



FACULTY OF LAW
Lund University

Emma Johansson

A Cultured and Happy Family
A Minor Field Study on the Correlation Between the
Implementation of the Vietnamese Family Planning
Policy and the Prevalence of Son Preference

JURM02 Graduate Thesis

Graduate Thesis, Master of Laws programme
30 higher education credits

Supervisor: Alejandro Fuentes

Semester of graduation: Autumn Semester 2014

Contents

SUMMARY	1
SAMMANFATTNING	2
PREFACE	3
ABBREVIATIONS	4
1 INTRODUCTION	5
1.1 Background	5
1.2 Purpose and Research Question	6
1.3 Methodology and Material	6
1.4 Difficulties and Critique of Sources	8
1.5 Delimitations and Analytical Framework	10
1.6 Outline	11
2 INTERNATIONAL HUMAN RIGHTS LAW: REGULATION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN	12
2.1 Introduction	12
2.2 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	12
2.2.1 <i>Non-Discrimination under International Human Rights Law</i>	12
2.2.2 <i>Definition of Discrimination against Women and Core Concepts</i>	14
2.2.3 <i>General Obligations of States Parties</i>	17
2.3 Conclusion	21
3 FAMILY PLANNING POLICIES	22
3.1 Introduction	22
3.2 Family Planning in a Global Context: From Fertility Reduction to a Human Right	22
3.2.1 <i>Introduction</i>	22
3.2.2 <i>Family Planning Policies: Definition</i>	22
3.2.3 <i>The Threat of a Demographic Crisis: The Surfacing of Family Planning Policies on the Global Development Agenda</i>	24
3.2.4 <i>Family Planning Policies and Reproductive Health</i>	25
3.2.5 <i>Family Planning as a Human Right</i>	26
3.3 International Human Rights Law: Regulation on the Right to Family Planning	27
3.3.1 <i>Introduction</i>	27

3.3.2	<i>The Cairo Programme of Action and the Beijing Declaration and Programme for Action</i>	28
3.3.3	<i>Legally Binding Norms under International Human Rights Law</i>	30
3.3.3.1	The Right to Family Planning under the UN Covenants	30
3.3.3.2	The Right to Family Planning under the CEDAW	31
3.4	Family Planning Policies in Vietnam: The Vietnamese Family and the Family Planning Policies	32
3.4.1	<i>Introduction</i>	32
3.4.2	<i>The Traditional Vietnamese Family</i>	33
3.4.3	<i>The Family and the Socialist Revolution</i>	36
3.4.4	<i>The Role of the Family and the Introduction of the Doi Moi Policies</i>	38
3.5	Conclusion	42
4	THE VIETNAMESE LEGAL SYSTEM	44
4.1	Introduction	44
4.2	Background and Key Features of the Domestic Legal System	44
4.3	Discrimination against Women	46
4.4	The Legal Framework of the Vietnamese Family Planning Policy	48
4.4.1	<i>General Provisions: Overall Goals</i>	48
4.4.2	<i>One-or-Two-Child Policy</i>	50
4.4.3	<i>Quality of the Population: Cultured and Happy Families</i>	51
4.4.4	<i>Upcoming Law on Population</i>	52
4.5	Conclusion	53
5	THE VIETNAMESE FAMILY PLANNING POLICY: SON PREFERENCE AND THE POLICY IMPLEMENTATION	55
5.1	Introduction	55
5.2	Son Preference in Vietnam	55
5.2.1	<i>Background and Underlying Causes</i>	55
5.2.2	<i>Consequences of Son Preference: Imbalance in the Sex Ratio at Birth</i>	58
5.3	Implementation of the Family Planning Policy and the Ideal Femininity	62
5.3.1	<i>General Characteristics: Mass Mobilisation</i>	62
5.3.2	<i>The Cultured and Happy Family: The Role of the Woman</i>	64
5.3.3	<i>Enforcement of the Family Planning Policy</i>	68
5.4	Conclusion	70
6	ANALYSIS AND CONCLUDING REMARKS	72
	SUPPLEMENT A	76
	SUPPLEMENT B	117

SUPPLEMENT C

118

BIBLIOGRAPHY

119

Summary

The State of Vietnam has worked actively against inequality between women and men since the early days of the socialist revolution in the mid-twentieth century. Vietnam is since 1982 State Party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, patriarchal structures influenced by Confucian ideology remain strong in present-day Vietnamese society. Such gender stereotyped structures are especially persistent within the realm of family life.

Since the 1960s, Vietnam has implemented a family planning policy. These policies have altered the preconditions of the family life of Vietnamese families, and constitute an extensive State intervention in the ambit of family life and the private life of the individual. This thesis explores the impact and consequences of the Vietnamese family planning policies on equality between women and men, and explores the concurrence between the formulation of the current Vietnamese family planning policy and the State obligations of Vietnam under the CEDAW. More precisely, this question is answered through an analysis of the possible correlation between the implementation of the Vietnamese family planning policy and the prevalence of son preference.

Son preference is a widespread phenomenon in Vietnam. The root cause of this phenomenon is a predominant patrifocal kinship structure, highly valuing the birth of sons. In recent years, the desire of families to have a son has taken new expressions, and Vietnam is currently experiencing an increased imbalance in the national Sex Ratio at Birth. This is an alarming development for the status of gender equality in Vietnam.

Feeble efforts of the State to enforce prohibitions on prenatal sex selection and inconsistency in the implementation of national legislation prohibiting discrimination against women, in combination with a revitalisation of Vietnamese traditional cultural values initiated by the State in the 1980s, has generated a regression in the efforts for equality between women and men in Vietnam. The ideal femininity currently propagated by the State through the family planning policy and the family planning campaigns revitalises a traditional Vietnamese female ideal, reinforcing the very gender stereotypes underlying the social structures generating preference for sons.

The current development in the implementation of the Vietnamese family planning policy is inconsistent with the State obligations of Vietnam under the CEDAW. The core obligations set out in Articles 1-5 CEDAW stipulate a responsibility of the State to combat gendered social structures and ensure the enforceability of provisions of non-discrimination under the domestic legal system. The current implementation of the family planning policy reinforces gendered structures detrimental to the enjoyment of human rights of women, and turns a blind eye to the practices of prenatal sex selection performed by a profit driven health care sector.

Sammanfattning

Vietnam har sedan den socialistiska revolutionen på mitten av 1900-talet arbetat aktivt för jämställdhet mellan kvinnor och män. Sedan 1982 är Vietnam part till Konventionen om avskaffande av all slags diskriminering av kvinnor (CEDAW). Patriarkala strukturer influerade av konfucianismen lever dock vidare, och det vietnamesiska samhället är än idag starkt präglad av sociala hierarkier mellan könen. Sådana könsstereotypa strukturer är särskilt ihärdiga inom familjens domän.

Sedan 1960-talet har Vietnam implementerat en familjeplaneringspolicy. Denna policy har påverkat förutsättningarna för det dagliga livet för vietnamesiska familjer, och utgör ett omfattande statligt ingrepp inom individens familje- och privatliv. Denna uppsats utforskar den vietnamesiska familjeplaneringspolitikens effekter på jämställdhet mellan kvinnor och män, och utforskar om utformningen av den nuvarande Vietnamesiska familjeplaneringspolicyn är förenlig med Vietnams skyldigheter enligt CEDAW. Mer exakt besvaras denna frågeställning genom en analys av möjliga samband mellan implementeringen av den vietnamesiska familjeplaneringspolicyn och förekomsten av preferens för söner.¹

Att familjer föredrar söner framför döttrar är ett utbrett fenomen i Vietnam. Den grundläggande orsaken till detta fenomen är ett patrilineärt strukturerat samhälle, i vilket söner värderas högre än döttrar. Under de senaste åren har denna önskan bland familjer att föda en son tagit nya uttryck, och Vietnam upplever för närvarande en ökande obalans i den nationella könsbalansen bland nyfödda.² Svaga insatser från staten för att genomdriva förbud mot prenatal könselektion, i kombination med en återupplivning av traditionella värden som initierats av staten på 1980-talet, har genererat en regression i arbetet för jämställdhet mellan kvinnor och män i Vietnam. Det kvinnoideal som för närvarande propageras av staten förstärker de könsstereotyper som ligger bakom de sociala strukturer som genererat preferens för söner.

Den nuvarande utvecklingen i implementeringen av den vietnamesiska familjeplaneringspolitiken strider mot Vietnams skyldigheter enligt CEDAW. De grundläggande skyldigheter som fastställs i artiklarna 1-5 CEDAW stipulerar statens ansvar att bekämpa genusstereotypa strukturer och säkerställa implementeringen av principen om icke-diskriminering i den nationella rättsordningen. Den nuvarande implementeringen av familjeplaneringspolicyn förstärker genusstrukturer på bekostnad av kvinnors mänskliga rättigheter, och ser mellan fingrarna på den utbredda praxis av prenatal könselektion som utförs inom en vinstdriven vårdsektor.

¹ Jämför det engelska uttrycket '*son preference*'.

² Jämför det engelska uttrycket '*sex ratio at birth*'.

Preface

I would like to thank the Swedish International Development Agency (SIDA) for granting me a Minor Field Study grant. During the fall of 2014, I conducted a field study in Hanoi, Vietnam, collecting data underlying the research presented in this thesis. Without the MFS scholarship, this study would never have been possible.

I would also like to give a warm thanks to the intelligent and ambitious people who have taken their time to help me with the practicalities and the challenges of conducting a field study. Thank you, Bengt Lundell for letting me become part of the long-standing cooperation between the Faculty of Law at Lund University and Hanoi Law University. Thanks to Dao Le Thu, Hoang Minh and Hoang Thuy Van at Hanoi Law University for your support during my time in Hanoi. A sincere thanks to Hoang Van Nghia and the rest of the brilliant staff at the Vietnamese Institute for Human Rights – your help has been indispensable for my research. My sincere thanks to the Key Informants who were kind enough to make room for me in their busy schedules, and agree to an interview. Thanks to Charlotta Sjösten for her wise advice, and for her willingness to share her experiences of conducting research in Vietnam.

