

The Trial of Rape

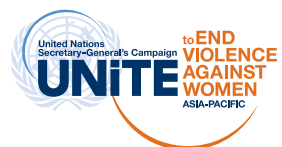
Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam

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Empowered lives.
Resilient nations.



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June 2017

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F oreword

In rich and poor countries alike, violence and the threat of violence continue to constrain the rights of girls and women – affecting one in three women globally¹ and impacting all aspects of their private and public lives.

After decades of sustained advocacy and action in the area of policy and legal reform, a majority of countries in the Asia-Pacific region now have laws criminalizing violence against women, including sexual violence. Yet despite these achievements, a historic deficit in the punishment and moral sanctioning of such crimes remains. A United Nations study that interviewed more than 10,000 men in six countries across the Asia-Pacific region found alarmingly high levels of sexual violence, ranging from 10-62 percent across sites.² Moreover, the majority of men who admitted to perpetrating rape faced no legal consequences and many did not even report feelings of guilt, suggesting that such violence remains largely tolerated and normalized in many of our societies.

The obligation of States to exercise ‘due diligence’ to prevent, investigate and prosecute

cases of violence against women and girls is well-established under international law. Yet implementation of legal commitments has been far too slow. Too often, the very infrastructure of justice – the police, the courts and the judiciary – fails to provide women and girls facing violence with adequate protection, redress and justice. In order to understand, and ultimately close, this gap between policy and practice, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) have supported this comparative study on the policing and prosecution of sexual violence in Asia, with a particular focus on Thailand and Viet Nam. We would like to thank the governments of Thailand and Viet Nam for supporting the study and providing useful data which contributed to the findings in the report.

We know that around the world, reported cases of sexual violence represent only the tip of the iceberg; crime surveys from 57 countries indicate that on average, 10 percent of women

1. World Health Organization (WHO) (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
2. UNDP, UNFPA, UN Women, UNV (2013) Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations, www.partners4prevention.org/sites/default/files/resources/p4p-report.pdf
3. UN Women (2011) *Progress of the World's Women: In Pursuit of Justice*. New York.

say they have experienced sexual assault, but of these, only 11 percent reported it.³ This under-reporting has many causes, including the shame and stigma which are often placed on the violated woman after an attack. The focus is often placed on her behaviour rather than that of her attacker: questioning what she was wearing, where she was and what she may have done to 'provoke' the attack.

Victims may also refrain from reporting because of fear that those entrusted with administering justice will meet them with indifference, or even blame them for the abuses suffered. This study shows that such fears are often well-founded, with a steady attrition of cases throughout the justice cycle – from reporting and investigation to prosecution and trial – and hostile attitudes among many service providers. More importantly, the study – the first of its kind in the Asia-Pacific region – provides important new insights into where and why attrition occurs and how it can be reduced.

When the actors tasked with facilitating access to justice instead 'counsel' and pressure victims to settle cases out of court, or treat them without regard for their dignity or privacy, many women eventually give up on a system which is often unresponsive to their needs. When the criminal justice system fails to fulfill women's human rights, this contributes to perpetuating cultures of reconciliation, cultures of invisibility, and cultures of impunity. This impunity – an exemption from punishment and accountability – fuels violence against

women, reducing the impact of advocacy and hard-fought policy achievements.

However, we know what needs to be done. Reports of violations must be received by state actors in the administration of justice who are well-trained and who understand the full scope of their obligations. The justice sector must be able to monitor its performance, through rigorous collection and analysis of the responses to reported violations. We must ensure that victims and survivors receive all the support services that they are entitled to and that they have access to protection, redress and justice. And most of all, we must all challenge and transform the harmful norms and cultural values that allow such violence to continue. To that end, it is especially encouraging that there is now global consensus for a 2030 development framework that includes a strong and transformative gender equality goal with clear and ambitious targets for ending violence against women.

Every woman or girl who experiences violence has the right to count on a criminal justice system that is free from gender stereotyping and discrimination, treats her with respect, maintains her dignity and effectively delivers impartial and unbiased justice that is free from outdated norms and misconceptions about the nature and roles of women and men. Ensuring well-functioning justice systems is not only a prerequisite for ensuring gender equality and women's empowerment, but is essential for the rule of law and for sustaining just, peaceful and prosperous societies for all.



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We are very grateful for the extensive guidance and technical support provided by the regional coordinators and colleagues from the participating United Nations agencies, who played an important part in the implementation of this comparative study and in the production of this report. In particular, we want to thank Anna-Karin Jatfors and Roberta Clarke from UN Women Regional Office for Asia and the Pacific, Antje Kraft from the UNDP Bangkok Regional Hub for Asia and the Pacific, and Margaret Akullo and Snow White Smelser from UNODC Regional Office for Southeast Asia and the Pacific.

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Finally, we gratefully acknowledge the participating countries themselves for taking this important step in examining how their criminal justice systems are responding to reported cases of rape, in order to understand ways forward for increasing women's access to justice and ending impunity for all forms of violence against women and girls.

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A

bbreviations and Acronyms

ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
CEFACOM	Centre for Study on Family Health and Community Development (Viet Nam)
CJS	Criminal Justice System
CSAGA	Centre for Studies and Applied Sciences in Gender, Family, Women and Adolescents (Viet Nam)
LIGHT	Community Health and Development (Viet Nam)
NGO	Non-governmental organization
OSCC	One Stop Crisis Centre (Thailand)
SAEK	Sexual Assault Examination Kit
SV	Sexual Violence
VAW	Violence Against Women
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNODC	United Nations Office on Drugs and Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization

E

xecutive Summary



Court proceedings are often long and drawn out, and focus on physical or forensic evidence or the victim's credibility rather than the credibility of the incident or the victim's lack of consent



Attrition of sexual violence cases in Thailand and Viet Nam

This study, the first of its kind in the Asia-Pacific region, seeks to analyze how the varying criminal justice systems in Thailand and Viet Nam respond to reported cases of rape and sexual assault, and to identify the key institutional factors associated with the disposition of cases in these countries. In doing so, the study aims to understand where and how attrition of sexual violence cases occurs and identify strategic entry points for strengthening the administration of justice in this area.

The study finds, consistent with other global attrition studies, that cases can filter out at every stage of the justice process. There are four major points of attrition:

Initial reporting stage, where police determine whether an offence has occurred, whether a report should be taken, and whether the complaint should be further investigated.

Investigative stage, where investigators must identify and examine all evidence and determine whether a case should be referred to prosecution.

Pre-trial stage, where the appropriate officials must determine whether to prosecute the case.

Trial stage, where a judge or judge and jury must decide whether to convict the suspect.

Research methods and scope

The research incorporated the mapping of the sexual violence legislation and legal processes in each country, a quantitative review of a minimum of 120 police and/or court case files in both countries, and qualitative interviews and focus group discussions conducted by national research teams with a total of 213 key informants, including government officials, criminal justice system actors, civil society groups, and individuals providing medical forensic and support services.

The study does not aim to provide nationally representative data to measure or compare overall attrition rates. Rather, it seeks to identify key factors which can impact on attrition for the purpose of understanding how such attrition can be reduced.

The study was limited to female victims of rape and sexual assault, including attempted rape and sexual assault, seeking justice through the formal criminal justice system. As such, it does not include non-reported cases or cases processed through informal justice mechanisms.

Research findings

The research found that **women reporting cases of rape in Thailand and Viet Nam encounter significant societal, legal, and institutional policies and practices that act as barriers to justice.** These barriers, in turn, can inhibit reporting of sexual violence and reduce the likelihood that a woman will persist in seeking redress through the criminal justice system.

In both countries, women's and girls' vulnerability to sexual violence is embedded in and supported by discriminatory social and cultural values, patterns and practices. That police, prosecutors, and judges are not immune to biases and stereotypes can be seen

in their attitudes towards the offences, the victims and the alleged perpetrators. These attitudes, in turn, can determine the manner in which they apply laws in practice, how speedily they respond, and their determination to exercise due diligence as state actors. The study suggests that criminal justice system service providers are not systematically held accountable for providing rights-based, victim-centred services.

Many women have limited knowledge and limited access to information about their rights and what they can and should expect as they navigate complex criminal justice systems and processes. Protections offered to victims of sexual violence can be inadequate, as in limited victim or witness protection programmes, and communication between criminal justice service providers and victims largely ceases once the initial report has been taken. Where support services are limited, victims and their families may choose to forego seeing their cases through to completion.

In both countries, attrition is high at the initial contact and reporting stage. Many victims are turned away and urged to seek mediation or other forms of settlement outside of the formal criminal justice system. Victims are often required to tell their story multiple times or are treated with disrespect and insensitivity. Police may refuse to take their reports, or take reports and then fail to conduct investigations, conduct inadequate investigations, or delay investigations.

Court proceedings can be long and drawn out, and often focus on physical or forensic evidence or the victim's credibility rather than the credibility of the incident or the victim's lack of consent. Significant delays plague many victims going through the administration of justice, which can start with late onset and completion of police investigation and carry through to delays in setting trial dates. The victim's character, behaviour or dress is often

called into question. There is little preparation or court support for the victim. In many cases, the Court acquits the accused.

There are few, if any, women- or victim-friendly facilities in police stations, hospitals, medical facilities where forensic medical examinations are conducted, or in courts. While sexual violence investigations are complex and challenging incidents to investigate, there are no specialized investigative units, and receiving officers and investigators receive little or no specialized training and professional development. There are few female police and investigating officers.

Data collection and analysis mechanisms are limited. This is reflected in inadequate or incomplete administrative data, whether police or court records. The inadequacies include limited disaggregation of demographic characteristics of victims and perpetrators and poor record-keeping on duration of cases and on outcomes of police investigations and prosecutions. In addition, there is limited monitoring and evaluation of programmes and responses, leaving the justice systems without an evidence base on which to build strategies, policies and practices for improving services.

There are limited referral networks and coordination mechanisms within the justice system, and between government, justice system agencies, and civil society service providers, often resulting in uncoordinated and inconsistent services. Data systems from different parts of the criminal justice system that do not speak to one another, and that may even use different definitions, terminology or case file numbers, further hamper effective collaboration and increase the risk of information loss.

Good and promising policies and practices have been introduced in both countries. These range from promising legislation, to increased political will and commitment

to fund coordinated support services, the establishment of one stop crisis centres, and the development of protocols for gender-responsive policing. However, limited implementation and accountability for action and inaction means that the full potential of these practices have yet to be realized.

Recommendations

To address the above challenges and to strengthen the criminal justice sector response to sexual violence, the study has identified priority recommendations in the following key areas:

1. **Establishing quality essential justice services for victims** that prioritize their safety, protection and support.
2. **Building institutional capacities** to transform organizational cultures and create gender awareness and sensitivity.
3. **Promoting comprehensive legal and policy frameworks.**
4. **Ensure approaches sensitive to sexual violence survivors are reflected** in criminal justice policies, practices and resources
5. **Developing effective internal and external oversight and accountability mechanisms.**
6. **Promoting specialized expertise** at all stages of the criminal justice system.
7. **Promoting an integrated and coordinated criminal justice, government and civil society response.**
8. **Developing effective monitoring and evaluation mechanisms.**
9. **Prioritizing resources**, both human and financial, for effective delivery of services.

E ditor's Note

The multi-country research was conducted in 2014 and reflected the national laws at the time. Between 2014 to 2017, the following laws related to sexual assaults have been updated in Thailand and Viet Nam.

Thailand

Changes to the Thai Criminal Code under Section 277

In Act No.23 B.E. 2558, Paragraph 5, previously stated that in the case where offender and victim are minors, the court may grant a permission for them to marry and for the offender to be acquitted. The amended text now states that while the court may grant a permission for the two parties to be married, the offender may also receive punishment. The jurisdiction of the offence has been shifted to the Juvenile Court instead of the Criminal Court.

Changes to the Thai Criminal Code under Section 285/1

An addition was made in the Criminal Law Amendment Act No.23 B.E. 2558 to prohibit the offender from being acquitted by claiming that an offender does not realize the fact that the child victim is not yet over 13 years of age.

Viet Nam

Changes under the 2015 Penal Code in comparison to the 1999 Penal Code

The 2015 Penal Code has improved the handling of previous sexual violence offences by adding “other sexual contacts” as a constituent element of rape and forced sex crimes in addition to “sexual intercourse”. This expanded the range of prohibited acts to include vaginal, anal and oral penetration of a sexual nature of the body of another person with any bodily part or object.

Rape: Under Article 141, rape is defined as an act by anyone who uses violence, threatens to use violence, deception, coercion or takes advantage of the victim's inability to self-defend the victim in order to have sexual intercourse or other sexual contact with the victim against the victim's will. Article 142 separately prohibits rape against persons under 16 years old. Having sex with persons under 13 years old is considered a statutory rape.

Forced sex: Under Article 143, forced sex is construed as any act by any person who use violence, threat of use of violence or fraud, deception, intimidation, etc. to coerce their dependents or otherwise desperate persons to unwillingly have sexual intercourse or other sexual contacts absolutely against the will of the victim. Article 144 separately prohibits forced sex against persons between 13 and 16 years old. Sexual intercourse and other sexual acts by a person 18 years or older against a child between the age of 13 and 16 are prohibited under Article 145.

Pornography: Under Article 147, a new crime was established prohibiting the use of a person under 16 years old for the purpose of pornography.

Changes under the 2015 Criminal Procedure Code in comparison to the 2003 Criminal Procedure Code

The 2015 Criminal Procedure Code introduced a new chapter on protection of informants, witnesses, victims and other participants of the procedural process. Under Chapter XXXIV, victims have the right to be informed of their right to protection, how to request protection, compensation for damage, restoration of honor and respect for their lawful rights and interests during the protection period.

The protection measures under Article 486 include:

- “ Deploying forces, professional measures, using weapons, supporting tools and other instrument as caution, security measures
- “ Restricted traveling interactions
- “ Keeping the relevant information confidential
- “ Moving, maintaining confidentiality of living and working places, changing traceability, personal background, identification features
- “ Deterring, cautioning, defusing abusive acts, preventing and responding to abusive acts

While the Code does not include any provision requiring the offender to stay away from places where the victim of violence is present, the Code stipulates one basis to impose temporary custody against the offender when he “uses threats, exerts control over, seek revenge against witnesses or victims and their family members (Article 119).



Introduction

Violence against women and girls remains the most pervasive violation of human rights.⁴ In Asia, as in the rest of the world, such violence is widespread, systemic and culturally entrenched, affecting women and girls regardless of context.

Sexual violence – including rape and other forms of sexual assault – is often deemed socially acceptable, due to entrenched social and cultural norms that minimize the value of women’s roles and reinforce their status as subordinate to men. Around the region, high societal tolerance for sexual violence results in low reporting, high attrition, and individual and institutional biases against victims. The persistent levels of sexual violence have devastating health, social, cultural and economic impacts on women and girls, their families, communities and society at large.

Research suggests that if a rape or sexual assault victim can move beyond the social stigma of ‘going public’ with her experience and report the crime, she often experiences unequal access to justice compared to those reporting other non-sexual crimes. Systemic impunity in cases of sexual violence is a gap in responsive and accountable governance institutions and mechanisms.

4. UN Women (2011) *Progress of the World’s Women: In Pursuit of Justice*. New York.

Attrition – the process by which cases fail to proceed through the justice system⁵ - on sexual violence cases remains high. Although some global attrition studies on sexual violence exist, this study, on the policing and prosecution of reported cases of rape and sexual assault in Thailand and Viet Nam, is the first comparative study on attrition in Asia.

In recent years, there has been extensive progress in the region to strengthen the legislative frameworks around violence against women. There are now at least 33 out of 39 countries in Asia and the Pacific⁶ that have laws to criminalize such violence, although there are only around 14 countries in the region in which marital rape is a crime.⁷ Moreover, as in other regions, progress on implementing existing legislation and commitments and strengthening overall accountability has been far too slow. Key challenges include: inadequate resources for implementing existing laws and policies, capacity gaps amongst criminal justice actors (law enforcement, prosecution and the judiciary), flawed coordination and referral mechanisms on issues of human rights and violence against women, and limited availability

of regulations and protocols establishing lines of ministerial responsibility. Earlier studies in Thailand and Viet Nam illustrate that police in many cases continue to “counsel” and “settle” cases at the police station, rather than taking appropriate legal action in cases of domestic violence.⁸

States have an obligation under international law to exercise ‘due diligence’ in establishing effective measures to prevent, investigate and prosecute cases of violence against women. Yet gaps in, and weak implementation of, legal frameworks often result in inadequate protection, redress and justice for women and girls facing violence. Multiple data sources confirm that the percentage of women reporting cases of violence or accessing health, protection, support or legal services remains low and women mostly tend to report cases of severe physical violence.^{9,10,11} Even when cases are reported, the steps involved in accessing the formal legal system (the “justice chain”) often breaks down, with high attrition rates and few cases resulting in conviction.¹² The research conducted as part of this study reinforces these findings.

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5. Lovett and Kelly (2009) Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe. Child and Women Abuse Studies Unit, London Metropolitan University, p.17.
 6. Countries include: Afghanistan, Australia, Bangladesh, Bhutan, Brunei, Cambodia, China, Fiji, India, Indonesia, Japan, Kiribati, Lao PDR, Malaysia, Maldives, Marshall Islands, Mongolia, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Thailand, Timor-Leste, Tonga, Tuvalu, Vanuatu, Viet Nam. UN Women Regional Internal Mapping (2016: unpublished).
 7. Countries include: Australia, Bhutan, Indonesia, Marshall Islands, Nepal, New Zealand, Papua New Guinea, Philippines, Republic of Korea, Thailand, Timor-Leste, Viet Nam. UN Women Regional Internal Mapping (2016: unpublished).
 8. Thailand: Claassen, Boonsit, Angkana and Piemyat (2004) Restorative Justice and Domestic Violence Resolution in Thailand. Voma Connections (No.17, Summer): 1, pp.9-16. <http://voma.org/docs/connect17.pdf>
 9. National Institute of Public Health and National Institute of Statistics (2006) Cambodia Demographic and Health Survey. Phnom Penh.
 10. Government of Viet Nam and United Nations (2010) National Study on Domestic Violence against Women in Viet Nam. Ha Noi.
 11. World Health Organization (2005) Summary Report: Multi-country Study on Women’s Health and Domestic Violence against Women. Geneva.

As noted in the 2011-2012 Progress of the World's Women report: "In rich and poor countries alike, the infrastructure of justice – the police, the courts and the judiciary – is failing women and girls, which manifests itself in poor services and hostile attitudes from the very people whose duty it is to fulfill women's human rights."¹³

To better understand this gap between policy and practice, and ultimately in order to design and implement more evidence-based programming with which to close it, the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC) and UN Women have supported this comparative study on the policing and prosecution of sexual violence – with a particular focus on rape and sexual assault – in Asia. The background, research and findings of the study, conducted between October 2013 and September 2014, are found in this report. Findings are based on limited case file data that was available for access from the police, prosecution and courts of the country of study during this timeframe, plus a range of qualitative interviews. While marked gaps in available data exist, leading to substantial unknown or undetermined conclusions, the study represents an important first step in building a platform for dialogue on the topic.

12. UN Women (2011) Progress of the World's Women: In Pursuit of Justice. New York.

13. UN Women (2011) Progress of the World's Women: In Pursuit of Justice. New York.



Context and Background

1. Background and objectives of the study

1.1 Background

The study into the investigation, prosecution and punishment of sexual violence against women and girls in Thailand and Viet Nam, is the first comparative study on attrition of sexual violence in the Asia region. Understanding attrition as the process by which cases drop out of, or are lost by, the criminal justice system, the study sets out to research how rape and sexual violence cases are handled in these two countries, and, in doing so, identifies strategic entry points for reducing impunity for sexual violence and strengthening the enforcement of policy commitments.

The study was originally designed to identify both overall attrition rates as well as factors that can have a positive or negative impact on attrition at the various stages of the criminal justice system. While a number of data-related challenges – which will be discussed further in this chapter – presented barriers to identifying specific attrition rates, the study does provide complex accounts of a range of factors contributing to attrition. These include legislative and procedural provisions and reforms; the extent of victims’ rights in the legal process; patterns of reporting crimes and recording of reports; and cultural norms and stereotypes related to rape. As such, the study aims to shed light on the actors, institutions, systems and cultures which contribute to, but also hold the key to combatting attrition.

