of the common minimum salary if they take leave for convalescence and health rehabilitation at home, or 40 percent of the common minimum salary if they are at a rest home.⁵²²

Lastly, restating Article 114 of the Labour Code, Article 36 of the Law on Social Insurance also provides that female labourers may go to work before the expiry of the maternity leave period but at least 60 days after childbirth on obtaining a medical establishment certification that working will not harm their health, and with notice and prior consent of their employers. Female labourers will receive both the remuneration for the days worked and that which they are entitled to if they availed themselves of the full maternity period as per Article 31 of the Law on Social Insurance. In relation to this, it has been proposed that, to enable women to be more competitive in the labour market as well as to allow the exercise of women's choice, the possibility of reducing the mandatory period of leave after childbirth should be studied further.

Although there are provisions on non-discrimination on account of marriage, pregnancy, taking maternity leave or raising children aged under 12 months, there is no explicit provision that female labourers, when availing themselves of the maternity regime, will not suffer from any loss of benefits or seniority.

Recommendations: In relation to Article 32 of the Law on Social Insurance, parents who adopt children of four months and above should also be entitled to take leave. The period of leave may be 15-30 days, depending on the age of the child, to enable the parents to have sufficient preparation for the child's care.

⁵¹⁹ Ibid., Article 35

⁵²⁰ Ibid., Article 34

⁵²¹ Ibid.

⁵²² Ibid., Article 37

There should be a clear legal stipulation that, when availing themselves of the maternity regime, females labourers will not suffer from any loss of benefits or seniority.

Article 17(3) of the Law on Gender Equality provides that poor women residing in remote and mountainous area and being from an ethnic minority, excluding those who pay compulsory social insurance, when giving birth to a child, must be supported by the Government. This provision is broad enough to cover both workers and non-workers, who are not subject to compulsory social insurance. More details are necessary to operationalize this provision.

Recommendation: More details are needed to operationalize Article 17(3) of the Law on Gender Equality. It is also recommended that a maternity regime under the voluntary social insurance scheme be also added to ensure that those not workers not covered under the compulsory social insurance scheme can also enjoy maternity benefits.

Indicator 80 Does legislation provide for support services to enable parents to combine family obligations with work responsibilities, including ensuring childcare facilities by the employer or the State?

Article 109 of the Labour Code has several provisions on combining family and work responsibilities. In many cases, though, they are in the form of protective legislation, or focus only on women combining work and family life and not on shared responsibilities between men and women.

Most provisions relating to family and work have already been discussed:

- Articles 17, 39 and 111 of the Labour Code on termination of employment (see Indicators 74-76);
- Articles 22 and 24 of the Labour Code on leave (See Indicators 74-76);
- Article 109 of the Labour Code on working regimes for women and its supplementing documents (See Indicators 74-76);
- Article 110 of the Labour Code on preferential treatment and reduction of taxes for enterprises that employ a high proportion of women employees and its supplementing legal documents, in particular Circular on Women Labour and Circular on Female Labourers relating to expenses on crèches and kindergartens (See Indicator 72);
- Article 110 of the Labour Code and Article 14(4) of the Law on Gender Equality on training (see Indicators 74-76);
- Article 112 of the Labour Code on transfer to lighter duties when work assignment of pregnant employee will adversely affect the health of the foetus (see Indicators 74-76);
- Article 113(1) of the Labour Code on jobs that are hard, dangerous, involving contact with toxic substances that adversely affects women's ability to bear children and its supplementing documents (see Indicator 72);

- Article 115 of the Labour Code on night work, overtime and rest breaks (see Indicators 74-76);
- Article 116 of the Labour Code on facilities relating to crèches and childcare centres (see Indicators 74-76);
- Provisions relating to the maternity regime (see Indicator 79).

There are no provisions for paternity leave for fathers to support or assist mothers in the care of newborn babies. In several drafts of the Law on Gender Equality, paternity leave was proposed. Views on it were divided. Some saw it as a good recommendation as it will create an opportunity for men to exercise parenthood. Others saw it as subject to abuse as they perceive that Vietnamese men will not take care of the newborn baby and will only use the leave to take time off work. Nevertheless, it is recommended that paternity leave still be put in place as this provides an enabling measure to urge men to share child-rearing responsibilities.

Recommendation: It is recommended that paternity leave be stipulated in law, which should be available to male employees in both the public and private sectors. The leave is to enable fathers to assist mothers in the care of newborn babies. Male employees applying for such leave must notify the employer about the pregnancy and the expected date of delivery. The number of days leave must also be stipulated in the legislation, which should be a reasonable period to enable appropriate support for the mother and care for the newborn baby.

Indicator 81 Does the legislation provide sexual harassment protection from employers and co-workers?

Indicator 82 Is there a definition of sexual harassment that includes a comprehensive list of unwelcome acts?

There are no provisions specifically prohibiting sexual harassment in the employment setting. Hence, no definition of sexual harassment can be found in legal documents. General provisions include:

- Article 111 of the Labour Code, which prohibits employers from discriminatory conduct towards female employees that degrades their dignity and honour;
- Article 10 of the Law on Gender Equality, which prohibits GBV. Under international standards, sexual harassment is considered a manifestation of GBV.⁵²³ However, the Law on Gender Equality provides no further elaboration on GBV;
- Penal Code provisions on damage to human life, health, honour and dignity.⁵²⁴

One of the very few mentions of sexual harassment in Vietnamese legal documents is in Section 4 of the Decree No. 45/2005/ND-CP of April 6, 2005 Providing for the Sanctioning of Administrative Violations in the Field of Health (Decree on Health Violations), which penalizes as an administrative violation abusing the profession to commit acts of sexual harassment against patients. This provision, though, does not apply to employer/employee relations, nor is a definition of 'sexual harassment' provided to assist in understanding it.

⁵²³ GR 19, Paragraph 18

⁵²⁴ See, for example, Penal Code, Articles 104, 110, 121 and 122

In the Responses to the List of Issues and Questions for Consideration of the Combined Fifth and Sixth Periodic Report of Viet Nam (Responses to Combined Fifth and Sixth Periodic Report), it was stated that in reality there are sexual harassment cases in the workplace.⁵²⁵ However, victims generally endure or suffer in secrecy or approach the local Trade Union or Women's Affairs Committee for protection. A lawsuit is considered a last resort. However, without a comprehensive law that defines 'sexual harassment', penalizes the act, provides appropriate remedies to victims and puts in place preventive mechanisms, it is obvious that the measures currently used to address sexual harassment are not enough.

GR 19 urges State Parties to provide protection against sexual harassment in the employment setting. A suggested definition is also provided in Paragraph 18 of GR 19. In addition to defining and prohibiting 'sexual harassment' in the employment setting, a system of ensuring prevention of such form of discrimination must be in place. Employers must be obligated to draft internal rules on sexual harassment and to disseminate such rules widely to employees. Employers must also be mandated to form committees to receive complaints on sexual harassment if any, and to provide appropriate remedies to the grievances of the victim-employee.

Recommendation: It is recommended that sexual harassment legislation be promulgated. Sexual harassment in the employment setting must be one of the prohibited acts. The suggested legislation must have a definition of 'sexual harassment' in the employment setting in line with the one provided in Paragraph 18 of GR 19. It is also recommended that such legislation require employers to draft internal rules on sexual harassment and to disseminate such rules widely. Employers must also be mandated to form committees to receive complaints on sexual harassment if any, and to provide appropriate remedies to the grievances of the victim-employee. The law should also penalize failure to do such obligations, including making the employer liable for damages when sexual harassment occurs in the employer's establishment.

Indicator 83 Are there regulations governing work conditions of domestic or household workers?

One of the key areas of informal labour is domestic work. Article 2 of the Labour Code states that the code also applies to domestic servants. More elaborately, Article 139 of the Labour Code provides:

Article 139

1. A person who has been employed for household chores may enter into an oral or written labour contract; where the duty is to safeguard assets, a written labour contract must be entered into;
2. An employer must respect the honour, dignity and welfare of a domestic servant and will be responsible for the provision of care when the person falls ill or is injured in an accident;
3. Wages, working hours, rest breaks, and allowances will be agreed by the parties when negotiating the labour contract. The employer must provide the domestic

⁵²⁵ Responses to Combined Fifth and Sixth Periodic Report, p. 18

servant with travelling expenses to return home at the end of his employment, except in cases where the domestic servant voluntarily resigns prior to expiry of the labour contract.

These provisions are very limited and do not regulate domestic work, which is one of the employment categories that, because it is undertaken within the confines of private homes, exposes the domestic worker to greater risk of abuse. Regulating the working conditions of domestic workers is one way to ensure their protection, as they provide appropriate standards on how to treat and means to redress in cases of breach.

Recommendation: It is recommended that further stipulations be provided for domestic workers. In particular, conditions of work should be clearly legislated, including: (a) days off; (b) rest hours; (c) provision of adequate food and accommodation; (d) periodic and timely payment of wages; (e) prohibition of requiring work in commercial, industrial or agricultural enterprises; and (f) causes for termination and compensation for unjust termination. Also, provisions for social insurance of domestic workers must also be explored.

Indicator 84 Is there legislation for the protection of Vietnamese overseas migrant workers?

The Law on Guest Workers is the main legislation on Vietnamese overseas migrant workers or what it terms 'Vietnamese guest workers'. Article 3(1) of the law defines 'guest workers' or 'guest workers under contract' as "Vietnamese citizens residing in Viet Nam who meet all the conditions prescribed by laws of Viet Nam and the host country, and work abroad in accordance with this Law."

Article 6 of the Law on Guest Workers regulates the following forms of overseas work:

- contracts signed with enterprises providing guest worker services or with non-business organizations licensed to send workers abroad;
- guest worker contracts signed with contract-winning or –receiving enterprises or with offshore-investing organizations or individuals that send workers abroad;
- guest worker contracts in the form of skill-improvement internship contracts, signed with enterprises sending workers abroad for internship to improve their skills;
- individual contracts.

Article 7 of the Law on Guest Workers contains a list of prohibited acts:

Article 7: Prohibited Acts

- (1) Granting guest worker service provision licenses (below referred to as licenses) to unqualified enterprises as prescribed by this Law.
- (2) Using licenses of other enterprises or letting others use ones' own licenses to send workers abroad.
- (3) Assigning the task of administering activities of sending workers abroad to persons who managed enterprises with revoked licenses or to persons who are serving a caution or a severer discipline due to their violations of the guest worker law.
- (4) Working in or sending workers to areas, sectors, occupations or jobs banned under government regulations or not permitted by the host country.

- (5) Abusing activities of sending workers abroad in order to organize the sending of Vietnamese citizens abroad.
- (6) Abusing activities of sending workers abroad in order to organize the recruitment and training of workers for the collection of charges.
- (7) Sending workers abroad without registering contracts with competent state agencies in accordance with this Law.
- (8) Failing to go to workplaces or fleeing from workplaces stated in contracts after entering the receiving country.
- (9) Illegally staying abroad after the expiration of labour contracts.
- (10) Enticing, seducing or tricking Vietnamese guest workers to stay in foreign countries in contravention of law.
- (11) Troubling, obstructing, harassing workers or enterprises, non-business organizations, off shore investing organizations or individuals in the sending of workers abroad.

As migration is a complex process, it should be borne in mind that there are many ways to expose guest workers to exploitation. This is necessary to enable protection of rights of both men and women from abuse. The law should consider clearly prohibiting other acts that abuse or may lead to abuse or vulnerability of guest workers, such as:

- contract substitution or alteration. In many cases, even if there is a contract, the contract is substituted or altered to the prejudice of the guest worker after it has been registered. This should be strictly prohibited because there have been many cases where new or altered contracts are forced on guest workers once they have reached the place of employment, with new or altered contracts containing lowered standards or unfair provisions;
- keeping the travel documents of the guest worker. It must be prohibited for the representatives of the enterprise or the employer to keep or withhold the travel documents of the guest worker. There are cases where guest workers are forced to remain illegally in the host country and are subject to intimidation and control of employers because their travel documents are kept from them;
- furnishing or publishing any false information or document in relation to recruitment or employment;
- failure to immediately reimburse the applicant-guest worker where deployment does not take place;
- recruiting or sending guest workers abroad without a licence;
- forcing or intimidating guest workers to stay abroad (in addition to identifying only enticement, seduction and trickery as per Article 7(10) of the Law on Guest Workers);
- sending minors abroad for employment.

Recommendation: The Law on Guest Workers must also prohibit explicitly: (a) contract substitution or alteration; (b) keeping the travel documents of the guest worker; (c) furnishing or publishing any false information or document in relation to recruitment or employment; (d) failure to immediately reimburse the applicant guest worker where deployment does not take place; (e) recruiting or sending guest workers abroad without a licence; (f) forcing or intimidating guest workers to stay abroad (in addition to the means identified in Article 7(10) of the Law on Guest Workers); and (g) sending minors abroad for employment.

The Law on Guest Workers provides for the procedures for licensing of enterprises providing guest worker services (service enterprises).⁵²⁶ It is suggested that, to ensure that such enterprises are authorized to conduct such a business, the licence must at all times be displayed clearly in the place of business. All materials issued, disseminated and published by the enterprises must cite the licence number of the enterprises. MOLISA, as the state management agency for overseas migration, must keep a list of all licensed enterprises and make this available to the public on reasonable request to check on the status of the enterprises. Such a list must also contain updates on lost or renewal of licences, violations or breaches, etc..

Recommendation: It must be stipulated in legal documents that the licence issued to enterprises authorizing them to engage in the business of overseas migration must at all times be displayed clearly in the place of business. All materials issued, disseminated and published by the enterprises must cite the licence number of the enterprises. MOLISA, as the state management agency for overseas migration, must keep a list of all licensed enterprises and make this available to the public upon reasonable request.

Article 22 of the Law on Guest Workers requires that service enterprises pay a deposit to be used by the State agencies to deal with problems arising from the enterprises' failure to perform their obligations in sending workers abroad. It is also suggested that the deposit be used to guarantee claims arising from non-performance of employer's obligation. This means that service enterprises are obligated to choose employers well, and places the risk on them instead of on the guest worker. This option is better because the service enterprises are in a better position to demand compliance. To guard itself, the service enterprises can require a performance deposit from employers to ensure their compliance with the labour contract.

Recommendation: In relation to Article 22 of the Law on Guest Workers, it is recommended that the deposit be also used to guarantee claims arising from non-performance of employer's obligation.

In Article 66 of the Law on Guest Workers, an overseas employment support fund is set up aimed at developing and expanding foreign labour markets, raising the quality of the workforce and supporting workers and enterprises in handling risk. It is unclear from the provision what the specific uses of the fund are. It is suggested that the fund prioritize the welfare of guest workers in relation to dealing with risks; and, as such, it should provide medical and health insurance for guest workers and their dependents, maternity coverage, travel insurance, and other welfare assistance. It should also provide for emergency repatriation - for example, in cases of war, epidemics, natural disasters, etc. - without prejudice

⁵²⁶ Law on Guest Workers, Articles 8-15

to claiming reimbursement from the enterprise that deployed the guest workers. In cases of abuse experienced by guest workers, the fund must cover appropriate counselling and rehabilitation measures.

Such a fund must also clearly provide for programmes for returning guest workers, including skills and livelihood trainings, and re-orientation and re-integration. It must ensure that men and women equally benefit from such skills and livelihood trainings.

Recommendation: *There should be a clear stipulation on the coverage of the overseas employment fund in Article 66 of the Law on Guest Workers. In particular, the fund should cover medical and health insurance for workers and their dependents, maternity coverage, travel insurance, and other welfare assistance. It should also provide for emergency repatriation – for example, in cases of war, epidemics, natural disasters, etc. - without prejudice to claiming reimbursement from the enterprise that deployed the guest workers, counselling and rehabilitation measures for abused guest workers, and skills and livelihood trainings, and re-orientation and re-integration, for returning guest workers. It must ensure that men and women equally benefit from such fund.*

In relation to reporting, a report on the sending of workers abroad is required by Articles 26, 29, 32, 36 and 41 of the Law on Guest Workers. A report to foreign-based Vietnamese diplomatic missions and consulates is also required under Articles 27, 30, 33, 38 and 41 of the law. In these cases, all reports must have sex-disaggregated data.

Recommendation: *Reports required under the Law on Guest Workers, including reports on the sending of workers abroad as required by Articles 26, 29, 32, 36 and 41 and reports to foreign based Vietnamese diplomatic missions and consulates under Articles 27, 30, 33, 38 and 41 must have sex-disaggregated data.*

Stipulations also exist concerning the provision of necessary knowledge for guest workers before they are sent abroad in Articles 9, 27, 28, 33, 38 and 41 of the Law on Guest Workers. To elaborate further on these, Article 44 of the law provides that the guest worker has the right to request the enterprise, non-business organization, offshore investing organization or individual to supply information on: (a) Vietnamese policies and laws on guest workers; (b) relevant policies and laws as well as customs and practice of the receiving country; and (c) rights and obligations of related parties while working abroad. It is suggested that the provision on Article 44(1) be mandatory; that is, the guest worker has the right to receive information, rather than simply a right to request for them. Article 65 of the law provides for the kinds of information that are considered to be 'necessary knowledge'. Information must be provided on gender relations in the receiving country, common issues/challenges affecting gender, and available assistance in cases of violations of contract or abuse (including from the foreign-based Vietnamese diplomatic missions and consulates).

Recommendation: *It is suggested Article 44(1) of the Law on Guest Workers be made mandatory; that is, the guest worker has the right to receive information, rather than simply a right to request for them. It should be clearly stipulated that information on gender relations in the receiving country, common issues/ challenges affecting gender, and available assistance in cases of violations of contract or abuse (including from the foreign-based Vietnamese diplomatic missions and consulates) must be considered necessary information in the light of Articles 9, 27, 28, 33, 38, 41, 44 and 65 of the Law on Guest Workers.*

V.9 HEALTH (ARTICLE 12 OF CEDAW)

V.9.1 OBLIGATIONS UNDER CEDAW

V.9.1.1 Text of CEDAW

ARTICLE 12

- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
- (2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

V.9.1.2 General Recommendations

The following excerpts from GRs are relevant to Article 12 of CEDAW:

GR 15: AIDS

Paragraph (a)

That States parties intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and on its effect on them;

Paragraph (b)

That programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection;

Paragraph (c)

That State parties ensure the active participation of women in primary health care and take measures to enhance their role as care providers, health workers and educators in the prevention of infection with HIV;

Paragraph (d)

That all States parties include in their reports under article 12 of the Convention information on the effects of AIDS on the situation of women and on the action taken to cater to the needs of those women who are infected and to prevent specific discrimination against women in response to AIDS.

GR 19: Violence Against Women

Paragraph 24(m)

States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control.

GR 24: Women and Health

Paragraph 2

States parties' compliance with article 12 of the Convention is central to the health and well being of women. It requires States to eliminate discrimination against women in their access to health care services throughout the life cycle, particularly in the areas of family planning, pregnancy and confinement and during the post natal period. The examination of reports submitted by States parties pursuant to article 18 of the Convention demonstrates that women's health is an issue that is recognized as a central concern in promoting the health and well being of women. For the benefit of States parties and those who have a particular interest in and concern with the issues surrounding women's health, the present general recommendation seeks to elaborate the Committee's understanding of article 12 and to address measures to eliminate discrimination in order to realize the right of women to the highest attainable standard of health.

Paragraph 6

While biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

Paragraph 7

The Committee notes that the full realization of women's right to health can be achieved only when States parties fulfil their obligation to respect, protect and promote women's fundamental human right to nutritional well being throughout their lifespan by means of a food supply that is safe, nutritious and adapted to local conditions. To this end, States parties should take steps to facilitate physical and economic access to productive resources, especially for rural women, and to otherwise ensure that the special nutritional needs of all women within their jurisdiction are met.

Paragraph 8

States parties are encouraged to address the issue of women's health throughout the woman's lifespan. For the purposes of the present general recommendation, therefore, "women" includes girls and adolescents. The general recommendation will set out the Committee's analysis of the key elements of article 12.

Paragraph 12

States parties should report on their understanding of how policies and measures on health care address the health rights of women from the perspective of women's needs and interests and how it addresses distinctive features and factors that differ for women in comparison to men, such as:

- (a) Biological factors that differ for women in comparison with men, such as their

menstrual cycle, their reproductive function and menopause. Another example is the higher risk of exposure to sexually transmitted diseases that women face;

(b) Socio economic factors that vary for women in general and some groups of women in particular. For example, unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which can affect their health. Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. Some cultural or traditional practices such as female genital mutilation also carry a high risk of death and disability;

(c) Psychosocial factors that vary between women and men include depression in general and post partum depression in particular as well as other psychological conditions, such as those that lead to eating disorders such as anorexia and bulimia;

(d) While lack of respect for the confidentiality of patients will affect both men and women, it may deter women from seeking advice and treatment and thereby adversely affect their health and well being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence.

Paragraph 13

The duty of States parties to ensure, on a basis of equality of men and women, access to health care services, information and education implies an obligation to respect, protect and fulfill women's rights to health care. States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations. They must also put in place a system that ensures effective judicial action. Failure to do so will constitute a violation of article 12.

Paragraph 14

The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care. For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women punish women who undergo those procedures.

Paragraph 15

The obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender based violence is a critical health issue for women, States parties should ensure:

(a) The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against

women and sexual abuse of girl children and the provision of appropriate health services;

(b) Gender sensitive training to enable health care workers to detect and manage the health consequences of gender based violence;

(c) Fair and protective procedures for hearing complaints and imposing appropriate sanctions on health care professionals guilty of sexual abuse of women patients;

(d) The enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children.

Paragraph 16

States parties should ensure that adequate protection and health services, including trauma treatment and counseling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees.

Paragraph 17

The duty to fulfill rights places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care. Studies such as those that emphasize the high maternal mortality and morbidity rates worldwide and the large numbers of couples who would like to limit their family size but lack access to or do not use any form of contraception provide an important indication for States parties of possible breaches of their duties to ensure women's access to health care. The Committee asks States parties to report on what they have done to address the magnitude of women's ill health, in particular when it arises from preventable conditions, such as tuberculosis and HIV/AIDS. The Committee is concerned about the evidence that States are relinquishing these obligations as they transfer State health functions to private agencies. States and parties cannot absolve themselves of responsibility in these areas by delegating or transferring these powers to private sector agencies. States parties should therefore report on what they have done to organize governmental processes and all structures through which public power is exercised to promote and protect women's health. They should include information on positive measures taken to curb violations of women's rights by third parties and to protect their health and the measures they have taken to ensure the provision of such services.

Paragraph 18

The issues of HIV/AIDS and other sexually transmitted diseases are central to the rights of women and adolescent girls to sexual health. Adolescent girls and women in many countries lack adequate access to information and services necessary to ensure sexual health. As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. Women in prostitution are also

particularly vulnerable to these diseases. States parties should ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality.

Paragraph 21

States parties should report on measures taken to eliminate barriers that women face in access to health care services and what measures they have taken to ensure women timely and affordable access to such services. Barriers include requirements or conditions that prejudice women's access, such as high fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and the absence of convenient and affordable public transport.

Paragraph 22

States parties should also report on measures taken to ensure access to quality health care services, for example, by making them acceptable to women. Acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives. States parties should not permit forms of coercion, such as non consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity.

Paragraph 23

In their reports, States parties should state what measures they have taken to ensure timely access to the range of services that are related to family planning, in particular, and to sexual and reproductive health in general. Particular attention should be paid to the health education of adolescents, including information and counseling on all methods of family planning.

Paragraph 24

The Committee is concerned about the conditions of health care services for older women, not only because women often live longer than men and are more likely than men to suffer from disabling and degenerative chronic diseases, such as osteoporosis and dementia, but because they often have the responsibility for their ageing spouses. Therefore, States parties should take appropriate measures to ensure the access of older women to health services that address the handicaps and disabilities associated with ageing.

Paragraph 25

Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which

women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. States parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.

Paragraph 26

Reports should also include what measures States parties have taken to ensure women appropriate services in connection with pregnancy, confinement and the post natal period. Information on the rates at which these measures have reduced maternal mortality and morbidity in their countries, in general, and in vulnerable groups, regions and communities, in particular, should also be included.

Paragraph 27

States parties should include in their reports how they supply free services where necessary to ensure safe pregnancies, childbirth and post partum periods for women. Many women are at risk of death or disability from pregnancy related causes because they lack the funds to obtain or access the necessary services, which include antenatal, maternity and post natal services. The Committee notes that it is the duty of States parties to ensure women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources.

Paragraph 29

States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high quality and affordable health care, including sexual and reproductive health services.

Paragraph 30

States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.

Paragraph 31

States parties should also, in particular:

- (a) Place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;
- (b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;
- (c) Prioritize the prevention of unwanted pregnancy through family planning and sex

education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion;

- (d) Monitor the provision of health services to women by public, non governmental and private organizations, to ensure equal access and quality of care;
- (e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;
- (f) Ensure that the training curricula of health workers include comprehensive, mandatory, gender sensitive courses on women's health and human rights, in particular gender based violence.

V.9.1.3 Concluding Comments

The relevant provisions relating to Article 12 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 24

The Committee expresses its concern about women's limited access to sexual and reproductive health-care services, and about the very high rate of abortions, in particular among adolescent and young women. The Committee is also concerned about the increase in HIV/AIDS infections among women.

Paragraph 25

The Committee urges the State party to take concrete measures to enhance women's access to health care, in particular to sexual and reproductive health services, in accordance with article 12 of the Convention and the Committee's general recommendation 24 on women and health. It requests the State party to strengthen measures aimed at the prevention of unwanted pregnancies, including through improved availability, acceptability and use of modern means of birth control, in order to eliminate the use of abortion as a method of family planning. The Committee recommends that the State party give priority attention to the sexual and reproductive health needs of adolescent and young women and men and that it provide age-appropriate sex education, including in school curricula, with special attention to the prevention of early pregnancies and sexually transmitted diseases and HIV/AIDS. The Committee also calls on the State party to ensure the effective implementation of its national strategy on the prevention and control of HIV/AIDS, including improved access to antiretroviral drugs, protection and care for babies born with HIV and training for medical personnel.

V.9.2 SELECTED INDICATORS

CEDAW and the relevant GRs require the elimination of all forms of discrimination in the field of health and to ensure women's access to health services. Paragraphs 7 and 8 of GR 24

require that the guarantee of health care must be applicable throughout a woman's life; thus, protection covers girls and elderly women. GR 24 also highlights the various area of health care requiring attention, such as those relating to maternity and pregnancy, HIV/AIDS and other STIs, sexual and reproductive health-care services and education, birth control and family planning methods, abortions, and the privatization of the health-care services.

In relation to maternity and pregnancy, it is stated in CEDAW and GR 24 that care before, during and after pregnancy must be given.⁵²⁷ Where costs are a problem, the State must put in place measures to ensure a safe and healthy delivery.⁵²⁸ Targets on maternal and child mortality and morbidity are only one of the measures, among many, that are needed to comply with the obligation of provision of care.⁵²⁹

GR 24 also addresses birth control, family planning methods and unwanted pregnancies.⁵³⁰ The obligation under CEDAW specifically points out that acceptable and accessible health-care services must be provided,⁵³¹ including improved availability, acceptability and use of modern means of birth control.⁵³² GR 24 emphasizes the need for informed consent prior to undergoing procedures, such as sterilization.⁵³³ States Parties must not permit forms of coercion in this field, including mandatory testing for STIs or mandatory pregnancy testing as a condition for employment.⁵³⁴ More importantly, abortions must not be used as means of family planning.⁵³⁵

GR 24 in particular highlights that as a consequence of unequal power relations based on gender, women and girls are unable to refuse sex or insist on safe and responsible sex.⁵³⁶ By understanding the unequal power relations between men and women, the gender-related aspects of HIV/AIDS and other STIs are clearly visible. In relation to Viet Nam and HIV/AIDS, the CEDAW Committee also states that there must be improved access to ARVs, protection and care for babies born with HIV, and training for medical personnel on HIV/AIDS.⁵³⁷

A gendered review of health care will also point out the need to focus on issues of sexual and reproductive education in addition to simply providing health-care services. State Parties must provide age-appropriate sexual and reproductive health information and education, especially to women and girls, which respects their right to privacy and confidentiality.⁵³⁸

Removal of barriers to the enjoyment of health care, especially high fees of health-care services, distance of health-care facilities, lack of convenient transportation, and lack of equal budgets for men and women's health care should be prioritized.⁵³⁹

⁵²⁷ CEDAW, Article 12(2) and GR 24, Paragraph 2

⁵²⁸ GR 24, Paragraph 27

⁵²⁹ See GR 24 generally

⁵³⁰ GR 24, Paragraphs 17, 22, 23 and 31(c)

⁵³¹ Ibid., Paragraphs 21 and 22

⁵³² Concluding Comments on Viet Nam 2007, Paragraph 25

⁵³³ GR 24, Paragraph 20

⁵³⁴ Ibid., Paragraph 22

⁵³⁵ Concluding Comments on Viet Nam 2007, Paragraph 25

⁵³⁶ GR 24, Paragraph 18

⁵³⁷ Concluding Comments on Viet Nam 2007, Paragraph 25

⁵³⁸ GR 24, Paragraph 18

⁵³⁹ Ibid., Paragraph 21

Of particular concern to the CEDAW Committee, as stated in Paragraph 17 of GR 24, is the relinquishment by State Parties of their health obligations to private agencies.⁵⁴⁰ Nevertheless, GR 24 points out that State Parties must ensure that the equal right to health is respected by these private agencies. Based on this, they must guarantee that the cost of health care remains equally accessible to persons of either sex.

In view of the obligations under CEDAW, the selected indicators for health are:

- Indicator 85** Is there legislation that guarantees non-discrimination and equal access to health care?
- Indicator 86** Are there measures in place to provide assistance on health-care services for poor women and other disadvantaged groups, such as women with disabilities or ethnic minority women?
- Indicator 87** Is there legislation ensuring access by women to appropriate health-care services relating to pregnancy and maternity?
- Indicator 88** Is there legislation addressing women living with HIV/AIDS and other STIs?
- Indicator 89** Is abortion prohibited?
- Indicator 90** Are sex-selective abortion and prenatal sex-selection prohibited?
- Indicator 91** Is there legislation regulating family size?
- Indicator 92** Is there legislation that guarantees the right to free and informed choice and prohibition of coercion, intimidation or undue influence in the use of contraceptives; for example, non-consensual sterilization or free choice of contraception)?
- Indicator 93** Is sexual harassment by health professionals prohibited?

V.9.3 RELEVANT LEGAL PROVISIONS

Indicator 85 Is there legislation that guarantees non-discrimination and equal access to health care?

The question of access to health relates to many factors such as health-care infrastructure, budgetary allocation for health-care, cost of health-care services, health status, and health-care needs of men and women. Maternal health, HIV/AIDS, contraception will be discussed.

As to health-care infrastructure, there is a nationwide health-care network in Viet Nam.⁵⁴¹ The Government states that all provinces and districts have health-care facilities, and nearly all communes/wards have health-care centres.⁵⁴² By the end of 2002, 100 percent of health-care centres at ward, communal and district levels were provided with medical workers.⁵⁴³ The number of medical workers in hamlets increased from 59.41 percent in 1999 to 89.80 percent

⁵⁴⁰ Ibid., Paragraph 17

⁵⁴¹ Wells, op. cit., p. 34

⁵⁴² Ibid.

