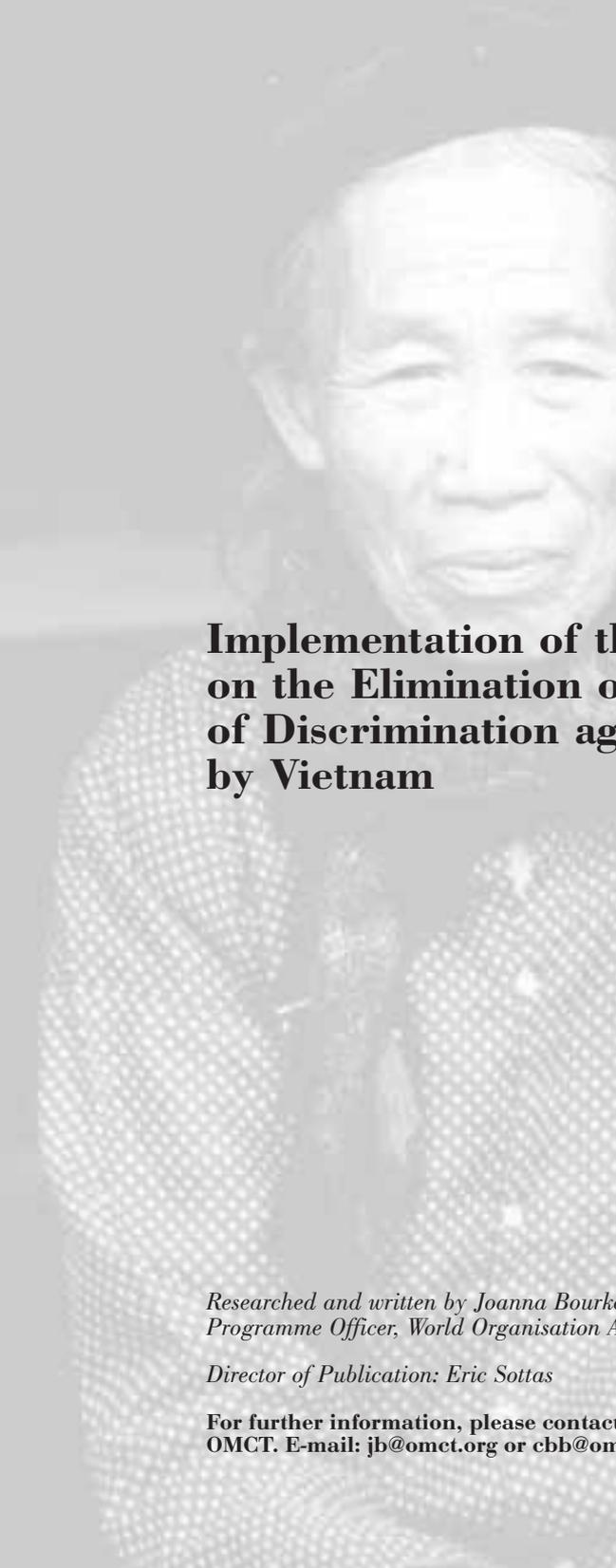




Violence against Women in Vietnam

*Report prepared
for the Committee
on the Elimination
of Discrimination
against Women*



**Committee
on the Elimination
of Discrimination
against Women**

*25th session
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**Implementation of the Convention
on the Elimination of All Forms
of Discrimination against Women
by Vietnam**

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The United Nations Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. In 1981, the Convention entered into force and the Committee on the Elimination of Discrimination against Women was formally established. The major task of the Committee is to review the reports submitted by the States parties in order to oversee the implementation of the Convention.

The issue of gender-based violence is not specifically addressed in the Convention, but it is however essential to its most fundamental provisions. In the general recommendation No. 19 adopted at its eleventh session in 1992, the Committee on the Elimination of Discrimination against Women formally extended the general prohibition on gender-based discrimination to include gender-based violence. The Committee affirmed that violence against women constitutes a violation of their internationally recognised human rights, regardless of whether the perpetrator is a public official or a private person.

One becomes inevitably aware of the fact that the States present reports that show only a one-sided image of reality, which is frequently incomplete. The case being, the effectiveness of this supervision and control depends on the quality of information available to the members of the various committees. Recent information, verified by reliable sources, is consequently indispensable.

In submitting alternative reports to the Committee on the Elimination of Discrimination against Women (CEDAW), OMCT seeks to provide de facto information concerning violence against women, including torture, in a specific country as well as analyse national legislation that fosters violence against women.

OMCT's reports highlight the legal provisions, both penal and civil, of the States concerned, which discriminate against women or which, without being discriminatory as such, become so through their application. Unequal power relations between men and women have led to the domination of and discrimination against women, which in turn leads to violence against women.

Furthermore, the reports draw attention to the lack of ways for the victims of violence to obtain reparation and identify the mechanisms guaranteeing the impunity of torturers.

The reports include recommendations for reform of de facto practices and legislation aimed at reducing the incidence of violence against women in the country in question.

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I

Preliminary Observations

Vietnam ratified the Convention on the Elimination of All Forms of Discrimination against Women on 17 February 1982. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women has not yet been signed or ratified by Vietnam.

With regard to other international human rights instruments, Vietnam acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1982. Article 7 of the Covenant prohibits torture and other cruel, inhuman or degrading treatment. In March 2000, the Human Rights Committee adopted General Comment 28 on Article 3 of the ICCPR concerning gender equality in which it stated that in order to comply with their obligations under Article 7 of the Convention, States must submit information on national laws and practice with regard to domestic and other forms of violence against women, including rape, on access to safe abortion for women who have become pregnant as the result of rape and on measures to prevent forced abortion or forced sterilisation.

Vietnam is also a party to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Elimination of all Forms of Racial Discrimination. The Convention on the Rights of the Child was ratified by Vietnam in 1990 and it signed the two Optional Protocols to that Convention in September 2000.

OMCT notes with great concern, however, that Vietnam is not a State party to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment which provides detailed protection against torture and ill treatment.

In 1998, the Standing Committee of the Vietnamese National Assembly adopted several ordinances on the Conclusion and Implementation of International Treaties. In its 2000 report to the Committee on the Elimination of Racial Discrimination, the Vietnamese government noted that under these ordinances, international conventions take precedence over domestic legislation and stated that it regards international instruments as an “organic part of Vietnamese law.”¹

1 – Vietnam, Ninth Periodic Report to the Committee on the Elimination of Racial Discrimination, UN doc. CERD/C/357/Add.2, 17 October 2000, para. 15.

The Vietnamese Constitution, as well as the Civil, Criminal and Family Codes generally provide for *de jure* equality between men and women in the political, economic, cultural, social and family spheres. Following the Fourth World Conference on Women, the government formulated a National Plan of Action for the advancement of women by the year 2000 and, after evaluating the progress made under the plan, further strategies have been adopted for the period 2001-2010.

Despite all of the commitments entered into internationally and nationally in relation to preventing and combating discrimination against women, violence and other forms of discrimination against women persist in Vietnam. Although violence against women, including domestic violence, marital rape, trafficking in women and girls and violations of women's reproductive rights are serious problems, they frequently go unacknowledged and unpunished, sending the message that these forms of discrimination against women are socially acceptable. Moreover, it would appear that since the implementation of the "doi moi" or renovation process in 1986, there has been an increase in violence and other forms of discrimination against women in Vietnam.

While OMCT welcomes the second and the combined third and fourth periodic reports of the Government of Vietnam to the Committee on the Elimination of Discrimination Against Women, it is regrettable that the reports fail to address the issue of violence against women in a comprehensive manner. For this reason and bearing in mind General Recommendation 19, in which the Committee on the Elimination of Discrimination against Women concluded that States parties should take all appropriate measures to overcome all forms of gender-based violence whether by public or private actors, this report will focus on violence against women in Vietnam. The report concludes with a set of recommendations for future action.



General observations on the legal, social and economic Status of Women in Vietnamese society

Women have historically played an important role in Vietnamese society and it is believed that women in Vietnam traditionally held “a special position and prestige in family and society” in comparison with women in other countries in the region.² The arrival of Confucianism in Vietnam during the Chinese occupation of the northern half of the country more than 1000 years ago substantially weakened this traditional gender equity and some authors have argued that it was at this point that patriarchy became entrenched as the dominant form of gender relations.³ With the advent of the Socialist government, formal equality was established in the Constitution and in many government policies and grassroots women’s organisations were established. Nevertheless, discrimination against women continues to exist in Vietnam and women encounter substantial legal and social obstacles when attempting to enforce their rights.

More than 50 per cent of Vietnamese women are currently members of the Vietnamese Women’s Union (VWU), which was originally formed under government auspices in 1930.⁴ Government Decree 163 (1998) institutionalised the status of the VWU and provided that it should be consulted and involved in any discussions on policies relating to women and children at all levels of government. The peak governmental body dealing with women’s issues is the National Committee for the Advancement of Women which consists of both centralised agencies as well as a network of Sub-Committees throughout the country.⁵

Gender development indicators show that Vietnamese women enjoy a relatively high level of health, education and gender equity as compared to other countries in the region and to those States with a comparable gross

2 – Vietnamese Women’s Union and the Centre for Family and Women’s Studies, *Vietnamese Women in the Eighties*, Foreign Languages Publishing House, Hanoi, 1989, p. 8.