Lastly I would like to thank my friends Elisabeth Karlsbad, Karin Hjalmarsson, Linnéa Kallhed and Shanai Park for your support during my work with this thesis.

Emma Johansson,
Lund, January 2015

Abbreviations

CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women
ICCPR	United Nations International Covenant on Civil and Political Rights
ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IUD	Intra-Uterine Device
SIDA	Swedish International Development Agency
SRB	Sex Ratio at Birth
UDHR	United Nations Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund

1 Introduction

1.1 Background

Although prohibited under international law, discrimination against women remains a worldwide occurrence.³ Promotion of gender equality and empowerment of women is deemed one of the most acute measures necessary to ensure global wide development. As a testament to this, in 2000, the United Nations named gender inequality as one out of the eight most pressing issues for the eradication of extreme poverty, through the adoption of the Millennium Development Goals.⁴ The Millennium Development Agenda was formulated as quantified goals to be achieved by the year 2015.⁵ Progress has been made, but inequality between women and men persists in every country of the world – including Vietnam.⁶

Since the second half of the twentieth century, family planning policies have presented one of the most extensive interventions by the State within the ambit of the family and private life of individuals.⁷ Whereas the policies of some States are well-known and debated – such as the Chinese one-child policy. In my experience, few are aware of the prevalence of family planning policies as a topic on the agenda of the global community and the agenda of virtually every State around the globe.⁸ Vietnam has implemented a family planning policy since the early days of the national socialist revolution in the mid-twentieth century.⁹ Throughout its existence, the family planning programmes of Vietnam have attracted the interest of scholars of social science, anthropology, demography and medicine. The studies cover a wide range of aspects of the implementation of the policies such as the effectiveness of the methods employed, and the perception of the family planning policies of the population.¹⁰

However, to my best knowledge, little research has been conducted in relation to the legal aspects and implications of the formulation and implementation of the family planning policies in Vietnam. This thesis aims to shed light on the legal implications under international human rights law

³ See Chapter 2.

⁴ Official website of the World Health Organisation, available at www.who.int/topics/millennium_development_goals/about/en/ accessed 2nd of January 2015.

⁵ As an example, Millennium Development Goal 1 – to eradicate extreme poverty and hunger – was concretised in goals to halve the proportion of people whose income is less than 1 USD a day and to achieve full productive employment and decent work for all, including women and young people, see *The Millennium Development Goals Report 2014*, report from the United Nations (2014), pp. 8 and 10.

⁶ Ibid. pp. 20-23.

⁷ See for example Judith Seltzer, *The Origin and Evolution of Family Planning Programs in Developing Countries* (RAND 2002), p. 1.

⁸ See Chapter 3.2 on the development of family planning policies.

⁹ See Chapter 3.4 on the development of the Vietnamese family planning policies.

¹⁰ See for example research conducted by Tine Gammeltoft, Daniel Goodkind, Helle Rydström, Danièle Bélanger, Yen B.T. Nguyen, et al.

of the family planning policies' effects on gender equality in Vietnam. The topic of the relation between the Vietnamese family planning policies and gender equality will be explored through the specific phenomenon of son preference¹¹ – and the possible correlation between the formulation of the family planning policies and the prevalence and expressions of son preference.

1.2 Purpose and Research Question

The purpose of this thesis is to explore the Vietnamese family planning policies' effects on gender equality. The aim of my work will be to analyse the effects of the Vietnamese family planning policies in relation to the international human rights law on discrimination against women, to investigate whether the national implementation of the family planning programmes accord with international law. Family planning policies impact the lives of women and men in multiple aspects of life, all of which cannot be addressed in this thesis. I have therefore chosen the correlation between the family ideal promoted through the Vietnamese family planning programmes and the existence of son preference as the focal point of my research. To analyse this topic in a feasible manner, a research question has been formulated as follows:

- Which are the State obligations of Vietnam under international human rights law in relation to discrimination against women and the implementation of the family planning policies with regard to the family ideal promoted by the State and the prevalence of son preference?

In order to provide an answer to above stated research question, a number of sub-questions need to be addressed. Firstly, the relevant framework of international human rights law needs to be analysed in order to establish the provisions of international law regulating the matters of discrimination against women and family planning policies. Secondly, the evolution and current formulation of the family planning policies in Vietnam need to be examined. This will create a point of departure for further analysis of the connection between family planning policies and son preference in Vietnam. To further facilitate the analysis, the question of causes and expressions of son preference need to be explored to identify potential intersections with the formulation and implementation of the family planning policies.

1.3 Methodology and Material

In the research process of gathering material for this thesis, a number of different methodologies have been applied. Firstly, in relation to the sections on the relevant international treaties and the Vietnamese legislation on gender equality and family planning, a legal dogmatic method has been applied. Legal dogmatic theory prescribes a thorough examination of

¹¹ 'Son preference' refers to families rather giving birth to sons than daughters, see Section 5.2.

legislation through an analysis of the relevant sources for the interpretation of law. The purpose of such analysis is to establish *lege lata*.¹² Under international law such relevant sources for the interpretation of law are outlined under Article 38 of the Statute of the International Court of Justice.¹³ Article 38 of the ICJ Statute divides the sources of international law into primary and subsidiary sources for the interpretation of legal provisions. The primary sources of interpretation are listed in Article 38(1)(a)-(c) of the ICJ Statute as international conventions, international custom and general principles of law. Subsidiary sources for interpretation, according to Article 38(1)(d) of the ICJ Statute, are jurisprudence and doctrine. Due to difficulties in finding relevant documents in English, the sections analysing Vietnamese legislation and the Vietnamese legal system is, in part, based on subsidiary sources of interpretation, mainly doctrine. Vietnamese jurisprudence is not available in English, and national jurisprudence has therefore not formed part of the research material underlying this thesis.

Secondly, the topic of family planning policies is a multi-disciplinary subject. In order to depict the context of the legal issues analysed in this thesis, a description of the sociological background is necessary. The underlying research of the sections on the notion of family in Vietnam and the history and evolution of the concept of family planning are mainly based on a literature study. Amongst leading scholars in this regard should be mentioned Helle Rydström, Danièle Bélanger, Daniel Goodkind, Tine Gammeltoft, Jayne Werner, Lisa Drummond and Le Thi Quy. The material of Professor Le Thi Quy is often quoted in the works of other scholars. Unfortunately the majority of her published research is only available in Vietnamese, and has therefore been inaccessible to me. It should be noted that none of the above mentioned scholars are legal scholars.

Thirdly, this thesis is in part based on material collected during a minor field study in Vietnam from mid-October until mid-December 2014. During this period, information was collected, mainly through interviews. The interview material was collected through ten qualitative, in-depth key informant interviews.¹⁴ The interviews were semi-structured and conducted according to an interview guide.¹⁵ The guide was sent to the interviewees beforehand, and all Key Informants were given the opportunity to reflect on all the questions raised in the interview guide. However, the focus of each interview varied depending on the specialisation of the interviewee. The interview guide was translated into Vietnamese to give interviewees not speaking English the same possibility to prepare for the interviews as for

¹² Karin Kulin-Olsson, *Juridikens fundament – med grundläggande juridisk metodlära* (2011 Jure Förlag AB), p. 54.

¹³ Statute of the International Court of Justice, adopted by the United Nations on the 24th of October 1945, San Francisco, as an annex to the Charter of the United Nations. Hereinafter: 'ICJ Statute'.

¹⁴ *Conducting Key Informant Interviews*, USAID Center for Development Information and Evaluation (1996), available at < http://pdf.usaid.gov/pdf_docs/PNABS541.pdf>, last accessed 11th of December 2014.

¹⁵ See Supplement B.

Key Informants speaking English. The questions posed in the interview guide were deliberately formulated in an open and broad manner, to allow for each interviewee to put forward her or his own perspective. It also allowed for the interviewer to ask further questions on a specific topic if deemed relevant.

The Key Informants were elected on the basis of their professional experience relating to the topic(s) analysed in this thesis. All interviewees fell under one out of two professional categories: (a) State official and policy maker, or (b) academic scholar. On a number of occasions, the professional role of the interviewee would be best described as a mix of the two professional categories, with regard to, for example, interviewees conducting research for State-funded research institutes, such as the Institute for Family and Gender Studies. All interviewees were Vietnamese professionals conducting research or working for national institutes in Vietnam. International organisations in Vietnam were purposely excluded in the process of finding suitable interviewees, as the publications from international organisations working within the field of population and development in Vietnam publish their material in both Vietnamese and English, and a substantial part of this research is widely accessible online.¹⁶ Therefore, it was deemed more relevant to locate interviewees working for national institutes and authorities, as the research conducted by these organisations is often neither published in English, nor accessible online. Out of the ten persons interviewed, four were women and six were men. The interviews were conducted in the private office of the Key Informant, or in a café suggested by the interviewee. All interviews were recorded, to enable revision and processing of the material collected through the interviews.

None of the Key Informants explicitly requested to remain anonymous. However, due to the political sensitivity of a number of topics discussed during the interviews, I have made the decision to not disclose the identity of the Key Informants. Hence, only the professional position of the Key Informants will be disclosed, and the interviewees will be referred to as 'Key Informant X'.¹⁷

1.4 Difficulties and Critique of Sources

To conduct research in a country foreign to the researcher generates inherent complications. Such difficulties are naturally reflected in the results of my research. To assure the accuracy of the material presented in this thesis, a continuous evaluation and critique of sources has been present throughout the research process. However, a certain level of reservation to the accuracy of the findings is, for reasons described below, inevitable.

¹⁶ For example the publications from UN organisations conducting research in Vietnam, e.g. United Nations Population Fund (UNFPA) and United Nations Development Programme (UNDP).

¹⁷ For a list of the professional positions of the Key Informants see Supplement C.

