he government of Viet Nam is committed to ensuring a woman’s right to life with dignity, including the right to live free from violence and the fear of violence and advancing her access to justice when such rights are violated. The Ministry of Justice, with support of UN Women, has undertaken various researches in order to get a better picture of the realities women face when seeking protection and justice in Viet Nam. Their findings and recommendations, along with relevant international standards and global tools, has informed the development of a more gender-responsive legal and policy framework to combat violence against women in Viet Nam. This Advocacy Brief highlights just a few of the various researches undertaken in Viet Nam and key international standards and global tools that have been emphasized in the work contributing to a gender-responsive criminal justice system for women subjected to violence against women. Some of the recommendations were already taken into account during the reforms of the Penal Code, Criminal Procedure Code and the Legal Aid Law with UN Women’s technical assistance to the Ministry of Justice.
ELEMENTS THAT CONTRIBUTE TO A GENDER-RESPONSIVE CRIMINAL JUSTICE SYSTEM

GENDER RESPONSIVE CRIMINAL JUSTICE SYSTEM

Evidence informed laws and policies

International standards

Global tools

Research
RESEARCH

- UN Women and UNODC, *Assessment of the Situation of Women In the Criminal Justice System in Viet Nam, *2013

ATTRITION STUDY

The study, *The Trial of Rape: Understanding the Criminal Justice Sector Response to Sexual Violence in Thailand and Viet Nam,* examines how the formal criminal justice systems in Thailand and Viet Nam responds to reported cases of sexual violence of women and girls, identifies the barriers to access justice, the attrition points and the contributing factors to attrition and impunity, and makes recommendations for strengthening the administration of justice in this area. The study found indications that gender stereotypes regarding the status of women and girls, as well as myths and misconceptions about sexual violence, exist in both countries. These societal beliefs can be reflected in the communities as a whole, by criminal justice practitioners, and, at times, by the survivors of sexual violence themselves. While there is a myth that ‘Real rape’ involves strangers, force, physical injury and occurs in public, 86 per cent of victims reported knowing the suspect and 76 per cent of victims had no visible signs of injury in Viet Nam.

86% OF THE SUSPECT IN VIET NAM WAS KNOWN TO THE VICTIM

76% OF VICTIMS IN VIET NAM HAD NO VISIBLE SIGNS OF INJURY
HIGHLIGHTS OF THE STUDY FINDINGS FROM VIET NAM

- **Initial contact stage:** victims are turned away, deterred or discouraged at the initial reporting stage, victim decides after initial contact not to make a formal denunciation.

- **Reporting stage:** victims are treated with disrespect and insensitivity; victim is required to tell her story multiple times; reports are refused; reports are taken and investigation is not conducted or delayed; decision by inquiry officer that report is not verified; decision by police that conduct is not a crime but administrative sanction is applicable; police encourage mediation and settlement; or the victim withdraws her formal complaint.

- **Investigation stage:** criminal investigating body may decide no further action due to insufficient evidence or case not legally founded; may conduct inadequate investigation (over-reliance on victim statement, failure to identify or trace suspect); over-reliance on forensic evidence when determining insufficient evidence (limited access to or use of forensic evidence); or victim withdraws (no assistance, support or protection services available, no communication with criminal justice providers, or settled the case).

- **Pre-trial and trial stage:** no court support for victim; focus on physical or forensic evidence instead of victim’s lack of consent; prosecutor or judge decides not to proceed; or court acquits.

- **Social norms tolerate sexual violence.** Women were described as the weaker gender, having low sex drive, being sexually inferior to men and not having their own sexual agency. This includes the belief that husbands cannot rape their wives.

- **Family honor and social stigma discourage women from reporting sexual violence.**

- **Prevalent gender stereotyping reinforces sexual myths and misconceptions.** This includes the belief that ‘real rape’ involves strangers, force, physical injury and occurs in public; that sexual violence only happens to ‘good’ or ‘innocent’ women and girls; and some women deserve to be raped, it is their own fault.

