

The Trial of Rape

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





Photo: UN Women/Panya Janjira

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Foreword

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

After decades of sustained advocacy and action in policy and legal reforms, a majority of countries in the Asia-Pacific region now have laws criminalizing violence against women, including sexual violence. Yet despite these achievements, a deficit in the punishment and moral sanctioning of such crimes remains. A United Nations study that interviewed more than 10,000 men in six countries across the Asia-Pacific region found alarmingly high prevalence rate of sexual violence. A range of 10 per cent to 62 per cent of the men interviewed across the region reported that they had perpetrated rape against a woman or girl in their lifetime.² Moreover, the majority of men who admitted to perpetrating rape faced no legal consequences and many did not even report feelings of guilt, suggesting that such violence remains largely tolerated and normalized in many of our societies.

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

We know that around the world, reported cases of sexual violence represent only the tip of the iceberg; crime surveys from 57 countries indicate that on average, 10 per cent of women say they have experienced sexual assault, but of these women, only 11 per cent reported it.³ This under-reporting has many causes, including the shame and stigma that are often placed on the woman after an attack. The focus is often placed on her behaviour rather than that of her attacker - questioning what she was wearing, where she was, and what she may have done to “provoke” the attack.

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

When the actors tasked with facilitating access to justice instead “counsel” and pressure victims to settle cases out of court, or treat them without regard for their dignity or privacy, many women eventually give up on a system that is often unresponsive to their needs. When the criminal justice system fails to fulfill women’s human rights, this helps perpetuate cultures of reconciliation, cultures of invisibility, and cultures of impunity. This impunity – exemption from punishment and accountability – fuels violence against women, reducing the impact of advocacy and hard-fought policy achievements.

However, we know what needs to be done. Reports of violations must be received by state actors in the administration of justice who are well-trained and who understand the full scope of their obligations.

1. World Health Organization, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-partner Sexual violence* (2013), p.2. Available from: http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf
2. UNDP, United Nations Population Fund, UN Women and United Nations Volunteers, *Why Do Some Men Use Violence against Women and How Can We Prevent It? Quantitative Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific* (2013). Available from <http://www.partners4prevention.org/sites/default/files/resources/p4p-report.pdf>
3. UN Women, *Progress of the World’s Women: In Pursuit of Justice*. (New York, 2013).

The justice sector must be able to monitor its performance through rigorous collection and analysis of responses to reported violations. We must ensure that victims and survivors receive all the support services that they are entitled to and that they have access to protection, redress and justice. And most of all, we must all challenge and transform the harmful norms and cultural values that allow such violence to continue. To that end, it is especially encouraging that there is now global consensus for a 2030 development framework that includes a strong and transformative gender equality goal with clear and ambitious targets for ending violence against women.

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



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Acknowledgements

This report is the product of the collaborative efforts of all partners involved in the study at both the regional and national levels.

We would like to thank in particular the national research partners without whom this study would not have been possible: in Thailand, the Thailand Institute of Justice, and in Viet Nam, the Ministry of Justice.

We are very grateful for the extensive guidance and technical support provided by the regional coordinators and colleagues from the participating United Nations agencies. They played an important part in the implementation of this comparative study and in the production of this report.

Finally, we gratefully acknowledge the participating countries themselves for taking this important step to examine how their criminal justice systems respond to reported cases of sexual assault and rape, in order to understand how to increase women's access to justice and end impunity for all forms of violence against women and girls.

The study was jointly funded and implemented by UN Women, UNDP and UNODC. It is an inter-agency contribution to the Secretary-General's UNiTE to End Violence against Women Campaign.

Overview

This study is the first comparative study of attrition in reported cases of sexual violence in Asia, and also the first attrition study on Thailand and Viet Nam. It aims to contribute to a better understanding of the policing and prosecution of sexual violence cases and the impact that the handling of their cases by the criminal justice system has had on women who were raped or sexually assaulted.

Specifically, this study analyzes how the criminal justice systems in Thailand and Viet Nam respond to reported cases of rape and sexual assault, and identifies the key institutional factors associated with the disposition of cases in these countries. The study aims to understand where and how attrition⁴ of sexual violence cases occurs and to identify strategic entry points for strengthening the administration of justice in this area.

Research methods and scope

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

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

The study was limited to female victims⁵ of rape and sexual assault, including attempted rape and sexual assault, who sought justice through the formal criminal justice system. As such, it does not include non-reported cases or cases processed through informal justice mechanisms.

