

**EXECUTIVE SUMMARY**

**CEDAW AND THE LAW:**

**A Gendered and  
Rights-Based  
Review**

**of  
Vietnamese  
Legal  
Documents**

**through  
the Lens  
of  
CEDAW**

*Convention on the Elimination of All Forms of Discrimination Against Women*



United Nations Development Fund for Women



UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies to foster women's empowerment and gender equality. Placing the advancement of women's human rights at the centre of all of its efforts, UNIFEM focuses its activities on four strategic areas:

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## TABLE OF CONTENTS

■ General Undertakings to Eliminate Discrimination and Ensure Equality (Articles 1-3 of CEDAW)	2
■ Temporary Special Measures and Measures in Favour of Maternity (Article 4 of CEDAW)	30
■ Social and Cultural Patterns of Conduct (Article 5 of CEDAW)	31
■ Trafficking and Exploitation of Prostitution (Article 6 of CEDAW)	34
■ Political and Public Life (Article 7-8 of CEDAW)	39
■ Nationality (Article 9 of CEDAW)	46
■ Education (Article 10 of CEDAW)	46
■ Employment (Article 11 of CEDAW)	55
■ Health (Article 12 of CEDAW)	67
■ Economic and Social Life (Article 13 of CEDAW)	73
■ Rural Women (Article 14 of CEDAW)	75
■ Equality Before the Law (Article 15 of CEDAW)	76
■ Marriage and Family (Article 16 of CEDAW)	78
<b>Conclusion</b>	<b>85</b>

# **CEDAW AND THE LAW: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW**

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

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

In doing a gendered and rights-based review of Viet Nams legal documents, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was chosen as the framework and analytical tool. This is because CEDAW is a human rights treaty and it strongly advances a rights-based approach to claiming rights. It is also a treaty that strongly espouses gender equality and non-discrimination in all fields.

CEDAW emphasizes the obligation of State Parties to ensure enjoyment of equality. Lastly, as a treaty thereby being a legal document itself, CEDAW is most compatible in discussions on law and legal reform.

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

## **GENERAL UNDERTAKINGS TO ELIMINATE DISCRIMINATION AND ENSURE EQUALITY (Articles 1-3 of CEDAW)**

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

## GUARANTEES OF EQUALITY AND NON-DISCRIMINATION

Article 2 of CEDAW requires that the principle of equality be embodied in the Constitution or laws. Article 1 provides the definition of discrimination. GR 25 highlights the elements of equality and non-discrimination that CEDAW espouses. Bearing these in mind, it is obvious that the definition and elements of equality and non-discrimination are one of the selected indicators to assess compliance with CEDAW. Therefore, the selected indicators focus on whether there is a clear definition of equality and non-discrimination that is compatible with CEDAW. They also inquire into whether the guarantees of equality and discrimination include discrimination on the basis of sex or gender, as well as other grounds of discrimination such as ethnicity, disability, age, and sexual orientation. This will enable a more inclusive and responsive guarantee to cover the different disadvantages that women may face due to multiple grounds of discrimination.

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

### *Definition of gender equality and gender discrimination*

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

### *Grounds of discrimination*

In the general provisions that guarantee equality and non-discrimination in Vietnamese laws (such as the Constitution and the Civil Code, Labour Code, Marriage and Family Law, and Penal Code), it can also be seen that many other grounds of discrimination, in addition to sex or gender, are recognized. These grounds include nationality, social status/class/position, belief, religion, educational level and occupation, and family background. Special laws provide specific protection to par-

ticular groups of people, such as the elderly, people with disabilities and people living with the Acquired Immune Deficiency Syndrome/the Human Immunodeficiency Virus (HIV/AIDS). What is noticeable, though, is that these grounds of discrimination are seen as separate from each other and are not always analysed or realized in an interconnected manner. Legal documents do not provide a mechanism on ways to address other forms of disadvantage in addition to gender in a systematic and simultaneous manner. On this note, it is suggested that the Law on Gender Equality be supplemented to include a provision recognizing the interrelatedness of grounds of discrimination. In particular, it should provide explicitly that other grounds of discrimination - such as nationality, religion, belief, age, disability, sexual orientation, and social, economic, health and other status - may aggravate or compound gender discrimination. Hence, they must be addressed with gender discrimination in an interconnected manner.

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

## PROHIBITION OF DISCRIMINATION

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

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

Provisions referring to the obligation of foreigners to abide by Vietnamese laws, including those prohibiting discrimination, exist. These can be found in the Constitu-

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

## LEGAL PROTECTION OF WOMEN

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

and support of women, especially of women victims/survivors of GBV as per GR 12 and GR 19.

### *Right to seek redress in cases of discrimination*

Article 74 of the Constitution provides for the right to file complaints and denunciations against the illegal doings of State organs, economic bodies, social organizations, units of the peoples armed forces, or any individual. In addition to general provisions of law on redress (such as in the Civil Code, Civil Procedure Code, Criminal Procedure Code, Law on Complaints and Denunciations and Penal Code), the right to seek redress in cases of discrimination is specifically provided in Article 37 of the Law on Gender Equality. In practice, however, the extent to which these general provisions are used to file gender-based discrimination complaints or denunciations is limited. On this point, it is recommended that legal education and awareness and educational campaigns be increased, especially targeting low-income earners and those living in rural or remote and mountainous regions on the guarantee of non-discrimination, their right to seek redress in cases of violation, and the appropriate institutions to access for redress.