The first, and perhaps most evident complication, is the language barrier. The interviews conducted during my field study in Vietnam, were all conducted in English; a foreign language for both interviewer and interviewee. Additionally, for six out of the ten interviews, the interview was conducted with the assistance of an interpreter. Such arrangements naturally add an element of risk of misunderstandings and difficulties in communicating information between interviewer and interviewee. However, despite language difficulties, in general, the communication between interviewer and interviewee worked well. When ambiguities arose, additional questions were asked to clarify statements, and to avoid misunderstanding in relation to questions asked and answers given. Several of the interviewees spoke good English. In the process of incorporating the interview material into my research, I have been careful to only use information clearly expressed by the Key Informants.

The language barrier did not only pose complications in the process of conducting interviews, but also in finding other research material. Firstly, due to limitations in time and resources, no research published in Vietnamese was translated. This means that, with the exception of research results referred to by interviewees during interviews, this thesis is only based on publications available in English.¹⁸ Naturally, this excludes research otherwise relevant for the topic of this thesis, and negatively affects the possibility to access up-to-date information and statistics. Secondly, the Vietnamese legislation accounted for in my research is, based on an analysis of English translations of Vietnamese legislation. When available, the analysis has been based on official translations published by State Organs. Unfortunately, with regard to the majority of the national legislation referred to in this thesis, no official translations were available. In such cases translations were obtained through the database ‘Vietnam Laws Online’,¹⁹ or the database on population policies of the world provided by Harvard University.²⁰ With regard to the Population Ordinance,²¹ translations of the amendments were not available. Therefore, in relation to the amendments of Article 10 adopted in 2008,²² a translation was provided by a translation agency. Naturally, to conduct research within a legal system foreign to the researcher, in combination with having to rely on translations of legal texts, pose a number of obstacles, which will affect the research outcomes.

¹⁸ With a few exceptions where sources in Swedish have been used.

¹⁹ Online database run by the law firm ‘Allens’. The database contains English translations of Vietnamese laws, available at <www.vietnamlaws.com> accessed 10th of December 2014.

²⁰ Visit database at <www.hsph.harvard.edu/population/policies/poppolicy.htm>, last accessed on 10th of December 2014.

²¹ Ordinance No. 06/2003/PL-UBTVQH11 adopted by the National Assembly on the 9th of January 2003. For further information see section on the current regulation of the Vietnamese family planning policy in Section 4.4.

²² Ordinance of the Standing Committee of the National Assembly pursuant to Resolution No. 27/2008 / QH12 of the Ordinance on Programme Building in 2009 and the additional Ordinance on Programme Building of the XIIth Congress (2007-2011), adopted on 27th of December 2008. For further information see section on the current regulation of the Vietnamese family planning policy in Section 4.4.

Finally, I would also like to comment on the sensitivity of the topics explored in this thesis. A number of the questions asked during interviews, as well as in the process of locating the relevant legislation and material, are closely connected to cultural norms and concern topics that could be perceived as sensitive. The Key Informants were interviewed as professionals, which naturally affect the type of answers received throughout the interview process. At times, I encountered a subtle reluctance to give direct answers to questions posed. On such occasions, the questions were reformulated to clarify the replies given, and then the interview moved on to the next question. In conclusion, this results in an interview material affected by the professional position of the interviewee. However, the purpose of this thesis is to explore State accountability under international law, in relation to implementation of State policies. Therefore, it is of the utmost relevance to collect information about the 'official' approach and attitude to the topics explored.

1.5 Delimitations and Analytical Framework

The topic of the effects of family planning policies on gender equality is a multifaceted topic, with a multitude of aspects that would present good material for further research. However all aspects cannot be explored within the framework of this thesis. The analytical framework for the research presented in this thesis is international human rights law, and the regulation of non-discrimination on the basis of gender under international human rights law. The specific issue chosen for further analysis is the correlation between the formulation of family planning policies and existence of son preference in Vietnam. This will be explored through an analysis of the formulation of the implementation of the family planning policies in Vietnam, in the light of the State obligations of Vietnam to combat gender discrimination against women. The focal point of the analysis is the State obligations under the Convention on the Elimination of All Forms of Discrimination against Women.²³

Connected to the topic of family planning and human rights, is the question of the existence and content of a human right to family planning under international law. This topic will be discussed briefly, but is not the focal point of this thesis. Rather, the focus of my research is the consequences of the implementation of family planning policies in relation to discrimination against women. Furthermore, the implementation of family planning policies affects a wide range of aspects of the lives of individuals. Various issues concerning human rights and family planning could be raised and explored. This thesis focuses, however, exclusively on the issues arising in relation to the family planning policies and gender equality, with focus on discrimination against women.

²³ Convention on the Elimination of All Forms of Discrimination against Women adopted and opened for signature by the United Nations General Assembly on the 18th of December 1979, Resolution 34/180, and entered into force on the 3rd of September 1981 in accordance with Article 27(1) CEDAW. Hereinafter: 'CEDAW' or 'the Convention'.

Son preference is a social phenomenon not just in Vietnam, but is a widespread occurrence also in other countries in the region.²⁴ However, a comparative study of the research question lies outside the scope of this thesis, and this study focuses exclusively on Vietnam, and does not explore the topic from a comparative perspective.

1.6 Outline

The outline of this thesis is organised as follows:

The second chapter offers a general overview, and highlights relevant legally binding provisions under international law, in relation to discrimination against women. This chapter provides the analytical tools necessary for further analysis of the regulations under the human rights discourse in relation to discrimination against women.

Chapter three, introduces the topic of family planning and family planning policies. In exploring the sociological aspects of the origin and evolution of the family planning policies, as well as the relevant legal provisions under international law, the second chapter aims at clarifying the underlying reasons for the adoption of family planning policies. The chapter ends with an analysis of the notion of family and the contemporary development of family planning policies in Vietnam.

The topics of discrimination against women and of family planning policies in the Vietnamese context are further elaborated upon in chapter four and five. In these chapters the Vietnamese legal system and the implementation of the current Vietnamese family planning policy are discussed. In this section the current legal system and formulation of the Vietnamese family planning policies are analysed to facilitate an analysis of the concurrence of the domestic legal system and the obligations of Vietnam under international law.

Research results and findings are presented in a final concluding chapter. However, as a pedagogic tool, every chapter of this thesis is closed with a concluding section. This structure aims to enable the reader to more easily follow the research process, and to understand the basis upon which certain conclusions are drawn.

²⁴ See for example Christophe Z. Guilmoto, 'Son Preference, Sex Selection, and Kinship in Vietnam' (2012) Vol. 38(1) *Population & Development Review* 31, p. 31.

2 International Human Rights Law: Regulation on the Elimination of Discrimination against Women

2.1 Introduction

For the purpose of exploring the State obligations of Vietnam under international human rights law in relation to discrimination against women and the implementation of the family planning policies, one must first establish the relevant norms of international law coming into play. This initial chapter aims to give an overview of the relevant framework of international law in relation to the elimination of discrimination against women. Consequently, this chapter will present the relevant norms of non-discrimination and gender equality under international human rights law. The focus of this chapter will be the CEDAW,²⁵ but also other relevant provisions of non-discrimination under international law will be briefly discussed. The regulation of a right to family planning under the Convention will be discussed below in section 3.3.3.2.

2.2 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

2.2.1 Non-Discrimination under International Human Rights Law

The principle of equality and the State obligation of non-discrimination constitute one of the cornerstones of the human rights discourse.²⁶ Equality between women and men is a central concept to international human rights law,²⁷ and the assertion of the equal rights of women and men has been

²⁵ Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature by the United Nations General Assembly on the 18th of December 1979, Resolution 34/180, and entered into force on the 3rd of September 1981 in accordance with Article 27(1) CEDAW.

²⁶ See for example Manfred Nowak, 'The Prohibition of Gender-Specific Discrimination Under the International Covenant on Civil and Political Rights' in Wolfgang Benedek, Esther M. Kisaakye and Gerd Oberleitner (eds.), *Human Rights of Women: International Instruments and African Experience* (Zed Books Limited 2002), p. 106; Sara Hossain, 'Equality in the Home: Women's Rights and Personal Laws in South Asia', in Rebecca J. Cook, (eds.), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994), p. 467.

²⁷ Maja Kirilova Eriksson, 'Abortion and Reproductive Health: Making International Law More Responsive to Women's Needs' in Kelly D. Askin and Doreen M. Koenig (eds.), *Women and International Law*, Vol. 3 (2001 Transnational Publishers), p. 5.

recognized in a number of key instruments under international law. To name a few, the preamble to the Charter of the United Nations²⁸ recognizes the equal rights of women and men, and Article 1 of the United Nations Universal Declaration of Human Rights²⁹ establishes that '[a]ll human beings are born free and equal in dignity and rights.' This assertion of the equal rights of everyone has later been reiterated and substantiated in numerous treaties of international human rights law. As an example, Article 2 of the International Covenant on Civil and Political Rights³⁰ and Article 2 of the International Covenant on Economic, Social and Cultural Rights³¹ oblige States Parties to respect and ensure to everyone, the rights acknowledged in the Covenants, without any distinction of, for example, sex or race. The recognition of gender equality in legally binding treaties of international law generates responsibilities and obligations of non-discrimination for States under international law.³² Consequently, discrimination on the basis of sex is prohibited according to international law.

In regard to discrimination against women, the key treaty is the CEDAW.³³ Adopted in 1979, the Convention has in 2014 reached almost universal ratification, with close to 190 States Parties. This makes the CEDAW one of the international human rights treaties that have been ratified by the largest number of States.³⁴ Vietnam ratified the Convention in 1982, but is not State Party to the Optional Protocol acknowledging the individual complaints procedure.³⁵ However, the significance of the Convention in relation to sex discrimination against women does not just lie in its widespread ratification, but also in its formulation as a human rights instrument exclusively

²⁸ Charter of the United Nations, adopted by the United Nations on the 26th of June 1945, San Francisco. Hereinafter: 'UN Charter'

²⁹ Universal Declaration of Human Rights, adopted by the United Nation General Assembly on the 10th of December 1948, Resolution 217(A)(III). Hereinafter: 'UDHR'

³⁰ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by the United Nations General Assembly on the 16th of December 1966, Resolution 2200(A), and entered into force on the 23rd of March 1976 in accordance with Article 49. Hereinafter: 'ICCPR'.