⁵⁴³ Combined Fifth and Sixth Periodic Report, p. 37

in 2002. However, only around 65 percent of communes have a doctor.⁵⁴⁵ The proportion of communes with doctors is much lower in the remote and mountainous regions, such as in the North West (23 percent), North East (53 percent) and Central Highlands (53 percent) of Viet Nam.⁵⁴⁶ Pharmaceutical retailing - including private drug stores (accounting for 72 percent of the retail market for pharmaceuticals) - provides essential medicines to communes and wards, including in remote and mountainous regions and on islands.⁵⁴⁷ In most cases, the disparities in health-care coverage is disproportionately borne by the poor, ethnic minorities and those who lived in remote and mountainous regions.⁵⁴⁸ Facilities relating to pregnancy, maternity and reproductive health care are discussed fully in Indicator 87. The discussion shows that a high ratio of births is assisted by a midwife, obstetric-pediatric assistant doctors and health-care workers. However, some regions, in particular remote and mountainous regions, post lower ratios.⁵⁴⁹

As to the number of female health-care workers, more than 70 percent of health-care workers in communes are women, but most of the directors are men.⁵⁵⁰ In such cases, women's health care priorities may not always be appropriately addressed.

In relation to the budget for health-care, its share of total government spending over the last five years has fluctuated only 6-7 percent, which is low in terms of international standards.⁵⁵¹ The UNDP Human Development Report 2005 notes that aid money accounts for more than 25 percent of the health-care funds for the poor.⁵⁵² Increased health-care spending is happening due to health insurance and social welfare funds. The system depends to a great extent on private contributions, including from the poor.⁵⁵³ There are also policies in place to step up the socialization and privatization of the health-care sector. There are also some provisions on access by the poor through health insurance cards. This is discussed more thoroughly in Indicator 86 below.

Health-care needs

As to the health-care needs of women and men, they are different. Life expectancy for both men and women in Viet Nam is high; however, men die at a younger age than women. In 2002, life expectancy at birth was estimated at 70 years for men and 73 years for women.⁵⁵⁴ Non-infectious disease is the primary cause of death for both men and women in Viet Nam.⁵⁵⁵ However, men are twice as likely as women to be killed by accidents and one-and-a-half times more likely to die from infectious diseases.⁵⁵⁶ The reasons can be found in the Survey

⁵⁴⁴ Ibid.

⁵⁴⁵ Wells, op. cit., p. 36

⁵⁴⁶ Ibid.

⁵⁴⁷ Combined Fifth and Sixth Periodic Report, p. 37

⁵⁴⁸ Wells, op. cit., p. 34

⁵⁴⁹ GSO Statistics, pp. 63-65

⁵⁵⁰ Wells, op. cit., p. 37

⁵⁵¹ Ibid., pp. 34-35

⁵⁵² Ibid., p. 35 citing United Nations Development Programme, 'Human Development Report 2005', UNDP, New York, 2005

⁵⁵³ Ibid., p. 35

⁵⁵⁴ Wells, op. cit., p. 42

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid.

Assessment of Vietnamese Youth 2003, which shows that more males than females are involved in risk behaviors, notably smoking, drinking, unsafe sex, motorbike racing and violence.⁵⁵⁷ Women, on the other hand, are far more likely than men to die of 'old age'.⁵⁵⁸

Another area for future gender-based research is suicide. It was the sixth leading cause of death recorded by Vietnamese hospitals in 2002.⁵⁵⁹ A survey of 250 people recovering from suicide attempts in hospitals found that two thirds of the people were female; and, of those, 80 percent had tried to end their lives because of a conflict with a spouse, boyfriend or family member.⁵⁶⁰

Women in Viet Nam have poorer health status compared to men.⁵⁶¹ Results from the Viet Nam National Health Survey of 2001-02 (VNHS) show that, in a four-week period, women were more likely to be ill and with higher severity of illness compared to men.⁵⁶² A large proportion of women and men in Viet Nam are undernourished at 29 percent and 27 percent respectively.⁵⁶³ Also, 26 percent of girls and 25 percent of boys under the age of five years are undernourished.⁵⁶⁴ In both health status and nutrition, people living in rural areas and ethnic minority groups are disadvantaged.⁵⁶⁵ The incidence and severity of illness and undernourishment is also higher for people living in rural areas compared to urban areas.⁵⁶⁶ Ethnic minority children have higher rates of undernourishment; for example, among the Central Highlands ethnic groups around 45 percent of boys and girls are undernourished.⁵⁶⁷

Additional health-care needs for women relate to their reproductive roles. Although both men and women have reproductive functions, women require more reproductive/sexual health-care services due to pregnancy, maternity, termination of pregnancy, etc. Many women are also subjected to GBV, hence requiring appropriate health-care services as well.

Laws, policies, strategies and plans

Bearing these in mind, laws, policies, strategies and plans are in place addressing the equal right to access health-care services.

Laws

Article 39 of the Constitution provides: "The State makes investment in, ensures the development of, and exercises unified management over the protection of people's health... The State shall see the organization of health insurance and create the necessary conditions for all citizens to enjoy health care". Article 39 states as well that priority is given to health care

⁵⁵⁷ Ibid., p. 43 citing the Survey Assessment of Vietnamese Youth 2003

⁵⁵⁸ Wells, op. cit., p. 42

⁵⁵⁹ Ibid., p. 43

⁵⁶⁰ Ibid., p. 44

⁵⁶¹ Ibid., p. 35

⁵⁶² Ibid. citing the VNHS

⁵⁶³ Wells, op. cit., p. 36

⁵⁶⁴ Ibid.

⁵⁶⁵ Ibid.

⁵⁶⁶ Ibid., p. 35

⁵⁶⁷ Ibid., p. 36

for highlanders and national minorities. Also, Article 61 of the Constitution states: “The citizen is entitled to a regime of health protection. The State shall establish a system of hospital fees, together with one of exemption from and reduction of such fees. The citizen has the duty to observe all regulations on disease prevention and public hygiene.” These two provisions should be read in conjunction with Article 63 of the Constitution, which points out: “Male and female citizens have equal rights in all fields - political, economic, cultural, social and family. All acts of discrimination against women and all acts damaging women’s dignity are strictly banned.”

Laws also provide for equal right to health. Article 1(1) of the Law on the Protection of People’s Health (Code 21 LCT/HDNN8 of June 30, 1989) (Law on Health) states that citizens are entitled to health protection and health-care services. Article 32 of the Civil Code emphasizes that individuals have the right to safety of life, health and body. It also provides in Article 5 that all parties are equal and that differences on account of gender must not be invoked. Article 17(1) of the Law on Gender Equality states: “Man and woman are equal in participating in the activities of education and communication on health care, reproductive health and in using health services.” The Law on Children provides that children have the right to health care and protection, regardless of their sex.⁵⁶⁸ There are also provisions in this law on health insurance cards for the poor as well as for children. See Indicator 86.

The Law on Health also has provisions relating to budgets. In Article 3, it states that the State is responsible for putting health protection in the State socio-economic development plan and State budget. The People’s Councils at all levels must allocate an appropriate part of their budgets to protecting people’s health.⁵⁶⁹

Policies, strategies and plans

Policies, strategies and plans discuss improving the general health-care system, which will impact greatly on equal access to health, especially access by women and ethnic minorities, as well as specific measures for gender equality and targeted interventions for women. First, Objective 3 of the Plan of Action for the Advancement of Women is the improvement of women’s health. The main indicators for it are to: (a) increase the proportion of women accessing health-care services to 95 percent by 2010; and (b) strive for 100 percent of health-care centres with female midwives and 80 percent of health-care centres with doctors. Provisions relating to safe motherhood and pregnancy are discussed in Indicator 87. The Plan of Action for the Advancement of Women requires MOH to: (a) develop the health-care system for women; (b) increase investment for upgrading commune health-care centres; (c) prioritize to remote and mountainous areas; (d) supplement material and human resources for mobile health-care teams to meet the health-care demands of women and children; and (e) direct provincial-level health departments to collaborate with local agencies and enterprises in organizing periodic health checks for women to diagnose diseases in a timely fashion and to provide medical treatment, especially reproductive-tract diseases.

⁵⁶⁸ Law on Children, Articles 4 and 15

⁵⁶⁹ Law on Health, Article 3(3)

Second, the Strategy for Protection and Care of People's Health in the 2001-2010 Period⁵⁷⁰ lists one of the 'Health Targets by 2010' as the target of enhancing equity in the access to, and use of, health-care services, particularly medical examination and treatment. In relation to access issues, the 'Health Targets by 2010' include: (a) four-and-a-half medical doctors and one university pharmacist for every 10,000 people; (b) improved quality of medical examination and treatment, functional rehabilitation and health-care improvement at all medical levels; and (c) applied scientific and technical advances to develop health-care services to the level of advanced countries in the region.⁵⁷¹

Major solutions identified to achieve the 'Health Targets by 2010' include: (a) prioritizing investment on particular areas (including increase proportion of regular State expenditure for health in the total State budget expenditure), prioritizing investment for poor remote and mountainous regions in prophylactic and traditional medicine activities, primary health-care activities at grassroots health-care stations, medical examinations and treatment for the poor and social policy beneficiaries, mother and child care protection; (b) strengthening organizations that includes developing regional general hospitals in remote and raising the quality of inter-commune general clinics in remote and mountainous areas; (c) promoting managerial work including dispatching professional health workers to remote and mountainous regions running short of health workers; (d) developing health-care personnel; (e) consolidating and developing grassroots medical establishments including ensuring that: 100 percent of communes have health-care stations suited to economic, geographical, environmental and ecological conditions, as well as the medical examination and treatment needs in each region; 80 percent of communes have medical doctors with 60 percent of them based in mountainous communes; 80 percent of commune health-care stations have intermediate-level midwives; all health-care stations have assistant pharmacists; 100 percent of villages and hamlets have regularly health-care workers with primary or higher medical training); (f) promoting prophylactic medicine and health improvement work including implement the programme on reproductive health, safe motherhood, basic obstetric care and family planning services; (g) increasing and diversifying medical examination and treatment activities including medical establishments of State and branches of semi-public, private and foreign-invested medical examination and treatment establishments; (h) implementing national policy on medicines to ensure constant and adequate supply of quality medicines and safe rational use of medicines; and (i) socializing medical work including diversification of health care forms to solicit and utilize various investment for health-care services.

Third, the National Strategy on Reproductive Health Care for the 2001-2010 Period (National Strategy on Reproductive Health Care) - pursuant to *the Decision No. 136/2000/QĐ-*

⁵⁷⁰ *Decision No. 35/2001/QĐ-TTĐ dated March 19, 2001 Approving the Strategy for the Protection and Care of the People's Health in the 2001-2010 Period*

⁵⁷¹ Among the other targets are: (a) average life expectancy of 71 years; (b) mortality rate of children aged under 1 years and under 5 years to below 2.5 percent and 3.2 percent respectively for live births; (d) newborn babies weighing under 2,500 g reduced to 6 percent; (e) malnourished children aged under 5 years below 20 percent; (f) average height of adolescents to reach 1.60 m or higher; (g) reduce morbidity and mortality rates of epidemic diseases (including restraining rate of HIV/AIDS infection); and (h) prevent, control and manage non-infectious diseases.

TTG on Approving “National Strategy on Reproductive Health Care for the 2001-2010 Period (Decision on Reproductive Health Care) - states as a goal: “to achieve by the year 2010 a marked improvement in the reproductive health status and narrow the gap between the regions and target groups by better meeting the changing reproductive health needs over the life cycle, and to do so in ways that are sensitive to the diverse circumstances of local communities, with particular attention to disadvantaged areas and target-groups”. It identifies key solutions and policies: (a) strengthen information, education and communication; (b) strengthen organization and human resource development for reproductive health-care service delivery network; (c) refine policies and laws in support; (d) socialization; (e) strengthen training of health personnel in reproductive health care, especially training for grassroots personnel; (f) budgets for reproductive health care; and (g) leadership and management.

Fourth, the National Strategy on Nutrition for the Period 2001-2010 (National Strategy on Nutrition)– pursuant to *the Decision No. 21/2001/QĐ-TTĐ of February 22, 2001 Approving the National Strategy on Nutrition for the Period 2001-2010* - includes among its targets the reduction of malnutrition rate of mothers and children.

Fifth, the Government’s Programme of Action for the Implementation of the Political Bureau’s Resolution No. 46-NQ/TW (Government’s Programme of Action) – pursuant to *the Decision No. 243/2005/QĐ-TTĐ of October 5, 2005 Promulgating the Government’s Programme of Action for the Implementation of the Political Bureau’s Resolution No. 46-NQ/TW of February 23, 2005 on Protection of, Care for and Improvement of the People’s Health in the New Situation* - has specific general health care targets by 2010: (a) two pharmacists of university degree for every 10,000 people; (b) 60 percent of curative medicines domestically manufactured; and (c) common medical equipment and instruments domestically manufactured and satisfying 60 percent of demand.

The Government’s Programme of Action also lists tasks to be accomplished: (a) renewing Viet Nam’s health-care system along the direction of equality, efficiency and development; (b) improving people’s health; and (c) developing human resources. In relation to task (a), the Government’s Programme of Action tasks the building and developing Viet Nam’s health-care system along the direction of intensifying health socialization. The State uniformly manages both public and private medical establishments in terms of professional medical techniques throughout the country from the central level to the grassroots level. It must create conditions to promote the development of private medical establishments. However, the public sector must still be fully capable of satisfying the people’s basic health-care needs. The public sector must continuously assure the equality and efficiency of medical examination and treatment, functional rehabilitation, disease prevention and improvement of the people’s health, and it must ensure development of health consultation centres, the in-house doctors model (in big cities first), and private convalescence homes, attaching importance to the health care of the aged and the disabled. Other tasks specified are to: (i) develop and perfect the network of preventive medicine, in particular to upgrade 100 percent of testing laboratories of provincial preventive medical centres; (ii) set up HIV/AIDS prevention combat and control centres in provinces and centrally run cities; (iii) raise the medical examination and treatment quality, establish new leading specialized hospitals for infectious diseases, dermatology, geriatrics and cardiovascular diseases and (iv) develop grass-roots

health-care networks.⁵⁷² In relation to task (b), it identifies, as priority subjects, mothers, children and elderly people. As to (c), it tasks the: (i) formulating of policies on preferential treatment of medical officials and workers, especially those at the grass-roots level and those working in remote and mountainous regions; and (ii) putting in place plans on personnel transfer, regime of obligatory service in remote and mountainous regions for new graduates of medicine.

Sixth, the Strategy for Youth Development by 2010 – pursuant to the Decision No. 70/2003/QĐ-TTĐ of April 29, 2003 on *the Strategy for Youth Development by 2010* - has Target 5: “Improve health, spiritual life, build the cultural life, suppress social evils and law breaching among youngsters.”

Seventh, the SEDP list as among its main goals the reduction of gender inequality and it cites as one of its specific objectives and expected results ensuring gender equality in health care. In relation to health in general, the SEDP aims to: (a) develop the people’s health-care system; (b) invest in grass-roots medical networks in terms of facilities, equipment and staff; (c) foster the pharmaceutical industry; (d) intensify scientific and technological advances in medicine; (d) focus on preventive, grass-roots and hi-tech medical services and specialized wards; and (e) intensify socialization of medical services.⁵⁷³ There are several references to maternal health, HIV/AIDS, contraception and health care for disadvantaged groups. See discussion in Indicators 86, 87, 88, 91 and 92.

Based on these laws, policies, strategies and plans, the principle of equal access to health care is guaranteed. However, in terms of the actual operationalization of the guarantee, there are several areas that need improvement. First, in the area of infrastructure development and human resources, the following improvements are required:

- building or strengthening health-care centres that specifically focus on health-care concerns of women, including diseases and infections that disproportionately affect them;
- putting in place measures relating to GBV. See Part V.1.3.6. It should be reiterated that it is necessary to ensure conditions of privacy and confidentiality, including drafting of work protocols on them. In many cases, women are hesitant to come forward to discuss particular health issues due to fear of publicity. Hence, putting in place strict protocols to ensure privacy and confidentiality will assist in accessing health-care services;
- ensuring participation of women in leadership positions in the health-care sector. This should be link to the discussion on women’s leadership and participation under Part V.5.3. Suggestions in that section should be incorporated;

⁵⁷² This includes these objectives: (a) by 2010, 100 percent of communes and wards have solidly built health-care stations suitable to their economic, geographical and eco-environmental conditions and local people’s medical examination and treatment demand; and (b) 80 percent of communes have medical doctors (specifically in 100 percent of delta, and 60 percent of mountainous, communes).

⁵⁷³ Results expected are: (a) average life expectancy of 72 years; (b) reduction of mortality of children aged under 1 years and under 5 years to 16 percent and 25 percent respectively; (c) 7.0 doctors and 11.2 pharmacists with university degrees per 10,000 population; (d) 80 percent of medical centres served by doctors; and (e) 100 percent of communal medical centers have sufficient conditions for normal operation.

- ensuring that mobile teams that cater to women have women staff, are gender-sensitive and are trained to address gender and women's health-care needs and concerns;
- training on gender aspects of health care should be mandatory for health professionals;
- strengthening the institutionalization of professional social work in health care. In relation to this, see suggestions on social work in Part V.1.3.6.

Second, in relation to health-care budgets, it is suggested that gender-responsive budgeting be implemented to monitor the extent of allocation and cost provided to gender and women's concerns. In relation to socialization and increasing privatization of the health-care sector, several research and monitoring initiatives must be initiated. In particular, there is a need to research and monitor continuously the impact of socialization and privatization in relation to access to health-care services by women, ethnic minorities, the poor and other disadvantaged groups. The impact on the women within disadvantaged groups must also be evaluated. Sex-disaggregated data and gender analysis is critical in this research and monitoring work.

Recommendations: There is a need to supplement legal and policy documents with several measures, such as: (a) building or strengthening of health-care centres that specifically focus on health-care concerns of women, including diseases and infections that disproportionately affect them. On this note, putting in place targets for the incorporation of such specialized health-care centres into the health-care infrastructure from central to local levels is suggested; (b) putting in place measures relating to GBV. See Part V.1.3.6. Additionally, it is suggested that women's protection units be established in hospitals to cater specifically to victims of GBV and ensure immediate to the victim's medical needs; (c) putting in place targets for women's participation in leadership positions in the health-care sector. See recommendations under Part V.5.3 for details; (d) ensuring that mobile teams that cater to women have a substantial proportion of women staff, are gender-sensitive and are trained to address gender and women's health-care needs and concerns; (e) training on gender aspects of health care should be mandatory for health professionals; (f) strengthening institutionalization of professional social work in health care as per recommendations in Part V.1.3.6. In all these recommendations, special attention and mention must be made on prioritizing ethnic minority women and women from remote and mountainous regions, who have been clearly disadvantaged in their right to access health care.

Legal provisions should also be in place relating to gender-responsive budgeting. At the minimum, information must be made available to the extent of allocation and cost provided to gender and women's concerns. In relation to socialization and increasing privatization of the health-care sector, research and monitoring initiatives must be initiated. In particular, there is a need to research and monitor continuously the impact of socialization and privatization in relation to access to health-care services by women, ethnic minorities, the poor and other disadvantaged groups, especially women in these groups. Measures to collect sex-disaggregated data and enable gender analysis of such data must be in place.

Indicator 86 Are there measures in place to provide financial assistance on health care for poor women and other disadvantaged groups, such as women with disabilities and ethnic minority women?

Health care in Viet Nam is financed by: (a) government budget allocation; (b) out-of-pocket payments; and (c) prepayment schemes or health insurance.⁵⁷⁴ **On government budget allocation**, in addition to discussions in Indicator 85, in Viet Nam, the percentage of public/private health expenditure is 20 percent and 80 percent respectively of total health care expenditure.⁵⁷⁵ This is low compared to other countries in the region.⁵⁷⁶ **Out-of-pocket payments** are by far the most important source of financing, which includes formal user fees.⁵⁷⁷ These are fees paid directly by patients when they seek treatment including consultations and medicines. User fees remain a major source of health-care financing; and, in many ways, they undermine equality of access to health care, most especially those who cannot afford them.⁵⁷⁸ **The prepayment schemes** include compulsory insurance coverage of active and retired workers in the public sector and salaried workers in the private sector. Coverage of the private sector is low, with only 13 percent of private sector employees covered in 1997. Voluntary **health insurance**, like health insurance for schoolchildren and farmers, also exists.⁵⁷⁹ The Resolution on Socialization targets by 2010 the universalization of medical insurance.

To reduce the inequalities caused by user fees, the Government introduced a policy of exempting certain individuals from treatment fees, including war veterans, people with disabilities, orphans, ethnic minorities, the poor, children aged less than six years, and individuals with particular illnesses.⁵⁸⁰ This policy may be found in relevant legal documents, such the: (a) Decision No.139/2002/QĐ-TTĐ of October 15, 2002 on the Purchase of Health Insurance Care Funds for the Poor (Decision on Health Insurance) on the purchase of health insurance cards or direct payment for medical examination and treatment and establishment of the Health Care Fund for the Poor, which covers the poor, residents of communities with difficult socio-economic circumstances, and ethnic minorities in disadvantaged provinces; (b) Ordinance on Elderly People, which states that elderly people who do not have any support or are without any income sources are entitled to free medical examination and treatment.⁵⁸¹ Elderly people who are aged 100 years or older will be granted health insurance cards free of charge; (c) Ordinance on Disabled Persons, which provides that persons with serious disabilities and with no income or support or are poor are entitled to free medical examination and treatment.⁵⁸² Persons with disabilities who are poor are also entitled to be supplied free-of-charge, or part of the costs, ordinary aids for functional rehabilitation;⁵⁸³ (d) Law on Children,

⁵⁷⁴ United Nations Development Programme, 'Health Care Financing for Viet Nam. Ha Noi', Discussion Paper No. 2, United Nations Development Programme, Ha Noi, June 2003 (UN Discussion Paper No. 2), p. i

⁵⁷⁵ Ibid., p. 7

⁵⁷⁶ Ibid.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid., pp. 6 and 8

⁵⁷⁹ Ibid., pp. 6-9

⁵⁸⁰ United Nations Country Team Viet Nam, 'User Fees, Financial Autonomy and Access to Social Services in Viet Nam'. Discussion Paper No. 6., Ha Noi, August 2005 (UN Discussion Paper No. 6), pp. 13-14

⁵⁸¹ Ordinance on Elderly People, Article 12

⁵⁸² Ordinance on Disabled Persons, Article 10

⁵⁸³ Ibid., Article 11

which provides that children aged less than six years are entitled to no-cost primary health care, including free medical examinations and treatment, at public medical establishments.⁵⁸⁴ The Decree on Children Law provides that: (i) children aged less than 6 years will be granted medical examination and treatment cards for free medical examination and treatment at public medical establishments; (ii) in cases where the medical examination and treatment cards have not yet been granted, the birth certificate can be presented; (iii) it is mandatory for public establishments to receive and provide medical examination and treatment for children aged less than six years.⁵⁸⁵ Nevertheless, there is some evidence, though, that health-care providers discriminate against people who have free insurance cards.⁵⁸⁶

This should be viewed in the context of *the Decree No. 10/2002/ND-CP of January 16, 2002 on Financial Regime Applicable to Public-Service Units with Revenues* (Decree on Financial Regime), which grants powers to revenue-raising public agencies, including government health facilities, to manage the revenue and expenditure accounts and to exploit alternative revenue sources and its detailing circular.⁵⁸⁷ The Decree on Financial Regime also reflects the Government policy to spend less on public services to shift the burden to the consumer.⁵⁸⁸ This resulted in a number of practices that hinder access to health care, especially by the poor, such as ‘patient skimming’ where hospitals pay more attention to patients who are easy and profitable to treat, which results in the very sick and the poor being referred elsewhere.⁵⁸⁹

In view of the way that health-care is being financed in Viet Nam, it is obvious that, without appropriate safeguards in place, access to it by the poor and ethnic minorities in remote and mountainous regions will be severely affected. In most cases, women will suffer disproportionately. It is suggested that more research be conducted in this area, especially into the impact of the Decree on Financial Regime and Decision on Health Insurance on women, to enable legislative reform to improve gender equality.

Recommendations: The impact of legal documents, in particular the Decree on Financial Regime and Decision on Health Insurance, must be further looked into, especially their effects on the disadvantaged sectors of society and revised accordingly. Data must be sex-disaggregated to enable an analysis of the gender issues and impacts. To ensure that appropriate standard of care is given to patients regardless of their gender and economic status, protocols on appropriate treatment and handling of patients must be drafted. Legal provisions that clearly prohibit and penalize direct and indirect forms of discrimination against disadvantaged groups in the field of access to health care, including those with health insurance cards, must be stipulated. These include: (a) patient skimming; (b) referrals when treatment and care can be reasonably provided by the health-care establishment; (c) refusal of treatment when able to do so; and (d) providing less than the minimum standard of care.

⁵⁸⁴ Law on Children, Article 15

⁵⁸⁵ Decree on Children Law, Articles 18(3)(a), 18(4)(a) and 18(4)(b)

⁵⁸⁶ UN Discussion Paper No. 6, p. 8

⁵⁸⁷ Circular No. 25/2002/TT-BTC of March 21, 2002 on guiding the implementation of the Government's Decree No. 10/2002/ND-CP of January 16, 2002 on Financial Regime Application to Public service units with Revenues

⁵⁸⁸ UN Discussion Paper No. 2, p. 12

⁵⁸⁹ UN Discussion Paper No. 6

Indicator 87 Is there legislation ensuring access by women to appropriate health-care services relating to pregnancy and maternity?

In the last five years, the use of prenatal health-care services has increased. The proportion of women receiving three or more prenatal examinations was 83.8 percent in 2003.⁵⁹⁰ The percentage of women who received prenatal services from a doctor, nurse or midwife increased from 71.0 percent in 1995-1997 to 86.0 percent in 2000-2002.⁵⁹¹ By 31 December 2003, 93.2 percent of ward clinics had midwives and obstetric-pediatric assistant doctors.⁵⁹²

Nevertheless, women from remote and mountainous regions still do not receive adequate maternal health care due to cost, distance to health-care centres and traditional birth practices.⁵⁹³ The Viet Nam Demographic and Health Survey of 2002 (VDHS) indicates that the percentage of women consulting trained medical staff for prenatal care is higher in urban (96 percent) than rural areas (84 percent). Prenatal care is highest in the Red River Delta (98 percent). An estimated 25 percent of mothers in the Central Highlands and Northern Mountains received no prenatal services. Also, urban women receive care from doctors much more frequently than rural women.

As to giving birth, the percentage of women giving birth with medical worker assistance has increased continuously from 91.4 percent in 2000, to 92.1 percent in 2001, to 93.8 percent in 2002, and to 95.8 percent in 2003.⁵⁹⁴ However the VNHS in 2001-2002, reported that 17 percent of all Vietnamese women gave birth at home without a trained health-care worker present at delivery. The main reasons for not giving birth at a health facility are: insufficient time to get to a health facility (34 percent); no need to go (20 percent); distance (11 percent) or too expensive (9 percent). Poor women, women from ethnic minorities and women living in remote and mountainous regions have lower percentages in this area. Around 63 percent of the Northern Mountain, and 75 percent of the Central Region, ethnic groups give birth at home without the assistance of a trained health-care worker, compared to only 8 percent of Chinese and Kinh women. Women in the poorest living standard group (44 percent) are far more likely to give birth at home without trained help compared to women in the highest living standard group (only 1 percent). Women living in areas like the North West (65 percent) and Central Highlands (40 percent) are also much more likely to give birth at home without trained help compared to women in areas like the Red River Delta (2 percent).

The average maternal mortality ratio in Viet Nam is 130 deaths per 100,000 live births.⁵⁹⁵ The rates vary considerably across regions, with the Red River Delta and South East posting 46 deaths per 100,000 live births, while the Central Coast and Northern Mountains post 199 and 411 deaths per 100,000 live births respectively.⁵⁹⁶ As prenatal care and births under

⁵⁹⁰ GSO Statistics, p. 62

⁵⁹¹ Wells, op. cit., p. 40;

⁵⁹² Combined Fifth and Sixth Periodic Report, p. 37

⁵⁹³ Wells, op. cit., p. 40

⁵⁹⁴ Ibid.

⁵⁹⁵ United Nations Population Fund, 'The State of the World Population. The Cairo Consensus at Ten: Population, Reproductive Health and The Global Effort to End Poverty', United Nations Population Fund, New York, 2004 (UNFPA Report)

⁵⁹⁶ Wells, op. cit., p. 7

medical supervision can reduce the risk of complications and infections causing death or serious illness of the mother and/or newborn baby, the region with the highest rate of births at home without trained help, the North West also has the highest infant and maternal mortality rates.⁵⁹⁷

There are a substantial number of laws, policies, strategies and plans in place relating to pregnancy and maternity:

- Article 41 of the Constitution provides: “It is the responsibility of the State, society, the family and the citizen to ensure care and protection for mothers and children, to carry into effect the population programme and family planning.”;
- Article 44 of the Law on Health provides that women have the right to gynecological care, prenatal care and medical service at health-care units during delivery. It also states that MOH is obligated to expand the network of gyno-obstetric and childcare facilities to the grassroots level to ensure health care for women;
- Article 17(3) of the Law on Gender Equality states that poor women residing in remote and mountainous regions and being ethnic minorities, excluding those who pay compulsory social insurance, when giving birth to a child must be supported by the Government;
- Objective 3 of the Plan of Action for the Advancement of Women is the improvement of women’s health. Among the indicators for it are to: (a) increase the proportion of pregnant women receiving three medical check-ups during their pregnancy to 60 percent. At least 90 percent of pregnant women will have check-ups before giving birth; (b) reduce the maternal mortality rate to 60 deaths per 100,000 live births by 2010; (c) strive for 100 percent health-care centres with female midwives and 80 percent of health-care centres with doctors; and (d) ensure 95 percent of health-care centres are able to provide medicines and equipment for safe motherhood and safe pregnancy. Measures taken include increasing the implementation of necessary obstetrical health care and safe motherhood, and ensuring clean and safe delivery;
- The National Strategy on Reproductive Health Care states as a goal: “to achieve by the year 2010 a marked improvement in the reproductive health status and narrow the gap between the regions and target groups by better meeting the changing reproductive health needs over the life cycle, and to do so in ways that are sensitive to the diverse circumstances of local communities, with particular attention to disadvantaged areas and target-groups.” One objective is: “To improve the health status of women and mothers; to obtain a more even reduction in maternal mortality and morbidity, perinatal deaths and infant mortality among different regions and target-groups, with special attention to disadvantaged areas and to beneficiaries of government policies.”;
- The National Strategy on Nutrition has five objectives with corresponding targets, including to: (a) reduce the malnutrition rate of children and mothers. Targets include

⁵⁹⁷ Ibid., p. 41

reducing the rate of newborn babies weighing less than 2,500 grams to 7 percent by 2005 and 6 percent by 2010; and (b) eliminate the status of Vitamin A and iodine deficiency and to reduce substantially the nutrition related anemia. Targets include reducing the rate of iron deficiency anemia among pregnant women in all regions where the program is executed to 30 percent by 2005 and 25 percent by 2010. There are also several provisions on increasing the knowledge of mothers to ensure that good nutrition of the families. Some major solutions and policies specific to women in the 'National Strategy on Nutrition' are: (a) preventing and combating protein-energy malnutrition among mothers and children; and (b) improving infrastructure and essential services for the care of mothers and children;

- one of the VDGs is the improvement of maternal health. It aims to reduce maternal mortality to 70 deaths per 100,000 live births by 2010 with special attention to remote and mountainous regions;
- the CPGRS also aims to reduce the maternal mortality rate to 80 per 100,000 live births by 2005 and to 70 per 100,000 live births in the whole country by 2010. Indicators are the maternal mortality rate and skilled attendants at delivery;
- the SEDP also seeks to reduce maternal mortality to 70 deaths per 100,000 live births by 2010, paying special attention to difficult areas and improve mother's postpartum health;

There are also provisions on childbirth by scientific methods. *The Decree No. 12/2003/ND-CP of February 12, 2003 on Childbirth by Scientific Methods* (Decree on Childbirth) provides that infertile couples and single women are entitled to give birth to children by reproduction-supporting techniques on the prescription of specialized doctors.⁵⁹⁸ Article 6 of the Decree on Childbirth prohibits surrogacy. However, it provides no definition for it. Article 10 of the decree lays down the tasks of medical officials to: (a) consider the psychological states of the sperm and ovum donors and recipients; (b) give full advice on risks that may occur in the process of taking sperms or ova; (c) check the health of, and do all tests for, sperm donors and recipients, ovum donors and recipients, as well as embryo donors and recipients; (d) acknowledge all parameters on the quality of the donor's sperms or ova; (e) strictly observe the process of reproduction-supporting techniques, as provided by MOH; and (f) keep secret all information on the names, ages, addresses and images of sperm as well as ovum donors and recipients.