### *Criminal procedure*

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

## Protection

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

## Privacy and confidentiality

Article 335 of the Criminal Procedure Code states the rights of denouncers including the right to request the confidentiality of their names, addresses and autographs. It is also provided, in Article 18 of the code, that courts will conduct trial in public except in certain cases.

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

### Institution and termination of particular cases

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

### Confrontation

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

### Body searches and body examination

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

### Custody

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

### Non-execution of the death penalty

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

### Postponement, temporary suspension or exemption of imprisonment penalty

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

### *Civil procedure*

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

### Privacy and confidentiality

In Article 15 of the Civil Procedure Code, trials of public cases are carried out publicly, except in special cases where it is necessary to preserve the fine customs and practices of Viet Nam or to keep State, professional, business or personal secrets. In addition to this article, a clear provision on confidentiality and privacy must be drafted for cases where the publication of a party's iden-

tity will lead to danger to life or health or to stigmatization or trauma. The provision must require procedure-handling bodies to keep confidential not only names, addresses and autographs, but also all information concerning the identity of the party concerned. In all cases, it should be mandatory for procedure-handling persons to inform denouncers and victims of their right to request for confidentiality and explain the consequences relating to it.

### Confrontation

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

### Provisional emergency measures

Articles 99 and 102 of the Civil Procedure Code provide for application of provisional emergency measures to deal with the urgent requests of the parties, to protect evidence, and to ensure judgment execution. It is suggested that the following emergency protection measures be expressly included in the list of provisional emergency measures: (a) prohibiting any forms of ha-

rassment or contact with a party and/or party's family members; (b) removal or exclusion of one party from a particular vicinity, including residence, place of work or education; and (c) prohibiting one party from threatening to use or using physical, emotional, psychological or sexual violence. It is also recommended that, where a request is made for emergency protection measures and there is extreme urgency so that delay in issuing the order will work to the extreme prejudice or harm of the requesting party, decisions be issued on the same day after ex parte determination, subject to the filing of a motion for its revocation by the other party if any.

### Application of security measures

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

### Law on Complaints and Denunciations

The Law on Complaints and Denunciations provides procedures for settlement of complaints and denunciations. In particular, there are articles on privacy and con-

fidentiality in Articles 16, 57, 72 and 77 of the law. It is recommended that, in cases where serious harm, stigma or trauma would follow the disclosure of the victims identity, all identifying information must be kept confidential. Private receiving places must also be provided for the receipt of complaints and denunciations to ensure privacy and confidentiality.

### *Administrative procedure*

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

### Differential age

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

### Custody

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

### Postponement, exemption and temporary suspension of administrative handling measures

Articles 80, 81, 89, 90, 98 and 99 of the Ordinance on

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

### *Legal aid*

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

It is suggested that, in assessing eligibility for legal aid under the Law on Legal Aid, persons, especially women, who have no means of substantial income - even if the average family income is above the poverty line - must be considered poor and eligible for legal aid in cases where family support cannot be expected or family support is difficult to attain, such as in cases of domestic violence or marital disputes. It is also suggested that the law, Decree on Legal Aid Law or other legal documents identify explicitly discrimination cases

as a priority areas for legal aid work. Consequently, in case of conflict of interest that may arise where persons applying for legal aid are opposing parties, priority should be given to cases of gender-based discrimination or GBV. It is recommended that appropriate guidelines for interviewing applicants/clients, legal aid counselling, participation in legal proceedings, and representation beyond legal proceedings be drafted, with gender-sensitive provisions incorporated into them. Persons performing legal aid should also accept cases provisionally, pending verification of the documents for eligibility, if they involve GBV where there is an immediate need for legal intervention or where there is danger of imminent violence to the applicant.

### *Conciliation, mediation and other forms of ADR*

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

relations or one of the parties has been abused or subjected to violence that prevents independent choices, except for very pressing reasons and with appropriate safeguards.

## **INSTITUTIONS AND MECHANISMS FOR IMPLEMENTATION AND MONITORING**

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

agencies accountable (for example, supervisory functions over the agencies).

### *State management agency*

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

### *Responsibilities of various agencies.*

The Law on Gender Equality provides generally for the responsibilities of Government ministries and State agencies and organizations. The Directive on Gender Equality Law provides some initial instructions to listed ministries and agencies. However, the list of ministries and agencies is limited. It is recommended that a list of

all ministries, agencies and organizations, and each of their specific responsibilities relating to gender equality, be contained in a decree. This will assist implementation of the provisions of Articles 27 and 31 of the Law on Gender Equality as it will have specific tasks for each ministry or agency to perform, hence, showing clear accountability in cases of non-performance. It is also recommended that an interministerial mechanism on gender equality or a revised National Committee for the Advancement of Women (NCFAW) be established or retained respectively for the purpose of coordinating work on gender equality among ministries/agencies. This mechanism must be under the leadership of MOLISA.

### *Data collection and monitoring*

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

The Statistics Law and Decree on Statistics Law contain no provisions on sex-disaggregated data or on gender analysis. Several national strategies/plans, in-

cluding the Plan of Action for the Advancement of Women, are also in place. Although they are limited in their coverage of gender equality issues, they can assist in tracking progress. It is recommended that clearly defined guidelines for incorporation of gender in systematic data collection and analysis - including sex-disaggregated data, gender indicators and gender analysis - be provided to cover the work of the General Statistics Office (GSO), other statistics offices, appropriate Government ministries and State agencies in their data collection and analysis work. It is also recommended that a gender equality monitoring mechanism be put in place that looks into monitoring and evaluating progress in the areas designated in CEDAW and the Law on Gender Equality (including in politics, economy, labour, education and training, science and technology, culture, information, sport, public health, and family), in particular the impact of legislation and interventions.