“

The aim of the study is to expand the regional knowledge base on how to advance the implementation of laws and expand access to justice for women and girls who experience sexual violence and abuse

”

1.2 Objectives

Ensuring that comprehensive legislation on violence against women is not only enacted but also effectively implemented requires a better understanding of the deficits in the administration of justice that can result in impunity. The aim of the study is to expand the regional knowledge base on how to advance the implementation of laws and expand access to justice for women and girls who experience sexual violence and abuse. To this end, the study aims to identify strategic entry points for programming, to provide key duty bearers – especially law enforcement agencies, prosecution and the judiciary – with crucial knowledge around where and why attrition happens, and to provide concrete recommendations for how institutional capacity and accountability to meet legal and policy commitments can be strengthened.

The overall objective is to contribute to ending violence against women and girls through strengthened state due diligence. Specifically, this comparative study seeks to:

- “ identify common deficits as well as good practices in Thailand and Viet Nam in the state legal response to violence against women;
- “ highlight substantive and institutional factors in the legal system that can cause attrition and impunity, thereby undermining women’s and girls’ access to justice and the implementation of laws on violence against women; and
- “ facilitate and guide future legal reform, policy-making and programming.

Low conviction rates for sexual violence offences may indicate a failure of one or more aspects of the criminal justice system to uphold the rights of victims to access justice. The study therefore examines, where possible, the full range of components of the reporting, investigation and prosecution process, such as police investigations, committal proceedings and trials, as each step is important for determining the outcome of a case and each provides important information on where and how attrition could be reduced.

1.3 Scope

This study focuses on female victims of rape and sexual assault. The scope of criminal offences studied have been limited to rape and sexual assault, including attempted rape/sexual assault. Both countries have criminalized rape or forced sexual intercourse, however the definitions and criminal elements vary. This study does not include examination of other types of sexual violence, such as sexual harassment, stalking, voyeurism, trafficking for the purpose of sexual exploitation, or forced prostitution.

Attrition refers to the process by which cases of rape and sexual assault fail to proceed through the criminal justice system; those cases that are discontinued and thus fail to reach trial and/or result in a conviction.¹⁴ Although it is recognized that globally, a high number (75 percent or more) of rapes do not ever enter the criminal justice system,¹⁵ the focus of the study is on reports of rape and sexual assault made to state authorities, especially to the police, which should trigger the administration of justice

14. Definition from Lovett and Kelly (2009) *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe*. Child and Women Abuse Studies Unit, London Metropolitan University.

15. The International Violence against Women Survey noted that less than 20 percent of women reported the last incident of violence they experienced to police: Johnson, H., Ollus, N., and Nevala, S. (2008) *Violence against Women: An International Perspective* (HEUNI). Other literature reviews estimate that rates of reporting range from 5 to 25 percent, meaning 75 percent or more of rape cases do not even enter the criminal justice system, see Kelly, L., and Lovett, J. and Regan, L. (2005) *A Gap or a Chasm? Attrition in Reported Rape Cases* (Home Office Research Study 293).

A focus on the formal criminal justice system

This study focuses on strengthening the performance of the formal criminal justice systems in Thailand and Viet Nam, while recognizing that customary, traditional or informal justice systems are also included in these jurisdictions. When the formal justice system is responsive to victim needs and priorities, and decisions appropriately reflect and resonate with the local context, the formal justice system can ensure meaningful social change and a reduction in the incidence of sexual violence is easier to achieve.

in protecting victims and in prosecuting and punishing perpetrators. While under-reporting is a critical topic to be examined, it is beyond the scope of this particular study. Rather, the study seeks to understand how and why reported cases are dropped from, or exit the system. Such points of exit can be located within the police service, procuracies/prosecution services or in courts, and can occur at various stages, from the recording of the offence by police to final disposition or outcome. The study does not aim to provide nationally representative data on overall attrition rates, but rather to identify key trends related to attrition and the factors associated with attrition at each stage of the criminal justice process.

It is essential to understand why cases are:

- “ not passing the reporting stage (for example, were they considered to be ‘false allegations,’ or did victims withdraw their complaint or refuse to proceed?);
- “ dropped at the investigative stage (is this due to the cases being considered unsolved, unfounded, or not being classified as a crime, suspects not apprehended, arrest warrants

- denied, evidentiary challenges such as forensic examination or victim withdrawal?);
- “ discontinued by the prosecutors; or
- “ dropped at trial or the accused is acquitted.

The study focuses on the key stakeholders within the criminal justice system, including police, prosecutors, judges, and other important stakeholders – such as victim services – that assist victims in navigating the criminal justice system, including civil society organizations, medical professionals/health centres, academics and leading researchers on the topic of violence against women.

1.4 What is included in the report?

Definitions used within this report

This report uses the term ‘**victim**’ to refer to those who report sexual violence – specifically, rape and sexual assault – given that it reflects the terminology used in the legal process. When sharing the stories of those interviewed who have experienced sexual violence, we use the term ‘**survivor**’ to reflect the agency of these women in seeking justice and in sharing their stories. The term ‘**suspect**’ is used to describe the person who is alleged to have committed rape or sexual assault and the term ‘**accused**’ is used to describe an individual who has been charged.

Chapter I: Context and Background sets out the context within which female victims of sexual violence find themselves navigating through the criminal justice system. The chapter explores global and regional prevalence of sexual violence, introduces the concept of attrition of sexual violence cases within the criminal justice system, and

presents the international legal and policy framework designed to protect women and girls' human rights. Chapter I also describes the methodology and framework used to gather and analyse data and information.

Chapter II: Study Findings: Understanding Barriers to Justice and Attrition in Sexual Violence Cases explores the societal, legal, procedural and institutional factors that influence attrition and place barriers for women and girl victims of sexual violence. The chapter includes: an analysis of the laws related to sexual violence within both of the countries of study; exploration of the criminal justice system stakeholders and service providers and their roles; and a critical analysis of the criminal processes within each stage of the criminal justice system process in both of

the countries of study, identifying where, how and why they impact attrition. A comparative analysis of the factors affecting a victim's experiences and decisions, and criminal justice system processes within both countries, lays the foundation for recommendations.

Finally, **Recommendations** summarizes the study findings and makes broad regional recommendations, which are based on common trends and issues seen across both countries, as well as a consideration of entry points for change with a focus on the criminal justice system.

The report also includes a **Glossary, Appendices** containing maps of the legal process in both countries, and **References** for further reading.

2. Realities for women and girl survivors of sexual violence - globally and regionally

2.1 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.¹⁶ 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.¹⁷ 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.¹⁸

It is estimated that 150 million girls under 18 have experienced sexual violence.¹⁹

16. 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.

17. 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

18. 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.

19. Pinheiro, P.S. (2006) World Report on Violence against Children. United Nations. p.17.

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.²⁰ 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.²¹

2.2 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 roles²² in Thailand and Viet Nam contributes to enhanced knowledge of the risks, victimization and realities women and girls face in reporting crimes of rape and sexual assault;²³ 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.²⁴ Rape is sometimes legitimized, both within communities and by the media, based on a woman's past sexual history.²⁵ 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.²⁶ In Viet Nam, men are considered active agents in sexual relationships and women are expected to please their husbands by meeting their sexual demands.²⁷ 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.

20. World Health Organization (2005) WHO Multi-country study on women's health and domestic violence against women. Geneva. p.52

21. Fulu, E., Warner, X., Miedema, S., Jewkes, R., Roselli, T., and Lang, J. (2013) Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations (Bangkok: UNDP, UNFPA, UN Women and UNV). www.partners4prevention.org/sites/default/files/resources/p4p-report.pdf

22. The socially determined differences between women and men in their roles, relations, identities, attitudes, behaviour and values.

23. Sexual assault might not be defined per se as an offence in the countries of study; however, it covers non-penetrative sexual violence, such as indecent acts in Thailand, and child obscenity in Viet Nam.

24. UN Women (2013) Strengthening the Capacity of the Thai Judiciary to Protect Survivors of Domestic Violence: Justice for Society's "Little Dots". UN Women Regional Office for Asia and the Pacific.

25. Siwapirunthep (2003) Decoding the Concept of Rape in Thai Society: Comparative Case Studies Between Media Viewers and the Victims of Rape. MA Thesis, Faculty of Media and Communications, Thammasart University.

26. Satrusayang, C. (2014) "Premier's Rape Remark Brings Thai Attitudes Under Scrutiny," DPA International. <http://www.dpa-international.com/news/asia/premiers-rape-remark-brings-thai-attitudes-under-scrutiny-a-39757734.html>

27. General Statistics Office in collaboration with World Health Organization (2010) Results from the National Study on Domestic Violence against Women in Viet Nam 2010: Keeping Silent is Dying. http://www.gso.gov.vn/default_en.aspx?tabid=487&ItemID=10693

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.²⁸

Sexual Violence Prevalence in Thailand, and Viet Nam

According to a WHO global systematic review of data on intimate and non-partner sexual violence,³³ 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 health³⁴ 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

Making the headlines: Rape in Asia

Recent headlines from Thailand: “Thailand horrified after 13-year-old girl raped, thrown from train”²⁹ and “No one asks to be raped.”³⁰

Recent headlines from Viet Nam: “Unbelieve: Man asked friend to rape his wife”³¹ and “3 held for rape, robbery after courting girls on Facebook.”³²

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 2006.³⁵ According to the Thai Public Health Ministry, there were 31,866 incidents of rape reported in 2013.³⁶ Similarly, the Thailand Development Research Institute³⁷ estimates 30,000 cases of rape occurring each year in the country – a figure derived from a survey of

28. Gardsbane, D., Vu, H.S., Taylor, K., Chanthavysouk, K. (2010) Gender-based Violence: Issues Paper. Ha Noi; and Thailand Protection of Domestic Violence Victims Act B.E. 2550 (2007).
29. Olarn and Whiteman (10 July 2014) “Thailand Horrified After 13-year-old girl Raped, Thrown from Train”. CNN. <http://edition.cnn.com/2014/07/09/world/asia/thailand-teen-train-rape/>
30. Bangkok Post (19 September 2014) “No One Asks to be Raped”. Bangkok Post. <http://www.bangkokpost.com/opinion/opinion/433039/no-one-asks-to-be-raped>
31. Viet Nam Breaking News (28 February 2013) “Unbelieve: Man Asked Friend to Rape His Wife”. Viet Nam Breaking News. <http://english.vietnamnet.vn/fms/society/67508/unbelieve--man-asked-friend-to-rape-his-wife.html>
32. Tuoitre News (30 October 2013) “3 Held for Rape, Robbery After Courting Girls on Facebook.” Tuoitre News. <http://tuoitrenews.vn/society/14587/3-held-for-rape-robbery-after-courting-girls-on-facebook>
33. 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.20 http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf
34. World Health Organization (2003) Multi-country Study on Women’s Health and Domestic Violence against Women: Country Findings Thailand.
35. UNODC International Statistics on Crime and Justice. https://www.unodc.org/documents/data-and-analysis/Crime-statistics/International_Statistics_on_Crime_and_Justice.pdf
36. Bangkok Post (19 September 2014) No One Asks to be Raped. Bangkok Post. <http://www.bangkokpost.com/opinion/opinion/433039/no-one-asks-to-be-raped>
37. Thailand Development Research Institute (25 July 2014) Factsheet on Rape: Some Observations. <http://tdri.or.th/tdri-insight/rape-and-execute/>

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.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹

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.⁴²

2.3 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

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

39. Viet Nam National Assembly Department of Social Affairs 2006 Survey as cited in UNODC and UN Women ‘Assessment of the Situation of women in the Criminal Justice System in Viet Nam: In support of the Government’s Effort towards Effective Gender Equality in the Criminal Justice System’ (Hanoi, July 2013).

40. This study examined sexual violence against women after 15 years of age and before 15 years of age, as this is the defining age for sexual offences in the Viet Nam Penal Code. The study found that sexual abuse before 15 years old was 3 percent. Viet Nam, General Statistics Office (2010) Results from the National Study on Domestic Violence against Women in Viet Nam: “Keeping silent is dying”. Ha Noi.

41. Studies reviewed in Gardsbane, D., Vu, H.S., Taylor, K., Chanthavysouk, K. (2010) Gender-based Violence: Issues Paper. Ha Noi.

42. Viet Nam, General Statistics Office (2010) Results from the National Study on Domestic Violence against Women in Viet Nam: Keeping Silent is Dying. Ha Noi.

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."⁴³

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

cases remain high around the world.

A review of global attrition studies

Several attrition studies from other regions provide insights into how different criminal justice systems handle cases of sexual violence and offer points for comparison with the countries researched within this study.⁴⁴ The studies reviewed focus on New Zealand, South Africa, the United States, and several European countries. Each features a multi-methodological approach including quantitative and qualitative research methods and applies a tiered approach to understanding attrition: first locating attrition points during the various stages of the criminal justice process and then exploring how attrition occurs.

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:

- Victim not reporting to the police (pre-attrition).
- Police decision not to record the offence due to insufficient evidence, inability to locate the suspect, or suspected false allegation.
- Police decision not to refer the case to the prosecutor.
- Prosecutor's decision to discontinue the case.
- 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.
- Victim withdrawal at all stages of the process.

Some **key patterns and trends** identified within the literature include:

43. Ekacahi, S. "Rape culture costs Thailand oh so dearly." Bangkok Post. January 9, 2013.

44. The main attrition studies consulted for both a review of attrition patterns and trends, as well as in the design of the research method for this study include: Kelly, Lovett and Regan's 2005 study on attrition in the UK; Lea, Lanvers and Shaw's 2003 study which developed profile of rape cases in southwest England; Lovett and Kelly's 2009 in-depth trans-European attrition study featuring 11 countries; Spohn and Telliss' 2012 attrition study from Los Angeles, USA; Triggs, Mossman, and Kingi's 2009 study from New Zealand; and Vetten, Jewkes, Sigsworth, Christofides, Loots, and Dunseith's 2008 South Africa study. All references and online links to these studies are found in the Appendix.

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 study⁴⁵ 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.⁴⁶ 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.⁴⁷ 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.⁴⁸ 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.⁴⁹ 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

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45. Lievere (2005) No Longer Silent: A Study of Women’s Help Seeking Decisions and Service Responses to Sexual Assault. Australian Institute of Criminology
 46. Vetten, L., Jewkes, R., Sigsworth, R., Christofides, N., Loots, L., and Dunseith, O. (2008) Tracking Justice: The Attrition of Rape Cases through the Criminal Justice System in Gauteng. Johannesburg: Tshwaranang Legal Advocacy Centre, the South African Medical Research Council and the Centre for the Study of Violence and Reconciliation www.csvr.org.za/docs/tracking_justice.pdf
 47. European Union Agency for Fundamental Rights (2014) Violence against Women: an EU-wide survey: Main Results, retrieved at http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf
 48. Lievere (2005) No Longer Silent: A study of women’s help seeking decisions and service responses to sexual assault. Australian Institute of Criminology
 49. Ibid.

victim's lack of knowledge of the legal process and how to report.⁵⁰

Prevalence of high attrition rates and poor treatment of victims across all regions and countries studied

Many studies revealed⁵¹ 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.⁵² Poor practices of police, prosecution and courts can also lead to early withdrawal of victims.⁵³ 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.⁵⁴

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, behaviour

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.⁵⁵

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.⁵⁶ 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,⁵⁷ 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."⁵⁸ Indeed, criminal justice actors take on

50. Ibid.

51. Cited in Lea, Lanvers, and Shaw (2003) Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors. *British Journal of Criminology*, 43(3) p.583. paladinservice.co.uk/wp-content/uploads/2013/07/gap-or-chasm-rape-report.pdf

52. Triggs, Mossman and Kingi (2009) Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System. Ministry of Women's Affairs. mwa.govt.nz/sites/mwa.govt.nz/files/responding%20to%20sexual%20violence%20attrition-pdf.pdf

53. Ibid.

54. Lea, Lanvers, and Shaw (2003) Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors. *British Journal of Criminology*, 43(3) p.583. paladinservice.co.uk/wp-content/uploads/2013/07/gap-or-chasm-rape-report.pdf

55. Triggs, Mossman and Kingi (2009) Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System. Ministry of Women's Affairs. mwa.govt.nz/sites/mwa.govt.nz/files/responding%20to%20sexual%20violence%20attrition-pdf.pdf

56. Lea, Lanvers, and Shaw (2003) Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors. *British Journal of Criminology*, 43(3) p.583. paladinservice.co.uk/wp-content/uploads/2013/07/gap-or-chasm-rape-report.pdf

57. Kelly, L. (2001) Routes to (in)justice: A Research Review on the Reporting, Investigation and Prosecution of Rape Cases. University of Northern London. <https://www.justiceinspectors.gov.uk/cji/wp-content/uploads/sites/2/2014/04/Rapelitrev.pdf>

58. Kelly, Lovett and Regan (2005) A Gap or a chasm? Attrition in reported rape cases Home Office Research Study 293. Home Office Research, Development and Statistics Directorate. p.2.

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.⁵⁹

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)⁶⁰ 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 2013,⁶¹ 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 2012.⁶² 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.

59. Kelly, L. (2001) Routes to (in)justice: A Research Review on the Reporting, Investigation and Prosecution of Rape Cases. University of Northern London. www.hmcpsi.gov.uk/documents/reports/CJJI_THM/BOTJ/Rapelitrev.pdf

60. Thailand Development Research Institute (25 July 2014) Factsheet on Rape: Some observations. <http://tdri.or.th/tdri-insight/tdri-factsheet-24/>

61. Bureau of Democracy, Human Rights and Labour, US State Department (2013) Country Reports on Human Rights Practices 2013: Thailand. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

62. Criminal Police Department, Ministry of Public Security statistics on child sexual offences (article 115 of the Penal Code) and offence of rape (article 111 of the Penal Code) from 2008-2012.

3. 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 Women⁶³(CEDAW), as well as the International Covenant on Civil and Political Rights⁶⁴ and the Convention on the Rights of the Child.⁶⁵ Thailand has also ratified the Optional Protocol to CEDAW,⁶⁶ 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"⁶⁷ and to "take measures towards modifying those social, cultural and traditional attitudes that are permissive of violence against women".⁶⁸ Recommendations for Viet Nam included a call to "ensure in law and in practice the protection of women against all forms of violence."⁶⁹

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.

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63. Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 34/180 of 18 December 1979, found at www.un.org/womenwatch/daw/cedaw/cedaw.htm.
 64. International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, found at www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
 65. Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989, found at www.ohchr.org/en/professionalinterest/pages/crc.aspx
 66. Optional Protocol to CEDAW, General Assembly resolution 54/4, found at www.un.org/womenwatch/daw/cedaw/protocol/text.htm.
 67. Recommendation 158.84 of the Report of the Working Group on the Universal Periodic Review: Thailand, A/HRC/33/16 of 15 July 2015 found at documents.un.org.
 68. Recommendation 88.31 of the Report of the Working Group on the Universal Periodic Review: Thailand, A/HRC/19/8 of 8 December 2011 found at documents.un.org.
 69. Recommendation 143.119 of the Report of the Working Group on the Universal Periodic Review: Viet Nam, A/HRC/26/6 of 2 April 2014 found at documents.un.org.

These include the 1993 United Nations Declaration on the Elimination of Violence against Women,⁷⁰ the 1994 Beijing Declaration and Platform for Action,⁷¹ 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 Strategies⁷²), and the Commission on the Status of Women 57th Session (CSW57) Agreed Conclusions,⁷³ the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,⁷⁴ the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*⁷⁵ and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.⁷⁶ 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.

3.1 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.

3.2 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.**"⁷⁸ 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

70. Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993, found at www.un.org/documents/ga/res/48/a48r104.htm.

71. Beijing Declaration and Platform for Action, adopted at the 16th plenary meeting, on 15 September 1995, found at www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf.

72. 2010 Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice General Assembly resolution 65/228 of 31 March 2011

73. Commission on the Status of Women 57th Session (CSW57) Agreed Conclusions, E/2013/v of 15 March 2013, found at [www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_\(CSW_report_excerpt\).pdf](http://www.un.org/womenwatch/daw/csw/csw57/CSW57_Agreed_Conclusions_(CSW_report_excerpt).pdf).

74. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, annex, of 29 November 1985, found at www.un.org/documents/ga/res/40/a40r034.htm.

75. Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council resolution 2005/20, annex of 22 July 2005.

76. UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, General Assembly resolution 67/187.

77. CEDAW Committee General Recommendation No. 19, found at www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm.

78. General Assembly resolution 48/104, article 1.

a woman because she is a woman and affects women disproportionately.⁷⁹

3.3 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 Project⁸⁰, 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 Standards⁸¹, call on states to develop domestic legislation that:

- .. does not invoke custom, tradition or religion to avoid their obligations to eliminate violence against women;
- .. includes penal, civil, labour and administrative sanctions to punish and redress the wrongs caused to victims;
- .. provides access to the mechanisms of justice and to just and effective remedies;
- .. ensures that the secondary victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- .. ensures effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders;
- .. 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.

3.4 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 2010⁸² and focuses on the criminal justice system while recognizing that a holistic and multi-disciplinary response is needed.

79. General Recommendation 19 of the Committee for the Convention of Elimination of Discrimination against Women.

80. The Due Diligence Project, <http://www.duediligenceproject.org/>

81. Yakin Ertürk (2006) Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, the Due Diligence Standard as a Tool for the Elimination of Violence Against Women Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences

82. 2010 Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice General Assembly resolution 65/228 of 31 March 2011, annex, found at http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf

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.

- “ Ensure that all forms of violence against women are criminalized and prohibited (provision 14(b)).
- “ Ensure that criminal laws are comprehensive and effective in eliminating violence against women (provision 14(a)).
- “ 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 Women⁸³ and Handbook on Effective Prosecution Responses to Violence against Women and Girls,⁸⁴ the UNODC has published

a *Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women*⁸⁵ 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.

4. 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

83. Available at http://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_Effective_police_responses_to_violence_against_women_English.pdf

84. Available at http://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf.

85. Available at http://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.

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:

- “ Consultations with UN constituents to confirm study objectives and scope, and to identify stakeholders to be consulted.
- “ Desk review and design of the research methodology.
- “ Development, piloting and finalization of the research tool and protocol in both countries of study.
- “ In-country guidance, training and collaboration with national researchers on the research methods and tools.
- “ Implementation of the research methods by national research teams.
- “ Validation of the study findings via country-level multi-stakeholder workshops.
- “ Country-specific findings developed by national research teams.
- “ Comparative analysis of national findings via the regional study as presented here within.
- “ 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:⁸⁶

- “ 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 (CSVN), 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.
- “ 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.
- “ 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.

86. A list of all attrition studies consulted is included in the references found at the end of this report.

The study design integrates:

- “ 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.
- “ Legal process and criminal justice actor/ stakeholder mapping in both countries.
- “ Review of an opportunistic sample of a total of 290 rape and sexual assault case files from Thailand and Viet Nam.
- “ 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.⁸⁷

Common guiding issues for analysis included:

- “ Background information on international human rights standards for addressing sexual violence.
- “ Criminal justice system structures, processes and actors, and their role in contributing to or mitigating attrition of sexual violence cases.
- “ Policing standards, procedures and practices for handling rape and sexual assault cases.
- “ 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:

- “ maps and compares the legal frameworks and processes within Thailand and Viet Nam as they pertain to sexual violence;
- “ identifies and analyses potential trigger points for attrition stemming from each country’s legal framework and procedures;
- “ 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
- “ highlights commonalities and differences among victims’ experiences with the criminal justice system and process in both countries of study.

87. This included 83 interviews in Thailand, and 31 interviews in Viet Nam including Government officials, criminal justice system practitioners, service providers, and survivors.

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.



Thailand Research Sites

Chiang Mai (Population: 1.66 million)
Bangkok (Population: 5.69 million)
Songkhla (Population: 1.39 million)



Viet Nam Research Sites

Hanoi (Population: 7.1 million)
Dak Lak (Population: 1.69 million)

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,

Table 1. Research Highlights

	Thailand	Viet Nam
Selected Sites	<ul style="list-style-type: none"> .. Bangkok (central) .. Chiang Mai (north) .. Songkhla (south) 	<ul style="list-style-type: none"> .. Hanoi (north) .. Dak Lak (south)
National records and statistics	Majority of available data is at national level or from Bangkok. Research team’s academic connections to Chiang Mai facilitated key informant access at that site.	Police national statistics and court statistics available, but did not include all sexual violence offences.
Interview/focus group discussion participants	9 Government officials ⁸⁸ 34 CJ practitioners ⁸⁹ 34 service providers ⁹⁰ 6 survivors Total 83	12 Government officials ⁹¹ 73 CJ practitioners ⁹² 45 service providers ⁹³ Total 130
Case files	169 police case files from Bangkok, Chiang Mai and Songkhla. * Research teams relied on contacts at the police level to secure an opportunistic sample of police records. * Lack of formal approval to court files and prosecution records. * System does not allow tracking police cases up the court level.	121 case files from district level police, prosecution and courts in Hanoi and Dak lak * Self-selected by criminal justice institutions. * Ward and commune police records were not accessible in all districts involved in the study.

88. 6 individual interviews and 1 FGD.

89. 19 individual interviews and 2 FGDs.

90. 24 individual interviews and 1 FGDs.

91. 2 individual interviews and 2 FGDs.

92. 29 individual interviews and 20 FGDs.

93. 8 individual interviews and 6 FGDs.

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 sampling⁹⁴ initially proposed could not be implemented. Opportunistic sampling⁹⁵ 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.

94. That is, a sample drawn from several separate parts of the population in order that it should be representative.

95. That is, a nonprobability sample – which is not random, having the potential for bias – that is based on what is readily available.

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.

Country specific research limitations included:





Thailand

Reservations in sharing official information by some Government officials posed barriers in interviewing key criminal justice agency actors.

Political instability during time of study causing limited access to criminal justice agencies.

As it is customary for judges not to grant interviews, participating judges limited their response to process issues.

File reviews were limited to police files. Availability of court files is in a brief summary form at the Court of First Instance level. Court cases cannot be traced back to the police level.



Viet Nam

The national partner was unable to obtain approval to have full access to all case files managed by the procuracy, which limited access to records to selected jurisdictions and sites.

Case reviews are limited to district level police, prosecutor and court records. Researchers could not access local commune/ward police records for the case review component; however, local police officers were included in the qualitative interviews.

The national partner, a government ministry, could not interview victims. Additional researchers retained were also unable to organize interviews with victims.

The national partner's qualitative research data was summarized and interpreted, not transcribed verbatim.

Case files reviewed were pre-selected by criminal justice agencies, not by national researchers, resulting in questionable randomness and reliability.







Study Findings

Understanding the Barriers to Justice and Attrition in Sexual Violence Cases



A sound and comprehensive national legal and institutional framework that is enforced in a victim-centered and gender-sensitive manner is essential for enhancing a coordinated and integrated criminal justice system response to sexual violence.



The second part of the report focuses on the key trends and contributing factors identified in the study that can have a positive or a negative impact on attrition. Gaining an understanding of and comparing factors associated with attrition in Thailand and Viet Nam is complicated by specific contextual, societal, legal, procedural, and institutional factors that are often interrelated. For instance, the penal codes, procedural law, evidentiary rules, criminal justice institutions and practices in Thailand and Viet Nam cannot be simplistically compared, as each country has different legal systems, offence definitions, terminology variations, and procedures regarding how crimes are reported, recorded, investigated, prosecuted and adjudicated. Therefore, rather than listing specific causes of attrition, this section seeks to highlight common attrition factors, trends and patterns.

A sound and comprehensive national legal and institutional framework that is enforced in a victim-centered and gender-sensitive manner is essential for enhancing a coordinated and integrated criminal justice system response to sexual violence. This section of the report conducts a comparative analysis of:

- “ How the social values, cultural patterns and practices shape the attitudes of criminal justice officials and the influence on attrition.

- “ How sexual offences are defined in the existing criminal laws in Thailand and Viet Nam and the impact on attrition.
- “ How the criminal legal processes in place, including criminal procedures and evidentiary rules, are implemented and their impact on attrition.
- “ How the criminal justice institutional foundations in each country influence attrition.

The international norms and standards will be the basis for analysis as to how aspects of the legal and institutional frameworks either contribute to or reduce attrition.

Unfortunately, many victims do not find the support necessary to see their cases through the criminal justice system. Nidd’s account provides a snapshot into some of the common issues and contributing factors to rape and sexual assault case attrition. Sexual violence against women and girls are embedded in and supported by social values, cultural patterns and practices. The police, prosecutors and judges are not immune to such values and, as such, their attitudes can influence the way they apply the law in practice and their treatment of victims.

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.

“

“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.”

”

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.”



1. Highlights of the study findings

1.1 Main findings

A number of study findings were overarching and consistent across Thailand and Viet Nam. They include the following, grouped as:

• Barriers to accessing justice.

• Attrition points within the criminal justice system.

• Contributing factors to attrition.

The findings are listed below and will be elaborated within this section of the study.

Barriers to access to justice

- Discrimination and subordination of women
- Absent or limited monitoring systems to track state actions in response to reports
- Criminal justice service providers not held accountable for providing rights-based, victim-centered response and services
- Sexual violence against women is not a priority for action in the criminal justice system
- Reactive response to incidents rather than a strategic, comprehensive and holistic approach
- Lack of coordination within the justice system, and between the justice system, government and civil society service providers, results in limited, inconsistent service
- Gender biases and stereotyping amongst institutional service providers
- Focus on mediation or other forms of settlement outside of the criminal justice system
- Many women have limited knowledge and access to information about their rights and what they can and should expect from the criminal justice system

Attrition points

- Initial contact stage: victims are turned away, deterred or discouraged at the initial reporting stage
- Reporting stage: victims are treated with disrespect and insensitivity; victim is required to tell her story multiple times; reports are refused; reports are taken and investigation is not conducted or delayed; police encourage mediation and settlement; or the victim withdraws
- Investigation stage: no or inadequate investigation; limited access to or use of forensic evidence; lack of assistance, support or protection services; no or very limited communication between the criminal justice system service providers and the victim; investigators decide not to proceed; or the victim withdraws
- Pre-trial and trial stage: no or limited court support for the victim; long drawn-out proceedings; focus on physical or forensic evidence instead of victim's lack of consent; prosecutor or judge decides not to proceed; or the court acquits the accused

Contributing factors

- .. Societal/cultural: limited community support for victims, discriminatory gender- norms and stereotypes
- .. Legal: focus on the credibility of the victim rather than credibility of the incident; narrow interpretation of evidentiary rules; limited oversight and monitoring of enforcement/implementation of laws; or focus on mediation and settlement
- .. Process: lack of victim-centered procedures; lack of multi-disciplinary, coordinated responses; directives and decisions that reduce victim agency; victim inadequately prepared and fearful of giving testimony in court; delays; or expenses incurred by the victim
- .. Institutional: no women- or victim-friendly facilities; little specialized training and professional development; few female police and investigating officers; limited information, assistance, support and communication for victims navigating complex systems and processes; limited data collection and analysis to inform criminal justice system action; or limited internal accountability mechanisms

1.2 Country-specific findings

There are a number of country-specific findings that are related to barriers to accessing

justice, attrition points within the criminal justicesystem, and contributing factors to attrition.

Table 2. Factors that contribute to attrition and raise barriers for women to access justice

Thailand	Viet Nam
<ul style="list-style-type: none"> .. Requirement to report within three months excludes many women. .. Limited investigation and over-emphasis on initial statement of victim taken by police as primary evidence used to convict or acquit by the courts. .. Although ‘consent’ is included in section 276 of the Criminal Code, the concept is not defined or clarified. .. Marital rape was only recently included in the Criminal Code with an ongoing cultural lag to recognize non-consensual intimate partner sex as rape. 	<ul style="list-style-type: none"> .. Formal denunciation required to proceed in court. .. Narrow definitions of rape and forced sexual intercourse, no offence covering sexual assault for women. .. Limited support to victims of non-partner sexual violence (the limited victim services are geared toward domestic violence victims). .. Focus on corroboration.

In Thailand and Viet Nam, given that this is the first study focusing on attrition in sexual violence cases, it is difficult to comment on whether these findings are consistent with other national studies. However, research sponsored by UNODC in Viet Nam on the quality of criminal justice services available to victims of domestic violence found that most of the cases reported to police did not lead to a criminal charge against the suspect.⁹⁶ The rates of attrition were the highest at the earlier stages of the criminal justice process, with 34 percent of the women interviewed reporting that they were told by local police to solve their problems within the family and that in only 12 percent of the cases were criminal charges instituted. Similar high attrition rates at the policing level are found in Thailand according to data provided by the Thai Royal Police and One Stop Crisis Centres (OSCC), where in 2013, there were 31,866 cases of rape reported to the OSCC and only 4,607 cases were reported to the police, with 1,295 of the latter resulting in issuing of an arrest warrant.⁹⁷

1.3 Main findings from the case file reviews

In both of the countries surveyed, quantitative data was collected from police and court files in order to complement the qualitative data on attrition presented by the informant interviews and focus group discussions with key stakeholders. There were 169 cases reviewed in Thailand, and 121 from Viet Nam, with a total regional case file review sample of 290. While the planned methodology was for randomized sampling and tracking for a

quantitative retrospective case study, the reality was that the data was collected in an opportunistic manner, based on accessible information. Due to the concerns regarding the quality and variations in information available for analysis, the comparisons focus on victim and suspect demographics, and high-level summaries of the cases reviewed, for a descriptive purpose only. They are not meant to be nationally representative or to provide a comparative analysis of attrition rates between the two countries more broadly.

96. UNODC, European Institute for Crime Prevention and Control, Research Centre for Gender and Development (2010) *Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam*.

97. Royal Thai Police 2014, One Stop Crisis Center (OSCC) 2014.

98. It should be noted that while the original quantitative methodology was to involve a random selection of 120 cases of sexual violence against women and children (both girls and boys) in Viet Nam, with the self-selection of cases by criminal justice agencies, the focus became exclusively on selecting cases involving female victims.

Victim profile

Main findings. In both countries:

- The majority were female victims.
- Over 60 percent of the victims were under the age of 18.
- The highest percentage of victims was split almost evenly between those 13 and 17 years of age and victims over 18 years of age. Cases where the victim was over the age of forty were minimal.
- Nearly all of the victims were younger than the suspect.
- Only a very minimal number of case files indicated that victims had disabilities or had ingested alcohol or drugs. There were a significant number of case files that did not include any information on disabilities, or on alcohol/drug ingestion.

Thailand

Of the 169 cases reviewed, 166 involved female victims and 3 involved male victims. The average age was 22, while the median age was 17 (minors). Just over half of cases were of minors. A total of 66.3 percent were single and 51.5 percent were students. Victims were on average seven years younger than the suspect. In 1.7 percent of the cases, victims had some form of disability. A total of 21 percent reported ingestion of alcohol (with 8 percent reporting involuntary or mistaken ingestion) and 4 percent of cases reported ingestion of drugs.

Viet Nam

All the victims in the case review where gender was recorded were female.⁹⁸ The overwhelming majority of female victims were girls under the age of 18 years (74 percent). The majority of victims were single, and at school or unemployed. This is similar to the breakdown in the national statistics from both police and court records. Victims were on average 10 years younger than the suspect. A total of 6 percent reported ingestion of alcohol, and less than 1 percent reported ingestion of drugs (which was recorded as involuntary/mistaken ingestion)

Suspect Profile

Main findings. In both countries:

- The majority of suspects were male.
- Most suspects were between the ages of 18 to 30, with very few suspects over the age of 40.
- A minimal number of cases involved suspects with disabilities. There were a significant number of cases that did not include suspect details.
- Recorded ingestion of alcohol by suspects was considerably higher than for victims in Viet Nam and Thailand, however, a significant number of cases provided no information on alcohol or drug use by the suspect.

Thailand

Almost all (98 percent) suspects were male (one suspect was female and one was transgendered) averaging 27 years of age with 79 percent over the age of 18. A total of 38 percent of suspects over 18, and 27 percent of suspects under 18 had some record of previous allegation of violence. Voluntary alcohol use was 42 percent for suspects compared to 13 percent for victims. Drug use was noted in a significantly higher proportion of suspects than in victims - 11 percent for suspects compared to 4 percent of victims.

Viet Nam

All suspects were male. Of the 73 percent of cases where age was recorded, 21 percent involved suspects under 18 years of age and 79 percent over 18 years old. Nearly half of all cases where age was recorded involved suspects between the ages of 18 to 25 years old. A total of 60 percent of suspects were single, 37 percent were unemployed and 25 percent had a previous criminal conviction. Alcohol use was indicated in 26 percent of the suspects, compared to 5 percent of the victims. There were no reports of drug ingestion.

Incident Profile

Main findings. In both countries:

- Between 86 percent and 91 percent of the suspects were known to the victim.
- Between 9 percent and 14 percent of cases involved complete strangers.
- The most common assault location is in a private space – most frequently the home of the victim and/or suspect, followed by another person’s home or a hotel room.
- In the majority of cases, records indicated that the victim did not sustain physical injuries.
- The use of force was either not recorded, or there was no use of force indicated in at least three quarters of cases.
- Weapon use was indicated in only a very small percentage of all cases reviewed.

Thailand

A total of 66 percent of cases were rape cases, with 12 percent involving children who could not consent. In 32 percent of cases the suspect was an acquaintance, in 26 percent the suspect was a current or former intimate partner, and in 14 percent the suspect was a neighbour. Over half of victims who were between 13 and 17 years old reported that the suspect was a current or former partner. The majority of cases (95 percent) involved a single suspect. A total of 33 percent of rapes took place in the suspect’s home, while 24 percent took place in the victim’s home and 12 percent in someone else’s home. A majority of incidents (55 percent) involving victims under 12 years of age occurred during the day, while most adult rapes occurred at night. A total of 68 percent of victims had no visible injuries, however adult victims were more likely to have visible injuries.

Viet Nam

Rape cases constituted 75 percent of those examined and 15 percent were sexual assaults or other types of sexual violence. The majority of cases involved sexual violence against girls: 65 percent of cases were statutory rape, rape of a child/minor, or forced sex of child/minor, and 6 percent sexual assault of children. The suspect was known to the victim in 86 percent of the cases, with the highest percentage of cases involving neighbours (25 percent) or acquaintances (14 percent). In only 14 percent of the cases was the suspect a complete stranger. There were no recorded cases of marital rape. The majority of sexual offences took place in private or semi-private space. Only 2 percent of cases involved a weapon, however physical injuries were documented in 24 percent of the cases and 6 percent of the cases involved gang rapes.

1.4 Country-specific good practice

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:

Table 3. Good and promising practices

Thailand	Viet Nam
<ul style="list-style-type: none"> • One Stop Crisis Centres.⁹⁹ • Interdisciplinary teams, when properly coordinated and resourced. • Current Royal Thai Police campaign to recruit more female officers. • Thonburi model courts.¹⁰⁰ • Ongoing training of Royal Thai Police, prosecutors and court personnel in partnership with UN Women. 	<ul style="list-style-type: none"> • Current review of Penal Code and Criminal Procedure Code provides an opportunity to expand sexual violence offences and introduce gender sensitive criminal procedures and evidentiary rules. • Allowing right of legal counsel and standing of victims in criminal proceedings. • UNODC is assisting the Ministry of Public Security with the development of a Circular on Police Response to Domestic Violence and the development of a police protocol for gender-responsive policing.

Since the completion of the study, there have been a number of positive developments in both countries which, if duly funded and implemented, could contribute to reducing

impunity for sexual violence and enhance legal protection for victims. Some key examples are listed in below

Thailand

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.

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99. Under the purview of the Thailand Ministry of Social Development and Human Security, and collaborating with the Ministry of Health, the Royal Thai Police and the Ministry of Labour, an OSCC is an integrated system of government departments working together on sexual violence, teenage pregnancy, human trafficking and child labour. Concurrently, under the Ministry of Health, hospital-based OSCCs provided medical support and treatment, counselling, psychological treatment and rehabilitation, and played a role in training medical staff to understand rape issues from an integrated perspective. Currently there are hospital-based OSCCs nationwide.
 100. According to UN Women, "In 2009 UN Women partnered with the National Human Rights Commission to establish gender-sensitive procedures for the effective implementation of Thailand's domestic violence legislation in the Thonburi Criminal Court...[Thonburi court], a model Courtroom and waiting room, were designed to create a safe space that respected the privacy and reduce the trauma for women survivors of domestic violence. The space ensured that women need not face their perpetrators by creating a separation with mirrored panels and a closed circuit camera at the perpetrator's stand. The model also allows women to have relatives to sit with them during proceedings. Finally, the judges, legal officers, other supporting staff (...) underwent gender-sensitivity training." For more information visit UN Women at: <http://asiapacific.unwomen.org/en/focus-areas/end-violence-against-women/pilots-with-the-justice-system>

Viet Nam

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.