Table 1. Research highlights

The data collection for this study was completed between 2013 and 2014

	Thailand	Viet Nam
Selected Sites	Bangkok (central, population: 5.69 million) Chiang Mai (north, population: 1.66 million) Songkhla (south, population: 1.39 million)	Ha Noi (north, population: 7.1 million) Dak Lak (south, population: 1.69 million)
National records and statistics	Majority of available data is at national level or from Bangkok. Research team's academic connections to Chiang Mai facilitated key informant access at that site.	Police national statistics and court statistics available, but did not include all sexual violence offences.
Interview/focus group discussion participants	9 government officials ⁶ 34 criminal justice practitioners ⁷ 34 service providers ⁸ 6 survivors Total 83	12 government officials ⁹ 73 criminal justice practitioners ¹⁰ 45 service providers ¹¹ Total 130
Case files	169 police case files from Bangkok, Chiang Mai and Songkhla. <ul style="list-style-type: none"> Research teams relied on contacts at the police level to secure an opportunistic sample of police records. Lack of formal approval to access court files and prosecution records. System does not allow tracking police cases up the court level. 	121 case files from district level police, prosecution and courts in Ha Noi and Dak Lak <ul style="list-style-type: none"> Self-selected by criminal justice institutions. Ward and commune police records were not accessible in all districts involved in the study.

4. Attrition is the process by which cases of rape and sexual assault fail to proceed through the criminal justice system, those cases that are discontinued and thus fail to reach trial and/or result in conviction. Definition from Jo Lovett and Liz Kelly, *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases across Europe*. Child and Women Abuse Studies Unit, London Metropolitan University (2009).
5. "Victim" is used in this report irrespective of the outcome of the case, so includes complainants. It means a person recorded as the victim of sexual offence, including those cases subsequently deemed no offence or false allegations. This is the common terminology for analysis of criminal justice data and is not intended to negate other terms such as "survivors".
6. Six individual interviews and one focus group discussion.
7. Nineteen individual interviews and two focus group discussions.
8. Twenty-four individual interviews and one focus group discussion.
9. Two individual interviews and two focus group discussions.
10. Twenty-nine individual interviews and twenty focus group discussions.
11. Eight individual interviews and six focus group discussions.

Research findings

The research found that women reporting cases of rape in Thailand and Viet Nam encounter significant societal, legal and institutional policies and practices that act as barriers to justice.

These barriers, in turn, can inhibit reporting of sexual violence and reduce the likelihood that a woman will persist in seeking redress through the criminal justice system.



In both countries, the vulnerability of women and girls to sexual violence is embedded in and supported by discriminatory social and cultural values, patterns and practices.

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



Many women have limited knowledge and limited access to information about their rights and what they can and should expect as they navigate complex criminal justice systems and processes.

Protections offered to victims of sexual violence can be inadequate, as in limited victim or witness protection programmes, and communication between criminal justice service providers and victims largely ceases once the initial report has been taken. Where support services are limited, victims and their families may choose to forego seeing their cases through to completion.



In both countries, attrition is high at the initial contact and reporting stage.

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



Court proceedings can be long and drawn out, and often focus on physical or forensic evidence or the victim's credibility rather than the credibility of the reported event or the victim's lack of consent.

Significant delays plague many victims going through the administration of justice, which can start with late onset and completion of police investigations and carry through to delays in setting trial dates. The victim's character, behaviour or dress is often called into question. There is little preparation or court support for the victim. In many cases, the court acquits the accused.



There are few, if any, women- or victim-friendly facilities in police stations, hospitals, and medical facilities where forensic examinations are conducted, or in courts.

While sexual violence cases are complex and challenging to investigate, there are no specialized investigative units, and officers and investigators receive little or no specialized training and professional development. There are few female police and investigating officers.



Data collection and analysis mechanisms are limited.

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



There are limited referral networks and coordination mechanisms within the justice system, and among government departments, justice system agencies, and civil society service providers. Often this results in uncoordinated and inconsistent services.

Data systems from different parts of the criminal justice system that do not speak to one another, and that may even use different definitions, terminology or case file numbers, further hamper effective collaboration and increase the risk of information loss.



Good and promising policies and practices have been introduced in both countries.

These include promising legislation, increased political will and commitment to fund coordinated support services, establishment of one-stop crisis centres, and development of protocols for gender-responsive policing. However, limited implementation and accountability means that the full potential of these practices has yet to be realized.