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

### *Strategies and plans*

Legal bases for socio-economic strategies and plans can be found in the Constitution; for example, Articles 84(3), 120, and 122(4). Further, Articles 8 and 26 of the Law on Gender Equality provide that the state management agency – that is, MOLISA - will formulate and implement national strategies, policies and goals on gender equality. There are existing strategies and plans on women already formulated. Other strategies and plans are also in place, which address, to a certain extent, the protection and promotion of gender equality, such as the Comprehensive Poverty Reduction and Growth Strategy (CPRGS), the Socio-Economic Development Strategy to 2010 (SEDS) and the Socio-Economic Development Plan for 2006-2010 (SEDP).

### **INCORPORATION AND APPLICATION OF TREATIES**

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

Both the Law on Gender Equality and the Law on Treaties state that, in cases where a legal document and a treaty to which Viet Nam is a party contains differ-

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

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

## **GENDER-BASED VIOLENCE/VIOLENCE AGAINST WOMEN AND ITS MANIFESTATIONS**

GRs 12 and 19 clearly highlight the obligation of the

States Parties under CEDAW to address GBV, including domestic violence, rape and other forms of sexual assault, sexual harassment, forced and early marriage, trafficking and sexual exploitation. They strongly urge States Parties to put in place a comprehensive range of measures to be able to address the violence and its various forms and manifestations. Paragraph 24 of GR 19 enumerates the recommendations of the CEDAW Committee relating to GBV to guide implementation. Concluding Comments on Viet Nam 2007 provided recommendations on measures that need to be undertaken in Paragraph 17 of GR 19, which include immediate means of redress, prosecution and punishment of perpetrators, further research on GBV, increase education programs, and establishment of crisis centres and shelters for victims.

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

### *Gender-based violence*

A guarantee on the inviolability of the person is found in Article 71 of the Constitution. The Penal Code and other legal documents, such as the Civil Code, Law on Children and Marriage and Family Law define and prohibit acts of violence. Also, a prohibition on GBV is found in Article 10 of the Law on Gender Equality, but no defini-

tion is provided. In this regard, it is recommended that a definition and explanation of gender-based violence, drawing on GR 19, must be provided, preferably by law or in a decree implementing the Law on Gender Equality. However, for more pervasive manifestations of GBV - for example, domestic violence, trafficking in women or sexual harassment - separate legislation is necessary to address fully all its aspects.

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

### *Domestic violence*

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

Ideally, a Law on Preventing and Combating Domestic Violence must: (a) provide a comprehensive definition of domestic violence, which includes physical, sexual, emotional and economic violence, and explicitly prohibit domestic violence; (b) extend protection to

those living together as spouses without the benefit of marriage and those involved in an intimate or dating relationship; (c) require mandatory reporting of cases involving domestic violence by health care providers, teachers, social workers and People's Committees to state management agencies or police. In these cases, appropriate procedures must be provided; (d) provide for the proper handling of domestic violence by public officials; (e) require state management agencies, local government units and courts to have a professional social worker working full-time on domestic violence cases; (f) provide protection to victims of violence through emergency or temporary protection orders; (g) require the provision of mandatory services for victims of domestic violence, such as emergency shelter, skills training, livelihood development services or job referrals, psycho-social counselling, reintegration, medical assistance, and free legal assistance; (h) require that law enforcers, procurators, health service providers, legal aid providers, social workers and the courts that deal with domestic violence cases have comprehensive training on gender sensitivity and handling cases of domestic violence; and (i) require health service providers to document and report all cases of domestic violence. The law must also ensure that information relating to the identity of the victim be kept confidential at all times, unless disclosure is requested by the victim. Further, mediation or conciliation must not apply in cases of domestic violence where the victim cannot make choices independently or is traumatized from the violence.

### *Rape and other forms of sexual abuse*

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

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

mandatory training of gender sensitivity, and rape and sexual assault cases, for those handling these offences.

### *Incest*

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

### *Stalking*

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

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

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

### **TEMPORARY SPECIAL MEASURES**

Article 63 of the Constitution creates a framework for temporary special measures. The Law on Gender Equality calls these measures measures to promote gender equality. The law gives a definition as well as identifies what these measures are in relation to particular fields. A review of examples of measures to promote equality in Articles 11-14 and 19 of the Law on Gender Equality show that there is a need to understand better what temporary special measures are, es-

pecially in listing what temporary special measures are required by law. In line with Concluding Comments on Viet Nam 2007, it is recommended that the Law on Gender Equality and its subordinate legal documents should make clear distinctions between temporary special measures (measures to promote equality) and general social policies in favour of women. It is also recommended that the subordinate legal documents include in the enumeration other forms of temporary special measures or measures to promote equality, such as special budgetary allocations, outreach or support programmes, and preferential treatment. Temporary special measures in other fields must also be considered, such as in the field of science and technology, culture, information, sports, and public health.

