

## **SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS: A GLOBAL ISSUE**

Sexual violence against women and girls is recognized as a form of violence against women. Although many forms of sexual violence exist, for the purpose of this study, the focus has been placed on rape and sexual assault<sup>1</sup> These forms of violence can take place in the domestic or public sphere by family members, friends, neighbours or strangers, to women and girls of any age, ability, culture, ethnicity, religion and sexuality. According to a 2013 World Health Organization (WHO) global review of available data, 35 percent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence<sup>2</sup> Some country studies show that up to 70 percent of women experience physical or sexual violence perpetrated by men in their lifetimes, the majority by husbands, intimate partners or someone they know<sup>3</sup>.

It is estimated that 150 million girls under 18 have experienced sexual violence. Gender-based power relations within society put many girls at a much higher risk for some forms of violence, and sexual violence in particular, than boys. A multi-country study reveals that the prevalence of forced first sex among adolescent girls younger than 15 years ranged between 11 percent and 48 percent globally.<sup>20</sup> A United Nations study on men's use of violence in Asia and the Pacific revealed that 26-80 percent of men reported having perpetrated physical and/or sexual intimate partner violence and 10-40 percent of men reported committing non-partner rape, with sexual entitlement being the most commonly cited motivation.

### **1. Sexual violence against women and girls in Asia Social and cultural norms condoning sexual violence in Asia**

As is the case in other regions, societies in Asia are predominantly patriarchal, marked by strict social norms related to women's and men's roles and expected conduct which continue to be held in both urban and rural areas. Understanding the gendered roles in Thailand and Viet Nam contributes to enhanced knowledge of the risks, victimization and realities women and girls face in

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<sup>1</sup> Although various other forms of sexual violence affect women and girls' lives – such as sexual harassment and human trafficking – sexual violence within this study refers specifically to rape and sexual assault unless otherwise specified.

<sup>2</sup> World Health Organization (2013) Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-partner Sexual Violence, p.2. [http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf)

<sup>3</sup> For individual country information, see full compilation of data in UN Women (2012) Violence against Women Prevalence Data: Surveys by Country. Population surveys have found that between 10-70 percent of women report being physically assaulted by an intimate male partner at some point in their lives, see Heise, L., Ellsberg, M. and Gottemoeller, M. (1999) Ending Violence against Women. Baltimore, MD: John Hopkins University School of Public Health

reporting crimes of rape and sexual assault; how laws are applied by the various justice actors; the extent to which the justice institutions and structures replicate gender inequalities in society; and women's participation and advancement within the criminal justice system.

In Thailand, commonly held beliefs among both men and women include that the wife is the husband's asset and that women ought to obey men, as illustrated by the expression that women are the hind legs of the elephant following men's front legs. Rape is sometimes legitimized, both within communities and by the media, based on a woman's past sexual history. There are two words for rape in Thai: *kom-keun*, which invokes the global understanding of forced intercourse without consent, and *plam*, a colloquial term denoting sex with force and without explicit consent that is more socially accepted, exacerbated by its regular appearance on Thai soap operas where 'bad girls' are punished with rape and then 'succumb' and 'fall in love' with their perpetrators. In Viet Nam, men are considered active agents in sexual relationships and women are expected to please their husbands by meeting their sexual demands. In both Thailand and Viet Nam, the importance of family is emphasized in the culture, laws and policies, and the law is implemented within the context of promoting the idea of 'harmony' (Thailand), and the 'happy family' (Viet Nam), which may discourage reporting of violence within the family.

Government campaigns to promote 'happy' or 'harmonious' families often reinforce stereotypes of women as mothers, wives and daughters-in-law; and men as the holders of privilege.

### **Sexual Violence Prevalence in Thailand, and Viet Nam**

According to a WHO global systematic review of data on intimate and non-partner sexual violence, South-east Asia is ranked highest after Africa, at 40.2 percent, for lifetime prevalence of intimate partner violence (physical and/or sexual) or non-partner sexual violence, or both, among all women of 15 years or older.

A 2003 WHO study on domestic violence and women's health found that 30 percent of ever-partnered women in Bangkok and 29 percent in Nakhonsawan reported that they had experienced sexual violence by an intimate partner. The same study suggested that 37 percent of physically or sexually abused women in Bangkok, and 46 percent in Nakhonsawan, never told anyone about the violence they had experienced, and if they did, it was usually to their parents or partner's family. Only 20 percent of physically abused women in Bangkok and 10 percent in Nakhonsawan ever turned to formal services (health, police, and religious/local leaders) for help. According to UNODC, the reporting rate rose from 7.7 per 100,000 in 2005 in Thailand, to 8.0 in 2006.<sup>35</sup> According to the

Thai Public Health Ministry, there were 31,866 incidents of rape reported in 2013. Similarly, the Thailand Development Research Institute estimates 30,000 cases of rape occurring each year in the country – a figure derived from a survey of criminal offences against the Thai population in 2012. From 2008 to 2013, on average, the number of cases reported to the police was approximately 4,000 per year. According to these statistics, 87 percent of rape cases therefore go unreported to police in Thailand.

In recent years in Viet Nam, more research has focused on domestic violence. Sexual violence in the family, particularly marital rape, is often not reported to officials, however in a 2010 national study on domestic violence against women in Viet Nam, 10 percent of ever-married women reported in the interviews that they experienced sexual violence by husbands in their lifetime and 4 percent in the past 12 months. Women who reported sexual violence almost always also report physical violence. A survey conducted by the Viet Nam National Assembly Department of Social Affairs in 2006 found that 30 percent of women surveyed said they were forced into unwanted sex by their husbands. As in Thailand, little research on rape and sexual violence in the community exists. The 2010 national study on domestic violence compared partner and non-partner violence and found that women in Viet Nam are three times more likely to have experienced violence by partners rather than by someone else. About 2 percent of women reported sexual violence by someone other than a husband since they were 15 years old. Most women reported that the perpetrators were strangers and boyfriends and only rarely were family members, which aligns with cultural norms focused on family unity and harmony. Finally, there is evidence from small qualitative studies to suggest that sex workers frequently experience violence from their regular partners, their clients, pimps or brothel owners.

It must be noted that there is a marked difference between the occurrences of rape and sexual assault experienced by women and girls, and the number of those incidents that are reported to police or enter the criminal justice system. Far more women and girls experience rape and sexual assault than report/are reported. In Viet Nam, according to the National Study on Domestic Violence against Women, 87 percent of abused women surveyed never sought help from any formal service or authority.

## **2. The justice deficit: Attrition of sexual violence cases in the criminal justice system**

“Why do I say we live in a rape culture? It’s because when women are sexually attacked, they get blamed for ‘asking for it’, for being in the wrong place at the wrong time when they should have stayed home as ‘good girls’ do. Their dresses and life history are scrutinized to judge their characters to see if they are ‘good’ or ‘bad’ girls. If they have the courage to fight the social stigma as ‘tainted

women', and 'broken goods' to seek justice, they first get grilled by rude questioning in public by the police, then by lawyers in court who often resort to digging into the victims' life stories to show they are morally loose women capable of blackmailing their clients.

This is what the victims painfully describe as 'repeat rapes'... In addition, the burden is also on the rape victims to prove that it's not consensual sex. Often, when they don't have severe injuries to show, the criminals get the benefit of the doubt. When the court cases take forever, most victims think it is simply not worth it to seek justice, and then go on to live with their traumas that often last a lifetime." - Sanitsuda Ekachai, Editorial Pages Editor, Bangkok Post

Although this quote is taken from an editorial piece written with a Thai rape victim in mind, it could easily be the case in most countries globally, including Viet Nam or other countries in the region. Rape represents one of the most brutal forms of physical and psychological violation. If a victim chooses to report her case to the police and follow through the criminal justice process (investigation, prosecution and trial), she can often expect to tell her story multiple times, each time having to relive traumatic events, thus being re-victimized. She may be subjected to scrutiny and invasive and degrading physical examinations, and unlike other crimes, is often forced to prove that the crime took place and that she is a legitimate victim, making it seem that she is the person under investigation. It is understandable, then, that attrition rates for rape and sexual assault

Attrition can be found within four stages of the criminal justice system: (1) reporting to police, (2) investigation, (3) prosecution, and (4) trial. The most common attrition points identified include:

- f* Victim not reporting to the police (pre- attrition).
- f* Police decision not to record the offence due to insufficient evidence, inability to locate the suspect, or suspected false allegation.
- f* Police decision not to refer the case to the prosecutor.
- f* Prosecutor's decision to discontinue the case.
- f* Court/jury decision to acquit due to absence of physical injury of the victim, lack of forensic evidence, or lack of traceability of the victim.
- f* Victim withdrawal at all stages of the process. Some key patterns and trends identified within the literature include:

#### **Understanding terminology when discussing attrition rates – lost vs. dropped cases**

It is not always clear whether cases are 'dropped' or 'lost'. Dropped cases are those where either the police or prosecutor makes a clear and explicit decision not to proceed with a case. Lost cases are those where the police fail to take the

report of rape or sexual assault seriously, fail to conclude the file, fail to identify or find the suspect, where the complaint is withdrawn by the victim, or where the accused is acquitted in court. In appreciating the extent to which victims' withdrawals contribute to attrition rates, one must realize that early assessment by the police of the difficulties of prosecution and conviction may be interpreted by the victim as discouragement to continue. An assessment of the difficulties in the case might be due to the complaints not being believed by the police or prosecutor. Furthermore, perceptions of being treated poorly by the criminal justice system lead many victims to screen themselves out of law enforcement and legal proceedings at an early stage. Victims who are treated insensitively or unsympathetically often decide not to continue with the process. Victims want the violence to end and to be safe and protected. If they do not believe the criminal justice system can help them in that, they will likely not be cooperative.

### **Extensive under-reporting of rape and sexual assault cases**

According to a 2005 Australian study on women's decisions to report sexual assault and service responses, the 'dark figure' of sexual assaults is those cases that are not captured by police statistics because they are never reported. Research from South Africa suggests that rape is extensively under-reported; only one in nine women who had been raped reported to police. A recent survey in Europe found that, in total, victims had reported the most serious incident of partner violence to the police in 14 percent of cases and the most serious incident of non-partner violence in 13 percent of cases. The relationship between the victim and offender may constitute one of the biggest impediments to reporting, given that the majority of women are sexually assaulted by men they know. Literature suggests that the likelihood of a victim reporting to police decreases as the relational distance between victim and offender decreases. Police are most likely to be notified of sexual assaults perpetrated by strangers, followed by estranged partners or known non-intimate offenders. These victim-related barriers to reporting might include: belief that the incident was trivial and one she should deal with it on her own as a private matter; belief that the harm inflicted was unintentional; shame, embarrassment and self-blame or blame of others; and the desire to protect the offender, her family and her children. The criminal justice system can also impose barriers for victims such as: police unwillingness to file the case or not taking the case seriously; fear by the victim of not being believed or treated with hostility; and the victim's lack of knowledge of the legal process and how to report.

Prevalence of high attrition rates and poor treatment of victims across all regions and countries studied. Many studies revealed a pattern of attrition involving a high percentage of cases being 'no-crime' – meaning that the incident was classified as a 'false complaint' or cleared by the police as no crime disclosed –

and an extremely small percentage returning a guilty verdict for rape or attempted rape. Indeed, a major focus of attrition studies rests on the low conviction rate for sexual violation cases and the high attrition that exists at all stages of the criminal justice process. Poor practices of police, prosecution and courts can also lead to early withdrawal of victims. Studies show that victim satisfaction is linked to the level of information they receive on criminal justice system procedures and throughout each stage of the criminal justice process.