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.’¹⁰¹

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.¹⁰²

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.”¹⁰³

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.¹⁰⁴ 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.

101. Nguyen Van Anh and Pham Thanh Giang (2012) Báo cáo: “Thực trạng bạo lực tình dục và cách ứng phó của những nạn nhân bạo lực gia đình trong các CLB do CSAGA hỗ trợ.” (Current situations of sexual violence and responses of Domestic Violence Survivors in clubs supported by CSAGA)

102. UN Women (September 2013) Report on the Perception and Attitudes of Young People on Issues Related to Violence Against Women and Girls in Thailand taken from: Strengthening the Capacity of the Thai Judiciary to Protect Survivors of Domestic Violence: Justice for Society’s “Little Dots”.

103. Royal Thai Police: Children, Women and Family Protection & Anti Human Trafficking Plan (2012), page 4.

104. Nguyen Thu Huong (2012) At the Intersection of Gender, Sexuality, and Politics: The Disposition of Rape Cases among some Ethnic Minority Groups of Northern Viet Nam, *Journal of Social Issues in Southeast Asia* 28(1), 132-51.

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.¹⁰⁵

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.¹⁰⁶

105. Section 96 of the Thai Criminal Code.

106. UN Women (2016) Gender Stereotypes in Laws and Court Decisions in Southeast Asia. Bangkok.

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:

- “ 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’.
- “ 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.”¹⁰⁷
- “ 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.”¹⁰⁸

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.¹⁰⁹ 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.¹¹⁰ 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.¹¹¹

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;¹¹² only 5 percent of forcible rape victims had serious physical injuries and only 33 percent had minor injuries;¹¹³ 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.¹¹⁴

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.

107. Rape culture costs Thailand oh so dearly (09/01/2013) Sanitsuda Ekachai is Editorial Pages Editor, Bangkok Post

108. ‘Patani raped...and filmed’, Bangkok Post, March 5, 2012 Voranai Vanijaka, Bangkok Post: March 4, 2012
<https://facthai.wordpress.com/2012/03/05/patani-raped-and-filmed-bangkok-post/>

109. In Thailand, the largest percentage of cases involved current or former intimate partners (26 percent). In Viet Nam, the highest percentage of cases involved neighbours (25 percent) or acquaintances (14 percent). In Thailand, only 9 percent of cases involved complete strangers, while in Viet Nam it was 14 percent. It is noteworthy that only 5 percent of cases reviewed in Viet Nam did not have any information regarding relationships between the victim and the suspect.

110. The next most common locations were outdoor public places, followed by semi-public places, such as workplaces, schools, hospitals and other institutional settings.

111. Weapon use is correlated with injury in a small percentage of cases overall. In Viet Nam, out of the 28 percent of cases that had documented injuries, weapon use was reported in less than 6 percent of those cases. In Thailand 30 percent of cases with injuries involved the use of a weapon.

112. Kelly, L. (2002) A Research Review on Reporting, Investigation and Prosecution of Rape Cases. London: HMCPSP.

113. Rennison, C. Rape and Sexual Assault: Reporting to Police and Medical Attention, 1999-2000, Bureau of Justice Statistics, U.S. Department of Justice: 2002.

114. Greenfield, L. (1997) Sex Offences and Offenders. Bureau of Justice Statistics, US Department of Justice.

Myth

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.”¹¹⁵
- 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?”¹¹⁶
- 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)

115. Rape culture costs Thailand oh so dearly (09/01/2013) Sanitsuda Ekachai is Editorial Pages Editor, Bangkok Post

116. Story of a Thai survivor as recounted during a qualitative interview.

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.¹¹⁷ 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.¹¹⁸

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.”

Male police investigator, Viet Nam

117. Randall, Melanie (2010) Sexual Assault Law, Credibility, and Ideal Victims: Consent, Resistance, and Victim Blaming 22(2), Canadian Journal of Women and the Law 397, 398, 409-410. Quoted in Eliminating judicial stereotyping: Equal access to justice for women in gender-based violence cases Simone Cusack 9 June 2014, p.27.

118. UN Women (2016) Gender Stereotypes in Laws and Court Decisions in Southeast Asia. Bangkok.

Myth

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.

- “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)
- “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)
- “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).
- “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)
- “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.

Myth

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:

- “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)
- “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)
- “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)

Myth

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.

- 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.¹¹⁹
- 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.¹²⁰ “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)

119. Office of Women’s Affairs and Family Development, Ministry of Social Development and Human Security (2011) “Report on Gender-based Violence against Women and Girls VAWG Indicators” (United Nations Development Programme, Thailand).

120. General Statistics Office, Viet Nam (2010) Results from the national survey on domestic violence against women in Viet Nam (Hanoi: GSO).

Myth

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.”¹²¹

“ 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.

Myth

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.¹²²

Many police officers interviewed expressed suspicion about delayed reports.

“ 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.

“ 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)

“ 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.¹²³

121. Sir Matthew Hale (1847) 1 History of the Pleas of the Crown 634 (Small 1847).

122. Kelly, L. and Regan, L. (2005) A Gap or a Chasm? Attrition in reported rape cases. UK Home Office Research Study

123. Focal group discussions with police officers (male and female) in Songkhla province, Thailand.

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.¹²⁴ 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.¹²⁵ The offender is prohibited from claiming that he/she does not realize the child victim is not yet over 13 years of age.¹²⁶

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.¹²⁷

“

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.

”

124. In Thailand, sexual offences fall into the category of general criminal offences as opposed to petty offences. In Viet Nam, rape falls under the category of serious crime and can be considered very serious crime if aggravating factors are present.

125. Section 277 para. 4 of the Thai Criminal Code.

126. Section 285/1 of the Thai Criminal Code.

127. Domestic Violence Victim Protection Act, BE 2550, Thailand (2007) Section 3, ‘Domestic Violence’ means any act done with the intention to or in the manner likely to cause harm to the body, mind or health of a family member or to exert coercion or immoral influence over a family member in order to wrongfully cause him to do, not to do or yield to any act, but not including an act done negligently.

Thailand

Elements of Crime

Elements of rape (s. 276)

- .. 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.
- .. » Force, or threat; or exploiting vulnerability and deception.
- .. » Non-consent.
- .. » 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.
- .. Culpable state of mind of offender.

Elements of child rape (s. 277)

- .. 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)
- .. 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)

- .. Inappropriate and improper sexual acts.
- .. Force, or threat or exploiting vulnerability and deception.
- .. 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.¹²⁸ 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

128. The Vietnamese Penal Code does not define 'indecent act'; however, guidance has been provided by the Vietnamese Supreme Court. The Supreme Court lists "using hands to touch or stimulate victim's genitals or applying the penis to other parts of the victim (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". Supreme People's Court's Summary and Guideline No. 329-HS2 dated 15 May 1967 on the actual trials of rape and other sexual crimes.

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).¹²⁹ 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

Tables 4 and 5 below compare aspects of the criminal substantive law relating to rape and

other sexual offences for both women and girls. For the purposes of this comparison, the definition of adult follows the legal provisions in both countries, (16 years and over).¹³⁰ 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.

129. According to Inter-Circular 12/1995, issued by the Ministry of Health and MOLISA, permanent injury to ‘sexual organs’ has a basic infirmity rate of 21-25 percent for females less than 45 years old, which includes injuries resulting in scars to the vagina or vulva or which cause the woman to have difficulty in having sexual intercourse. For older females, the same injuries would result in an infirmity rate of 10-15 percent. For women who are below 44 years old and who have injuries such as cutting both ovaries and they have not born a child would result in an infirmity rate of 51-55 percent.

130. Section 277, the Thai Criminal Code prescribes the statutory rape provision of children over 13 years of age but not yet over 15 years of age while the offender is not yet of 18 years of age, irrespective of consent of such child victim, and if the Court has granted permission to both children to marry and the Court may also inflict lesser punishment to the juvenile offender. Furthermore, Section 276 para.4 where the spouse rapes his wife while the victim still intends to live together as a married couple, the court can inflict less punishment.

Viet Nam

Elements of Crime

Elements of rape (article 111)

- .. Penetration. Penile vaginal penetration.
- .. 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.
- .. Non-consent.
- .. Does not include marital exemption as an element of the offence.
- .. Culpable state of mind of offender.

Elements of forcible sexual intercourse (article 113)

- .. Penetration. Penile vaginal penetration.
- .. »Exploitation or deception. Those who employ trickery to induce persons dependent on them or persons being in dire straits to have sexual intercourse with them against their will.

Elements of child obscenity (article 116)

- .. Inappropriate and improper sexual acts.
- .. Consent or force is not an element.

Table 4. Comparing rape and sexual violence for adults

Country	Rape			Other sexual offences		Gender language
	Scope of act	Force/threat versus consent based	Marital rape	Range of acts	Force/threat or consent	
Thailand	Wide – includes all forms of penetration by body parts and objects	Force/ threat based	2007 reforms criminalizes marital rape	Indecent assault – not clearly defined	Force/ threat	Gender neutral
Viet Nam	Narrow – only penile-vaginal penetration	Force/ threat based	Not excluded/ not explicitly included	Not criminalized	Not criminalized	Gender neutral

Table 5. Comparing rape and sexual violence for children

Country	Defining minor/child	Rape of minor/child			Other sexual offences
		Scope of acts	Force/threat or consent based	Mitigation issues	Scope of act
Thailand	Not yet over 15 years of age	Wide definition	Deemed not legally capable of consenting	If a person not yet over 18 years of age commits sexual intercourse against a child over 13 years of age but not yet over 15 years of age who is not a spouse, the Court has granted permission to both children to marry together and the Court may inflict less punishment. ¹³¹	Indecent assault against children
				If victim is over 13 years but not yet over 15 years and offender is not yet over 18 years, there is no criminal liability for the offender if both parties agree to marriage	
	Under 13		Deemed not legally capable of consenting	No mitigating factors	
Viet Nam	13 to under 16	Narrow – only penile-vaginal enetration	Deemed not legally capable of consenting to an adult For perpetrators under 18 years old, element is force/threat		Child obscenity
	Under 13	Narrow – only penile-vaginal penetration	Deemed not legally capable of consenting to anyone		

131. Section 277, Paragraph 5 of the Thai Criminal Code.

3.3 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.

Attrition alert

Narrow definitions or interpretations of the prohibited acts which do not fully capture experiences of rape and sexual assault allow for the possibility that many victims of sexual violence cannot go forward with their cases because their experience may not fit into the legal definitions. Narrow definitions reveal traditional legal thinking about the nature of rape, considering penile penetration of the vagina having the potential to cause greater physical and psychological suffering than other forms of bodily penetration.

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.

Attrition alert

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

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)

Attrition alert

The lack of a comprehensive detailed legal definition of the acts that comprise rape and sexual/indecent assault allow substantial room for discretion by criminal justice officials.

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.

Attrition alert

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

Attrition alert

The way sexual offences are defined can shift the focus to the victim's behaviour rather than on the accused's actions.

Attrition alert

In non-stranger rape cases, a common defence is that the accused believed that the victim consented to the sexual act.

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.¹³²

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’).

132. Prechakul, P. *Sexuality in the Court's Decision* (Bangkok: Human Rights Commission: 2008) pp.43-59.

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.

Attrition alert

Legal exemptions made to statutory rape, which fails to protect girls.

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.

Attrition alert

Where the criminal law explicitly excludes marital rape, attrition happens at the outset.

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.

Attrition alert

Where the legal framework in the countries allow for lesser punishment for rape in marriage in a non-criminal justice regime, attrition can take place when either the victim decides to use the administrative regime or when the police decide to proceed by way of administrative sanction and not criminal punishment.

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.¹³³ 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.

Attrition alert

Where the legal framework views that rape between husband and wife was simply impossible, this reflects the stereotyped view that the wife is the husband's property and that it is impossible for the husband to steal his own property, which leaves married women less protected from sexual violence perpetrated by their husbands.¹³⁴ If such an act takes place, it will only be appropriately punished if the wife decides to initiate divorce proceedings. If the woman chooses to remain with the husband, the mitigation of the husband's punishment from imprisonment to a sentence with conditions to control his behaviour, continues to minimize rape within marriage.

133. UNODC, European Institute for Crime Prevention and Control, Research Centre for Gender and Development (2010) Research on the Quality of Criminal Justice Services available to Victims of Domestic Violence in Viet Nam and UNODC and Viet Nam Ministry of Justice (2009) Summary of the Assessment of Current Practices of Administrative Punishment and the Use of Reconciliation/Mediation Teams When Dealing with Cases of Domestic Violence in Viet Nam.

134. Vethpisay, P. Rape: the study of elements of the act of rape (Master of Law thesis, Thammasart University, 2008) pp 16-17.

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’.¹³⁵

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.

Attrition alert

Gender-neutral language may negate the reality that rape is a crime of power committed within the paradigm of social and physical inequality between the male and female. Such definitions of offences could have an impact on policies that aim to combat sexual violence as they may not have due consideration of the gendered power relations at stake.

Location of sexual crimes within the Penal Codes

In Thailand, the offences are located in the chapter dealing with “offences related to sexuality”. In Viet Nam, these offences are located in the section dealing with “crimes of infringing upon human life, health, dignity and honour.”

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.

Attrition alert

Requiring a time limit up to which a victim can report a case of sexual violence, can mean that when victims report to police after the time limit, the case will not proceed further.

135. Boonyanait, N. Domestic Violence and Forgiveness in Restorative Justice in Somsavat, V ed Stance (Bangkok: Rong Phim Deun Tula: 2010), pp.166-168.

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.

Attrition alert

The ability of the accused to escape criminal responsibility for rape or sexual assault by claiming a mistaken belief in consent.

Attrition alert

If the law permits mitigating factors which allows for a sentence that does not reflect the gravity of the crime, this could be seen as ‘constructive’ attrition.

Table 6. Types of rape and severity of sentences in Thailand and Viet Nam

Types of rape	Thailand	Viet Nam
Rape with no aggravating factors	Minimum 4 years and up to 20 years imprisonment a fine	Minimum 2 years and maximum 7 years imprisonment
Rape with aggravating factors	Can extend to life imprisonment or death in a few situations	Can extend up to 7 and 15 years imprisonment and 12 to 20 years imprisonment, life imprisonment or death, depending on which aggravating factors
Sexual/indecent assault	Maximum 10 years and a fine	Minimum 6 months to 3 years imprisonment

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.¹³⁶

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.

Diagram 1. Overview of the mapping of the criminal justice (CJ) process



136. The legal process map design used in this report relies heavily on the designs created by Lovett, J., and Kelly, L. (2009) Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe (Child and Women Abuse Studies Unit, London Metropolitan University).

Table 7. Summary of reporting procedures in each country

Reporting	Thailand	Viet Nam
Who can report a matter?	Victim, or a parent/guardian on behalf of the victim	Victim, parent/guardian on behalf of minor or disabled victims, or a third party who witnessed or knew of the offence
Requirements for filing a report	Victim (or legal representative for a minor) must sign a written complaint	Victim (or lawful representative for minors) must submit written denunciation or sign a written complaint
Time limits	Three months from date of alleged incident (for adult victim)	No time limits
Initial reception/ taking statement of victim	<p>If victim is female, interrogation must be conducted by female officer unless victim consents or for reasons of necessity</p> <p>If victim under 18, must be interviewed separately at place suitable for the child and in the presence of a psychologist, social worker, person requested by child or public prosecutor; audio-visually recorded and not to be questioned repeatedly</p>	Nothing specific regarding female victims of sexual violence
Recourse if police do not accept written complaint?	Victim has option of private prosecution	Victim may go to Procuracy or Court for order compelling police or complain to officer's superiors
Can victim withdraw report?	Yes	Yes, if she withdraws consent, the victim cannot file again
Mandatory reporting (third parties)	No obligation for sexual offences Obligation under domestic violence law	No obligation for sexual offences Obligation under domestic Violence law
Availability of protection orders	Protection orders only available to victims of domestic violence	Forbidden contact orders only available to victims of domestic violence

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.”¹³⁷ 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

137. Data derived from a social worker (who prefers to be anonymous in the report) during key informant interviews with NGO representatives and staff from Ministry of Social Development and Human Security in all three study sites in Thailand.

International norms and standards relevant for initial contact/reporting:

- “ Urge States to ensure that a victim reporting a crime of sexual violence must be treated with dignity and respect and confidentiality and privacy must be maintained throughout.
- “ Urge States to provide services that are prompt, professional, non-judgmental and victim-focused.
- “ Ensure police are responsible for facilitating access to health services, victim support, safety planning and protection services.
- “ Provide trained personnel to be available to assist and support the victim in filing her complaint.

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,¹³⁸ 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.¹³⁹ Trauma research further suggests that victims “might often recall accurate information about the sexual assault after one or even two full sleep cycles.”¹⁴⁰ 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.

138. Secondary victimization is defined as “the victim-blaming attitudes, behaviors, and practices engaged in by community service providers, which results in additional trauma for sexual assault survivors.” from Rebecca Campbell and Sheela Raja (2005).

139. Lonsway, Kimberly (2005) Interviewing the Victim PART I: Interviewing Techniques Based on the Realistic Dynamics of Sexual Assault. End Violence Against Women International. p.18-24.

140. Ibid. p.19.

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.¹⁴¹ 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 audio-visually 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

141. As a requirement of article 133 of the Thailand Criminal Procedure Code, women inquiry officers must conduct the examination of offences related to sexuality, including rape. However, of 1,465 police stations nationwide, there are only approximately 300 policewomen at the commissioned officer level (data provided by Police General Chatchawal Suksomjit, Deputy Commission General, Royal Thai Police at a key informant interview on 24 December 2013).

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.

Table 8. Summary of criminal procedural legal factors that impact on attrition: initial contact and reporting

Contribute to attrition	Reduce attrition
No female- or victim-friendly facilities	<ul style="list-style-type: none"> “ Establish safe spaces where women and girls can wait and be interviewed with respect in a manner that protects their dignity, privacy, and confidentiality “ Treat women and girls humanely “ Limit access to case files; retain case files
Poor or inadequate reception and treatment by receiving officers	<ul style="list-style-type: none"> “ Maintain a record of all incidents that are reported to police “ Develop and require gender- and victim-sensitive responses by all receiving officers “ Adequately resource and train receiving officers to aid and support victims in a non-judgmental, empathetic manner “ Monitor and evaluate the quality of work being done
Onus is on the victim to make formal report	<ul style="list-style-type: none"> “ Gender-sensitive and trained personnel available to assist and support victim in filing her complaint
Removing victim agency (mandatory reporting)	<ul style="list-style-type: none"> “ Promoting victim agency during reporting stage
Excessive wait times	<ul style="list-style-type: none"> “ Make sexual violence investigations a priority; require immediate action “ Coordinate investigations with support, legal and health service providers
Repeated telling of story	<ul style="list-style-type: none"> “ Minimize the number of times a woman has to tell her story to reduce secondary victimization “ Take her statement at a time and in a place that is comfortable and safe for her “ Record and confirm the accuracy of content of the woman’s statement

Contribute to attrition	Reduce attrition
Restricted statute of limitations for reporting	<ul style="list-style-type: none"> “ No statute of limitations for reporting
No access to immediate, urgent or long-term protection measures	<ul style="list-style-type: none"> “ Available effective protection measures
No risk assessments, safety planning	<ul style="list-style-type: none"> “ Conduct ongoing risk assessments, and facilitate safety planning throughout the justice process “ Work with other service providers to ensure holistic, ‘wraparound’ services for the victim

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.¹⁴² 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

142. Information derived from victims and from NGOs which have worked closely with victims of sexual violence.

Table 9. Summary of investigation procedures in each country

Investigation	Thailand	Viet Nam
Forensic examination	Forensic examination of victim is mandatory regardless of time between report and incident	Forensic examination of victim is not explicitly mandatory pursuant to the Criminal Procedure Code Victim must consent to forensic examination
Timing of the investigation	Investigation must be completed within two months. Investigation period can be extended by three months (maximum, twice) if reasonable and necessary	The time limit for investigations depends on the classification and seriousness of crime (generally 24 months)
Interrogation of suspect	Inquiry officer can issue a subpoena, upon reasonable grounds, for the suspect to come for an official inquiry	Suspect may be taken into custody (if known to victim) and be examined or interrogated
Victim assistance and support		Circular 07/2011 gives priority of legal aid to victims of sexual violence

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.¹⁴³

143. Thai Criminal Code, literature review of Supreme Court cases.

International norms and standards relevant for initial contact/reporting:

- “ Promote timely investigations that are conducted in a professional manner, meet evidentiary and investigative requirements, exhausting all available means to identify and arrest the suspect, considering throughout the women’s and girls’ safety, security and dignity.
- “ The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems¹⁴⁴ calls on States to ensure appropriate advice, assistance, care facilities and support to female victims of violence throughout the criminal justice process in a manner that prevents repeat victimization and secondary victimization.