GR 25 in Paragraph 12 requires equality between not only men and women, but also among the various groups of women. In the field of maternal health care, there is a glaring disparity that disadvantages women in rural areas and remote and mountainous regions, and ethnic minority women. In particular, there is an urgent need to bridge the wide gap in access to health-care services on pregnancy and maternity by women in rural areas and remote and mountainous regions, and ethnic minority women. In this regard, a legal document that specifies the health-care needs of these regions and women is important to provide the necessary emphasis and guidance.

⁵⁹⁸ Decree on Childbirth, Article 4

Recommendations: *It is suggested that a legal document focus particularly on access to health, most especially maternal health care of women in rural areas, and remote and mountainous regions, and ethnic minority women. It must include: (a) intensifying the work on establishing outreach health-care services, including mobile teams; (b) targeting infrastructure development, especially more accessible maternity and women's health-care centres for these regions and women; (c) designating a specific office to advise and provide technical skills on providing health-care services for these regions and women; and (d) monitoring and evaluating interventions consistently. In relation to information dissemination activities, it should target both men and women. In all cases, knowledge and behavior change in women must be completed by knowledge and behavioral change in men as well.*

In relation to the National Strategy on Nutrition, although it targets mothers to seek to raise nutrition of, and eradicate malnutrition in, the family, it should always consider that the State policy is that child-rearing is a shared responsibility. Therefore, fathers should also be equipped with knowledge and skills on nutrition - bearing in mind that it is mothers who usually entrusted with family care and nutrition - this will then include situations of families where the primary care is provided by the father; for example, where the mother has passed away. It has been emphasized repeatedly by GR 24 that health-care interventions must have a life cycle approach.⁵⁹⁹ Hence, emphasis must also be placed on ensuring the right to proper nutrition for girls, especially as one of the ways to ensure safe pregnancy and motherhood is to ensure that proper nutrition is provided at the earliest possible stage.

Recommendation: *Strategies on nutrition in particular those referring to ensuring family and child nutrition should include fathers, without losing sight of the fact that it is mothers who are entrusted with family care and nutrition.*

In relation to the Decree on Childbirth, it is suggested that a definition of 'surrogacy' be provided. This will ensure that there is sufficient notice on the conduct that is prohibited. Also, the Decree on Childbirth must provide that no de facto discrimination occurs in relation to single women, whether unmarried, divorced or widowed, wanting childbirth by scientific methods on account of such status.

Recommendations: *A definition of 'surrogacy' must be provided in the Decree on Childbirth or its supplementary documents. Clear provisions must be stipulated on prohibiting discrimination against single women, whether unmarried, divorced or widowed, who want childbirth by scientific methods on account of such status.*

Indicator 88 Is there legislation addressing women living with HIV/AIDS and other STIs?

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In 2006, it was reported that there have been 109,989 HIV-infection cases nationwide, of which AIDS cases amount to 18,581.⁶⁰⁰ Deaths resulting from AIDS amounted to 10,785 up to then. The percentage of women is 15.21 percent, and the percentage of men is 84.79

⁵⁹⁹ GR 24, Paragraphs 2, 7 and 8

⁶⁰⁰ Responses to Combined Fifth and Sixth Periodic Report, p. 20

percent, of people living with HIV. Women and men living with AIDS amount to 16.23 percent and 83.87 percent respectively. Deaths from AIDS up to 2006 was 15.12 percent women and 84.88 percent men. It is estimated that 2.54 percent of HIV-infection cases are female commercial sex workers. Mother-to-Child Transmission (MTCT) accounts for 1.08 percent of HIV-infection cases.

A higher figure of people living with HIV/AIDS was posted by MOH; that is, in 2003 there were 215,000 people living with HIV/AIDS.⁶⁰¹ However, the MOH figure is consistent with the previous figure in terms of the number men greatly outnumbering women living with HIV/AIDS by a ration of 2.3 men to 1.0 women in 2003. It is surmised that, due to under-reporting and incomplete surveillance methods, the actual number of HIV infections is likely to be much higher.

The main form of HIV transmission is among injecting drug users.⁶⁰² The proportion of reported people living with HIV due to sexual transmission is low. It is expected that sexual contact will become the dominant mode of HIV transmission in Viet Nam in the coming years, particularly as the use of condoms is not common. Of note is the prevalence of HIV/AIDS among pregnant females seeking prenatal care, especially in the 15-24 age group. HIV/AIDS infection rates among pregnant women attending antenatal clinics increased by more than 10 times in seven years, from 0.03 percent in 1995 to 0.39 percent in 2002. Areas on concern, especially for women, include the: (a) general inability of women to negotiate safe sex thus increasing the risk of infection; (b) increasing women's burden as primary carers of people living with HIV/AIDS; and (c) risk of infection from MTCT, which has implications for maternal and child health care. The social stigma attached to HIV/AIDS exacerbates the situation of people living with it and their carers.⁶⁰³

Several laws address HIV/AIDS. The Law on Gender Equality provides: "Man and woman are equal in choosing and deciding on contraceptive measures for safe sex and for preventing and protecting against HIV/AIDS and other sexually transmitted diseases."⁶⁰⁴ Article 117 of the Penal Code penalizes those who know that they are infected with HIV and intentionally spread the disease to other persons with one to three years imprisonment. Article 118 of the Penal Code punishes those other than Article 117 who spread the disease. Article 29 of the Law on Health provides that health-care establishments must provide medical treatment for people living with AIDS or STIs, which constitute a public health risk. The Resolution on Work for Women stated that special attention should be given to the areas of population, family planning, health care, prevention and fight against diseases and HIV/AIDS.

The basic law on HIV/AIDS is the Law on HIV/AIDS, which provides as follows.

Elimination of stigma and discrimination

Article 3 of the Law on HIV/AIDS states as principles the: (a) elimination of stigma and discrimination against people living with HIV and their family members; and (b) facilitation of people living with HIV and their family members to participate in social activities, especially in HIV/AIDS prevention and control.

⁶⁰¹ Wells, op. cit., p. 42

⁶⁰² Ibid.

⁶⁰³ Ibid, p. 34

⁶⁰⁴ Law on Gender Equality, Article 17(2)

Rights of people living with HIV

Article 4 of the Law on HIV/AIDS enumerates the rights of people living with HIV including : (a) the right to live in integration with the community and society; (b) the right to enjoy medical treatment and health care; (c) the right to have general education, learn jobs and work; (d) the right to privacy related to HIV/AIDS; (e) the right to refuse medical examination and treatment when having treatment for AIDS; and (f) other rights as provided for by the Law on HIV/AIDS and other related laws. Article 4(a) of the law seeks to ensure that people living with HIV/AIDS are free from stigma and discrimination.

State policies

Article 6 of the Law on HIV/AIDS provides for the State policies on HIV/AIDS prevention and control, which include prevention and control of MTCT, rearing of babies aged less than six months born to mothers living with HIV with substitute milk, and support for people living with AIDS in particularly difficult circumstances.

Prohibited acts

Article 8 of the Law on HIV/AIDS list prohibited acts which include: (a) purposefully transmitting, causing the transmission of, or threatening to transmit, HIV to another person; (b) stigmatizing and discriminating against people living with HIV; (c) abandoning minor children living with HIV by parents or guardians; (d) publicizing the name, address and image of a person living with HIV, or disclosing information that a person is living with HIV to another, without consent of the person; (d) falsely reporting that a person is living with HIV; (e) forcing HIV testing; and (f) refusing to provide medical examination or treatment to a person knowing or suspecting that the person is living with HIV.

Information, education and communication

Article 9 of the Law on HIV/AIDS states that information, education and communication on HIV/AIDS prevention and control will aim at raising awareness, changing attitude and behavior, and fighting stigmatization and discrimination against people living with HIV. It also states that the information, education and communication must: (a) be accurate, clear, simple, practical and relevant; (b) take into account the education level, age, gender and traditions, culture, ethnic identity, religion, social morals, beliefs and customs of the targeted audience; and (c) be non-discriminatory, respect gender equality, and not use negative information on or images of people living with HIV.

Article 11 of the Law on HIV/AIDS provides that everyone has the right to have access to information, education and communication on HIV/AIDS prevention and control. Priority in this area must be given to: (a) people living with HIV and their family members; (b) drug users; (c) commercial sex workers; (d) people who have STIs; (e) homosexual people; (f) mobile population groups; (g) pregnant women; (h) people living in remote and mountainous regions or areas with particularly difficult socio-economic conditions.

Family and HIV/AIDS

Article 13 of the Law on HIV/AIDS states that voluntary HIV testing is encouraged for those who are getting married or having a baby and for pregnant women. It also provides that families of people living with HIV must be responsible for rearing, caring and providing moral support to people living with HIV.

HIV/AIDS and the workplace

Article 14 of the Law on HIV/AIDS enumerates the responsibilities of the employer including: (a) organizing propaganda and education on HIV/AIDS prevention and control measures; (b) ensuring no stigmatization and discrimination against people living with HIV in the workplace; (c) arranging jobs suitable to the health and professional qualification of labourers living with HIV; and (d) facilitating employee participation in HIV/AIDS prevention and control activities.

Article 14 also prohibits: (a) terminating or causing difficulties to an employee living with HIV; (b) forcing an employee living with HIV to change jobs; (c) refusing to give a salary raise, promote an employee, ensure his/her legitimate rights or benefits on the ground that such person is living with HIV; and (d) request a job applicant to have an HIV test or refuse to recruit a person on the ground that such person is living with HIV.

HIV/AIDS and educational establishments

Article 15 of the Law on HIV/AIDS states that educational establishments are responsible for organizing education for students and learners on HIV/AIDS prevention and control integrated with sex and reproductive health education, and for conducting other HIV/AIDS prevention and control activities at their establishments. Education establishments are not allowed to refuse admission, discipline or expel, or separate, limit or forbid, students from participating on the ground that they are living with HIV. They also cannot request a student, learner or a candidate to have an HIV test.

Another important legal document is the Decree on Health Violations that provides sanctions for administrative violations. The following violation of regulations on HIV/AIDS prevention and combat are punished by a fines of VND 2 million to VND 5 million: (a) disclosing testing secrets or results without permission; (b) violating regulations on keeping secret the names, ages, addresses and images of people living with HIV; (c) publishing on mass media names, ages, addresses and images of people living with HIV without their consent; and (d) refusing to give medical treatment to people living with HIV. The following acts are also punishable: (a) notifying positive HIV test results to persons other than the patient; (b) relying on test results to recruit labour or enrol trainees; (c) failing to supply or disseminate information on HIV control and prevention to labourers; and (d) dismissing labourers or expelling pupils of students for reasons of living with HIV.

The Directive No. 02/2003/CT-TTG of February 24, 2003 by the Prime Minister on Strengthening Prevention and Combating of HIV/AIDS (Directive on HIV/AIDS) provides instruction to particular ministries on the prevention and combat of HIV/AIDS: (a) MCI has the main responsibility on information, education and communication tasks on prevention and combating of HIV/AIDS, such as to provide guidance for community awareness to ensure understanding and non-discrimination towards people living with HIV/AIDS; (b) MPS will conduct studies and develop mechanisms for management of children, commercial sex workers, drug abusers living with HIV/AIDS who are now kept in re-educational centres, jails or detention centres. It will also develop plans and organize effective preventive measures to reduce the spread of HIV/AIDS from high risk groups to the community; (c) MOLISA will conduct studies and develop mechanisms for community-based management, care and education of children, sex workers and drug abusers infected with HIV/AIDS; and (d) MOH will focus on treatment and prevention of MTCT.

In addition to the laws, decrees and directives, there are several plans and strategies on HIV/AIDS. Primarily there is the National Strategy on HIV/AIDS Prevention and Control in Viet Nam until 2010 with a Vision to 2020 (National Strategy on HIV/AIDS) *pursuant to the Decision No. 36/2004/QĐ-TTĐ of March 17, 2004 Approving the National Strategy on HIV/AIDS Prevention and Control in Viet Nam till 2010 with a vision to 2020*. Among its specific objectives is one that particularly pertains to women: that is, to ensure appropriate care and treatment for people living with HIV/AIDS, including 100 percent of pregnant mothers living with HIV/AIDS. Care, treatment and counselling are also provided to 90 percent of adults living with HIV/AIDS, 100 percent of children living with or affected by HIV/AIDS, and 70 percent of people living with AIDS. Other objectives that are phrased in a gender-neutral manner in the National Strategy on HIV/AIDS are: (a) 100 percent of units and localities across the country will incorporate HIV/AIDS prevention and control activities into their social-economic development programmes; (b) 100 percent of people living in urban areas and 80 percent of people living in rural and mountainous areas will correctly understand and identify ways of preventing HIV/AIDS transmission; (c) control HIV/AIDS transmission from high-risk groups, including 100 percent safe injections and condom use when having risky sex; (d) perfect the management, monitoring, surveillance and evaluation systems for the HIV/AIDS prevention and control programme, including 100 percent of HIV testing will be compliant with the regulations on voluntary testing and counselling; and (e) prevent HIV/AIDS transmission through medical services.

Among the social solutions suggested in the National Strategy on HIV/AIDS are to improve knowledge and ensure the role and equal rights of women so that they can actively participate in HIV/AIDS prevention and control, including exchanging experiences and life skills. Some of the technical solutions in the strategy are stepping up the treatment of people living with HIV/AIDS; for example, by ensuring treatment for 100 percent pregnant women living with HIV and gradually increasing the number of people living with HIV/AIDS who receive treatment each year. It also includes prevention of MTCT by: (a) raising the awareness of women in reproductive age of the risk of HIV transmission and the possibility of MTCT; (b) raising the capacity of the system engaged in preventing MTCT, inter alia, setting up a network of HIV-testing and counselling at all levels, providing counselling and social support for pregnant women and 'women in difficult circumstances' who are living with HIV/AIDS, organizing training and retraining courses for staff working on prevention of MTCT, supplying equipment for obstetric/gynecology hospitals to diagnose HIV infection, supplying adequate prophylactic medicines, and providing counselling and support of substitute milk for newborns of mothers living with HIV; and (c) intensifying activities to early prevent MTCT, including encouraging safe sexual behavior especially for women in reproductive age to promote the use and facilitate the access to condoms, encouraging HIV testing before marriage and delivery for counselling, providing sufficient information on MTCT and preventive methods for pregnant women, implementing early management of pregnancy to detect the risk of MTCT and providing early treatment, detecting and treating STIs early for women in reproductive age, providing treatment to prevent MTCT during labour, and applying measures to prevent MTCT during delivery.

Other plans and strategies also address HIV/AIDS. First, the Plan of Action for the Advancement of Women has as one of its main objectives the improvement of women's health. One of its indicators is to control the number of pregnant women living with HIV/AIDS

to 0.5 percent. Measures relating to HIV/AIDS specifically include: (a) periodically collecting statistics and publishing data on women living with HIV/AIDS, including pregnant women; (b) implementing effective measures to decrease the proportion of women living with HIV/AIDS; (c) promoting Information and Education Communication (IEC) to increase awareness on preventing and combating HIV/AIDS and STIs; (d) expanding education and counselling services for groups of people living with HIV/AIDS to increase their responsibility in preventing the spread of the disease; (e) organizing voluntary testing programmes in high risk areas; and (f) incorporating counselling services into health, family planning, health care and protection programmes for women and children.

Second, the National Strategy on Reproductive Health Care provides a more comprehensive approach by addressing reproductive health. Its goal is “to achieve by the year 2010 a marked improvement in the reproductive health status and narrow the gap between the regions and target groups by better meeting the changing reproductive health needs over the life cycle, and to do so in ways that are sensitive to the diverse circumstances of local communities, with particular attention to disadvantaged areas and target-groups.” The strategy cites as an objective effective prevention to reduce incidences STIs including HIV. Other objectives include to: (a) create a change in perception, as well as support and commitment, to the attainment of the objectives and elements of reproductive health care among people of all strata, first of all among senior officials at all levels; (b) ensure the rights of women and couples to have children and select contraceptive methods of good quality; (c) improve the reproductive health status, including sexual health, of adolescents through education, counselling and provision of services suited to different age groups; (d) improve the knowledge of men and women about sexual relations and sexuality to exercise fully their rights and responsibilities towards fertility; and (e) promote safe and responsible sexual relations on the basis of equality and mutual respect to improve reproductive health and the quality of life.

Third, the CPGRS also looks into reproductive health and HIV/AIDS. It targets the slow rate of HIV/AIDS transmission. Its indicator being the proportion of people aged 15-19 years and children living with HIV/AIDS.

Fourth, the SEDP also puts up as one of its targets the prevention of HIV/AIDS and seeks to reduce the infection rate by 50 percent by 2010.

The political will of the State to prevent and combat HIV/AIDS is evident in the number of legal documents, strategies and plans that address the matter. Evident as well is the multi-sectoral approach that the State is taking in addressing the issue.

In relation to discrimination, non-stigmatization and non-discrimination of persons living with HIV/AIDS are already prohibited by the Law on HIV/AIDS.⁶⁰⁵ However, equal preventive, care and treatment interventions must be provided regardless of gender, nationality, social, economic and other status.

Also, protocols for handling of cases of HIV/AIDS must be clearly drafted to enable appropriate guidelines for those who handle, or are confronted with, HIV/AIDS cases; for

⁶⁰⁵ Law on HIV/AIDS, Article 8(3)

example, protocols for health and medical workers, police officers, mass media, employers, heads of educational institutions and teachers. These protocols must guarantee confidentiality and privacy. Although Article 5 of the Law on HIV/AIDS and Article 14 of the Decree on Health Violations already penalize disclosure of HIV test results or leaking names, ages or addresses without the consent of the person living with HIV, the guarantee of confidentiality and privacy must be extended to all identifying information. Further, the protocols must contain instructions on how to deal with people living with HIV in an appropriate manner to ensure that no discrimination or stigmatization occurs. The law must also clearly provide that identifying information must be kept confidential during proceedings, whether administrative or judicial. This will enable people living with HIV to question discriminatory practices without fear of being exposed. It is important to note that, in many cases, ensuring privacy and confidentiality benefits women as they are more likely to be afraid to seek medical treatment on infections of this nature.

It has also been pointed out that the burden of care work falls on women. Proposals for care of people living with HIV/AIDS must bear this in mind. In this regard, there is a need to set up or strengthen health-care centres for people living with HIV/AIDS. Where, home care and treatment is preferred, appropriate support and resources must be provided not only to the person living with HIV/AIDS but also to the carer; for example, job placement that allows for work at home or flexible hours to enable the balancing of work and care.

Increased monitoring of the progress of the strategies and plans is necessary to ensure that targets are met. In monitoring progress, indicators must be at all times be sex-disaggregated and gender analysis of the results must be done.

In relation to awareness-raising, information and education initiatives to highly vulnerable groups and the general public, gender and rights must be incorporated in the content of these initiatives. Issues and challenges due to gender relations, in particular gender discriminatory cultural practices and patterns of conduct that inhibit prevention and control of HIV, such as inability to negotiate safe sex by women, refusal to use condoms by men to show masculinity, or exploitation of prostitution must be discussed as well.

Recommendations: The Law on HIV/AIDS must also explicitly provide that equal preventive, care and treatment interventions must be provided to people living with HIV/AIDS regardless of gender, nationality, social, economic, and other status.

In relation to confidentiality and privacy, the Law on HIV/AIDS and Decree on Health Violations must clearly provide that the guarantee of confidentiality and privacy extend to all identifying information and this must be reflected in the protocols suggested below. The law and decree must also clearly provide that identifying information must be kept confidential during proceedings, whether administrative or judicial, and whether it is within the employment, education or other setting.

Protocols for handling of cases of HIV/AIDS must be drafted for health and medical workers, police officers, mass media, employers, heads of educational institutions and teachers. The protocols must contain step by step instructions on how to deal with people living with HIV in an appropriate manner so ensure that no discrimination or stigmatization occurs.

The Law on HIV/AIDS must also look after the carers of people living with HIV/AIDS, many of them women. Appropriate support and resources must be provided to the carers according to the situation; for example, job placement that allows for work at home or flexible hours to enable the balancing of work and care.

Additionally, the Law on HIV/AIDS must provide that strategies and plans when monitoring progress must at all times require sex-disaggregated data and gender analysis of the results. Also, it must explicitly emphasize that awareness-raising, information and education initiatives to highly vulnerable groups and the general public must have as one of its contents gender equality. Issues and challenges due to gender relations, especially gender discriminatory cultural practices and patterns of conduct that inhibit prevention and control of HIV/AIDS, must be discussed. A list of these gender-discriminatory practices should be prepared to guide the IEC interventions.

Indicator 89 Is abortion prohibited?

Indicator 90 Are sex-selective abortion and prenatal sex selection prohibited?

Although there is still a need for complete and consistent data on abortions in Viet Nam, it is generally accepted that abortion rates are high.⁶⁰⁶ The VNHS indicates that 20 percent of pregnancies among married women aged 15-49 years were ended by 'induced abortion' or 'menstrual regulation'.⁶⁰⁷ This data does not include unmarried women who undergo abortions. MOH data estimates a higher figure, with 46 percent of the total pregnancies terminated.⁶⁰⁸ Rates of abortion in urban areas are higher than in rural areas.

The high rates of abortion reflects a combination of factors including: (a) gender expectations that women are responsible for ensuring family planning; (b) the supply and range of methods for contraception is limited; (c) family planning providers and clients receive monetary incentives to perform abortion/menstrual regulations, IUD insertions and sterilizations, but they are not equally encouraged to offer other methods; (d) premarital sex is not encouraged by society, so young or unmarried people are hesitant to ask for contraceptives and count on abortion to terminate pregnancy when it occurs.⁶⁰⁹

Abortion among adolescents is believed to be high.⁶¹⁰ The lack of reliable data on abortions for unmarried women shows the reluctance of young and unmarried youth to discuss sexual activity.⁶¹¹ It was reported that, although sex education was provided in schools by biology teachers, they treated the issue with great embarrassment and did not provide any useful information to students.⁶¹²

⁶⁰⁶ Wells, op. cit., p. 38

⁶⁰⁷ Ibid. citing the VNHS

⁶⁰⁸ Ibid. citing the MOH data

⁶⁰⁹ Long, Lynellyn, Le Ngoc Hung, Allison Truitt, Le Thi Phuong Mai and Dang Nguyen Anh, 'Changing Gender Relations in Viet Nam's Post Doi Moi Era', Policy Research Report on Gender and Development, Working Paper Series No. 14, The World Bank Development Research Group/Poverty Reduction and Economic Management Network, June 2000 (Long, et al.), pp. 22-23

⁶¹⁰ Kabeer et al., op. cit., p. 27

⁶¹¹ Wells, op. cit., p. 39

⁶¹² Ibid.

The VDHS found that around 50 percent of women reported having a health problem following a pregnancy termination.⁶¹³ Abortion complications account for around 12 percent of maternal deaths. Also, it is said that 30 percent of reproductive health-care centres are not able to manage complications of abortions.

Sex-selective abortions are believed to be an increasing area of concern. It is surmised that son preference is another reason behind the high rate of abortions.⁶¹⁴ (See also discussion on Indicators 91-92 for the link between abortions and contraception.) A look at the sex ratio will show that among urban newborn babies, from 106.6 girls for every 100 boys in 1999, in 2001 and 2002, the ratio rose to 114.1 and 113.1.⁶¹⁵ However, in 2003, the figure went down again to 102.7.⁶¹⁶ It was suggested that the decrease in the number of newborn baby girls is due to early sex identification, which may be used for sex-selective abortions.⁶¹⁷

As for the laws on abortion, Article 44 of the Law on Health provides that women have the right to an abortion on demand. Health establishments and private persons are prohibited from engaging in abortions unless licensed.⁶¹⁸

The Penal Code punishes illegal abortion under Article 243. It provides: “Those who perform illegal abortion for other persons, causing loss of lives or serious damage to the health of such persons or who have already been disciplined or administratively sanctioned for such act or already sentenced for such offense, not yet entitled to criminal record remission but continue to commit it, shall be sentenced to non-custodial reform for up to three years or between one and five years of imprisonment.” Article 243 further provides that, when the crime results in very serious or particularly serious consequences, the sentence will be 3-15 years imprisonment. In all these cases, a fine, or a 1-5 year ban from holding certain posts and/or from practicing certain occupations or jobs, can also be imposed.

Article 40(7) of the Law on Gender Equality lists, as one of the violations on gender equality in the field of public health, “choosing gender for the fetus under all forms or inciting and forcing other people to abort because of the fetus’ gender.” Article 7 of the Population Ordinance, No. 06/2003/PL-UBTVQH11 of January 9, 2003 (Population Ordinance) prohibits selecting the gender of unborn babies in any form. The Decree on Population elaborates further by stating:

Article 10:

To strictly prohibit acts of selecting fetus gender, including:

- (1) Propagating, disseminating methods of fetus gender creation in forms of organized talks, writings, translation, photocopying of books, newspapers, documents, pictures, photos, recorded videos, recorded audio tapes; storing, circulating documents, means and other forms of propagation and dissemination of fetus gender creation methods.

⁶¹³ Ibid. citing the VDHS

⁶¹⁴ Wells, op. cit., p. 38

⁶¹⁵ GSO Statistics, p. 47

⁶¹⁶ Ibid.

⁶¹⁷ Wells, op. cit., p. 47

⁶¹⁸ Law on Health, Article 44(3)

- (2) Diagnosing to select fetus gender by methods of determination thereof via symptoms, pulse feeling; blood, gene, amniotic fluid, cell tests; ultrasonics.
- (3) Getting rid of fetuses for reason of gender selection by methods of abortion, supply and use of assorted chemicals, drugs and other measures.

One of the indicators for Objective 3 of the Plan of Action for the Advancement of Women is the reduction of the proportion of abortions to 25 percent by 2010. The National Strategy on Reproductive Health Care also has one of its objectives the reduction of unwanted pregnancies and abortion relation complications. To target adolescents, a Comprehensive Plan on Protection, Care and Improvement of Reproductive Health for Adolescents and Young Adults 2006-2010 was introduced that includes improving knowledge and skills of adolescents and young adults in self-protection and self-care, and expanding access to effective age and gender aware services to this group.

It has been emphasized by the CEDAW Committee that abortion should not be used as a means of contraception.⁶¹⁹ High rates of abortion are symptomatic of the lack of available contraception, ineffective or inexistent education on reproductive and sexual health/rights, and strong preference for sons. These issues must be properly addressed, especially in the light of health implications for women undergoing repeated abortions.

Recommendations: It is suggested that explicit legal provisions ensure increased awareness of availability and accessibility to a wide range of contraceptive methods. Further, both men and women should be targeted family planning by information, education and communication interventions. Laws must also ensure that post-abortion health care of good quality is available and accessible.

As to sex-selective abortions, although legal provisions already exist prohibiting it, there is a need to provide further guidelines to ensure its implementation. It is suggested that a more detailed legal document on sex selection is required in particular elaborating or supplementing further on the Decree on Population. Some proposals for possible inclusion in such document or subject to consideration for inclusion are: (a) a prohibition on any person to conduct or aid in the conduct of sex selection on a woman or a man or on both or on any tissue, embryo, fluid or gametes derived from either or both of them. This refers to procedures, tests or prescription aimed at increasing or ensuring the probability that the embryo will be of a particular sex; (b) regulation of the sale of ultrasound machine, imaging machines, scanners or other device capable of detecting the sex of the foetus, to persons, laboratories, clinics, etc., unless registered with the appropriate designated agency; (c) the conduct of prenatal diagnostic techniques must not be used for the purpose of determining the sex of the foetus. On this note, qualified persons conducting such must record in writing the reasons behind the conduct of such techniques. Specific guidelines can be provided on what are the obvious conditions where it is allowable; for example, the pregnant woman: (i) is aged above 35 years; (ii) has undergone previous abortions, foetal loss or miscarriage; (iii) has been exposed to harmful or toxic substances; (iv) or her

⁶¹⁹ CEDAW Concluding Comments on Viet Nam, Paragraph 25

spouse/lover has a family history of physical or mental disability. In cases (i) to (iv), the sex of the foetus must not be communicated; (d) a prohibition on publishing, distributing, printing or communicating any advertisement regarding facilities for both prenatal determination of sex or sex selection before conception; and (f) increasing public awareness about the practice of pre-conception sex-selection and prenatal determination of sex of the foetus leading to sex-selective abortions.

Indicator 91 Is there legislation regulating family size?

Indicator 92 Is there legislation that guarantees the right to free and informed choice and prohibition of coercion, intimidation or undue influence in the use of contraceptives; for example, non-consensual sterilization or free choices of contraception?

In relation to these indicators, see Part V.13.3, Indicator 108 for an integrated discussion.

Indicator 93 Is sexual harassment by health professionals prohibited?

The Decree on Health Violations penalizes as a violation of professional and technical regulations abusing the medical or health profession to commit acts of sexual harassment against patients.⁶²⁰ This provision, however, does not apply to employer/employee relations in the medical field. The Decree on Health Violations also does not provide a definition of 'sexual harassment' to assist in having a consistent understanding of sexual harassment.

Recommendation: It is recommended that sexual harassment legislation be promulgated. (See recommendations in Part V.8.3., Indicator 81 for reference.) Sexual harassment in the medical and health setting must be one of the prohibited acts. The suggested legislation must have a definition of 'sexual harassment' that is compatible with the one provided in Paragraph 18 of GR 19 and adapted to suit health-care provider/patient and employer/employee relationships. It is also recommended that such legislation require administrators of hospitals and health-care centres and clinics to draft internal rules on sexual harassment and to disseminate such rules widely. The administrators must also be mandated to form committees to receive complaints on sexual harassment, if any, and to provide appropriate remedies to the grievances of the victim-patient. The law should also penalize failure to do such obligations, including making the hospital, health-care centre or clinics, liable for damages when sexual harassment occurs in their establishment.

⁶²⁰ Decree on Health Violations, Article 27(2)(h)

V.10 ECONOMIC AND SOCIAL LIFE (ARTICLE 13 OF CEDAW)

V.10.1 OBLIGATIONS UNDER CEDAW

V.10.1.1 Text of CEDAW

ARTICLE 13

- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:
- (a) The right to family benefits;
 - (b) The right to bank loans, mortgages and other forms of financial credit;
 - (c) The right to participate in recreational activities, sports and all aspects of cultural life.