³¹ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by the United Nations General Assembly on the 16th of December 1966, Resolution 2200A (XXI), and entered into force on the 3rd of January 1976 in accordance with Article 27. Hereinafter: 'ICESCR'.

³² Christine Ainetter Brautigam, 'International Human Rights Law: The Relevance of Gender' in Wolfgang Benedek, Esther M. Kisaakye and Gerd Oberletiner (eds.), *Human Rights of Women: International Instruments and African Experience* (Zed Books Ltd. 2002), p. 11.

³³ See for example *ibid.* p. 24; Marsha A. Freeman, Christine Chinklin and Beate Rudolf, *The UN Convention On the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford University Press 2012), p. 2.

³⁴ See for example General Recommendation No. 22 Amending Article 10 of the Convention, adopted in 1995 during the 14th Session of the Committee on the Elimination of Discrimination against Women.

³⁵ For the full list of the ratification status of the CEDAW, visit the official website of the United Nations Office of The High Commissioner for Human Rights: <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en>, accessed 31 October 2014.

addressed to women.³⁶ The focus of the Convention is to achieve gender equality by addressing and combating the systemic subordination of women in relation to men. Hence, the CEDAW Convention is not gender neutral; it is a treaty exclusively applicable to discrimination against women.³⁷

2.2.2 Definition of Discrimination against Women and Core Concepts

For the purpose of the analysis of this thesis, ‘*discrimination against women*’ will be defined according to the definition found in the Convention. Article 1 CEDAW defines the term ‘discrimination against women’ as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil or any other field.

This Article contains key features of the definition of discrimination under the Convention, but also key concepts with regard to the scope of the Convention. Firstly, Article 1 CEDAW establishes that the Convention is applicable to *all* forms of discrimination against women. According to this definition, the Convention is applicable to any differential treatment between women and men, without an objective and reasonable justification, occurring within the ambit of human rights and fundamental freedoms of women. In other words, the scope of State obligation not to discriminate is not limited to the rights specifically mentioned in Part II-IV of the Convention.³⁸ For the elaboration on the substance of these far-reaching State obligations to eliminate all forms of discrimination against women, the Committee on the Elimination of All Forms of Discrimination against Women³⁹ has assumed the tripartite typology of State obligations to *respect, protect, fulfil*.⁴⁰

The Convention text is based on *sex* as the determining marker for the assessment of discrimination under CEDAW.⁴¹ Intrinsic to the definition of discrimination under the Convention, is an assumption of significant biological differences between women and men.⁴² The Convention does not expressly utilise the terms ‘*gender*’ or ‘*gender equality*’,⁴³ but recognizes

³⁶ Freeman, Chinklin and Rudolf, 2012, pp. 2 and 13.

³⁷ Ibid. p. 9; General Recommendation No. 25 on Article 4 paragraph 1 CEDAW on Temporary Special Measures, adopted in 1999 during the 20th Session of the Committee on the Elimination of Discrimination against Women, para. 5.

³⁸ Freeman, Chinklin, and Rudolf, 2012, p. 2.

³⁹ Hereinafter: ‘CEDAW Committee’ or ‘the Committee’.

⁴⁰ Freeman, Chinklin and Rudolf, 2012, p. 20.

⁴¹ Ibid. p. 59.

⁴² General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 CEDAW, adopted in 2010 during the 47th Session of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/GC/28, para. 5.

⁴³ Freeman, Chinklin and Rudolf, 2012, p. 59.

the existence of culturally constructed differences between women and men; see Article 5 CEDAW. At the time of the drafting process and adoption of the Convention, the term gender was not yet an established concept under international human rights law. This explains the absence of the term in the convention text.⁴⁴ However, the CEDAW is not a static document, but a living instrument evolving through continuous interpretation.⁴⁵ Through General Recommendations, the Committee has recognized the concept of gender as an analytical tool for the interpretation and the implementation of the obligations under the Convention.⁴⁶ In its General Recommendation No. 28 the Committee distinguished ‘gender’ to ‘sex’, and defined the term ‘gender’ as referring to:

socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.⁴⁷

The inclusion of the concept of gender for the purpose of the interpretation and application of the Convention, was motivated by reference to the wording of Article 1 CEDAW prohibiting *all* forms of discrimination against women.⁴⁸ The Committee recognises gender roles as social constructions contingent to a specific cultural, spatial and temporal context, which can be altered to guarantee equality between women and men.⁴⁹ This aspect of the notion of gender should be clearly differentiated to the notion of sex, the latter referring to factual and constant biological and physical differences between women and men such as reproductive functions.⁵⁰ Today, the notion of gender equality is a well-established concept in relation to the elimination of discrimination against women under the Convention. The CEDAW prohibits discrimination against women regardless if it is the consequence of notions of sex and/or gender.⁵¹

The first Article of the CEDAW also identifies the equality model underlying the Convention. In this context, one should make a clear distinction between the concepts of ‘equality’ and ‘equity’. The Convention is based on equality, and does not advocate the concept of ‘gender equity’ as a means of realisation of the obligations under the Convention.⁵² ‘Equity’ refers to ‘fair treatment of women and men according to their respective

⁴⁴ Freeman, Chinklin and Rudolf, 2012, p. 15.

⁴⁵ See for example General Recommendation No. 25, para. 3; General Recommendation No. 28, para. 2; Nowak, 2002, p. 106.

⁴⁶ See for example General Recommendation No. 19 on Violence against Women, adopted in 1992 during the 11th Session of the Committee on the Elimination of Discrimination against Women, para. 1; General Recommendation No. 25, paras. 7 and 11.

⁴⁷ General Recommendation No. 28, para. 5.

⁴⁸ Ibid.

⁴⁹ Ibid.; Freeman, Chinklin, and Rudolf, 2012, p. 147.

⁵⁰ Compare Ainetter Brautigam, 2002, p. 21.

⁵¹ General Recommendation No. 28, para. 5. Compare with the definition of ‘gender’ in Ainetter Brautigam, 2002, pp. 21-22.

⁵² General Recommendation No. 28, para. 22.

needs.’⁵³ While equality promotes *equal* rights of women and men, equity does not oppose the assignment of different roles of women and men, as long as they are *equally valued*. The concept of equity was rejected during the drafting process of the Convention, as it was considered too subjective and too open for justifications of gender inequality by referring to different – but equally valued – roles of women and men.⁵⁴

Consequently, the definition of discrimination under the Convention has its basis in the equal enjoyment of human rights and fundamental freedoms for women as for men.⁵⁵ Notwithstanding this standpoint of *equality as equal treatment*; in order to facilitate an interpretation of the term equality accordant with the object and purpose of the Convention, the concept of equality underlying the Convention also incorporates other approaches to the notion of equality.⁵⁶ For example, the equality model described above is readily applied in situations where the life experiences of women and men are concurrent. However, the concept of non-discrimination as equal enjoyment of rights is not as easily applied in situations where the life experiences of women and men differ. The main example of such differing life experiences is situations relating to childbearing.⁵⁷ Another example is the rights to bodily integrity and the right to life. These rights apply equally to both women and men, but violence and loss of life affects women and men in essentially different ways. A gender-neutral understanding of these rights does not consider the reality that certain types of violence affect women disproportionately in comparison to men, especially with regards to domestic violence.⁵⁸ In relation to certain aspects of life, the meaning of ‘equal enjoyment of rights’ as stated in Article 1 CEDAW, therefore, demands differential treatment of women and men.⁵⁹

Another example of the flexibility of the equality model underlying the Convention is the recognition of the difference between formal and substantive equality. According to the CEDAW Committee, an approach purely focusing on the formal legal equality (*de jure* equality) of women and men is not sufficient to achieve substantial equality (*de facto* equality) between the sexes.⁶⁰ To exemplify, Article 1 of the Convention prohibits discrimination ‘on the basis of sex’; this formulation covers occurrences where distinction is made explicitly on the basis of sex. Such distinction is referred to as ‘direct discrimination’ under international law. Secondly, the

⁵³ General Recommendation No. 28, para. 22.

⁵⁴ Freeman, Chinklin and Rudolf, 2012, pp. 18 and 146.

⁵⁵ Rebecca J. Cook, ‘State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women’ in Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994), p. 235.

⁵⁶ Compare Freeman, Chinklin and Rudolf, 2012, p. 62.

⁵⁷ *Ibid.*, pp. 17-18 and 61.

⁵⁸ *Ibid.*, p. 18.

⁵⁹ See for example General Recommendation No. 24 on Article 12: Women and Health adopted in 1999 during the 20th Session of the Committee on the Elimination of Discrimination against Women, paras. 11-12; General Recommendation No. 28, para. 5.

⁶⁰ General Recommendation No. 25, para. 8.

prohibition of discrimination under Article 1 CEDAW also covers situations where a theoretically neutral provision results in a disparate impact on the rights of women. This type of discrimination is referred to as ‘indirect discrimination’ under international law. In conclusion, both direct and indirect discrimination against women is prohibited under the Convention.⁶¹

The Convention does not contain any specific rules on interpretation. The interpretation of the Articles of the CEDAW shall therefore be conducted according to the general rules of interpretation under international law, as articulated in Articles 31-33 of the Vienna Convention on the Law of Treaties.⁶² Furthermore, according to Part V of the Convention, the interpretation and implementation of the Convention is under the supervision of the CEDAW Committee.⁶³ Through its assessments of State reports, general recommendations and individual complaints under the Optional Protocol, the Committee contributes to the implementation of the Convention and the interpretation of the provisions therein.⁶⁴

2.2.3 General Obligations of States Parties

The general obligations of States Parties under the Convention are stipulated in Part I, Articles 1-5 CEDAW. The first five Articles of the Convention frame the scope of the Convention, and Articles 1-5 should be read in conjunction with each other and Article 24.⁶⁵ Although a number of relevant forms of discrimination are explicitly mentioned in the articulation of the Convention, the general obligations established in Part I of the Convention guarantee the application of the Convention in relation to *any* form of discrimination against women.⁶⁶ Together, Articles 1-5 and 24 CEDAW constitute a general framework for the understanding of State obligations under the Convention. Read in conjunction, these six Articles establish three central obligations of States Parties: (a) to ensure the legal protection for women against sex discrimination; (b) to adopt concrete and effective measures to improve the *de facto* position of women; and (c) to take measures to address prevailing gender patterns impeding the exercise of the rights of women on an equal basis with men.⁶⁷

As established above, Article 1 stipulates the definition of the term discrimination against women under the CEDAW, and sets out a number of

⁶¹ See for example General Recommendation No. 28, paras. 5 and 16; Freeman, Chinklin and Rudolf, 2012, p. 59.