Table 2. Promising practices

Thailand	Viet Nam
<ul style="list-style-type: none"> • Revision of the Criminal Code • Establishment and expansion of One-Stop Crisis Centres • Interdisciplinary teams in responding to sexual violence cases • Current Royal Thai Police campaign to recruit more female officers • Establishment of victim-centred court spaces • Ongoing training of Royal Thai Police, prosecutors and court personnel in partnership with UN Women 	<ul style="list-style-type: none"> • Revision of the Penal Code and Criminal Procedure Code • Revised codes that have expanded sexual violence offences and introduced gender-sensitive criminal procedures and evidentiary rules • Introduction of the right of legal counsel to represent victims in criminal proceedings • Development of curriculum for prosecutors and police officers on response to domestic violence and protocol for gender-responsive policing

Understanding the barriers to justice and attrition in sexual violence cases

Societal factors that impact access to justice and influence attrition

The study found indications that gender stereotypes regarding the status of women and girls, as well as myths and misconceptions about sexual violence, exist in both countries.

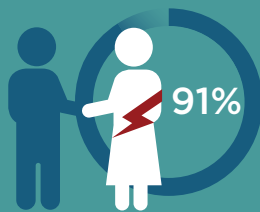
These beliefs are apparent in communities as a whole, among criminal justice practitioners, and sometimes among victims of sexual violence themselves.

Myth: “Real rape” involves strangers, force and physical injury and it occurs in public.

While this myth is pervasive, the findings from the case file review show that it does not reflect the nature of most sexual violence cases.

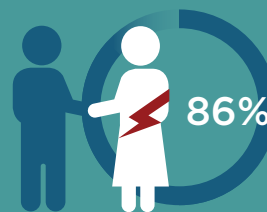
In the majority of cases, the victims and the suspects knew each other. The implication of this is that suspect identification was not an issue; however, it raises the issue of the need for victim protection, safety and support services.

Thailand



91 per cent of victims reported knowing the suspect

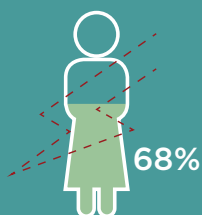
Viet Nam



86 per cent of victims reported knowing the suspect

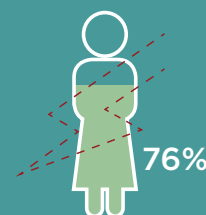
The majority of cases had no record or documentation of physical injury. However, many officers felt that they would not proceed in a case where there was no forensic evidence or witness statements. This reasoning reflects the continued gender stereotyping that requires some form of corroboration for women's reports of sexual assault.

Thailand



68 per cent of victims had no visible signs of injury

Viet Nam



76 per cent of victims had no visible signs of injury

The majority of rapes and sexual assaults took place in private spaces such as homes or hotel rooms. The implication for criminal justice service providers is that in the majority of cases, it is unlikely that there are witnesses, and as a result, the victim's lack of consent will likely be an important issue at trial.

The majority of rapes and sexual assaults took place in a private space: most frequently the home of the victim and/or suspect, followed by another person's home or a hotel room.



Myth: Rape and sexual violence are problems when they happen to 'good' or 'innocent' women and girls

The study findings demonstrated that these beliefs are held by a number of criminal justice providers in both countries.

"Raping a virgin is worse than raping a non-virgin."

- a male police officer -

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

- a male police officer -

"The first question that was put to me was, 'Why didn't you simply accept compensation from him (the offender)? You already have children, why were you asking for so many things?' I thought that was an insult. It was me who was raped and I had to be the one who understands and compromises?"

- a female rape survivor -

Myth: Some women deserve to be raped and sexually assaulted; it is their own fault

This myth regards victims of sexual violence as "asking for it" (i.e., sexy clothes incite men to sexual violence), "wanting it", or putting themselves in dangerous situations (e.g., sex work or being intoxicated). In both countries, the study found that women were often blamed for the sexual violence they had suffered for reasons including being a sex worker, dressing provocatively, going out in the evening with a man, or even being alone on a bus at night.

"A girl who is drunk or showing a lot of cleavage might be the cause of the offence."

- a male prosecutor -

"You were raped because of the way you dressed; if not by this offender, you would have been abused by another."

- a female social worker reporting a statement from a police officer handling a case of a rape victim who was 12 years of age -

"I know I may not look so decent, as good girls of my age are supposed to look. But it didn't mean I deserved to be raped. I did not ask those men to rape me. I begged them not to."

- a female rape survivor -

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

- a female rape survivor -

"I used to blame myself for what had happened to me. I partied a lot at night, I trusted people too easily. I wore revealing dresses. What could I say to defend myself? I was raped. It was partly my fault."