- **Widespread focus on the private settlement of these cases.** Criminal justice providers often took on the role of encouraging mediation. Such negotiations had negative consequences and increased attrition rates.
• **Narrow definitions or interpretations of the prohibited act of what constitute** rape and forced sexual intercourse do not fully capture women’s experiences of sexual violence.

• Narrow definitions or interpretation may translate into high thresholds of evidentiary standards.

• Definitions of rape based on the use of force often result in the crime being made dependent on evidence of bodily injuries on the female victim.

• The way sexual offences are defined can shift the focus on to the victim’s behaviour rather than on the accused’s actions. The focus is on credibility of victim rather than credibility of the incident.

• **Lack of victim centered procedures** such as poor or inadequate initial reception by local police.

• **Onus is on the victim** to lodge a formal complaint in order for the investigation to proceed.

• **Over-reliance on forensic evidence.**

• **Limited victim support and assistance** throughout the criminal system, including victims being inadequately prepared and fearful of giving testimony in court.

• **Practice of bribery by criminal justice officials** resulting in the victim being ignored or pressured to settle the case outside of the criminal justice system.

• **Limited oversight and internal accountability mechanisms.** Inadequate mechanisms to lodge and follow-up on complaints about poor, slow or inadequate criminal justice services leaving victims feeling helpless and without options for pursuing justice.

• **Lack of victim friendly facilities or victim centred policies or guidelines.**

• **Lack of institutional resources** resulting in placing the onus on the victim to cover costs of necessary services, such as forensic examinations.

• **No specialized sexual violence police or prosecution units;** few female police and investigating officers.

• **Little specialized training and professional development** on how to handle sexual violence cases.

• **Limited information, assistance, support and communication** for victims navigating complex systems and processes.

• **Limited data collecting and analysis** to inform criminal justice system action.
RECOMMENDATIONS OF THE STUDY

1. Establish quality essential justice services for victims that prioritize their safety, protection and support

2. Build institutional capacities to transform organizational cultures and create gender awareness and sensitivity

3. Promote comprehensive legal and legislation frameworks

4. Mainstream gender equality and women’s empowerment into criminal justice policies, practices and resources

5. Develop effective internal and external oversight and accountability mechanisms

6. Promote specialized expertise at all stages of the criminal justice system

7. Promote an integrated and coordinated criminal justice, government and civil society response

8. Develop effective monitoring and evaluation mechanisms

9. Prioritize resources, both human and financial
The study, Access to Criminal Justice by Women subjected to Violence in Viet Nam: Women's Justice Perception Study, sought to find out perceptions of what gender-based violence constitutes crimes, how accessible criminal justice is for women who experience gender-based violence and women’s level of knowledge of their rights and how the criminal justice system works as well as their confidence levels in the criminal justice institution and actors. The perceptions are taken from three different angles – the first is from women in general, the second is from women who have been victims of violence who have experience in using the justice system and the third is from justice practitioners who have experiencing in providing justice to such victims. The study findings are meant to contribute to the development of guidelines for criminal justice providers (police, prosecutors, judges, legal aid providers) and first responders (head of the residential cluster, People’s Committee, Women’s Union) to ensure better enforcement of the relevant provisions under the amended Penal Code and Criminal Procedure Code to improve access to justice by women subjected to violence in Viet Nam.
### MAIN FINDINGS FROM THE WOMEN’S JUSTICE PERCEPTION STUDY