### **Stereotyping of rape victims and persistence of the ‘classic’ rape scenario**

Global literature suggests that there continues to be an excessive focus on the victim, her characteristics, sexual history, behavior and perceived credibility, rather than on the action of the offender. This can result in re-victimization, victim withdrawal, and inappropriate attrition of cases not being classified as a crime.

Scrutiny on the victim can be influenced by unrealistic stereotypes and myths held about rape and rape victims. In addition, the most marginalized victims—with physical or mental health issues, unemployed, and young unmarried women – are particularly disadvantaged by the criminal justice system. Layered atop these stereotypes is the ongoing pervasiveness of the notion of ‘real rape,’ first used by Susan Estrich in 1987 to describe sexual assaults committed by strangers, outdoors, and involving weapons and injury. As suggested by a 2001 study, while these four conditions are rare, they continue to be the template against which all reported rapes are measured: As powerfully suggested in a UK study, “The failure of CJS [the criminal justice system] to address stereotypes means that the processes involved in responding to reported rapes – from early investigation through to courtroom advocacy – can serve to reinforce, rather than challenge, narrow understandings of the crime of rape, who it happens to and who perpetrates it. The attrition process itself reflects, and reproduces, these patterns.” Indeed, criminal justice actors take on gatekeeping roles at each stage in the process, allowing stereotypes and misconceptions to feed into decision-making on what constitutes a strong or a weak case.

### **Attrition of rape cases in Asia**

Some statistical data on attrition is available in Thailand, with more limited data available in Viet Nam. However, limitations in the data collection and analysis processes in both countries, in addition to challenges in accessing case files from across the justice chain, made it difficult to accurately gauge attrition at the aggregate level.

Further information on the topic is provided in chapter II Study Findings: Understanding the Barriers to Justice and Attrition in Sexual Violence Cases.

The Thailand Development Research Institute (TDRI)<sup>60</sup> found that from 2009-2013, women victims of rape reported to the police in 4,000 cases annually. From those 4,000 cases, police averaged 2,400 arrests, illustrating that an average of 6 out of every 10 cases reported leads to arrest. TDRI also found that there could be as many as 30,000 rape incidents per year, which means that the unreported rape incidents could be as high as 87 percent. Different figures were found by the US State Department's human rights report on Thailand for 2013, which suggests that Thai police reported receiving 2,503 rape cases from January to September 2013 including one case in which the perpetrator killed the victim. Police arrested suspects in 1,456 of these cases.

Additionally, between October 2012 and September 2013, there were 12,637 women (over 18) who reported abuse and sought assistance from the Ministry of Health's One Stop Crisis Centre (OSCC): Of these, 73 percent reported physical abuse and 18 percent reported sexual abuse.

The Ministry of Social Development and Human Security recorded 450 cases of domestic violence nationwide in 2013. In only 134 cases, victims pursued criminal charges. Although information on the progression of these cases is largely unknown, 25 cases were under reconciliation procedures.

In Viet Nam, statistics from the Criminal Police Department (Ministry of Public Security) show a steady increase in reporting of sexual offences over the five year period of 2008- 2012, with 947 reported cases in 2008 to 1,338 reported cases in 2012. These statistics only record two forms of sexual violence – rape of adults and having sex with a child – and showed that roughly three-quarters of sex offences reported involved child victims and only about 25 percent of the cases involve rape of women.

## **2. Protecting women's and girls' human rights: The international legal and policy framework**

Thailand and Viet Nam have ratified or acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Thailand has also ratified the Optional Protocol to CEDAW, which provides for an inquiry procedure as well as a complaints procedure. Both countries have been involved in the Universal Periodic Review, which is conducted by the United Nations Human Rights Council and involves a review of Member States' human rights record. Recommendations for Thailand included calls to “intensify efforts to promote policies in the area of prevention, sanction and eradication of all forms of violence against women” and to “take measures towards modifying those social, cultural and traditional attitudes that are permissive of violence against women”. Recommendations for Viet Nam

included a call to “ensure in law and in practice the protection of women against all forms of violence.”

Furthermore, as Member States of the United Nations, Thailand and Viet Nam have adopted a number of relevant declarations and resolutions on responding to violence against women.

Key international human rights and legal instruments

Convention on the Elimination of All Forms of Discrimination against Women (‘CEDAW’), the Optional Protocol to CEDAW and CEDAW General Recommendation No. 19.

International Covenant on Civil and Political Rights, the Convention on Economic, Social and Cultural Rights, the Convention on the Rights of the Child.

Declaration on the Elimination of Violence against Women.

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.

These include the 1993 United Nations Declaration on the Elimination of Violence against Women, the 1994 Beijing Declaration and Platform for Action, the 2010 Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (the Updated Model Strategies’), and the Commission on the Status of Women 57th Session (CSW57) Agreed Conclusions, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Viet Nam and Thailand have also committed to the Association of South-east Asian Nations (ASEAN) 2004 Declaration on the Elimination of Violence against Women in the ASEAN Region as well as the 2013 Declaration on the Elimination of Violence against Women and Violence against Children in ASEAN and the 2015 Regional Plan of Action on Ending Violence against Women and Girls.

## ***2.1 Right to life with dignity***

The CEDAW provides an overarching human rights framework for all women and confirms Thai and Vietnamese women’s fundamental freedoms, including the right to life with dignity. The CEDAW Committee General Recommendation No. 1977 further articulates this right to life as including the right to live free of violence and free of the fear of violence. This includes states being responsible for “private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for



providing compensation.” Further in relation to national legal frameworks, the CEDAW Committee calls on States Parties to 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.

## **2.2 Defining violence against women**

Violence against women is defined in the Declaration on the Elimination of Violence against Women to mean “any act of gender- based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” This definition reflects the breadth of the issues involved in violence against women and also the gendered nature of the abuse. Such violence is directed against a woman because she is a woman and affects women disproportionately.

## **2.3 Due diligence obligation**

The legal instruments and resolutions help to further crystallize the international obligation of due diligence, which requires States to exercise due diligence to establish effective measures to prevent, investigate and prosecute cases of violence against women. The Due Diligence Project<sup>80</sup>, a research advocacy project, has elaborated on the five P’s of due diligence to eliminate violence against women:

1. Prevention: states are to take measures that thwart the occurrence of violence against women. An effective criminal justice response can act as a deterrent and prevent further violence.
2. Protection: states must keep the victims safe from present harm and the re-occurrence of further violence, as well as ensure victims receive adequate and timely services.
3. Prosecution: states have a duty to exercise their criminal jurisdiction over those responsible for the violence. This duty must be exercised in an effective, prompt, impartial and thorough manner, which allows victims to take steps to try to stop the violence without fear of repercussions.
4. Punishment: states have an obligation to impose an appropriate sanction on perpetrators as a consequence of their having committed violence against women.
5. Provision of redress and reparations: states must provide available remedies, such as compensation, to the victim in order to address the harm or loss suffered by them.

International standards and due diligence obligations, including the United Nations Special Rapporteur on Violence against Women’s Due Diligence Standards<sup>81</sup>, call on states to develop domestic legislation that: does not invoke

custom, tradition or religion to avoid their obligations to eliminate violence against women;<sup>f</sup> includes penal, civil, labour and administrative sanctions to punish and redress the wrongs caused to victims;<sup>f</sup> provides access to the mechanisms of justice and to just and effective remedies;<sup>f</sup> ensures that the secondary victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;<sup>f</sup> ensures effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders;<sup>f</sup> ensures measures for the protection of women subjected to violence, access to just and effective remedies (including compensation and indemnification), healing of victims and rehabilitation of perpetrators.

## **2.4 The Updated Model Strategies on the Elimination of Violence against Women and the Blueprint for Action**

The Updated Model Strategies was adopted by the General Assembly in 2010<sup>82</sup> and focuses on the criminal justice system while recognizing that a holistic and multi-disciplinary response is needed. It provides a series of broad recommendations covering substantive, procedural, and operational issues of the criminal justice system as well as calling for comprehensive, coordinated, and multi-sector responses.

*f* Ensure that all forms of violence against women are criminalized and prohibited (provision 14(b)).

*f* Ensure that criminal laws are comprehensive and effective in eliminating violence against women (provision 14(a)).

*f* 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 (provision 14(a)).

In addition to developing a Handbook on Effective Police Responses to Violence against Women<sup>83</sup> and Handbook on Effective Prosecution Responses to Violence against Women and Girls,<sup>84</sup> the UNODC has published a Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women<sup>85</sup> which provides a framework for Member States to develop national implementation plans for the criminal justice system to respond to violence against women and girls in line with the recommendations and provisions contained in the updated Model Strategies as well as in other relevant international instruments.

Furthermore, to bridge the gap between commitments made at the international level on responding to violence against and the lack of implementation at the national level, UN Women and the United Nations Population Fund (UNFPA), in partnership with UNODC and WHO are developing standards and guidelines

for the provision of police and justice services for violence against women as part of the United Nations Joint Global Programme on Essential Services for Women and Girls Subjected to Violence.

### **3. Methodology**

Working in consultation with relevant UN regional agencies (UN Women, UNDP, UNODC), and under the overall guidance of the UN Women Regional Programme Manager, Ending Violence against Women, an international research team was tasked with designing, developing and supporting the implementation of this research study during October 2013 to September 2014. The international research team includes gender, policing, and prosecution experts. Research methods were contextualized and implemented in Thailand and Viet Nam by national partner institutions from October 2013 to February 2014. United Nations regional agencies selected Thailand and Viet Nam for this comparative regional study based on certain criteria. These include: their diverse social, legal and cultural contexts, the level of media and social attention on sexual violence against women and girls, the commitment of key stakeholders to accelerate the enforcement of policy commitments to respond to this issue, and the identification of national partner institutions with the interest and capacity to successfully implement the study. The Thailand Institute of Justice in Thailand, and the Ministry of Justice and national consultants in Viet Nam were selected as national research partners to undertake national-level qualitative and quantitative research. Each national research team consisted of one lead researcher, two or more quantitative researchers, and two or more qualitative researchers. Additional support was provided in Viet Nam by a gender expert, Professor Huong, who conducted further interviews with criminal justice practitioners and service providers.

Key elements to achieving the objectives of this study included:

- f* Consultations with UN constituents to confirm study objectives and scope, and to identify stakeholders to be consulted.
- f* Desk review and design of the research methodology.
- f* Development, piloting and finalization of the research tool and protocol in both countries of study.
- f* In-country guidance, training and collaboration with national researchers on the research methods and tools.
- f* Implementation of the research methods by national research teams.
- f* Validation of the study findings via country-level multi-stakeholder workshops.
- f* Country-specific findings developed by national research teams.

*f* Comparative analysis of national findings via the regional study as presented here within.

*f* The original quantitative retrospective case study envisioned was modified when barriers to accessing case records could not be overcome (see below).