⁶² United Nations Vienna Convention on the Law of Treaties, adopted by the United Nations on the 23rd of May 1969.

⁶³ The Committee’s interpretations of the provisions in the Convention serves a subsidiary sources for the interpretation of international law, compare Article 38 ICJ Statute.

⁶⁴ See for example Nowak, 2002, pp. 105-106. Note that Vietnam is not State Party to the Optional Protocol.

⁶⁵ General Recommendation No. 25, para. 6; General Recommendation No. 28, para. 7; Freeman, Chinklin and Rudolf, 2012, pp. 8-9 and 72. Note that Article 24 CEDAW stipulates the general commitment of States Parties to abide to the obligations set forth in the Convention.

⁶⁶ General Recommendation No. 28, para. 7; Freeman, Chinklin and Rudolf, 2012, p. 72.

⁶⁷ General Recommendation No. 25, paras. 6-7.

fundamental characteristics of the Convention. Article 2 CEDAW articulates the general obligation of States Parties under the Convention to ‘condemn discrimination against women in all its forms’ by incorporating the obligation to combat discrimination against women into their national legal systems.⁶⁸ The principle of equality between women and men shall, according to Article 2 CEDAW, be incorporated and protected as a legally binding norm under the national legal systems of States Parties.⁶⁹ This entails, for example, an obligation to enact national legislation prohibiting discrimination against women and to amend discriminatory laws. Through the ratification of the Convention, States Parties undertake to ensure the enforceability of the obligations under the CEDAW in the domestic legal order.⁷⁰ Article 2 is therefore essential for the full realisation of the object and purpose of the Convention.⁷¹

States Parties are obliged to respect, protect and fulfil their legal obligations under the Convention to ensure the equal enjoyment of rights and freedoms for women, as for men.⁷² In relation to Article 2 CEDAW, the responsibility to respect obliges the States Parties to abstain from implementing laws, policies, regulations, institutional structures or administrative procedures, which will result in denial of the enjoyment of rights of women on an equal footing with men.⁷³

States Parties also have the obligation to protect women from sex discrimination. Whether discriminatory acts are generated by State or private actors, the obligation to protect stipulates a responsibility for States to protect women against discriminatory practices,⁷⁴ see for example Article 2(d) and 2(e). Consequently, Article 2 CEDAW imposes an obligation of *due diligence* on States Parties in relation to private actors. This means that if States do not take sufficient steps to prevent discrimination against women committed by non-State actors; the actions of private actors could be attributed to the State under international law.⁷⁵ This obligation includes a responsibility to actively combat customary practices and stereotyped roles of women and men upholding notions of superiority and inferiority between the sexes.⁷⁶ As an example, such obligation to protect can be fulfilled through the adoption of appropriate regulations on the conduct of private actors operating within the sectors of health and education.⁷⁷

Finally, States have a responsibility to fulfil the obligations established under Article 2 CEDAW. States Parties are obliged to implement a variety of steps to work towards the goal of the full enjoyment of the rights of

⁶⁸ General Recommendation No. 28, para. 31.

⁶⁹ *Ibid.*, para. 33.

⁷⁰ *Ibid.*, para. 31.

⁷¹ *Ibid.*, para. 6.

⁷² *Ibid.*, para. 9.

⁷³ *Ibid.*, paras. 9 and 16.

⁷⁴ *Ibid.*, paras. 10, 17 and 34.

⁷⁵ *Ibid.*, para. 13.

⁷⁶ *Ibid.*, para. 9. See also section State obligations under Article 5 discussed below.

⁷⁷ *Ibid.*, para. 13.

women on the basis of equality with men. Such measures should aim at achieving both *de jure* and *de facto* equality between the sexes, and could consist of, for example, special measures taken in accordance with Article 4 CEDAW.⁷⁸ The obligation to fulfil constitutes an obligation to take action, and a responsibility to achieve results.⁷⁹

Article 3 CEDAW establishes that States Parties must take appropriate measures to guarantee the enjoyment of human rights and fundamental freedoms for women on an equal basis with men. Such measures shall be taken in *all fields*, including political, social, economic and cultural aspects of life. Articles 2 and 3 CEDAW are closely connected and are often applied in conjunction. Article 3 CEDAW, however, has its independent field of application, and the Committee has referred to the Article as ‘catching’ matters that fall outside the express scope of the other Articles.⁸⁰ Two sets of issues mentioned by the Committee in relation to Article 3 CEDAW are measures taken in relation to gender mainstreaming and development policies.⁸¹

Article 4 CEDAW regulates the adoption of special measures. The adoption of special measures is best understood in the overall object and purpose of the Convention to achieve both *de jure* and *de facto* equality between women and men.⁸² To achieve this goal, the CEDAW recognises that under certain circumstances biological as well as socially and culturally constructed differences between the sexes require non-identical treatment of women and men.⁸³ Special measures adopted under Article 4 CEDAW do not constitute discrimination against men.⁸⁴ The Convention stipulates the adoption of such non-identical treatment of both temporary and permanent nature, compare Article 4(1) and (2) CEDAW.

The obligation of States to adopt temporary special measures is addressed in Article 4(1) CEDAW.⁸⁵ The rationale behind Article 4(1) CEDAW is an aspiration to accelerate the achievement of *de facto* equality between the sexes through the adoption of temporary special measures in specific fields.⁸⁶ Measures adopted under Article 4(1) are not exceptions to the general obligation of non-discrimination, but such special measures form part of active efforts to achieve equality between women and men. In order to more effectively and speedily combat stereotyped gender roles, States Parties shall adopt temporary special measures.⁸⁷ Such measures can take many forms, for example, they can be formulated as quota systems giving preference to women, or as an allocation and/or reallocation of resources in

⁷⁸ General Recommendation No. 28, para. 20.

⁷⁹ *Ibid.*, paras. 9-10. See also Cook, 1994, p. 232.

⁸⁰ Freeman, Chinklin, and Rudolf, 2012, p. 101.

⁸¹ *Ibid.*, p. 121.

⁸² General Recommendation No. 25, para. 4.

⁸³ *Ibid.*, para. 8.

⁸⁴ *Ibid.*, para. 18.

⁸⁵ *Ibid.*, para. 24.

⁸⁶ *Ibid.*, para. 18.

⁸⁷ *Ibid.*

a manner beneficial for women.⁸⁸ The special measures established under Article 4(2) are distinctive from the measures under Article 4(1). Article 4(2) CEDAW refers to non-identical treatment due to biological differences between women and men. Such special measures are permanent in nature, and refer to non-identical treatment in relation to, for example, reproductive functions and maternity.⁸⁹

Finally, with regards to the general obligations under the CEDAW, Article 5 CEDAW requires the States Parties to address discrimination as an issue of structural nature.⁹⁰ Articles 5 and 2 are closely interrelated and often applied in conjunction.⁹¹ These two Articles are considered as constituting the very core of the Convention, and reservations to either of the two are therefore considered as incompatible with the object and purpose of the Convention.⁹²

Article 5 is a testament to the acknowledgment of discrimination against women as the product of social and cultural structures, within the public life as well as the private and family life, maintaining inequality between the sexes.⁹³ The occurrences targeted under Article 5 CEDAW can be concretised in the terms of ‘*gender stereotypes*’ in relation to subparagraph (a) and ‘*parental gender roles*’ in relation to subparagraph (b).⁹⁴ Hence, Article 5 CEDAW addresses the issue of social constructions of a hierarchy between the sexes stipulating the inferiority of women in relation to men.⁹⁵ In many cultures around the world the inferiority of women is, regrettably, closely connected to women’s sexuality and reproductive capacities.⁹⁶ The obligations stipulated under Article 5 CEDAW are therefore especially important in relation to inequalities within the sphere of the family and in connection to maternity.⁹⁷ The human rights discourse has its basis in the relationship between the State and the individual. However, as mentioned above, the State obligations under the CEDAW also include a *due diligence* responsibility in relation to horizontal relationships between individuals, including members of the family.⁹⁸ Through the specific reference to ‘*maternity as a social function*’ and the recognition of the common responsibilities of parents for the upbringing of their children, Article 5 CEDAW addresses damaging social structures related to female sexuality

⁸⁸ General Recommendation No. 25, para. 23.

⁸⁹ Ibid., para. 16.

⁹⁰ See for example General Recommendation No. 3, adopted in 1987 during the 6th Session of the Committee on the Elimination of Discrimination against Women; Freeman, Chinklin and Rudolf, 2012, p. 163.

⁹¹ Freeman, Chinklin and Rudolf, 2012, p. 143.

⁹² General Recommendation No. 28, para. 41; Freeman, Chinklin and Rudolf, 2012, p. 167; General Recommendation No. 29 on Article 16 of the CEDAW: Economic Consequences of Marriage, Family Relations and their Dissolution, adopted in 2013 during the 54th Session of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/GC/29, para. 3.

⁹³ See also preamble to the CEDAW.

⁹⁴ Freeman, Chinklin, and Rudolf, 2012, p. 142.

⁹⁵ Ibid., p. 146.

⁹⁶ Ibid., pp. 147-148.

⁹⁷ Ibid., p. 142.