<table>
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<th>There is confusion over when violence against women is a crime.</th>
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<td>While certain forms of VAW were clearly seen as criminal offences such as rape, human trafficking and serious physical domestic violence, there was less certainty as to when other forms of VAW would meet the criminal threshold. This was especially seen in the case of domestic violence which can include various forms - physical, psychological, sexual and economic violence and repetitive behaviour. There was also a mismatch in perception and reality when it came to the question of whether sexual harassment and sexual assault were crimes. Although a high percentage of women in general thought that they were crimes, sexual assault in cases of adult women and sexual harassment are currently not criminalized.</td>
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<th>Perceptions can have an impact on justice seeking and justice providing behaviour.</th>
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<td>The perceptions regarding what forms of VAW constitute crimes under the Penal Code can impact the justice seeking behaviours of women who experience gender-based violence, how women in the general community support or do not support victims of violence in seeking justice, and how justice practitioners provide justice. For example, the uncertainty that domestic violence is a crime or violation and not merely a private family matter is reflected in under-reporting, unclear reporting procedures and uncertainty of the obligations of the police and first responders (e.g. head of residential cluster, People’s Committee, Women’s Union) and lack of effective response in terms of providing protection and justice to the victims.</td>
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<th>Non-agreement as to the level of understanding by women of their rights and knowledge of the justice system.</th>
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<td>A high percentage of women said that they were well informed of their rights and had knowledge of the criminal justice system, compared to half the victims that reported that they only became aware of their rights after seeking help from the Peace House. This is in contrast to the views of criminal justice providers who believed that most victims did not know about their rights or the criminal justice system and placed the blame on women victims for not reporting the violence and viewed that as one of the main causes of the failure of the justice system to respond to VAW.</td>
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<th>Numerous factors that contribute to why women do not report to the police.</th>
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<td>The barriers women face include societal and cultural barriers as well as legal and institutional barriers. While societal and cultural barriers (e.g. stigma, pressure by family, the concern that if they report this means divorce, or the negative impact on children’s future jobs) require changing attitude and requires holistic multi-sectoral approaches, the legal and institutional barriers (lack of privacy, protection concerns, complicated procedures, etc.) require action by the criminal justice system.</td>
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Perception of barriers women face when accessing justice.

The top five most significant factors that women perceive as barriers were: (1) privacy concerns; (2) limited awareness of rights; (3) protection concerns; (4) shame and embarrassment; and (5) pressure by family. The victims interviewed experienced similar barriers with privacy and protection concerns being mentioned often. Justice providers' perception of barriers primarily rested on the victims themselves who they saw as accepting their fate; fear of retaliation by the abuser if they reported; as well as the low awareness by the women themselves as to what violence is and a low understanding of the law.

Confidence levels in the criminal justice system.

There was a disconnect between women in general who had a great deal of confidence in the criminal justice system and its actors as compared with the experience of the victims who told of a number of challenges they had when dealing the police, prosecutors and judges. Furthermore, there appears to be a ‘disconnect’ between justice providers and women in general regarding the levels of confidence and satisfaction in the justice system as compared to those who have actually used the system.

Challenges identified by the victims

The onus of reporting to all the relevant authorities, including police, head of residential cluster and Women’s Union rests on the victim; the safety concerns of the victims were not identified by the ward or commune police nor were any protection measures provided at the time of reporting; privacy in reporting was not always guaranteed; they felt the violence was often minimized and they were treated with disrespect and blamed for the violence; the response (reconciliation; administrative punishment) did not stop the violence; and the administrative sanctions negatively impacted them.

What improvements women want to see happening in the criminal justice system.

Some of the more commonly identified initiatives included: dealing with justice providers that are specially trained in understanding violence against women; being made to feel comfortable, safe and secure and treated with dignity and respect; being believed and listened to; being able to speak to a female justice provider; having her protection needs addressed; ensuring privacy (whether this is from having friendly private space in police stations, being able to report at another location like a One Stop Crisis Centre, or closed trials or publication bans); prioritizing her case; and being given information on the progress of her case and the criminal justice system; being provided legal (through legal aid) and non-legal support (such as through an available support person or being referred to other social services) and other measures to reduce secondary victimization (minimize the need to repeat her story, not having to face the accused in court, etc.).
**IMPLICATIONS FOR THE GUIDELINES FOR CRIMINAL JUSTICE PROVIDERS**

The guidelines should........