3 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, p. 1.

4 – UNDP, Gender Briefing Kit: Vietnam, December 2000.

5 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 14.

domestic product.⁶ Recent reports indicate, however, that the adoption of the “doi moi” or renovation policy in 1986, along with the Asian economic downturn have had an increasingly negative impact on the status of women in Vietnam.⁷

The Vietnamese Constitution of 1992 contains emphatic guarantees concerning the equality of men and women. Article 63 of the Constitution provides that:

“Male and female citizens have equal rights in all fields – political, economic, cultural, social and the family ... All acts of discrimination against women and all acts damaging to women’s dignity are strictly banned. Men and women shall receive equal pay for equal work. Women workers shall enjoy a regime related to maternity. The State and society shall create all necessary conditions for women to raise their qualifications in all fields and fully play their roles in society.”

This provision is important in that it addresses formal equality in both the public and ‘private’ spheres and specifies that women shall not be discriminated against by virtue of their reproductive role. Nevertheless, the fact that Constitutional provisions, as well as policies for the advancement of women constantly emphasise women’s maternal role may perpetuate the stereotypical idea that women should be the sole or primary caregivers for children. Legislative and policy changes may be necessary in order to ensure that fathers are encouraged to play an equal role in the upbringing of children in Vietnam.

II.1 Education

The 1998 Law on Education provides in its Article 9 that women and girls shall have equal access to educational opportunities. While girls are currently attending primary and secondary schools in numbers almost equivalent to those of boys, there is still a strong gender disparity in the number of women undertaking tertiary education.⁸

6 – According to the UNDP’s Human Development Report 2000, Vietnam was ranked 89 on the Gender Development Index out of the 143 nations surveyed.

7 – Melanie Beresford, *Impact of Macroeconomic Reform on Women in Vietnam*, UNIFEM, Bangkok, 1997.

8 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 27.

The Vietnamese Statistical Office reported in 1999 that women form 69 per cent of the 5.3 million illiterate people in Vietnam. While the rate of female literacy has improved dramatically in the last twenty years, there remains a literacy gap of around twelve per cent between women and men aged over forty. The 1999 census revealed that twelve per cent of girls aged five and over have never attended school, while the rate for boys is seven per cent.⁹

II.2 Work

Women are provided with formal guarantees of equality in their choice of occupation and of equal remuneration for work of equal value in the Constitution, the Civil Code and in various Labour Laws. Article 45 of the Civil Code provides that: “Individuals have the right to work. Everyone has the right to work, and enjoys the freedom to select an occupation or job free from discrimination on the basis of sex, ethnic origin, social status, belief or religion.”

More than seventy per cent of women of working age (from 16 to 55) in Vietnam participate in the labour market and women constitute 52 per cent of the total labour force.¹⁰ Despite this high rate of participation in the labour force, working women are generally concentrated in lower status occupations and earn substantially less than their male counterparts for equivalent work. Information received shows that wage-earning women receive only 72 per cent of male salaries for the same type of work.¹¹

The Government’s combined third and fourth periodic report states that temporary special measures aimed at protecting female workers and at supporting businesses run by women “have not worked as well as expected.” The report goes on to note that some enterprises still use the list of prohibited jobs for female workers as an excuse to refuse to recruit women or to dismiss them.¹²

According to the Viet Nam Women’s Union, the unemployment rate for women increased from 5.38 per cent in 1996, to 7.42 per cent in 1999,

9 – General Statistical Office, *Preliminary Results of the Population and Housing Census: 1999, 2000*.

10 – UNDP Gender Briefing Kit: Vietnam, December 2000.

11 – Human Rights Information Network, “Women Play Important Role in Socio-Economic Development”, 8 January 1999.

12 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 16.

largely due to the impact of the regional economic crisis.¹³ Recent evidence has demonstrated that the shift towards a market economy has generally affected women in a negative manner, pushing them away from the security of salaried employment into more precarious household and informal sector work and increasing the level of unemployment.¹⁴

While unemployment may be on the rise in Vietnam, women continue to perform the bulk of unremunerated domestic and agricultural work. Rural women in Vietnam work an average of 12.5 hours per day, women in northern Vietnam and mountainous regions work an average of 14 hours per day and single working women work an average of 16 hours per day.¹⁵ A direct consequence of the fact that women in Vietnam tend to shoulder a double or triple role (work inside the home, caring for children and work outside the home) is that they have very limited time available for relaxation, education and training, social, cultural or recreational activities.¹⁶

II.3 Land

Although women in Vietnam are, in theory, legally entitled to own land, the *de facto* situation of rural women as regards land ownership is far from ideal. A recent report describes women in rural Vietnam as a “disadvantaged group” and notes that women are frequently dependent upon male relatives for access to land.¹⁷ While joint title is permitted under Vietnamese land law, it is much more common for land to be solely in the husband’s name¹⁸ and this leads to difficulties for divorced or widowed women in claiming title to land. Women who are not registered land owners

13 – Viet Nam Women’s Union (VWU), *Report on the Implementation of the Beijing Platform for Action to the Bangkok ESCAP meeting*, 25-29 October 1999, Women’s Publishing House, Hanoi, 1999.

14 – Melanie Beresford, *Impact of Macroeconomic Reform on Women in Viet Nam*, UNIFEM, Bangkok, 1997.

15 – UNDP, *Gender Fact Sheet*, Hanoi, June 1999.

16 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, p. 16.

17 – Cecil Hood, *Gender Issues in the Administration of the Land Law in Viet Nam*, New Zealand Ministry of Foreign Affairs, 2000.

18 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 38. The report notes that only 10-12 % of land use certificates in Viet Nam are registered in women’s names and that the number of jointly-held certificates is very limited. Women rarely inherit or have any say over their parent’s land-use rights due to traditional practices in many Vietnamese families.

also face obstacles in borrowing money from lending institutions, as it is extremely hard for them to demonstrate that they have sufficient collateral without land title.¹⁹

II.4 Marriage

The Constitution, Civil Code and Law on Marriage and the Family all provide for equality between partners in marriage. Article 64 of the 1992 Constitution provides that: “Marriages shall conform to the principles of free consent, progressive union, monogamy and equality between husband and wife.” Article 36 of the 1996 Civil Code states that: “The wife and the husband are equal; they have equal rights and obligations in all respects in their family and in civil transactions; together they build a well provided for, strong, harmonious and happy family.” Article 9 of the Law on Marriage and the Family (2000) stipulates that: “marriage is decided by both man and woman on the principle of free consent; no one may force or cheat others; no third person may force or prevent them from getting married.” Article 146 of the Penal Code declares that persons who force other persons into marriage against their will through persecution, ill-treatment or intimidation and who have previously been administratively sanctioned for these acts but then repeat them, shall be subject to warning, non-custodial reform for up to 3 years or a prison term of between 3 months and 3 years.

The hallmarks of the *de jure* régime applicable to marriage in Vietnam are then equality between husband and wife and free consent to marriage. In practice, however, it would appear that the principle of free consent is not always adhered to. According to the Vietnamese government’s initial report to the Committee on the Rights of the Child which was submitted in 1992, the number of under-age marriages involving girls and boys below the age of 15 is increasing, particularly in remote areas.²⁰ In the H’mong ethnic group, marriage by kidnapping is reportedly still common, with the future husband demanding that the woman’s family consent to the wedding.²¹

19 – UNDP, Gender Briefing Kit: Vietnam, December 2000.

20 – Vietnam, Initial Report to the Committee on the Rights of the Child, UN Doc. CRC/C/3/Add.4, 22 October 1992, para. 65.

21 – Dang Nghiem Van, Chu Thai Son, and Luu Hung, *Ethnic Minorities in Viet Nam*, Gioi Publishers, Hanoi, 2000.

Article 19 of the Law on Marriage and the Family provides that the minimum ages for marriage are 20 years for men and 18 years for women. Article 32 of the Law states that the difference in minimum age for marriage is related to the differential rate of physiological and psychological development between women and men. OMCT is of the view that this discrepancy in the age of marriage between women and men constitutes discrimination which may not be justified on biological grounds.

II.5 Situation of Indigenous and Minority Women

There are 54 different ethnic groups living in Vietnam and the situation of indigenous and minority women is often compounded by multiple layers of discrimination based on ethnicity and gender. Minority and indigenous groups in Vietnam tend to suffer from geographic isolation, high levels of poverty, ill health and a lack of access to services. Indigenous and minority women are further disadvantaged by the fact that they are frequently the victims of domestic violence and other forms of gender-based discrimination. A joint report by the Government-Donor-NGO working group on poverty published in 1999 stated that indigenous women and women from ethnic minorities frequently face problems including: “heavy workloads, limited decision-making power within the household (particularly on reproductive decisions), high levels of domestic violence and low levels of access to education and knowledge.”²²

As outlined below, there is also some evidence that indigenous and minority women may face greater pressure than other sections of the population to undergo sterilisation or abortion procedures for the purposes of meeting family planning and population target levels.