### **MEASURES IN FAVOUR OF MATERNITY**

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

### **SOCIAL AND CULTURAL PATTERNS OF CONDUCT**

#### **(Article 5 of CEDAW)**

Article 5 of CEDAW and Paragraphs 12 and 13 of Concluding Comments on Viet Nam 2007 require a number of measures to be put in place to change practices that discriminate against women, including cultural practices, stereotypes and patterns of conduct. A number of focus areas are seen as critical to bring about change in this regard, including awareness-raising on gender equality, information dissemination on CEDAW and

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

### **MODIFICATION OF STEREOTYPES AND DISCRIMINATORY PRACTICES**

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

## INFORMATION ON GENDER EQUALITY

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

## ROLE OF THE MEDIA

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

## **TRAFFICKING AND EXPLOITATION OF PROSTITUTION**

### **(Article 6 of CEDAW)**

Article 6 of CEDAW requires States Parties to take all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women. The CEDAW Committee - in GR 19, GR 24 and Concluding Comments on Viet Nam 2007 - requires that specific preventive, punitive and rehabilitative measures must be in place to comply with States Parties obligations. The CEDAW Committee also emphasized the evolving forms of sexual exploitation such as sex tourism and organized marriages, as well as the need for special attention for vulnerable and disadvantaged groups of women especially women in prostitution. In relation to trafficking, Concluding Comments on Viet Nam 2007 is specific in its recommendations; that is, systematic data collection and analysis, increased information exchange, increased prosecution, improving the economic situation of women, measures for reintegration, non-penalization of trafficked women and ratification of the Trafficking Protocol. In relation to prostitution, Concluding Comments on Viet Nam 2007 expressed concern on rehabilitation measures for victims of prostitution such as administrative camps.

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

## PROSTITUTION

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

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

To ensure that women in prostitution are not discriminated in accessing basic services, provisions ensuring non-discrimination of these women must be specifically

stipulated, especially in the areas of education, health care, labour and employment. In particular, it must be clearly ensured that rape and sexual assault cases against women in prostitution are not trivialized or ridiculed but pursued accordingly.

### SEX TOURISM

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

### TRAFFICKING

Trafficking in women and children is prohibited in Articles 119 and 120 the Penal Code and in Article 8(6) of the Decree on Children Law. These laws do not define “trafficking” but the Resolution on Penal Code provides a definition of “trading in children”. Vietnamese laws, including the Labour Code, Law on Guest Workers and the Penal Code also have good coverage of offences that are committed in the course of trafficking and its many aspects. In July 2004, the National Plan of Action Against Trafficking was adopted and focuses on four major components that are fleshed out in the Decision on Trafficking: (a) communication and education; (b) fight against crime; (c) receipt and support of returning

victims; and (d) development of legal framework on trafficking. The plan and projects are moves in the right direction. However, it must be noted that some of these interventions are best contained in legislation rather than in a plan and/or project document.

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

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

Supplementary measures to address trafficking in women and children must be provided in legal docu-

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

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

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

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

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

### THE RIGHT TO VOTE AND THE RIGHT TO STAND FOR ELECTION

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

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

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

## THE RIGHT TO PUBLIC POSITIONS

Article 63 of the Constitution and Article 11 of the Law on Gender Equality provide general guarantees on the

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

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

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

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

### **COMMUNIST PARTY OF VIET NAM LEADERSHIP**

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

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

Article 63 of the Constitution states that male and female citizens have equal rights in all fields, including in the political arena. Thus, it provides a general guarantee on equal participation in mass organizations, NGOs and other civil society groups. In relation to NGOs, local and international NGOs - including those working on

womens issues - operate within considerable government constraints under the Law on Associations and Decree on Associations. It is suggested that a more favourable enabling environment, including more supportive legislation, be provided for the operation of NGOs, which include womens NGOs as well. Prohibition of non-discrimination on account of gender must be clearly stipulated in law, unless the association is clearly set up to cater to particular gender interests and needs.

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

## **PARTICIPATION AT THE INTERNATIONAL LEVEL**

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

## **NATIONALITY**

### **(Article 9 of CEDAW)**

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

## **EDUCATION**

### **(Article 10 of CEDAW)**

Article 10 of CEDAW requires that women enjoy equal access to education of all kinds and at all levels. It proceeds to illustrate that this covers all categories of education whether in rural or urban areas: pre-school, general, technical, professional or higher technical education, vocational training, adult and functional literacy programmes. A critical area to look into is ensuring that various courses or studies for a wide range of profes-

sions are open to women, especially those that are traditionally seen as for males only or are male-dominated. Women and girls also must have equal access to scholarships and study grants to assist them in accessing education. It is also critical to look into different groups of women to see whether they have equal opportunities to education. In this regard, there is a need to ensure equal access to education by rural and ethnic minority women. Article 10 also looks into whether women or girls have access to equal conditions of education. This involves having the same curricula, examinations, teaching staff with qualifications of the same standard, school premises and equipment of the same quality. In many cases, opportunities to participate in sports and physical education are limited for women and girls. Article 10 also looks at ensuring that education being provided has incorporated gender. In this regard, the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education is strongly urged. It also obligates that equal access to specific educational information to ensure health and well-being of families. This includes information on reproductive and sexual rights.

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

lack of access to education by girls in rural and remote and mountainous regions.

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

## ACCESS TO EDUCATION

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

Nevertheless, some suggestions are recommended to be able to comply with Article 10 of CEDAW. It is suggested that supporting legal documents to the Law on

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

### COMPULSORY PRIMARY AND SECONDARY EDUCATION

The Law on Children and Decree on Children Law, Law on Education and Law on Primary Education provide that primary education and lower secondary education are now considered universal education levels, as well as highlight the responsibility of families and the State to ensure that children study and complete the universal education programme. These laws are gender-neutral. However, targets recently set on primary and secondary education look into eliminating the existing gender gap and ensuring equal access to primary and secondary education by both girls and boys. Some recommendations, however, are suggested. It is recommended that further sex-disaggregated research and gender analysis be done on enrolment and completion rates. In par-

ticular, the study should provide a gendered analysis on why a gender gap exists and the reasons behind it. The study should investigate whether the percentage is in favour of boys or girls and what is required is to discover the reasons behind non-completion on education, and it should provide the appropriate, though not necessarily the same, interventions for girls as well as for boys.