⁹⁸ Ibid., p. 10.

and reproductive capacities, and obliges States Parties to combat such structures. By recognising the importance of maternity as a social function, the Convention put emphasis on the positive aspects of maternity and recognises motherhood as a fundamental function in society – *not* a source of justification for structural discrimination against women.⁹⁹ The obligation of States to modify damaging gender stereotypes entails various types of commitments; e.g., efforts to remove gender stereotypes from educational material and the media and to review of the national laws and policies to remove obstacles to shared family responsibilities between parents.¹⁰⁰ Hence, Article 5 calls for transformative equality, i.e. a transformation of existing social and cultural structures to achieve equality – *de jure* and *de facto* – between women and men.¹⁰¹

2.3 Conclusion

In conclusion, the legal framework of international human rights law proscribes discrimination against women, and obliges States to take action to eliminate inequality between the sexes. As a State Party to the CEDAW, Vietnam is legally obliged under international law to fulfil a wide range of undertakings to combat discrimination against women to secure equality between women and men. This obligation includes a responsibility to take measures to protect women from discriminatory acts performed by State actors as well as non-State actors. Furthermore, the Convention stipulates a responsibility of the State to combat – and to abstain from reproducing – structures of social hierarchy between the sexes stipulating inferiority of women in relation to men.

In relation to the effects of the formulation and implementation of the family planning policy of Vietnam, above established State obligations affect both the content and implementation of such policy. Firstly, the CEDAW establishes limits within which such policies must remain. A formulation of a family planning policy resulting in discrimination against women – directly or indirectly – would constitute a breach of Vietnam’s obligations under international law. Secondly, the Convention also obliges the State to take action against certain gender-stereotyped structures in relation to family planning and the predominant notion of family. Such measures on behalf of the State could comprise of, for example, promotion of the common responsibilities of parents for the upbringing of their children and to take measures against occurrences within the family damaging to women; e.g. domestic violence, son preference, etc. Especially the State Obligations established under Articles 2 and 5 CEDAW are of interest for further analysis in relation to the research question of this thesis.

⁹⁹ Compare Freeman, Chinklin, and Rudolf, 2012, p. 142.

¹⁰⁰ *Ibid.*, pp. 161-164.

¹⁰¹ *Ibid.*, p. 163.

3 Family Planning Policies

3.1 Introduction

For the analysis of the consequences of the Vietnamese family planning policies, one must have an understanding of the concept of *family planning policy*. The first two sections of this chapter will give an overview of what family planning policies are, and how the notion of family planning policy has evolved and changed over time. Firstly, the sociological origins of the family planning policies, in a global context, are explored. Secondly, the framework of international law, in relation to a right to family planning, is analysed.

To facilitate the understanding of family planning in the Vietnamese context, the final section of this chapter will explore the notion of family in Vietnam, as well as the origins and evolution of the Vietnamese family planning policies. The purpose of this chapter is to offer an explanation of the practical rationales for the adoption of family planning policies, both internationally, and nationally in Vietnam, as well as the international legal framework coming into play, in relation to such policies.

3.2 Family Planning in a Global Context: From Fertility Reduction to a Human Right

3.2.1 Introduction

To depict the international evolution of the concept of family planning policies, the evolution has been divided into three phases according to the underlying reasoning of the policies: (1) demography, (2) health and (3) human rights. In utilising this division, I have taken inspiration from the terminology used by Seltzer.¹⁰² The division is made purely for pedagogical reasons, and does not represent a ‘bulletproof’ categorisation of family planning policies. Although the three phases can be seen as forming ‘generations’ of the evolution of family planning policies, the reality is far more complex. In reality, most family planning policies of the world do not belong to one phase, but find its roots and rationales in all three.¹⁰³ However, firstly, the definition of ‘family planning policy’ is explored.

3.2.2 Family Planning Policies: Definition

Family planning policies represent a multifaceted concept covering a wide spectrum of actions to promote a specific family ideal. States are the main

¹⁰² Compare to the division of family planning policies as having demographic rationale, health rationale, or human rights rationale used by Seltzer, see Judith Seltzer, *The Origin and Evolution of Family Planning Programs in Developing Countries* (RAND 2002).

¹⁰³ Compare *Ibid.*, p. xiii.

actors for the implementation and formulation of the family planning policies, but private actors also play a crucial role.¹⁰⁴ Today, virtually every State in the world implements a family planning policy of some sort.¹⁰⁵ One may argue that, due to the central role of the family in every society around the globe, a functioning family planning policy is a must in every State.¹⁰⁶

For the purpose of this thesis, a '*family planning policy*' is defined as *an organized intervention on behalf of the State to actively support family characteristics considered beneficial for the family and society, or to discourage characteristic considered detrimental to the family and society.*¹⁰⁷ Such definition covers a wide range of State activities, but key for further analysis is the definition of family planning policies as attributable to the State.

According to the above stated definition, family planning policies can take a wide range of forms. To exemplify, it can consist of an effort to regulate the fertility level of the population by subsidising contraception, or a political aspiration to promote common responsibility of mothers and fathers in the upbringing of their children through the promotion of paternity as well as maternity leave.¹⁰⁸ Family planning policies can be implemented through legislation explicitly prescribing the observance of a specific family ideal, e.g. legislation establishing a maximum number of children per couple.¹⁰⁹ Or, it can be implemented through more subtle measures such as sexual education in school and promotion of a certain family ideal.¹¹⁰ To exemplify the wide range of policies encompassed, one can use the dichotomy utilised by Robila dividing family planning policies in explicit and implicit policies. Explicit family planning policies are policies explicitly aiming at regulating the family life, for example, legislation against domestic violence. An implicit family planning policy is a regulation indirectly affecting family life such as migration policies.¹¹¹

¹⁰⁴ John Ross and Ellen Smith, 'Trends in National Family Planning Programs, 1999, 2004 and 2009' (2011) Vol. 37(3) *International Perspectives on Sexual and Reproductive Health* 125, p. 131.

¹⁰⁵ Seltzer, 2002, p. 1; Ross and Smith, 2011, p. 125.

¹⁰⁶ Mihaela Robila, 'Family Policies Across the Globe: Development, Implementation, and Assessment' in Mihaela Robila (ed.), *Handbook of Family Policies Across the Globe* (Springer Science and Business Media 2014), p. 10.

¹⁰⁷ Compare with other definitions, for example: Seltzer, 2002, p. 1; Karen Bogenschneider and Tom Corbet, 'Building Enduring Family Policies in the 21st Century: The Past as Prologue' in Marilyn Coleman and Lawrence H. Ganong (eds.), *Handbook of Contemporary Families: Considering the Past, Contemplating the Future* (Sage Publications 2009), p. 453; Robila, 2014, p.3.

¹⁰⁸ As an example from the implementation of the Swedish family planning policy in the 1970s see '*Det är schysst att vara föräldradig!*', available at <www.filmarkivet.se/sv/Film/?movieid=594> accessed 2nd of January 2015.

¹⁰⁹ As the case of Vietnam, see Sections 3.4 and 4.4.2.

¹¹⁰ Compare the current implementation of the Vietnamese family planning policy described below in Section 5.3.

¹¹¹ Robila, 2014, p. 3.

Family planning policies according to this definition can be implemented nationally, but can also be present in State funded development aid, such as through the U.S. Agency for International Development or the Swedish International Development Cooperation Agency.¹¹² International donors have played a key role in promoting population awareness and family planning policies in the developing world.¹¹³ However, developing countries experiencing problems with high fertility have self-financed a large proportion of the efforts to implement family planning policies nationally.¹¹⁴

In conclusion, by adopting the above stated definition of family planning policies, this thesis has its basis in a wide notion of family planning policy.¹¹⁵ The definition encompasses a wide range of actions on behalf of the State in the interaction between State and family. This definition serves well for the analysis of the research question stipulated in the introductory chapter of this thesis.

3.2.3 The Threat of a Demographic Crisis: The Surfacing of Family Planning Policies on the Global Development Agenda

The rapid population growth occurring in the eastern parts of Asia during the mid-twentieth century generated concerns about an emerging ‘world population problem’. Due to increasingly better living conditions, mortality rates had declined whilst fertility rates remained high.¹¹⁶ In this context, the concept of family planning policies surfaced on the global development agenda in the 1960s, due to fears of what consequences could come from this rapid population growth in the developing world.¹¹⁷ Research at the time indicated that a significant percentage of women living in developing countries were not using contraception, even though they wished to have no more children.¹¹⁸ By halting the rapid population growth, policy makers hoped to secure future global development by preventing overpopulation. This first generation of family planning policies thus had the objective to reduce fertility in order to prevent a feared demographic crisis.¹¹⁹ Although the population policies of the 1960s and 1970s also considered aspects such as health and welfare of women; the predominant objective of the family planning policies at the time was to prevent consequences of rapid

¹¹² See for example Seltzer, 2002, pp. 37-42.

¹¹³ Ibid., p. 36.

¹¹⁴ Ibid.

¹¹⁵ Compare Tomasevski making a distinction between ‘family planning’ and ‘population policy’; see Katarina Tomasevski, *Human Rights in Population Policies: A Study for SIDA* (SIDA 1994), pp. 14-18. Such distinction is *not* made in this thesis, and population policies are encompassed in above stated definition of family planning.

¹¹⁶ Ann K. Blanc and Amy O. Tsui, ‘The Dilemma of Past Success: Insiders’ Views on the Future of the International Family Planning Movement’ (2005) Vol. 36(4) *Studies in Family Planning* 263, p. 264.

¹¹⁷ Gavin Jones and Richard Leete, ‘Asia’s Family Planning Programs as Low Fertility Is Attained’ (2002) Vol. 33(1) *Studies in Family Planning* 114, pp. 116-117.

¹¹⁸ Seltzer, 2002, p. xii.

¹¹⁹ Ibid., p. 10.

population growth to negatively affect economic growth, natural resources, productivity, food supply, etc.¹²⁰ In short, the focal point of the first family planning policies was to secure future global development levels by reducing fertility.