V.10.1.2 General Recommendations

The following excerpt from GR 21 is relevant to Article 13 of CEDAW:

GR 21: Equality in Marriage and Family Relations

Paragraph 7

When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman's ability to provide for herself and her dependants.

V.10.2 SELECTED INDICATORS

There are many areas of economic and social life. However, the focus for Article 13 of CEDAW will be on equal participation in business and enterprises, and equal right to access credit. Other economic and social rights, such as the rights to participate in social activities, to work, to property including land, to inheritance, and to enter and conclude contracts are discussed under Articles 7, 8, 10, 15 and 16.

The selected indicators for economic and social life are:

Indicator 94 Is there a guarantee for women's equal participation in business?
Is there legislation supporting women's involvement in setting up and maintaining enterprises?

Indicator 95 Do women have equal right to receive credit, loans and funds?

V.10.3 RELEVANT LEGAL PROVISIONS

Indicator 94 Is there a guarantee for women's equal participation in business and enterprises?

The Constitution provides that citizens enjoy freedom of enterprise as determined by law.⁶²¹ Article 21 of the Constitution further states: "The private individual, small owner and private capitalist economic sectors may opt for organizational forms of production and business, may set up enterprises not restricted in scope of operation in branches and trades beneficial to the national economy and the people's life. The family household economy is encouraged to develop."

Article 50 of the Civil Code states that individuals have the right to freedom of business. They have the rights to choose the forms, areas and lines of business, to establish enterprises, and to enter freely into contracts and hire labour, and other rights in accordance with the provisions of law.⁶²² There are several laws on business and enterprises, such as the *Enterprise Law* (No. 60/2005/QH11 of December 25, 2001) (Enterprise Law) and *Investment Law* (No. 59/2005/QH11 of December 25, 2001) (Investment Law). However, they do not have any gender-specific provisions. The *Decree No. 90/2001/ND-CP of November 23, 2001 on Support for the Development of Small-and Medium-Sized Enterprises* (Decree on SMEs) also does not have gender-specific provisions. However, as many women's businesses tend to be at the level of small and medium-sized enterprises (SMEs), this law is of importance. The Decree on SMEs urges the development of SMEs and, in turn, applies a number of support policies such as: (a) setting up credit guarantee funds to provide a guarantee for SMEs where they fail to acquire enough properties for mortgage;⁶²³ (b) creating conditions to raise access to information on markets, goods and prices; (c) creating conditions to renovate on technologies, equipment and machinery, develop new products and modernize management; and (d) providing financial support for consultancy and human resource training.⁶²⁴

The Programme on Human Resource Training Support For Small- And Medium-Sized Enterprises in the 2004-2008 Period (Programme for Human Resource Training) – pursuant to the *Decision No. 143/2004/Qđ-TTg Of August 10, 2004 Approving The Programme On Human Resource Training Support For Small- And Medium-Sized Enterprises In The 2004-2008 Period* (Decision on SMEs 2004) - operationalizes particular aspects of the Decree on SMEs on building capacities of SMEs as well as business support service providers: (a) training and fostering human resources for SMEs, including raising capabilities on: (i) general business management; (ii) personnel management and administration; (iii) marketing administration; (iv) drawing up marketing plans, raising marketing skills and skills for participation in fairs and exhibitions; (v) finance and accounting administration; (vi) technical and technological management; and (b) fostering business support service providers

⁶²¹ Constitution, Article 57

⁶²² Civil Code, Article 50

⁶²³ See Decision No. 193/2001/QĐ-TTg of December 20, 2001 Issuing the Regulation on the Setting Up, Organization and Operation of Credit Guarantee Funds for Small- and Medium-Sized Enterprises; and Circular No. 93/2004/TT-BTC of September 29, 2004 Guiding a Number of Contents of the Regulation on Setting Up, Organization and Operation of Credit Guarantee Funds for Small- and Medium-Sized Enterprises

⁶²⁴ See Decision on SMEs 2004

including: (i) training in general consultancy and marketing skills for consultants and lecturers; (ii) training on establishment of enterprises, in general business management, marketing administration, finance/accounting administration, business planning, technical/technological management, and human resource administration.⁶²⁵ Like the Decree on SMEs, the programme has no gender-specific provisions.

Specific articles on women are found in the Law on Gender Equality. It provides “Men and Women are equal in setting up a business, carrying out business and production activities, managing business and are equal in accessing information, capital markets and labour sources.”⁶²⁶ The Law on Gender Equality also identifies as a violation impeding men or women on account of their gender from setting up a business and carrying out business activities.⁶²⁷ Conducting commercial advertisements that cause adverse consequences to the business owners or traders of a particular gender is also prohibited by the law.⁶²⁸

The Resolution on Work for Women provides, among the tasks and solutions to enable the realization of women’s potential in the period of accelerating industrialization and modernization: “The Government and relevant sectors should study the situation and issue specific policies to create more favorable conditions for women’s development: Policies to support women in training, accessing information, scientific and technological applications, new technologies... Favorable policies to support women in the development of small and medium businesses.”

According to a report by the Viet Nam Chamber of Commerce and Industry, four years after the introduction of the Enterprise Law, 27 percent of those registering a business were women and 40 percent of household businesses were run by women.⁶²⁹ The ratio of businesswomen increased significantly from 15.00 to 17.00 percent in 1990-1995, to 24.74 percent in 2001 and to 20.00 percent in 2002 of total business people.⁶³⁰

A survey of non-farm enterprises run by women shows that they are different from those run by men.⁶³¹ In both rural and urban areas, women are likely to engage in retail sales, hotel and restaurant operations, and production of textiles and garments. Men mainly run enterprises producing or processing goods (other than textiles). Enterprises operated by women typically employ fewer individuals and are less likely to have a business licence than those operated by men. Women’s businesses are likely to be smaller than men’s businesses. In relation to farming, female-operated farms cultivate only 54 percent of the land area cultivated by male-operated farms. Female-operated farms tend to have less labour resources, though they tend to cultivate the land more intensively when measured by labour hours.⁶³² On account of less land cultivated, female-operated farms have lower profits. Livestock raising is the most female-dominated income generating activity in agriculture.

⁶²⁵ Decree on SMEs, Article 6-11

⁶²⁶ Law on Gender Equality, Article 12(1)

⁶²⁷ Ibid., Article 40(2)(a)

⁶²⁸ Ibid., Article 40(2)(b)

⁶²⁹ Combined Fifth and Sixth Periodic Report, p. 48 citing the Viet Nam Chamber of Commerce and Industry report

⁶³⁰ Ibid.

⁶³¹ Food and Agriculture Organization, Regional Office for Asia and the Pacific and UNDP Support for Policy and Programme Development, ‘Gender Differences in the Transitional Economy of Viet Nam’, Food and Agriculture Organization and United Nations Development Programme, Ha Noi, August 2002 (FAO Report), p. 10

⁶³² Ibid., p. 11

One of the challenges faced by women owning and managing their own business or enterprise is the lack of resources, both technical and financial. In relation to financial resources, see discussion in Indicator 95 on equal access to credit. As to technical resources, there are initiatives carried out by Viet Nam Women's Union to assist women entrepreneurs on technical matters.⁶³³ In particular, the Viet Nam Women's Union has provided 289 training courses to 8,672 women who own small enterprises in 52 provinces/cities on starting a business, improving knowledge and business management skills. It has also provided support for female entrepreneurs to: participate in consultation and national and international forums, host national and international exhibitions, attend talks and forums on laws relating to enterprises, technology, markets, labels and designs, encourage participation of businesswomen especially in Viet Nam Women's Union activities, and form a network of female entrepreneurs. About 262 of these clubs composed of female entrepreneurs were set up.

Another challenge identified is that women from remote and mountainous regions, and ethnic women in particular, have limited knowledge on investment sources in production and business.⁶³⁴ To address this, the Decree on SMEs and its supporting documents, including the Programme for Human Resource Training, enumerate support policies in the field of human resource development, but there are no specific gender provisions to ensure and monitor that female entrepreneurs/owners/managers benefit from them. It is suggested that a monitoring system that looks in women's access to the support policies be put in place, as well as specific interventions to increase percentages of women as target participants (a minimum of 30 percent and progressively working towards 50 percent participation). Female instructors or lecturers must also be recruited to provide more hands-on knowledge on challenges faced by women entrepreneurs/owners/managers.

Also, to ensure that a clear policy against gender equality and non-discrimination is carried into the field of business and to prevent discriminatory stereotypes about businesswomen, it is suggested that clear provisions on non-discrimination on account of gender in the field of business be stipulated in legal documents governing investment, enterprises and business; for example, the Enterprise Law, Investment Law, Decree on SMEs and its supporting documents, and *Law on Cooperatives (No. 18/2003/QH11 of November 26, 2003)* (Law on Cooperatives).

Creating or strengthening a gender-friendly environment for female entrepreneurs, including protection against sexual harassment in the conduct of their business, should be prioritized by law. The definition in Paragraph 18 of GR 19 can provide a standard that can be adapted in crafting a definition of 'sexual harassment' in the business setting. This should protect against clients as well as officials who demand sexual favors in the conduct of their official tasks. The setting up of day-care centres and crèches will be useful for businesswomen to balance business and family life.

Lastly, improving female entrepreneurs' access to technical skills is important, including increased support to enable their access to business information, as well as skills in business,

⁶³³ Viet Nam Women's Union Report, p. 45

⁶³⁴ Ibid.

personnel, financial and technical management and administration. Particular attention should be paid to providing support to ethnic minority women and those women who live in remote and mountainous regions.

Recommendations: *It is suggested that clear provisions on non-discrimination on account of gender in the field of business be stipulated in general laws on business, investment and enterprise; for example, the Enterprise Law, Investment Law, Decree on SMEs and its supporting documents,, and Law on Cooperatives. Provisions defining and prohibiting sexual harassment in the field of business must be drafted, including those committed by clients as well as officials who demand sexual favors to perform their legitimate tasks, including those relating to registration of business enterprises, taxation, inspections, etc.. Legal provisions should also be provided to encourage the setting up of day-care centres and crèches. Clear responsibility in legal documents must be stipulated for ensuring increased support for female entrepreneurs to access business information and skills in business, personnel, financial and technical management and administration, especially ethnic minority women and those women who live in remote and mountainous regions. A target of 50 percent, with a minimum of 30 percent, should be progressively achieved in relation to ensuring women's participation in human resource capability development in line with the Decree on SMEs and Programme on Human Resource Training.*

Indicator 95 Do women have equal right to credit, loans and funds?

Laws do not formally prohibit women from accessing credit, loans and funds. There are several laws, strategies and plans that address women's access to credit. The:

- National Strategy for the Advancement of Women under its objective of achieving women's equal rights in labour and employment has the following indicator: 80 percent of women-headed households will have access to loans from poverty reduction programmes, and women will comprise 50 percent of people who have access to credit by 2005;
- Plan of Action for the Advancement of Women aims to ensure that 80 percent of female-headed poor households get loans from the National Poverty Reduction Programme, and 50 percent of total borrowers from the Viet Nam Bank for Social Policies (VBSP) are women;
- SEDP also identifies as a specific objective enabling women to access credit sources;
- CPGRS also provides as one of the measures under its objective to promote gender equality, to strengthen women's access to credit resources and capital from the National Strategy for Poverty Reduction;
- National Target Programme on Poverty Alleviation in the 2006-2010 Period (National Target Programme on Poverty Alleviation 2006-2010) pursuant to *Decision No. 20/2007/QĐ-TTĐ* of February 5, 2007 of the Prime Minister Approving the National Target Programme on Poverty Alleviation in the 2006-2010 Period provides priority to poor households with female heads and has a major target by 2010 the provision of preferential credit loans to 6 million poor households;

- Law on Gender Equality, in Article 12(2)(b), states that female workers in rural areas will be given credit aid and encouraged to expand their work in agriculture, forestry and fisheries.

There are also several provisions on land, property and inheritance rights that affect significantly women's access to credit. See Part V.12.3, Indicator 105 for the provisions, discussion and recommendations.

However, in reality, women have less access to credit, loans and funds; for example, although one third of all loans are obtained from banks, women have access these banks less frequently than men.⁶³⁵ Loans accessed by men from banks (other than Bank for the Poor, now VBSP⁶³⁶) account for 33 percent, while the figure for women is only 18 percent.⁶³⁷

Additionally, there are also sources that provide preferential credit for the poor and farmers, such as: (a) heavily subsidized credit under the Hunger Eradication and Poverty Reduction Programme (HEPR) (for poor households); (b) VBSP (for poor households); (c) Viet Nam Bank for Agriculture and Rural Development (VBARD) (for farmers); (d) commune-level savings-and-loan schemes, usually with help from NGOs; (e) mass organizations, such as Viet Nam Women's Union.⁶³⁸ However, an assessment showed that 6 percent of poor households have accessed credit under the HEPR, while 30 percent if non-poor households benefited from it. The VHLSS 2002 indicates that loans were only given to 25 percent of poor female-headed households compared with 35 percent of poor male-headed households. Hence, similarly, poor women also have lower access to credit than men do.

Women unions at various levels are also allowed by the Government to act as credit guarantors for member loans.⁶³⁹ Every year, 30 percent of the total small projects in the country are funded by loans of this kind. In 2000, VBARD and the Viet Nam Women's Union signed a Joint Resolution on Granting Loans for Women. Hence, if the applicant is sponsored by the Viet Nam Women's Union or Viet Nam Farmer's Union, loans of up to VND 10 million do not require collateral.⁶⁴⁰ After three years of implementation, VBARD had provided credit loans to 1.3 million women with the total value of VND 5.134 billion,⁶⁴¹ which is a significant improvement of women's access to credit.

NGOs and mass organizations provide significant role in extending credit to the poor, women, and ethnic minorities through microcredit. Total loans of this nature amount to about 5 percent.⁶⁴² In this area, the Viet Nam Women's Union provides both access to small-scale credit and training in financial management, such as the Saving Day for Poor Women scheme and TYM Credit Fund.

⁶³⁵ FAO Report, p. 7

⁶³⁶ See, for example, Decision 131/2002/QĐ-TTĐ of October 4, 2002 on the Establishment of the Social Policy Bank, and Directive No. 05/2003/CT-TTĐ of March 18, 2003 Directing the Operation of the Bank for Social Policies (Directive on Social Policies Bank)

⁶³⁷ FAO Report, p. 7

⁶³⁸ Wells, op. cit., p. 27

⁶³⁹ Combined Fifth and Sixth Periodic Report, p. 35

⁶⁴⁰ Wells, op. cit., p. 27

⁶⁴¹ Combined Fifth and Sixth Periodic Report, p. 41

⁶⁴² Wells, op. cit., p. 28

Nevertheless, there are some indications of improvement on women's access to credit. It has been reported that, as of December 2002, female households account for 60 percent of the total borrowers of credit funds, an increase by more than 20 percent as compared to 1999.⁶⁴³ Although good, women's borrowings tend to be for small loans.⁶⁴⁴ Hence, in terms of total amount borrowed, women fall below the total amount of men's borrowings.

The lack of any capital or property to offer as collateral is identified as one of the major impediments for women to access credit;⁶⁴⁵ for example, a MARD study of female-headed households in rural areas found that a lack of working capital was identified as the most serious challenge faced by female heads of household.⁶⁴⁶ Another study highlighted that LUCs are important to access credit, especially when they are in name of the person seeking credit.⁶⁴⁷ Ensuring equality in the realm of property rights, including in relation to LUCs, are a critical area of intervention. See Part V.12.3, Indicator 105 for specific discussion and recommendations on this issue.

Some further observations are as follows. As most common loans for women are informal, such as loans from relatives (approximately 27 percent of all loans) and other private lenders (approximately 24 percent of all loans), they are subjected to higher interest rates, which in many situations is reflective of the lack of collateral-based lending.⁶⁴⁸ In cases where mass organizations, such as Viet Nam Women's Union, may sponsor the credit applications, many women can be excluded if they are not members; for example, ethnic minority women tend not to be members.⁶⁴⁹ Also, women after borrowing can often have limited understanding and inadequate management skills and lack of capacity in formulating effective business and production plans.⁶⁵⁰ Where women are part of a male-headed household, difficulties arise when income is not equally accessed, shared or controlled; for example, if the husband withholds money for purposes that do not benefit the family such as gambling.⁶⁵¹ Also, although it is good to see alternative and specialized sources of funding, especially informal sources, ensuring equality of access to credit at the formal level is important to pursue.

Recommendations: See recommendations in Part V.10.3, Indicator 94 and Part V.12.3,

⁶⁴³ Combined Fifth and Sixth Periodic Report, p. 41

⁶⁴⁴ Asian Development Bank, 'Country Briefing Paper: Women in Viet Nam' Regional and Sustainable Development Department and Mekong Department, Asian Development Bank, Manila, 2002 (ADB Paper), p. 22

⁶⁴⁵ See, for example, World Bank Assessment, p. 25

⁶⁴⁶ Wells, op. cit., p. 27

⁶⁴⁷ Lee, Sunhwa, 'A Gender Analysis of The 2004 Viet Nam Household Living Standard Survey', <http://siteresources.worldbank.org/INTVIETNAM/Resources/GenderAnalysisREVISEDSunhwa.doc>, Unpublished, April 20, 2006, p. 27

⁶⁴⁸ ADB Paper, p. 22 and 23

⁶⁴⁹ Wells, op. cit., p. 27

⁶⁵⁰ Combined Fifth and Sixth Periodic Report, p. 41

⁶⁵¹ Wells, op. cit., p. 28

V.11 RURAL WOMEN (ARTICLE 14 OF CEDAW)

V.11.1 OBLIGATIONS UNDER CEDAW

V.11.1.1 Text of CEDAW

ARTICLE 14

- (1) States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.
- (2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counseling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

V.11.1.2 General Recommendations

The following excerpt from GR 19 is relevant to Article 14 of CEDAW:

GR 19: Violence against Women

Paragraph 21

Rural women are at risk of GBV because of traditional attitudes regarding the subordinate role of women in many rural communities. Girls from rural areas are at special risk of violence and sexual exploitation when seeking employment outside their rural community to seek employment in towns.

Paragraph 24(o)

States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities.

Paragraph 24(q)

States parties should report on the risk to rural women, the extent and nature of violence and abuse to which they are subject, their need and access to support and other services and the effectiveness of measures to overcome violence.

V.11.1.3 Concluding Comments

The relevant paragraphs on Article 14 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 28

The Committee expresses its concern about the situation of women in rural and remote areas, as well as the situation of ethnic minority women, who lack sufficient access to adequate health services, education opportunities, and employment and credit facilities.

Paragraph 29

The Committee calls upon the State party to pay special attention to the needs of women living in rural and remote areas and women belonging to ethnic minorities by ensuring that they have equal access to health care, education, social security, income-generation opportunities and participation in decision-making processes at all levels. It also encourages the State party to use innovative methods to improve information on and awareness of the provisions of the Convention and of relevant laws, including the Law on Gender Equality, among women and girls in rural and remote areas and women belonging to ethnic minorities. The Committee requests the State party to ensure that the draft law on ethnic minorities integrates the objectives of the Law on Gender Equality and that the draft law on ethnic minorities be passed as soon as possible. The Committee requests that comprehensive information be included in the next periodic report, including sex-disaggregated data and trends over time, on the de facto holistic position of rural and ethnic minority women and on the impact of measures taken and results achieved in the implementation of policies and programmes for these groups of women and girls.

V.11.2 SELECTED INDICATORS

Article 14 of CEDAW ensures that rural women are not discriminated against in the exercise and enjoyment of rights in all fields, especially in the area of development, health, education, employment and economic benefits, including access to credit, protection from violence and living conditions. The term ‘rural women’ is actually a broad term that covers not only women living in the rural areas. The CEDAW Committee uses the term to look also into situations of ethnic minority women, female farmers or women in agriculture, and women in remote and mountainous regions.⁶⁵²

⁶⁵² See, for example, Concluding Comments on Viet Nam 2007, Paragraph 29

There are many indicators relating to this article. However for the purpose of this paper, the selected indicators on rural women are:

- Indicator 96** Is there legislation to ensure the enjoyment of rights by ethnic minority girls in the area of education?
- Indicator 97** Is there legislation to ensure the enjoyment of the right to health care by ethnic minority women and women in remote and mountainous regions?
- Indicator 98** Is there legislation to ensure the enjoyment of rights of rural women in the area of land policies?
- Indicator 99** Is there legislation to ensure the equal representation of ethnic minority women in publicly elected bodies?
- Indicator 100** Are there legal provisions on rural women's participation in policymaking and implementation at the grass-roots level?

V.11.3 RELEVANT LEGAL PROVISIONS

Article 94 of the Constitution states: "The National Assembly shall elect a Council of Ethnic Minorities... [It] studies and makes proposals to the National Assembly on issues concerning the nationalities; supervises and controls the implementation of policies on nationalities, the execution of programmes and plans for socio-economic development of the highlands and regions inhabited by national minorities. Prior to promulgation of decisions related to nationalities policies, the Government must consult the Council of Ethnic Minorities."

Female farmers in the remote and mountainous regions, especially single female-headed households and old women, are the most vulnerable group.⁶⁵³

Indicator 96 Is there legislation to ensure the enjoyment of rights by ethnic minority girls in the area of education?

See Part V.7.3, Indicator 65(d) for details, discussion and recommendation.

Indicator 97 Is there legislation to ensure the enjoyment of the right to health care by ethnic minority women in the area and women in remote and mountainous regions?

See Part V.9.3, Indicators 85-87 for details, discussion and recommendation.

Indicator 98 Is there legislation to ensure the enjoyment of rights of rural women in the area of land policies?

In accessing land, ethnic minority women often have to overcome the challenge of ensuring that their name is ultimately listed on the LUC.⁶⁵⁴ By the end of 2002, agricultural land had been allotted to approximately 12 million farmer households and 91.74 percent of the households were granted agricultural LUCs, taking up 87.02 percent of the agricultural land area.⁶⁵⁵ Only 10-12 percent of these LUCs were registered in women's names only because

⁶⁵³ Combined Fifth and Sixth Periodic Report, p. 44

⁶⁵⁴ Wells, op. cit., p. 13

⁶⁵⁵ Combined Fifth and Sixth Periodic Report, p. 46

the heads of household are single women or widows.⁶⁵⁶ In most cases, registration is only in the name of the husband as they are considered as the head of household; and, hence, deemed the sole decision maker on these matters.⁶⁵⁷ This is especially the case in the rural areas where, because of the custom of considering the husband as the only and sole head of household, and because LUCs and the local land administration book only have the name of household head, that will be the husband's name.⁶⁵⁸ This causes difficulties for women when they need the LUC as collateral for loans, in cases of division of property during divorce, or in cases of inheritance following the death of the husband.⁶⁵⁹

The Constitution, Land Law, Marriage and Family Law and Decree on Marriage and Family Law provide for equal rights of men and women over land. Households that have already received LUCs with only the name of the head of the household on them should request a new certificate with the names of both husband and wife on them. See Part V.12.3, Indicator 105 for the discussion and recommendation on LUCs.

Indicator 99 Is there legislation to ensure the equal representation of ethnic minority women in publicly elected bodies?

Article 63 of the Constitution guarantees that male and female citizens have equal rights in the political field. It further provides: "The citizen, regardless, of nationality, sex, social background, religious belief, cultural standard, occupation, time of residence shall, upon reaching the age of eighteen, have the right to vote, and upon reaching the age of twenty one, have the right to stand for election to the National Assembly and the People's Councils in accordance with the provisions of the law." This is restated in Article 2 of the Law on Election to National Assembly 2001 as well as by Article 2 of the Law on the Election to People's Councils.

Article 11 of the Law on Gender Equality also emphasizes the equal rights of men and women in relation to nominations or self-nomination of candidates to the National Assembly and People's Council, as well as to agencies of political organizations, socio-political organizations, socio-political and professional organizations, social organizations, social and professional organizations. Any one who impedes this is subject to the applicable administrative or penal sanctions.⁶⁶⁰

Particular laws, strategies and plans, such as the Law on Election to National Assembly 1997, Law on Election to National Assembly 2001, Law on Election to People's Councils, Law on Gender Equality, National Strategy for the Advancement of Women, Plan of Action for the Advancement of Women, CPGRS and SEDP provide for the proportion of women in elected positions, either in a general or specific manner. (For the specific provisions, see Part V.5.3, Indicators 53-55.)

⁶⁵⁶ Ibid.

⁶⁵⁷ Wells, op. cit., p. 26

⁶⁵⁸ Combined Fifth and Sixth Periodic Report, p. 46

⁶⁵⁹ Ibid.

⁶⁶⁰ Law on Gender Equality, Article 40(1)

In addition to the proportion for women, a proportion for ethnic minorities is also guaranteed by legal documents. Article 10 of the Law on Election to National Assembly 2001 provides: “The number of the National Assembly deputies who are ethnic minority people shall be proposed by the Standing Committee of the National Assembly at the suggestion of the Council of Ethnic Minorities in order to ensure that the different ethnic minorities have a proper number of deputies.”

The Law on Election to People’s Councils provides:

Article 14

On the basis of the number of the deputies to be elected to the People’s Councils, after consulting with the Standing Board of Viet Nam Fatherland Front Central Committee and the People’s Committees of the same levels, at least ninety five days before the election day:

- (1) The standing bodies of the provincial- and district-level People’s Councils shall make the proposition on the proportion, composition and number of People’s Council deputies to be elected from political organizations, socio-political organizations, social organizations, economic organizations, people’s armed force units and State agencies of the same levels and administrative units of lower levels, ensuring the appropriate number of female deputies to the People’s Councils; *for localities with many ethnic minority groups, it is necessary to ensure the appropriate number of People’s Council deputies being ethnic minority people.*
- (2) The standing bodies of the commune-level People’s Councils shall make proposition on the proportion, composition and number of People’s Council deputies to be elected from political organizations, socio-political organizations, social organizations, economic organizations, people’s armed force units and State agencies of the same levels as well as hamlets and villages (hereinafter referred collectively to as hamlets), population groups, populations quarters and clusters (hereinafter referred collectively to as population groups) in their respective localities, ensuring the appropriate number of female deputies to the People’s Councils; *for localities with many ethnic minority groups, it is necessary to ensure the appropriate number of People’s Council deputies being ethnic minority people.*

In deciding on the candidates to fill up the proportion allocated for ethnic minorities, the proportion allocated for women must be applied. This means that a proportion of seats should be reserved for ethnic minority women candidates within the quota allocated for ethnic minorities. This will ensure that the slots allotted for ethnic minorities are equally divided between ethnic minority men and women.

Recommendation: In addition to the recommendations in Part V.5.3, Indicators 53-55, it is suggested that, to ensure clarity, the Law on Election to National Assembly 1997, Law on Election to National Assembly 2001 and Law on Election to People’s Councils must provide that the proportion of ethnic minority deputies should have no less than 30 percent female ethnic minority candidates with the aim of increasing progressively to a higher proportion. To support the 30 percent proportion of female candidates within the proportion of ethnic minority candidates, there must be clear

stipulation for supportive measures for female ethnic minority candidates, including: (a) capacity-building training for women ethnic minority candidates; (b) raising awareness of the electorate to recognize the skills of women ethnic minority candidates; and (c) setting up resources (for example, campaign spaces, funds) to be utilized by female ethnic minority candidates.

Indicator 100 Are these legal provisions on rural women's participation in policymaking and implementation at the grassroots level?

For discussion and recommendations on this, see Part V.5.3, Indicators 59-61.

V.12 EQUALITY BEFORE THE LAW (ARTICLE 15 OF CEDAW)

V.12.1 OBLIGATIONS UNDER CEDAW

V.12.1.1 Text of CEDAW

ARTICLE 15

- (1) States Parties shall accord to women equality with men before the law.
- (2) States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
- (3) States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
- (4) States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

V.12.1.2 General Recommendations

The following excerpts from GR 21 are relevant to Article 15 of CEDAW:

GR 21: Equality in Marriage and Family Relations

Paragraph 7

When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman's ability to provide for herself and her dependants.

Paragraph 8

A woman's right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman's right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependants.

Paragraph 9

Domicile is a concept in common law countries referring to the country in which a

person intends to reside and to whose jurisdiction she will submit. Domicile is originally acquired by a child through its parents but, in adulthood, denotes the country in which a person normally resides and in which she intends to reside permanently. As in the case of nationality, the examination of States parties' reports demonstrates that a woman will not always be permitted at law to choose her own domicile. Domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman's right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.

Paragraph 26

Article 15(1) guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

V.12.2 SELECTED INDICATORS

Bearing in mind the obligations under CEDAW, the selected indicators for equality before the law are:

- Indicator 101** Does the Constitution guarantee equality before the law?
- Indicator 102** Do women have equal capacity in civil matters?
- Indicator 103** Do women (regardless of marital status) have an equal right to conclude contracts? (Are there any restrictions to women entering and concluding contracts?)
- Indicator 104** Do women have an equal right to be executors or administrators of estates?
- Indicator 105** Do women have the same right with respect to ownership, acquisition, management, administration, enjoyment and disposition of property, including land?
- Indicator 106** Do women have equal right to freedom of movement and to choose residence and domicile?

V.12.3 RELEVANT LEGAL PROVISIONS

- Indicator 101** Does the Constitution guarantee equality before the law?
- Indicator 102** Do women have equal capacity in civil matters?
- Indicator 103** Do women (regardless of marital status) have an equal right to conclude contracts? (Are there any restrictions to women entering and concluding contracts?)
- Indicator 104** Do women have an equal right to be executors or administrators of estates?

Article 52 of the Constitution provides that all citizens are equal before the law. Other laws also have provisions that guarantee equality before the law. Article 5 of the Criminal Procedure

Code states that criminal procedure will be conducted and applied on the principle that all citizens are equal before law, regardless of their nationality, sex, belief, religion, social strata and social position. Article 8 of the Civil Procedure Code has a similar provision: “All citizens are equal before law and courts regardless of their nationalities, sexes, social status, beliefs, religions, educational levels and occupations.” Article 8 also provides that all agencies and organizations are equal regardless of their forms of organization, ownership and other matters. This gives a formal guarantee of equality to those juridical entities owned and managed by women.

Additionally, equality before the law is further underscored through provisions on equal civil capacity. The Civil Code provides that, in civil relations, the parties are equal and cannot invoke differences in ethnicity, gender, social status, economic situation, belief, religion, educational level and occupation as reasons to treat each other unequally.⁶⁶¹ It also provides that the civil legal capacity of an individual must not be restricted unless otherwise provided for by law.⁶⁶² An adult has full civil act capacity, except in the cases specified in Article 22 and 23 of the Civil Code. There is no restriction on capacity to act (termed in English translations of Vietnamese legal documents as ‘civil act capacity’) on the basis of gender, nor is consent or authorization required simply because one is a member of a particular gender.

There are no restrictions explicit in legal documents to women’s right to enter and conclude contracts. Article 638 of the Civil Code provides how an estate administrator is chosen. There are also no restrictions explicit in law on the women becoming estate administrators.

Legal documents also guarantee equality before the courts. The Criminal Procedure Code states: “Procurators, defendants, defense counsels, victims, civil plaintiffs, civil defendants, persons with interests and obligations related to the cases and their lawful representatives and defense counsels of interests of the involved parties shall all have the equal rights to present evidences, documents and objects, make claims and argue democratically before court. Courts shall have to create conditions for them to exercise these rights with a view to clarifying the objective truths of the cases.”⁶⁶³ The Civil Procedure Code, on the other hand, states “The involved parties are equal in rights and obligations in civil procedures; the courts have the responsibility to create conditions for them to exercise their rights and perform their obligations.”⁶⁶⁴

Indicator 105 Do women have the same right with respect to ownership, acquisition, management, administration, enjoyment and disposition of property, including land?