## ETHNIC MINORITIES

One of the crucial concerns on education in Viet Nam is access to education by ethnic minorities, in particular ethnic minority girls. There are several legal documents and policies addressing access to education by ethnic minorities, although most are gender-neutral, such as the Constitution, Law on Education and Law on Primary Education. In providing recommendations, general improvements in access to education must benefit ethnic minority girls as they are the ones who are usually excluded where resources are limited. Hence, recommendations apply to general access issues and specifically to ethnic minority girls. It is suggested that a legal document be issued: (a) providing more transparent and detailed criteria for entitlement to scholarships, social subsidies and places/quotas; (b) introducing measures for reduction/exemption from non-tuition fees or facilitating students loans for payment of non-tuition fees, especially in cases where students are entitled to free tuition; (c) ensuring the appropriate proportion of ethnic minority women and girls - starting from 30 percent and gradually moving to 50 percent of the total ethnic minority grantees - are qualified for scholarships, social subsidies, tuition subsidies and reductions, and other

measures; and (d) exploring the possibility of credit facilities and allowances for ethnic minorities, which must be provided not only for the cost of education but also to alleviate the loss of income or help due to schooling of children, especially girls.

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

## PEOPLE WITH DISABILITIES

Articles 15-17 of the Law on Education and Articles 63 and 89 of the Ordinance for Disabled Persons mandate particular measures for people with disabilities, while the Socio-Economic Development Plan for 2006-2010 (SEDP) provides a target to have children with disabilities increasingly participate in the education system. Both these laws and the plan are gender-neutral and do not provide any gender-specific references to particular experiences by men or women. There is a significant gender imbalance in terms of accessing education by people with disabilities. It is recommended that clearer

guidelines be provided to ensure that women and girls with disabilities are not overlooked. The guidelines should provide that data collection and information must always be sex-disaggregated and subject to appropriate gender analysis. Scholarships and subsidies for people with disabilities must ensure that women and girls amount to at least 30-50 percent of the grantees. Where this cannot be met, a plan must be drafted and resources allocated to build capacity of women and girls to be able to qualify in the next round for these scholarships/grants. This must be implemented in areas where significant gender imbalance exists. For persons with disabilities who go to official boarding schools and EMSBs, clear guidelines must be set for their reasonable accommodation and facilitation of their mobility. A system for monitoring that women and girls with disability benefit on an equal basis must be in place.

## **SOCIALIZATION**

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

## **EQUAL CONDITIONS OF EDUCATION**

Article 10 of the Law on Education states that all citizens regardless of their ethnicity, religion, belief, gender, family background, social status or economic condition are equal in learning opportunities. Aside from this, there is

no specific or express guarantee on equal conditions of education, such as the same curricula, examinations, teaching staff or facilities. Hence, it is recommended that an explicit provision guaranteeing the right to equal education conditions, including the same curricula, examinations, teaching staff and facilities be stipulated.

### REVISION OF TEXTBOOKS AND CURRICULA

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

## NON-DISCRIMINATION BY SCHOOL ADMINISTRATORS, TEACHERS AND OTHER PERSONNEL

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

## SEXUAL HARASSMENT

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

## **EMPLOYMENT**

### **(Article 11 of CEDAW)**

The obligations under CEDAW on employment are quite comprehensive. Article 11 of CEDAW mandates equal right to work and equal conditions of employment in all aspects. More specifically, it guarantees equality in relation to the right to work, which includes the right to equal employment opportunities, freedom of choice of profession, right to gain a living by work freely chosen or accepted, and the application of the same criteria for selection in matters of employment. In this light, Concluding Comments on Viet Nam 2007 also require interventions for the occupational segregation happening in Viet Nam. Also, it strongly urges Viet Nam to address sexual harassment. Article 11 also guarantees equal conditions of employment in relation to promotion, job security, benefits and conditions of service, trainings and placement services, remuneration, evaluation, social security (especially in cases of retirement, unemployment, sickness, invalidity, old age and incapacity to work), and protection of health and safety in working conditions. It requires that interventions should be made to address discriminatory practices relating to maternity and pregnancy. The article obligates States Parties to review their protective legislation regularly and to make revisions to enable women to enjoy their rights fully. It also requires guarantees that women in particular sectors of work are protected; for example, domestic workers or migrant workers. The selected indicators, thus, focus on these issues.

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

### EQUAL EMPLOYMENT OPPORTUNITIES

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

Article 111 of the Labour Code states that an employer must give preference to women who satisfies all

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

### **PREFERENTIAL TREATMENT AND TAX REDUCTION**

Article 110 of the Labour Code provides: “The State shall establish policies on preferential treatment and reduction of taxes for enterprises which employ a high number of female employees.” This is further elaborated upon by the Circular on Female Labourers, Circular on Women Labour and Decree on Women Labourers. It is suggested that a review of Article 110 of the Labour Code and these subordinate documents be conducted. In relation to the items considered as tax reductions in the subordinate documents, it is recommended that tax

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

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

Likewise, other preferential policies can be provided to enterprises that are putting in place these support and capacity-building measures, in place of the task of moving women from banned jobs into suitable ones.

### EQUAL PAY FOR WORK OF EQUAL VALUE

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

### EQUAL CONDITIONS OF WORK

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

#### *Working regime for women*

Article 109 of the Labour Code and its relevant subordinate legal documents set up a working regime for women based on flexible working hours, incomplete work day, incomplete work week and home work. It is suggested that this regime be: (a) applicable only to pregnant women in advanced stages of pregnancy, when certified as unable to carry out work during the

normal working regime; (b) extended to men and women with frail health and men and women with difficult family situations; (c) supported by intensive behavioral change communication measures to enable shared responsibilities at work; and (d) supplemented guidelines on home work on conditions of work and other labour provisions.