The success of these first programmes relied on an assumption of an ‘unmet need’. An unmet need refers to women and men not practising contraception, but having a desire to do so.¹²¹ By meeting this unmet need for contraception, policy makers hoped to prevent unwanted fertility, resulting in reduced fertility rates.¹²² The focus of the first generation of family planning programmes was, therefore, to provide contraceptive services.¹²³ Research supports that there was indeed an unmet need for fertility control, and since the initiation of the family planning policies in the 1960s, fertility rates have gone down and contraceptive use has gone up. Naturally, there have also been other political, social and economic changes occurring in the world over this period, which have affected fertility levels.¹²⁴ However, studies do show that family planning policies have been effective with regards to reducing fertility.¹²⁵

3.2.4 Family Planning Policies and Reproductive Health

As of the 1980s, the focus of the family planning policies shifted from focusing on overpopulation to a more general focus on the health consequences of high fertility levels.¹²⁶ The policies of this period aimed not just at reducing fertility, but took a broader approach to battle public health concerns, through family planning policies. Issues such as maternal and child mortality posed threats to development and the wellbeing of the global population.¹²⁷ During this period, family planning policies began to be viewed in terms of equity, and with an aspiration of access to quality health care services for all.¹²⁸

The health perspective of family planning policies take into account a wide range of health issues relating to high fertility rates such as poor health of not just mothers, but the family as a whole. This more comprehensive approach in the formulation of family planning programmes also contributed to the legitimisation of the policies as part of the health and development sectors.¹²⁹ Through the evolution of the concept of family

¹²⁰ Seltzer, 2002, pp. 10 and 12.

¹²¹ Ibid., pp. xv and 20-22.

¹²² Ibid., p. 56.

¹²³ Jones and Leete, 2002, p. 117.

¹²⁴ Ibid., pp. 122-123.

¹²⁵ Seltzer, 2002, pp. xv and 56-57.

¹²⁶ Ibid., pp. xiii and 78-79.

¹²⁷ Ibid., p. 12.

¹²⁸ Ibid., p. 13.

¹²⁹ Ibid., p. 36.

planning programmes, the family planning policies came to be incorporated as a natural part of the wider concept of reproductive health.¹³⁰

However, one might say that the family planning policies based on health objectives resembled much of the first generation of policies, as they too centred on fertility control. The focus of these policies was often contraception use of women, and the health consequences thereof.¹³¹ But unlike the first generation of family planning policies mainly based on demographic concerns, the second generation did not just focus on the supply of contraceptives, but had also a more clear focus on the quality of the contraception methods provided.¹³² The first programmes to implement family planning programmes only offered a limited number of female-centred contraception options, such as Intra-Uterine Devices,¹³³ the pill and sterilisation. As the programmes developed, the existing methods improved and new modes were developed, and family planning policies have been beneficial for the development and availability of a wider, and safer range of contraception methods.¹³⁴

These second generation family planning policies also addressed the issue of abortion, and the issue of women choosing to end pregnancies by means of abortion, whether legal or not.¹³⁵ An important aspect of the health objectives of family planning policies has been promotion of contraception in order to pre-empt abortions. By replacing abortion with contraception, these policies have attempted to reduce the number of unsafe abortions, and the maternal mortality and morbidity often a result of such medical procedure. Also, these policies have proven to have positive effects in regard to reduction of population growth and safer access to contraceptives. As an example, studies have shown that, over time, an increased use of contraception is connected to a reduction of the number of abortions.¹³⁶ Other studies have also confirmed positive health effects of the family planning policies, mainly by reducing high-risk pregnancies and maternal mortality through an increased use of effective and safe contraceptive methods.¹³⁷

3.2.5 Family Planning as a Human Right

The third generation of family planning policies finds its rationale in the human rights discourse, and the understanding of family planning as a human right. The concept of family planning as a human right has its origins in the 1960s,¹³⁸ but gained more widespread acknowledgment first in the

¹³⁰ Seltzer, 2002, pp. 102-103.

¹³¹ Ibid, p. xvii.

¹³² Blanc and Tsui, 2005, p. 265.

¹³³ Hereinafter: 'IUD'.

¹³⁴ Seltzer, 2002, p. 34.

¹³⁵ Ibid, p. 82.

¹³⁶ Ibid., p. 80.

¹³⁷ Ibid., p. xvii.

¹³⁸ See for example the Final Act of the International Conference on Human Rights, Tehran 22nd of April to 13th of May 1968, UN Doc. A/CONF.32/41, Section XVII.

1990s as a reaction to certain coercive characteristics of the implementation of demographically motivated family planning policies.¹³⁹ This generation of policies is based on a standpoint that every human being has a fundamental right to make her/his own decisions regarding reproduction.¹⁴⁰ During the 1990s, the basis of the family planning policies transformed, once and for all, from demographic objectives to finding its legitimacy in an emerging human rights discourse. The legitimisation of the policies evolved to a legitimisation of family planning policies as a means to respect women's right to autonomy over their own bodies – including reproductive autonomy – and the empowerment of women to exercise this right.¹⁴¹

The emergence of the human rights objectives of the family planning policies also marked a change of focus from the collective demographic and health concerns, to a more individual-centred discourse.¹⁴² The family planning policies based on human rights objectives also called for cultural sensitivity, and an adaptation of policies to accommodate for cultural and religious diversity. The concept of fertility, and its role in society, is a cultural construct, unique to each culture. Advocates of family planning policies based on human rights, therefore, emphasise the importance of a culturally sensitive formulation of any successful family planning policy.¹⁴³ It was also the surfacing of the human rights rationale of family planning policies, which placed the issue of gender as a central concept for the formulation of family planning policies.¹⁴⁴

3.3 International Human Rights Law: Regulation on the Right to Family Planning

3.3.1 Introduction

There is no international human rights law treaty dealing specifically with family planning policies and a right to family planning. However, there have been several initiatives within the activities of the UN to establish common policies for the implementation of family planning policies. Also, a number of general human rights treaties deal with the matter of family planning in, more or less, direct terms. This section will provide a brief overview of the international legal framework regulating the right to family planning, focusing on the two UN Covenants and the CEDAW.

As stated in the introductory chapter, the focus of this thesis is the State responsibility in relation to discriminatory effects arising from the

¹³⁹ Blanc and Tsui, 2005, p. 265.

¹⁴⁰ See section 3.3.2 about the Cairo Programme of Action and the Beijing Declaration and Platform for Action.

¹⁴¹ Seltzer, 2002, pp. xviii and 60.

¹⁴² *Ibid.*, p. 110.

¹⁴³ *Ibid.*, pp. 111-112.

¹⁴⁴ Peter McDonald, 'Gender Equality in Theories of Fertility Transitions' (2000) Vol. 26(3) *Population and Development Review* 427, p. 427.

implementation of family planning programmes. The focus is not a debate on the existence and content of a human right to family planning; however, a general understanding of the regulation of such a right is relevant for further analysis of the formulation and effects of family planning policies. The purpose of this section is to offer such general overview.

3.3.2 The Cairo Programme of Action and the Beijing Declaration and Programme for Action

Family planning as a human right was first mentioned in the final document to the UN Tehran Conference on Human Rights in 1968.¹⁴⁵ This stance was further confirmed by the World Population Plan of Action adopted during the UN World Population Conference held in Bucharest in 1974.¹⁴⁶ In these two documents, the right to family planning was formulated as a right of individuals and couples to decide freely and responsibly, the number, spacing and timing of their children.¹⁴⁷ This definition of a right to family planning was later reiterated in the final documents of the 1994 International Conference on Population and Development held in Cairo and the Fourth World Conference on Women held in Beijing in 1995.¹⁴⁸ As an example, the Cairo Programme of Action recognises:

the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.¹⁴⁹

This definition of the right to family planning focuses on reproductive autonomy, sexual education and reproductive health. Furthermore, the principle of equality between women and men is a concept intrinsic to the definition of a human right to family planning, hence, considerations of a broad range of equality considerations are corollary to any formulation of a right to family planning.¹⁵⁰ For the further analysis of the research question of this thesis, such definition serves as an analytical framework for the understanding of the underlying reasons for the formulation of the family planning policies adopted by States. However, the above stated definition of

¹⁴⁵ UN. Doc. A/CONF.32/41, Section XVII.

¹⁴⁶ The World Population Plan of Action, adopted by the World Population Conference Bucharest August 1974, para. 28-29.

¹⁴⁷ Compare Ibid. and UN Doc. A/CONF.32/41, Section XVII.

¹⁴⁸ Report of the International Conference on Population and Development, adopted at the International Conference on Population and Development in Cairo on the 13th of September in 1994, UN Doc. A/CONF.171/13, Chapter VII, Section A, para. 7.3; Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women in Beijing on the 15th of September in 1995, UN Doc. A/CONF.177/20, Section C, 'Women and Health', paras. 94-95.

¹⁴⁹ UN Doc. A/CONF.171/13, Chapter VII, Section A, para. 7.3.

¹⁵⁰ Compare UN Doc. A/CONF.177/20, Section C, 'Women and Health', para. 96.

a right to family planning does not encompass the full spectrum of policies covered by the definition of family planning policy utilised in this thesis.¹⁵¹

Although reiterating the definition of a right to family planning from earlier documents, the Cairo Programme of Action marked a change in relation to the approach towards population and development.¹⁵² The Programme defines family planning as a human right, and locates it within the broader concept of reproductive health. By defining reproductive health – including family planning – as a human right, already recognised under international law, the Cairo Programme of Action stipulated an alternative to the prevailing order subordinating reproductive health to population control and fertility reduction.¹⁵³ The Cairo Programme of Action and the Beijing Declaration and Platform for Action serve as a testament to the evolution of family planning policies, from family planning policies focused on demographic goals to focus on the individual's right to the highest attainable standard of health.¹⁵⁴

The Beijing Declaration and Platform for Action is also of interest in relation to the research question of this thesis as it deals with the issue of son preference. The Resolution stipulates a responsibility of States to ensure the human rights of girls, and to combat preference for sons – including a responsibility to take action against sex selection.¹⁵⁵

Both the Cairo Programme of Action and the Beijing Declaration and Platform for Action were adopted by a large number of States.¹⁵⁶ The resolutions serve as a testament to the acknowledgment of the commitment of States to comply with the goals agreed upon in aforementioned programmes. However, all abovementioned documents were adopted in the form of UN General Assembly Resolutions, and as such they do not constitute legally binding documents under international law. This does not mean, however, that such documents are not of relevance when assessing the legal norms of international human rights law. Although not legally binding, the resolutions adopted by the UN General Assembly play a crucial role for the evolution of the norm-creating process under both international law, and domestic legal systems.¹⁵⁷

¹⁵¹ See Section 3.2.2 for definition and examples.