- a female rape survivor -

Myth: Sexual violence only happens in certain segments of society

The study found this myth expressed in statements by a number of criminal justice providers interviewed.

“Rape is something that only happens to ‘low-class’ people, the uneducated or migrants.”

- a female justice official -

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

- a female academic -

Myth: Husbands cannot rape or sexually assault their wives

While marital rape is a crime in Thailand and Viet Nam, the study found that societal attitudes provide indications as to why marital rape cases are not frequently reported to the police.

- Thai social norms regard domestic violence as an internal matter, not to be shared with or interfered in by people from outside the family. This has kept Thai women in silence. Women abused by their spouses are often blamed for some kind of misconduct.¹²
- In Viet Nam, no reported cases of marital rape were included in the case review and none of the criminal justice practitioners interviewed had ever even heard of such a case going through the criminal justice system. There is a common belief that consent to marriage is also consent to sexual intercourse and as long as the marriage is valid, this sexual right cannot be revoked.

“The police and Women’s Union do not believe rape can happen in marriage, so they try to solve these problems through reconciliation”

- a female academic -

Myth: A victim will report everything at the first available opportunity

Police often have specific ideas about how a rape victim should behave, and if the alleged victim does not conform to their expectations, they are less likely to proceed with the case, on the grounds that there was no credible evidence. Many police officers interviewed expressed suspicion about delayed reports.

- The majority of criminal justice officials interviewed noted their reliance on the examination of the vagina and detection of sperm, and the challenges in cases involving sexually mature female victims and victims who delayed reporting, or contaminated the forensic evidence by washing after being raped.
- Victims who are minors took a long time to tell their families about the incident.
- Families further delayed reporting to the police because of the sensitivity of the issue and the psychological fragility of young victims.

“They are often not reported immediately, but only after one or two days, a week or even a month after the incident. Therefore, it’s hard to collect physical evidence such as sperm, condoms, skin scratches, etc. Even victims often find these acts so horrible that they wash themselves immediately after it happens.”

- a male criminal investigator -

12. Attrition is the process by which cases of rape and sexual assault fail to proceed through the criminal justice system; those cases that are discontinued and thus fail to reach trial and/or result in conviction. (Definition from Lovett and Kelly, Different systems, *Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe*. Child and Women Abuse Studies Unit, London Metropolitan University (2009).

Legal and institutional factors influencing attrition

The study identified a number of legal and institutional factors that can contribute to attrition. Below are some of those “attrition alerts”. Please refer to the full report for an analysis of these findings, and a complete list.

ATTRITION ALERTS

The effectiveness of services for victims of sexual violence depends on multiple providers working together in a coordinated manner to address the needs of victims. The lack of such social and institutional support structures can prevent reporting.

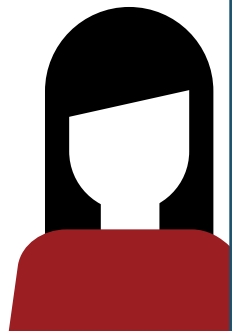
The ability of the accused to escape criminal responsibility for rape or sexual assault by claiming the woman consented to the act.

Requiring a time limit for victims to report cases of sexual violence to police can mean that if victims report after that, the case will not proceed further.

If contacting and dealing with police is physically challenging, time-consuming and expensive, and a good reception and assistance are not likely to be received, victims may not report attacks or continue to seek redress through the criminal justice system.

The case file analysis found one victim who had to go to the police station more than 10 times before her case could proceed.

Throughout the process, she said, the police tried to mediate and settle her case against her will. She was told to accept the money and drop the case because, “after all, he (the offender) is the father of your baby.”



“It is natural and very understandable for the victims to take time to decide to tell the story to someone, let alone to report to the police. They feel dirty and damaged because of what happened. Practitioners like us understand, even the police understand, but the law does not understand.”

- a female NGO worker -

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

Definitions of rape based on the use of force often result in the case being made dependent on evidence of bodily injuries.

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

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

Police officers interviewed said that they look for key words like “forced”, “tying arms and legs”, “beating”, and “tearing of clothes” to substantiate a rape. They also said they look for indications that the suspect took advantage of the victim’s inability to resist, or is ill or mentally ill, or used anaesthetic or sleeping pills to prevent resistance (though they acknowledged that such gestures and actions are difficult to substantiate).