### *Facilities*

It is also recommended that Article 116 of the Labour Code be revised to stipulate that all enterprises with a sufficient number of employees must set up crèches or kindergartens or provide support for the setting up of such facilities, rather than only enterprises with high proportion of women. A legal document can set down details as to the minimum number of employees for this provision to be mandatory.

### *Night work, overtime and rest breaks*

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

### *Transfer to lighter duties*

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

### *Training*

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

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

### *Leave*

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

### *Termination of employment*

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

state management agency of the proportion of men and women retrenched and from which positions.

### *Retirement age and social insurance*

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

### *Pregnancy and maternity regime*

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

of the child, to enable the parents to have sufficient preparation for the child's care.

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

### COMBINING FAMILY AND WORK

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

### SEXUAL HARASSMENT

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

Code, Article 10 of the Law on Gender Equality and Articles 104, 110, 121, 122 of the Penal Code, which can be of limited use against sexual harassment. One of the very few mentions of sexual harassment in legal documents is in Article 4 of the Decree on Health Violations. This decree penalizes as an administrative violation abusing the profession to commit acts of sexual harassment against patients. However, it does not apply to employer/employee relations, and a definition is not provided to assist in understanding sexual harassment. It is recommended that sexual harassment legislation be promulgated.

### **DOMESTIC OR HOUSEHOLD WORKERS**

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

### **VIETNAMESE MIGRANT WORKERS**

The Law on Guest Workers is the main legislation on Vietnamese overseas migrant workers. It identifies forms of overseas work and provides regulations. Article 7 of the law also contains a list of prohibited acts. Nev-

ertheless, some suggestions to make the law compliant with CEDAW are recommended. The Law on Guest Workers must prohibit explicitly: (a) contract substitution or alteration; (b) keeping the travel documents of the guest worker; (c) furnishing or publishing any false information or document in relation to recruitment or employment; (d) failing to reimburse immediately the applicant in a case where deployment does not take place; (e) recruiting or sending guest workers abroad without a licence; (f) forcing or intimidating guest workers to stay abroad; and (g) sending minors abroad for employment.

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

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

## **HEALTH**

### **(Article 12 of CEDAW)**

Article 12 of CEDAW requires the elimination of all forms of discrimination in the field of health and to ensure women's equal access to health-care services. GR 24 elaborates further. It explains that the guarantee of health care must be applicable throughout a woman's life. Thus, protection covers from as early as sex-selective abortions to the protection of elderly women. The obligation under Article 12 specifically highlights the various areas of health care requiring attention, such as those relating to access to health, maternity and pregnancy, HIV/AIDS and other Sexually Transmitted Infection (STIs), sexual and reproductive health-care services and education, birth control and family planning methods, abortions, and the privatization of the health-care services. In view of these, the selected indicators focus on these areas.

### **GUARANTEES OF NON-DISCRIMINATION AND EQUAL ACCESS TO HEALTH CARE**

There are numerous laws, plans and strategies in Viet Nam that address the equal right to access health-care services, including the Law on Health, Plan of Action for the Advancement of Women and Strategy for Protection and Care of People's Health. There is a need to supplement legal and policy documents through: (a) building or strengthening centres that specifically focus on health-care concerns of women, including diseases and infections that disproportionately affect them; (b) putting in place measures relating to GBV, establishing wom-

ens protection units in hospitals; (c) introducing targets for women's participation in leadership positions in the health sector; (d) ensuring that mobile teams that cater to women have a substantial proportion of female staff, are gender-sensitive, and are trained to address gender and women's health needs and concerns; (e) mandatory training on gender aspects of health care for health professionals; and (f) strengthening the institutionalization of professional social work in health care. In all these recommendations, special attention and mention must be made to prioritizing ethnic minority women, and women from remote and mountainous regions, who have been clearly disadvantaged in their right to access health care. Legal provisions should also be in place relating to gender budgeting.

### ASSISTANCE TO POOR AND DISADVANTAGED WOMEN

User fees remain a major source of health financing and, in many ways, undermine equality of access to health care. To reduce the inequalities caused by user fees, the Government introduced a policy of exempting or privileging certain individuals from or in treatment fees, including war veterans, people with disabilities, orphans, ethnic minorities, the poor, children aged less than 6 years and individuals with particular illnesses. These exemptions may be found in relevant legal documents, such as the Decision on Health Insurance, Law on Children, Ordinance on Elderly People, Ordinance on Disabled Persons and Resolution on Socialization. They should be viewed in the context of Decree on Financial Regime, which reflects the Governments policy

to spend less on public services and shift the burden to the consumer. The impact of these legal documents - and, in particular, the Decree on Financial Regime - must be further looked into, especially their effects on the disadvantaged sectors of society. Data must be sex-disaggregated to enable an analysis of the gender issues and impacts. To ensure that the appropriate standard of care is given to patients regardless of their gender and economic status, protocols on appropriate treatment and handling of patients must be drafted. Legal provisions that clearly prohibit and penalize direct and indirect forms of discrimination against disadvantaged groups in the field of access to health care, including those with health insurance cards, must be stipulated. These forms include: (a) patient skimming; (b) unnecessary referrals when treatment and care can be reasonably provided by the health-care establishment; (c) refusal of treatment when able to do so; and (d) providing less than the minimum standard of care.