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.”

Male forensic expert, Viet Nam

144. GA res 67/187, annex.

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?”

Male forensic expert, Viet Nam

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.¹⁴⁵ 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).¹⁴⁶

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.¹⁴⁷ Although medical research recommends collection within 72-96 hours of the assault to preserve evidence,¹⁴⁸ 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.

145. Section 131(1) of the Criminal Procedure Code, Thailand.

146. Section 152 of Code of Criminal Procedure, Viet Nam.

147. WHO Guidelines for medico-legal care for victims of sexual violence. 2003. p.18.

148. Dumont, J. and D. White (2007) The Uses and Impacts of Medico-legal Evidence in Sexual Assault Cases: A Global Review, WHO, p.13.

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.”

Male forensic expert, Viet Nam

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.

Legal assistance to victims

In the words of one survivor: “Law is power and lack of legal knowledge is thus lack of power. I felt powerless.”

Thailand and Viet Nam have different measures in place to provide legal advocacy and support to victims. In practice, however, the study found that limited implementation of these measures often left victims unsupported and unaided throughout the investigative and trial processes. In Viet Nam and Thailand, victims have the possibility to stand at trial as *partie civile*. This means that the victim has legal standing in the criminal trial as a party, not just as a witness for the prosecution. As such, she can have a lawyer assist her throughout the criminal process, who can request that the judge gather certain evidence or interview witnesses during the investigation phase and represent the victim at the criminal trial. Under certain situations, victims may be able to access state-run legal aid assistance.

Interviews with seven survivors in Thailand revealed that all victims felt they would have been more empowered if they had had legal

knowledge. Knowledge that would have been useful included awareness of the 3-month period to report to the police after the incident occurs, an understanding of the importance of collecting forensic evidence immediately after the rape occurs, awareness of the right to request a female inquiry officer, and of the right to oppose bail for the accused.

In Viet Nam, despite the fact that legal aid is available to support victims as witnesses in the process, researchers heard accounts that highlight the denial of the right of women to a fair trial, owing to a failure to receive legal assistance to pursue their cases.

“The court did not allow social workers to be with the plaintiff during the trial in order to support her emotionally and possibly to speak on her behalf if needed. The jurors are just sitting there, and they know nothing about a victim-centred approach, particularly in rape cases.”

Female social worker, Viet Nam

Table 10. Summary of criminal procedural legal factors that impact on attrition: Investigation

Contribute to attrition	Reduce attrition
Mandatory invasive forensic examination	<ul style="list-style-type: none"> “ Authorize forensic examinations without requiring police report “ Ensure that medico-legal examinations are arranged only if required, and are conducted in a timely manner “ Establish and enforce forensic examination guidelines that minimize intrusion and abide by internationally accepted standards^{149,150} “ Arrange for analysis and report preparation in a manner that meets chain of evidence requirements
Lengthy investigations	<ul style="list-style-type: none"> “ Prioritize sexual violence investigations to reduce delay “ Monitor investigation progress on an ongoing basis

149. UN Women, World Health Organization, United Nations Population Fund, United Nations Development Programme, United Nations Office on Drugs and Crime (2015) Essential services package for women and girls subject to violence.

150. World Health Organization (2003) Guidelines for medico-legal care for victims of sexual violence. Geneva.

Contribute to attrition	Reduce attrition
Poor or inadequate investigations	<ul style="list-style-type: none"> “ Ensure that immediate and urgent protection measures are accessible to all victims “ Develop and implement investigation protocols and guidelines that define required investigative standards that meet evidentiary requirements “ Ensure that all evidence is gathered to establish the credibility of the allegation rather than the credibility of the victim “ Ensure that all evidence is analysed and appropriately prepared for presentation in court “ Ensure that the suspect is identified and arrested as quickly as possible “ Ensure that supervisory and management accountability is maintained throughout the investigative process
Poor engagement and communication with the victim during the investigation	<ul style="list-style-type: none"> “ Make victim support available. Assign victim liaison to support and make referrals to required services “ Specify in-person contact when the suspect is apprehended or released or when the court date is changed

4.4 Prosecution/pre-trial processes

The prosecution/pre-trial stage of the criminal justice process focuses on those cases that have been referred by the investigating body to either the prosecutor in Thailand, or the procuracy in Viet Nam. These two bodies either

select or approve the appropriate charge or lay an indictment, and include the courts’ pre-trial review process to determine whether the case should be sent for trial. In Thailand, this is done by a preliminary judge and in Viet Nam by an assigned judge.¹⁵¹

Table 11. Summary of pre-trial procedures in each country

Prosecution/pre-trial processes	Thailand	Viet Nam
Laying charges/ indictment	Prosecutor prepares the indictment (Private filing) Victim can hire a lawyer to file matter in Court	Procuratorate issues a decision to prosecute or not and prepares the indictment (the charge)
Plea bargaining	No plea bargaining is allowed	No – but judges can get involved in informal settlements
Pre-trial detention	The courts can issue a warrant for suspect arrest and detain him up to 84 days in cases of rape and 48 days in cases of indecency	The accused may be subject to pre-trial detention to prevent accused from hindering the court process
Preliminary hearing or review/committal hearing	Compulsory preliminary hearing if case filed by an individual (not compulsory if filing by prosecutor)	An assigned judge reviews the case file and makes a determination if case is ready for trial

151. In civil law systems this judge is judge d’instruction or investigating judge. However, in Viet Nam, respondents noted that in their system this judge is referred to as ‘assigned’ judge rather than investigating judge, as the judge is not involved in the investigation stage but conducts a review of police and procuracy case files.

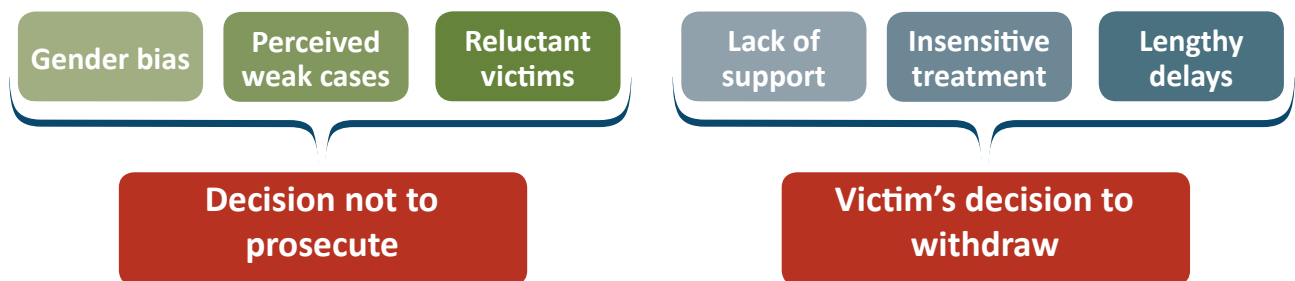
**Attrition at the prosecution/pre-trial stage:
What did the study find?**

Attrition at this stage involved decisions made by the prosecutor in both countries, not to file an indictment. Attrition also included those cases being dropped from the process by decisions made by the judiciary not to commit or refer the matter to trial in both Thailand and Viet Nam. Cases were also lost at this stage in situations where the victims withdrew.

The study's findings indicated that pre-trial/prosecutorial stage attrition rates in both countries was relatively low, and amounted to the fewest number of cases being dropped throughout the criminal justice process. According to the case review in Viet Nam, only 2 out of the 88 cases referred to the pre-trial stage were dropped. The case review found that the decision to drop these cases was made by the criminal justice officials (the procuracy or assigned judge) and not by the victim.

Criminal justice practitioners explained that this low attrition rate was likely due to the fact that the procuracy is involved in the criminal investigation at an earlier stage, as they are required to approve the decision to institute a criminal case. Thus they have already influenced the decision to drop what they perceive as 'weak' cases during the investigation stage. One female prosecutor described her role as "sticking stamps, meaning approving that whatever is sent from the police passes through your desk." The findings also indicate that it is common for the assigned judges who review the dossier (the case file), to approve the case for trial: A female legal expert said "The judges just rely on the dossiers for their convenience. It is obviously easier for them. They would rather do that than making further effort to look into the case."

Diagram 2. Main causes of attrition at pre-trial stage



Common reasons for attrition

While the attrition rates at this stage are difficult to calculate and compare across the countries, the qualitative interviews provide some common reasons for cases being dropped at this stage of the criminal justice process.

Perceived weak cases: Assessing the evidence

In both countries, prosecutors and judges act as gatekeepers to the courts, not allowing for what they consider as 'weak' cases to enter

the next level. As far as is known, there are no prosecution policies that restrict prosecutorial discretion, for example, mandatory or pro-prosecution policies in cases involving sexual violence against women and girls.

In both Thailand and Viet Nam, interviews with prosecutors and judges, as well as investigators and police, raise the issue of evidentiary challenges in sexual violence cases. These included: concerns about victim credibility; lack of forensic evidence; concerns that the victim delayed reporting or refused a medical

International norms and standards relevant at the pre-trial stage

- “ Urge States to introduce criminal pre-trial processes that are non-biased and sensitive to the specific needs of victims and survivors of sexual violence.
- “ Provide that the primary responsibility for initiating prosecution is to be on the prosecution, not the victim.
- “ Promote the principle of offender accountability by ensuring the selection and approval of charges reflect the gravity of the conduct.

examination, or was intoxicated at the time of the incident; and lack of corroborating evidence. In Viet Nam, many interviewed officials described the burden of proof and finding physical evidence of sexual violence as being often impossible to meet, which means often that the case will not proceed. According to most Vietnamese officials interviewed, a victim statement cannot stand on its own.¹⁵² The lack of clear understanding of the evidentiary requirements needed to proceed with a prosecution was evident. There was little appreciation of the different evidentiary requirements for sexual violence cases, classified as ‘consent’ cases, versus ‘identity’ cases. There was also over-reliance on forensic evidence, even in cases where there is delayed reporting and likely contaminated or little forensic evidence available, or no visible physical injuries.

In Thailand, where evidence collection and investigation is the responsibility of the inquiry officer, insufficient evidence or poor process can lead to challenges for the prosecutor:

“Without trust in the system and with increasing complexities of the system, it is becoming difficult to have a strong case with sound evidence for a rape case as the victim hesitates to speak or fight further. We, the prosecutors, cannot do much because it is the inquiry official who interrogates and collects evidence. We are like a postman delivering a package to the court.”

*Pro-bono lawyer of community NGO,
Thailand*

Prosecutors need to ensure that they have all available relevant evidence before them prior to determining on filing an indictment and selecting the appropriate charge that reflects the gravity of the criminal conduct. As one NGO representative from Thailand explains, even when solid evidence is available, prosecutors can influence the decision to settle a case: “People may think once the case reaches the prosecution stage with solid evidence, it will go through easily, but my experience supporting rape victims is somehow different. There was one case where a prosecutor called the victim and asked her to go to his office to receive money as compensation from the suspect’s family. She did not go, but the prosecutor office kept calling and insisting that she accept the money. It is common, I think, as an offence that falls under Section 276 can be settled at all stages of the criminal justice system. And maybe it is Thai culture or maybe it is easier for practitioners to just try to settle cases. Most victims I have worked with were first told to ‘compromise’ and ‘accept’. Is that what women are supposed to do? Accept?”

152. Prof Huong’s report p.42.

Gender bias contributing to attrition rates at the prosecution stage

Prosecutors may condone or falsely believe that women and girls bring on violence by their actions. There are a number of negative beliefs about sexual violence based on gender discrimination and stereotyping (see myths in section 2.2). If these myths are formally or informally embraced by prosecutors, this results in downplaying the perpetrator's responsibility and criminality while shifting the blame towards the victim. The victim's behaviour and personal characteristics then take centre stage rather than the perpetrator's actions. This generally results in suspicion of the victim's claim of sexual violence and little support or justice being provided to the victim.

Gender biases can also result in prosecutors trivializing the sexual violence, and reducing charges against the perpetrator. Most of the prosecutors interviewed in Viet Nam said that they tended to raise doubt about the credibility of the rape allegation as a result of the inconsistent statements. It was noted that these seemingly inconsistent statements are bound to create unfavourable impressions with regard to the victim, except child victims. "A problem in the investigative process is the inconsistency of statements made by victims of sexual offences who are women and children. For example at the precinct X, the victim said this was her first sexual experience but later she changed her story saying that there had been previous sexual encounters. This may be due to her confused mental state but it may result from agreement with the accused to reduce the seriousness of the crime."

Insensitive treatment of victims

If victims have an unsatisfactory or even hostile experience with the criminal justice system, they distrust the system or do not believe that the system can help them. In both countries, interviews with victims and civil society

raised issues concerning the lack of trust and confidence in the criminal justice process and actors, as well as fears of not being believed or treated with disdain or contempt.

In both countries there are no specific obligations on the criminal justice system service providers to keep the victim informed of progress of the investigation and any decisions they make. Interviewees noted that there is limited to no communication with justice system service providers, and that there is little opportunity for victims to provide input into decisions made at the reporting, investigative or court stage. The lack of victim-engagement strategies contributes to increased victim stress, humiliation and intimidation during the legal process.

In Viet Nam, a social worker supporting a young girl who had been raped by her uncle-in-law re-iterated the frustration of the victim's mother with the prosecution process.

"That day he (the accused) volunteered all the necessary information, he spoke the truth, but later denied everything. They (prosecutor) did not let me see the notes taken at the police station, the only evidence given was that I took the girl to have an examination of her wounds. In the beginning the police said that with this crime this guy should get 12 to 13 years at least. Even the prosecutor lady who investigated the case said so. But later they passed a completely different judgment.... They gave him a much lighter sentence (charging him with child molestation rather than rape of a child)."

Female social worker explaining a mother's story, Viet Nam

Findings from Viet Nam indicate that prosecutors rarely have contact with the victims directly, summoning them only if they see a need to verify a seemingly contradictory statement.

Lengthy delays and lack of preparation for trial

The slow process of prosecution can cause fear and frustration among victims. In Thailand, there was little evidence of practices that promoted victims' agency and expedited hearings. Communication with victims on their case progress was often seen as non-existent in both countries. As one survivor in Thailand explains: "I can easily sum up my experiences in the prosecution stage in three words; I don't understand. I don't understand the law, I don't understand why it takes so long and I don't understand language used in correspondence from the prosecutor office. Of course I felt like quitting and leaving everything behind."

Ongoing and extended delays result in victims no longer wanting to participate in proceedings. Interviews with victims and civil society noted that delays in trials continue to be a problem. In Thailand and Viet Nam there are no specific provisions that explicitly provide for the fast-tracking of sexual violence cases.

Studies confirm that support and assistance to victims throughout the criminal justice system impacts on the continued participation of victims, increases the likelihood of successful prosecution and conviction, increases victim satisfaction irrespective of the criminal justice outcome, and reduces the effects of secondary victimization.¹⁵³ Another study showed that the

way victims are supported and treated in the criminal justice process is as important as the eventual outcome of the case.¹⁵⁴ The confusing nature of criminal justice legal processes, together with lengthy court procedures and delays, may leave victims with little hope that their cases will ever go through. In both countries there are no specific criminal procedures in place to assist and support the victim through the investigative process, nor are there specific obligations on the police to keep the victim informed of the investigation and any decisions they make.

The value of support is best explained by victims who have used support services. Victims surveyed showed that in those cases that resulted in acquittals – but where victims were supported throughout by a lawyer, a support worker, or civil society organization – while they were disappointed in the outcome, they did not regret pursuing the case. Victims in Thailand accessing NGOs such as the Women and Men Progressive Movement Foundation, Foundation for Women, and Friends of Women Foundation, often found the support they needed to enhance their legal awareness and work through the challenges associated with progressing through the criminal justice system. As one survivor explains: "I was asked why do I trust an NGO so much. And if I trust an NGO, why do I have to come to the police and go through justice system. To be honest, I did not trust anyone but this NGO has supported me greatly. They provided me with legal advice, connected me to relevant organizations and staff have become my friends. They have helped me regain strength. They treated me with respect."

153. Lovett, J., Regan, L. and Kelly L. (2004) *Sexual Assault Referral Centres: Developing Good Practice and Maximizing Potential* (Home Office: London) and Goodman, L., Bennett, L., and Dulton, M.A. (1999) *Obstacles to victims cooperation with the criminal prosecution of their abusers: the role of social support*, *Violence and Victims*, 14/4.

154. Ford, D., and Breall, S. (2000) *Violence against Women: Synthesis of Research for Prosecutors* (National Institute of Justice).

Reluctant victims

Victims can be reluctant to cooperate with prosecutors and the criminal process for a number of reasons, including those previously described. Furthermore, there may also be safety concerns. While both Thailand and Viet Nam provide for pre-trial detention of the accused, it was unclear whether there are specific provisions covering pre-trial release conditions that would prohibit contact with the victim or obligations on the judge when determining pre-trial release to conduct a risk assessment. It does not appear that the justice systems in either country provide for any reference to the potential need for protection measures as a consideration in court release or bail proceedings.

4.5 Trial processes

The trial process stage of the criminal justice system focuses on those cases that have been referred to trial, whether by a preliminary judge in Thailand, or an assigned judge that reviews the case file in Viet Nam.

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

Attrition at this stage involves those cases where: the court acquits the accused; the accused absconds before trial and the prosecutor decides to discontinue the case; the victim decides to withdraw from the legal process, or retract her statement; or where the victim declines to cooperate for any reason, such as reaching an informal settlement. The study's findings indicate that attrition at trial varies greatly in both countries.

Table 12. Summary of criminal procedural legal factors that impact on attrition: Pre-trial processes

Contribute to attrition	Reduce attrition
No prioritization of sexual violence cases	•• Procedures that prioritize sexual violence cases
Procedures that allow for delay	•• Ensure that prosecutors make all discontinuance decisions
Time restraints that have prosecutors making decisions before completion of all evidence	•• Promote evidence building that focuses on the credibility of the allegation rather than the credibility of the victim/survivor
Forced mediation, alternative dispute resolution in cases involving violence against women and girls	•• Pre-trial processes take into account the unique needs and perspectives of victims/survivors, respect their dignity and integrity and minimize intrusion into their lives
Lack of effective protection measures	•• Reduce barriers that place undue pressure on the victim/survivor to withdraw charges
Reduced severity of charges	•• Correct charge and approval of the charge made quickly and based on application of clear procedural and evidential standards

In Thailand, the findings from the case review did not provide any indication regarding attrition rates at trial, as the case files sampled from the investigation stage could not be traced to the courts due to different case file numbers being used by different parts of the system and the lack of access to court records. However, according to a review of national statistics, 20-30 percent of cases that entered the trial stage resulted in acquittals.

In Viet Nam, the quantitative sample of this study indicated very low attrition at this stage, with a high percentage of cases that were set for trial resulting in conviction. The case review found only 1 out of the 86 cases referred to trial that had resulted in an acquittal. Interviews with criminal justice practitioners confirmed that once a case was approved by the procuracy, it went to trial quickly and resulted in high conviction rates.

Table 13. Summary of trial procedures in each country

Trial processes	Thailand	Viet Nam
Overview of trial	Trial has adversarial and inquisitorial elements	Trial has inquisitorial and adversarial elements
Role of victim	Victim has standing as a party at the criminal trial. Victim’s lawyer can cross examine and call evidence in chief	Victim has standing as a party at the criminal trial. Victim’s lawyer can cross examine and call evidence in chief
Requirement of victim to testify	The victim may be required to provide examination-in-chief and cross examination Where the victim is a child, court may admit a tape recorded statement for examination in chief There do not appear to be any limits on what the victim may be cross examined on	The victim may be required to be present at trial to answer questions from judge, procuratorate and defence lawyer after the judge reads her statement There do not appear to be any limits on what the victim may be cross examined upon
Protection for victims during trial	Courts may be closed for cases involving sexual offences on request by prosecutor Child victims can be questioned through a psychologist or social worker Victims, as witnesses in a criminal trial, have special protections under the Witness Protection Act (2003) – for example, safe accommodations, protection of identity, and any measures to help and support a witness	Victim can request a closed trial or protection of their identity For child victims, can request screens or CCTV
Evidentiary rules	No specific evidentiary rules prohibiting past sexual history	No specific evidentiary rules prohibiting past sexual history
Timeframe	No provisions regarding time to set trials	Trial time: 30 days to 2 months depending on seriousness of crime
Special Courts	Pilot special domestic violence court	No
Compensation	Victim must file her own motion seeking compensation.	Victim can seek compensation at trial

Predictors for convictions

The study findings point to some of the factors that can predict the probability of conviction.