#### **4.1 Regional-level methodological framework**

While the method developed is based on the specific contexts found within the countries of study, it recognizes and is built upon previous attrition studies that have been successfully implemented in other countries and regions. These include:

*f* The collaborative efforts of researchers within the Tshwaranang Legal Advocacy Centre (TLAC), South African Medical Research Council (MRC) and the Centre for the Study of Violence and Reconciliation (CSVR), who have conducted a quantitative study of how the criminal justice system processes complaints concerning rape in South Africa. Undertaken in Gauteng Province in 2003, *Tracking Justice: The Attrition of Rape Cases through the Criminal Justice System in Gauteng* analysed a sample of the reported rapes to comprehensively evaluate the strengths and weaknesses of policing and prosecution of sexual violence within this province.

*f* The in-depth, trans-European attrition study by Lovett and Kelly from 2003, entitled *Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe*, which tracks data from 11 European countries with varying judicial systems and cultures.

*f* The Ministry of Women's Affairs of New Zealand report from 2009 entitled *Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System* which analyses 1,955 police files from 2005 to 2007 tracking attrition through each stage of the criminal justice process.

The study design integrates:

*f* Comprehensive desk review including global, regional and nationally available statistics, research, norms and standards on violence against women, sexual violence, attrition, and applicable criminal justice systems.

*f* Legal process and criminal justice actor/ stakeholder mapping in both countries.

*f* Review of an opportunistic sample of a total of 290 rape and sexual assault case files from Thailand and Viet Nam.

*f* Interviews and/or focus group discussions (FGDs) with a total of 213 criminal justice system stakeholders, service providers, survivors and representatives of key government ministries in the two countries of study.<sup>87</sup>

Common guiding issues for analysis included:

- f* Background information on international human rights standards for addressing sexual violence.
- f* Criminal justice system structures, processes and actors, and their role in contributing to or mitigating attrition of sexual violence cases.
- f* Policing standards, procedures and practices for handling rape and sexual assault cases.
- f* Prosecutorial response to reporting and pursuing a complaint, and committal hearings and trials.

The original research plan included a retrospective quantitative study of cases through the criminal justice process to identify specific attrition points and causes, as well as a series of key informant interviews and focus group discussions with key stakeholders. However, while every effort was made to follow the intended research plan, a lack of full access to records to ensure randomness and systematic case tracking throughout the various stages of the criminal justice system required an adjustment to the original quantitative design. As a result, the quantitative component of the study ultimately consisted of a review of available cases, whether police and/or court files, to complement the qualitative findings by identifying key trends and providing additional insights into the current state of access to justice for women and girl victims of sexual violence. Available, accessible cases were analysed to confirm or challenge narratives provided via interviews and focus group discussions. The case review provides a partial profile of victims, suspects, and incidents. In the absence of consistent and available crime data and overall prevalence information on sexual violence against women and girls, the quantitative research serves as a complement to the qualitative research. Further details of study challenges and research limitations are described at the end of this section.

The comparative framework developed for the regional study:

- f* maps and compares the legal frameworks and processes within Thailand and Viet Nam as they pertain to sexual violence;
- f* identifies and analyses potential trigger points for attrition stemming from each country's legal framework and procedures;
- f* identifies key patterns and trends associated with victim, suspect and incident profiles in each country; determines key trends related to attrition at each stage of the criminal justice process (reporting, investigation, pre-trial/prosecution, trial); and
- f* highlights commonalities and differences among victims' experiences with the criminal justice system and process in both countries of study.

### **A victim/survivor-centred approach**

This study's approach is founded on the principles of gender equality and women's empowerment, which informed the development of gender-sensitive, victim-centred qualitative and quantitative research methods. These methods were developed with the intention of consistency across both countries of study while acknowledging the need to remain sensitive to specific socio-political, legal and cultural contexts and differences that exist. Throughout the research process, and as will be discussed within the limitations of research section, such differences did impact the ability of national research teams to gather quality data for analysis.

It is important to focus on victims' needs and perspectives to bring to light their often-invisible experiences of the criminal justice process as well as to identify their specific needs and interests related to the criminal justice system.

#### **4.2 Country-level methodological framework**

Acknowledging the study's overarching goal of guiding future legal reform, policy making and programming, research tools were developed to facilitate the gathering of policing and prosecution information to assist in developing recommendations for building and strengthening institutional capacity and accountability, and to identify strategic entry points for programming and support.

As previously described, the revised methodology blended a case review and statistical analysis with key informant interviews and focus group discussions with key criminal justice actors, support services and survivors. Questions were developed, reviewed and tailored in cooperation with national research teams to reflect national contexts.

A quantitative research tool was developed to capture victim, suspect and incident profiles, and case exit points from the criminal justice system. Google Forms was leveraged as the platform for statistical analysis. Research teams reviewed police and court files that they were able to locate and access, which were of rapes and sexual assaults of women and girls that entered the criminal justice system between January 2008 and December 2012. Research sites were selected by national research teams in consultation with national partner institutions and UN partner agencies.

Given the variable record systems and access points in both countries of study, the stratified sampling<sup>94</sup> initially proposed could not be implemented. Opportunistic sampling<sup>95</sup> became the method of case file collection at each of the identified study sites. In Thailand, researchers were able to access police records from 2008 to 2013 from various police contacts at stations in Bangkok, Chiang Mai and Songkhla. In Viet Nam, researchers were provided with case files selected by the district level police agency, procuracy and courts. While the

research team visited some commune and ward police stations, systematic access to their records was not provided. To maintain consistency among both countries, researchers committed to analysing a minimum of 120 case files spread relatively evenly between two to three sites within each country. Data collection and entry was performed by designated researchers who were trained in quantitative research methods. Each case file was assigned a confidential tracking number to ensure anonymity and confidentiality was maintained.

Throughout the study timeframe, researchers made continuous efforts to access prosecution and court records in Thailand, and local police records in Viet Nam, in attempts to randomize case selection. However, due to a number of challenges in this regard, full and equal data access could not be ensured within the project time frame. As a result, the quantitative component of this study does not allow for comparative analysis across both countries but, rather, serves to complement and triangulate the data obtained through the qualitative interviews and focus group discussions as well as the legal review.

Researchers identified and interviewed key informants and facilitated focus group discussions with: senior representatives from relevant ministries and criminal justice agencies; criminal justice and health practitioners, and support service organizations. Efforts were made to ensure representation of both genders in interviews. However, as the criminal justice systems in both countries are male-dominated at all levels, this proved challenging. Survivor interviews were coordinated through reputable NGOs with the consent of the survivors, in Thailand. It was not possible to interview survivors in Viet Nam.

Given the limited number of urban and rural sites selected in both countries for case review and qualitative research, study findings are not nationally representative and cannot be generalized to other regions in the countries without further research.

### **Ethical Considerations**

The highest level of ethical standards was maintained throughout the study. Qualitative analysis included careful consideration of the risks and opportunities that research participants might experience by participating in this study, and established procedures that acknowledged and respected each research participant's identity, interests, confidentiality, and anonymity.

Information collected, recorded, analysed and interpreted was carefully monitored for accuracy. All relevant laws and institutional policies were upheld, and information was gathered only with the express authorization of appropriate institutional representatives.

All information gathered remains confidential. To protect victim information, each case reviewed was assigned a unique case file number, which remains on file only with the lead international researcher.

National researchers participated in a workshop facilitated by the international research team that included a segment on research ethics and the guiding principles for this study. This session highlighted the importance and value of honesty, integrity, confidentiality and objectivity to the study. The session also highlighted the role each member of the team played in promoting and protecting the quality, accuracy, and reliability of the research, and the special protocols used for conducting survivor interviews in order to provide an empowering experience, rather than re-victimization through the re-telling of traumatic events.

National research teams included female and male researchers. Careful consideration was given to how the gender and identity of the researcher could affect the experiences of, and responses provided by, key informants, focus group participants, and survivors.

### **Research challenges**

This section illustrates the challenges researchers faced in conducting planned research. The most significant challenges encountered were in accessing criminal justice case records and in linking police, prosecution and court records. Specific conclusions about when cases were discontinued, key decision makers in case conclusion, and the factors influencing these decisions could not be reached. Attrition rates calculated from the case review samples in each country provide a picture of attrition based only on the files reviewed, and are not reflective of the overall picture of attrition in each of the countries of study.

### **International norms and standards calling for comprehensive national legal frameworks**

The updated Model Strategies and Practical Measures, Provision 14 (a) Member States are urged: (a) To review, evaluate and update their national laws.... especially their criminal laws, ... to ensure and guarantee their value, comprehensiveness and effectiveness in eliminating all forms of violence against women and to remove provisions that allow for or condone violence against women or that increase the vulnerability or re-victimization of women who have been subject to violence.

Commission on the Status of Women 57 Agreed Conclusions, call on States to: (c) adopt, as appropriate, review, and ensure the accelerated and effective implementation of laws and comprehensive measures that criminalize violence against women and girls and that provide multidisciplinary and gender-sensitive preventive and protection measures, such as emergency barring orders and



protection orders, the investigation, submission for prosecution and appropriate punishment of perpetrators to end impunity, support services that empower victims and survivors, as well as access to appropriate civil remedies and redress.

The story of Nidd: a Thai rape survivor

Nidd worked in a factory in Bangkok. She was raped by a co-worker who lured her into his room, pretending to be sick. She became pregnant after the rape incident.

“I was so embarrassed and scared. At the time, I also felt stupid for having trusted the person. I did not dare telling anyone. I only wanted to commit suicide.”

She learned about the Women and Men Progressive Foundation through her friend to whom she confided. She decided to seek help from the Foundation but was at first too shattered to want to go through the criminal justice system. However, after attending a series of support group and counselling sessions, Nidd decided to report to the police.

“I learned from other victims. Their experiences were worse than mine but they were so audacious to tell us their pain, to demonstrate how they were determined to fight, to go through the official process. So I told myself ‘why don’t you, Nidd?’”

With the help of the Foundation, Nidd reported her case to the police. However, she suffered from inappropriate treatment by the police.

“The first question that was put to me was ‘why didn’t you report earlier?’ So I explained that I did not know how. I did not have legal knowledge. Then the other police officer asked me ‘Why didn’t you simply accept compensation from him (the offender)? You already have children, why you were asking for so many things?’ I thought that was an insult. It was me who was raped and I had to be the one who understands and compromises?”

Nidd was interrogated four times by male inquiry officials. It took Nidd weeks to obtain a case number required for the compensation of victims according to the Criminal Injuries Compensation Act (2001). She went to the police station more than 10 times for her case to be able to proceed. Throughout the process, Nidd lamented, the police tried to mediate and settle her case against her will. She was told to accept the money and drop the case because “after all, he (the offender) is the father of your baby.” But Nidd was too determined to give in. She believed that the offender needed to be arrested and punished and that she had the right not to settle the case based on what she had learned from the NGO support group and legal advice provided by the Foundation.

Eventually the case went through to the prosecution stage and she is now waiting to be called to testify by the court of first instance.

“It has been a complex process. I could not understand most of the legal documents that were sent to me, such as the letter from the prosecutor’s office and the court. Worse still, I was called promiscuous by my employer despite being a rape victim.”

In spite of all these painstaking experiences, Nidd insisted:

“I will continue to fight for my right, for the justice that I deserve. The system is not women friendly, I know. But I can’t surrender just because of that. I was about to but then I thought I wanted my kid to grow up knowing that his/her mom was strong and that justice, at least for women, must be fought for.”