Article 58 of the Constitution states: “The citizen enjoys the right of ownership with regard to his lawful income, savings, housing, goods and chattel, means of production, funds and other possessions in enterprises or other economic organizations, with regard to land entrusted by the State for use, the matter is regulated by the provisions of Articles 17 and 18 [of the Constitution]. The State protects the citizen’s right to lawful ownership and inheritance.”

⁶⁶¹ Civil Code, Article 5

⁶⁶² *Ibid.*, Article 16

⁶⁶³ Criminal Procedure Code, Article 19

⁶⁶⁴ *Ibid.*, Article 8

This should be read together with Article 63 of the Constitution: “Male and female citizens have equal rights in all fields - political, economic, cultural, social and family.”

Legal documents on property rights are gender-neutral. The main law concerning land is the Land Law, which, save for very few provisions, is also gender-neutral. The Civil Code provides for rules relating to property and ownership rights in Part II. Chapter XIV of the Penal Code provides a list of crimes against property in Articles 133-145, such as extorting property,⁶⁶⁵ openly appropriating property,⁶⁶⁶ abusing trust to appropriate property,⁶⁶⁷ illegally holding property,⁶⁶⁸ and illegally using property.⁶⁶⁹ Also, Article 173 of the Penal Code penalizes “[t]hose who grab and occupy land or transfer the land use right or use land in contravention of the State’s regulations on land management and use, causing serious consequences...”.

The most discussed issue relating to property is registration of LUCs. This is even identified by Goal 3 of the VDGs, which seeks to ensure gender equality and women empowerment and has as one of its targets ensuring that the names of both husband and wife appear on all LUCs by 2005. There are no impediments in law on the basis of gender relating to registration of land-use rights. In reality, however, only 19 percent and 15 percent of LUCs are registered in the woman’s name or in the names of both spouses respectively in certificates for agricultural land.⁶⁷⁰ For residential land, the percentages for registration in the woman’s name or in the names of both spouses are 22 percent and 18 percent respectively.⁶⁷¹

There are two main laws on the issue of registration of LUCs: the Land Law and Marriage and Family Law. The Land Law states that where the land-use right is a mutual asset of a wife and husband, the LUC must state the names of the husband and wife.⁶⁷² The Land Law seeks to attend to the gender bias in registering LUCs; that is, the tendency to register LUCs only in the name of the husband as he was considered the sole head of household. To implement the Land Law, *the Decree No. 181/2004/ND-CP Of October 29, 2004 On The Implementation Of The Land Law* (Decree on Land Law) provides that the names of both the husband and the wife must be inscribed in the LUC as common property of the husband and wife.⁶⁷³ It further states that, where it is proposed that solely the name of the husband or wife will appear, there must be a written agreement between the husband and wife to this effect with certification by the commune, ward or township People's Committees.

Article 27(1) of the Marriage and Family Law provides that the land-use right obtained by husband and wife after their marriage is their common property. The land-use right obtained before the marriage or inherited by either is common property only if so agreed by both. If common properties require registration, they must be in the name of both husband and wife.⁶⁷⁴ The Decree on Marriage and Family Law provides further details. It states that land-use rights

⁶⁶⁵ Civil Code, Article 135

⁶⁶⁶ Ibid., Article 137

⁶⁶⁷ Ibid., Article 140

⁶⁶⁸ Ibid., Article 141

⁶⁶⁹ Ibid., Article 142

⁶⁷⁰ World Bank Assessment, p. 43

⁶⁷¹ Ibid.

⁶⁷² Land Law, Article 48(3)

⁶⁷³ Decree on Land Law, Article 43

⁶⁷⁴ Marriage and Family Law, Article 27(2)

are one of the common properties requiring registration.⁶⁷⁵ When being registered for ownership right, the names of both husband and wife must be inscribed.⁶⁷⁶ The decree further states: “In cases where the ownership right to a property under the common ownership of husband and wife had been registered before the effective date of this Decree with the inscription of the name of either husband or wife, the husband and wife may request the competent State agency to re-grant the property ownership right registration paper for the inscription of the names of both husband and wife thereon; if the husband and wife do not ask for the re-granting of the property ownership right registration paper, such property shall still belong to their common ownership; in case of a dispute, the party that claims the property under his/her ownership shall be obliged to prove it.”⁶⁷⁷

A number of goals, strategies and plans have also addressed this issue. The VDGs seek to ensure that the names of both husband and wife appear on LUCs. The SEDP states as among its development orientation the improvement of women’s rights in relation to LUCs. The CPGRS identifies as one of its social development and poverty reduction targets to ensure the rights of women to benefit from household assets by allowing them to register as co-owner of assets (same as for their husbands) and to ensure that the names of both husband and wife appear on LUCs before 2005. The Gender Strategy in Agriculture and Rural Development to the year 2010 - issued pursuant to *Decision No. 4776/QĐ/BNN/TCCB dated 28 October 2003* by the Minister of Agriculture and Rural Development - also particularly sets as a target that, by 2005, the names of both husband and wife will appear on 100 percent of the newly issued LUCs.

Although the Land Law and Marriage and Family Law, as well as the strategies and plans, have led to some progress, one shortcoming of both laws is that they only apply to LUCs issued after their adoption. There is a need to ensure also that previously issued LUCs be changed to ensure equality.

See discussions and recommendations on property relations between husbands and wives in Part V.13.3, Indicator 114.

Recommendation: It is recommended that more proactive strategies be put in place to encourage registration of LUCs in the names of both husband and wife. Among these proactive strategies are: (a) increase legal awareness—raising campaigns on the need to request the joint registration of husbands and wives in the LUCs. Women, in particular, must be made aware of the value of having LUCs in their own names; for example, its importance to access to credit; (b) introduce targets by localities to re-grant previously issued LUCs to reflect the names of both spouses; and (c) provide free or subsidized legal aid, especially legal counselling and advice, to provide assistance to women on procedures relating re-issuance of LUCs in the names of both spouses.

Indicator 106 Do women have equal right to freedom of movement and to choose her residence and domicile?

⁶⁷⁵ Decree on Marriage and Family Law, Article 5(1)

⁶⁷⁶ Ibid., Article 5(2)

⁶⁷⁷ Ibid., Article 5(3)

Article 68 of the Constitution states: “The citizen shall enjoy freedom of movement and of residence within the country; he can freely travel abroad and return home from abroad in accordance with the provisions of law.”

Article 48(1) of the Civil Code states that individuals have the right to freedom of travel and freedom of residence. An individual’s freedom of travel or freedom of residence may be restricted only by decision of a competent agency and in accordance with the order and procedure specified by law.⁶⁷⁸ The Law on Residence, No. 81/2006/QH11 of November 29, 2006 (Law on Residence) also provides: “Citizens have the right to freedom of residence... Citizens rights to freedom of residence is only limited under decisions of competent State agencies and in accordance with the order and procedures prescribed by law”.⁶⁷⁹

In relation to husbands and wives, Article 55 of the Civil Code provides that the place of residence of husband and wife is the place where the husband and wife live permanently together. They may have separate places of residence if they agree. The Marriage and Family Law further states that the domicile of husband and wife is selected by themselves without being bound by customs, practices or administrative boundaries.⁶⁸⁰ The Law on Residence provides that the place of residence of husband and wife is the place where the husband and wife live together, but the husband and wife may have different places of residence if they agree.⁶⁸¹ The Decree on Marriage and Family Law (Ethnic Minorities) also provides specific provisions on residence places of wives and husbands states in Article 11(1): “Wives and husbands choose by themselves or mutually agree to stay separately or together with either of their families, without having to be bound by customs and practices. After their marriages, wives and husbands shall be entitled to live together without obstruction by anybody.” The decree elaborates: “Patrilocality or matrilocality shall apply only when it is compatible with the wives’ and husbands’ aspiration to choose their residence places.”⁶⁸² These laws were put in place to address customs and practices that perpetuate inequality, in particular the custom that ‘women have to follow their husband’ and ‘a young girl has to obey her father, a young married woman has to obey her husband, the widow has to obey her son’.⁶⁸³

Unlike the Civil Code and Law on Marriage and Family, which have provisions on non-discrimination on the basis of gender,⁶⁸⁴ the Law on Residence contains no such provision. To ensure that non-discrimination is highlighted as a main principle relating to residency, it is important to have explicit provisions stating that equality is a core principle in the application of the Law on Residency and that discrimination on the basis of gender in the application of the provisions of law is a prohibited act.

Recommendation: It is recommended that Article 4 of the Law on Residence include the principle of gender equality and non-discrimination. It is also recommended that direct and indirect discrimination on the basis of gender be included as among the prohibited acts in Article 8 of the law.

⁶⁷⁸ Civil Code, Article 48(2)

⁶⁷⁹ Law on Residence, Article 3

⁶⁸⁰ Law on Marriage and Family, Article 20

⁶⁸¹ Law on Residence, Article 15

⁶⁸² Decree on Marriage and Family Law (Ethnic Minorities), Article 11(2)

⁶⁸³ Combined Fifth and Sixth Periodic Report, pp. 50-51

⁶⁸⁴ See Part V.13.3, Indicator 108 for the exact provisions

V.13 MARRIAGE AND FAMILY (ARTICLE 16 OF CEDAW)

V.13.1 OBLIGATIONS UNDER CEDAW

V.13.1.1 Text of CEDAW

ARTICLE 16

- (1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights,
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
- (2) The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

V.13.1.2 General Recommendations

The following excerpts from GRs 19 and 21 are relevant to Articles 16 of CEDAW:

GR 19: Violence against Women

Paragraph 22

Compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.

Paragraph 23

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

GR 21: Equality in Marriage and Family Relations*Paragraph 13*

The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as article 2 of the Convention requires.

Paragraph 14

States parties' reports also disclose that polygamy is practised in a number of countries. Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.

Paragraph 15

While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to enforce these laws in reality contravene the Convention.

Paragraph 16

A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.

Paragraph 17

An examination of States parties' reports discloses that many countries in their legal systems provide for the rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, rather than by

complying with the principles contained in the Convention. These variations in law and practice relating to marriage have wide ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage. Such limitations often result in the husband being accorded the status of head of household and primary decision maker and therefore contravene the provisions of the Convention.

Paragraph 18

Moreover, generally a de facto union is not given legal protection at all. Women living in such relationships should have their equality of status with men both in family life and in the sharing of income and assets protected by law. Such women should share equal rights and responsibilities with men for the care and raising of dependent children or family members.

Paragraph 20

...States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.

Paragraph 26

Article 15(1) guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

Paragraph 27

In countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.

Paragraph 28

In most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.

Paragraph 29

All of these rights should be guaranteed regardless of a woman's marital status.

Paragraph 32

In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions,

such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non financial contributions should be accorded the same weight.

Paragraph 33

In many countries, property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged.

Paragraph 35

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.

Paragraph 38

Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a women's right freely to choose her partner.

Paragraph 39

States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.

V.13.1.2 Concluding Comments

The relevant provisions relating to Article 16 of CEDAW in Concluding Comments on Viet Nam 2007 are:

Paragraph 26

The Committee is concerned about the differential minimum legal age for marriage for women and men as well as about reports on underage marriages of girls, which limit their development and opportunities to fully develop their skills and capacities, especially in some ethnic minority areas.

Paragraph 27

The Committee urges the State party to set the same minimum age of marriage for women and men at 18 years, in line with article 1 of the Convention on the Rights of the Child and article 16 of the Convention and the Committee's general recommendation 21 on equality in marriage and family relations. It also calls on the State party to take measures to prevent and stop underage marriages.

V.13.2 SELECTED INDICATORS

In the past, the realm of marriage and family was considered private and not subject to examination. With the coming into force of CEDAW, this realm was subjected to international standards and opened up to scrutiny. CEDAW and its interpretative documents provide comprehensive protection in relation to marriage. It guarantees equal rights relating to entry into marriage, equal rights during marriage (whether it relates to property, children or inheritance) and equal rights upon dissolution of marriage. CEDAW also protects not only registered marriages, but also de facto unions (or unions without marriage). In relation to family life, protection is provided during the whole life of a woman or a girl. In particular, women and girls are protected from violence, especially those caused by harmful traditional practices; for example, early marriage, forced marriage, polygamy and domestic violence. CEDAW also states that there are various forms of family; hence, the protection afforded should be expansive rather than restrictive.

Bearing these obligations in mind, the selected indicators for marriage and family are:

Indicator 107 Does the Constitution provide for special protection for family and marriage?

Indicator 108 Is there a general guarantee in a legal document of gender equality in the family and marriage?

Indicator 109 Does legislation guarantee the same right and conditions to enter into marriage; that is, the right to decide if, when and who to marry?

Indicator 109(a) Is there an equal minimum age of 18 years for marriage? Is there prohibition on child marriage?

Indicator 109(b) Is registration of birth in an official registry required?

Indicator 110 Does legislation guarantee marriage only with free and full consent of both spouses?

Indicator 111 Is there a legislative prohibition on traditional practices that restrict the right to decide if, when and who to marry, including kidnapping for marriage, dowries, bigamy and polygamy, and restriction on remarriage of widows/widowers?

Indicator 112 Does legislation require registration of marriage in an official registry?

Indicator 113 Does legislation penalize adultery?

Indicator 114 Are both spouses (husband and wife) equal in the ownership,

acquisition, management, administration, enjoyment and disposition of property?

Indicator 115 Does legislation provide same rights and responsibilities to men and women for the number and spacing of their children (including education and means to exercise these rights)?

Indicator 116 Does the legislation provide for equal property rights of men and women who live together without the benefit marriage (de facto unions)?

Indicator 117 Do women and men have equal inheritance rights?

V.13.3 RELEVANT LEGAL PROVISIONS

In Viet Nam, the percentage of married population is highest for women aged 35-39 years with 87.1 percent of women, and for men aged 45-49 years with 96.5 percent of men.⁶⁸⁵ The percentage of single men is higher than single women. Divorce is socially unacceptable in Viet Nam.⁶⁸⁶ In 2003, only 0.7 percent of men and 1.9 percent of women were officially registered as divorced or separated. It is likely that there is under-reporting on this matter. Divorced women remaining single after divorce is 2.6 percent higher than divorced men remaining single, and the percentage of widows is five times than the percentage of widowers.⁶⁸⁷ The number of female-headed households is 36.2 percent and 20.2 percent in urban and rural areas respectively. Certain types of female-headed households, such as divorced, separated or widowed women particularly in rural areas, are more vulnerable to poverty.⁶⁸⁸ Qualitative assessments point to female-headed households being worse off in terms of vulnerability to poverty.⁶⁸⁹

Indicator 107 Does the Constitution provide for special protection for family and marriage?

Indicator 108 Is there a general guarantee in a legal document of gender equality in the family and marriage?

Article 64 of the Constitution states: "The family is the cell of society. The State protects marriage and the family." It also provides that the state and society shall recognize no discrimination among children.

The Decision No. 106/2005/QĐ-TTĐ of May 16, 2005 on Approving the Strategy on Building of Vietnamese Families in the 2005-2010 Period (Decision on Families) states: "Families constitute one of the important factors decisive to the sustainable development of the society and the success of the cause of national industrialization and modernization and socialist construction. Building of Vietnamese families with few children...which are abundant, progressive, equal and happy, constitutes a motive force of the socio-economic development

⁶⁸⁵ GSO Statistics., pp. 47-48

⁶⁸⁶ Wells, op. cit., p. 8

⁶⁸⁷ GSO Statistics, p. 43

⁶⁸⁸ Wells, op. cit., pp. 11 and 12

⁶⁸⁹ Ibid.

strategy in the period of national industrialization and modernization.”⁶⁹⁰ The term ‘family’ appears to be broadly defined in law. The Decree on Marriage and Family Law provides detailed guidance for the implementation of the Marriage and Family Law. Accordingly, the State, government agencies and social organizations undertake the responsibility to support families in economic development, building happy families, caring for the children, addressing domestic disputes and problems, preventing violence especially against the elderly, women and children, equipping family members with good behavioural skills, and identifying and encouraging exemplary families showing responsibility - and criticizing families showing irresponsibility - to their members and the society.⁶⁹¹

With the importance placed on the family, there are several legal documents guaranteeing equality in the family and marriage regime. Article 2 of the Marriage and Family Law identifies the basic principles of the marriage and family regime: (a) voluntary, progressive and monogamous marriage in which husband and wife are equal; and (b) non-discrimination among and between sons and daughter. Article 19 of the Marriage and Family Law also states that husband and wife are equal to each other, and they have equal obligations and rights in all aspects of their family. The principle of equality is also mentioned in Article 40 of the Civil Code: “[H]usband and wife are equal to each other, shall have the same rights and obligations in all respects in family and in civil relations and shall together build a plentiful, equitable, progressive, happy and lasting family.” The Law on Gender Equality also contains provisions on equality in family and marriage. It provides that wife and husband are equal in civil and other relationships on marriage and family.⁶⁹²

The Marriage and Family Law states that ‘the family’ is “a group of persons closely bound together by marriage, blood ties or rearing relations, thus giving rise to obligations and rights among these persons according to the provisions of this Law.”⁶⁹³ Nevertheless, there is no further elaboration of this definition. Elucidation on the definition of ‘the family’, however, may ensure that attention is given to various forms of the family. In Viet Nam, as in many cases, a ‘family’ is seen as composed of a husband, wife and children as well as other relatives. However, it should be borne in mind that various forms of families exist, such as those involving divorced, separated, widowed persons and female-headed families. Due to the burden of care borne by women, especially in the care of children, failure to take into consideration the various forms of the family impact on them heavily. By providing a specific provision on these various forms of the family, implementers are reminded to ensure that their policies and interventions do not discriminate, especially against the women in these families.

Recommendations: It is recommended that further elucidation be provided on the definition of ‘the family’. This should specifically refer to the fact that families can involve divorced, separated, widowed persons, single parents and female-headed families; and, therefore, policies and interventions should ensure that their concerns are considered and that are not discriminated against.

⁶⁹⁰ Decision on Families, Article 1

⁶⁹¹ Combined Fifth and Sixth Periodic Report, p. 17

⁶⁹² Article 18, Law on Gender Equality

⁶⁹³ Marriage and Family Law, Article 10

The Civil Code, Law on Gender Equality and Marriage and Family Law have other specific provisions on equality in marriage and family relations as can be found in the Indicators below: for example, equality relating to property, parental authority, and deciding on the number and spacing of children.

Indicator 109 Does legislation guarantee the same right and conditions to enter into marriage; that is, the right to decide if, when and who to marry?

Indicator 109(a) Is there an equal minimum age of 18 years for marriage? Is there prohibition of child marriage?

Indicator 109(b) Is registration of birth in an official registry required?

Indicator 110 Does legislation guarantee marriage only with free and full consent of both spouses?

Indicator 111 Is there a legislative prohibition on traditional practices that restrict the right to decide if, when and who to marry, including kidnapping for marriage, dowries, bigamy and polygamy, and restriction on remarriage of widows/widowers?

Article 64(3) of the Constitution states: “Marriage shall conform to the principles of free consent, progressive union, monogamy and equality between husband and wife.” There are several legal provisions on marriage and family as follows.

Marriage and Family Law

Article 9 of the Marriage and Family Law provides the conditions for entry into a marriage: (a) the man must be aged at least 20 years and the woman aged at least 18 years. This requirement is emphasized as well in Article 2 of the Marriage and Family Law, which identifies as a basic principle of marriage and family regime voluntary marriage; (b) the marriage must be voluntarily decided by the man and woman. There should be no use of force or deception; and (c) the marriage is not forbidden by Article 10 of the Marriage and Family Law.

Article 4 of the Marriage and Family Law explicitly forbids underage marriage, forcing marriage, hindering voluntary and progressive marriage, feigned marriage, and deceiving other persons into marriage. Article 8 of the Marriage and Family Law defines ‘underage marriage’ as a marriage when one or both marriage partners has or have not reached the marriage age prescribed by law and forcing other persons to get married against their will. An ‘illegal marriage’ will result if the requirements on age and consent are not fulfilled; that is, establishment of husband and wife relations with breach in conditions provided by law.⁶⁹⁴ In such cases, an annulment of the marriage can be requested.⁶⁹⁵

Civil Code

The Civil Code also contains provisions on marriage. Article 39 states that males and females who have fully met the conditions for marriage in accordance with the law have the right to marriage of the free will. The Civil Code further states that the freedom of marriage between

⁶⁹⁴ Ibid., Article 8(3)

⁶⁹⁵ Ibid., Articles 15-17

persons belonging to different ethnicities and/or religions, religious and non-religious persons, and Vietnamese citizens and foreigners, must be respected and protected by law.⁶⁹⁶

Penal Code

Article 148 of the Penal Code penalizes organizing underage marriage and entering into underage marriage. It provides that those who commit the following acts when they have already administratively sanctioned but repeat their violation will be punished: (a) organizing marriage of underage persons; or (b) deliberately maintaining the illegal conjugal relationship with underage persons though the court has already decided the termination of such relationship. In this regard, ‘underage marriage’ means marrying when either or both parties have not yet reached the marital ages prescribed by the Marriage and Family Law.⁶⁹⁷ Penal liability attaches only if the offender who organized the marriage clearly knows or had grounds to know that either or both persons are not of marital age.⁶⁹⁸

Article 146 of the Penal Code states that those who force other persons into marriage against their will or prevent other persons from entering into marriage 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, will be subject to warning, non-custodial reform for up to three years, or a prison term of between three months and three years. The Joint Circular on Marriage and Family Crimes explains the terms in Article 146 of the Penal Code: (a) ‘persecution or ill-treatment’ means cruel ill-treatment of other persons - such as frequent detention, forcing them to abstain from eating and drinking, scolding, humiliation, etc. - to force a marriage or prevent a voluntary marriage; (b) ‘mental intimidation’ means threatening to harm the lives, health, honour, property or legitimate interests including threats to set fire on houses, kill relatives, disclose personal secrets, or commit suicide if a couple marry each other; and (c) ‘property claim’ means an excessive claim of property as a condition for marriage to prevent voluntary marriage between a male and female.⁶⁹⁹

Decree on Marriage and Family Violations

The Decree No. 87/2001/Nd-Cp Of November 21, 2001 On Sanctions Against Administrative Violations In The Field Of Marriage And Family identifies acts of administrative violation in marriage and family and provides sanctions. It imposes a warning and a fine of between VND 50,000 and VND 200,000 for entering or organizing underage marriage where: “(a) deliberately maintaining illegal conjugal relationship with another person, who has not yet reached the marriage age, though there has been a court ruling compelling the termination of such relationship; and (b) Organizing the marriage for persons who have not yet attained the marriage age.”⁷⁰⁰ The decree also punishes forced marriage or hindering voluntary and progressive marriage with a warning or a fine of between VND 50,000 and VND 200,000.

⁶⁹⁶ Civil Code, Article 39

⁶⁹⁷ Joint Circular on Marriage and Family Crimes, paragraph 4(1)

⁶⁹⁸ *Ibid.*, paragraph 4(2)

⁶⁹⁹ *Ibid.*, paragraph 2(1)

⁷⁰⁰ Decree on Marriage And Family Violations, Article 6

Birth registration

It is obvious that an efficient system of birth registration will ensure effective monitoring of the marriage age. Article 29 of the Civil Code provides that individuals have the right to have their births registered. The Law on Children further states that children have the right to be registered at birth.⁷⁰¹ Responsibility for birth registration rests with parents and guardians.⁷⁰² People's Committees of communes, wards and townships are responsible for ensuring that all births are registered.⁷⁰³ Children of poor households are exempt from birth registration fees.⁷⁰⁴

Ethnic minorities

Article 6 of the Marriage and Family Law clarifies that, on the application of marriage and family-related customs and practices, the customs and practices embodying the identity of each nationality and not running counter to the principles laid down in the law are to be respected and promoted. This is reiterated and further elaborated in the Decree on Marriage and Family Law (Ethnic Minorities), which provides: "The fine marriage and family customs and practices of the ethnic minority people... which demonstrate the identity of each ethnic group and do not run counter to the principles prescribed in the Marriage and Family Law shall all be respected and promoted."⁷⁰⁵ However, the decree also emphasizes that "backward marriage and family customs and practices of the ethnic minority people... which contravene the principles prescribed in Marriage and Family Law shall be strictly prohibited or eradicated through mobilization."⁷⁰⁶ Specifically, it was drafted for application of the Marriage and Family Law for ethnic minorities. The Decree on Marriage and Family Law (Ethnic Minorities) reiterates the age of marriage being 20 years for men and 18 years for women.⁷⁰⁷ It also states that marriage is decided voluntarily by men and women regardless of nationality, religion and belief and without coercion or deception.⁷⁰⁸ The decree explicitly provides that the practice of underage marriage and forced marriage must be eradicated through mobilization by People's Committees, the Viet Nam Fatherland Front, village patriarchs, hamlets chiefs and religious dignitaries.⁷⁰⁹

The Decree on Marriage and Family Law (Ethnic Minorities) also strictly prohibits the custom of wife snatching or kidnapping women in order to coerce them into marriage.⁷¹⁰ It also provides that no one be allowed to take advantage of physiognomy reading or other forms of superstitious practice to obstruct the exercise of the right to freedom of marriage of men and women. In particular, the decree protects the rights of widows and widowers. It states that they have the right to remarry and they are not compelled to return marriage offerings to families of their ex-spouses.⁷¹¹ The practice of forcing widowers or widows to marry other persons in the

⁷⁰¹ Law on Children, Article 11

⁷⁰² Ibid., Article 23 (1)

⁷⁰³ Ibid., Article 23(2)

⁷⁰⁴ Ibid., Article 23. This is reiterated in Article 14 of the Decree on Children Law.

⁷⁰⁵ Decree on Marriage and Family Law (Ethnic Minorities), Article 2(1)

⁷⁰⁶ Ibid., Article 2(2)

⁷⁰⁷ Ibid., Article 4

⁷⁰⁸ Ibid., Article 5

⁷⁰⁹ Ibid., Articles 4 and 5

⁷¹⁰ Ibid., Article 5

⁷¹¹ Ibid., Article 6(1)

families of their ex-spouses is prohibited.⁷¹²

The Decree on Marriage and Family Law (Ethnic Minorities) provides a list of ‘fine’ marriage and family customs of the ethnic minority people, which are respected and to be promoted including: (a) monogamy; (b) free choice of companion to court and live with; and (c) accepting marriages between people of different ethnic minority groups.⁷¹³ It also provides a list of ‘backward’ marriage and family customs and practices that needs to be eradicated through mobilization including: (a) underage marriage; (b) forced marriages; (c) obstructing or rejecting marriages due to ethnic and religious differences; (d) prohibiting marriages between the fourth generation and further; and (e) if the man has no wedding presents, forcing him to work for his parents-in-law. Further ‘backward’ customs and practices that contravene the Marriage and Family Law and are strictly prohibited are listed including: (a) polygamy; (b) snatching or kidnapping women in order to coerce them into marriage; (c) asking for high wedding presents of commercial nature; (d) string binding (that is, when husbands die, the widows are forced to marry their brothers-in-law; or when wives die, the widowers are forced to marry their sisters-in-law); or (e) forcing the widows or widowers, who remarry other persons, to repay the wedding money to the families of their ex-spouses.⁷¹⁴

From these provisions, it is clear that there is an unequal age of legal marriage for men and women. This goes against the tenets of equality. In reality, though, the average age of women for first their marriage is 22.8 years and the average age of men for their first marriage is 26.0 years.⁷¹⁵ The situation is different in remote and mountainous regions, however, where premature marriage is practiced along with other practices that violate free choice.⁷¹⁶ It is commendable that Viet Nam has legal documents to guarantee the right if, when and who to marry within its general population, and also it has a separate document that addresses specific cultural practices that need to be revised or modified to comply with its obligations under CEDAW. In relation to the Decree on Marriage and Family Law (Ethnic Minorities) list of backward customs and practices in Appendix A, it is highly suggested that list is reviewed for eradication through mobilization. In particular, in addition to simply eradicating through mobilization, there is a need also to prohibit strictly underage marriage and forced marriage. Also, in relation to the list of backward customs and practices that are strictly prohibited in Appendix B of the decree, in addition to prohibition, eradication through mobilization efforts is also necessary so that the prohibition is coupled with an understanding of non-discrimination. This applies, for example, to customs such as polygamy, restrictions on widows to remarry, and asking for wedding presents of high commercial value.

Recommendations: It is recommended that the age of marriage be the same for men and women. In setting equal age for marriage, the minimum age should not be less than 18 years. It is also recommended that Appendices A and B of the Decree on

⁷¹² Ibid., Article 6(2)

⁷¹³ A List Of Ethnic Groups Fine Marriage And Family Customs And Practices Encouraged For Promotion, As Prescribed For The Application Of The 2000 Marriage And Family Law To Ethnic Minority People was promulgated together with the Decree on Marriage and Family Law (Ethnic Minorities) and attached as Appendix A.

⁷¹⁴ A List Of Ethnic Groups Backward Marriage And Family Customs And Practices, Banned From Application Or Eradicated Through Mobilization As Prescribed For The Application Of The 2000 Marriage And Family Law To Ethnic Minority People was promulgated together with the Decree on Marriage and Family Law (Ethnic Minorities) and attached as Appendix B.

⁷¹⁵ Combined Fifth and Sixth Periodic Report, p. 52

⁷¹⁶ Ibid.

Marriage and Family Law (Ethnic Minorities) be reviewed and modified. Many acts in Appendix A should be strictly prohibited, such as underage and forced marriage. Also, it is recommended that acts listed in Appendix B should not only be strictly prohibited, but there should be mobilization efforts, including education and communication on gender equality, to bring about change and fully eradicate these discriminatory practices.

Indicator 112 Does legislation require registration of marriage in an official registry?

The Marriage and Family Law provides: “Marriage must be registered with the competent State bodies (called marriage registration offices) according to the proceedings prescribed in Article 14 of this Law.”⁷¹⁷ Divorced husband and wife wishing to remarry each other must also register their remarriage. Marriage proceedings at variance with the provisions in Article 14 of the law will not be legally valid. Article 14 stipulates that marriage registration must be organized in the presence of man and woman who wish to be married. It further states that the representative of the marriage registration office will ask if they wish to marry voluntarily each other. If they agree, the representative will hand the certificate to them. The Marriage and Family Law also provides that a man and a woman who fail to register their marriage, but who live together as husband and wife, will not be recognized by law as husband and wife.⁷¹⁸

To encourage marriage registration several legal documents were issued. *The Resolution 35/2000/QH10 on 9 June 2000 on the Implementation of the Marriage and Family Law*: (a) encourages marriage registration for husband/wife relations established before 3 January 1987 (that is, the date the Marriage and Family Law came into force); (b) requires registration for husband/wife relations established from 3 January 1987 to 1 January 2001. A period of until 1 January 2003 is provided for registration. Where a marriage is not registered by 1 January 2003, it will not be recognized by law as husband and wife. Paragraph II.1 of *the Resolution No. 01/2003/NQ-HDTP of April 16, 2003 Guiding the Application of Law to the Settlement of Some Types of Civil as well as Marriage and Family Disputes* explicitly provides for the impact on inheritance rights of failing to register a marriage: where a man and a woman lived together as husband and wife sometime between 3 January 1987 and 1 January 2001, meet all conditions for marriage registration, and one spouse died prior to 1 January 2003, the other spouse is allowed to enjoy the deceased spouse’s heritage under the law provisions on inheritance. However, if after 1 January 2003, the man and women had not yet registered their marriage and one spouse died, any inheritance dispute, pending new regulations of competent State bodies will be handled by the courts as follows: (i) if the case has not yet been accepted for handling, it will not be accepted; or (b) if the case has been accepted and its handling is underway, the courts will issue a decision to temporarily suspend the handling; and (c) provides that relations established after 1 January 2001 without registration are not recognized by law as husband and wife relations. These provisions are also reiterated in Article 2 of *the Decree No. 77/2001/ND-CP of October 22, 2001 detailing the Marriage Registration According to the National Assembly’s Resolution No. 35/2000/QH10 on the Implementation of the Marriage and Family Law* (Decree on Marriage Registration).