Inverse relationship between conviction and age of the victim

In Viet Nam, while the ratio of minor victims to adult victims amongst the sample cases reviewed was 69.4 percent minors to 30.6 percent adults, the cases of minors resulted in higher conviction rates. Victims under 13 years of age had an 81 percent conviction rate; victims between 13 and 16 years old resulted in a 92 percent conviction rate, while victims over 16 years only resulted in 37 percent of convictions. This predictor is similar to other attrition studies which find that conviction rates are generally higher for victims under 20 years.¹⁵⁵

Victim–offender relationship

The quantitative data from this study did not provide clear predictions on whether the factor of the relationship between the victim and the accused is a good predictor of the probability of conviction. However, in other attrition studies, victim-offender relationships were a significant factor at almost all stages: the significant predictors were strangers and current partners or boyfriends.¹⁵⁶ This means that attacks by strangers were more often associated with false complaints and no offence cases and the high attrition rate was due to their association with unidentified suspects. However, if prosecuted, stranger attacks were much more likely to result in a conviction, giving these cases a relatively high overall conviction rate.

International norms and standards relevant at the trial stage

- “ Call for measures to prevent further hardship and trauma that may result from attending the trial itself and to ensure that trial processes maximize the victim’s cooperation, promote her capacity to exert agency during the trial stage while ensuring that the burden or onus of seeking justice is on the State.
- “ Urge States to have criminal procedural and evidentiary laws that ensure a friendly and enabling courtroom environment for victims to feel safe and comfortable recounting what they have experienced; procedures to minimize re-victimization; and the application of evidentiary rules in a non-discriminatory manner.
- “ Call on all States to eliminate the requirement that the victim’s testimony be corroborated; place restrictions on the introduction of the victim’s prior sexual conduct; and establish legal provisions or the application of special measure for vulnerable and intimidated witnesses.

Aggravating factors

Consistent with other attrition studies, the qualitative interviews with criminal justice officials indicate that, generally where aggravating factors such as violence and injuries, use of weapons, or multiple accused are present, they felt this was a strong predictor of a case resulting in a conviction. In Viet Nam,

many officials interviewed shared the view that cases of rape which showed signs of the perpetrator’s use of violence, visible signs of resistance on the victim’s part and bodily injuries to the victim, would more likely result in the perpetrator confessing and thereby being convicted. The 39 out of 121 cases reviewed in Viet Nam that were classified as gang rape,

155. New Zealand attrition study, which also cites other attrition studies.

156. New Zealand attrition study, which also cites other attrition studies.

violent rape or rape with a weapon, all resulted in conviction.

Perceived negative attributes of the victim

The high percentage of convictions in cases involving girl victims can have indications of perceived ‘good character’ victims versus ‘bad character’ victims. It was not clear whether perceived negative attributes of the victim, such as alcohol and drug use, criminal history, previous allegations, etc. were significant in terms of conviction rates. Nor was it clear if the victim refused a medical examination or delayed in reporting, these factors were seen as negative attributes of the victim.

Available corroborative evidence

Global studies have found that there are higher conviction rates in cases involving physical evidence, forensic evidence and witness statements. This was consistent with interviews with criminal justice officials in Viet Nam.

Judicial biases

In many countries, the criminal nature of sexual violence and expresse bias against its victims, condoning or falsely believing that women bring on violence by their actions, such as arguing with a spouse, dressing provocatively to go out, or walking alone at night.¹⁵⁷ Interviews with the judiciary in both countries found that many judges held preconceived beliefs about attributes or characteristics female victims should possess or how they should behave.

In Thailand, judges consider the issue of consent generally through the determination of the past history between the victim and the suspect, which includes the victim’s sexual history and her appearance at the time of incident.

These judicial biases based on myths and stereotyping can impact on how the judge

assesses the victim’s testimony and her credibility, the offender’s culpability, and whether the conduct in question is viewed as criminal in nature. Such biases can compromise the impartiality of the judge’s decision and impair their ability to assess the facts, to misinterpret or misapply the laws and shape the legal results from the criminal trial. As seen from the statements above – where there is the belief that men are sexually active and women are sexually passive – the man is unable to control his hormonal urges and cannot be held responsible for his sexual misconduct, especially if provoked by what the woman is wearing or her behaviour. Where the victim is sexually active, or has acted immodestly, this can lead to victim blaming, believing that such women deserve rape and do not deserve the law’s protection.

Classifying victims based on stereotypes into categories of ‘bad’ victims versus ‘ideal’ or ‘authentic’ victims based on their lives, backgrounds and characteristics have implications when judges assess the victim’s credibility. Such biases include the inference that a woman who is sexually active has the propensity to consent to sex and must have consented, or that women who dress and behave inappropriately provoked the sexual violence and should therefore accept the blame. This leads to belief that such women are less credible witnesses.

Safeguards for victim while testifying

Court procedures are reportedly the most daunting experiences for sexual violence victims. The complicated nature of legal procedures and laws, as well as the overly punitive and adversarial orientation of the justice system – without much reference to the victim’s actual needs – can be seen as a major barrier to victims’ engagement with the legal system,

157. Morley and Mullender (1994), as well as confirmed in Bott et al. (2005) Preventing and Responding to Gender Based Violence in Middle and Low Income Countries: A Global Review and Analysis (World Bank Policy Research Working Paper 3618).

particularly in the absence of legal advocacy and support. The pressure to testify often serves as an additional stress factor for victims, and there is a need for court procedures that reduce experiences of intimidation, humiliation and stress.

Both countries have legal provisions which allow for closed hearings. However, neither country studied, specifically allows support persons to be with the victim at the trial. On the positive side, both countries allow screens or other types of measures such as CCTV to protect young victims from seeing the accused when testifying. In Thailand, child victims can also be questioned through a social worker or other appropriate person.

Despite the fact that trials are conducted differently in Thailand and Viet Nam, the victims and civil society groups in each country spoke about how daunting the experience of going to court and having to testify is for victims of sexual violence. For example:

In Thailand:

“In the case of a minor, the Court occasionally issues an order for the use of closed circuit television or video tape while questioning. The final deliberation on whether the case is sensitive and whether the equipment should be used belongs to the Court. However in reality, the equipment available at the court is of poor quality due to inadequate budget allocated for this purpose. More importantly, victims are not aware of their rights to request this method of questioning and hearing.”

Female researcher, Thailand

In Viet Nam, according to a female academic, victims in Viet Nam who have to speak about their rape in court feel inhibited about talking publicly about sex-related matters and fear

cross-examination, as they were worried about not being able to present their own case coherently but also to recall details of the acts of their assailants correctly (female academic, Viet Nam). NGOs have raised concern about the lack of safeguards for victims who have to testify in court:

“A judge can decide whether the trial is held in public or behind closed doors in order to preserve people’s privacy. The onus is on the victim to make the request. However, some judges think that high profile rape trials should be held in public for educational purposes (without the presence of the victim). It was not clear as to whether they consider the impact on the victim.”

Female NGO worker, Viet Nam

Generally, the courtroom environment in both countries pays little heed to the victim’s needs. The majority of courtrooms are staffed predominately with male judges and court staff who lack training on how to handle sexual violence cases and support victims. There are few special measures available to create an enabling courtroom environment. The main measure available in both countries is application for closed trials. However, victims reported that this is not always in place. If a victim does not feel safe and secure when providing her testimony or answering the court’s questions, she can appear hesitant or be viewed as providing inconsistent statements.

Application of evidentiary rules

As in many countries, victims of sexual violence in Thailand and Viet Nam are often treated unlike other crime victims. The interpretation of evidentiary rules in these countries illustrates how difficult it is for the victim to establish her credibility, to fend off inquiry and speculation regarding her character, to challenge the admission of irrelevant or highly prejudicial

evidence, and to counter the over-reliance on corroborative evidence.

Rape myths often invite judgment and skepticism and have historically served to justify unique case treatment evidenced in corroboration requirements, consent and resistance standards, the admissibility of victim character evidence, sexual history of the victim and drawing adverse inference when reporting is delayed. Even when the corroboration requirement has been removed from the law or there has been strict application of sexual history evidence, it remains the case that for no other crime is the credibility of the victim so subject to preconceived notions as in cases of sexual violence.

In principle, evidentiary rules should promote evidence-building that focuses on the credibility of the allegation, rather than the credibility of the victim. While a victim’s complaint should be regarded as credible and valid unless the contrary is clearly indicated, in practice, reliable testimony from the victim is often not seen as sufficient to secure a conviction. Rather, many judges look for medical and/or circumstantial evidence for additional proof of injury.

In Thailand and Viet Nam, there are no explicit prohibitions against corroborative warning, or using evidence of the victim’s past sexual history or adverse inference if reporting is delayed. However, the study indicates that in

Table 14. Summary of criminal procedural legal factors that impact on attrition: Trial processes

Contribute to attrition	Reduce attrition
Corroboration requirements	“ Procedures that limit or ban public presence at the trial, for example, in-camera trials or closed trials or removal of all unnecessary persons
Evidentiary rules that allow for past sexual history of victim or victim character evidence	“ Evidentiary rules that limit past sexual history of victim or victim character evidence
Evidentiary rules that require victim must prove she resisted the perpetrator	“ Limit or restrict media publishing of personal information of victims
Adverse inference rulings (requiring recent complaints)	“ Procedures that ensure privacy, integrity and dignity of victim
Allow for aggressive cross examination of the victim in court	“ Onus of applying for special measures on State (prosecutor/judge) and not on victim
Allowing situations where the victim can be intimidated by accused and/or his family at the Court	“ Procedures that facilitate the victim’s testimony in a manner that allows her to avoid seeing the accused (i.e. screens, live link, video recorded evidence, evidence given in private, examination through an intermediary)
	“ Allow for examination conducted through an intermediary or use of video-recorded interview as evidence in chief
	“ Allow for expert witness with appropriate experience to provide information about the dynamics and complexities of sexual violence against women
	“ Procedures that allow a family member, friend or professional support person to be with victim during testimony

Viet Nam, in practice, a victim’s past sexual history may be used to discredit her complaint. Furthermore, while there is no requirement for corroboration evidence, in practice, a weak case or one that lacks evidence is regarded as one in

which there is no sign of the perpetrator’s use of violence, no visible signs of resistance on the victim’s part, no bodily injuries on the victim, and no other witnesses.

5. Institutional contributors to attrition

5.1 Comparing the functions of Criminal Justice System institutions and other services providing institutions

Criminal justice system sexual violence service providers and service provider responsibilities vary from one country to another. The following table provides an overview of service providers and service provider responsibilities in each country.

Table 15. Sexual violence service providers

Service provider	Thailand	Viet Nam
Criminal justice system		
Police	<p>Takes verbal or written complaint</p> <p>Inquiry officer decides if case is a criminal or family matter; records victim testimony; investigates; and prepares case for charge</p> <p>In case of minor, interdisciplinary team is established¹⁵⁸</p>	<p>Takes reports</p> <p>Formal institution of criminal investigation is approved by procuracy</p> <p>Once approved, investigates the incident</p>
Magistrate	n/a	n/a
Prosecutor	<p>Acts as plaintiff for criminal case; if needed, orders inquiry officers to gather more evidence; files motion to court requesting detention order; issues prosecution order; lays charges; presents evidence; conducts examinations in chief and cross examinations of victims; witnesses and accused</p>	<p>Approves institution of criminal case; files indictments; represents procuracy at trial</p>
Judge	<p>Considers evidence and makes a decision, passes sentence</p>	<p>Assigned judge: conducts review of case file/dossier; trial judge: considers evidence; passes sentence</p>
Legal representative for victim	<p>Provides legal advice to victim; assists victim in gathering further evidence; represents victim at trial (and can assist victim in case of settlement)</p>	<p>Obtains investigative file; can gather evidence on behalf of victim and represent victim at trial</p>

158. An interdisciplinary team consists of an inquiry official, prosecutor, and psychologist or social worker.

Service provider	Thailand	Viet Nam
External service providers		
Helpline ¹⁵⁹	24 hour nationwide helpline through MSDHS OSCC. Available for both counselling and referral services for victims	Limited provision by Viet Nam Women's Union; some funded projects in some provinces; Center for Studies and Applied Sciences in Gender, Family, Women and Adolescents (CSAGA) operates a hotline
One Stop Shops/ Crisis Centres ¹⁶⁰	750 nationwide: provide health/physical aid; counselling services; referral services; and bring multi-disciplinary team together to aid victim	None
NGOs: Victim support and counselling services	Large network of NGOs working specifically on sexual violence, providing counselling, legal and sometimes financial aid to victim	Limited, more services available in cities (CSAGA, Hager International, Community Health and Development [LIGHT], Centre for Study on Family Health and Community Development [CEFACOM]) Women's Union are available but no specific services for sexual violence victims Temporary shelters and reliable addresses predominately perceived to be for victims of domestic violence
Government services	Ministry of Health, Ministry of Social Development and Human Security (MSDHS), Royal Thai Police, Office of Attorney General, OSCC (which are under MSDHS and MoPH)	Ministry of Justice, Department of Legal Aid; Ministry of Public Security; Supreme People's Court, Supreme People's Procuracy, Ministry of Labour, Invalids and Social Affairs (MOLISA), Ministry of Culture, Sports and Tourism (MOCST) and Ministry of Health
Medical service providers	Provide healthcare and conduct medico-legal exams	Provide healthcare and conduct medico-legal exams

159. Helpline is defined as a free telephone line that provides advice, information, support and crisis counselling.

160. Rape or sexual assault crisis centres can be community-based or hospital-based, providing a combination of services, including helpline, advocacy support and counselling. One Stop Centres commonly bring together medical, law enforcement, legal and victim support professionals in one location to provide a full range of care for victims and gather and process the related medico-legal evidence.

5.2 Institutional contributors to attrition

Criminal justice institutions must be held accountable for ensuring that the exercise of power and enforcement of laws by police, and the application of laws by the prosecution, the courts, and other criminal justice officials, is undertaken according to the rule of law and that officials are held accountable for any breaches through appropriate and functioning oversight and accountability mechanisms.¹⁶¹

The research highlighted institutional factors that reduce trust and confidence in the justice system and its service providers to address sexual violence. The study found that these factors can contribute significantly to attrition at all points in a woman's and girl's journey through the criminal justice system. They can be broadly grouped into:

- Weak governance and accountability mechanisms.
- Limited institutional capacity and capable resources.
- Insufficiently developed infrastructure.
- Very limited monitoring and evaluation.
- No strategic, comprehensive plans and limited multi-disciplinary and multi-agency interactions.

Weak governance and accountability mechanisms

Attrition alert

Without ethics and service standards, policies and codes of conduct that outline expectations and consequences for breaches of professional accountability, and follow-up when those requirements are breached, criminal justice service providers can proceed with impunity.

Thailand and Viet Nam have both enacted sexual harassment in the workplace legislation.¹⁶² However, there were no criminal justice system institutional codes of conduct or policies identified that reference this legislation; that focus on ensuring that professional accountability is maintained through the investigation and trial process; and ensure that departments, agencies and service providers are held accountable for their actions/inactions.

Attrition alert

The practice of bribery of criminal justice officials can result in the victim being ignored or pressured to settle the case outside of the criminal justice system.

A respondent from Viet Nam provided an example of a prosecutor who told the victim's mother that the offender has a big 'umbrella'; implying powerful protection by people in high places. They also found that the suspect and/or his family may lobby or bribe police or prosecutors to get the case dropped or have reduced charges laid (e.g. reducing a rape against a child charge to an obscenity charge). It was noted that when the police or prosecutor receives the bribe, they would then pressure the victim and her family to accept the suspect's offer for compensation so that the matter can be settled outside of the criminal justice system. There were a variety of reasons associated with the practices of these officials, including their perceptions and attitudes towards rape and rape victims. In addition, research findings from Viet Nam found that the need for certain police units to show low serious crime rates or to receive 'happy neighborhood' awards also reduces the interest in handling sexual violence cases through the criminal process

161. UN A/RES/75/228 IV16.j)

162. Viet Nam Labour Code (2013) section 8.

Attrition alert

No or inadequate mechanisms to lodge and follow-up on complaints about poor, slow or inadequate criminal justice services leave a victim feeling helpless and without options for pursuing justice that is owed to her.

In Viet Nam, while the law affords the victims the right to file complaints and denunciations¹⁶³ and guarantees the right to compensation for persons suffering from damage caused by the criminal procedure-conducting bodies or persons,¹⁶⁴ the study found no indications that these provisions were used by victims of sexual violence who were not satisfied with their treatment by the criminal justice officials.

Attrition alert

Failure to implement and utilize mechanisms to address violence and sexual violence by service providers who are responsible for protecting, supporting and assisting victims, increases fear and distrust of the justice system and justice service providers, and increases distrust of and decreases confidence in the system's – and indeed the States' – ability to respond and protect its citizens. This reduces the likelihood that a woman will complain, follow up on her complaint, or pursue justice through the criminal justice process.

The study in Viet Nam reported a case from a female academic where a young woman was raped by a police officer whose duty it was to protect her from such a crime. The woman had committed a petty crime and was locked up in a cell, in a helpless position with no one around to intervene when she was raped. The offending

police officer was protected by his superior, who proposed a deal: the victim would be allowed to be released and not charged with petty crime if her mother dropped the rape case. Perpetration of sexual violence by police is not an isolated to this case and has also been found in other countries.¹⁶⁵

Attrition alert

Case coordination, management, and quality control are required to ensure that: cases are addressed in a timely manner; investigative processes are adhered to; all necessary interviews are conducted; evidence is collected and processed; and prosecutors and judges are in possession of all of the evidence and documentation; and witnesses available and ready to proceed at the trial.

Accountability for service provider action or inaction requires ongoing supervision, management, and evaluation. Failure to do so can result in deferrals, delays, lost files and acquittals, and create situations where although the victim may be interested in proceeding, police are unable to continue or conclude an investigation. Viet Nam and Thailand do not yet have clear directions in place for police regarding mandatory registration of initial incident reports.

The need for investigation planning, investigative guidelines, case management processes, and case monitoring and evaluation were not addressed or identified as an issue in any of the interviews with service providers. Several criminal justice system interviewees did, however, comment on shortcomings and gaps in police responses and investigations; ranging from a lack of response, to delayed response, to

163. The Viet Nam Constitution, article 74.

164. The Viet Nam Code of Criminal Procedures, article 30.

165. Verma JS, Seth L, Subramaniam G. 2013. Report of the Committee on Amendments to Criminal Law. http://timesofindia.indiatimes.com/realtime/justice_js_verma_committee_report.pdf p.78

inadequate investigation, insufficient protocols with medical and forensic facilities, and a lack of preparation for court.

Experiences shared by NGOs and victims also highlighted the need for quality control measures. For example, an NGO representative in Viet Nam relayed an incident where her client repeatedly tried to get police to take her complaint after her 8-year-old child was raped by a neighbour, only to be told by police that she was crazy, that there was no evidence, and that she should stop bothering them as there was no evidence of any crime.

The case file review also identified information gaps in police and court records and files. Gaps in both Thai and Vietnamese case files reviewed included: no indication of the age of the victim, whether or not the victim suffered injuries, the victim's relationship with the suspect, or whether the suspect was interviewed.

Attrition alert

Service providers require appropriate organizational structures, workloads, and resources in order to provide appropriate levels of victim-focused responses to sexual violence, or project future requirements for services. Without such foundations, victims are at risk of not receiving the services they need and deserve.

Institutional capacity and resources

A lack of institutional resources can place the onus on the victims, as well as police in some countries, to cover the costs of necessary services, such as forensic examination. Such costs for accessing the system can be prohibitive to the victim. The findings from Thailand showed that forensic costs were not being included in Universal Healthcare Coverage and were thus born by the women. The findings from Viet Nam showed that in order to carry out a DNA test, the investigator in charge of

the case must get formal approval from his superior who then decides to send the request to the Institute of Criminal Science of Ministry of Public Security. The investigator then has to pay out-of-pocket for the test expenses (for example, a bone test to determine the age of the victim, or psychiatric examination). Some investigating officers were concerned that if the victim dropped the case, officers would be likely to have to cover the costs. Thus the study found that the red-tape procedures and the reluctant attitude on the part of investigators, due to having to pay for the test in advance and the burden of paperwork for reimbursement, resulted in DNA testing being a rare option among investigators. A female prosecutor commented "Since I began to work in this office in 2004, I never came across a case involving a DNA request. The same happened when I worked in district S."