| ✓ | Provide clear guidance as to when the threshold for criminal behaviour, administrative behaviour or behaviour that warrants grassroots reconciliation are met. |
| ✓ | Emphasize that all justice responses need to be victim-centred and prioritize police’s duty to stop the violence and protect the women, irrespective of whether she files a formal denunciation. |
| ✓ | Limit the number of people a victim must deal with and minimize re-telling of her story. |
| ✓ | Address the institutional barriers that contribute to the lack of reporting to police for those forms of violence that are clearly seen as crimes (e.g. rape and forcible sexual intercourse) but are not being reported to the police. |
| ✓ | Focus on the duty of criminal justice providers and clearly address the tendency to shift the blame on victims for not using the justice system rather than examine inherit challenges within the justice system. |
| ✓ | Reflect a shift from placing the blame on the women victims for not reporting and cooperating with the justice system to how to enhance a gender-responsive justice system that is trusted by the users. |
| ✓ | Make reporting easier for women and focus on how to improve conditions when victims report. Needs to cover issues of privacy when reporting and ensuring confidentiality; priority response; clear and simple reporting procedures for the women; clear responsibility on the first point of police contact to ensure the appropriate police authority receives the report and acts on it; gender sensitive police officers to take victim’s report, trained in understanding gender-based violence and ensure comfortable and safe environment is available when reporting. |
| ✓ | Provide that all first responders have clear procedures in what to do with a report, and have the onus when receiving reports to ensure that the proper police jurisdiction and victim support providers, such as the Women’s Union are informed. |
| ✓ | Ensure clear guidance regarding protection and the need to provide for a wide range of protection measures in VAW cases even if the victim does not proceed with a formal criminal case. This includes clear guidelines regarding how to conduct a risk assessment, develop safety plans, apply for court protection orders and seek effective conditions (e.g. no consumption of alcohol) as well as clear guidelines on enforcing protection orders. |
| ✓ | Ensure emphasis of the principle of holding perpetrators accountable for their actions. Holding perpetrators accountable should not negatively impact the victim (e.g. review how fines in administrative punishment might negatively impact the victims). Consider a broad range of ways to hold abuser accountable, such as court ordered rehabilitation programmes and probation with community service. |
| ✓ | Be disseminated to the public to raise awareness of their rights and how they should be treated by justice providers. |
| ✓ | Include accountability measures to hold justice providers accountable in applying the appropriate legal regimes in each case. |
INTERNATIONAL STANDARDS

• Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
• CEDAW General Recommendation No. 33 on women’s access to justice
• CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19
• UN Declaration on the Elimination of Violence against Women
• Beijing Declaration and Platform for Action
• Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN
• UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice
• Commission on the Status of Women 57th Session Agreed Conclusions on elimination and prevention of all forms of violence against women and girls
• 2030 Agenda for Sustainable Development and the inclusion of Sustainable Development Goal (SDG) 5, Target 5.2, to eliminate all forms of violence against women in public and private spheres
The international standards and norms articulated in the international instruments listed above establish a number of fundamental principles that guide States’ efforts in the elimination of violence against women:

- **States’ obligation to exercise due diligence.** In all cases of violence against women, whether it is intimate partner violence or sexual violence, States are obliged to exercise due diligence to conduct official investigations, initiate criminal proceedings, bring the perpetrator to trial and impose appropriate penal sanctions. Among other things this obligation means that where such violence is brought to the attention of the authorities, they must of their own motion, immediately, thoroughly, and impartially investigate such violence, and where warranted by that investigation vigilantly and in a speedy manner prosecute those responsible.

- **Victim-centered approach.** A victim-centered approach means using a human-rights based approach where victims’ rights and needs are first and foremost. She has a right to be treated with dignity and respect instead of being exposed to victim-blaming attitudes; choose the course of action in dealing with the violence instead of feeling powerless; privacy and confidentiality instead of expose; non-discrimination instead of discrimination; and receive comprehensive information to help her make her own decisions instead of being told what to do.

- **Improve offender accountability.** Improving offender accountability should inform substantive, procedural, and operational issues of the criminal justice system and all comprehensive, coordinated, and multidisciplinary responses. State actions should encourage reporting and maximize the victim’s cooperation with the criminal justice process. This principle should guide the design of interventions at the investigative, prosecution and trial stages as well as corrections, which focus on rehabilitation of offenders, where appropriate.