⁷¹⁷ Marriage and Family Law, Article 11(1)

⁷¹⁸ Ibid., Article 11

Marriage registration is performed by the People's Committees of the commune, ward or district town of the locality where either of the two parties register permanent residence.⁷¹⁹ The marriage relationship of those who register their marriages will be recognized as from the date the involved parties established husband and wife relationship or actually lived together as husband and wife.⁷²⁰ The recognized date of marriage must be clearly inscribed in the marriage register and the marriage certificate. The Decree on Marriage and Family Law (Ethnic Minorities) also contains provisions on marriage registration for ethnic minorities. In particular, it provides that marriage registration for ethnic minorities in remote areas is exempt from fee.⁷²¹

For violations of regulations on marriage registration a “fine of between VND 200,000 and VND 500,000 shall be imposed for acts of modifying or falsifying contents of or forging papers for marriage registration, which, however, are not serious enough for penal liability examination; deliberately making false declarations or taking other deceitful acts when making marriage registration”.⁷²² The Penal Code penalizes registration of illegal marriage: “[T]hose who are responsible for the registration of marriage and know clearly that the applicants are not qualified for the marriage and still make the registration for such persons, have been disciplined for such act but repeat their violation” will be penalized.⁷²³

Clearly Vietnamese legal provisions require registration of marriage and have put in place measures to strongly urged compliance. One major concern relating to husband and wife relations established between 3 January 1987 and 1 January 2001 that were not registered prior to 1 January 2003, as well as those established after 1 January 2001 and unregistered, is that there is a need to ensure that couples entering into such relationship are aware of the need and importance of registration. They must be educated on the value of such registration, especially in relation to the consequences of non-registration. Failure to educate may lead to persons thinking they are within a valid marriage and entitled to the protection provided to married couples. This may affect more on women as their reproductive role is not likely to be recognized as an income contribution in a de facto union without the benefit of marriage. See Indicator 116.

More proactive means to ensure registration must be encouraged including legal awareness campaigns and free legal assistance on marriage registration. In remote and mountainous regions, marriages are often not registered due to poor transport access to government registration offices. Mobile registration offices may be put in place to ensure more applications for registration.⁷²⁴

Recommendation: It is recommended that education on the value of marriage registration must be increased, with particular emphasis on the consequences of non-registration. This must be focused on husband and wife relations established between 3 January 1987 and 1 January 2001 that were not registered prior to 1 January 2003, as

⁷¹⁹ Decree on Marriage Registration, Article 5(1); and Decree on Marriage and Family Law (Ethnic Minorities), Article 8

⁷²⁰ Decree on Marriage Registration, Article 3

⁷²¹ Decree on Marriage and Family Law (Ethnic Minorities), Article 8

⁷²² Decree on Marriage and Family Violations, Article 9

⁷²³ Penal Code, Article 149. This is further elaborated in Joint Circular on Marriage and Family Crimes.

⁷²⁴ UN Press Article

well as those established after 1 January 2001 and unregistered. Legal documents must also urged the establishment of more proactive and institutionalized measures to ensure marriage registration including legal awareness campaigns, free legal assistance on marriage registration and mobile registration offices.

Indicator 113 Does legislation penalize adultery?

Where the crime of adultery is penalized, in many jurisdictions, it usually encompasses: (a) sexual relations by a married person with someone other than a spouse; or (b) sexual relations with a person known to be married to another. In Viet Nam, there is no crime titled as adultery. However, provisions on bigamy or acts violating monogamy regime actually include particular acts of adultery. Article 147 of the Penal Code defines ‘bigamy’ as: “Any married person who marries or lives with another person like husband or wife or any unmarried person who marries or lives with another person who he/she knows to be a married person, thus causing serious consequences or who has been administratively sanctioned for such acts but repeat the violation, shall be subject to warning, non-custodial reform for up to one year or a prison term of between 3 months and one year.” Article 8 of the Decree on Marriage and Family Violations identifies the following acts as violating the marriage ban or monogamy regime: “(a) Married person entering into marriage or living with another person like husband or wife but such act has not yet caused serious consequences; and (b) Unmarried person entering into marriage or living with another person, who he/she knows is a married person, but such act has not yet caused serious consequences.” Living ‘like husband or wife’ is often proved by a common child, a couple is considered by neighbors and other members of society as husband and wife, they have common property, etc.⁷²⁵ The break up of the family of one or both parties, divorce, suicide by the husband, wife or child are considered to be ‘serious consequences’.⁷²⁶

One of the critiques on adultery legislation is that, in many jurisdictions, it affects women disproportionately. In particular, because of societal tolerance of male sexual relations, as compared to its disapproval of female sexual relations, outside marriage, in many instances, cases of adultery are most often filed against women. There is a need for further research on this area.

Indicator 114 Are both spouses (husband and wife) equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?

Article 58 of the Constitution states: “The citizen enjoys the right of ownership with regard to his lawful income, savings, housing, goods and chattel, means of production, funds and other possessions in enterprises or other economic organizations, with regard to land entrusted by the State for use, the matter is regulated by the provisions of Articles 17 and 18. The State protects the citizen’s right to lawful ownership and inheritance.” This should be read with Article 63 of the Constitution, which provides: “Male and female citizens have equal rights in all fields - political, economic, cultural, social and family”. For general provisions on property rights of men and women, see Part V.12.3, Indicator 105.

⁷²⁵ Joint Circular on Marriage and Family Crimes, Paragraph 3.1

⁷²⁶ Ibid., Paragraph 3.2(a)

There are also a number of provisions relating to property rights of husband and wife as follows.

Mutual representation

Article 24 of the Marriage and Family Law guarantees mutual representation between husband and wife: “Husband and wife may authorize each other to establish, perform or terminate transactions which, as prescribed by law, must be agreed upon by both husband and wife; such authorization must be made in writing.” Further, Article 24(1) of the Marriage and Family Law also states that when either spouse loses civil act capacity, the other spouse with full civil act capacity may represent the other. This also applies when one spouses civil act capacity is limited.

Joint liability for transactions

Article 25 of the Marriage and Family Law provides: “Husband or wife must take joint liability for lawful civil transactions conducted by either of them to satisfy their family’s daily-life essential needs.”

Common property of husband and wife

The common property of the spouses includes “property created by husband and wife, incomes generated from labor, production and business activities and other lawful incomes of husband and wife during the marriage period; property jointly inherited or given to both, and other property agreed upon by husband and wife as common property.”⁷²⁷ Land-use rights obtained by spouses after their marriage are their common property. Where obtained before the marriage or personally inherited by husband or wife, land-use rights will be common property only if so agreed upon by husband and wife. The Marriage and Family Law also provides that “where a property under the common ownership of husband and wife is required by law to be registered for ownership, the names of both husband and wife must be inscribed in the ownership certificate thereof.”⁷²⁸

Spouses have equal rights and obligation relating to the possession, use and disposition of common property.⁷²⁹ Common property of spouses is for ensuring the family needs and performing common obligations.⁷³⁰ Major transactions relating to the common property - that is, involving a big value or the family’s sole means of livelihood - must be agreed upon by both spouses.⁷³¹ Division of property during the marriage must be recorded in writing.⁷³² Spouses may request the courts to intervene if they fail to reach an agreement. On this matter, the Law on Gender Equality also contains provisions ensuring equality of wife and husband in the possession common assets and in using their common income and in deciding their family resources.⁷³³

⁷²⁷ Marriage and Family Law, Article 27 (1)

⁷²⁸ Ibid., Article 27 (2)

⁷²⁹ Ibid., Article 28(1)

⁷³⁰ Ibid., Article 28(2)

⁷³¹ Ibid., Article 28 (3)

⁷³² Ibid., Article 29(1)

⁷³³ Law on Gender Equality, Article 18(2)

Personal property of the spouses

Spouses have the right to own personal property.⁷³⁴ They also have the right to possess, use, manage and dispose their own personal property.⁷³⁵ However, if either spouse is unable to manage personal property and does not authorize another person to manage it, the other spouse may manage the personal property of the other.⁷³⁶ It is also provided in law that: (a) each spouse's own property obligations are performed with his/her personal property; (b) personal property of husband and wife can be used to meet the family's essential needs if their common property is not enough; and (c) where either spouse's personal property has been put to common use and the profits or yields from such personal property constitute the family's sole means of livelihood, the disposition of such personal property must be agreed on by both husband and wife.⁷³⁷

Common property of households

There are also provisions regulating common property of households. Article 106 of the Civil Code states that "family households in which members have common property and jointly contribute their efforts and labor to the common economic activities in agricultural, forestry or fishery production or in a number of other production and/or business domains defined by law shall be subjects when participating in civil relations in such domains." As such, the head of a household will be the representative of the household in civil transactions for the common interest of the household.⁷³⁸ The father, mother or another adult member may be the head of the household. Article 110 of the Civil Code states that "family households must bear civil liability for the exercise of civil rights and the performance of civil obligations, which are established and performed in the name of the family households by their respective representatives. Family households shall bear civil liability with their common property; if such is insufficient, their members must bear joint liability with their own property." In reality, despite the gender-neutral provisions, only around one quarter of households are registered as female-headed households.⁷³⁹ The percentage of female-headed households among married couples is low, reflecting the stereotyped notion of a male head of the family and, consequently, a male head of household.

It is evident that formal equality in this area is already guaranteed by the legal documents in Viet Nam. In practice, there may be room for improvement of the laws in particular the increased recognition in reality of women as an equal partner and head of the family. It is suggested that, to ensure formal inclusion of both spouses in transactions involving common real property, agreement of the other spouse must be in writing, whether or not registered in the names of both spouses. Another area of focus must be ensuring safe spaces for the exercise of property rights within the family; for example, although joint representation and agreement of both spouses are generally required for transactions involving the common

⁷³⁴ Marriage and Family Law, Article 32 (1)

⁷³⁵ Ibid., Article 33(1)

⁷³⁶ Ibid., Article 33(2)

⁷³⁷ Ibid., Article 33

⁷³⁸ Civil Code, Article 107 (1)

⁷³⁹ Wells, op. cit., p. 11

property or on family matters, in a context where women suffer from domestic violence, such representation and agreement by the woman is only on paper as in reality she does not have a safe space within which she can make an independent decision without fear of consequences. Hence, addressing domestic violence is a critical factor in ensuring equality in the family. See discussions on domestic violence in Part 1.3.6, Indicator 23.

Strengthened strategies must be put in place to encourage registration of common properties in the names of both husband and wife. This will ensure that women are aware of the value of having properties in their own names and that there is understanding of the laws by the people around them. Among the strategies that must be in place are: (a) legal awareness-raising campaigns on the value of registration of common properties in the name of both spouses; and (b) subsidized legal aid to provide legal advice and to assist in registration matters. See Part V.12.3, Indicator 105 on LUCs.

For spouses to be able to understand fully property relations, there should be proactive efforts as well on how to manage, use, possess and divide common, personal and household property in an equal and gender-sensitive manner. This is necessary so that spouses will have the understanding and skill to manage equally and to use their properties, and not simply to revert to unequal or discriminatory ways of running economic resources in the family.

Recommendations: As to all transactions involving common real property, it is suggested that agreement of the other spouse must be in writing, whether or not registered in the names of both spouses. This will ensure that there is formal inclusion of both spouses in real property transactions.

It is recommended that legal documents urge increased efforts be put in place to encourage registration of common properties to be inscribed in the names of both husband and wife, including: (a) legal literacy and awareness-raising campaigns on the value of registration of common properties in the name of both spouses; and (b) subsidized legal aid to provide legal advice and to assist in registration matters. It is also suggested that strengthened efforts targets both spouses on how to manage, use, possess and divide common, personal and household property in an equal and gender-sensitive manner, focusing on increased understanding and skill to equally manage and use their properties.

See Part V.12.3, Indicator 105 for recommendations on LUCs and Part V.1.3.6, Indicator 23 for recommendations on addressing domestic violence.

Indicator 115 Does legislation provide same rights and responsibilities to men and women for the number and spacing of their children (including education and means to exercise these rights)?

There are several legal provisions on rights and responsibilities on the number and spacing of children. In Viet Nam, in almost all cases, these fall under provisions on population, health, especially sexual and reproductive health, and family planning. Among the relevant legal provisions are as follows.

Family planning as a duty for all

The Law on Health emphasizes that family planning is a duty for all people, who have the right

to choose family planning methods.⁷⁴⁰ As such, responsibilities are placed on the State and its agencies to issue policies and take measures that facilitate popular acceptance of family planning methods.⁷⁴¹ Health, cultural, educational institutes, the mass media and relevant mass organizations are duty bound to promote education on population and family planning.⁷⁴² Article 2 of the Marriage and Family Law also states as one of the basic principles of the marriage and family regime being that husband and wife are obliged to implement the population and family planning policy. The Population Ordinance and Decree on Population also identify family planning as an obligation. Family planning is defined by the Population Ordinance in Article 3(9) as “the State’s and society’s efforts to enable every individual and couple to actively and voluntarily decide on the number of children, the time to have babies and the duration between child births in order to protect their health and raise their children with a sense of responsibility and in conformity with social standards and families’ living conditions.”

Family planning policies and measures.

Article 9 of the Population Ordinance regards family planning as a primary measure to readjust the birth rate and as a consequence contribute to ensuring prosperous, equitable, progressive and happy lives. The National Strategy on Reproductive Health Care for 2001-2010 Period states that one of its objectives is to sustain the fertility reduction trend, to ensure the rights of women and couples to have children and select contraceptive methods of good quality, and to reduce unwanted pregnancies and abortion-related complications.⁷⁴³ It targets a fertility rate of two children for women of reproductive age. The Law on People’s Health provides that each couple should have one to two children.⁷⁴⁴ The Decree on Population also states that each couple and individual has the obligation to adopt a family size with few children; that is, one or two children.⁷⁴⁵ *The Resolution No. 47-NQ/TW of March 2005* reaffirmed the policy that married couples are encouraged to have only one or two children. This policy is imposed on public sector employees, who are subject to higher health-care costs, reduced salary increases and less access to employment benefits, such as housing for non-compliance.⁷⁴⁶

The following are considered to be family planning measures: (a) mobilizing and assisting individuals and couples to apply family planning actively and voluntarily; (b) providing quality, convenient and safe family planning services directly for people; (c) offering material and moral incentives and implementing insurance policies so as to encourage application of family planning. The following are population services: (a) supply of information, means products relating to work on propagation, campaigning, education and counselling on population; (b) provision of contraceptive means; (c) reproductive health care and family

⁷⁴⁰ Law on Health, Article 43(1)

⁷⁴¹ Ibid., Article 43(2)

⁷⁴² Ibid., Article 43

⁷⁴³ Decision on Reproductive Health Care

⁷⁴⁴ Law on Health, Article 43(1)

⁷⁴⁵ Decree on Population, Article 17

⁷⁴⁶ Long, op. cit., p. 23

planning services; (d) health check before marriage registration;⁷⁴⁷ (e) population quality-raising services; and (e) other population services.⁷⁴⁸

This is reiterated in Article 15 of the Decree on Population, which lists reproductive health care and family planning measures: (a) to propagate to and educate people, especially minors, on reproductive healthcare and family planning; (b) to provide directly to people services on reproductive health care and family planning in a diversified, qualitative, convenient and safe manner; (c) to encourage material and spiritual incentives; (d) to adopt social policies to step up the implementation of reproductive health care and family planning among people; (e) to increase capability of organizing and implementing programs, projects and plans on reproductive health care and family planning; and (f) to detect and handle violations in reproductive health care and family planning.

Favourable conditions for the poor and ethnic minorities

The Population Ordinance provides that the State will support and create favorable conditions for the implementation of family planning programs and projects for the poor, persons meeting with difficulties, and minors, giving priority to areas with exceptionally difficult socio-economic conditions or with difficult socio-economic conditions.⁷⁴⁹ The Decree on Population explicitly extends this to ethnic minorities in those areas.⁷⁵⁰

Contraception

Also among the forms of services on reproductive health care and family planning are “to distribute on the basis of communities, supply free of charge, to socially market, to sell freely at requests, contraceptive means of different kinds” and “to employ the mobile technical teams, State-run medical establishments and private medical establishments to provide medically technical services under the provisions of law”.⁷⁵¹ The Decree on Population states that persons providing family planning services must have professional knowledge and skills suitable to each contraceptive measure.⁷⁵² Contraceptive users must use contraceptives voluntarily and must be knowledgeable of contraceptive measures.⁷⁵³

Education

The Population Ordinance and Decree on Population prioritize the provision of information, education and communication on population. Article 7 of the Population Ordinance provides that information on population must cover: (a) knowledge about population, reproductive health, family planning, gender equality, hereditary diseases, measures to raise the population quality; (b) contents and measures of regulating the population size, structure, raising the

⁷⁴⁷ Article 23 of the Population Ordinance provides: “State shall encourage and create conditions for men and women to have health checks before making marriage registration; have gene tests for people in danger of genetic defects or being affected with toxic chemicals; give counseling on hereditary genes; provide material and spiritual assistance for people with genetic defects, affected with toxic chemicals or infected with HIV/AIDS...” The Decree on Population provides further elaboration on pre-marriage registration health checks in Article 2, and health check and hereditary diseases in Article 26.

⁷⁴⁸ Population Ordinance, Article 8

⁷⁴⁹ Ibid., Article 9(3);

⁷⁵⁰ Decree on Population, Article 15

⁷⁵¹ Ibid., Article 20

⁷⁵² Decree on Population, Article 21(2)

⁷⁵³ Ibid., Article 21(1)

population quality and distribution of population; and (c) rights and responsibilities of individuals and family members in implementing the population policy. The Decree of Population specifies the forms of education and counselling on population, reproductive health, and family planning. Article 18 of the decree provides that this includes: (a) propagating on the mass media and Internet; (b) giving direct propagation, mobilization and consultancy; and (c) organizing the teaching and learning in educational establishments in the national education system.

Responsibilities

The Population Ordinance identifies responsibilities of the State agencies and organizations in population work. In particular, it states that agencies and organizations must, within the scope of their respective tasks and powers: (a) integrate population elements into their socio-economic development plan and policies; (b) propagate and campaign for the implementation of the population work; (c) provide various population services; and (d) organize the implementation of the population legislation within their own agencies and organizations.⁷⁵⁴ Article 5 of the Decree on Population reiterates the responsibilities and elaborates further on task (a). It also explicitly states that the people must have diversified, quality, convenient and safe population services.⁷⁵⁵

Gender equality in family planning and population work

The Population Ordinance aims, as among the principles of population work, “to guarantee the initiative, voluntariness and equality of each individual and family in birth control, reproductive health care, selection of residential places, and application of measures to raise the population quality.”⁷⁵⁶ It also provides: “[The] State shall adopt policies and measures to eliminate all forms of gender discrimination, discriminatory treatment between boys and girls, ensuring that women and men have the same interests and obligations in building prosperous, equal, progressive, happy and sustainable families.”⁷⁵⁷

The Decree on Population, which details the implementation of the Population Ordinance, has a particular article on gender equality:

Article 23: Gender Equality

- (1) Propagating the gender equality; eliminating all forms of gender discrimination; creating conditions for the female to take initiative in caring for their reproductive health, family planning and to enjoy equality in education, training, raising of their all-sided qualifications and participation in social activities; the male to practice family planning.
- (2) Eliminating all biases against young girls; protecting the legitimate rights and interests of young girls in daily-life activities, medical examination and treatment, learning, entertainment and recreation and all-sided development.

⁷⁵⁴ Population Ordinance, Article 5(4)

⁷⁵⁵ Decree on Population, Article 5(2)(b)

⁷⁵⁶ Population Ordinance, Article 2(2)

⁷⁵⁷ Ibid., Article 2

Article 18(3) of the Law on Gender Equality also contains a provision on gender equality and family planning: “Wife and husband are equal in discussing, deciding the choice and use of the appropriate family planning measures...” This equal obligation is also in Article 24 of the Marriage and Family Law, which states that husband and wife are obliged to implement the population and family planning policy.

Rights and obligations of individuals

The Population Ordinance guarantees rights of citizens relating to population work, which include the rights to: (a) be provided information on population; (b) be given quality, convenient, safe and confidential population services; and (c) practice family planning, select measures to take care of one’s reproductive health.⁷⁵⁸ There are also provisions on confidentiality relating to consultations by doctors in Article 24 of the Law on Health. The Law on Health also emphasizes that consent of the patient is required prior to surgery.⁷⁵⁹ Article 10 of the Population Ordinance guarantees rights of individuals and couples, which include the rights to: (a) decide on the time to have babies, the number of children and the duration between childbirth suitable to their age, health, study, labouring or working conditions, incomes, and raise their children on the basis of equality; and (b) select and apply family planning measures.

The Population Ordinance also identifies the obligations of couples and individuals in family planning, including the obligation to use method of contraception.⁷⁶⁰ It also identifies obligations of citizens on population work, which include to: (a) practice family planning and to build families that are “prosperous, equal, progressive, happy and sustainable” and with few children; and (b) “respect the interests of the State, society and community in readjusting the population size, population structure, population distribution, and raising the population quality.”⁷⁶¹

The Decree on Population, which details the implementation of the Population Ordinance, reiterates these rights and obligations. It states also: “The rights and obligations of each couple, individual are inseparable from one another in the implementation of family planning. Each couple, individual shall have the responsibility to exercise their rights and fulfill their obligations towards the State and the society.”⁷⁶²

Prohibited acts

All attempts to obstruct family planning implementation are strictly prohibited.⁷⁶³ In particular, the Population Ordinance prohibits: (a) obstructing or forcing the practice of family planning; (b) selecting the gender of unborn babies in any form; (c) dealing with faked, substandard, expired or banned contraceptive devices; and (d) disseminating information that adversely affects or is contrary to population work, fine ethics and social life.⁷⁶⁴

⁷⁵⁸ Ibid., Article 4

⁷⁵⁹ Law on Health, Article 28

⁷⁶⁰ Population Ordinance, Article 10

⁷⁶¹ Ibid., Article 4

⁷⁶² Decree on Population, Article 17

⁷⁶³ Law on Health, Article 43

⁷⁶⁴ Population Ordinance, Article 7

The Decree on Population provides further details on this as follows:

Article 9: To strictly prohibit acts of obstructing, forcing the implementation of family planning, including:

- (1) Intimidating, infringing upon the honor, dignity; infringing upon the bodies of persons who apply contraceptive measures, persons who give birth only to boys or only to girls.
- (2) Coercing, imposing to apply measures for contraception, child bearing, pre-mature birth, close childbirth intervals, giving birth to many children, giving birth only to boys, giving birth only to girls.
- (3) Causing difficulties to persons who voluntarily apply contraceptive measures.

Article 10: To strictly prohibit acts of selecting fetus gender, including:

- (1) Propagating, disseminating methods of fetus gender creation in forms of organized talks, writings, translation, photocopying of books, newspapers, documents, pictures, photos, recorded videos, recorded audio tapes; storing, circulating documents, means and other forms of propagation and dissemination of fetus gender creation methods.
- (2) Diagnosing to select fetus gender by methods of determination thereof via symptoms, pulse feeling; blood, gene, amniotic fluid, cell tests; ultrasonics,
- (3) Getting rid of fetuses for reason of gender selection by methods of abortion, supply and use of assorted chemicals, drugs and other measures.

Article 11: To strictly prohibit the production, trading, import and supply of a number of contraceptives, including:

- (1) Contraceptives incompatible with quality standards and goods labels under the current law provisions.
- (2) Low-quality contraceptives as concluded in writing by competent bodies through quality inspection and expertise.
- (3) Contraceptives with expired use dates inscribed on products, product packages or those with use dates not yet expired but already notified by competent bodies for not continuing to use them.
- (4) Contraceptives not yet permitted by competent State bodies for circulation in Vietnam.

Article 12: To strictly prohibit a number of acts of propagating, disseminating information on population, including:

- (1) Propagating and disseminating information on population in contravention of the Party's lines and policies and the State's laws.
- (2) Propagating and disseminating information on population inaccurately, untruthfully, causing adverse impacts on the implementation of the population work, social life and other fields.

- (3) Abusing the propagation and dissemination of information on population, reproductive health and/or family planning to distribute documents and/or articles, or committing other acts contrary to fine customs, practices and social ethics.

Strategies and plans

It is also relevant to look into national strategies and plans as particular provisions cover the right to decide the number and spacing of children. The National Strategy on Reproductive Health Care has as one of its objectives to sustain the fertility reduction trend, to ensure the rights of women and couples to have children and select contraceptive methods of good quality, and to reduce unwanted pregnancies and abortion related complications. It discusses the right within a more comprehensive framework of reproductive health care. Objective 3 of the Plan of Action for the Advancement of Women provides, as among the measures to be taken by MOH: (a) collaboration with the Committee on the Protection of Family and Children (CPFC) in regularly conducting inspection of the provisions of health care and family planning services at grass-roots level in line with national standards; (b) involvement of men in family planning and prevention of STIs; and (c) focusing on forms of counselling, dialogue, face-to-face communication with couples at reproductive age and adolescents on safe sex, family planning and preventive hygiene. The Resolution on Work for Women also states: "Special attention should be given to the areas of population, family planning, health care, prevention and fight against diseases and HIV/AIDS..." For more concrete legal provisions and discussions on sex-selection, see Part V.9.3, Indicator 90.

A look at the actual situation in Viet Nam shows that knowledge of family planning is high. The percentage of married women aged 15-49 years using contraceptives was 75.6 percent in 2003.⁷⁶⁵ Contraceptive use by age range in 2003 was 23.2 percent (for the age range of 15-19 years), 51.1 percent (for the age range of 20-24 years), 71.3 percent (for the age range of 25-29 years), 82.1 percent (for the age range of 30-34 years), 86.3 percent (for the age range of 35-39 years), 84.1 percent (for the age range of 40-44 years) and 70.7 percent (for the age range of 45-49 years). It is noticeable that contraceptive use in the age range of 15-19 years was the lowest. Choices of contraceptives are limited, and IUDs are the most popular contraceptive for women. In 2002, married women aged 15-49 years used the following contraceptives in the following proportions: the Pill/10.5 percent, IUDs/56.5 percent, injection/0.9 percent, jelly or foam/0.3 percent, condoms/8.4 percent, female sterilization/7.2 percent, male sterilization/0.5 percent, withdrawal/15.4 percent, and others/0.4 percent.⁷⁶⁶ No national data is available for unmarried women.

It is not only that information on unmarried women is lacking. In 2000, a NCAFW study pointed out that most family planning campaigns target married women.⁷⁶⁷ Unmarried women are not adequately prioritized. Also, although it is mostly men, whether married and single, who are the decision makers on contraceptive use, they are also seldom the target of campaigns and services. There is a need for more information to young people on these issues, including pre-marital sexuality.⁷⁶⁸

⁷⁶⁵ GSO Statistics, p. 66

⁷⁶⁶ GSO and UNICEF, 'Data on Social Statistics in Viet Nam', Statistical Publishing House, Ha Noi, 2004 (GSO Data), p. 17

⁷⁶⁷ Wells, op. cit., p. 38 citing the NCAFW study

⁷⁶⁸ Long, op. cit., p. 25

Contraceptive use in North West and Central Highlands registered the lowest in terms of contraceptive use of married women aged 15-49 years in 2002 with 71.23 percent and 72.23 percent respectively, the national average being 76.85 percent.⁷⁶⁹ Thus, extra attention and interventions to women in these areas are required. See Part V.9.3, Indicators 85-87 for discussion and recommendations. However, in the 2002 data, as to method used, the Northern regions - that is, Red River Delta, North East and North West and North Central - registered the highest rates of IUD usage at 71.0 percent, 77.2 percent and 74.4 percent respectively, where South Central, Central Highlands, Southeast, Mekong Delta registered at 61.7 percent, 51.0 percent, 48.5 percent, and 57.5 percent respectively.⁷⁷⁰ This further shows that there is little success in attempts at diversification in the North.⁷⁷¹

Hence, the range of contraceptives available and the extent of use shows that there is a need to ensure more access to a broad range of contraceptives. Although there is no legal prohibition on which contraceptive to access, there has been incentives provided for people to undergo sterilization and IUD procedures.⁷⁷² The high use of IUDs is due to a government family planning campaign that promotes this modern method of contraception. Particular legal documents provide that men who are sterilized are given an allowance equaling 40 kg of rice and are exempted from public labour for one year. Male civil servants receive one month salary and seven days leave with full pay. Women who have at least two children are eligible to have sterilization procedures provided for free. Likewise, women who undergo sterilization are also provided an allowance equaling 40 kg of rice and are exempted from public labour until the end of their working age. Woman civil servants would also be entitled for 20 days of leave with full payment. Also, the use of IUDs is encouraged, with monetary incentives offered in some instances.⁷⁷³ The number of days leave, however, may now be reduced to seven days for IUD implantation and 15 days for sterilization procedures with the coming into force of the Law on Social Insurance.⁷⁷⁴ Family planning providers are also given monetary incentives to perform abortions/menstrual regulations, IUD insertions and sterilization, which encourage them to offer these over other methods.⁷⁷⁵

The last comprehensive joint assessment of issues relating to abortion in Viet Nam was undertaken in 1999 by a number of national and international experts representing organizations such as MOH, Viet Nam Women's Union, World Health Organization (WHO) and Population Council and it found that there are weaknesses in the provision of information and counselling on contraception.⁷⁷⁶

Some observations on the situation and these legal documents are as follows.

First, in relation to information and education on population and family planning, the list of contents for any information on population in Article 7 of the Decree on Population is

⁷⁶⁹ GSO Data, pp. 18 and 19

⁷⁷⁰ United Nations Population Fund, 'Implementation of Viet Nam's Population Strategy: 2001-2005: An International Perspective', Ha Noi, April 2006 (UNFPA Perspective), p. 9

⁷⁷¹ Ibid, p. 8

⁷⁷² Center for Reproductive Rights, p. 217

⁷⁷³ Ibid., p. 217 citing *Ho Chi Minh City Health and Financial Services' Inter-Service Notice No. 475/MH 107 of May 10, 1989*

⁷⁷⁴ Law on Social Insurance, Article 33

⁷⁷⁵ Long, op. cit., p. 23

⁷⁷⁶ Wells, op. cit., p. 38 citing the joint assessment

inclusive, but it is also very general. It is suggested that a more detailed guideline be provided to ensure that appropriate education on the issues are provided; for example, knowledge on gender equality is required as contents by the decree. However, the Decree on Population should specify that this knowledge should: (a) raise awareness on equal rights and responsibilities of man and woman on deciding the number and spacing of children; (b) eradicate or revise discriminatory cultural practices impinging on women's rights, including the right to reproductive and sexual health; (c) provide special needs and care required to ensure safe motherhood; (d) eliminate socio-cultural and other obstacles obstructing access to family planning services, including contraception; (e) prevent early and unwanted pregnancies; and (f) provide information on early sexual activity. Education and behavioral change communication on family planning is also necessary for men, including their use of contraceptives.