Thailand's procedural laws recommend that victims' statements be taken by a female police officer. Recognizing that it is important to provide victims with an option to speak to a female officer, the reality in both countries is that there are insufficient women in the justice system trained to fulfill receiving and investigation functions. In Thailand, statistically, there are only seven female inquiry officials for the whole of Provincial Police Region 5 (Northern Thailand) and just four in Region 4 (Southern Thailand).¹⁶⁶ Police women appear to work in silos and are marginalized within the police structure as they are tasked with singlehandedly dealing with crimes relating to sexual violence.¹⁶⁷

Attrition alert

Requiring female officers to take statements and investigate cases of sexual violence when there are very limited numbers of female officers available, can result in long waits and poor service for the victim.

166. Data provided by lead of female inquiry officers in Chiang Mai and Songkhla

167. Data provided by lead of female inquiry officers in Bangkok, Chiang Mai and Songkhla

To advance their career within the police system, police women have to pass a comprehensive test evaluating their skills in all areas of policing. Having exclusive skills on sex related crimes is thus not helpful to them in terms of career development. 16 out of 20 female inquiry officers interviewed thought that being assigned to work exclusively on ‘women and girls’ issues could be disadvantageous for their career (although they felt proud being able to help women and girls). One senior female inquiry officer who has “fought her way up the career ladder” stated “I enjoy working with women and girls and feel like I can help them as they are vulnerable. But the structure of the Royal Thai Police does not pay reward to such function. The exam and evaluation judge you from broader skills and general cases you are dealing with; how can female police officers pass the exam and triumph in the evaluation if we are already set to deal with sex-related offenses?”

In Viet Nam, where the legal framework does not contain a provision requiring a female police officer to take the statement of sexual violence victims, the study found that there has been attention paid to increasing female police recruits. However, another study raised the concern that many female police recruits were being assigned to office tasks including filing, production of identity cards, vehicle registration, and logistical work instead of field positions, resulting in few female criminal investigators in Viet Nam.¹⁶⁸

Although hiring more women will help to ensure women can choose to be interviewed by a female officer, this alone will not increase service effectiveness. The key to effective service provision rests in justice organizations

ensuring that police officers, prosecutors, judges and other service providers – regardless of their gender – have the training and the competency to work in a sensitive, victim-focused manner with women.

Attrition alert

Having investigators, prosecutors and judges with limited experience, and limited understanding of the dynamics and complexities of sexual violence providing services, can lead to inadequate service and poor decisions.

Courts in Thailand and Viet Nam are staffed predominately with male judges and court staff who lack training on how to handle sexual violence cases and provide support to victims. This disparity can also contribute to a lack of attention on women’s issues. In Thailand, the Thonburi Criminal Court is a pioneering model offering a range of women-friendly services. These include women-friendly courtroom facilities with a separate partitioned testimony area and a closed circuit TV, so that women can testify without confronting alleged abusers. The court also installed a ‘witness room’ as a safe waiting area outside the courtroom for women. Guidelines were established for domestic violence cases, which are classified separately from other cases, and all judges and court staff receive training on violence against women and the domestic violence law.

Attrition alert

Directives, standards, policies, and tools must be supported by ongoing professional development for service providers. Without the appropriate knowledge, skills and abilities, services providers will not be able to provide appropriate services for victims of sexual violence.

168. Notably, data provided orally during a meeting with Ministry of Public Security, 23 November 2012, indicated that less than 1 percent of the criminal investigators in Viet Nam are women. See UNODC and UN Women (2013) Assessment of the Situation of Women in the Criminal Justice System in Viet Nam: In Support of the Government’s Efforts Towards Effective Gender Equality in the Criminal Justice System. (Hanoi).

Biases of and stereotyping by criminal justice personnel on other criminal justice personnel

The study highlighted the need to constantly be aware of and challenge any biases of and stereotyping by criminal justice personnel, to ensure that sexual violence does not become exclusively a 'woman problem'. In Viet Nam, for example, an interviewee noted "It would be better to have women investigators but there are too few of them, because it's hard for women to do 'street work' (i.e., going out to investigate a criminal case), spending long nights. Women police personnel are mainly given desk jobs. They could help with physical examination of female victims or take them to the hospital for examination/treatment of injuries" stated a male investigator.

In Viet Nam, from the interviews with judges, there appeared to be a bias in favour of assigning a female judge to sexual violence cases. A male judge commented "Female judges do it better than male judges. They seem to be more gentle, use better words, especially in cases involving children. They would appear as if in the role of a mother, a sister towards the child victim." In Thailand, the reverse was heard, where some male judges felt that it would not be proper for young female judges to hear accounts of sexual activities and would be immodest.

Sexual violence investigations and prosecutions are often complex and require service providers who have specialist knowledge, skills and abilities. None of the criminal justice service providers interviewed had received any specialized sexual violence training.

Attrition alert

If accessing police is physically challenging, time consuming, expensive and a good reception and assistance are not likely to be received, victims may not report or continue their journey through the criminal justice system.

Infrastructure

Availability and accessibility to police stations, courts and NGOs that provide support services in the major centres was not highlighted as a significant issue by criminal justice system service providers interviewed. In Thailand, the police officer and station assigned to a case is determined by where the victim reported, not necessarily where the victim lives, therefore if this is far from a victim's home, she must travel each time she is requested to do so, even if this imposes significant cost and burden on her.

Attrition alert

A lack of dedicated and specialized investigative units and courts can result in a lack of expertise among criminal justice providers in addressing sexual violence cases in a sensitive and effective manner.

There were no specialized sexual violence investigative units identified in either country; however, in Thailand, a Children, Women and Family Protection Center and an Anti-Human Trafficking Center have been established in the Royal Thai Police.¹⁶⁹ Thailand is also piloting specialized courts for domestic violence cases, but does not have any courts focusing on sexual violence cases outside the family setting.

Despite a few specialized courts, in many regions in both countries, physical facilities, such as the waiting room, or the questioning rooms in Thai courts, are often sub-standard with limited rooms available at the court. Interview respondents also noted that where rooms are available, their arrangements and set-up often fail to take into account the victim's privacy and discretion.

Attrition alert

A lack of or weak mechanisms for systematic and coordinated data collection, compilation and analysis, and ongoing programme and response monitoring and evaluation, limits the evidence base on which to build strategies, policies and practices for improving services.

Monitoring and Evaluation

Ongoing monitoring and assessment of the impacts of policies and practices on women and men within the organization and persons to whom services are delivered, is key to

ensuring that the criminal justice system understands and continues to promote gender- and victim-sensitive practices. A strong evidence base is required to provide States, justice service providers and the public with the needed information to improve policy and programme development and to demonstrate accountability.

There were no indications from interviews about how statistics and statistical reports are used by managers and executives to identify emerging trends, service gaps, or to assist in strategic planning and implementation in either country of study, and there were limited publically available statistical records relating to sexual violence investigation and prosecution found in Viet Nam. For example, the statistics from the Unit of Criminal Investigation only covers two types of sexual violence offences: adult rape (article 111 of the Penal Code) and having sex with a child (article 115 of the Penal Code). The statistics were not disaggregated by sex or age or any other characteristics.

Attrition alert

Effective services for victims of sexual violence is dependent on multiple sexual violence-related service providers working together in a coordinated manner to address the needs of victims. The lack of such social and institutional support structures can prevent reporting.

While the commitment shown by both countries in initiating these studies is commendable, more comprehensive data collection, sharing and analysis, as well as monitoring of responses and outcomes, is still needed to guide more evidence-based policy and practice.

169. The Plan on Children, Women, and Family Protection and Anti-Trafficking, The Royal Thai Police, November 2012.

Coordinated Multi-disciplinary Approaches

Effective services for victims of sexual violence is dependent on multiple sexual violence-related service providers working together in a coordinated manner to address the needs of victims. The lack of such social and institutional support structures can prevent reporting.¹⁷⁰

From the perspective of a victim, coordination of essential services means that she can be assured that the services she requires will be provided for her, and where those services are not within the purview of the justice system, that justice system service providers will facilitate referrals to appropriate providers.

Coordination between justice organizations as well as between justice organizations and civil society organizations for the purpose of providing a good service to victims is weak in both countries examined. Criminal justice service providers spoke of their job roles and functions, but did not appear in most cases to have an orientation on services to the victim. They did not express an understanding of their responsibility in ensuring victim safety and protection, providing referrals to needed services, or contributions to seeking justice for the victim.

Good practice in Thailand

In Thailand, the One Stop Crisis Centre (OSCC) represents an integrated system of government departments working on sexual violence, teenage pregnancy, human trafficking and child labour. Under the umbrella of sexual violence, the Thailand Ministry of Social Development and Human Security is a key agent responsible for operating and overseeing OSCCs nationwide. The OSCCs were established to decrease steps

and complications that victims deal with when visiting the hospital. Thus, the creation of OSCCs was aimed at preventing 're-victimization' of the victim.¹⁷¹

Aside from medical support and treatment, in Thailand, hospital-based OSCCs provide support in the areas of counselling, psychological treatment as well as rehabilitation. They also play a role in training medical staff to understand issues of rape through an integrated approach. The OSCC works with other organizations, such as the Ministry of Social Development and Human Security, as well as emergency homes at provincial and district levels if the victim needs temporary shelter. Currently there are 750 OSCCs nationwide. In 2013, Thailand launched an integrated One Stop Crisis Center (OSCC 1300) with a hotline number 1300, under the responsibility of the Ministry of Social Development and Human Security with collaboration from the Ministry of Health, the Royal Thai Police and the Ministry of Labour. The Khon Kaen hospital received the 2014 United Nations Public Service Award for its One Stop Crisis Centre under the category Promoting gender-responsive delivery of public services. The hospital-based OSCC at Pathumthani hospital is also held as an example of best practice and is recognized for its success in supporting, treating and rehabilitating sexual violence victims. However, the issue of limited budget and insufficient resources to respond to increasing rates of reported cases and the management of OSCC remains a major challenge for its effectiveness in helping victims of sexual violence. These challenges, according to interviewed practitioners, are likely to have negative effects on the confidence of victims, who may not see OSCCs as an effective support mechanism, while many victims are not even aware of the existence of OSCCs.¹⁷²

170. UN A/RES/75/228 IV16.b

171. The hospital based OSCC system was under the Ministry of Health and was created before the OSCC system of the Ministry of Social Development and Human Security

172. Data derived from interviews with OSCC and emergency home staff



R

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Sexual violence is a highly complex phenomenon, rooted in gender-based discrimination and historical gender inequality

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The findings of the study provide insights into the factors that contribute to attrition of sexual violence cases from the criminal justice system and those factors that can reduce attrition in two Asian countries. The study is intended to support the development and implementation of criminal justice laws, policies, codes, procedures, programmes and practices for countries in the region, and to be particularly relevant for the countries subject to the study, Thailand and Viet Nam.

This study is the first comparative study of attrition in reported cases of sexual violence in Asia, and also the first attrition studies in Thailand and Viet Nam. Despite challenges in the implementation of the planned methodology, the study contributes to a better understanding of the policing and prosecution of sexual violence and the impact that the handling of their cases by the criminal justice system has had on the women who have suffered from rape and sexual assault.

It is recognized that sexual violence is a highly complex phenomenon, rooted in gender-based discrimination and historical gender inequality that cannot be solved by the criminal justice system alone. A comprehensive, integrated, multisectoral criminal justice response, one that is victim-centered and ensures offender accountability, is an essential component in preventing and addressing the persistent impunity for sexual violence.

The recommendations outlined in this section are meant to support States in implementing their national and international policy commitments to realizing women's human rights and ending violence against women, through strengthening States' capacity to exercise due diligence in the prevention, investigation and prosecution of such violence.

The recommendations are aimed at complementing efforts undertaken at the international, regional and national level that provide guidance on responding to sexual violence. Of particular note, the *Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice* and the *UNODC's Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women and Girls*, provide strategies covering substantive, procedural, and operational issues that are recommended to ensure effective investigation, prosecution and appropriate punishment, as well as to ensure access to appropriate remedies and redress for survivors of sexual violence.

The recommendations are divided into two parts. Firstly, nine broad regional recommendations are set out, based on the main common trends and issues identified across both countries. Secondly, a consideration of entry points for change is included, predominately focused on the criminal justice system. It should be noted that country-specific issues and recommendations are covered in the country reports prepared by the national research teams. Underlying these recommendations must be an ongoing commitment to further research on the topic. Facilitating further research of attrition in justice system responses to sexual violence in the region will improve understanding of the issues, develop an evidence-based foundation for needed changes in policies and programmes, and identify priorities for moving forward.

1

Establish quality essential justice services for victims that prioritize their safety, protection and support¹⁷³

Key Findings

Women and girls faced numerous barriers to reporting sexual violence as well as throughout the progress of their cases. For example, many victims reported being treated with disrespect and insensitivity, victims are required to tell their stories multiple times, reports are refused or are taken but investigation is not conducted or delays, or police encourage mediation and settlement. Critical gaps in the provision of victim-centered justice services were found at all stages of the criminal justice system. Specific quality justice services need to be developed and delivered that address the barriers to victims' committed participation in the criminal justice process: to overcome victim disengagement; to reduce attrition rates; and to enhance the criminal justice response to sexual violence.

Examples of programmes and approaches

- “ Ensure that voices of criminal justice providers, and providers from the disciplines of health, psycho-social support/social welfare, etc., are included in debates about attrition and how services can and should be improved.
- “ Promote, develop and establish strategic, comprehensive and coordinated action plans with a range of response agencies to increase awareness of, respond to and prevent sexual violence against women and girls.
- “ Identify, promote and build on leading practices.
- “ Ensure that justice services are available to every victim regardless of her place of residence, nationality, ethnicity, caste, class, sexual identity, etc.
- “ Enhance legal aid programmes and work with lawyers associations to promote availability of legal representation for victims.
- “ Establish and implement victim support, protection and safety policies and practices.
- “ Develop policies of mandatory recording of any complaint of sexual violence, and place the onus on the police to make and file a report and provide the victim with the police case file number.
- “ Develop policies to ensure victims are not deferred or delayed, asked to wait to make a report, or be in any other way impeded in their effort to bring their case to the attention of justice authorities.
- “ Develop and implement policies to prioritize response to and investigation of sexual violence complaints that reduce secondary victimization (traumatizing survivors again due to insensitive reporting procedures).
- “ Consider pro-arrest and pro-prosecution policies.

173. UN Women and UNFPA, in partnership with UNODC and UNDP, have developed standards and guidelines for the provision of police and justice services for violence against women as part of the Joint Global Programme on Essential Services for Women and Girls who have been Subjected to Violence; and have developed draft Guidelines for Essential Services and Quality Standards for Essential Justice Services to Respond to Violence against Women and Girls. These essential services cover: prevention; initial contact; assessment and investigation; pre-trial processes; trial processes; accountability and reparations; post-trial processes; safety and protection; assistance and support; communication and information and coordination.
<http://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence>

2

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

Key Findings

In both countries, women reported experiencing victim-blaming, humiliating treatment, and discrimination by criminal justice service providers. The majority of criminal justice service providers interviewed reflected persistent gender biases and stereotyping. Many had specific ideas as to how a ‘real’ rape victim should behave, and if the victim did not behave in the expected manner, the case was not likely to proceed.

Examples of programmes and approaches

- “ Institutionalize sustained gender sensitization and comprehensive training for all criminal justice providers, both male and female, mandated by law and developed in close cooperation with women’s rights groups, civil society organizations and service providers for sexual violence victims.¹⁷⁴
- “ Promote initiatives that increase the number of trained and competent women in operational, investigative and leadership positions in all areas and at all levels of the criminal justice system, and that support their career paths.
- “ Establish gender-sensitive, victim-focused practices for all responses to sexual violence based on international human rights norms and standards in justice delivery.¹⁷⁵
- “ Establish a code of acceptable conduct for all justice service providers. Promptly address unacceptable behaviours and actions.

3

Promote comprehensive legal and policy frameworks

Key Findings

Many legal factors contributed to attrition in both countries, including: the narrow scope of prohibited acts in Viet Nam; the reliance on forced-based definitions in Viet Nam and Thailand; and the problematic legal effects of classifying acts against adults as compoundable crimes in Thailand, such as specific time limits for reporting rape cases. Furthermore, criminal procedures that are not gender-sensitive and place a heavy onus on the victim, such as requiring victims to lodge complaints to proceed with investigations or allowing for negotiations outside the criminal justice system, are also factors that contribute to attrition. Women and girls have limited knowledge and limited access to information about their rights and what they can and should expect from the criminal justice system.

174. UN Women (2016) Gender Stereotypes in Laws and Court Decisions in Southeast Asia: A Reference for Justice Actors. Bangkok

175. Ibid.

Examples of programmes and approaches

- “ Facilitate and guide future legal reform, policy making and programming within the region, and sharing of good practices.
- “ Ensure legislation is comprehensive and multidisciplinary, criminalizing all forms of violence against women, and encompassing issues of prevention, protection, survivor empowerment and support, as well as adequate punishment of perpetrators and availability of remedies for survivors.¹⁷⁶
- “ Codify victims’ rights. Legislation should include the rights of victims in the criminal justice system as well as minimum standards for victims who decide not to participate in or face obstacles in accessing the criminal justice process. This should include specific rights as participants in the criminal justice system, such as the right to receive information, the right to access to justice, and the right to compensation, as well as remedies when any of the rights are violated.
- “ Examine the content of laws and policies, rules of evidence and procedure, and jurisprudence or previous court decisions and ascertain whether they contain gender stereotypes. Take steps to eliminate those stereotypes.¹⁷⁷

4

Ensure approaches sensitive to sexual violence survivors are reflected in criminal justice policies, practices and resources

Key Findings

Criminal justice agencies are male-dominated institutions which promote an institutional culture of negative bias and attitudes that infiltrate procedures and practice. Discrimination against the victims/survivors of sexual violence has been found in the investigative and court processes. There were situations where the processes are based on gender stereotypical assumptions even though the formal laws being applied do not contain such discrimination. In such cases, decisions by the police and juridical actors are based on bias gender norms rather than on an unprejudiced consideration of the evidence presented, thus violating the rights of the victims/survivors.¹⁷⁸

176. UN Women (2012) Handbook for Legislation on Violence against Women. New York.

177. UN Women (2016) Gender Stereotypes in Laws and Court Decisions in Southeast Asia: A Reference for Justice Actors. Bangkok.

178. Ibid.

Examples of programmes and approaches

- “ Examine the impacts of institutional policies and practices on women and men, and especially on survivors of sexual violence, in organizations and in the community.
- “ Ensure that definitions of offences do not allow for misinterpretations or condone myths or stereotypes, including ensuring that all sexual acts committed against any non-consenting women regardless of her background, even when they do not show signs of resistance, are considered sexual violence and are criminalized¹⁷⁹
- “ Develop and implement measures to protect women in their organizations from violence and harassment.
- “ Address unacceptable behaviours and actions.
- “ Regular and institutionalized gender-sensitive training and capacity building, including specific training for relevant public officials when new legislation is enacted. Ensure that such training be developed in close consultation with non-governmental organizations and service providers for complaints/survivors of violence against women.¹⁸⁰

5

Develop effective internal and external oversight and accountability mechanisms

Key Findings

There was little recourse for victims who believed that justice service providers were mishandling their case or treating them in a discriminatory manner. While evidence found that there were some internal procedures for accountability, there was a lack of external and independent oversight and accountability mechanisms.

Examples of programmes and approaches

- “ Facilitate the development, strengthening and implementation of institutional governance frameworks, adapted to local contexts and mandates with benchmarks and indicators.
- “ Develop accountability and oversight mechanisms that hold governments and criminal justice systems accountable for the provision of quality services and prevention efforts.
- “ Develop and implement internal governance structures that hold executives, managers and supervisors accountable for the action or inaction of their staff.
- “ Develop and implement mechanisms for service complaints to be heard and addressed.
- “ Ensure that supervisory and management accountability is maintained throughout the investigation process.

179. United Nations Office on Drugs and Crime (2014) Strengthening Crime Prevention and Criminal Justice Response to Violence against Women. New York.