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

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

Questions offered by 15 female inquiry officers: “What were you doing there at that time? It was late.”, “Why did you go with him (the offender) in the first place?”, “What were you wearing when the incident happened?”, “Why didn’t you shout or fight back?”, “Are you sure you did not give him any signals that you were interested?”

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

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

A respondent provided an example of a prosecutor who told the victim’s mother that the offender has a big “umbrella”, implying powerful protection by people in high places. The researchers also found that the suspect and/or his family may lobby or bribe police or prosecutors to get the case dropped or have charges reduced (e.g., reducing a charge of rape against a child to an obscenity charge).



Legal and procedural factors relating to criminal procedural processes and impact on attrition

In both countries, attrition occurred at all stages of the criminal justice process—reporting/initial contact stage, investigation stage, pre-trial stage, and trial stage. While the limitations in the quantitative data meant that the study was unable to draw specific conclusions on attrition rates, the qualitative information provides indications as to the key factors influencing why cases failed to proceed.

“It was difficult for me to explain to male police officers. I was raped by men and I had to tell the story to men?”

- a female survivor -



Reporting/initial contact stage

Police are the initial point of contact for victims of sexual assault in both countries. Although processes and procedures vary, police in both countries are responsible for taking initial reports, conducting investigations, and preparing cases for charges.

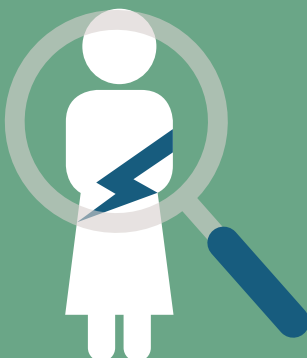


Factors contributing to attrition

- Lack of women or victim-friendly facilities
- Poor or inadequate reception and treatment by receiving officers
- Onus is on the victim to make formal report
- Taking away the victim's agency and power by not allowing her to make decisions (e.g. mandatory reporting)
- Excessive wait times
- Repeated telling of story
- Restricted statute of limitations for reporting
- No access to immediate, urgent or long-term protection measures
- No risk assessments or safety planning to develop integrated protocols and referral networks
- Victims are turned away and urged to seek mediation or other forms of settlement outside of the formal criminal justice system.

Investigation stage

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



Factors contributing to attrition

- Mandatory invasive forensic examination
- Lengthy investigations
- Poor or inadequate investigations
- Poor engagement and communication with the victim during the investigation



“I can easily sum up my experiences in the prosecution stage in three words: I don’t understand. I don’t understand the law, I don’t understand why it takes so long, and I don’t understand the language used in correspondence from the prosecutor’s office. Of course I felt like quitting and leaving everything behind.”

- a female survivor -

Pre-trial stage

The prosecution/pre-trial stage focuses on those cases that have been referred by the investigating body to either the prosecutor in Thailand, or the procuracy in Viet Nam. These two bodies either select or approve the appropriate charge or lay an indictment. The court holds a pre-trial review to determine whether the case should be sent for trial. In Thailand, this is done by a preliminary judge and in Viet Nam by an assigned judge.



Factors contributing to attrition

- No prioritization of sexual violence cases
- Procedures that allow for delay
- Time restraints that have prosecutors making decisions before completion of all evidence
- Forced mediation, alternative dispute resolution in cases involving violence against women and girls
- Lack of effective protection measures
- Reduction of severity of the charges

Trial stage

Attrition at this stage involves those cases where the court acquits the accused; the accused absconds before trial and the prosecutor decides to discontinue the case; the victim decides to withdraw from the legal process, or retracts her statement; or the victim declines to cooperate for any reason, such as reaching an informal settlement.



Contributing factors to attrition

- Corroboration requirements
- Evidentiary rules that allow for the victim’s past sexual history or evidence about her character
- Evidentiary rules that require victim to prove she resisted the perpetrator
- Adverse inference rulings (requiring recent complaints)
- Allowing for aggressive cross-examination of the victim in court
- Allowing situations where the victim can be intimidated by the accused and/or his family at the court

Recommendations

This study provides insights into the factors that contribute to attrition of sexual violence cases from the criminal justice system in two Asian countries and those factors that can reduce attrition.

The study is intended to support the development and implementation of criminal justice laws, policies, codes, procedures, programmes and practices for countries in the region, particularly Thailand and Viet Nam.

It is the first comparative study of attrition in reported cases of sexual violence in Asia, and also the first attrition study on Thailand and Viet Nam. Despite challenges in implementing the planned methodology, the study contributes to a better understanding of the policing and prosecution of sexual violence cases and the impact that the handling of their cases by the criminal justice system has had on women who were raped and sexually assaulted.