## **PREGNANCY AND MATERNITY**

There are a substantial number of laws, plans and strategies in place relating to pregnancy and maternity. A degree of progress has also been achieved in maternal health care. Nevertheless, women from remote and mountainous areas still receive inadequate maternal health care, due to cost, distance to health centres and traditional birth practices. Hence, it is suggested that a legal document focusing on access to health, in particular maternal health care, by women in rural areas, women in remote and mountainous regions and ethnic minority women must be promulgated. It must: (a) in-

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

### HIV/AIDS AND OTHER STIS

Several laws address HIV/AIDS, including the Law on HIV/AIDS and Directive on HIV/AIDS, Law on Gender Equality, Law on Health and Decree on Health Violations, and Penal Code. In addition, there are several plans and strategies dealing with HIV/AIDS, primarily the National Strategy on HIV/AIDS. Nevertheless, some suggestions are made for their improvement. The Law on HIV/AIDS must explicitly provide that preventive care and treatment interventions must be provided to people living with HIV/AIDS regardless of gender, nationality, social, economic and other status. It must also state clearly that the guarantee of confidentiality and privacy extends to all identifying information, and this must be reflected in new protocols and guidelines. The Law on HIV/AIDS and Decree on Health Violations must also clearly stipulate that identifying information must be kept

confidential during proceedings of any nature, whether administrative or judicial, and within the employment, education or other setting. Protocols and guidelines for handling of cases of HIV/AIDS must be drafted; for example, for health and medical workers, police officers, mass media, employers, heads of educational institutions and teachers. These protocols and guidelines must contain step-by-step instructions on how to protect and respect people living with HIV/AIDS in an appropriate manner, so as to ensure that no discrimination or stigmatization occurs. Appropriate support and resources must be provided to the carers according to the situation, which may include job placement that allows for work at home or flexible hours to enable the balancing of work and care.

## ABORTION

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

It is suggested that explicit legal provisions ensure increased awareness of, availability of and accessibility to a wide range of contraceptive methods. This can lower the risk of unwanted pregnancies and frequent

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

### CONTRACEPTION

See section on Article 16.

### SEXUAL HARASSMENT

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

## **ECONOMIC AND SOCIAL LIFE** **(Article 13 of CEDAW)**

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

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

To ensure that a clear policy for gender equality and non-discrimination is carried into the field of business, and to prevent discriminatory stereotypes about businesswomen or female entrepreneurs, it is suggested that clear provisions on non-discrimination on account of gender in the field of business be stipulated in general laws on business, investment and enterprise; that is, the Enterprise Law, Investment Law, Law on Cooperatives and Decree on SMEs, and their supporting

documents. Provisions defining and prohibiting sexual harassment in the field of business must be drafted as well, including those committed by clients as well as officials who demand sexual favors to perform their mandated tasks. Legal provisions should also be provided to encourage the setting up of day-care centres and crèches. Clear responsibility in legal documents must be stipulated for ensuring increased support for female entrepreneurs to access business information and skills, and personnel, financial and technical management and administration skills, especially ethnic minority women and those women who live in remote and mountainous regions. A target of 50 percent, with a minimum of 30 percent, should be progressively achieved to ensure women's participation in human resource capability development.

### ACCESS TO CREDIT, LOANS AND FUNDS

The laws in Viet Nam do not formally prohibit women from accessing credit, loans and funds. There are several laws, plans and strategies that address women accessing credit including the Law on Gender Equality, National Strategy for the Advancement of Women and Plan of Action for the Advancement of Women, and the the Socio-Economic Development Plan for 2006-2010 and National Target Programme on Poverty Alleviation. Preferential credit for the poor and farmers is also available, which women can utilize as well. However, in reality, women have less access to credit, loans and funds. One of the major impediments for women in accessing credit is the lack of any capital or property, especially land, to offer as collateral. For further discussions and recommendations, see Article 15 and 16 of CEDAW.

## **RURAL WOMEN**

### **(Article 14 of CEDAW)**

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

## POLITICAL PARTICIPATION

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

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

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

Article 52 of the Constitution - and provisions in others laws such as Article 8 of the Civil Procedure Code and Article 5 of the Criminal Procedure Code - guarantee equality before the law. Articles 14, 16 and 19 of the Civil Code also guarantee all individuals the same civil capacity and capacity to act. It provides no distinction on the basis of sex as to the right to enter into contracts

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

## PROPERTY RIGHTS

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

The most discussed issue relating to property is the registration of LUCs. There are no impediments in law on the basis of gender relating to the registration LUCs. In reality, however, land is registered mostly in the name of the husband. Article 48(3) of the Land Law, Article 43 of the Decree on Land Law, and Article 27 of the Marriage and Family Law and Article 5 of the Decree on Marriage And Family Law, require that the full names of both the husband and the wife be inscribed in the Land-Use Certificate (LUC), which is the common property of the husband and wife. Goals, plans and strategies, including the Comprehensive Poverty Reduction and Growth Strategy (CPRGS), the Socio-Economic Development Plan for 2006-2010 (SEDP) and the Viet Nam Development Goals (VDGs) have also

urged the joint registration of newly issued certificates.

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

## **MARRIAGE AND FAMILY** **(Article 16 of CEDAW)**

Article 16 of CEDAW, GR 19 and GR 21 look into ensuring equality in the realm of the family and marriage. They guarantee equal rights relating to entry into marriage, during marriage (whether it relates to property, children, inheritance) and on dissolution of marriage. They protect not only registered marriages, but also de facto marriages (that is, unions without marriage). In relation to family life, their protection is provided for the whole life of women. In particular, women and girls are protected from violence, especially violence caused by harmful traditional practices such as early marriage, forced marriage, polygamy and domestic violence. GR 21 also states that there are various forms of the family. Hence,

the protection afforded should be expansive rather than restrictive. The selected indicators, therefore, focus on these aspects of Article 16 and these GRs. Further, Concluding Comments on Viet Nam 2007 focused, in particular, on calling Viet Nam to prevent underage marriages and urging it to set a minimum age of marriage at age 18 years. Selected indicators focus on these matters too.