- **Create a community climate of intolerance of violence against women.** States are to take appropriate measures to ensure that they are sending a message that violence against women will not be tolerated. This includes ensuring all forms of violence against women are criminalized and prohibited, as called for in the Updated Model Strategies and Practical Measures.

- **Non-perpetuation of harmful gender stereotypes.** States are to take appropriate measures to ensure their state agents, such as police, prosecutors and judges do not perpetuate harmful gender stereotypes in conducting their investigations, prosecutions and adjudications when handling cases involving violence against women. States should also remove any provisions that allow or condone violence against women or that increases the vulnerability or re-victimization of women who have been subjected to violence.
GLOBAL TOOLS

UN-Interagency Essential Services Package

The UN Joint Global Programme on Essential Services for Women and Girls Subjected to Violence aims to provide greater access to a coordinated set of essential and quality multi-sectoral services for all women and girls who have experienced gendered-based violence. The Programme identifies the essential services to be provided by the health, social services, police and justice sectors. It also provides guidelines for the coordination of essential services and the governance of coordination processes and mechanisms as well as implementation guidelines. Service delivery guidelines for the core elements of each essential service have been identified to ensure the delivery of high-quality serviced for women and girls experiencing violence. Taken together these elements comprise the ‘Essential Service Package’.

The Essential Services Package is based on the extensive commitments made at the global level to respond to, and prevent violence against women and girls and reflects the international standards and norms discussed in the previous section. It aims to fill the gap between these agreements and obligations made at the international level and country level activity by providing technical guidance on how to develop quality essential services for women and girls subjected to violence. The adoption of the Essential Services Package in Viet Nam can play a key role in addressing the societal, legal, procedural and institutional challenges identified in the various researches and contribute to Viet Nam making significant progress towards ensuring a gender-responsive justice system.
MODULE 3 JUSTICE AND POLICING

Essential Services throughout the Justice Continuum

**Essential Service 1: Prevention.** Justice providers should promote and support organizations and initiatives seeking to end violence against women and increase women’s equality as well as support efforts to raise awareness and promote the unacceptability of men’s and boy’s violence against women. Justice providers should be actively encouraging women to report violence.

**Essential Service 2: Initial Contact.** A positive initial contact experience with the justice system is crucial for victims. Services must be available and accessible to all women and demonstrate to the victim that the justice system and actors are committed to her safety and well-being. The victim should be able to make a report at any time and at a location that is safe, private and agreeable to her. Her report should be taken by a trained justice provider.

**Essential Service 3: Investigation.** Investigations need to be started in timely fashion, conducted in professional manner, meet evidentiary and investigative requirements and that all available means to identify and arrest the suspect are exhausted. Throughout, the woman’s safety, security, and dignity are carefully considered and maintained. Ensure to conduct a thorough investigation, ensuring all available evidence that can lend credibility to the allegation is collected, promoting evidence building that focuses on the credibility of the allegation rather than the credibility of the victim. Need to consider whether a forensic examination is required and if so they are done in a timely manner.

**Essential Service 10: Communication.** Communication is key throughout the justice system. A victim needs to know that she is being listened to and that her changing justice needs are being understood and addressed. All communications by justice providers should promote the dignity and respect of the victim. This includes being non-judgmental, empathetic and supportive; validating what has happened to the victim; and ensuring that she has a sense that her voice is being heard. Information and the way it is communicated should empower victims; prioritize confidentiality and privacy; and be regular, and effective.

**Essential Service 11: Coordination amongst Justice Agencies.** Given the different mandates of each justice agency and their various tasks, a coordinated approach is essential. Coordination sets transparent standards and expectation from each justice agency. From a victim’s perspective, coordination means that she will be met with the same understanding of her rights and her situation and receive the same, high quality response from all justice actors.
Essential Service 4: Pre-trial Processes. Such processes are to be non-biased and gender sensitive to the needs of victims. The primary responsibility for initiating prosecutors rests with the prosecutor, not with victims. Correct charges and approval of the charge are made quickly and such cases are prioritized in setting for trial dates. No forced mediation or alternative dispute resolutions. Only allow mediation in strict conditions that protect the victim.