22 – Government-Donor-NGO Poverty Working Group, *Attacking Poverty: Viet Nam Development Report 2000*, World Bank, Hanoi, 1999, p. 33.



Violence in the Family

The issue of domestic violence has, thus far, received very limited attention from the legislature, the judiciary, governmental institutions and the media in Vietnam. The government's combined third and fourth periodic report to this Committee does not mention domestic violence and, aside from a comprehensive section on trafficking in women, makes only very oblique references to violence against women in general. There is no specific legislation prohibiting family-based violence and the government has not enacted policy to provide for the systematic training of officials at all levels on dealing with cases of domestic violence. The limited information that is currently available concerning the investigation, prosecution and punishment of domestic violence raises serious questions as to the level and consistency of law enforcement. Ignorance and corruption amongst law enforcement personnel and members of the judiciary are considered to be at the heart of the large degree of impunity enjoyed by perpetrators of domestic violence. Finally, to date there has been little research done concerning the amplitude or frequency of the problem of family-based violence in Vietnam.

According to incomplete statistics provided by 18 Vietnamese provinces and cities between 1990 and 1998, 11,630 case of domestic violence requiring intervention by the authorities were recorded. Over the same 8 year period, 515 reported cases occurred in Ba Ria-Vung Tau; 819 in Khanh Hoa; 1,123 in Thai Binh; 1,484 in Ha Tay; 967 in Ninh Thuan; and 2,002 in Kien Giang.²³ The real number of cases of domestic violence is undoubtedly much higher than these figures would suggest as they are derived only from cases that have proceeded to the hearing stage. Other surveys have demonstrated that victims frequently do not report acts of domestic violence and even where the violence is reported, women are often discouraged both by their families and by authorities from following through with complaints.

There is evidence that there has also been an increase in recent years in the number of cases of domestic violence resulting in the murder of the victim. Prior to 1993, family-based violence ending in murder accounted for 14-15 per cent of the total number of murders. In the period 1994-1997, domestic violence-related murders comprised 17-20 per cent of all murders.²⁴

23 – Documents provided by the Supreme Peoples Court, Hanoi, 1998.

24 – *The Law* 83, 17 October 1997.

A small-scale study on domestic violence carried out by the Vietnam Women's Union in 1997 in the northern provinces of Hanoi, Ha Tay, and Thai Binh, revealed the widespread nature of family-based violence in the region.²⁵ Another report from 1997 found that the most common form of domestic violence in Vietnam was physical or psychological violence perpetrated on a woman by her husband and that this accounted for 65 to 70 per cent of all cases of family-based violence.²⁶ In 1998, the Population Council reported that domestic violence in Vietnam occurs "in families from all education and socio-economic levels" and that numerous factors including; poverty, alcohol and drug abuse, gambling, mental illness, stress and/or frustration and son preference may contribute to domestic violence.²⁷ A study conducted in Northern Vietnam in 1998 by Dr. Le Thi Quy noted that "underlying domestic violence, as well as other forms of inequality between men and women in Vietnam is a more than 1000 year history of patriarchy that privileges men over women."²⁸

In 1999, a comprehensive study of domestic violence in Vietnam was undertaken by a team of researchers working within the framework of the World Bank's Policy Research Report on Gender and Development.²⁹ The study, which was based on qualitative and a limited amount of quantitative data received from focus groups, questionnaires and interviews with key district and commune-level authorities, found domestic violence to be a "very real and widespread issue in Vietnam, affecting women from all social and geographical groupings."

III.1 The legal regime applicable to domestic violence and its enforcement

Aside from the provisions on the infliction of physical injuries discussed below, Article 151 of the Vietnamese Penal Code is the only piece of criminal law directly relevant to domestic violence. The provision is entitled "ill-treating or persecuting grand-parents, parents, spouses,

25 – Dr. Vu Manh Loi, Dr. Vu Tuan Huy, Dr. Nguyen Huu Minh and Ms. Jennifer Clement, *Gender-Based Violence: The Case of Vietnam*, World Bank, Vietnam, 1999.

26 – Tran Quoc Tu, *Domestic violence to women: Situation and Measures of Interventions*, unpublished paper cited in UNDP Gender Briefing Kit: Vietnam, December 2000.

27 – Le Thi Phuong Mai, "Violence and its Consequences for Reproductive Health: The Vietnam Case", *South and East Asia Regional Working Papers No. 12*, Hanoi, 1998, p. 36.

28 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, p. 1.

29 – Dr. Vu Manh Loi *et. al.*, *op. cit.*

children, grandchildren and/or fosterers” and stipulates that persons who “ill-treat or persecute” family members “thus causing *serious* consequences or who have already been administratively sanctioned for such acts but repeat their violations, shall be subject to warning, non-custodial reform for up to two years or a prison term of between three months and two years.” (emphasis added)

While the fact that the provision would appear to cover both physical and psychological violence against family members is positive, the need for the ill treatment or persecution to cause “serious consequences” is problematic as it is unclear exactly how the seriousness of these consequences is to be evaluated. Furthermore, the fact that criminal sanctions will only be applied in cases of repeated violence or where there are serious consequences sends the message that singular acts of violence or cases where the violence does not reach the required threshold of seriousness may go unpunished. The sentencing scale for the crime is also of concern as it seems that perpetrators of repeated or serious acts of domestic violence may emerge from the proceedings with nothing more than a warning.

As will be seen in greater detail below, the criminal law relating to domestic violence has been inconsistently and often inadequately enforced in Vietnam. There have been reports that judges in some communities have accepted bribes in order to exonerate the perpetrators of domestic violence and in cases where offenders are convicted, they tend to receive relatively light sentences.³⁰

Article 4 of the Law on Marriage and the Family states in similar terms to the Penal Code that “ill treatment and persecution against grandparents, parents, spouses, children, grandchildren, siblings or other family members are forbidden.” The Law provides that “agencies, organisations and individuals have the right to request the Court or other competent bodies to take measures to promptly stop and severely handle” persons committing acts in violation of the Law. Article 107 on the implementation of the Law on Marriage and the Family stipulates that violations of its provisions shall “depending on the nature and seriousness of their violations, be administratively sanctioned or examined for penal liability, if causing any damage, they must pay compensation.” The provision of compensation for acts of domestic violence is a laudable addition to the

30 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, p. 39.

Law and OMCT calls upon the government to ensure that such compensation is provided to victims of family-based violence.

Importantly, however, the section of the Law on Marriage and the Family relating to divorce does not explicitly state that violence is a grounds for divorce and it is, instead, left to the discretion of the Court to judge whether or not a divorce should be granted. Divorce for reasons relating to family-based violence is usually only granted to women in cases where they have been subjected to repeated and severe physical violence. The current law on Marriage and the Family makes it exceedingly difficult to bring the perpetrator of the violence to trial, even if he has violated the law, without a formal request by the victim. Moreover, Chapter X of the Marriage and Family Law provides that participation in a process of compulsory conciliation is necessary before a divorce will be granted. Conciliation proceedings are normally carried out several times and many couples reportedly change their minds during the process and decide to reconcile. A serious weakness in this system, particularly in situations where the woman has been the victim of domestic violence, is that it fails to take into consideration the unequal power relationship between the wife and the husband and generally leads to women being less able to successfully assert their rights.³¹

III.2 Wife Battering

It has been asserted that wife battering is still often perceived in Vietnam as an extension of the Confucian idea that husbands are responsible for the “education” of their wives and that this education may include acts of physical violence.³² The deeply entrenched social belief that men have the right to beat their wives is clearly apparent in the outrage and disbelief that often accompany the sanctioning of wife batterers. In one case, men present at the trial of a man who was convicted and sentenced to 9 months’ jail for wife battering reportedly demanded “he beats his spoiled wife, why is he imprisoned together with thieves and robbers ?”³³ These kinds of declarations attest to the fact that wife battering and other forms of domestic violence are still not widely considered to be criminal acts that should be sanctioned in the same way as other crimes. Any strategy for the

31 – *Ibid.*, p. 18.

32 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, pp. 26-27.

33 – *Women of Ho Chi Minh City*, no. 83, 25 October 1997.

elimination of domestic violence in Vietnam must, therefore, address these ingrained patriarchal practices and actively work to change societal attitudes concerning gender relations.

Information received suggests that physical abuse of women by family members is very rarely reported and that the few recorded cases of wife battering are generally documented during divorce proceedings. According to court officials, most cases of wife battering never come before the courts due to the numerous social and legal impediments faced by women wishing to bring such cases.³⁴

Under Article 104 of the Vietnamese Penal Code, husbands who physically injure their wives can theoretically be charged with the intentional infliction of injury. In practice, however, there are two conditions that must be fulfilled before this can occur. Firstly, the woman must have suffered injuries amounting to an “infirmity rate” of between 11% and 30%,³⁵ and secondly, the woman is required to file charges. According to information received, police will not usually arrest wife batterers without an explicit request from the woman, regardless of the degree of injury that she has suffered.³⁶

In the context of an interview conducted for the 1999 World Bank study on domestic violence in Vietnam, the District Police Investigator in the town of Hue described the case of a woman who was subjected to repeated physical violence by her husband until she was eventually hospitalised with a broken eardrum. Following this incident, she petitioned for divorce. The District Court decided that the case was criminal rather than civil in nature and requested that the Investigator begin criminal proceedings. At the time that the interview team spoke with the Investigator, the criminal case was pending, the divorce proceedings had been suspended and the woman was still living in the same house as her violent husband.³⁷

34 – *Ibid.*, p. 18.