Good and promising practices to strengthen the criminal justice sector response to sexual violence were found in both countries. While implementation of promising policies and programmes often remains challenging, largely due to financial or human resource constraints, they do offer positive signs that attempts to improve practice are under way. Below is a list of some examples of country- specific good practice that could be further supported, scaled up, or considered for adaptation in other contexts:

In Thailand, One Stop Crisis Centres, Interdisciplinary teams, when properly coordinated and resourced.<sup>f</sup> Current Royal Thai Police campaign to recruit more female officers.<sup>f</sup> Thonburi model courts.<sup>f</sup> Ongoing training of Royal Thai Police, prosecutors and court personnel in partnership with UN Women. The new Gender Equality Law (GEL) was officially announced on 8 March 2015, which guarantees individuals against direct and indirect discrimination on the basis of sex or sexuality. The law stipulates that policies, rules, regulations, orders, measures, projects or practices of public, private organizations or individuals that are gender discriminatory are not allowed, except for the purpose of eliminating barriers for equal enjoyment of rights and liberties, religious principles and national security. The GEL also establishes

a Committee for the Promotion of Gender Equality, which is mandated to improve social and cultural patterns of behaviors in order to eliminate discriminatory gender biases and practices, as well as gender-based violence, with an aim to eliminate barriers to different rights.

The Royal Thai Police, in partnership with UN Women, the Department of Women’s Affairs and Family Development, and Friends of Women Foundation, has also been expanding the training of police inquiry officers on the protection of women victims of violence, domestic violence and trafficking to include 900 core police inquiry officers in all regions of Thailand. Based on the lessons

learnt from these and previous trainings in recent years, special training modules are being developed to be institutionalized in the Royal Thai Police.

As a direct result of this study, the Thailand Institute of Justice has allocated additional funding to expand the research and develop a toolbox and public campaign to inform both victims and duty bearers of their rights and obligations, as well as relevant laws and where support could be sought in the criminal justice system and national and local support services.

In Vietnam, In Viet Nam, the Penal Code and the Criminal Procedure Code are currently in the process of being revised. Some of the key changes from current legislation being discussed include expanding the definition of rape/ forced sex and abolishing the element ‘against the will of victim’, explicitly criminalizing marital rape, and introducing a new offence of sexual assault. Gender-responsive criminal procedures also in debate including the possibility of a new chapter on protective measures for victims that would provide additional ground for allowing temporary detention of suspects who continue to use or threaten to use violence and letting victims provide testimony through CCTV rather than appearing in person during the trial, as well as expanded provisions on legal aid to VAW victims. Additional references have also been made to the need to protect the identity of victims in criminal proceedings, including amended evidentiary rules to keep victims’ testimony confidential, and allowing judges to stop questioning that may affect victims’ dignity or privacy. Current provisions which place de facto onus on victims to report cases and allow cases to be withdrawn upon victims’ request are now being reconsidered.

In Viet Nam, the government is also in the process of developing a new National Thematic Project (NTP) on GBV prevention and control which would address other forms of GBV beyond domestic violence. The NTP is currently in the process of being drafted and is expected to be submitted to the Prime Minister for approval by September 2015. Factors that contribute to attrition and raise barriers for women to access justice

## **2. Societal factors that impact access to justice and influence attrition**

The study finds 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.

Although this study focuses predominately on attrition on a woman’s journey through the criminal justice system, it would be incomplete without acknowledgment of the significant number of women and girls who experience

sexual violence and cannot report or choose not to report (or, in the case of girls, whose families choose not to report), and those who are thwarted in their attempts to do so.

## **2.1 Cultural context and impact on access to justice**

### **Traditional views of the role of women and girls in society**

The understanding of sexual violence, particularly surrounding the issue of consent, can be influenced by the cultural construction of femininity. In Viet Nam, the Taoist ideology of yin and yang suggests that women have a low sex drive, are sexually inferior to men and do not have their own sexual agency. In another study, a researcher noticed that “young married men, whose wives had taken up residence with them, spoke happily of having a sexual outlet.... I heard young married men excitedly tell how they had woken up in the night or early morning with an erection but did not have to suffer the discomfort because they were able to ‘hit their wife a few times and go back to sleep.’”

Thailand has traditionally been a strongly patriarchal society. Girls and women are often assigned at least partial blame for incidents of violence and this stigma may serve as an added barrier to accessing support and is a common reason why survivors may withdraw complaints after reporting.

The Royal Thai Police Anti-Trafficking Plan (2012) states: “...negative attitudes towards women is still buried deep within the thoughts and subconscious minds of Thai people and Thai society. From the beliefs, values, expectations and standards related to the way of life in Thai society that still accepts and adheres to the role of women as being the weaker gender, the housewives or the followers behind men. These roles and feelings toward women are the internal factors causing problems for women and violence in the family, especially with the present social problem of family institutions being smaller and more emotionally distant. The trend of the single-family units is increasing, caused by family members moving into the workforce, divorces, abandonment by the husband or male figure, and pregnancy causing women to be the caretakers of the family.

Most of the people in the family are children and women, so they tend to be physically, mentally, sexually abused, molested, treated obscenely or even raped.”

### **Family honour and social stigma**

The process of reporting sexual violence is inextricably bound up with the ideas of family honour, kinship, and social belonging. In Thailand, for example, the family plays a critical role in supporting or discouraging a victim in her decision to report her case and proceed through the criminal justice process. As noted by a female inquiry officer from Songkhla province, Thailand: “We need to educate

and empower families that their daughters could be victims of rape and it is not their fault – either of the family or of the victim...and they need to report and take things forward to get justice, as a kind of honour for the family. But the reality is that families are too ashamed; they don't want the story to be known. 'Saving face' is more important than justice."

In Viet Nam, earlier research shows that the decision to pursue a case through the criminal justice process constitutes an attempt to defend the honour of the family and that of the larger kin network.<sup>104</sup> Where it is perceived that there is no honour to be defended or concern for stigma and shame against the family, then the victim will not receive support from family or kin network. A female academic commented "There is a concept of women's sexuality as a usable object that accrues or loses value depending on how it is used." This may explain why a high number of cases that are reported and processed through the criminal justice system involve girls under 16 years old. The study case review found 72 percent of the cases reviewed involved girls under the age of 16 years old. National statistics from both the police and courts show a similar breakdown between child rape and rape.

### **The practice of informal negotiations and the impact on attrition**

The study found that the issue of family honour plays a prominent role in the disposition of rape cases through informal negotiations that take place outside the criminal justice system. The private settling of cases was an issue raised in both countries. It was common to hear of private settling of the cases by families of the victim and families of the perpetrator, without the participation of the authorities. However it was not unusual for the criminal justice authorities, at each stage, to encourage the victim to try to settle the matter. In Thailand, although police receive no formal mediation and settlement training, interviews revealed that police often took on this role and encouraged mediation, whether before a victim filed her case or after. The procedures on how cases are settled remain vague and inconsistent.

Findings in Viet Nam suggest that police often encouraged the family of victims to negotiate rather than to proceed through criminal courts. One Vietnamese judge interviewed described a case where he adjourned the trial to allow for informal mediation between the two 'parties'. According to a female social worker, many police officers interviewed recalled that in cases involving a girl where she appeared unhurt (for example her hymen remained intact and there was no serious bodily injury), the officers would tell the victim's family "She is okay now so it's better to protect her honor. If this becomes known when she grows up she will have difficulty finding a husband." The delay by the authorities in bringing a charge against the suspect serves as a signal to the victim and/or her family that the incident should be best dealt with informally

between the parties concerned. The findings from Viet Nam also noted that some police participants complained that due to the practice of negotiations, reporting would be delayed, and in their opinion meant that physical evidence of sexual violence would be compromised and they would often not proceed due to the 'weak' case. There were also statements, which reflected the attitude that the victim would report to the police as a 'strategy' to get more compensation through the informal settlement.

The practice of informal settlement can delay the report to police and therefore deny the victim access to justice.

## **2.2 Gender stereotyping and the reinforcement of sexual violence myths and misconceptions**

Gender stereotyping plays a direct role in creating and sustaining myths and misconceptions about sexual violence, and defining 'real' victims and perpetrators. This research identified a multitude of reports that a number of criminal justice service providers are influenced by the socio-cultural norms and gender biases, myths and stereotypes which exist in both countries. These findings echo similar conclusions made by other studies that explore how such myths influence women and girls' access to justice and attrition of sexual violence cases

### **Myth**

- 'Real rape' involves strangers, force, physical injury and occurs in public

The study found that a number of criminal justice providers held such a belief. Such statements reflected this conviction:

*f* In Viet Nam a common belief was that sexual violence does not occur within the family or is committed by close acquaintances or in locations considered to be 'secure' and 'peaceful'.

*f* In Thailand: "The burden is also on the rape victims to prove that it's not consensual sex. Often, when they don't have severe injuries to show, the criminals get the benefit of the doubt."

*f* "That's not rape. It's consensual. She wasn't fighting. It's not rape. She only struggled to hide her face from the camera. It looks like they are just cuddling."

While many interviewees communicated perceptions that reflected the traditional thinking that rape involves strangers, physical injury and occurs in public, the case review discredits this idea. Between 86 percent (Viet Nam) and 91 percent (Thailand) of the suspects were known to the victim. The case review found that the majority of rapes and sexual assaults took place in a private space: most frequently the home of the victim and/or suspect, followed by another person's home or a hotel room. The implication for criminal justice service providers is that in the majority of cases, it is unlikely that there are witnesses to

the assaults, and as a result, the victim's lack of consent will likely be an important issue at trial. In the majority of cases in both countries, records indicated that the victim did not sustain physical injuries and that the use of force was either not recorded, or there was no use of force in at least three quarters of the cases. Weapon use was indicated in only a very small percentage of all cases reviewed.

These findings mirror other studies that have found that: a victim is more likely to be sexually assaulted by someone she knows – friend, date, intimate partner, classmate, neighbour or relative – than by a stranger; only 5 percent of forcible rape victims had serious physical injuries and only 33 percent had minor injuries; and nearly 6 out of 10 sexual assault incidents occurred in the victim's home or at the home of a friend, relative or neighbour.

The implication of this finding is that suspect identification was not an issue in the majority of cases; however, this raises the issue of the need for victim protection, safety and support services in both countries.

- Rape and sexual violence is only a problem when it happens to 'good' or 'innocent' women and girls.

The study findings demonstrate that these beliefs are held by a number of criminal justice providers in all three countries.

"Raping a virgin is worse than raping a non-virgin" according to a male police officer in Viet Nam. "This reflects the belief that once having been 'used', a female's sexual worth could not be much worse off by additional 'usage'." (female academic, Viet Nam)

"When women are sexually attacked, they get blamed for 'asking for it', for being in the wrong place at the wrong time when they should have stayed home as 'good girls' do. Their dress and life history are scrutinized to judge their characters to see if they are 'good' or 'bad' girls. If they have the courage to fight the social stigma as 'tainted women', and 'broken goods' to seek justice, they first get grilled by rude questioning in public by the police, then by lawyers in court who often resort to digging into the victims' life stories to show they are morally loose women capable of blackmailing their clients."

The Thai case of Nidd (page 31), who was asked by police, "Why didn't you simply accept compensation from him (the offender)? You already have children, why you were asking for so many things?"

The findings from the case review in both countries show high numbers of girl victims as compared to adult women. In Viet Nam, the case review found 72 percent of the cases reported and processed through the criminal justice system involved victims under 16 years of age. One academic suggested that this could be indicative of a culture that views proceeding through the criminal justice

system as a way to protect vulnerable children, while adult women are considered much less vulnerable. Alternatively, it is consistent with the belief expressed by numerous interviewees that only certain girls get raped, or that ‘good girls’ cannot be raped.