Specific guidelines should also be provided on how such information on population is to be integrated into the national education system. This will enable access to information by adolescents. A systematic and consistent inclusion into the curricula must be done to ensure that the provisions on the existing legal documents are operationalized. This should include revision of textbooks, teacher training, and modification of teaching manuals. What kind of information is to be provided per grade/year in school must also be specified in the guidelines. The guidelines, in addition to operationalizing the provision of information in the national education system, will also make monitoring of compliance easier.

On contraception, Viet Nam's legal documents provide several specific provisions on this matter. The provisions guarantee the supply of different kinds of contraception, as well as emphasize that contraception should be used voluntarily and by knowledgeable users. Legal provisions also guarantee quality, convenient and safe family planning services. Nevertheless, the high rate of preference for IUDs reflects the emphasis that has been on this particular form of contraception. There have also been minor legal documents providing incentives for IUD use and sterilization as well as other incentives for health-care providers, which work to encourage them to favour IUD use, sterilization and even abortion. Therefore, there is a need to review these incentives and also further to address issues of accessibility and availability to women of other forms of contraception. In this regard, it is suggested that legal documents mandate the provision of a wider range of contraception. As a parallel effort, specific guidelines should be given to health-care providers on providing information and counselling to users about advantages, limitations, risks and contraindications of the various contraceptive methods, as well as ascertaining with the user the best methods for their needs.

It is also suggested that guidelines to ensure that informed consent is provided for sterilization methods be strengthened. It must be compulsory for all sterilization procedures to ensure that the patient has given informed consent prior to undergoing the sterilization procedures. The patient must sign a document stating that: (a) she or he has consented to undergo the sterilization procedure; (b) she or he understands that the procedure irreversible; (c) she or he knows of her or his right to informed consent; (d) the doctor or health-care service provider has fully explained the advantages, limitations, consequences and risks of the procedure to her or him in a language understood by her or him.

The policy on limiting family size and providing incentives or disincentives for conforming or violating the policy must be reviewed, especially in the light of Article 16(1)(e)

of CEDAW that provides that women have the same rights to decide freely and responsibly on the number and spacing of their children, which is also reaffirmed in a number of international documents. Although in some instances legal provisions are couched in language of incentives, incentives penalize those who do not conform to the set family size. From this perspective, they do not enjoy the right guaranteed because a penalty is imposed for its exercise.

Also, moral and material incentives that are provided to health-care providers for each abortion, IUD insertion or sterilization should be abolished to enable independent counselling on the appropriate method of contraception based on the needs of the patient. Monitoring also needs to be in place on how State incentives favoring those who undergo sterilization or IUD insertion, or conform to family size policies, can discriminate against women or couples who have not undergone specific contraceptive procedures, or have gone beyond the set family size of one or two children. Revision of these policies is necessary to ensure that the exercise of the right to decide on the number and spacing of children is enjoyed without prior restraint or subsequent penalty or sanction.

Regulation on the use of emergency contraception or postcoital hormonal contraception used by women within a few days following unprotected sex to prevent a pregnancy must also be in place, especially its immediate access by victims of rape or forced sexual intercourse. In this case, emergency contraception should be available free-of-charge in government health institutions. It should be compulsory for State institutions where women are likely to report the crime to inform the woman of her right to emergency contraception and to make the necessary referral to the appropriate health-care institution. Adequate information and counselling should be provided by the health-care provider and the informed consent of the victim must be obtained prior to providing emergency contraception.

A concrete guarantee of non-discrimination in access to family planning services, especially access to contraceptives, must also be provided, especially on account of nationality, ethnicity, and economic and social status, in addition to non-discrimination on the basis of gender. This will ensure equal access by disadvantaged group of women, such as ethnic minority women, poor women, rural women.

Lastly, unmarried women should also be targeted as beneficiaries of family planning services without discrimination on account of their status as unmarried. An explicit provision on this must be in all legal documents on population and family planning to ensure that they are not discriminated against and to ensure awareness by implementers of the need for inclusion of these women in their work.

Recommendation: *In the light of the above, the following recommendations are made in relation information and education on population and family planning: (a) a more detailed guideline be provided to ensure that appropriate education on the issues is provided. In relation to gender equality, for example, it should specify that contents should include practical information, in addition to basic concepts, such as: (i) raising awareness on equal rights and responsibilities of men and women in deciding the number and spacing of children; (ii) eradication or revision of discriminatory cultural practices impinging on women's rights, including the right to reproductive and sexual health; (iii) special needs and care required to ensure safe motherhood; (iv) socio-cultural and other obstacles obstructing access to family planning services, including contraception; (v) early and unwanted pregnancies; and (vi) early sexual activity; (b)*

increased education and behavioral change communication on family planning for men, including their use of contraceptive; and (c) specific guidelines on how information on population is to be integrated into the national education system in a systematic and consistent manner, which should include integration and regular review of the curricula, revision of textbooks, teacher training, modification of teaching manuals, guidelines as to what kind of information is to be provided per grade/year.

The following recommendations are made in relation to contraception: (a) access to a wide range of contraception should also be one of the explicit rights relating to population work and family planning and guaranteed in the list of rights in the Articles 4 and 10 of the Population Ordinance and Article 17 of the Decree on Population; (b) specific guidelines should be given to health-care providers on providing information and counselling to users to enable their informed consent, which will include advantages, limitations, risks and contraindications of the various contraceptive methods, as well as to ascertain with the user the best methods for their needs. Procedures to ensure that the patient has given informed consent prior to undergoing the sterilization procedures must be in place, including that the patient must sign a document stating that: (i) she or he has consented to undergo the sterilization procedure; (ii) she or he understands that the procedure irreversible; (iii) she or he knows of his right to informed consent; and (iv) the doctor or health service provider has fully explained the advantages, limitations, consequences and risks of the procedure to her or him in a language understood by her or him; (c) review of moral and material incentives in legal documents for the use of particular forms of contraception. Monitoring needs to be in place on how these State incentives can discriminate against women or couples who have not undergone specific contraceptive procedures; and (d) guidelines on the use of emergency contraception or postcoital hormonal contraception used by women within a few days following unprotected sex to prevent a pregnancy, especially its immediate access by victims of rape or forced sexual intercourse. In these cases, it is suggested that emergency contraception should be available free-of-charge in government health-care institutions. State institutions where women are likely to report the crime will be mandated to inform the woman of her right to emergency contraception and to make the necessary referral to the appropriate health-care institution. Adequate information and counselling will be provided by the health-care provider and informed consent of the victim must be obtained prior to providing emergency contraception. There is also a need for improved monitoring and evaluation. In particular, quality of services must be monitored.

For recommendations on sex selection, see Part V.9.3, Indicator 90.

The policy of limiting family size to one or two children and providing incentives or penalties for conforming or violating the policy must be repealed as they work to penalize, directly or indirectly, the valid exercise of a right. In lieu of this policy, it is suggested that further information and education, especially behavioral change communication, be put in place to ensure a more sustainable population policy than one that is government imposed.

In addition to the guarantee of gender equality, a guarantee of non-discrimination in access to family planning services, especially access to contraceptives, on the basis of other grounds must also be explicitly guaranteed to equal access by disadvantaged group of women, such as ethnic minority women, poor women, rural women.

The quality of population information and data, especially on access by a wider group of women, other than married women must be improved. An explicit provision on this must be in all legal documents on the equal access by unmarried women to all family planning services. There should be a clear prohibition on discriminating against them on account of their unmarried status.

Indicator 116 Does the legislation provide for equal property rights of men and women who live together without the benefit marriage (*de facto* unions)?

There is no special provision in Vietnamese legal documents governing property relations of unions without marriage where there exists no legal impediment for a valid marriage. However, there are some provisions that may apply to some instances of unions without marriage registration or without a legal marriage such as Article 11 of the Marriage and Family Law, which states that persons who fail to register their marriage but live together as husband and wife will not be recognized by law as husband and wife.

In certain circumstances, Article 17 of the Marriage and Family Law may also apply. It provides for situations where an illegal marriage is annulled. In these cases, the property of the man and the woman will be dealt with by recognizing that personal property belongs to one of them and their common property will be divided as agreed upon by both of them. If they fail to reach an agreement, they may request the courts to divide the property. The courts will consider each partner's contributions as well as protection of the legitimate interests of women and children. However, no further provisions are provided on how each partner's contributions are to be considered.

In a valid marriage, property relations during marriage are stipulated explicitly (see Indicator 114 for the provisions of law). Express provisions are also provided in cases of divorce where division of property can be agreed on by the parties or, in cases of disagreement, settled by the courts in accordance with the following principle: the common property is halved between the spouses bearing in mind each party's contributions, where housework is regarded as income-generating labour.⁷⁷⁷

Without an express provision governing unions without marriage, women's reproductive contributions in these relationships, including care for the family, household chores, etc., will be disregarded. Hence, one of the main reasons why express attention on unions without marriage is important is to ensure protection of the contributions of women or 'wives' in relationships where they have little negotiating power on account of their subordinate status in family and society. Thus, where a man and woman live together as husband and wife without the benefit of marriage or marriage registration, a woman may also be less likely to assert herself over her 'husband', including on matters such as property rights and registration of marriage.

Recommendation: It is suggested that explicit provisions be provided for de facto unions. To define specifically what 'unions without marriage' are contemplated to be covered by legislation, it could define its coverage as including only those unions without marriage where a man and woman are: (a) capacitated to marry each other; (b) live exclusively with each other as husband and wife; and (c) are not married or under

⁷⁷⁷ Law on Marriage and Family, Article 95

a void marriage. It should state that, in the absence of proof to the contrary, properties acquired while they lived together are presumed to be obtained through their joint efforts and, hence, owned by them jointly. In this regard, just like in a valid marriage, to calculate each party's contributions, reproductive work, including housework and care for family members are regarded as income-generating labour.

Indicator 117 Do women and men have equal inheritance rights?

Article 676(1) of the Civil Code provides who are considered heirs at law:

Article 676: Heirs at law

(1) Heirs at law are classified in the following order:

- (a) First rank of inheritance shall include wife, husband, biological father, biological mother, adoptive father, adoptive mother, biological children and adopted children of the decedent;
- (b) Second rank of inheritance shall include paternal grandfather, paternal grandmother, maternal grandfather, maternal grandmother, natural brother(s) and sister(s) of the decedent; grandchildren of whom the decedent is the paternal grandfather or grandmother, maternal grandfather or grandmother;
- (c) Third rank of inheritance shall include paternal and maternal great-grandparents; paternal and maternal uncles and aunts by blood of the decedent; nephews and nieces of whom the decedent is the paternal or maternal uncle or aunt by blood; great grand-children of whom the decedent is the paternal or maternal great grandparents.

Article 676(2) then provides: "Heirs belonging to the same rank of inheritance shall be entitled to equal portions in the estate." It is clear from Article 676(1) that men and women who are related in the same manner to the testator are in the same rank. No distinction or demotion is provided on the basis of gender. Article 676(3) further emphasizes: "Heirs belonging to the subsequent rank of inheritance shall be entitled to inheritance only if none of the heirs of the preceding rank of inheritance is left as they have died, are not entitled to the estate, are disinherited or disclaim the estate."

Also, the Marriage and Family Law further emphasizes the equal right of spouses to inherit each other's property according to the provisions of the inheritance legislation. The Decree on Marriage and Family Law (Ethnic Minorities) in particular lists as 'backward' customs the following practices of patriarchy: (a) inability of widows to inherit from their husbands or if a widow remarries persons other than in her husband's family, she is not allowed to enjoy and take away any property from her late husband's estate; and (b) only sons are entitled to inherit from their deceased fathers.⁷⁷⁸ However, in traditions that practice matriarchy, the practice is for widowers and sons not to inherit from their deceased wives or parents respectively.⁷⁷⁹ All these instances are prescribed by the Decree on Marriage and Family Law (Ethnic Minorities) to be eliminated by mobilization.

There are also some accounts of parents preferring their sons to inherit properties, especially real properties, as they believed that their sons will take care of the parents as well

⁷⁷⁸ Decree on Marriage and Family Law (Ethnic Minorities), Appendix B

⁷⁷⁹ Ibid.

as provide for their own wives and children, while their daughters will get married and move out of the family house.

In view of these perceptions, a look at the provisions of the Civil Code, which at first glance appear to be gender-neutral, may actually lead to discrimination against women and girls. Provisions that allow the testator to freely choose heirs may operate to deprive daughters and sisters of their inheritance on the basis of their gender (in favor of sons and brothers). Likewise, provisions that give precedence to written agreement of heirs - that is, Article 684(1) of the Civil Code - despite the testator's will or inheritance at law, and the provisions of Article 676 of the Civil Code, may also circumvent the guarantee of women's equal inheritance rights.

Although each person has a right to freely dispose properties after death to anyone, this right should be limited in that it cannot be done in a manner that discriminates on the basis of gender. There is a need for further study on this matter so that incidences of possible indirect discrimination can be surfaced and addressed. Where incidences of contravention of the law exists, most especially due to customs and discriminatory thinking, it is suggested that a system of reserved inheritance be put in place for a specific portion of the testator's estate for compulsory heirs that cannot be easily disregarded by the testator without justifiable reasons or even by written agreement of the heirs without appropriate safeguards, such as legal counselling on women's rights and consequences of disclaiming their portion of the estate. This will address gender biases by the testators as well by relatives and other heirs who may apply undue pressure on the women or girls to forego their rightful inheritance.

Having compulsory heirs or a reserved portion of the estate to ensure protection of particular group of heirs is not alien to the inheritance laws of Viet Nam. Article 669 of the Civil Code provides for "heirs independent from contents of testaments", which states that minor children, fathers, mothers, wives, husbands and adult children without working capacity are entitled to a portion of the estate that is equivalent to two thirds of the portion given to an heir-at-law, if the estate is divided according to law, in cases where they are not allowed by the testator to enjoy the estate or are allowed only a portion less than two thirds of their due part, unless they disclaim the estate or are not entitled to the estate as per Article 642 of the Civil Code. The system suggested can use Article 676 of the Civil Code as a basis for the identification of compulsory heirs and their hierarchy of succession. With this system, inheritance laws must also take note of alleged sales of property or of donations to transfer property to male heirs, which operate to take away property for the estate and deprive women and girls of a bigger share.

Recommendation: Further study is recommended on incidences of indirect discrimination relating to inheritance rights, in particular, the number of women or girls who have not received inheritance as opposed to men or boys of equal relation to the testator, whether by choice of the testator, by written agreement of the heirs or by other means of circumventing equal inheritance rights; for example, alleged sales or donations. It is suggested that a system of reserved inheritance be put in place for a specific portion of the testator's estate to be allotted for compulsory heirs, which cannot be easily disregarded by the testator without justifiable reasons or by written agreement of heirs without appropriate safeguards, such as legal counselling on women's rights and consequences of disclaiming their portion of the estate. This system must provide for collation of property back to the estate in cases of donations or alleged sales of property to male heirs, which operate to take away property for the estate and deprive women and girls of their share in the estate.

VI. CONCLUSION

As gender is a cross-cutting issue relevant in all sectors and arenas, legal reform to incorporate gender equality is a challenging process. This legal review seeks to contribute to this process as one of its building blocks. It is hoped that the recommendations in the review will assist not only in the immediate reform of legal documents, but also in the continuous process of analysing, monitoring, evaluating, revising, supplementing and drafting of legal documents to ensure their compliance with international standards on gender equality.

It is obvious that, to achieve gender equality or to progress towards it, comprehensive measures must be in place. This has always been emphasized, especially by the CEDAW Committee in its instruments. Review and reform of laws and legal documents is simply one of the numerous measures and obligations that need to be undertaken to achieve equality and eliminate discrimination. Legal reform by itself will not be effective if it is not complemented and supplemented by other measures, including education and awareness-raising, economic interventions, psychological and medical assistance, and psycho-social services. Many forms of measures must be in place, and they must complement and supplement each other to comply with the obligation under CEDAW to respect, protect, promote and fulfil equal rights.

Lastly, it is critical to bear in mind that, to carry out the recommendations, the commitment of the political leadership and the participation of an informed, diverse and gender-sensitive constituency are necessary. These are needed for legal reform to become real and sustainable. The effective participation of women, as a crucial part of this constituency, must be recognized at all times. Continuous and unwavering will and support from the State and the people is necessary to be able to consistently progress towards the goal of gender equality.

Appendix I:

LIST OF 150 INDICATORS AND SUB-INDICATORS

(A total of 117 Indicators and 33 Sub-Indicators for CEDAW)

V.1 General Undertakings to Eliminate Discrimination and Ensure Equality (Articles 1-3 of CEDAW)

V.1.2.1 Guarantee of Equality and Non-Discrimination

- Indicator 1** Is there a guarantee of equality and non-discrimination on the basis of sex or gender in the Constitution and/or legal documents?
- Indicator 2** Is there a definition of equality between men and women/gender equality and does it conform to substantive equality?
- Indicator 3** Is there a definition of discrimination/non-discrimination on the basis of sex and does it conform to Article 1 of CEDAW?
- Indicator 4** Do legal documents address the intersections of other grounds of discrimination with gender discrimination (such as discrimination on the basis of ethnicity, disability, age and sexual orientation)?

V.1.2.2 Prohibition on Discrimination

- Indicator 5** Is there legislation in place that clearly prohibits gender discrimination by public authorities?
- Indicator 6** Is there legislation that prohibits gender discrimination by private persons, enterprises and organizations?
- Indicator 7** Are there sanctions in place for actions or omissions that result in discrimination? Are sanctions heavier if the discriminatory act is committed by a public official?
- Indicator 8** Is there legislation in place that prohibits gender discrimination by foreigners and foreign-owned and/or controlled entities?

V.1.2.3 Legal Protection of Women

- Indicator 9** Is there a right to seek redress in cases of discrimination?
- Indicator 10** Are current criminal, civil and administrative procedures able to handle appropriately cases of gender discrimination? Are there legal documents that provide specific guidance in the handling of cases of discrimination?
- Indicator 11** Is there a guarantee of legal aid for cases of gender discrimination? Is there a guarantee of legal aid for women?
- Indicator 12** Is conciliation, mediation or negotiation required by law to settle disputes in all cases?
- Indicator 13** Is protection against gender discrimination extended to foreigners?

V.1.2.4 Institutions and mechanisms for Implementation and Monitoring

- Indicator 14** Is there a specific agency responsible to coordinate measures to achieve gender equality or women's human rights? Is the agency provided with appropriate mandates, powers and resources to be able to promote gender equality and protect women's human rights?
- Indicator 15** Are there legal documents that clearly establish responsibilities of various State agencies (whether legislative, executive, judicial or administrative) to incorporate gender equality in their operations?
- Indicator 16** Are there legal documents that require systematic collection and analysis of sex-disaggregated data, monitoring impact of interventions as well as trends or progress in relation to gender equality?
- Indicator 17** Does legislation require that strategies and plans be put in place to ensure promotion and protection of gender equality?
- Indicator 18** Are there agencies, whether State or independent, that monitor or supervise State compliance with gender equality and/or CEDAW?

V.1.2.5 Incorporation and Application of Treaties

- Indicator 19** What is the status of CEDAW in the domestic legal framework?
- Indicator 20** Can CEDAW's provisions be invoked directly in judicial or quasi-judicial proceedings as a source of an actionable right?
- Indicator 21** In case of conflict between CEDAW and domestic legal documents, which will prevail?

V.1.2.6 Gender-Based Violence/ Violence Against Women and its Manifestations

Indicator 22 Gender-Based Violence

- Indicator 22(a)** Is GBV prohibited by law?
- Indicator 22(b)** How is 'gender-based violence' defined?
- Indicator 22(c)** What sanctions are in place for perpetrators?
- Indicator 22(d)** What measures are in place for victims of GBV?
- Indicator 22(e)** Does the law mandate inter-agency cooperation to address GBV? Is there a clear designation of coordinated and individual responsibilities of State agencies to address GBV?

Indicator 23 Domestic Violence

- Indicator 23(a)** Is domestic violence prohibited by law?
- Indicator 23(b)** How is 'domestic violence' defined?
- Indicator 23(c)** What measures are mandated by law to address the needs of victims of domestic violence? What interim or

	permanent measures are put in place for the protection of victims?
Indicator 23(d)	What sanctions and/or measures are imposed against the perpetrator of domestic violence?
Indicator 23(e)	Does the law encourage/require conciliation or mediation for domestic violence cases? Is there a duty to ascertain the presence/absence of domestic violence during conciliation or mediation? What procedures are in place if one party to conciliation or mediation is a victim of domestic violence?
Indicator 23(f)	Is legal assistance available to victims of Domestic Violence?
Indicator 23(g)	Does the law mandate inter-agency cooperation to address domestic violence? Is there a clear designation of coordinated and individual responsibilities of State agencies to address domestic violence?
Indicator 24 Rape and other Forms of Sexual Assault	
Indicator 24(a)	Are rape and other forms of sexual assault prohibited?
Indicator 24(b)	How are 'rape' and 'other forms of sexual assault' defined? Do their definitions include broad range of sexual assault acts?
Indicator 24(c)	Does consent of a child to sexual acts operate as a defence in the crimes of rape and other forms of sexual abuse?
Indicator 24(d)	Is marital rape an offence?
Indicator 24(e)	Are prosecutions for rape and other forms of sexual assault only possible if consented to by the victim? Are prosecutions for rape and other forms of sexual assault discontinued if the victim withdraws the complaint, forgives or marries the accused?
Indicator 24(f)	Is there a prohibition on the use of prior sexual conduct to establish consent to sexual acts?
Indicator 24(h)	Is there a requirement of corroboration to prosecute cases of rape and/or other forms of sexual assault?
Indicator 25 Incest	
Indicator 25(a)	Is incest prohibited?
Indicator 25(b)	How is 'incest' defined?
Indicator 25(c)	What forms of redress are provided to victims of incest?
Indicator 25(d)	Are sanctions are in place for perpetrators?

Indicator 26 Stalking	
Indicator 26(a)	Is stalking prohibited?
Indicator 26(b)	How is 'stalking' defined?
Indicator 26(c)	What forms of redress are provided to victims of stalking?
Indicator 26(d)	Are sanctions in place for perpetrators?
V.2 'Temporary Special Measures' and 'Measures in Favour of Maternity' (Article 4 of CEDAW)	
Indicator 27	Do the Constitution and laws contain provisions that allow the setting of temporary special measures to accelerate <i>de facto</i> equality?
Indicator 28	Is there a definition of 'temporary special measures' in legislation?
Indicator 29	Is there a procedure for the implementation of temporary special measures?
Indicator 30	Is there legislation that provides for special measures in favour of maternity?
V.3 Social and Cultural Patterns of Conduct (Article 5 of CEDAW)	
Indicator 31	Is there legislation that requires the modification of stereotypes and other practices that discriminate against women?
Indicator 32	Are there measures in place to provide information on gender and gender equality?
Indicator 33	Is there legislation addressing the role and responsibility of media to refrain from discriminatory conduct and to contribute to achievement of equality?
V.4 Trafficking and Exploitation of Prostitution (Article 6 of CEDAW)	
V.4.2.1 Trafficking	
Indicator 34	Is trafficking of women prohibited?
Indicator 35	Is there a definition of 'trafficking' in legislation?
Indicator 36	What sanctions are in place for commission of trafficking?
Indicator 37	Is there legislation protecting would-be brides from being victimized by traffickers? Is mail order bride system prohibited?
Indicator 38	Are trafficked women penalized?
Indicator 39	Does legislation put in place measures to combat trafficking?

- Indicator 40** What legislative measures are in place to address needs of victims of trafficking and their families?
- Indicator 41** Are there interim and permanent protective measures required by law for the protection of the victim/survivor of domestic violence?
- Indicator 42** Does legislation exist ensuring that women who have been trafficked and their children are able to claim citizenship, residency and other rights?
- Indicator 43** Is inter-agency cooperation to address gender-based violence mandated by law? Is there a clear designation of responsibilities of ministries and agencies to eliminate discrimination?
- Indicator 44** What measures are provided by legislation concerning responsibilities of embassies abroad for protection of victims of traffickers?
- Indicator 45** Is trafficking an extraditable offense?

V.4.2.2. Exploitation of Prostitution

- Indicator 46** Is prostitution considered an offense? If yes, how is it committed and who are considered offenders?
- Indicator 47** Are there sanctions in place?
- Indicator 48** Is sex tourism prohibited?
- Indicator 49** Are there measures required by law to address the needs of women exploited for prostitution?
- Indicator 50** Is inter-agency cooperation to address prostitution mandated by law? Is there in legislation a clear designation of responsibilities of ministries and agencies to eliminate prostitution?
- Indicator 51** Are women in prostitution given equal protection of the law in relation to crimes of rape or sexual assault?
- Indicator 52** Is there legislation to ensure that women in prostitution are given equal access and benefits to health care, education and other basic services?

V.5 Political and Public Life (Articles 7-8 of CEDAW)

- Indicator 53** Is the equal right to vote guaranteed by the Constitution or law?
- Indicator 54** Is there equal eligibility for election for all publicly elected bodies?
- Indicator 55** Are there legislative provisions for temporary special measures, especially minimum quotas of women in elections at all levels? Does legislature clearly specify measure to support the quotas?

Indicator 56	Is there equal eligibility for appointment to public positions?
Indicator 57	Is there legislative provision for temporary special measures, especially minimum quotas of women in appointed public positions at all levels? Does legislation clearly specify measures to support the quotas?
Indicator 58	Are women able to access leadership positions in the Communist Party of Vietnam?
Indicator 59	Do women have an equal right to participate in mass organizations, NGOs and other civil society groups?
Indicator 60	Is there legislation regulating registration and mobilization of NGOs to promote the advancement of women?
Indicator 61	Are these legal provisions on female participation in policymaking and implementation at the grassroots level?
Indicator 62	Do women have equal opportunity to represent government at the international level and participate in work of international organizations?
V.6 Nationality (Article 9 of CEDAW)	
Indicator 63	Do women have an equal right to acquire, change or retain their nationality? (Does marriage to a non-national or change of a husband's nationality affect a wife's nationality?)
Indicator 64	Do women have equal right to transmit their nationality to their children?
V.7 Education (Article 10 of CEDAW)	
Indicator 65 Equal Access to Education	
Indicator 65(a)	Is there a guarantee of equal access to education by women and girls?
Indicator 65(b)	Is there a legislative prohibition against non-enrolment or expulsion from school based on pregnancy and maternity?
Indicator 65(c)	Is there compulsory primary and secondary education for girls and boys? Are both girls and boys able to access equally such compulsory education?
Indicator 65(d)	Is there legislation on ensuring access to education of disadvantaged groups, especially ethnic minority women and girls and women and girls with disabilities?

- Indicator 66** Is there legislation to ensure equal conditions of education; for example, same curricula, examinations, teaching staff, facilities, and opportunities to participate in sports?
- Indicator 67** Is there legislation on eliminating stereotyped roles of men and women in all forms of education?
- Indicator 68** Is there legislation requiring the periodic review of textbooks and curricula to ensure gender sensitivity?
- Indicator 69** Are there legal documents ensuring that school administrators, personnel and teachers do not discriminate on the basis of gender and are gender sensitive?
- Indicator 70** Is sexual harassment prohibited in educational and training institutions?

V.8 Employment (Article 11 of CEDAW)

- Indicator 71** Does legislation guarantee equality and non-discrimination in employment on the grounds of sex, marital status and pregnancy? Does this apply to both public and private sectors?
- Indicator 72** Do women have the same employment opportunities as men? Does legislation provide for the same criteria for selection? Are there restrictions on women's choice of employment?
- Indicator 73** Does legislation contain an equal pay for work of equal value provision?
- Indicator 74** Does legislation provide for equal conditions of work, including job security, benefits, evaluation and promotions?
- Indicator 75** Does legislation ensure special protection for women's health during pregnancy?
- Indicator 76** Does the legislation provide reasonable nursing time during working hours?
- Indicator 77** Does legislation provide for an equal retirement age?
- Indicator 78** Does legislation provide protection from dismissal on account of marriage, pregnancy or maternity leave?
- Indicator 79** Does the legislation provide paid maternity leave for a reasonable period of time without loss of seniority and other benefits?
- Indicator 80** Does legislation provide for support services to enable parents to combine family obligations with work responsibilities, including ensuring childcare facilities by the employer or the State?
- Indicator 81** Does the legislation provide sexual harassment protection from employers and co-workers?

Indicator 82	Is there a definition of 'sexual harassment' that includes a comprehensive list of unwelcome acts?
Indicator 83	Are there regulations governing work conditions of domestic workers?
Indicator 84	Is there legislation for the protection of Vietnamese overseas migrant workers?
V.9 Health (Article 12 of CEDAW)	
Indicator 85	Is there legislation that guarantees non-discrimination and equal access to health care?
Indicator 86	Are there measures in place to provide assistance on health-care services for poor women and other disadvantaged groups, such as women with disabilities or ethnic minority women?
Indicator 87	Is there legislation ensuring access by women to appropriate health-care services relating to pregnancy and maternity?
Indicator 88	Is there legislation addressing women living with HIV/AIDS and other STIs?
Indicator 89	Is abortion prohibited?
Indicator 90	Are sex-selective abortion and prenatal sex-selection prohibited?
Indicator 91	Is there legislation regulating family size?
Indicator 92	Is there legislation that guarantees the right to free and informed choice and prohibition of coercion, intimidation or undue influence in the use of contraceptives; for example, non-consensual sterilization or free choice of contraception)?
Indicator 93	Is sexual harassment by health professionals prohibited?
V.10 Economic and Social Life (Article 13 of CEDAW)	
Indicator 94	Is there a guarantee for women's equal participation in business? Is there legislation supporting women's involvement in setting up and maintaining enterprises?
Indicator 95	Do women have equal right to receive credit, loans and funds?
V.11 Rural Women (Article 14 of CEDAW)	
Indicator 96	Is there legislation to ensure the enjoyment of rights by ethnic minority girls in the area of education?

- Indicator 97** Is there legislation to ensure the enjoyment of the right to health care by ethnic minority women and women in remote and mountainous regions?
- Indicator 98** Is there legislation to ensure the enjoyment of rights of rural women in the area of land policies?
- Indicator 99** Is there legislation to ensure the equal representation of ethnic minority women in publicly elected bodies?
- Indicator 100** Are there legal provisions on rural women's participation in policymaking and implementation at the grass-roots level?

V.12 Equality Before the Law (Article 15 of CEDAW)

- Indicator 101** Does the Constitution guarantee equality before the law?
- Indicator 102** Do women have equal capacity in civil matters?
- Indicator 103** Do women (regardless of marital status) have an equal right to conclude contracts? (Are there any restrictions to women entering and concluding contracts?)
- Indicator 104** Do women have an equal right to be executors or administrators of estates?
- Indicator 105** Do women have the same right with respect to ownership, acquisition, management, administration, enjoyment and disposition of property, including land?
- Indicator 106** Do women have equal right to freedom of movement and to choose residence and domicile?