35 – The “infirmity rate” is based on Government Regulation No. 12/TTLB which outlines specific types of damage to a persons health and allocates a percentage to the degree of damage. The extent of the “infirmity” may only be assessed by the various central and provincial Councils for Estimation of Health Damage.

36 – Dr. Vu Manh Loi *et. al.*, *op. cit.*, p. 19.

37 – *Ibid.*, p. 19.

III.3 Marital Rape

Marital rape is not explicitly mentioned as a criminal offence in Article 111 of the Vietnamese Penal Code. Research on domestic violence has shown that the term “marital rape” appears to be unknown in Vietnam, however, there is evidence that “forced sex” in the context of marriage does occur.³⁸ The present report prefers to use the terminology “marital rape” in order to refer to non-consensual sex in the context of marriage as this term has been widely accepted and more clearly expresses the gravity of the offence.

The Vietnamese Center for Reproductive and Family Health has noted that no cases of marital rape have so far been brought before the Vietnamese courts and that this is largely due to the perception of conjugal affairs as being private and to the deeply embedded idea that wives must obey their husbands and are therefore not entitled to refuse their demands for sex.³⁹

A recent report on family-based violence states that in Vietnamese society it is considered to be within a husband’s conjugal right to demand that his wife have sex with him even without her consent. The report further notes that sex has traditionally been something of a taboo subject in Vietnam and that it is therefore very difficult to assess the prevalence of marital rape. Most documented cases of marital rape have been collected during divorce proceedings or other situations requiring intervention from community institutions. According to many Vietnamese divorce lawyers, marital rape and other forms of violence are the underlying but unspoken reasons behind many divorce proceedings.⁴⁰

III.4 Acid attacks

In recent years there has reportedly been an increase in the number of incidents in which acid is sprayed or splashed onto the faces of women.⁴¹ These acid attacks, which are usually committed by the woman’s husband as a punishment for alleged acts of adultery, may result in death or in

38 – *Ibid.*, p. 5.

39 – Information received from the Center for Reproductive and Family Health, 28 December 1999.

40 – *Ibid.*, p. 7.

41 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, p. 18.

serious and permanent disfigurement for the victim. Some victims of acid splashing have reportedly committed suicide as a result of the physical and psychological trauma engendered by the attack.⁴²

The Burn Unit at Cho Ray hospital in Ho Chi Minh City treated 114 acid burn victims between 1994 and June 1997. According to statistics released by the hospital, approximately 90 per cent of these acid splashing cases occurred in the context of domestic violence.⁴³

Some cases of domestic violence involving acid attacks have reportedly been tried in Vietnamese courts, however, there is little information available concerning the conviction rates or sentencing for these crimes. Dr. Pham Viet Ba, Director of Cho Ray hospital's Burn Unit stated in a 1997 interview that "acid splashing is considered a brutal attempted murder. It should be given the most serious penalty as the crime of murder."⁴⁴ It is unclear whether Vietnamese authorities have been active in investigating, punishing and prosecuting cases of domestic violence involving acid.

The justifications given by the perpetrators of acid attacks for their actions are, in many ways, similar to those advanced by the perpetrators of other forms of domestic violence. For example, Mr. Tran Van T. from Ho Chi Minh City stated while on trial for charges of attacking his wife with acid that he had committed the crime because "my wife is so beautiful and I'm afraid she would be watched by someone with secret designs."⁴⁵

III.5 Bride price

Evidence indicates that in some areas of Vietnam, the practice of the bride's parents asking for gifts from the groom's family has re-emerged.⁴⁶ Demands for a 'bride price' may create tensions within the marriage and amongst the woman's extended family. The fact that the bride has been 'bought' by the groom and his family can result in her being viewed as a 'commodity' who may be forced to perform household tasks and subjected to various forms of psychological and physical abuse. Moreover, the newly

42 – *Ibid.*

43 – Women of Ho Chi Minh City, no. 63, 16 August 1997.

44 – *Ibid.*

45 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, p. 18.

46 – *Ibid.*, p. 28.

married couple are responsible for “repaying” the debts incurred by the husband’s family in purchasing the wedding gifts and the wife is often blamed as the source of the family’s financial woes.

Violence against Women in the Community

IV

Community-based violence in Vietnam takes many forms and may include rape and other forms of sexual violence, community punishments for alleged adultery, violence against and harassment of sex workers and trafficking in women.

IV.1 Rape and Sexual Violence

Article 111 of the Penal Code stipulates that: “Those who use violence, threaten to use violence or take advantage of the victims’ state of being unable for self-defense or resort to other tricks in order to have sexual intercourse with the victims against the latter’s will shall be sentenced to between two and seven years of imprisonment.” The Code further provides for a series of “aggravating” circumstances which will increase the penalty to between seven and twenty years’ imprisonment, life imprisonment or capital punishment. If the rape victim is between 16 and 18 years old, the penalty is five to ten years’ imprisonment, the rape of children aged from 13 to 16 is punishable by terms of imprisonment from seven to fifteen years.

The Penal Code further states in Article 111 (5) that offenders convicted for rape “may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.”

According to information received, the reported incidence of rape has increased by more than 40 per cent over the last decade and Supreme Court statistics collected between 1994 and 1996 show that between

600 and 800 cases of rape were reported annually during that period.⁴⁷ Nevertheless, the crime of rape in Vietnam remains largely under-reported, as the Government's second periodic report to this Committee submitted in 1999 notes, despite provisions in the Penal Code providing for severe sanctions for rapists, many cases of rape and other forms of sexual violence are not reported or prosecuted "because victims remain afraid to speak out."⁴⁸

OMCT would urge the Vietnamese government to take measures in order to ensure that law enforcement personnel and the judiciary receive gender-sensitive training in the investigation, prosecution and punishment of cases of rape and other forms of sexual violence.

IV.2 Community punishments

Reports from academic and media sources in Vietnam have stated that women accused of having committed adultery or other offences against the dignity of the family may be subjected to public humiliations by members of the community and by their families.⁴⁹ Despite the fact that such practices are prohibited under Vietnamese law, in some locations women believed to have committed adultery are punished by having their heads shaved and marked with lime and are then led to public places in order to shame them. On other occasions, women may be stripped and forced to expose themselves naked in front of the community.

IV.3 Prostitution

Prostitution is criminalised in Vietnam. According to the schema developed by the Special Rapporteur on violence against women in her 2000 report to the Commission on Human Rights, Vietnam would fall into the legal paradigm of "tolerant criminalisation" in relation to prostitution.⁵⁰

47 – Le Thi Phuong Mai, *Violence and Its Consequences for Reproductive health: the Vietnamese Case*, Population Council, Hanoi, 1998.

48 – Viet Nam, Second periodic report to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/2, 15 March 1999, para. 62.

49 – Dr. Le Thi Quy, *Domestic Violence in Vietnam*, Asia Pacific Forum on Women, Law and Development, Chiangmai, August 2000, p. 16.

50 – Report of the Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, UN Doc. E/CN.4/2000/68, 29 February 2000, para. 21.

Under this paradigm, sex work is viewed as a social evil that should be subjected to penal measures.⁵¹ In situations of tolerant criminalisation, the legislation is generally silent on the legality of prostitution itself but instead targets pimps, brothel owners and clients.

Article 202 of the Vietnamese Penal Code states that any individual convicted of organizing or encouraging prostitution shall be imprisoned for between six months and five years. Articles 254 and 255 of the Penal Code criminalise harbouring and procuring prostitutes and Article 256 prohibits paid sexual intercourse with minors aged between 16 and 18 years.

The 2001-2005 action program for preventing and combating prostitution was adopted by the Vietnamese government in December 2000. The action program contains several distinct phases aimed at the eventual elimination of prostitution through a more rigorous application of anti-prostitution regulations vis-à-vis brothels and massage parlours as well as against State officials and employees using prostitutes.⁵²

Thus, the Vietnamese Penal Code and other policy initiatives do not criminalise sex work in itself but rather criminalise third party involvement in prostitution. While this kind of framework would, on the surface, appear to protect prostitutes from being penalised, there is evidence to suggest that in its application, tolerant criminalisation may result in sex workers being prosecuted either in addition to or instead of procurers, pimps and brothel owners.⁵³

According to reports by Vietnamese and international media, there are increasing numbers of prostitutes working in big cities such as Hanoi and Ho Chi Minh City and the majority of these women come from economically-depressed rural areas. As outlined below, a large number of

51 – See for example the preamble to Decision No.151/2000/AD-TTg of December 28, 2000 approving the action program for prostitution prevention and combat for the 2001-2005 period, Official Gazette, No. 5, 8-2-1001, pp. 20-21 which states at p. 20 that: “The 2001-2005 action program prostitution prevention and combat aims to prevent, stop and step by step repel such evil. For localities where prostitution has not yet appeared, not to let it appear; for localities where prostitution is not serious, to actively fight and eliminate the vice; for localities where prostitution is serious, to resolutely fight and minimize it.”