Essential Service 5: Trial Processes. This includes ensuring friendly and enabling court environments for victims to feel safe and comfortable recounting what they have experienced (such as permitting a support person to be with the victim during the trial process, having separate waiting areas at the court house, removal of the public, allowing for measures to ensure no direct contact between victim and accused), procedures to minimize re-victimization (measures to protect her privacy, integrity and dignity and allow for her full participation) and the application of evidentiary rules in a non-discriminatory manner (complaints are regarded as credible and valid unless contrary is clearly indicated, disallow questions about victim’s past sexual history when unrelated to the case, not allow adverse inference to be drawn solely from delay in reporting).

Essential Service 6: Perpetrator Accountability and Reparations. Appropriate sanctions to hold perpetrators accountable for their actions and provide for just and effective remedies for victims for the harm and loss suffered by them. Sentencing must be commensurate with the gravity of the crime and focused on the safety of the victim. The victim should have an opportunity to participate at sentencing hearings to tell the court the physical and psychological harm and the impact of victimization.

Essential Service 7: Post Trial Processes. This includes processes to ensure the accountability and rehabilitation of perpetrators and reduce recidivism. Rehabilitation should be part of conviction rather than as an alternative; such programmes need to promote victim safety, be supervised, and have appropriate consequences for those who do not satisfactory complete them.

Essential Service 8: Safety and Protection. Protection is critical to stopping the violence and preventing reoccurrence and threats of violence. Protection measures need to be available independent of any initiation of a criminal or other legal case; be designed to empower women in their access to justice; and enable them to stay safely engaged with the justice process. Women need access to immediate and urgent protection measures which are available free of charge, easy to apply for, rapid, accessible after court hours, with assistance and support being provided by justice service providers to complete the application. Needs to be effectively monitored and enforced, with breaches being taken seriously, charged criminally where possible and appropriately sanctioned by the courts. Justice providers should conduct risk assessments and develop safety plans.

Essential Service 9: Support and Assistance. Victims need assistance and support throughout the criminal justice process. This includes legal assistance, practical, accurate and comprehensive information, victim and witness support services and referrals to support from outside the justice sector (such as health, shelters, social services, counselling). These services can empower women, allowing them to make their own informed decisions based on knowledge of their right and justice options. Sure the accountability and rehabilitation of perpetrators and reduce recidivism. Rehabilitation should be part of conviction rather than as an alternative; such programmes need to promote victim safety, be supervised, and have appropriate consequences for those who do not satisfactory complete them.
OPPORTUNITIES FOR IMPLEMENTING RESEARCH RECOMMENDATIONS

The Government of Viet Nam is commended for their participation in the regional attrition study and initiating the women’s justice perception study. The studies’ recommendations, based on international standards and the practical global tools, provide a framework for potential action for Viet Nam to reach their goal of ending impunity for violence against women. The Government of Viet Nam is currently working on the following:

► Development of guidelines for police and other first responders, criminal investigators, prosecutors and judges The Ministry of Justice is currently developing guidelines for criminal justice providers and first responders to ensure better enforcement of the relevant provisions under the amended Penal Code and Criminal Procedure Code in line with international standards to improve access to justice by women subjected to violence in Viet Nam.

► Development of training materials on the guidelines for police and other first responders, criminal investigators, prosecutors and judges The Ministry of Justice is developing training materials to raise awareness of the guidelines and develop capacity of criminal justice providers to ensure gender responsive criminal justice for women subjected to violence.

► Piloting the Essential Services Package. The Government of Viet Nam is working with various UN agencies to pilot the Essential Services Package in the health, social services, justice and policing sectors and establishing a coordination mechanism.