V.13 Marriage and Family (Article 16 of CEDAW)

- Indicator 107** Does the Constitution provide for special protection for family and marriage?
- Indicator 108** Is there a general guarantee in a legal document of gender equality in the family and marriage?
- Indicator 109** Does legislation guarantee the same right and conditions to enter into marriage; that is, the right to decide if, when and who to marry?
- Indicator 109(a)** Is there an equal minimum age of 18 years for marriage?
Is there prohibition on child marriage?
- Indicator 109(b)** Is registration of birth in an official registry required?
- Indicator 110** Does legislation guarantee marriage only with free and full consent of both spouses?

- Indicator 111** Is there a legislative prohibition on traditional practices that restrict the right to decide if, when and who to marry, including kidnapping for marriage, dowries, bigamy and polygamy, and restriction on remarriage of widows/widowers?
- Indicator 112** Does legislation require registration of marriage in an official registry?
- Indicator 113** Does legislation penalize adultery?
- Indicator 114** Are both spouses (husband and wife) equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?
- Indicator 115** Does legislation provide same rights and responsibilities to men and women for the number and spacing of their children (including education and means to exercise these rights)?
- Indicator 116** Does the legislation provide for equal property rights of men and women who live together without the benefit marriage (de facto unions)?
- Indicator 117** Do women and men have equal inheritance rights?

Appendix II: LIST OF REFERENCES

I. LIST OF INTERNATIONAL LEGAL DOCUMENTS

A. *Treaties*

- Convention on the Elimination of All Forms of Discrimination Against Women
- Vienna Convention on the Law of Treaties
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime
- United Nations Convention against Transnational Organized Crime

B. *General Recommendations*

- CEDAW General Recommendation No. 1: Reporting by State Parties (1986)
- CEDAW General Recommendation No. 2: Reporting by State Parties (1987)
- CEDAW General Recommendation No. 3: Education and Public Information Campaigns (1987)
- CEDAW General Recommendation No. 4: Reservations (1987)
- CEDAW General Recommendation No. 5: Temporary Special Measures (1988)
- CEDAW General Recommendation No. 6: Effective National Machinery and Publicity (1988)
- CEDAW General Recommendation No. 7: Resources (1988)
- CEDAW General Recommendation No. 8: Implementation of Article 8 of the Convention (1988)
- CEDAW General Recommendation No. 9: Statistical Data concerning the Situation of Women (1989)
- CEDAW General Recommendation No. 10: Tenth Anniversary of the Adoption of the Convention on the Elimination of All Forms of Discrimination against Women (1989)
- CEDAW General Recommendation No. 11: Technical Advisory Services for Reporting Obligations (1989)
- CEDAW General Recommendation No. 12: Violence against women (1989)
- CEDAW General Recommendation No. 13: Equal Remuneration for Work of Equal Value (1989)
- CEDAW General Recommendation No. 14: Female circumcision (1990)
- CEDAW General Recommendation No. 15: Avoidance of Discrimination against Women in National Strategies for the Prevention and Control of Acquired Immunodeficiency Syndrome (AIDS) (1990)

- CEDAW General Recommendation No. 16: Unpaid Women Workers in Rural and Urban Family Enterprises (1990)
- CEDAW General Recommendation No. 17: Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the Gross National Product (1991)
- CEDAW General Recommendation No. 18: Disabled women (1991)
- CEDAW General Recommendation No. 19: Violence against women (1992)
- CEDAW General Recommendation No. 20: Reservations to the Convention (1992)
- CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations (1994)
- CEDAW General Recommendation No. 22: Amending Article 20 of the Convention (1995)
- CEDAW General Recommendation No. 23: Political and Public Life (1997)
- CEDAW General Recommendation No. 24: Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women - Women and Health (1999)
- CEDAW General recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures (2004)

C. Concluding Comments

- Concluding Comments of the Committee on the Elimination of Discrimination against Women: Viet Nam. Jan. 17, 2007. CEDAW/C/VNM/CO/6
- Concluding Comments of Committee on the Elimination of Discrimination against Women: Viet Nam. 2001. CEDAW A/56/38

D. CEDAW Reports and related documents

- Combined Fifth and Sixth Periodic Report of States Parties: Viet Nam. Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/VNM/5-6. June 22, 2005 at [http: www.un.org/womenwatch/daw/cedaw/37sess.html](http://www.un.org/womenwatch/daw/cedaw/37sess.html)
- Responses to the List of Issues and Questions for Consideration of the Combined Fifth and Sixth Report of Viet Nam to the CEDAW Committee, 37th session. CEDAW/C/VNM/Q/6/Add.1. September 2006 at [http: www.un.org/womenwatch/daw/cedaw/37sess.html](http://www.un.org/womenwatch/daw/cedaw/37sess.html)
- Report of the Non-Governmental Organizations regarding the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Viet Nam. 2006
- “New Law on Gender Equality will Greatly Improved Viet Nam’s Legal Regime for Women’s Advancement, Anti-Discrimination Committee Told”, Department of Public Information, New and Media Division, United Nations (UN) New York (17 January 2007) at [http: www.un.org/womenwatch/daw/cedaw/37sess.html](http://www.un.org/womenwatch/daw/cedaw/37sess.html)

II. LIST OF VIETNAMESE LEGAL DOCUMENTS ⁷⁸¹

A. Constitution

- Viet Nam Constitution (1992), as amended by Resolution No. 51/2001/QH10 of December 25, 2001

B. Laws

- Law on Domestic Violence Prevention and Control of November 21, 2007⁷⁸²
- Law on Residence, No. 81/2006/QH11 of November 29, 2006
- Law on Gender Equality (No. 73/2006/QH11 of November 29, 2006)
- Law on Vietnamese Guest Workers (No. 72/2006/QH11 of November 29, 2006)
- Law on Social Insurance (No. 71/2006/QH11 of June 29, 2006)
- Law on Legal Aid (No. 69/2006/QH11 of June 29, 2006)
- Law on HIV/AIDS Prevention and Control (No. 64/2006/QH11 of June 29, 2006)
- Law on Education (No. 38/2005/QH11 of June 14, 2005)
- Civil Code (No. 33/2005/QH11 of June 14, 2005) (unofficial translation)
- Law on the Protection, Care and Education of Children (No. 25/2004/QH11 of June 15, 2004)
- Civil Procedure Code (No. 24/2004/QH11 of June 15, 2004)
- Law on Inspection (No. 22/2004/QH11 of June 15, 2004)
- Law on the Conclusion, Accession to and Implementation of Treaties (No. 41/2005/QH11 of June 14, 2005)
- Code of Criminal Procedure (No. 24/2003/QH11 of November 26, 2003)
- Law on Cooperatives (No. 18/2003/QH11 of November 26, 2003)
- Law on Land (No. 13-2003-QH11 of November 26, 2003)
- Law on the Election of Deputies to the People's Councils (No. 12/2003/QH11 of November 26, 2003)
- Law on Supervisory Activities of the National Assembly (No. 05/2003/QH11 of June 17, 2003)
- Statistics Law (No. 04/2003/QH11 of June 17, 2003)
- Law on Organization of the People's Procuracies (No. 34/2002/QH10 of April 2, 2002)
- Enterprise Law (No. 60/2005/QH11 of December 25, 2001)
- Investment Law (No. 59/2005/QH11 of December 25, 2001)

⁷⁸¹ All Vietnamese legal documents are arranged in reverse chronological order.

⁷⁸² Considered but not included in the scope of the review as adopted or issued after the review's cut off period of October 30, 2007.

- Law on Organization of the Government (No. 32/2001/QH10 of December 25, 2001)
- Law on Election of Deputies to the National Assembly, No. 31/2001/QH10 of December 25, 2001)
- Law on Organization of the National Assembly (No. 30/2001/QH10 of December 25, 2001) amended on April 2, 2007
- Marriage and Family Law (No. 22/2000/QH10 of June 9, 2000)
- Penal Code (No.15/1999/QH10 of December 21, 1999)
- Law on Viet Nam Fatherland Front, No. 14/1999/QH10 of June 12, 1999)
- Press Law (No. 12/1999/QH10 of June 12, 1999)
- Law on Complaints and Denunciations (No. 09/1998/QH10 of December 2, 1998) as amended in 2004 and 2005
- Law on Vietnamese Nationality (No. 07/1998/QH10 of May 20, 1998)
- Law on Election of the Deputies of the National Assembly (April 15,1997) as amended by Law Amending and Supplementing a Number of Articles of the Law on Election of Deputies to the National Assembly, No. 31/2001/QH10 of December 25, 2001
- Law on the Promulgation of Legal Documents (December 11, 1996) as amended by Law Amending and Supplementing a Number of Articles of the Law on the Promulgation of Legal Documents (No. 02/2002/QH11 of December 16, 2002)
- Labour Code (No.23 of June 1994) as amended on April 2, 2002 and November 29, 2006
- Law on Universalization of Primary Education (1991)
- Law on Protection of People's Health (Code 21 LCT/HDNN8 of June 30, 1989)
- Law No. 102/SL-L of May 20, 1957 on Enacting the Law on the Rights to Set up Association voted for by the National Assembly at the 6th Session

C. National Assembly resolutions

- Resolution No. 56/2006/QH11 of June 29, 2006 on the Five-Year Socio-Economic Development Plan 2006-2010
- Resolution No. 51/2001/QH10 of December 25, 2001 on Amendments and Supplements to a Number of Articles of the 1992 Constitution of the Socialist Republic of Viet Nam
- Resolution No. 35/2000/QH10 of July 9, 2000 on Implementation of the Marriage and Family Law.
- Resolution No. 32/1999/QH10 of December 21, 1999 on the Enforcement of the Penal Code

D. Ordinances

- Ordinance on Amending and Supplementing a Number of Articles of the Ordinance on Enforcement or Imprisonment Sentences (No. 01/2007/UBTVQH12 of October 19, 2007)
- Ordinance on Conclusion and Implementation of International Agreements (No. 33/2007/PL-UBTVQH11 of April 20, 2007)

- Ordinance on Exercise of Democracy in Communes, Wards and Townships (No. 34/2007/PL-UBTVQH11 of April 20, 2007)
- Ordinance on Handling of Administrative Violations (No. 29/2006/PL-UBTVQH11 of April 5, 2006) amended in 2007
- Ordinance on Organization of Criminal Investigations (No. 23/2004/PL-UBTVQH11 of August 20, 2004)
- Ordinance on Execution of Civil Judgments (No. 13/2004/PI-UBTVQH11 of January 14, 2004)
- Ordinance on Prostitution Prevention and Combat (as per state president Order No. 10/2003/L-CTN of March 31, 2003)
- Population Ordinance (No.06/2003/PI-UBTVQH11 of January 9, 2003)
- Ordinance on Procurators and Procuracies (No. 3/2002/PL-UBTVQH11 of October 4, 2002)
- Ordinance on Judges and Jurors of the Peoples Courts (No. 02/2002/PL-UBTVQH11 of October 4, 2002)
- Ordinance on Handling of Administrative Violations (No. 44/2005/PL-UBTVQH10 of July 2, 2002)
- Ordinance on Advertisement (No. 39/2001/PL-UBTVQH10 of November 16, 2001)
- Ordinance on Elderly People (No.23/2000/PL-UBTVQH10 of April 28, 2000)
- Ordinance of Disabled Persons (No. 06/ 1998 /PL-UBTVQH10 of July 30, 1998)
- Ordinance on Public Employees (No. 01/1998/PL-UBTVQH10 of February 26, 1998)

E. Government resolutions

- Resolution No. 25/2006/NQ-CP of October 9, 2006 on Issuing the Action Plan of the Government to Implement the Resolution of the Tenth Party Congress and the Resolution of the National Assembly Term XI on the Five-Year Socio-Economic Development Plan 2006-2010
- Resolution No. 5/2005/NQ-CP of April 18, 2005 on Stepping Up Socialization of Educational, Healthcare, Cultural, Physical Training and Sport Activities
- Resolution No. 08/2004/NQ-CP of June 30, 2004 on Further Decentralisation of State Management from Central Government to Local Governments of Centrally-Affiliated Cities and Provinces
- Resolution No. 05/1993/CP of January 29, 1993 on Prevention and Control of Prostitution

F. Government decrees

- Decree No. 70/2008/ND-CP of June 4, 2008 Detailing the Implementation of a Number of Articles of the Law on Gender Equality ⁷⁸³

⁷⁸³ Considered but not included in the scope of the review as adopted or issued after the review's cut off period of October 30, 2007.

- Decree No. 187/2007/ND-CP of December 25, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Information and Communication ⁷⁸⁴
- Decree No. 186/2007/ND-CP of December 25, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Labour, Invalids and Social Affairs ⁷⁸⁵
- Decree No. 185/2007/ND-CP of December 25, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Culture, Sports and Tourism ⁷⁸⁶
- Decree No. 28/2007/ND-CP of February 26, 2007 Detailing and Guiding the Implementation of a Number of Articles of the Law on Lawyers
- Decree No. 07/2007/Nd-CP Of January 12, 2007, Detailing And Guiding The Implementation Of A Number Of Articles Of The Law On Legal Aid
- Decree No. 49/2005/ND-CP of April 11, 2005 on Sanctioning of Administrative Violations in Education
- Decree No. 45/2005/ND-CP of April 6, 2005 Providing for the Sanctioning of Administrative Violations in the Field of Health
- Decree No. 41/2005/ND-CP of March 25, 2005 Detailing and Guiding the Implementation of a Number of Articles in the Law on Inspection
- Decree no. 36/2005/ND-CP of March 17, 2005 Detailing the Implementation of a Number of Articles of the Law on Child Protection, Care and Education
- Decree No. 28/2005/ND-CP of March 9, 2005 on Organization and Operation of Small-sized Financial Institutions in Vietnam
- Decree 178/2004/ND-CP of 15 December 2004 detailing the Implementation of a Number of Articles of the Ordinance on Prostitution and Combat
- Decree No. 181/2004/ND-CP Of October 29, 2004 On The Implementation Of The Land Law
- Decree No. 178/2004/ND-CP of October 15, 2004 Detailing the Implementation of a Number of Articles of the Ordinance on Prostitution Prevention and Combat
- Decree No. 177/2004/ND-CP of October 12, 2004 Detailing the Implementation of a Number of Articles of the 2003 Law on Cooperatives
- Decree No. 113/2004/ND-CP of April 16, 2004 Prescribing Administrative Sanctions against Acts of Violating Labour Legislation
- Decree No. 40/2004/ND-CP of February 13, 2004 Detailing and Guiding the Implementation of a Number of Articles of the Statistics Law
- Decree No.104/2003/ND-CP of September 16, 2003 Detailing And Guiding The Implementation Of A Number Of Articles Of The Population Ordinance

⁷⁸⁴ Ibid.

⁷⁸⁵ Ibid.

⁷⁸⁶ Considered but not included in the scope of the review as adopted or issued after the review's cut off period of October 30, 2007.

- Decree No.88/2003/ND-CP of July 30, 2003 Providing for the Organization, Operation and Management of Associations
- Decree No. 79/2003/ND-CP of July 7, 2003 Promulgating the Regulation on the Exercise of Democracy in Communes
- Decree 65/2003/ND-CP of June 11, 2003 on Legal Consultancy Organization and Activities
- Decree No. 29/2003/ND-CP of March 31, 2003 Prescribing the Functions, Tasks, Powers and Organizational Structure of the Ministry of Labour, Invalids and Social Affairs
- Decree No. 24/2003/ND-CP of March 13, 2003 detailing the Implementation of the Ordinance on Advertisement
- Decree No. 19/2003/ND-CP of March 7, 2003 Prescribing the Responsibility of State Administrative Agencies of Various Levels for Ensuring the Participation in the State Management by Viet Nam Women's Union of Various Levels
- Decree No. 12/2003/ND-CP of February 12, 2003 on Childbirth by Scientific Methods
- Decree No. 114/2002/ND-CP of December 31, 2002 Detailing and Guiding the Implementation of a Number of Labour Code's Articles on Wages
- Decree No. 68/2002/ND-CP of July 20, 2002 on Marriage and family relationships with foreign elements prohibits the use of marriage and adoption as covers for the trafficking in, exploitation and sexual abuse of women and children material gains
- Decree No. 51/2002/ND-CP of April 26, 2002 Detailing the Implementation of the Press Law and the Law Amending and Supplementing a Number of Articles of the Press Law
- Decree No. 32/2002/Nd-CP Of March 27, 2002 Prescribing The Application Of The Law On Marriage And Family To Ethnic Minority People
- Decree No. 30/2002/ND-CP of March 26, 2002 Prescribing and Guiding the Implementation of a Number of Articles of the Ordinance on Elderly People
- Decree No. 10/2002/ND-CP of January 16, 2002 on Financial Regime Applicable to Public-Service Units with Revenues
- Decree No. 90/2001/ND-CP of November 23, 2001 on Support for Development of Small-and Medium-Sized Enterprises
- Decree No. 87/2001/Nd-CP Of November 21, 2001 On Sanctions Against Administrative Violations In The Field Of Marriage And Family
- Decree No. 70/2001/Nd-CP Of October 3, 2001 Detailing The Implementation Of The Marriage And Family Law
- Decree No. 54/2001/ND-CP of August 23, 2001 Guiding the Execution of the Expulsion Penalty
- Decree No. 53/2001/ND-CP of August 23, 2001 Guiding the Enforcement of Residence Bans and Probation Penalties
- Decree No. 31/2001/ND-CP of June 26, 2001 on Sanctioning Administrative Violations in the Culture-Information Field

- Decree No. 77/2001/ND-CP of October 22, 2001 detailing the Marriage Registration According to the National Assembly's Resolution No. 35/2000/QH10 on the Implementation of the Marriage and Family Law
- Decree No. 74/2000/ND-CP of December 6, 2000 on Marketing and Use of Breast Milk Substitutes to Protect and Promote Breastfeeding
- Decree No. 60/2000/ND-CP of October 30, 2000 Stipulating the Execution of the Non-Custodial Reform Penalty
- Decree No. 56/2000/ND-CP of October 12, 2000 Amending Clause 2, Article 6 of the Government's Decree No. 95/1998/ND-CP of November 17, 1998 on Recruitment, Employment and Management of Public Servants
- Decree No. 07/2000/ND-CP of March 9, 2000 on Social Relief Policies
- Decree No. 29/1998/ND-CP of May 11, 1998 Promulgating the Regulation on the Exercise of Democracy in Communes
- Decree No. 23-CP Of April 18, 1996, Of The Government Providing Details, And Guidance For The Implementation Of A Number Of Articles Of The Labour Code On Women Labourers

G. Prime Minister's decisions

- Decision No. 114/2008/QD-TTG of August 22, 2008 on Strengthening the NCFAW ⁷⁸⁷
- Decision No. 20/2007/QD-TTG of February 5, 2007 Approving the National Target Programme on Poverty Alleviation in the 2006-2010 Period
- Decision No. 312/2005/QD-TTG of November 30, 2005 Approving the Projects under the Programme of Action against the Trafficking in Women and Children from 2005 to 2010
- Decision No. 243/2005/QD-TTG of October 5, 2005 Promulgating the Government's Programme of Action for the Implementation of the Political Bureau's Resolution No. 46-NQ/TW of February 23, 2005 on Protection of, Care for and Improvement of the People's Health in the New Situation
- Decision No. 106/2005/QD-TTG of May 16, 2005 on Approving the Strategy on Building of Vietnamese Families in the 2005-2010 Period
- Decision No. 143/2004/Qd-TTG Of August 10, 2004 Approving The Programme On Human Resource Training Support For Small- And Medium-Sized Enterprises In The 2004-2008 Period
- Decision No. 130/2004/QD-TTG of July 14, 2004 Decision of the Prime Minister. Approval of the National Plan of Action against Crime of Trafficking in Children and Women during the period of 2004-2010
- Decision No. 36/2004/QD-TTG of March 17, 2004 Approving the National Strategy on HIV/AIDS Prevention and Control in Viet Nam till 2010 with a vision to 2020

⁷⁸⁷ Considered but not included in the scope of the review as adopted or issued after the review's cut off period of October 30, 2007.

- Decision No. 70/2003/QĐ-TTĐ of April 29, 2003 on the Strategy for Youth Development by 2010
- Decision No. 27/2003/QĐ-TTĐ of 19 February 2003 Promulgating the Regulation on Appointment, Reappointment, Shift, Resignation and Removal from Office of Leading Officials and Public Employees
- Decision No. 13/2003/QĐ-TTĐ of January 17, 2003 Approving the 2003-2007 Programme on Law Dissemination and Education
- Decision No. 180/2002/QĐ-TTĐ of December 19, 2002 Promulgating the Regulation on Financial Management Applicable to the Social Policy Bank
- Decision No. 139/2002/QĐ-TTĐ of October 15, 2002 on the Purchase of Health Insurance Care Funds for the Poor
- Decision 131/2002/QĐ-TTĐ of October 4, 2002 on the Establishment of the Social Policy Bank
- Decision No. 19/2002/QĐ-TTĐ of February 21, 2002 on the National Strategy for the Advancement of Vietnamese Women till 2010
- Decision No. 193/2001/QĐ-TTĐ of December 20, 2001 Issuing the Regulation on the Setting Up, Organization and Operation of Credit Guarantee Funds for Small- and Medium-Sized Enterprises
- Decision No. 136/2001/QĐ-TTĐ of September 7, 2001 Approving the Overall Programme on State Administrative Reform the 2001-2010 period
- Prime Minister's Decision 92/2001/QĐ-TTĐ of June 11, 2001 on Consolidating the National Committee for the Advancement of Vietnamese Women
- Decision No. 35/2001/QĐ-TTĐ dated March 19, 2001 Approving the Strategy for the Protection and Care of the People's Health in the 2001-2010 Period
- Decision No. 23/2001/QĐ-TTĐ of February 26, 2001 on the National Programme of Action for Vietnamese Children in the 2001-2010 Period
- Decision No. 21/2001/QĐ-TTĐ of February 22, 2001 Approving the National Strategy on Nutrition for the Period 2001-2010
- Decision No. 142/2000/QĐ-TTĐ of December 11, 2000 Issuing the Regulation on the Implementation of the Agreement on Child Adoption Cooperation between the Socialist Republic of Vietnam and Republic of France
- Decision No. 136/2000/QĐ-TTĐ of November 28, 2000 on Approving "National Strategy on Reproductive Health Care for the 2001-2010 Period

H. Prime Minister's directives

- Directive No. 10/2007/CĐ-TTĐ of May 3, 2007 on the Implementation of the Law on Gender Equality (unofficial translation)
- Directive No. 03/2005/CĐ-TTĐ of February 25, 2005 on Enhancing the State Management over Marriage and Family Relations Involving Foreign Elements
- Directive No. 14/2004/CĐ-TTĐ of April 2, 2004 on Handling and Prevention of Vietnamese

Citizen's Illegal Exit, Entry and Residence in Foreign Countries

- Directive No. 05/2003/CT-TTG of March 18, 2003 Directing the Operation of the Bank for Social Policies
- Directive No. 02/2003/CT-TTG of February 24, 2003 by the Prime Minister on Strengthening Prevention and Combating of HIV/AIDS
- Directive No. 15/2000/Ct-TTG of August 9, 2000 on Enforcement of the 2000 Marriage and Family Law
- Directive No. 22/1998/CT-TTG of May 15, 1998 on the Implementation of the Exercise of Democracy in Communes
- Directive No. 766/1997/CT-TTG of September 17, 1997 on the Assignment of Responsibilities for Taking Measures Against the Illegal Sending of Women and Children Abroad

I. Strategies, Plans and Programmes⁷⁸⁸

- National Target Programme on Poverty Alleviation in the 2006-2010 Period (Decision No. 20/2007/QĐ-TTĐ of February 5, 2007) Action Plan of the Government to Implement the Resolution of the Tenth Party Congress and the Resolution of the National Assembly Term XI on the Five-Year Socio-Economic Development Plan 2006-2010 (Resolution No. 25/2006/NQ-CP of October 9, 2006)
- Plan of Action for the Advancement of Women in Viet Nam (2006-2010)
- Programme of Action against the Trafficking in Women and Children from 2005 to 2010. (Decision 312/2005/QĐ-TTĐ of November 30, 2005)
- Programme of Action for the Implementation of the Political Bureau's Resolution No. 46-NQ/TW of February 23, 2005 on Protection of, Care for and Improvement of the People's Health in the New Situation (Decision No. 243/2005/QĐ-TTĐ of October 5, 2005)
- Viet Nam Achieving the Millennium Development Goals (Document No. 4947/VPCP-QHQT of September 1, 2005)
- Five Year Strategic Education Development Plan 2006-2010 (Ref: 6520/BGD&ĐT-KHTC of July 28, 2005)
- Strategy for Development and Improvement of Vietnam's Legal System to the year 2010 and Directions for the Period Up to 2010 (Resolution No. 48/2005/NQ-TW of May 24, 2005)
- Approving the Strategy on Building of Vietnamese Families in the 2005-2010 Period (Decision No. 106/2005/QĐ-TTĐ of May 16, 2005)
- Programme On Human Resource Training Support For Small- And Medium-Sized Enterprises In the 2004-2008 Period (Decision No. 143/2004/QĐ-TTĐ Of August 10, 2004)
- National Plan of Action against Crime of Trafficking in Children and Women during the period of 2004-2010 (Decision No. 130/2004/QĐ-TTĐ of July 14, 2004 Decision of the Prime Minister)

⁷⁸⁸ Most of these strategies, plans and programmes have already been listed under Prime Minister's decisions, Government resolutions or Communist Party of Viet Nam documents.

- National Strategy on HIV/AIDS Prevention and Control in Viet Nam till 2010 with a vision to 2020 (Decision No. 36/2004/QD-TTG of the Prime Minister of March 17, 2004)
- Gender Strategy and Plan of Action for Agriculture and Rural Development (Decision No. 4776/2003/QD-BNN/TCCB of October 28, 2003 of the Minister of Agriculture and Rural Development)
- Strategy for Youth Development by 2010 (Decision No. 70/2003/QD-TTG of April 29, 2003)
- Programme on Law Dissemination and Education 2003-2007 (Decision No. 13/2003/QD-TTG of January 17, 2003)
- National Plan of Action on Education for All (2003-2015)
- The Comprehensive Poverty Reduction and Growth Strategy (Document No. 2685/VPCP-QHQT of May 21, 2002)
- Plan of Action for the Advancement of Women in Viet Nam by 2005. (No. 26/2002/KH-UBOG of March 18, 2002)
- National Strategy for the Advancement of Vietnamese Women till 2010 (Decision No. 19/2002/QD-TTG of February 21, 2002)
- Overall Programme on State Administrative Reform the 2001-2010 period (Decision No. 136/2001/QD-TTG of September 7, 2001)
- Strategy for the Protection and Care of the People's Health in the 2001-2010 Period (Decision No. 35/2001/QD-TTG of March 19, 2001)
- National Programme of Action for Vietnamese Children in the 2001-2010 Period (Decision No. 23/2001/QD-TTG of February 26, 2001)
- National Strategy on Nutrition for the Period 2001-2010 (Decision No. 21/2001/QD-TTG of February 22, 2001)
- National Strategy on Reproductive Health Care for the 2001-2010 Period (Decision No. 136/2000/QD-TTG of November 28, 2000)

J. Joint circulars, inter-ministerial circulars, ministerial circulars and other ministerial legal documents

- Circular No. 93/2004/TT-BTC of September 29, 2004 Guiding a Number of Contents of the Regulation on Setting Up, Organization and Operation of Credit Guarantee Funds for Small- and Medium-Sized Enterprises
- Decision No. 4776/2003/QD-BNN/TCCB of October 28, 2003 of the Minister of Agriculture and Rural Development to Approve the Gender Strategy and Plan of Action for Agriculture and Rural Development
- Joint Circular No. 14/2002/TTLT-BTC Guiding the Organization of Medical Examination and Treatment for the Poor and the Setting up, Management, Use, Payment and Settlement of Funds for Medical Examination and Treatment for the Poor under the Prime Minister's Decision No. 139/2002/QD-TTG of October 15, 2002
- Decision No. 205/2002/QD-BLDTBXH of February 21, 2002 on Supplementing and Amending the List of Personal Protection Outfits Equipped for Labourers Doing Occupations of Jobs Involving Hazardous or Noxious Elements

- Circular No. 25/2002/TT-BTC of March 21, 2002 on guiding the implementation of the Government's Decree No. 10/2002/ND-CP of January 16, 2002 on Financial Regime Application to Public Service Units with Revenues
- Joint Circular No. 01/2001/TTLT-BTP-BCA-TANDTC-VKSNDTC issued September 25, 2001 Guiding the Application of the provisions in Chapter XV "Crimes Infringing upon the Marriage and Family Regimes" of the 1999 Penal Code
- Circular No. 79/1997/Tt-Btc Of November 6, 1997 Guiding The Implementation Of Decree No. 23-Cp Of April 18, 1996 Of The Government Detailing And Guiding The Implementation Of A Number Of Articles Of The Labour Code Regarding Specific Provisions On Female Labourers
- Circular No.3-Ldtbxxh/Tt Of January 13, 1997 Guiding The Implementation Of A Number Of Articles Of Decree No.23-Cp Of April 18, 1996 Of The Government With Specific Stipulations About Women Labour
- Inter-Ministerial Circular No. 9-TT/LB on April 13, 1995 Defining the Harmful Working Conditions and Jobs where the Use of Minors' Labour is Banned

K. Supreme People's Court Resolutions (Arranged Reverse Chronologically)

- Resolution No. 01/2003/NQ-HDTP of April 16, 2003 Guiding the Application of Law to the Settlement of Some Types of Civil as well as Marriage and Family Disputes, Paragraph II.1
- Resolution No. 04/HDTP of November 29, 1986 on the Guidelines for applying a number of provisions in the Penal Code

L. Viet Nam's Communist Party documents

- Resolution 11-NQ/TW of the Political Bureau of the Communist Party of Viet Nam dated April 27, 2007 on the Work for Women in the Period of Accelerating Industrialization and Modernization
- Resolution No. 48/2005/NQ-TW of the Political Bureau of the Communist Party dated May 24, 2005 on Strategy for Development and Improvement of Viet Nam's Legal System to the year 2010 and Directions for the Period Up to 2010
- Directive No.37/2004/CT-TW of November 8, 2004 Keeping the Implementation the Decree No. 09/1998/ NQ-CP and the National Programme on Prevention, Combat against Criminals until 2010

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APPENDIX III:

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of

peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal

terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counseling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities

for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned;
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19

- 1. The Committee shall adopt its own rules of procedure.
- 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

- 1. The present Convention shall be open for signature by all States.
- 2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
- 3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- 4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

- 1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
- 2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

- 1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
- 2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

- 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
- 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
- 3. Reservations may be withdrawn at any time by notification to this effect addressed to the

Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

UNIFEM is active in all regions and at different levels. It works with countries to formulate and implement laws and policies to eliminate gender discrimination and promote gender equality in such areas as land and inheritance rights, decent work for women and ending violence against women. UNIFEM also aims to transform institutions to make them more accountable to gender equality and women's rights, to strengthen the capacity and voice of women's rights advocates, and to change harmful and discriminatory practices in society.

Two international agreements frame UNIFEM's work: the Beijing Platform for Action resulting from the Fourth World Conference on Women in 1995, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), known as the women's bill of rights. The spirit of these agreements has been affirmed by the Millennium Declaration and the eight Millennium Development Goals for 2015, combating poverty, hunger, disease, illiteracy and gender inequality, and building partnerships for development. In addition, Security Council Resolution 1325 on Women, Peace and Security is a crucial reference for UNIFEM's work in support of women in conflict and post-conflict situations.

United Nations Development Fund for Women



Convention on the Elimination of All Forms of Discrimination against Women

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