52 – Vietnam, Decision No.151/2000/AD-TTg of December 28, 2000 approving the action program for prostitution prevention and combat for the 2001-2005 period, Official Gazette, No. 5, 8-2-1001, pp. 20-21.

53 – Report of the Special Rapporteur on violence against women, 2000, *op. cit.*, para. 24. The Special Rapporteur cites the example of the Indian Immoral Traffic (Prevention) Act which creates a framework of tolerant criminalisation that targets solicitation, enticement, procuring and living off the proceeds of prostitution but not prostitution *per se* and yet has been most frequently invoked against sex workers themselves.

sex workers are coerced or deceived into forced prostitution by traffickers. Many women working as prostitutes are also fleeing situations of domestic violence.

The combined third and fourth periodic report by the Vietnamese government states that in 1998 and 1999, the authorities “set up files to manage 12,700 prostitutes out of 38,400 prostitutes; discovered 3,189 cases of prostitution and detained 12,225 people involved in prostitution.”⁵⁴ It is unclear from the report whether the “management” of prostitutes in Vietnam involves the arrest or detention of sex workers by the authorities and to what extent a distinction is made between women and girls who are trafficked or otherwise coerced into sex work and other categories of prostitutes. According to reports, prostitutes are routinely arrested by Vietnamese police and are often forced to undertake periods of “rehabilitation” in State-run centres.⁵⁵

Sex workers are particularly vulnerable to rape and other forms of sexual violence and to sexually transmitted diseases including HIV and AIDS. More than one fifth of prostitutes in Hanoi are reportedly infected with HIV.⁵⁶ As with trafficking, increasing numbers of girls are becoming involved in sex work and it is estimated by UNICEF that of the approximately 200,000 prostitutes currently working in Vietnam, more than 10 per cent are girls under 18 years of age.⁵⁷

According to information received, there have been cases of police and other state officials harassing sex workers and there is also evidence of involvement by some law enforcement officials in organising prostitution and in demanding payments from sex workers in return for protection from police harassment.⁵⁸

54 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 20.

55 – Youth Research Institute, *Prevention of Trafficking in Women in Vietnam*, Labour and Social Affairs Publishing House, Hanoi, 2000, p. 145. See also Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 20: “At present, there are 51 Government run rehabilitation centers for prostitutes nationwide.”

56 – Reuters, *A fifth of Hanoi prostitutes have HIV*, 7 December 2000.

57 – P.F. Kelly and Le Bach Duong, *Children and women trafficking in Vietnam: what we know from literature, interviews, and analyses*, Hanoi, 1999, p. 19.

58 – Youth Research Institute, *Prevention of Trafficking in Women in Vietnam*, Labour and Social Affairs Publishing House, Hanoi, 2000, p. 129.

IV.4 Trafficking in women and girls

Vietnamese women and girls continue to be trafficked from Vietnam to Cambodia, China, Macau, Myanmar, Thailand and Singapore for the purposes of economic or sexual exploitation. The government's National Plan of Action for the Advancement of Women in Vietnam notes that trafficking in girl children for the purposes of sexual exploitation appears to have increased in recent years.⁵⁹ There is also evidence to suggest that poor women from rural areas are being trafficked to urban centres in Vietnam for work in the sex industry.⁶⁰

A growing number of Vietnamese women are marrying foreigners either in an effort to escape poverty and lack of economic opportunity in Vietnam or because they are coerced or tricked into marriage by matchmaking agencies. Reports in the press claim that each month up to 500 Vietnamese women from Ho Chi Minh City marry foreigners and then leave the country and there have been numerous allegations of “wife buying” particularly by Taiwanese and Chinese men.⁶¹

According to data from the Vietnamese Foreign Ministry, 11,310 Vietnamese women and girls are currently working as prostitutes in Cambodia and the majority of these are victims of trafficking. Approximately 70 per cent of the women and girls involved are under 20.⁶²

Local statistics show that between 1990 and 1999, about 22,000 Vietnamese women and girls were detained while being trafficked to China for coerced marriages or for other exploitative purposes.⁶³ Trafficking in women between Vietnam and Southern China is facilitated by imbalances in the sex ratio in the two countries. Women tend to outnumber men in the rural provinces of northern Vietnam whereas in Southern China the situation is the reverse. There have been numerous reports of women from northern Vietnam being trafficked into forced marriages with men from

59 – Vietnam, National Plan of Action for the Advancement of Women, 4 October 1997, p. 14.

60 – International Organization for Migration, *Trafficking in Migrants: Quarterly Bulletin*, No. 23, April 2001, pp. 2-3. See also Youth Research Institute, *Prevention of Trafficking in Women in Vietnam*, Labour and Social Affairs Publishing House, Hanoi, 2000, p. 47.

61 – Viet Nam News, *Vietnamese women marrying foreigners and Viet Kieu*, 3 May 2000.

62 – Youth Research Institute, *Prevention of Trafficking in Women in Vietnam*, Labour and Social Affairs Publishing House, Hanoi, 2000, p. 50.

63 – Remarks by Truong Huu Quoc, General Director of Police, Ministry of Public Security at the National Seminar on Prevention of Trafficking in women and children, Hanoi, 21-22 December 1999.

Southern China.⁶⁴ Between 1994 and 1999, more than 11,000 trafficked women returned from China to Vietnam either as a result of their expulsion by Chinese authorities or as a consequence of ill-treatment by their Chinese husbands and their extended families.⁶⁵

In response to this growing problem, the Vietnamese government has developed a number of different policies and has enacted stiffer penalties for traffickers in the 2000 revisions to the Penal Code. Article 119 of the Penal Code criminalises trafficking in women and provides for prison sentences from two to seven years for perpetrators as well as fines, probation or residence bans. Article 120 of the Code deals with trading in, fraudulently exchanging or appropriating children. Articles 273-275 stipulate that persons found guilty of organising the illegal entry or exit of persons to or from Vietnam face prison sentences of up to 20 years and a maximum fine of 50 million VND.

In June 2000, following Decision No. 61/2000/QĐ-TTg, the Prime Minister established a National Committee on the prevention and control of AIDS, drugs and prostitution. The inter-ministerial committee contains representatives from the Vietnamese Women's Union which is carrying out prevention and communication programmes in relation to trafficking in each of the different provinces.⁶⁶ As mentioned previously, the Vietnamese parliament has also adopted a 2001-2005 action program for preventing and combating prostitution which has the elimination of trafficking rings involved in trafficking in women and girls for the purposes of sexual exploitation as one of its goals.⁶⁷

At the regional level, Vietnam is part of the UNDP programme aimed at combating trafficking in the Mekong Delta and efforts are underway to expedite the signing of bilateral agreements with neighbouring countries in relation to trafficking.⁶⁸

64 – Youth Research Institute, *Prevention of Trafficking in Women in Vietnam*, Labour and Social Affairs Publishing House, Hanoi, 2000, p. 20.

65 – Remarks by Truong Huu Quoc, General Director of Police, Ministry of Public Security at the National Seminar on Prevention of Trafficking in women and children, Hanoi, 21-22 December 1999.

66 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 20.

67 – Vietnam, Decision No.151/2000/AD-TTg of December 28, 2000 approving the action program for prostitution prevention and combat for the 2001-2005 period, Official Gazette, No. 5, 8-2-1001, pp. 20-21.

68 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 20.

OMCT welcomes the evident commitment by the Vietnamese government to engage in legislative and policy-based activities for the prevention of trafficking, for the investigation and punishment of traffickers and for the provision of assistance and support to victims of trafficking. Nevertheless, the government's combined third and fourth periodic report notes that much work still needs to be done in terms of inter-agency coordination on trafficking and in the effective implementation of law and policy in this area. In this regard, it is regrettable that the National Action Plan adopted for the 2001-2005 period only deals with those aspects of trafficking related to sexual exploitation and does not touch upon trafficking for the purposes of forced or bonded labour, domestic servitude or forced marriage.⁶⁹

Violence against Women Perpetrated by the State



V.1 Torture and Impunity

Article 71 of the Vietnamese Constitution guarantees citizens the right to “physical inviolability and legal protection of their life, health, honour and dignity.” Article 74 of the Constitution provides that “The citizen has the right to lodge complaints and denunciations with competent State authorities against the illegal acts of State organs, economic bodies, social organizations, units of the peoples armed forces, or any individual.”

Article 5 of the Law on Criminal Procedure states that: “Nobody shall be arrested without a decision of a court or a decision approved by the Prosecutor. Arrest and detention of a person must be undertaken in accordance with the provisions of this law. Acts of coercion or torture are strictly prohibited.” Article 6 of the Law stipulates that “any act causing

69 – Vietnam, Decision No.151/2000/AD-TTg of December 28, 2000 approving the action program for prostitution prevention and combat for the 2001-2005 period, Official Gazette, No. 5, 8-2-1001, pp. 20-21.

danger to the life, health, property, honour and dignity of citizens shall be strictly punished by law.”