“Rape is something that only happens to ‘low class’ people, uneducated or migrants.” (female justice official, Viet Nam)

The archetype of the ‘ideal’ sexual assault victim functions to disqualify many complainants’ accounts of their sexual violence experiences. ‘Bad victims’ – those women whose lives, backgrounds, and characteristics depart from the narrow confines of ‘ideal victims’ in sexual assault cases – are the women whose accounts are subject to the most scrutiny, whose credibility is most attacked, and who are seen to be less deserving of the law’s protection. Applying these biases to sexual violence victim interviews and investigations can lead to the exclusion of many women from participation in the criminal justice process, including: mature women working as domestic workers who are sexually violated by their bosses; women with physical or mental health disabilities; women who are educated and ‘should know better’; sex workers; women who speak openly about sexual matters; or women who are lesbians.

The myth of what constitutes a ‘real’ or ‘ideal’ victim serves to reinforce attitudes by criminal justice practitioners of how the ‘ideal’ victim should behave. For example, findings from Viet Nam revealed attitudes of criminal justice practitioners that the ‘ideal’ victim should demonstrate intense fear, helplessness or horror or strong emotions. A victim who can recount experience in a cold and detached manner does not fit this idea of appropriate behaviour and therefore her story is not seen as credible:

“At the time of reporting sometimes it is difficult to tell a ‘ca ve’ (female sex worker) from a good woman. The investigator has to observe closely the person who reports the incident. In the case of a good woman, the person who reports the crime generally seems confused and rather timid during the process. If by looking at the way a subject dresses herself you can make a guess at her profession. If her attitude when answering questions about sexual matters are quite open by the way she speaks, then you have to reconsider the case. Because while cases reported by a ‘ca ve’ can be rape, it is possible that her accusation is at variance with what actually happened.”

- Some women deserve to be raped and sexually assaulted; it is their own fault.

This myth regards victims of sexual violence as ‘asking for it’ (i.e. sexy clothes incite men to sexual violence), ‘wanting it’, or putting themselves in dangerous situations (i.e. sex work or being intoxicated). In both countries, the study found



that women were often blamed for the sexual violence they had suffered for reasons ranging from being a sex worker, to dressing provocatively, going out in the evening with a man, or even being alone on a bus at night.

*f* “I know I may not look so decent, as good Thai girls of my age are supposed to look. I wore red lipstick and had this ‘rang’ (wild) persona. People think I was a ‘rang’ girl. But it did not mean I deserved to be raped. I did not ask those men to rape me. I begged them not to.” (female rape survivor, Thailand)

*f* “I used to blame myself for what had happened to me. I partied a lot at night, I trusted people too easily. I wore revealing dresses. What could I say to defend myself? I was raped. It was partly my fault.” (female rape survivor, Thailand)

*f* “Cases involving female sex workers most often happen like this. First both parties agree to the deal, but later the client demands more, even causes pain and injury to the woman, or lets more people join in, like in a ‘gang bang’, without extra payment: that’s why the woman reports to the police. It’s revenge, because the client does not stick to the deal.” (male criminal investigator, Viet Nam providing an explanation for why a sex worker could not be viewed as an innocent victim).

*f* “You were raped because of the way you dressed yourself, if not by this offender shall you be abused by another.” (female social worker reporting a statement from a police officer handling a case of a rape victim who was 12 years of age, Viet Nam)

*f* “A girl who is drunk or showing a lot of cleavage might be the cause of the offence.” (male prosecutor, Viet Nam)

Such myths influence the attitudes of the criminal justice practitioners in their assessment of the victim’s credibility. How justice service providers view and treat a victim will impact a victim’s cooperation and the case as it progresses through the system.

- Sexual violence only happens in certain segments of society

The study found this myth replicated in various beliefs, articulated by a number of criminal justice providers interviewed:

*f* “There is a prevailing suggestion that acts of sexual violence are more prone to occur in locations considered to be fraught with ‘complexities’ where residents are from different social backgrounds, or for example, there are significant numbers of migrant workers and ethnic minority populations.” (justice official, Viet Nam)

*f* “It is commonly believed that men who live in happy, peaceful places or those with high education would not commit such ‘unreasonable’ acts like rape. This portrait reinforces the assumption that rape and other sex offences are prevalent among the poor and less educated and permits ‘normal’ people to

safely distance themselves from these ‘bad’ events.” (female academic, Viet Nam)

*f* “We see many cases where girls fall in love and have sex with (boys/men). When they get pregnant, their families are shocked and report to police. These boys and men are not rapists, they are in love.” (male investigator, Viet Nam, when discussing cases of statutory rape and feeling sorry for the boys or men)

- Husbands cannot rape or sexually assault their wives

The study found that prevailing societal attitudes provide indications as to why marital rape cases are not frequently reported to the police.

*f* Thai social norms regard domestic violence as an internal matter, not to be shared with or interfered in by people from outside the family. This has kept Thai women in silence. Women abused by their spouses are often blamed for some kind of misconduct.<sup>119</sup>

*f* In Viet Nam – where no reported cases of marital rape were included in the case review and none of the criminal justice practitioners interviewed had ever dealt with or even heard of such a case going through the criminal justice system – there is a commonly held belief that consent to marriage is also consent to sexual intercourse and as long as the marriage is valid, this sexual right cannot be revoked. Moreover, other research has found that there is a predominant belief that if women do not satisfy their husbands, the latter could seek out sex workers.<sup>120</sup> “The police and Women’s Union do not believe rape can happen in marriage, so they try to solve these problems through reconciliation.” (female academic, Viet Nam)

- Women seeking to avenge slights or to extort money often fabricate sexual violence charges

This myth follows the famous statement made by Sir Mathew Hale in the 18th century that rape is an “accusation easily to be made and hard to be proved and harder to be defended by the party accused, tho never so innocent.”<sup>121</sup>

*f* A number of Vietnamese police officers interviewed were of the opinion that any reported rape from a ‘ca ve’ (sex worker) was false as they were likely trying to extort more money from their clients. From the case review, there were no recorded denunciations of such cases.

- A victim will report everything at the first available opportunity

Police often have specific ideas about how a rape victim should behave, and if the alleged victim does not conform in the expected manner, they are less likely to proceed with the case on the grounds that there was no credible evidence.

Many police officers interviewed expressed suspicion about delayed reports.

*f* Findings from Viet Nam reflect how the police view the fault of the victims for failing to report or for reporting the crime too late, where there will be no evidence.

*f* “Acts of rape generally take place at places like hotels, guesthouses, deserted places... between two persons. Therefore it’s hard to find evidences. They are often not reported immediately, but only after one or two days, a week or even a month after the incident, therefore it’s hard to collect physical evidence such as sperm, condoms, skin scratches, etc. Even victims often find these acts so horrible and that they wash themselves immediately after it happens. It’s easier (to find physical evidences) with cases involving young girls or women who have sexual experience for the first time (virgins) by examination and assessment. With married women it is more challenging to find and prove the necessary evidences.” (male criminal investigator, Viet Nam)

*f* Findings in Thailand reveal that often victims who are minors took a long time to tell their families about the incident and reporting to the police was further delayed by families due to the sensitivity of the issue and the psychological fragility of young victims.

### **3. Legal factors relating to the definition of crimes and the influence on attrition**

In both Thailand and Viet Nam, rape is recognized as a crime. However, the countries differ widely as to the definition of the elements of rape. The countries also vary considerably as to what other sexual offences are included in their Penal Codes and how sexual violence is dealt with in other laws, such as domestic violence or administrative sanctions.

#### **3.1 Elements of sexual offences: country summaries**

##### **The Thailand Criminal Code, as amended by Criminal Code Amendment Act 2007**

The two main Thai offences dealing with sexual violence discussed in this report are rape and indecent assault. Thailand amended the offences relating to sexuality in 2007 to expand the definition of rape (s. 276) to include both females and males as victims and offenders, all types of penetration, and criminalization of marital rape. Children not yet over 15 years of age are deemed legally incapable of consenting to sexual intercourse or to any indecent act. The Court may inflict lesser punishment to offenders who are minors. The offender is prohibited from claiming that he/she does not realize the child victim is not yet over 13 years of age.

In 2007, Thailand passed the Domestic Violence Victim Protection Act which views domestic violence as unique since it happens among family members and close relatives. The Act provides for different approaches, methods and

procedures to the existing criminal justice approach, emphasizing rehabilitation of the offender over penalization, protection of the victim and restoring good family relationships. The Act defines domestic violence as physical and mental abuse and does not explicitly include sexual abuse.

#### Elements of rape (s. 276)

*f* Sexual intercourse. An act done with the intention to gratify the sexual desires of the offender by using the sexual organ of the offender to do by any means to the sexual organ, anus or mouth of another person, or by using any object to do by any means to the sexual organ or anus of another person. If a child is not yet of over 15 years of age, the offender shall be criminally liable, irrespective of having consent of such child, and if a child is not yet over 13 years of age even though the offender does not realize the fact that such child is not yet over 13 years of age, such offender shall be criminally liable.

*f* » Force, or threat; or exploiting vulnerability and deception.

*f* » Non-consent.

*f* » Does not include marital exemption as an element of the offence, although law provides mitigation of punishment if spouses intent to live together as married couple.

*f* Culpable state of mind of offender.

#### Elements of child rape (s. 277)

*f* A child victim who is not yet over 15 years of age and is not a spouse of an offender, irrespective of consent of such child (para. 1)

*f* If a child victim is not yet over 13 years of age even though the offender does not realize the fact that such child is not yet over 13 years of age, such offender shall be criminally liable. (para. 3)

#### Elements of indecent assault (s. 278, s. 279)

*f* Inappropriate and improper sexual acts.

*f* Force, or threat or exploiting vulnerability and deception.

*f* Indecent assault to a child not yet over 15 years of age, though it is consensual, the offender is still liable.

### **The Viet Nam 1999 Penal Code**

In Viet Nam, for adult women and girls aged 16 years and older who have experienced different forms of sexual violence, only rape and forcible sexual intercourse are currently codified as crimes (articles 111 and 113). The type of conduct and circumstances criminalized as forcible sexual intercourse would fall under a broad definition of rape in many countries. For girls who are under 16 years of age, in addition to rape and forcible sexual intercourse, indecent acts (coerced sexual acts) are included as crimes under the offence of child

molestation.<sup>128</sup> For women and girls aged 16 years and older who experience non-penetrative sexual violence, such violence would be considered a physical assault under article 104 of the Penal Code if there was an infirmity rate, or degree of injury that has been assessed by a medical officer, over 11 percent, according to a Government circular, or if committed in aggravating circumstances which are set out in 104(1) (a-k).<sup>129</sup> In Viet Nam, there are two crimes that can be classified as ‘statutory rape’ (meaning that sexual intercourse with a person below a statutory designated age is a crime): firstly, sexual intercourse with a girl under 13 years of age by anyone is a crime pursuant to article 112(4); and secondly, sexual intercourse by an adult with a child aged over 13 years of age and under 16 years is a crime pursuant to article 115. The Penal Code also criminalizes ‘attempts’ of these offences.