## PROTECTION FOR MARRIAGE AND FAMILY

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

## ENTRY INTO MARRIAGE

Article 64 of the Constitution states: “Marriage shall conform to the principles of free consent, progressive union, monogamy and equality between husband and wife.” There are several legal provisions on entry into marriage, including the Civil Code, Marriage and Family Law, and Penal Code and their subordinate legal documents, that emphasize these principles and prohibit acts that violate them, including use of force or deception to secure consent to marriage, under-age marriage, hindering voluntary and progressive marriage, feigned marriage,

deceiving other persons into marriage. Some recommendations on this topic include setting the same age of marriage for men and women at not less than age 18 years, as well as a review of the list of acts in Decree on Marriage and Family (Ethnic Minorities) that identifies explicitly the prohibited acts in the marriage practices of ethnic minorities.

## REGISTRATION OF MARRIAGE

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

## ADULTERY

The crime of adultery is penalized in many jurisdictions and it usually covers either sexual relations by a married person with someone other than his/her spouse or with a person knowing him/her to be married. One of the criticisms of the crime is that it impacts disproportionately on women, in particular because of societal tolerance of male sexual relations outside marriage, with cases most often filed against women. In Viet Nam, there is no crime of adultery

per se. However, the provisions on bigamy or acts violating monogamy regime in Article 147 of the Penal Code criminalise acts amounting to adultery. There is a need for further research on this area in Viet Nam.

## PROPERTY RIGHTS

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

## NUMBER AND SPACING OF CHILDREN

Article 43 of the Law on Health emphasizes that family planning is a duty for all people who have the right to choose family planning methods. Article 2 of the Marriage and Family Law also states that one of the basic principles of the marriage and family regime is that a husband and wife are obliged to implement the population and family planning policy. Article 10 of the Population and Article 17 of the Decree on Population also identify family planning as an obligation. Article 43(1) of the Law on Health, Article 17 of the Decree on Population, National Strategy on Reproductive Health Care and Resolution No. 47-NQ-TW of March 2005 affirm a policy that targets a fertility rate of two children for a woman of reproductive age. This policy is

imposed especially on public sector employees, who are subject to higher health-care costs, reduced salary increases, and less access to employment benefits such as housing if they have more than two children. Article 21 of the Decree on Population emphasizes voluntary and knowledgeable use of contraceptives. In practice though, the range of available contraceptives is limited.

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

In relation to contraception, access to a wide range of contraception should also be one of the explicit rights relating to population work and family planning, and it must be guaranteed in the list of rights in Articles 4 and 10 of the Population Ordinance and Article 17 of Decree on Population. Specific guidelines should be given to health-care providers on providing information and counselling to users of contraception to enable their informed consent and to

ascertain with them the best methods for their needs. Procedures to ensure that the patient has given informed consent prior to undergoing sterilization procedures must be in place. There is a need to review the moral and material incentives in legal documents for the use of particular forms of contraception as they may violate gender equality, in particular right to determine number and spacing of children.

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

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

In addition to the guarantee of gender equality, a guarantee of non-discrimination in access to family planning services, especially access to contraceptives, on other grounds to gender must also be explicitly guaranteed, especially equal access by disadvantaged groups of women such as ethnic minority women, and poor or rural women. In particular, an explicit provision on the equal access by unmarried women to all family planning services must be stipulated. There should be a clear prohibition on discriminating against them on account of their unmarried status.

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

### DE FACTO UNIONS

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

### INHERITANCE RIGHTS

Vietnamese law guarantees equal inheritance rights in Article 676 of the Civil Code and Article 31 of the Marriage and Family Law. In practice, however, contravention of the law exists due to discriminatory customs and practices. Further study is recommended on incidences of indirect discrimination against women relating to inheritance rights. It is suggested that a system of reserved inheritance be put in place for a specific portion of the testators estate, which would be allotted for com-

pulsory heirs that cannot be easily disregarded by the testator without justifiable reasons or by written agreement of heirs without appropriate safeguards, such as legal counselling on women's rights and the consequences of disclaiming their portion of the estate. This system must include provisions on collation of property back to the estate in cases of donations and alleged sales of property to male heirs that operate to take away property from, and to deprive women and girls of their share in, the estate.

## **CONCLUSION**

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



UNIFEM is active in all regions and at different levels. It works with countries to formulate and implement laws and policies to eliminate gender discrimination and promote gender equality in such areas as land and inheritance rights, decent work for women and ending violence against women. UNIFEM also aims to transform institutions to make them more accountable to gender equality and women's rights, to strengthen the capacity and voice of women's rights advocates, and to change harmful and discriminatory practices in society.

Two international agreements frame UNIFEM's work: the Beijing Platform for Action resulting from the Fourth World Conference on Women in 1995, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), known as the women's bill of rights. The spirit of these agreements has been affirmed by the Millennium Declaration and the eight Millennium Development Goals for 2015, combating poverty, hunger, disease, illiteracy and gender inequality, and building partnerships for development. In addition, Security Council Resolution 1325 on Women, Peace and Security is a crucial reference for UNIFEM's work in support of women in conflict and post-conflict situations.

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