Chapter XII of the 2000 Penal Code increases penalties for offences against the administration of justice and includes specific punishments for the imposition of criminal liability on innocent people (Article 293), inflicting corporal punishment (Article 298), and abusing one’s position and power to detain a person in contravention of the law (Article 303).

In its July 2000 report to the Committee on the Elimination of Racial Discrimination, the government of Vietnam noted that it had engaged in extensive training for all law enforcement personnel and officials involved in the administration of justice in order to guarantee that these public servants are equipped to handle complaints concerning abuse of authority and to prevent acts of violence.⁷⁰

On paper, these Constitutional, legislative and administrative provisions would appear to provide detained persons with adequate protection against torture and other forms of violence. In practice, however, there have been reports of detention without trial, beatings by prison guards and ill treatment of prisoners.⁷¹ According to information received, the government continues to use its 1997 Decree No. 31-CP on “administrative detention” which gives authorities extremely broad powers to detain persons without trial and to place them under “administrative probation” for periods ranging from 6 months to 2 years.⁷² While it is difficult to obtain a clear picture of the situation of persons in detention in Vietnam given the absence of independent monitoring of the prison and detention system, conditions in detention are reportedly poor and are often characterised by overcrowding, insufficient food and a lack of sanitary facilities.

According to the Vietnamese government’s initial report to the Committee on the Rights of the Child which was submitted in 1992, cases of violence against children in detention have been reported in three provinces.⁷³ More recently, other sources have reported instances of police brutality against street children.⁷⁴

70 – Vietnam, Ninth Periodic Report to the Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/357/Add.2, 20 July 2000, para. 46.

71 – US Department of State, Country Reports on Human Rights Practices, 2000, Released by the Bureau of Democracy, Human Rights, and Labor, February 2001, pp. 2-3.

72 – Vietnam Human Rights Network, Information dated 9 December 1999.

73 – Vietnam, Initial Report to the Committee on the Rights of the Child, UN Doc. CRC/C/3/Add.4, 22 October 1992, para. 110.

74 – US Department of State, Country Reports on Human Rights Practices, 2000, Released by the Bureau of Democracy, Human Rights, and Labor, February 2001, p. 2.

V.2 Rape and other forms of violence against women in custody

The government's combined third and fourth periodic reports to CEDAW state that women are detained separately from men and that they are granted additional allowances in order to "buy necessities for their personal hygiene."⁷⁵ The government reports do not, however, provide any information concerning the actual condition of women in detention and there is no indication as to whether women are supervised by female guards.

Reproductive Rights



In 1993, Vietnam adopted a strategy on population and family planning with the goal of reducing the birthrate so that by the year 2015 all families "will have had two children, as a means to reach the stabilisation of our population scale starting from the middle of the 21st century."⁷⁶ In 1999, Vietnam was awarded the UN Population Award in recognition of its efforts with respect to family planning.⁷⁷

Despite recent achievements in the provision of family planning services throughout the country, there is evidence that women are still perceived as being responsible for contraception and this is borne out in the relatively high rate of IUD use, female sterilisation and abortion.⁷⁸ As outlined below, OMCT is concerned that the provision of incentives and the active pursuit of birth reduction policies may lead to situations of undue pressure or coercion whereby the reproductive rights of women are violated.

75 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 16.

76 – Vietnam, Policies and Strategy on Population and Development, NCPFP, 3 June 1993.

77 – Viet Nam, Combined third and fourth periodic reports to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/VNM/3-4, 20 October 2000, p. 7.

78 – Vietnam, General Statistical Office, Vietnam living standards survey, Statistical Publishing House, Hanoi, 2000.

In a circular released in 2000, the National Committee for Population and Family Planning stated that it was hoping to achieve the target birthrate in 2005, ten years earlier than originally planned, and that it had established a range of new strategies for promoting contraceptive use including through the provision of financial incentives to communes that lower birthrates or increase the number of contraceptive users.⁷⁹ Importantly, greater incentives are provided to individuals and communes in mountainous or isolated areas who agree to sterilisation, these being the areas in which birth rates are higher as well as being the regions in which large numbers of persons from ethnic minority and indigenous groups live.⁸⁰

Abortion is provided free of charge in cases where women become pregnant whilst using clinical contraceptive measures (IUDs, sterilisation, contraceptive injections or implants) and if they have family planning cards. According to the 2000 circular on family planning, women belonging to ethnic minorities in mountainous districts, “people of Khmer stock and Catholic people shall have their abortion ... at family planning services establishments run by the State.” All women wishing to benefit from State subsidies following abortion must fill in a form and certify that at the time of the pregnancy, they were using contraception which failed. Additionally, women from ethnic minority groups and Catholic women are required to list “their full names, ethnicity and native places.”⁸¹

While there is little information available concerning the impact of Vietnam’s family planning policies, the coercive application of such policies in China has led to serious violations of womens reproductive rights.⁸² Importantly, in July 2000, members of a Vietnamese indigenous group approached the Human Rights Committee stating that they had been subjected to State-sanctioned persecution and violence, including the mass sterilisation of women.⁸³

79 – Vietnam, Circular NO. 01/2000/TT-UB of 23 February 2000, Guiding the 2000 Plan for Population and Family Planning Program.

80 – *Ibid.*

81 – *Ibid.*

82 – Committee against Torture, Concluding Observations on China, 24th Session, 1-19 May 2000, para. 17.

83 – Human Rights Committee, Summary record of the first part of the 1866th meeting: Viet Nam, UN Doc. CCPR/C/SR.1866, 27 July 2000, para. 38.

OMCT is concerned that the drive to secure certain targets in relation to the reduction of the birth rate in Vietnam may result in serious violations of women's reproductive rights including forced abortion or sterilisation. The provision of incentives to local communities that achieve or better the goals set may place undue pressure on women to undergo sterilisation or abortion procedures. Furthermore, the fact that fertility reduction incentive programmes have concentrated on areas in which ethnic minorities and indigenous peoples live may put minority and indigenous women, who are often in situations of comparative social and economic disadvantage, at greater risk of violations of their freedom of choice in relation to reproductive issues.

Conclusions & Recommendations

VII

OMCT notes with great concern that Vietnam is not a State party to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and recommends that the Convention be ratified and rapidly implemented at the national level in order to provide persons living in Vietnam with more comprehensive protection against torture and ill treatment.

OMCT would like to highlight the fact that while the provision of guaranteed maternity leave and assistance with child care is important, the continued emphasis on the maternal role of women may have the effect of perpetuating the idea that women should be the sole or primary care-givers for children. In order to readdress gender stereotypes, men should also be actively encouraged to play a greater role in caring for children.

OMCT believes that the discrepancy in the legal age of marriage for women and men as enshrined in Article 9 of the amended Marriage and Family Law (2000), constitutes discrimination that cannot be justified on biological grounds and calls on the government of Vietnam to change this provision in order to provide for equality in the age of marriage.

In relation to domestic violence, OMCT is concerned that the government has not yet enacted specific legislation or developed effective policies to

deal with the problem. Despite the fact that domestic violence is widespread in Vietnam, the phenomenon appears to be a taboo subject and the importance of its impact upon the human rights of women has generally been minimised or ignored by society at large and by the relevant government authorities. In light of the numerous social and legal obstacles to enforcing the law in cases of domestic violence, it is not surprising that women wishing to bring complaints or to commence divorce proceedings in cases of family-based violence often finish by deciding not to pursue the proceedings.

OMCT recommends that the government enact and enforce legislation for the effective prevention, investigation and punishment of cases of domestic violence, including marital rape. Measures must also be taken in order to ensure that the process of compulsory conciliation in the context of divorce proceedings does not adversely affect the rights of women.

There is an urgent need for the creation of broad-based awareness-raising campaigns on domestic violence which target policy-makers as well as the general public. The government should ensure that all law enforcement officials and the judiciary receive in-depth training in the prevention, investigation and prosecution of complaints of family-based violence.

Greater efforts must be made to develop educational initiatives aimed at changing social attitudes towards family-based violence and towards gender roles in the family. Grassroots community organisations as well as the media could prove to be valuable partners for this purpose.

Research into the prevalence and frequency of family-based violence in Vietnam, such as the study currently being undertaken by the Vietnamese Women's Union and the United Nations Fund for Women (UNIFEM) or the research conducted in 1999 within the framework of the World Bank's Policy Research Report on Gender and Development should be actively supported and any recommendations duly considered and rapidly implemented.

OMCT would like to suggest that the government take greater steps to develop and implement reliable tools for monitoring and reporting on the measures being put in place to prevent, prosecute and punish cases of family-based violence and that more detailed information concerning these measures be included in future reports to the United Nations treaty monitoring bodies. The provision of this information would bring State reports into closer conformity with the recommendations made by the Committee on the Elimination of Discrimination against Women in its General Recommendation No. 19 of 1992.

OMCT is deeply concerned at reports that community punishments are still being practised upon women accused of having committed adultery in some regions of Vietnam and calls upon the Government to ensure that all such cases of community punishments are thoroughly investigated, prosecuted and the perpetrators punished.