In 2007, Viet Nam passed the Law on Domestic Violence Prevention and Control, which includes ‘forced sex’ as an act of domestic violence (article 2(1)(e)). This law does not establish new criminal offences, rather, it sets up the kinds of prohibited acts and competent agencies responsible for the management of activities related to prevention and combating violations. The legal source for handling and sanctioning such cases is a Government Decree relating to the law. The initial Decree 110 dealt with forced sex in the family, by the administrative sanction regime and involved fines. However, the recently passed Decree 167 does not include a reference to forced sex. The legal implications for administratively punishing perpetrators of forced sex in the family remain unclear.

### **3.2 A comparative analysis of sexual offences**

For the purposes of this comparison, the definition of adult follows the legal provisions in both countries, (16 years and over). However, both are States Parties to the Convention of the Rights of the Child, which provide specific protection for children under the age of 18 years. Currently, in Thailand and Viet Nam, sexual violence victims who are 16 years and older and not yet 18 years old are treated as adult victims, which has consequences for the range of punishment available, as well as specific support services available to child victims. They lack the special protection and gender- and age-sensitive criminal justice responses essential to address their special needs and vulnerabilities, and that are required by international law.

The classification of the offences of rape and sexual assault can have implications for how these cases are handled pursuant to the criminal procedural laws (discussed in the following section), as well as reflecting how seriously society views the criminal conduct. In Thailand, sexual offences are treated as criminal, as opposed to petty or minor offences. Rape of ‘adult’ females is regarded as compoundable crimes. In other words, these offences are regarded

as private wrongs and seen as less harmful to the public, as opposed to non-compoundable offences, or so-called offences against the state. Rape and sexual assault against children in Thailand are classified as non-compoundable crimes. In Viet Nam, the classification of rape and sexual assault can range from less serious crimes, serious, very serious to particularly serious crimes, largely depending on the injury level of the victim or aggravating factors.

Elements of rape (article 111)

*f* Penetration. Penile vaginal penetration.

*f* Force, or threat. Use violence, threaten to use violence or take advantage of the victim's state of being incapable of self-defense or resort to other guiles in order to have sexual intercourse with the victim against the latter's will.

*f* Non-consent.

*f* Does not include marital exemption as an element of the offence.

*f* Culpable state of mind of offender.

Elements of forcible sexual intercourse (article 113)

*f* Penetration. Penile vaginal penetration.

*f* »Exploitation or deception. Those who employ trickery to induce persons depend-ent on them or persons being in dire straits to have sexual intercourse with them against their will.

Elements of child obscenity (article 116)

*f* Inappropriate and improper sexual acts.

*f* Consent or force is not an element.

### **3.2 Legal factors influencing attrition**

#### **Prohibited acts**

The way rape and sexual offences are defined in national criminal law or covered in other legal frameworks, such as administrative laws or domestic violence laws, is a starting point in identifying factors related to attrition in sexual violence cases. The legal definitions can have a direct impact on how reported cases of sexual violence are responded to and handled by the criminal justice system, in terms of investigation, prosecution and adjudication. How these crimes are defined also sends a message to the community on what is seen as acceptable and unacceptable behaviour and can in turn impact on the level of engagement and cooperation by the victims with the criminal justice system.

In Viet Nam, a woman or girl who is 16 years or older and is a victim of a wide range of sexual violence acts, including anal rape, rape with an object or by any other part of the body, sexual assault, and unwanted sexual touching, will not be received as a victim of sexual violence crime by the criminal justice actors. Findings from Viet Nam noted cases of sexual violence using 'artificial' objects

inserted into a woman's vagina, such as toothpaste tubes, chopsticks or a spoon handle that were not considered as rape or forced sex. These victims would only be able to proceed with a criminal case of physical assault under article 104 of the Penal Code if they suffered an injury that had been assessed by a medical officer to have an infirmity rate of 11 percent or over. However, if such acts are committed against girls under 16 years of age, they may be able to proceed with a charge of child molestation.

In Viet Nam, the majority of criminal justice officials interviewed noted their reliance on the examination of the vagina and detection of sperm, and the challenges in cases involving sexually mature female victims and victims who delay in reporting, or contaminated the forensic evidence by washing after being raped. The study also found that while in theory the Vietnamese Penal Code covers attempted rape, some police officers were of the view that proof of penetration was necessary in order to proceed with a criminal investigation. As one investigator stated: "Take the following case: a man rushed into the house of a girl when she was alone. He took a pair of scissors lying on the table, threatened her with them, then began to tear off her clothes. In the ensuing struggle she managed to free herself and ran out into the street, shouting for help. So how do we treat the case, shall we consider it as rape? The suspect will argue: 'This girl insulted me, I did it to scare her off so she won't do it again. I didn't rape her, no way'." (male investigator, Viet Nam)

In both Thailand and Viet Nam, the range of indecent acts is not defined by the law; however, guidance has been given by each Supreme Court. The Thai Supreme Court lists "unwanted kissing, caressing, hugging, touching which is considered improper and embarrasses the other person publicly." The Vietnamese Supreme Court lists "using hands to touch or stimulate victim's genitals or applying the penis to other parts of the victims (mouth, chest, anus), or using the penis to rub against the victim's genitals without the intention to penetrate vagina or forcing victim to touch, massage, kiss offender's body or genitals." Both interpretations have serious limitations, with Thailand requiring public embarrassment and Viet Nam focusing on the involvement of the victim's or offender's genitals in the sexual touching.

### **Guidance from international norms and standards.**

The updated UN Model Strategies and Practical Measures calls on all Member States to ensure that all forms of violence against women are criminalized and prohibited (Provision 14(b)). While there is no internationally agreed definition on the range of acts to be included when defining rape and sexual assault, guidance can be had from the Council of Europe Convention definition which provides for in Article 36: "sexual violence, including rape".... following intentional conduct (a) engaging in non-consensual vaginal, anal or oral

penetration of a sexual nature of the body of another person with any bodily part or object; (b) engaging in other non-consensual acts of a sexual nature with a person; (c) causing another person to engage in non-consensual acts of a sexual nature with a third person. UNODC's Blueprint for Action recommends criminalizing all forms of violence against women and girls as expansively as possible and that definitions ought not to condone myths or stereotypes.

### **Consent**

The Thai and Vietnamese definitions focus on force, threats, or being unable to resist. Vietnamese police officers interviewed during this study said that if the victim cannot show signs of resistance, such as injuries, or calling on witnesses who have heard her cries for help at the moment of the rape, they will either view her as not being credible or, even when they do believe her, say that there is not sufficient evidence according to their laws to proceed.

The Vietnamese definition uses the term “against one's will” and the Thai definition looks for threats, harm or exploitation, both of which require active or earnest resistance on the part of the victim in order to negate consent. This ignores the common possibility that women submit to intercourse out of fear of greater harm, and fails to acknowledge the range of coercive circumstances in which women are sexually assaulted.

In Thailand, another study of court decisions in rape cases found that when considering the issue of consent, the court focused on how long the victim took to report the rape; whether she could show injuries and her relationship with the suspect.

Qualitative findings from Viet Nam indicated a tendency by criminal investigators to focus on the behaviour of the victim rather than the accused. As one investigator explained: “Once a ca-ve (sex worker) came to report she had been raped. I later observed that the guy (accused) was very tall; the girl was quite short. The girl said she was pushed against the wall and raped. I asked her how could this happen since the guy was much taller than her. She then said she did raise her legs. If she did so it was a voluntary act, how could it be rape?” (male investigator, Viet Nam).

The research revealed a propensity by criminal justice officials to apply traditional interpretations of behaviour constituting consent when there is some sort of relationship between the victim and perpetrator. The defence of consent should require evidence that there is at least some form of affirmative speech or action on the part of the victim, rather than from an inference of passivity or acquiescence.

In Viet Nam, police officers frequently cited reported rape cases by minors against their boyfriends as being consensual sex and feeling sorry for the



accused. As one police officer noted: “I recall one case where a 12 year old girl had her (17 year old) boyfriend over to her house and they went into the bedroom. We had to proceed with the denunciation because she was under 13 years of age but they were boyfriend-girlfriend and in love, so I felt bad to have to proceed” according to a male investigator. The research revealed a lack of consideration by criminal investigators that rape could actually take place in a boyfriend-girlfriend relationship (‘date rape’).

Qualitative findings from Thailand showed that a prevalent attitude among the police and public in cases of rape that do not involve additional bodily harm or evidence of fighting back, gives the benefit of the doubt to the suspect by concurring that it might be the case of blackmailing (false allegation). In Thailand, statutory rape is defined to include girls under 16 years old, as they are defined as not legally capable of consenting. However, if the girl is under 16 years but married then she is considered able to consent to having sex with her husband. If the girl is over 13 years old but not yet over 15 years of age and the other party is not yet over 18, then there is no criminal liability imposed if both parties agree to marriage.

#### **Guidance from international norms and standards.**

The updated Model Strategies and Practical Measures calls on States to ensure that the laws on sexual violence adequately protect all persons against sexual acts that are not based on the consent of both parties (Provision 14(c) (iii)). The Council of Europe Convention uses the term non-consensual and defines ‘consent’ as having to be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances. The UNODC’s Blueprint for Action recommends that all sexual acts committed against non-consenting women, even if they do not show signs of resistance, are considered sexual violence and criminalized. The Blueprint for Action further recommends that for girls above the age considered to be legally competent to consent to sexual acts but below the age of 18 years old, states should incorporate the concept of abuse of position of trust or dependency in considering consent.

Confusion over the issue of how to criminalize consensual sex involving minors and the overlay of discriminatory attitudes of sexual agency of young girls

In establishing sexual crimes against children, the laws in both countries are similar in how they define the age of consent, or in other words, the minimum age at which a person is considered to be legally competent to consent to sexual acts. However, Viet Nam and Thailand vary in how the type of sexual acts or relationship between the parties are interpreted, for example if there was a position of trust or dependency versus both parties being minors.

In Viet Nam, the attitudes exhibited by the majority of criminal justice professionals interviewed was that sexually active minors are presumed to consent to sexual intercourse with 'their boyfriends', even adults. In Viet Nam, girls under 13 years of age are deemed not legally capable of consenting to having sexual intercourse with anyone, whereas girls aged over 14 and under 16 years of age are not legally capable of consenting to have sex with an adult, but can do so for boys under 18 years of age. The research illustrated limited understanding of grooming techniques, the vulnerabilities of minors and risk of sexual exploitation by adults of minors, as well the idea that rapes can occur in dating relationships.

### **Marital rape**

In Thailand, while the 2007 reforms criminalize marital rape, husbands who have consensual sexual intercourse with their wives who are under 16 years of age are exempt from the statutory rape offence. However, non-consensual sex in those situations would fall under the rape offence.

In Viet Nam, the definition of rape does not distinguish between rape in or outside of marriage and therefore marital rape can be considered criminal behaviour. However, the 2007 Law on Domestic Violence Prevention and Control establishes 'forced sex' within the family as an act of domestic violence that is subject to administrative, rather than criminal punishment. Administrative punishment includes warnings, fines, forcing a public apology, or attending a re-education programme and is decided by the police or village/commune leaders rather than by the courts. In Viet Nam, the research revealed that no reported cases of marital rape have been received by the police, or in other words, no formal written denunciations have been processed by the police. Another study found that the vast majority of domestic violence cases are dealt with by grassroots reconciliation teams. This is despite the fact that the domestic violence law clearly provides that reconciliation should not be used in incidents of a criminal nature, unless the victim requests for an exemption from criminal proceedings, or incidents of violations of administrative laws subject to civil fines. The sanction regime established by the domestic violence law allows for cases to be dealt with outside the criminal justice system by the local police or village/commune leader and as such can be an avenue of attrition.