Sexual violence is a highly complex phenomenon rooted in historical gender-based discrimination and inequality, so it cannot be solved by the criminal justice system alone.

A comprehensive, integrated, multi-sectoral criminal justice response that is victim-centred and ensures accountability of offenders is essential to stemming the persistent impunity in cases of sexual violence.

The recommendations outlined here are meant to support States in implementing their national and international policy commitments to protect women's human rights and end violence against women, by strengthening their capacity to exercise due diligence in preventing, investigating and prosecuting such violence.



These are key recommendations arising from the study. The full report provides options and concrete examples for implementing each of them.



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

Women and girls face numerous barriers to reporting sexual violence as well as throughout the progress of their cases. Many victims report being treated with disrespect and insensitivity. Victims are required to tell their stories multiple times. Reports are refused or they are taken but investigation is not conducted or is delayed. Or police encourage mediation and settlement. Critical gaps in the provision of victim-centred services were found at all stages of the criminal justice system. Specific quality services need to be developed and delivered that address the barriers to victims' committed participation in the criminal justice process, in order to overcome victim disengagement, reduce attrition rates, and enhance the criminal justice response to sexual violence.



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

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



3. Promote comprehensive legal and policy frameworks

Many legal factors contribute to attrition in both countries. These include the problematic legal effects of classifying acts against adults as compoundable crimes, such as specific time limits for reporting rape cases. Criminal procedures that are not gender-sensitive and place a heavy onus on victims, such as requiring them to lodge complaints in order for investigations to proceed or allowing for negotiations outside the criminal justice system, also contribute to attrition. Women and girls have limited knowledge and limited access to information about their rights and what they can and should expect from the criminal justice system.



4. Ensure that approaches sensitive to victims are reflected in criminal justice policies, practices and resources

Criminal justice agencies are male-dominated and they promote an institutional culture of negative bias and attitudes that is reflected in procedures and practices. Discrimination against victims has been found in investigation and court processes. In some instances, processes are based on gender-stereotype assumptions even though the formal laws being applied do not contain such discrimination. In such cases, decisions by the police and judicial actors are based on biased gender norms rather than on an unprejudiced consideration of the evidence presented, thus violating the rights of victims.¹³

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



5. Develop effective internal and external oversight and accountability mechanisms

Victims have little resource if they believe that justice service providers are mishandling their case or treating them in a discriminatory manner. While some internal procedures for accountability do exist, there are no external and independent oversight and accountability mechanisms.



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

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



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

Criminal justice agencies often work in silos, with unclear communication protocols or practices and referral pathways among these agencies, or between these agencies and non-justice sector institutions such as health and social welfare agencies.

The burden of confronting the impunity of sexual violence must shift from the victim to the criminal justice institutions. Given the differing mandates of each institution, a coordinated response is essential to changing the manner in which the criminal justice system as a whole traditionally has responded to sexual violence.



8. Develop effective monitoring and evaluation mechanisms

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



9. Prioritize resources, both human and financial, for effective delivery of services

Both countries appear to have limited resources in place to build and sustain capacity, as well as limited capability to provide quality essential justice services that can effectively respond to sexual violence against women.

Entry points for change

The study also identified specific entry points for change within key sectors. Below are examples of policy and programming approaches that can improve specific parts of the criminal justice process.

Ministry of Justice and other bodies responsible for law reform

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

Police sector

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

Prosecution services

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

Judiciary and the courts

- Training for judges to eliminate judicial stereotyping and to apply evidentiary rules in a non-discriminatory and gender-sensitive manner.
- Policies that support enabling courtroom environments for victims.
- Specialized sexual offences courts with specialized prosecutors, victim support professionals and/or dedicated judges.

Forensic services

- Training for forensic professionals to ensure that medical and forensic evidence is collected in a manner that does not cause secondary victimization to the woman, and that the strengths and limitations of such evidence are understood.
- Protocols for sexual assault medical forensic examinations based on World Health Organization guidelines.
- Specialized sexual assault care and treatment centres that foster extensive community networks of agencies working with victims.

Legal aid mechanisms, programmes and engaging lawyers' associations and firms

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

Social services and victim support

- Partnerships between criminal justice agencies and social services and victim support agencies.
- Funding and training for civil society organizations to provide professional and/or trained volunteer support services for victims before, during and after the criminal justice process.
- Identification of and support for agencies and organizations that provide services and support for victims.
- Identification of and support for local agencies and organizations that can influence decision-makers in developing high-quality services and practices.



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