OMCT is concerned that the criminalisation of prostitution, even though this is directed against clients, panderers and brothel-owners may lead to sex workers being subjected to arrest, extortion or harassment by police. Moreover, intensive police surveillance and monitoring of prostitutes may result in women and girls involved in sex work being unwilling to turn to authorities when they are victims of violence.

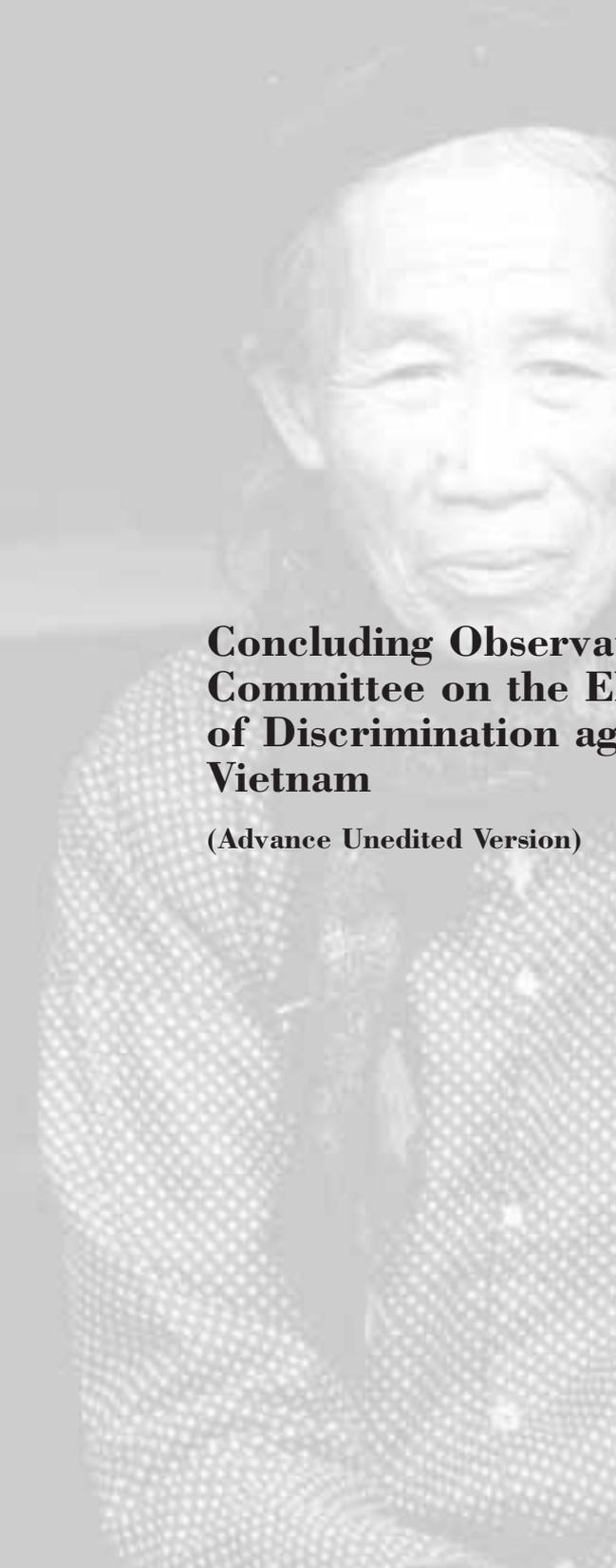
OMCT welcomes the serious attention that the government has given to the issue of trafficking in women and girls as well as the measures implemented to prevent and combat trafficking. OMCT would recommend, however, that care be taken to ensure that measures aimed at combating trafficking do not close off avenues of legal migration for women and that trafficking prevention programmes incorporate measures designed to improve socio-economic opportunities for women in Vietnam. The government should also guarantee that women and girls are not penalised as a result of their status as victims of trafficking. OMCT would also like to suggest that the government develop policies to prevent and combat trafficking in women and girls for exploitative purposes including forced and bonded labour, domestic servitude and forced marriage rather than only focusing on trafficking for the purposes of sexual exploitation.

Reports of administrative detentions and ill treatment of detainees are of great concern and OMCT calls upon the government to ensure that the constitutional and procedural guarantees for the protection of detained persons are complied with at all times and in all circumstances.

OMCT would like to request that the government make public gender disaggregated data concerning the number of women in detention, their location and the conditions under which they are held, paying particular attention to mechanisms for the prevention, investigation and punishment of acts of violence against detained women.

While government efforts to increase the availability and accessibility of family planning services are to be commended, OMCT remains concerned that the drive to secure certain targets in relation to the reduction of the birth rate in Vietnam may result in violations of women's reproductive rights including forced abortion or sterilisation. For this reason, OMCT calls upon the government to ensure that their family planning policies do not violate

women's reproductive rights and to investigate, prosecute and punish private persons or officials found to have used coercion, intimidation or violence against women in order to induce them to undergo abortion or sterilisation procedures. In particular, OMCT requests that the government take the particular needs and vulnerabilities of indigenous women and women from ethnic minorities into account in the design and implementation of family planning strategies. ■



*25th session
2-20 June 2001*

**Concluding Observations of the
Committee on the Elimination
of Discrimination against Women:
Vietnam**

(Advance Unedited Version)

Introduction by the State Party

1. The Committee considered the second periodic report (CEDAW/C/VNM/2) and the combined third and fourth periodic reports of the Socialist Republic of Viet Nam (CEDAW/C/VNM/3-4) at its 518th and 519th meetings, on 11 July 2001.

2. In introducing the reports, the representative noted that they described implementation of the Convention from 1986 to 2000, during which period Viet Nam had experienced profound change as a result of the comprehensive renewal process initiated in 1986.

3. A 10-year strategy for economic development and stabilization to the year 2000, which sought to double gross domestic product (GDP) by 2000, had been adopted in 1991. Implementation of the plan had had significant results in all areas; women's lives had been improved, and their status in society and the family raised.

4. Equality and non-discrimination were enshrined in the Constitution, and promoted by the legal system through legislation and concrete policies and plans of action. The right to equality before the law had been reflected in laws, inter alia, in respect of property, nationality and marriage and the family. Viet Nam had ratified many United Nations human rights treaties and several International Labour Organization (ILO) conventions, including Convention No. 100 on equal pay and Convention No. 182 on the worst forms of child labour. Women participated in all areas of the workplace, where they enjoyed equal rights with men with respect to remuneration, as well as health and safety at work.

5. A National Plan for the Advancement of Vietnamese Women had been adopted which had established the target of increasing the representation of women in elected bodies to between 20 to 30 per cent, and to between 15 to 20 per cent in all levels of administration, by 2000. The proportion of members of People's Councils who were women had increased, and was now 22.5 per cent at the provincial level, 20.7 per cent at the district level, and 16.3 per cent at the communal level. A proportion of 26.22 per cent of parliamentarians in the current National Assembly were women, as compared with 18.5 per cent in the previous Assembly, thereby placing Viet Nam ninth out of 135 among the members of the Inter-Parliamentary Union in terms of women's representation, and second in the Asia-Pacific region. Both the Vice-President of the State and Vice-Chairperson of the National Assembly were women and women constituted 30 per

cent of the staff of the foreign service, and 25 per cent of those posted abroad.

6. The literacy rate among women and girls had reached 88 per cent, and the population of female compared with male students had been steadily increasing. Women had equal rights to health care, and Viet Nam had been awarded a United Nations prize for its achievements with regard to reproductive health care. The average number of children per women of reproductive age had been reduced from 3.8 in 1989 to 2.3 in 1999, and the maternal death rate from 1.1 per thousand in 1996 to 0.9 per thousand in 1999.

7. The representative noted that the incorporation by the Government of gender issues into socio-economic development programmes had enhanced women's lives, inter alia, through providing access to jobs, credits and loans. A Bank for the Poor had been established, and assistance provided to the Women's Union for the development of income-generating projects, which had particularly helped rural and ethnic minority women living in mountainous and remote areas.

8. In 1993, the National Commission for the Advancement of Women had been established as the result of a decision of the Prime Minister to provide advice on gender equality and advancement of women. The National Commission had participated in the design and implementation of national action plans for the advancement of women, and the monitoring of law reform, and had elaborated policies and programmes for the improvement of women's status. Local committees had been established nationwide and cooperation between governmental bodies and non-governmental organizations had increased.

9. In concluding her presentation, the representative drew attention to the fact that Viet Nam was highly ranked in the United Nations Development Programme (UNDP) human development index (HDI) and gender-related development index, which was significant in light of the fact that Viet Nam continued to face difficulties, inter alia, as a result of the vestiges of feudalism, war and low economic development.

10. Despite progress, she indicated that there remained obstacles to implementation of the Convention, including high unemployment, polarization between rich and poor, social issues such as prostitution, trafficking in women and drug abuse and sexually transmitted diseases. Domestic violence was an issue, and gender-bias customs lingered causing negative impacts on women's advancement. She indicated that the

preparation of the report had offered further opportunities to assess progress and enhance awareness and implementation of the Convention.