The reforms to the Thai Criminal Code in 2007 explicitly criminalized marital rape, but provides that the court may impose a lesser punishment if the victim still wishes to live together as a couple. The wording seems to suggest that in order for the court to impose imprisonment in cases of marital rape, the victim must initiate divorce proceedings. This provision reflects the socio-cultural values of 'maintaining harmony' which prioritizes keeping the family together,

the responsibilities of which often fall on the women, as ‘good wives and good mothers’.

Guidance from international norms and standards.

The UN Declaration on the Elimination of Violence against Women refers to sexual violence within the family and makes a specific reference to marital rape. The Commission on the Status of Women 57th Session Agreed Conclusions endorsed criminalization of marital rape. The Council of Europe Convention includes in the definition of sexual violence that the provision also applies to acts committed against former or current spouses or partners as recognized by international law.

In Thailand, the reforms in 2007 provide that both genders can be victims and offenders. However, the gender-neutral definition of rape in the Thai Criminal Code includes the phrase of “act done with the intention to gratify the sexual desire of the offender,” which evokes confusion between seeing rape as a sexual act as opposed to one of violence and control. In Viet Nam, gender-neutral language is used, however, the narrow interpretation of rape and forcible sexual intercourse implies that only women can be victims and males can be perpetrators. For child obscenity, victims and perpetrators can be either gender.

The findings from this study were inconclusive as to the actual impact of gender-neutral versus gender sensitive language in the criminal provisions on attrition. The study found no specific anti-sexual violence policies in both Thailand and Viet Nam.

### **Statute of limitation requirements**

In Thailand, the Criminal Code classifies rape as a crime against the person rather than a crime against the State. This means that the victim has three months in which to report the sexual offence to the police from the date the incident happened and was known. This feeds into the common belief that a victim of sexual violence will report everything at the first available opportunity. Civil society organizations in Thailand appreciate the need for the victim to feel safe and supported before reporting: “It is natural and very understandable for the victims to take time to decide to tell the story to someone, let alone to report to the police.

They feel dirty and damaged because of what happened. Practitioners like us understand, even the police understand, but the law does not understand.” (female Thai NGO worker)

### **Available defences**

In Thailand and Viet Nam, the law does not limit the availability of the defence of mistaken belief in consent. This means that the accused can put forth this

defence in situations where he has self-induced intoxication, or been reckless or willfully blind or did not take reasonable steps to ascertain the victim's consent.

#### **4. Legal and procedural factors relating to criminal procedural processes and impact on attrition**

##### **4.1 Comparative analysis of legal processes and attrition influencers**

Thailand and Viet Nam have different criminal legal traditions and procedural approaches to rape and sexual assault. The legal systems in both countries have a mix of adversarial and inquisitorial elements. As such there are differing criminal processes, procedural and evidentiary laws, and roles played by the various criminal justice actors. Appendix 1 and 2 provide visual maps of the legal process depicting the typical pathway of rape and sexual offence cases in both countries and highlight the stages at which attrition might occur.

Given the variations in criminal procedures in Thailand and Viet Nam, this part of the report focuses on the four common stages in the criminal justice process: reporting/initial contact; investigation; pre-trial processes/ prosecution and trial processes, as well as addressing the concern of pre-attrition and that of under-reporting. Throughout these stages, a comparative look at the legal processes in place will be summarized before examining the study's findings regarding attrition points, patterns and trends. As discussed earlier, while the limitations in the quantitative data meant that the study was unable to draw specific conclusions on attrition rates, the qualitative information provides indications as to the key decision-makers and factors influencing why cases failed to proceed.

##### **4.2 Reporting/initial contact**

Police are the initial point of contact for victims of rape in both countries. Although processes and procedures vary from one country to another, police in both countries are responsible for taking initial reports, conducting investigations, and preparing the case for charge.

Quantitative and qualitative findings from Thailand indicate high attrition rates at this stage. According to data from the OSCC, measured against reporting data from the Thai Royal Police, only 20 percent of cases reported to the OSCC reach the reporting stage, and of those cases, only 31 percent lead to the issuing of an arrest warrant. According to information gleaned from the case review, victims over the age of 18 typically reported the incident within the first week (26.9 percent of the victims aged 18 and over reported within 24 hours, and a further 43.6 percent reported the incidents within a week). Younger victims were more likely to report the incident at a later date. As previously noted, qualitative data has shed light on this situation: often victims who are minors took a long time to tell the family about the incident, and then the family took further time to report to the police due to sensitivity of the issue and the

psychological fragility of young victims. In cases of rape where a family member is the perpetrator, it usually takes many months for the case to be reported. In most cases, the incident will go unreported as “no one wants to admit that you have criminal in your family especially in sex related offence.” Certainly, the three-month time limit for adults to report a case, from the date that the incident took place and was known, will automatically result in attrition at the reporting stage.

In Viet Nam, the first potential point of attrition occurs when the victim first contacts the police or other justice official and makes a verbal report of rape or sexual violence, and a formal denunciation is not made and the case proceeds no further. It appears that the practice is not to record these verbal reports at the local police stations. The qualitative interviews and focus groups provided some indications that attrition could be high at this stage. For example, if the police determine that the reported behaviour does not meet the threshold of a crime, they can choose not to deal with the case or to do so administratively. The victim might decide not to proceed with a formal written denunciation for a number of reasons, including illiteracy, fear of the justice process, gender prejudices of the police, dissuasion by the attitude of the receiving police officer, or because she and the suspect agree to a financial settlement. A female academic stated “The police and Women’s Union do not believe rape can happen within marriage, so they try to solve these problems through reconciliation.”

The next point of attrition is after the victim files a formal written denunciation. At this point, local authorities may decide not to proceed or not to refer the matter to the investigative body. Interviewees suggested the following reasons for attrition at this stage: the opinion of the police that the victim is lying when reporting rape, for example, sex workers trying to obtain money from a client; the police do not think that the victim behaves as they should have when reporting; there is no evidence of any use of force, such as tied arms and legs, beating or torn clothes; there is no evidence of the use of sleeping pills on the victim; the victim might withdraw when told of having to undergo a forensic examination; the victim and suspect might settle on compensation; or the victim might withdraw due to concerns about confidentiality and concerns that everyone will know.

### **Initial reception for the victim**

Police are, with limited exceptions, the gatekeepers for entry to the criminal justice system. A negative initial experience with the police will significantly impact the victim’s confidence in the system’s ability to assist her in gaining justice and can result in a decision not to continue her quest for justice through the formal justice system. Study findings reinforce that there is significant risk

for attrition at the initial reporting stage to police. Respondents noted that treatment by police is in many cases unprofessional and degrading without regard for the trauma the woman has suffered. In both countries, interviewees reported that victims are often required to wait long hours in police stations – often staffed exclusively by men – for an officer to take their statement, and to be taken to hospital for examination. Study findings highlight cases where the traumatized victim has to sit in unfriendly spaces without privacy for many hours, and is unable to change clothes or wash or even use the toilet, otherwise she may be blamed for compromising the evidence.

In Thailand, victims raised the concern that when they were waiting to make the report, the suspect was in the same room, and the public was able to overhear her conversation with the police. Additionally, the police officer and station assigned to a particular case is determined by where the victim reported, not necessarily where the victim lives. If this location is far from the victim's home, she must travel each time she is requested to do so, which can represent a huge cost and burden for her.

### **Filing the initial incident report**

Interviews with victims, NGOs, government referral agencies, and medical service providers draw attention to the systemic institutional barriers that victims face in accessing police, and the pressure victims, and those agencies supporting them, must apply to get police to accept a report. Although reporting processes vary between the countries examined, a victim can encounter reporting challenges in each country. In Viet Nam a victim must file, sign or give a fingerprint in a written complaint or denunciation to start the criminal justice process. This can be particularly daunting if she cannot understand the language, read or write, or if she has disabilities that preclude her from doing so. Further, respondents noted that victims are often threatened not to denounce, and fear revenge if they do. Generally the local police take the initial report and conduct preliminary investigations. These officers, who function primarily as report takers, have no training in justice, investigation, evidence gathering or criminal procedure. They pass their 'findings' onto an experienced investigator from a centralized division who conducts the primary investigation. However, all information is later used as evidence for prosecution. The initial non-professional comments and findings could prove detrimental to the victim's case.

A victim and her family related that they were provided with copies of an incident report in a language they did not understand and could not read. It was noted that oftentimes, a victim is not informed of the steps she must follow in the formal filing process, how the process works, or what her rights are.

Findings from Viet Nam showed that in certain regions, local police kept rape cases off the official record to lend credence to the official view that rape and other crimes were “under control” in those “sensitive areas of special focus” (a term referring to mountainous and remote areas). Interviews suggested that this practice could be related to the enhancement of promotion prospects for local police officers who are seen to be capable of maintaining security and preventing violent crime in their region.

### **Onus on the victim**

Rape and sexual offences against women in Thailand and Viet Nam are classified as crimes that require the victim’s consent in order to proceed. Sexual crimes against girls in Thailand are treated as crimes against the State. Classifying sexual offences as crimes against the person, or semi-public crimes, means that the onus is on the victim to lodge a formal complaint in order for the investigation to proceed. Such a classification allows the ‘parties’ to negotiate a settlement outside the criminal justice system. In both countries, the victim has the right to withdraw from the process. However, for those situations where the crime is against the State, in theory, the police and prosecution can continue without the cooperation of the victim. In Viet Nam, if the victim withdraws her consent, she must sign an official form saying that she understands that she cannot re-submit the denunciation.

### **Providing a statement**

In Viet Nam, the first potential point of attrition occurs when the victim first contacts the police or other justice official and makes a verbal report of rape or sexual violence, and a formal denunciation. The study found that in both countries, victims were often made to repeat their stories multiple times, a process which can be humiliating, exacerbate her trauma through secondary victimization,<sup>138</sup> and increase the risk of attrition. When the repeated requests for statements is considered in conjunction with the fact that the victim’s story is interpreted by the statement taker, complete with his/her bias, and its content is often not verified by the victim and can later be used to discredit her in court, it is easy to see why women may choose to disengage from the criminal justice system. Moreover, any conflicting or inconsistent statements are used to call into question a victim’s credibility and reliability.

A significant body of research on the dynamics of sexual violence has demonstrated that the trauma a victim has experienced can have a variety of negative effects on her ability to provide complete and accurate information about her assault. <sup>139</sup> Trauma research further suggests that victims “might often recall accurate information about the sexual assault after one or even two full sleep cycles.”

However, many of the criminal justice professionals interviewed were not conversant with the physical, behavioural and psychological symptoms of rape trauma, the impacts this could have on the victim, or that such trauma may result in variations in her testimony.

Three survivors interviewed in Thailand described the uncomfortable setting of their interrogation, where any available desk or room in the police station was used without concern for privacy or safety. Respondents noted that questions asked by police were often biased and did not consider a victim's feelings or emotional state. Examples of questions offered by 15 female inquiry officers representing police stations in Bangkok, Chiang Mai and Songkhla include: "What were you doing there at that time? It was late.", "Why did you go with him (the offender) in the first place?", "What were you wearing when the incident happened?", "Why didn't you shout or fight back?", and "Are you sure you did not give him any signals that you were interested?"