180. UN Women (2012) Handbook for Legislation on Violence against Women. New York.

Key Findings

Criminal justice service providers identified the need for training and specialization in handling sexual violence cases. Thailand has no specialized sexual violence police investigative units, but the Royal Police Cadet Academy started admitting female students in 2009 to increase female police inquiry offers for crimes against women and children, while a Children, Women and Family Protection Center and an Anti-Human Trafficking Center within the Royal Thai Police were set up in 2012.

Examples of programmes and approaches

- “ Legislation/subsidiary legislation should ensure the designation or strengthening of specialized police units and specialized prosecutor units focused on sexual violence, and provide adequate funding for their work and specialized training for their staff.
- “ Ensure that complainants/survivors have the option of communicating with female police officers or prosecutors.
- “ Provide for the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of cases.
- “ Ensure that officers assigned to specialized courts receive specialized training and that measures are in place to minimize stress and fatigue of such officers.
- “ Ensure police are responsible for facilitating access to health services, victim support, safety planning and protection services.¹⁸¹
- “ Provide trained personnel to be available to assist and support the victim in filing her complaints.
- “ Facilitate the creation of specialized and multidisciplinary units in relevant criminal justice institutions.
- “ Support the development of linkages and relationships, jointly developed protocols, and action plans for coordinated responses, between justice specialists, governments and civil society specialists (e.g. ‘One stop centres’ or specialized courts).

181. Ibid.

7

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

Key Findings

The study found that various criminal justice institutions often work in silos with unclear communication protocols or practices and referral pathways among criminal justice agencies or with other non-justice sector agencies, such as health and social welfare agencies. The burden of confronting the impunity of sexual violence must shift from the victim to the criminal justice institutions. Given the differing mandates of each institution, a coordinated response is essential to changing the manner in which the criminal justice system as a whole traditionally has responded to sexual violence.

Examples of programmes and approaches

- “ Establish a coordination mechanism that promotes effective working relationships among the key criminal justice stakeholders and ensures clear information flow and referral pathways.
- “ Establish a coordination and clear referral pathways between the justice system and the other essential services for survivors including the health and welfare services.¹⁸²
- “ Engage and nurture relationships and partnerships with a broad range of stakeholders, including criminal justice institutions, civil society organizations and the private sector, to work collaboratively to identify how and where they can have maximum impact.
- “ Make sexual violence investigations a priority and coordinate the investigations with support, legal and health service providers.
- “ Adopt an interdisciplinary approach in investigation and adjudication.¹⁸³

8

Develop effective monitoring and evaluation mechanisms

Key Findings

In both countries, there were limitations in the quantity and quality of criminal administrative data on sexual violence crimes available to the public and other criminal justice agencies. In both countries, research teams faced challenges in accessing information on how cases are recorded, tracked throughout the system, and closed. This was due to lack of official approval to access all police, prosecution and court records. Additionally, researchers noted inconsistencies in case file record keeping and completion. In both countries, there is a lack of regular and systematic collection of prevalence data on sexual violence (no victimization surveys) and little information on costs and impacts of sexual violence.

182. UN Women, World Health Organization, United Nations Population Fund, United Nations Development Programme, United Nations Office on Drugs and Crime (2015) Essential services package for women and girls subject to violence.

183. UN Women (2016) Gender Stereotypes in Laws and Court Decisions in Southeast Asia: A Reference for Justice Actors. Bangkok

Examples of programmes and approaches

- “ Coordinate the collection and management of criminal administrative data which is generated by police, prosecution services, the courts and corrections, including arrest and clearance rates, prosecution, case disposition of the offenders and recidivism rates; and support public dissemination of this data for accountability, monitoring and evaluation purposes.
- “ Build the capacity of government and other justice partners to collect all types of data, including violence against women population surveys, and to use and analyse data for evidence-informed criminal justice policies and programmes.
- “ Define performance metrics and analyse data collected to determine progress against goals set and use findings to aid in planning and implementing improvements.
- “ Support local research on sexual violence and promote publication and dissemination of research.

9

Prioritize resources, both human and financial

Key Findings

In both countries, there appeared to be limited resources in place to build and sustain capacity, as well as limited capability to provide quality essential justice services that can effectively and efficiently respond to sexual violence against women.

Examples of programmes and approaches

- “ Build the capacity of government and criminal justice institutions to conduct gender budgeting and gender auditing of resources.
- “ Assist in developing a framework to ensure that sufficient gender-responsive resources are in place to address violence against women.
- “ Regularly assess budget allocations and expenditures on services for sexual violence survivors.
- “ Dedicate specific budget lines under ministry of department budgets to improve services for survivors of sexual violence.
- “ Establish legislation which mandate the allocation of a budget for its implementation by: creating a general obligation on Government to provide an adequate budget for the implementation of the relevant activities; and/or requesting the allocation of funding of a specific activity, for example, the creation of a specialized prosecutor’s office; and or allocating specific budget to non-governmental organizations for specified range of activities related to its implementation.¹⁸⁴

184. UN Women (2012) Handbook for Legislation on Violence against Women. New York.

E ntry Points for Change

Ministry of Justice and other relevant bodies responsible for law reform

- Criminal law reform to ensure the criminalization of all manifestations of sexual acts committed against non-consenting women, to reflect the realities experienced by survivors, including marital rape.
- Criminal procedural law and evidentiary rules review to eliminate discriminatory application and promote a victim-centred approach.
- Capacity building for legal drafters to ensure that legislation is gender-responsive.

Police Sector

- Policies that empower and equip police officers to respond promptly and effectively to incidents of sexual violence, and to protect the victims.
- Comprehensive protocols and guidelines that promote consistent and uniform gender-sensitive approaches to handling and investigating sexual violence incidences.
- Training that is integrated institutionally starting with the police academy and supported by the protocols mentioned above.
- Specialized units that include multi-disciplinary professionals, including forensic experts, health care workers, social workers, counsellors, etc.
- Policies that promote senior level agency commitment and leadership in providing victim-focused services.

Prosecution Services

- Pro-prosecution policies that promote the empowerment of the victim in prosecutorial decision-making and includes oversight procedures.
- Capacity building for prosecutors to respond effectively to cases of sexual violence with integrated training in law schools and/or prosecution service colleges.

Judiciary and the Courts

- “ Training for judges to eliminate judicial stereotyping and how to apply evidentiary rules in a non-discriminatory and gender-sensitive manner.
- “ Policies that support enabling court room environments for victims.
- “ Specialized sexual offences courts with specialized prosecutor, victim support professional or dedicated judges.

Forensic services

- “ Training for forensic professionals to ensure that the collection of medical and forensic evidence is undertaken in a manner that does not cause secondary victimization to the victim, and understand the strengths and limitations of such evidence.
- “ Protocols for sexual assault medical forensic examinations based on WHO guidelines.
- “ Specialized sexual assault care and treatment centres that foster extensive community networks of agencies working with victims of sexual violence.

Legal aid mechanisms, programmes and engaging lawyers associations and firms

- “ Expand eligibility of available legal aid to include victims of sexual violence.
- “ Partnerships with law associations to promote *pro bono* legal representation and assistance for victims.

Social Services and Victim Support

- “ Partnerships between criminal justice agencies and social services and victim support agencies.
- “ Funding and training for civil society organizations to provide professional and/or trained volunteer support services for victims before, during and after the criminal justice process.

Non-justice sector

- “ Identify and support agencies and organizations that are providing services and support for victims.
- “ Identify, support and capitalize on local agencies and organizations that have the ability to access and influence decision-makers in developing effective, high-quality services and practices.

Glossary

Terminology can often differ between countries and languages. This is evident in Thailand, for example, where the term 'attrition' does not exist. For the purpose of this study, global understandings of terms have been used while recognizing their specific and varied applications in the countries of study.

Accused describes an individual who has been charged with rape or sexual assault.

Acquittal refers to the conclusion of a case at trial where the offender was found not guilty.

Attrition is the process by which cases of rape and sexual assault fail to proceed through the criminal justice system; those cases that are discontinued and thus fail to reach trial and/or result in conviction.¹⁸⁵

Case refers to any recorded incident of sexual violence irrespective of the outcome or formal designation of initiating criminal proceedings. It is the unit of measure in this study and refers to a reported incident involving sexual violence against a victim that is documented in a single police file. This can include a single offence or a group of related offences.

Charges laid refers to formal charges being laid against at least one alleged offender (in other words, the suspect becomes the accused and is being prosecuted).

185. Definition from Lovett and Kelly (2009) Different systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe. Child and Women Abuse Studies Unit, London Metropolitan University.

Civile partie is a Latin term for plaintiff and in civil law traditions refers to situations where the victim has standing as a party in the criminal case.

Conviction refers to the conclusion of a case where the offender pleads guilty or was found guilty by the court.

Criminal justice system refers to the formal systems that are the responsibility of the State and its agents. They include government support laws, and institutions such as the police, prosecution services, courts, and prisons that have the responsibility to enforce and apply the laws of the State and to administer the sanctions imposed for violations of laws.

Discontinuance refers to the interruption or termination of a legal action.

Domestic violence is defined differently in each country's domestic violence legislation but basically includes violence perpetrated by intimate partners and other family members and manifested through physical, sexual, psychological and economic violence.

False allegation or false complaint means the alleged victim was charged with or warned in relation to making a false complaint.

Forensic evidence or medico-legal evidence uses the definition set out by WHO as "documented extra and ano-genital injuries and emotional state as well as those samples and specimens that are taken from the victim's body or clothing solely for legal purposes. Such evidence includes saliva, seminal fluid, head hair, pubic hair, blood, urine, fibre, debris and soil."¹⁸⁶ The WHO has developed guidelines for medico-legal care for victims of sexual violence.¹⁸⁷

No offence or no-crime refers to incidents established as a 'false complaint' or cleared by the police as no offence disclosed.

Offender is used in this report irrespective of the outcome of the case, so includes alleged offender, suspect or defendant. This does not imply that all recorded sexual offences have been substantiated.

One Stop Centres bring together medical, law enforcement, legal and victim support professionals in one location to provide a full range of care for victims and gather and process the related medico-legal evidence.

Opportunistic sampling which is also known as grab or convenience sampling is a type of non-probability sampling which involves the sample being drawn from cases that are selected because they are readily available and convenient.

Pre-attrition refers to situations where the victim does not contact police or other authorities and never enters the criminal justice system as a reported case.

Rape is a subcategory of sexual violence and usually includes the physically forced or otherwise coerced or nonconsensual penetration of the vulva or anus with a penis, other body part, or object, although the legal definition of rape varies from country to country and, in some countries, may also include oral penetration.

186. Du Mont, Janice and D. White (2007) The Sses and Impacts of Medico-legal Evidence in Sexual Assault Cases: A Global Review. WHO, Geneva.

187. World Health Organization (2004) Guidelines for Medico-legal Care for Victims of Sexual Violence. WHO, Geneva.

Secondary victimization is the victim-blaming attitudes, behaviors, and practices engaged in by community service providers, which results in additional trauma for sexual assault survivors.¹⁸⁸

Sexual assault is a subcategory of sexual violence and usually refers to any involuntary sexual act in which a person is threatened, coerced or forced to engage against their will, or any non-consensual sexual touching of a person. The legal definition of sexual assault varies from country to country.

Sexual assault crisis centres can be community-based or hospital-based and provide a combination of services, including helpline, advocacy support and counselling.

Sexual offence includes rape and other sexual violence that has been criminalized in the two countries, as well as alleged sexual violations.

Sexual violence is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality, using coercion, by any person, regardless of their relationship to the victim, in any setting, including, but not limited to, home and work.¹⁸⁹

Stratified sample is a sample drawn from several separate parts of the population in order that it should be representative.

Survivor refers to those women and girls who have experienced sexual violence and sought justice and/or shared their stories.

Suspect is the person alleged to have committed rape or sexual assault.

Victim is used in this report irrespective of the outcome of the case, so includes complainants. Victim means a person recorded as the victim of sexual offence, including those cases subsequently deemed no offence or false allegations. The term victim is used as this is the common terminology for analysis of criminal justice data and is not intended to negate other terms such as 'survivors'.

Violence against women is a broad umbrella term, defined by the United Nations as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."¹⁹⁰ It includes many different forms of violence against women and girls, such as intimate partner violence, non-partner sexual violence, trafficking, and harmful practices such as female genital mutilation.

188. Rebecca Campbell and Sheela Raja (2005) "The Sexual Assault and Secondary Victimization of Female Veterans," *Psychology of Women Quarterly*, February 23, 2005, <http://onlinelibrary.wiley.com/doi/10.1111/j.1471-6402.2005.00171.x/full>

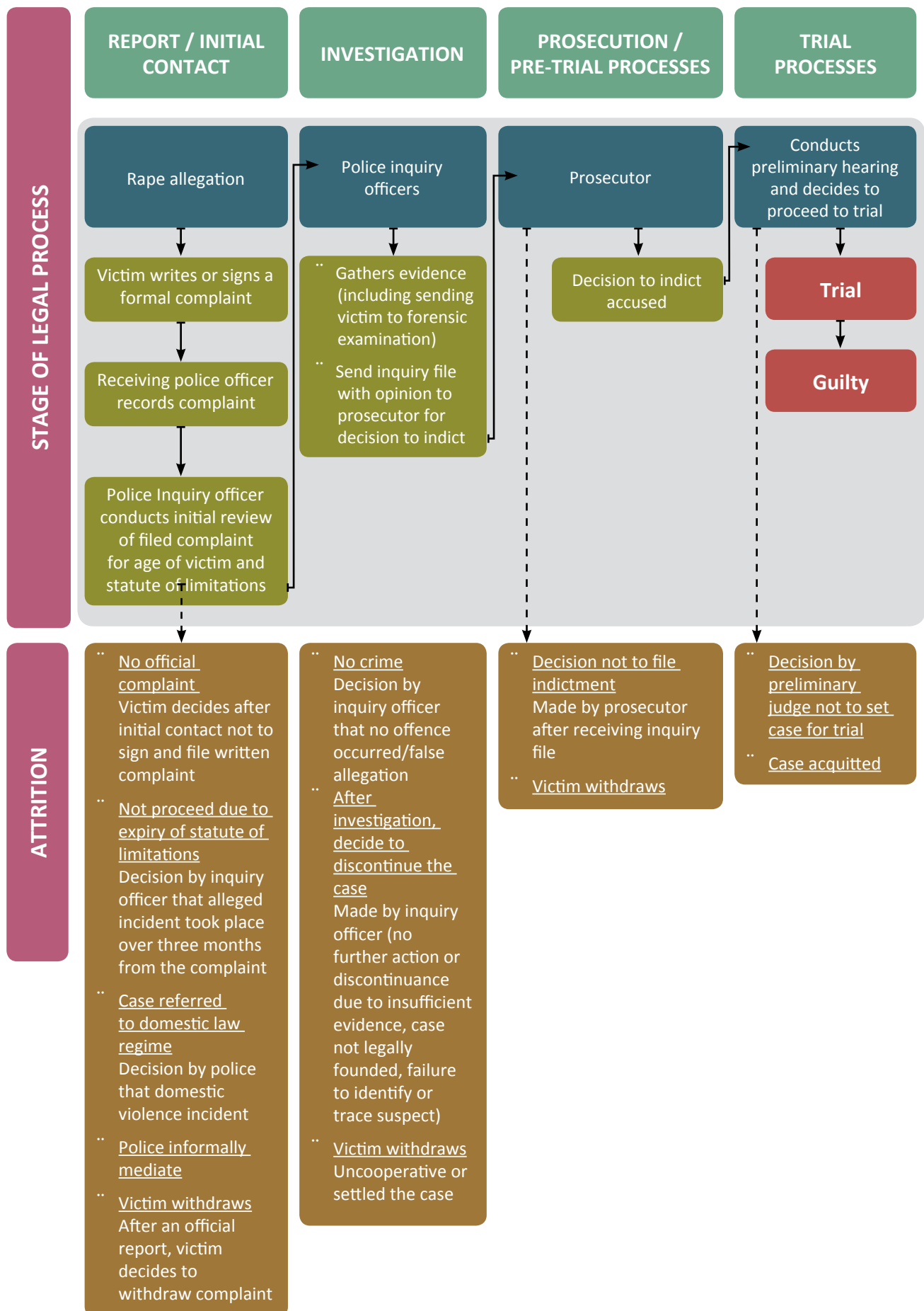
189. Jewkes, S. and Garcia-Moreno, Sexual violence, in Krug et al. (2002) *World Report on Violence and Health*. WHO, Geneva.

190. United Nations Declaration on the Elimination of Violence against Women.

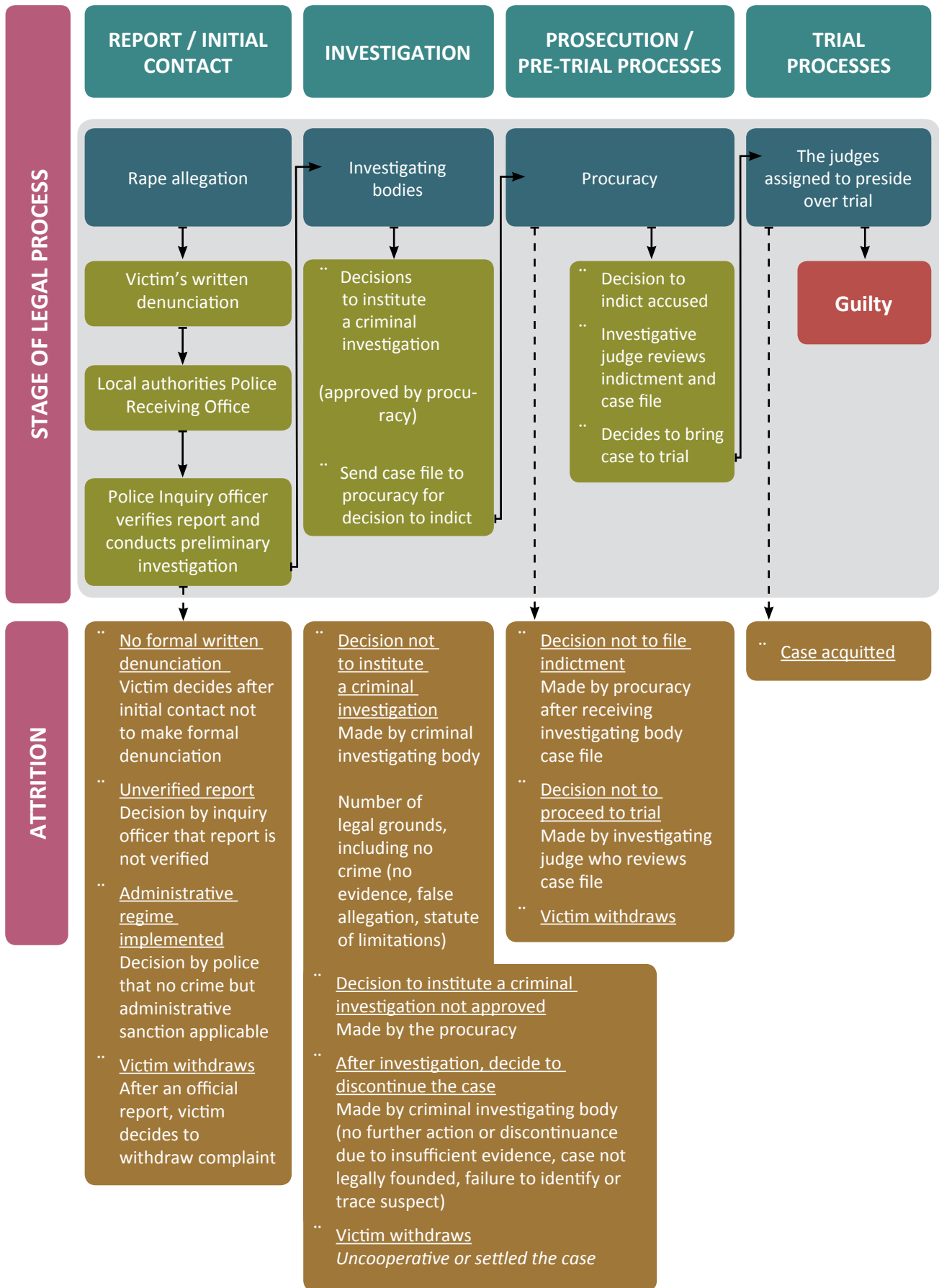


A ppendices

Appendix 1. Map of the legal processing of sexual offence cases in Thailand



Appendix 2. Map of the legal processing of sexual offence cases in Viet Nam



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