Concluding comments of the Committee

Introduction

11. The Committee commends the Government of the Socialist Republic of Viet Nam on its second and combined third and fourth periodic reports, which are in accordance with the Committee's guidelines for the preparation of periodic reports. It also commends the Government for the comprehensive written replies to the questions of the Committee's pre-session working group, and the oral presentation of the delegation which sought to clarify the current situation of women in Viet Nam, and provided additional information on the implementation of the Convention.

12. The Committee congratulates the Government for the high-level and large delegation. The Committee appreciates the positive approach of the delegation and the frank and constructive dialogue that took place between it and the Committee.

Positive aspects

13. The Committee welcomes the recognition in Viet Nam of the Convention on the Elimination of All Forms of Discrimination against Women and other treaties as binding legal instruments and the adoption of a procedure to monitor legislation for conformity with international treaties. It commends the introduction of a procedure to enforce the Constitutional guarantee of equality.

14. The Committee commends the Government on the development and strengthening of national mechanisms for advancement of women, inter alia, at the local level, and the linkage of these mechanisms with the Vietnamese Women's Union.

15. The Committee commends the State party for its allocation of resources to achieve economic growth with social equity, thus creating an enabling environment for the implementation of the Convention. The Committee notes the progress achieved and the relatively high ranking of

the State party in the UNDP Human Development Report HDI and the gender development index (GDI). The Committee also notes with appreciation Government measures to eliminate poverty.

16. The Committee commends the Government on the preparation of a national strategy for women (2001-2010) and a Five-year Plan on the Advancement of Women (2001-2005) as recommended by the Beijing Platform for Action. It notes with satisfaction the inclusion of a gender perspective in the economic and social development plan for 1991-2000.

Factors and difficulties affecting the implementation of the Convention

17. The Committee considers that the country's ongoing economic transformation poses special challenges to the realization of gender equality, particularly in the areas of women's employment and education of girls and young women and can undermine the progress achieved in realizing equality between women and men. The Committee also considers that the social development programme of the State party has been hampered by the 1997 economic crisis in Asia and that continuing poverty poses an obstacle to the implementation of the Convention.

18. The Committee notes that the persistence of a strong patriarchal culture which emphasizes the traditional roles of women and men constitutes an impediment to the full implementation of the Convention.

Principal areas of concern and recommendations

19. The Committee is concerned that patriarchal attitudes and behaviour reflected inter alia in women's inferior role in the family, the non-recognition of women's work, son preference and in men's failure to share household and family responsibilities, are deeply entrenched.

20. The Committee recommends that the Government take urgent and wide-ranging measures, including targeted educational programmes, revision of curricula and textbooks and mass media campaigns, to address traditional stereotypes regarding the roles of women and men in society.

21. The Committee is concerned about the low representation of women on decision making bodies in political and public life at all levels.

22. The Committee recommends increasing the number of women in decision-making at all levels and in all areas, including macroeconomic policy. It recommends that the State party introduce temporary special measures in accordance with article 4.1 of the Convention, strengthen its efforts to promote women to positions of power supported by special training programmes and awareness-raising campaigns regarding the importance of women's participation in decision-making at all levels.

23. The Committee is concerned that the existing national machinery for the advancement of women does not have sufficient strength and visibility and human and financial resources to sustain its efforts to ensure the advancement of women and their equality with men.

24. The Committee recommends that the State party strengthen the existing national machinery in order to give it more visibility and strength, as well as the capacity to mainstream a gender perspective into all policies and programmes and to promote the advancement of women. It recommends that the capacity of the national machinery be assessed on a continuous basis and that it be provided with necessary human and financial resources.

25. The Committee is concerned about the considerable gap between the State party's effort to ensure de jure equality between women and men and the enjoyment by women of de facto equality, particularly in economic, social and political areas.

26. The Committee recommends that the State party monitor the implementation of legal provisions that guarantee women de jure equality to ensure that they benefit women de facto. It urges the State party to introduce gender-sensitization and training programmes for law enforcement, judicial and health personnel and others responsible for the implementation of legislation, so that women's de facto enjoyment of equality will be guaranteed.

27. The Committee is concerned about the prevalence of violence against women and, in particular, domestic violence. It is concerned at the lack of legal and other measures to address violence against women, as well as at the failure of the State party specifically to penalize marital rape. It is concerned that penalties for child sex abuse are low, that there is a prevalence of forced and child marriage, and that cruelty does not constitute grounds for divorce. It is concerned that there is an overemphasis on reconciliation in cases of marital breakdown, inter alia, in cases where violence has occurred.

28. The Committee urges the State party to implement the recommendations of the Committee's general recommendation No. 19 on violence against women and to ensure that all forms of violence against women and girls constitute crimes and that victims are provided with protection and redress. The Committee urges the criminalization of marital rape and close scrutiny of requirements for reconciliation in cases of marital breakdown, particularly where violence is involved. It recommends organizing gender training for all public officials, in particular law enforcement personnel, the judiciary, and members of local committees, on violence against women and girls, and the launch of public awareness campaigns on all forms of violence against women and girls and the impact of such violence.

29. While recognizing the State party's efforts to address trafficking in women and girls, the Committee remains concerned that the State party has not ensured collection of sufficient statistical data and information on this issue. It is also concerned that the impact of existing legal provisions and other measures on the elimination of trafficking has not been assessed and that law enforcement in the area of trafficking is weak.

30. The Committee urges the State party to collect comprehensive statistics and information on trafficking in women and girls, and on the impact of measures to address this problem, and to include this information in its next periodic report. It recommends that the State party collaborate in regional and international strategies to confront trafficking, and monitor, and where appropriate apply, positive experiences of other countries in this context. The Committee further recommends the establishment of measures aimed at improving the economic situation of women in order to reduce their economic vulnerability to traffickers and the creation of comprehensive rehabilitation programmes for women and girls who have been trafficked.

31. Recognizing the efforts of the Government in reducing disparities and improving the status of women of ethnic minorities, the Committee remains concerned about their situation.

32. The Committee recommends that the Government provide more statistical data and information on the situation of ethnic minority women in its next periodic report.

33. Despite the State party's efforts and progress in the area of primary and secondary education, the Committee is concerned about the high female dropout rate in rural areas from schools, and particularly higher

education. The Committee notes that the increased rate of dropout has coincided with the transformation to a market economy, and is concerned that the gains that have been made by the State party in women's and girls' in education may not be sustained.

34. The Committee encourages the State party to intensify its efforts to promote women's access to higher education and their retention in the system. It also recommends that the State party seek to provide incentives to parents to ensure that their daughters attend school.

35. While noting a decline in women's mortality rate, the Committee is nevertheless concerned at the status of women's health, especially women's reproductive health, and the high rate of abortion among young unmarried women. It is also concerned about the persistence of stereotypic attitudes with respect to women's health concerns, especially contraception, which appears to be regarded as the sole responsibility of women, as well as the increase of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), malaria and tuberculosis among women.

36. The Committee urges the State party to maintain free access to basic health care and to continue to improve its family planning and reproductive health policy, inter alia, through making modern contraceptive methods widely available, affordable and accessible. The Committee also urges the Government to promote sex education for both boys and girls, paying special attention to HIV/AIDS prevention.

37. Noting that a large percentage of women in the Socialist Republic of Viet Nam live in rural areas, the Committee is concerned that they have limited access to health-care services, education and income-generating activities.

38. The Committee recommends that the State party reinforce its attention to the situation of rural women and develop special policies and programmes aimed at the economic empowerment of rural women, ensuring their access to credit, as well as to health-care services and to educational and social opportunities and productive resources. It also calls for more information on this subject in the next report.

39. The Committee is concerned that the retirement ages for women and men differ and that this has negative effects on women's economic well-being. It is also concerned that the retirement age is negatively affecting rural women's access to land.

40. The Committee recommends that the State party reviews the existing legal provisions regarding the retirement age of women and men, with a view to ensuring that women are entitled to continue productive employment on an equal basis with men. The Committee also recommends that the State party evaluate the present Land Law and eliminate any provisions which discriminate, directly or indirectly, against women.

41. The Committee notes with concern the lack of information on sex segregation in the labour market. The Committee is also concerned that the impact of incentives to encourage the employment of women has not been assessed.

42. The Committee calls on the State party to increase its efforts to collect statistics and information on the position of women and men in the labour market, especially in the private sector.

43. The Committee urges the Government to sign and ratify the Optional Protocol to the Convention and to deposit, as soon as possible, its instrument of acceptance of the amendment to article 20, paragraph 1, of the Convention on the Committee's meeting time.

44. The Committee requests the Government to respond to the concerns expressed in these concluding comments in its next periodic report under article 18 of the Convention.

45. The Committee requests the wide dissemination in the Socialist Republic of Viet Nam of the present concluding comments in order to make the people of Viet Nam, and particularly government administrators and politicians, aware of the steps that have been taken to ensure de jure and de facto equality for women and the future steps required in that regard. It also requests the Government to continue to disseminate widely, in particular to women's and human rights organizations, the Convention and its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action, and the results of the twenty-third special session of the General Assembly entitled "Women 2000: gender equality, development and peace in the twenty-first century".

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