Regardless of the level of gender awareness or sensitivity of a female police officer – as it cannot be assumed that just because an officer is female, she will be any more likely to treat a victim with respect and care – many victims noted that they felt more comfortable relaying their story to female officers, who are represented in significantly lower numbers than men within the police in both countries.<sup>141</sup> One Thai survivor explained: "I am a woman and I was raped. It was difficult to overcome shameful feelings; the feelings that my body was dirty. It was difficult for me to explain to male police officers. I was raped by men and I had to tell the story to men? No. I'd rather talk to women, they have similar bodies as mine. I believe they could feel for me more. We are women."

Male frontline officers interviewed in focus groups in Thailand and Viet Nam confirmed that they too felt uncomfortable having to question and discuss 'personal and intimate' matters with female victims, which is likely to affect the reporting and recording of cases.

#### Promising practices: Recent reforms in Thailand

The Thai criminal procedure for victims under 18 is sensitive to the victim's vulnerabilities, including the multidisciplinary team approach that requires support from a psychologist, social worker, and a support person requested by the victim. In Thailand, the police and prosecutor are required to be present at the one interview, which minimizes the number of times the victim has to repeat her story. The law explicitly provides that the victim's statement be audiovisually recorded and that she should not be questioned repeatedly. Unfortunately, these procedures are not provided for all victims of sexual violence, only children.

#### Availability of effective protection measures



Protection for women and girls who have experienced sexual violence is critical in its own right and as such, protection measures should be available independent of any initiation of a criminal case. Effective protection can empower victims to report and enable them to stay safely engaged with the criminal justice system. Safety considerations must be prioritized in all decisions throughout the criminal justice process, and should take into account the physical and emotional needs of the victim.

In both countries, protection orders are only available to a woman if she is a victim of domestic violence. Judicial protection orders (restraining orders or no-contact measures) do not appear to be available to victims of sexual violence committed by acquaintances, boyfriends or strangers. The safety and protection of the sexual violence victim does not appear to be a priority consideration in criminal justice system processes. It does not appear that the justice systems in either country provide for access to immediate, urgent or long-term protection measures outside of domestic violence situations. None of the police interviewed in Thailand or Viet Nam referred to conducting risk assessments, assisting victims in developing safety plans, or working with other service providers to develop integrated protocols and referral networks that focus on safety and protection. Nor was the necessity of protection identified as a pressing issue by any of the criminal justice service providers interviewed.

### **4.3 Investigation**

The police, criminal investigators and prosecutors may all be involved in the investigation stage. In Thailand, the police conduct the investigation after the victim signs a complaint. In Viet Nam, formal investigations require a decision to institute a criminal investigation, which is to be approved by the procuracy.

Attrition at the investigation stage: What did the study find?

In both Thailand and Viet Nam, the study found a high risk of attrition during the investigation stage. In Thailand, if OSCC data is compared against the Thai Royal Police data, only six percent of the cases reported to the OSCC result in the issuing of an arrest warrant. While Section 133 of the Criminal Procedure Code stipulates that an inquiry concerning a female victim must be conducted by a female inquiry officer, there are insufficient female officers in relation to the total number of police stations and reported incidents, hence it is likely that a victim will be questioned by a male officer. This procedure may cause the victim to change her statement, or to withdraw altogether for fear of stigmatization or judgment. Even though female inquiry officials are not necessarily gender-sensitive, victims interviewed in this study noted that they

felt more at ease with and more willing to talk to female officials, particularly concerning detailed physical accounts.<sup>142</sup> All victims interviewed for this study shared their experiences of uneasy feelings when having had to tell the stories to male inquiry officers.

At this stage, there are a number of potential points of attrition in Viet Nam: firstly, when the investigating body decides not to formally initiate a criminal investigation, and secondly, when the investigating body decides to formally initiate a criminal case but the procuracy does not approve. After the investigation stage, the next potential point of attrition comes when the investigating body decides not to proceed further. During this stage, the victim may withdraw at any time. Findings from Viet Nam indicate that this is the main stage where attrition occurs. There appear to be differing levels of attrition depending on whether the victim was a girl or a woman. The quantitative case review found a rate of attrition of 27 percent in cases involving girl victims, compared to an attrition rate of 61 percent in cases involving women victims. In nearly 50 percent of the cases that were dropped by the police, the reason recorded was “no offence”, which according to interviews means that based on the evidence, no crime was committed or there was deficient evidence. In less than 1 percent of cases was false allegation recorded. In just over a third of the cases dropped at this stage (36 percent), the victims withdrew. All victims who withdrew were adults. The reasons cited for withdrawal included: victims and suspect negotiated a settlement; victims were afraid of stigma; or victims were concerned about their privacy.

Sexual offence investigations are complex investigations, complicated further by the fact that often there are no independent witnesses or forensic evidence available, resulting in a focus on the credibility of the victim. Consent becomes a significant issue, and in both countries, the study found that there is often a reluctance to proceed without additional corroboration. Many officers interviewed noted that in cases where there was no visible evidence on the victims’ bodies, the difficulty of proving a case was increased. Others mentioned the difficulty encountered when the sexual act of intercourse remains incomplete. In Thailand, the criminal code does not elaborate on the circumstances to determine consent, and a review of court decisions found that the main circumstantial factors used to determine consent included the relationship between the perpetrator and the victim, the events leading up to the rape, and the physical appearance of the victim and the suspect.

### **Medical and medico-legal services**

Facilities for gathering medical evidence

In Thailand, after a victim reports a case, she is sent promptly to an assigned hospital or medical centre regardless of visibility or severity of injuries, or the time period between incident and reporting. According to various interviews conducted with medical practitioners and other professionals, there appears to be no common understanding of how the medico-legal exam should be presented as evidence in the police file and in court. It was noted that there are currently only two medical examiners with rape and sexual assault expertise; however, based on interviews with medical practitioners, this expertise is being gradually strengthened.

In Viet Nam, while there are specialized facilities and medical staff to undertake forensic examinations, there are no specifically trained or designated forensic examiners for sexual violence. Furthermore, as far as is known – with the exception of the hospitals that follow WHO protocols – there are no specific guidelines for handling sexual violence cases, particularly when the report is of sexual abuse that did not occur recently.

The qualitative findings from Viet Nam indicated that rape victims are often treated with insensitivity by medical and legal personnel:

“At local level, the police can transfer the case to the authoritative forensic agency, but some forensic experts may not feel confident to perform the rape victim examination given their lack of expertise in these particular skills. The forensic experts would turn to the gynaecological nurses for assistance. Therefore it is not unusual to see a queue of four persons walking through the hospital, led by a male forensic expert. The victim trying to hide her face with a scarf and hat walks behind him, then the nurse, and the last person in the queue is the police holding a pile of paperwork. By looking at this any bystander can immediately tell that the girl or woman is the rape victim. Imagine that the victim was already traumatized from the rape, this way of treatment would even jeopardize her a thousand times more.”

Another example from Viet Nam highlights further concerns regarding the treatment of victims of sexual violence:

“Once, a male forensic expert did the examination. He somehow scared off the victim. She hastily put on her pants, and quickly ran away from the examination room to the nearby park. Maybe he did not explain the procedure to the victim sufficiently. For instance, why the victim needs to be fully naked? There were situations in which the women only agreed to be topless and wanted to keep their pants on. And how their collaborative attitudes would help us carry out the exam effectively? If she just tries to keep her leg closed how could we perform the tests?”

## **Evidence gathering processes**

In Thailand and Viet Nam, a rape must first be reported to the police before a forensic medical examination takes place. In Thailand, forensic examinations of the victim are mandatory irrespective of when the victim makes her report. The examination is to be done to the extent as necessary and expedient, inflicting least pain and not to harm the victim. If the victim does not consent, an adverse inference can be drawn. In Viet Nam, the forensic examination is not mandatory under the law, however when the investigators require an examination of the victim's body for traces of evidence, then the examination must be conducted by a female officer, or in the presence of another woman (for example a female nurse or female companion of the victim).

Interviewees reported that medical examinations are rarely conducted within 24 hours. There is no contraception to prevent pregnancy, HIV prophylaxis or therapeutic care provided and many medical and psycho-social needs of survivors are not addressed or met. Hospitals are busy, and sexual violence victims often end up waiting, with limited opportunity to maintain privacy or confidentiality.

Delays in accessing forensic services may result in changes to physical evidence (e.g. healing of injuries) or loss of forensic materials. Although medical research recommends collection within 72-96 hours of the assault to preserve evidence, a significant number of medical forensic examinations in Thailand and Viet Nam are completed beyond that time frame. In Viet Nam, interviewees noted that in some cases, victims had to wait three days to have a forensic examination.

Researchers found that in many cases there is collection of unnecessary evidence: for example, when the victim reports oral sex, evidence is collected from the genital area. This may be due to investigators and forensic medical examiners not having sufficient knowledge about court evidentiary requirements, or how various types of evidence collected can be used to support the victim's complaint or identify the suspect.

## **Medico-legal evidence gathering policies**

In Viet Nam, forensic evidence is the primary evidence considered when determining if an act constitutes an offence. The Viet Nam case review indicates that 95 percent of victims went for a forensic examination. Of these, 40 percent of cases involved over four days between the time of the incident and the date of reporting. Five cases were sent for forensic examinations despite reporting the incident of rape over a year later. If case reporting is delayed, and the possibility

of gathering useful evidence is diminished, in some cases the investigation is suspended, and the case is concluded. There was confusion among interviewees about the necessity of having a forensic examination and the difficulties in cases progressing in the criminal justice system if the forensic examination failed to provide conclusive evidence of rape or forced sex.

“Up to now the police do not follow the rule strictly. When the rape victim revealed the incident... the concerned police often take the victim to the local family planning clinic or other healthcare facility, and ask the gynaecological nurses to perform the examination.

These nurses and even practitioners in fact unwittingly destroy the possible evidence rather than making every effort to save anything that might contain the source of biological material left on the victim's body. They would clean the victim's private parts, so how could they find the perpetrator's sperm? They would even shave the victim's pubic hair, so how could they find and collect the perpetrator's loose pubic hair there? They at times did it with a dull blade, which would cause new nicks and scratches in the victim's private area. This practice would make it extremely challenging for the investigator to figure out which nicks were caused from the rape per se. If you would conduct a survey among the gynaecological nurses and practitioners I am sure they would not actually know what an intact and broken hymen looks like. I had read the case description at times written by these gynaecological practitioners, and found phrases that were ridiculous and non-sensical, such as ‘hymen was broken in two pieces’. Well the hymen is not a water tube that can be broken in two pieces. And ‘the hymen was broken into rectangular shape’ or ‘the hymen was broken and one piece missing’, and so on and so forth.”

#### Over-reliance on corroborating physical evidence

Vietnamese police officers interviewed noted that they look for terms including “forced”, “tying arms and legs”, “beating”, and “tearing of clothes” to substantiate a rape. They also stated that they look for indicators that the suspect took advantage of a victim's inability to resist, is ill or mentally ill, or used anaesthetic or sleeping pills so as to prevent victim resistance, though they acknowledged that such gestures and actions are much more difficult to substantiate. While the Code of Criminal Procedure does not preclude relying only on the statement of the victim, many officers felt that they would not proceed in a case where there was no forensic evidence or other witness statements. This reasoning reflects the continued gender stereotyping which requires some form of corroboration.