¹⁵² Jones and Leete, 2002, p. 114.

¹⁵³ Susana T. Fried and Ilana Landsberg-Lewis, 'Sexual Rights: From Concept to Strategy' in Kelly D. Askin, and Dorean M. Koenig (eds.), *Women and International Human Rights Law* Vol. 3, (Transnational Publishers, Inc. 2001), p. 109.

¹⁵⁴ Rebecca J. Cook and Mahmoud F. Fathalla, 'Advancing reproductive rights beyond Cairo and Beijing' in Kelly D. Askin and Dorean M. Koenig (eds.), *Women and International Human Rights Law*, Vol. 3 (2001 Transnational Publishers Inc.), p. 73.

¹⁵⁵ UN Doc. A/CONF.177/20, Section L, 'The Girl Child', para. 259.

¹⁵⁶ Cook and Fathalla, 2001, pp. 73-74.

¹⁵⁷ See for example General Recommendation No. 24 on Article 12: Women and Health adopted in 1999 during the 20th Session of the Committee on the Elimination of Discrimination against Women, para. 3; Fried and Landsberg-Lewis, 2001, pp. 108-109; Kirilova Eriksson, 2001, p. 16.

3.3.3 Legally Binding Norms under International Human Rights Law

3.3.3.1 The Right to Family Planning under the UN Covenants

The Cairo Programme of Action and the Beijing Declaration and Platform for Action, both refer to the right to family planning as forming part of the right to reproductive health recognised under the existing international human rights discourse. The resolutions do not, however, refer to any specific treaty provisions.¹⁵⁸

As mentioned in the introduction to this section, there is no treaty specifically dealing with a right to family planning under international human rights law. There are, nevertheless, a number of treaties addressing the issue in, more or less, implicit terms. Worth mentioning, in this context, are the two UN Covenants: the ICCPR and the ICESCR. Both Covenants recognize the importance of family as the fundamental unit of society; see Article 23(1) ICCPR and Article 10(1) ICESCR. Due to the fundamental social function of the family, the Covenants recognise the right of every individual to found a family, and oblige the State to accord the widest possible assistance and protection to the family unit, see Article 23(2) ICCPR and Article 10(1) ICESCR. Furthermore, the ICCPR prohibits arbitrary interference in the private and family life of the individual. This individual right established under Article 17 ICCPR entails a right to bodily integrity, including sexual autonomy.¹⁵⁹ Finally, Article 12(1) ICESCR stipulates an obligation of States Parties to recognize to everyone ‘the highest attainable standard of physical and mental health’. According to the Committee on Economic, Social and Cultural Rights, the right to health established under Article 12(1) ICESCR encompasses an individual right to bodily autonomy – including sexual and reproductive freedoms.¹⁶⁰ The right to health under the ICESCR includes a right to reproductive health and health-related education such as sexual education.¹⁶¹ Neither ICCPR nor ICESCR mention family planning explicitly, but as accounted for above, both covenants contain legally binding provisions stipulating State obligations in relation to the right to reproductive health and family planning. As State Party to both UN Covenants, Vietnam, consequently, is bound by international norms, establishing State obligations in relation to the implementation of a right to family planning.¹⁶²

¹⁵⁸ UN Doc. A/CONF.171/13, Chapter VII, Section A, para. 7.3; UN Doc. A/CONF.177/20, Section C, ‘Women and Health’, para. 95.

¹⁵⁹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd Revised Edition (N.P. Engel Publisher 2005), pp. 391-392.

¹⁶⁰ General Comment No. 14 on the Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), adopted in 2000 during the 22nd Session of the Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/2000/4, para. 8.

¹⁶¹ *Ibid.*, paras. 11 and 14.

¹⁶² For full list of States Parties to the ICCPR and the ICESCR visit the website of the United Nations High Commissioner for Human Rights:

<www.ohchr.org/EN/Pages/WelcomePage.aspx>, last accessed 11th of December 2014.

3.3.3.2 The Right to Family Planning under the CEDAW

The convention text of the CEDAW contains explicit reference to family planning. Article 10 CEDAW, articulating the State responsibility in the field of education, states that:

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

[...]

(h) Access to specific educational information to help to ensure the health and well-being of families, *including information and advice on family planning*.¹⁶³

Accordingly, the CEDAW stipulates an obligation of States to include family planning into domestic educational programmes to ensure access to information about sexual health and family planning. Furthermore, Article 11 CEDAW elaborates on the obligations of State Parties within the area of employment. The Article does not utilise the term family planning, but it does, however, recognize State obligations falling within the ambit of family planning policies, as defined in this thesis. For example, Article 11(2)(a) CEDAW prohibits discrimination of female employees due to pregnancy and Article 11(2)(c) CEDAW obliges the State to adopt measures to enable parents to combine family life and work responsibilities.

Article 12 CEDAW elaborates on the State obligations of non-discrimination against women in the field of health care. Article 12(1) CEDAW ensures the access to health care services for women, on an equal basis with men, including family planning services.¹⁶⁴ The obligations flowing from this Article have been elaborated upon by the Committee, according to which the access to health care under Article 12 includes the recognition of the right to reproductive health as a basic right under the Convention.¹⁶⁵ According to the Committee, the elimination of discrimination in the field of health care and the right of women to achieve the highest attainable standard of health, requires States to adopt measures to eliminate discrimination against women in relation to family planning, pregnancy and post-natal care.¹⁶⁶ The elimination of discrimination against women within health care services requires the recognition of differentiating needs between women and men, both with regard to biological, and socio-

¹⁶³ Emphasis added.

¹⁶⁴ Also Article 14 CEDAW, recognising the vulnerability of rural women, reiterates the recognition of family planning as part of what is deemed as ‘adequate health care facilities’ under the Convention, see Article 14(2)(b).

¹⁶⁵ General Recommendation No. 24, para. 1.

¹⁶⁶ *Ibid.*, para. 2.

economic factors.¹⁶⁷ As an example the health care sector shall take measures to combat traditional and cultural practices harmful to the health of women of all ages, e.g. female circumcision and preference for male offspring.¹⁶⁸

Finally, with regards to the regulation of family planning under the CEDAW, Article 16 CEDAW on the elimination of discrimination in matters relating to marriage and family relation should be highlighted. According to Article 16(1)(e) CEDAW, women and men shall have the same rights to ‘decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights’.¹⁶⁹ The Committee has further elaborated upon this right, concluding that due to the implications of childbearing on the lives of women, women have the right to decide on the number and spacing of their children.¹⁷⁰ In order to make such decision, women have the right to information about family planning methods such as safe and reliable methods of contraception. Any coercive practices in relation to the right of the individual to freely decide on the number and spacing of children are prohibited under the Convention.¹⁷¹ Instead, the Convention promotes voluntary fertility regulation through freely available and appropriate methods. Such approach is considered beneficial for the well-being and development of all family members, and for the population as a whole.¹⁷²

3.4 Family Planning Policies in Vietnam: The Vietnamese Family and the Family Planning Policies

3.4.1 Introduction

In order to analyse family planning policies in Vietnam and its effects on the discrimination against women, one must first have an understanding of the notion of ‘*family*’ in Vietnamese society.¹⁷³ This chapter gives a general overview of the development of the notion and the importance of the concept of family, throughout Vietnamese history. To depict the social

¹⁶⁷ General Recommendation No. 24, para. 12.

¹⁶⁸ General Recommendation No. 19 on Violence against Women, adopted in 1992 during the 11th Session of the Committee on the Elimination of Discrimination against Women, paras. 19-20; General Recommendation No. 24, paras. 15 and 29.

¹⁶⁹ Compare this right established under Article 16(1)(e) CEDAW to the definition of the right to family planning adopted in the Cairo Programme for Action and the Beijing Declaration and Platform for Action.

¹⁷⁰ General Recommendation No. 21 on Equality in Marriage and Family Relations, adopted in 1994 during the 13th Session of the Committee on the Elimination of Discrimination against Women, para. 21.

¹⁷¹ *Ibid.*, para. 22.

¹⁷² *Ibid.*, para. 23.

¹⁷³ Compare Danièle Bélanger and Magali Barbieri, ‘Introduction; State, Families, and the Making of Transitions in Vietnam’ in Danièle Bélanger and Magali Barbieri (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009), p. 7.

transformations experienced by Vietnamese families in a comprehensible manner, the development has been divided into three time periods: (1) the traditional Vietnamese family, (2) the family and the socialist revolution and (3) the role of the family and the introduction of the *Doi Moi* policies.¹⁷⁴ The description of the notion of family will also depict the evolution of gender roles embedded in the Vietnamese notion of family and the situation of gender equality in Vietnam today. Finally, this section offers an overview of the objectives and evolution of the family planning policies in Vietnam since their introduction in the mid-twentieth century up until today.¹⁷⁵

In relation to this section, it should be acknowledged that any attempt to describe one uniform notion of the ‘Vietnamese family’ will be a generalisation. Naturally, in reality, there is neither one notion of the traditional Vietnamese family, nor is there one notion of the modern-day Vietnamese family. This section does not aim at defining what constitutes a Vietnamese family; it simply aims at drawing a general picture of characteristics common to many families in Vietnam at a given time in history. The same goes for the depiction of the implementation of the family planning policy. It is a well-documented fact that the implementation of the Vietnamese family planning policies has taken different forms and expressions in different regions of the country.¹⁷⁶ The examples of the forms of implementation mentioned in this section are therefore just that – examples – from specific localities forming an overall understanding of the enforcement of the family planning policies.

3.4.2 The Traditional Vietnamese Family

Historically Vietnamese society had a matriarchal structure.¹⁷⁷ However, this changed with the establishment of Confucianism as the basis of the ideological system of Vietnam in the thirteenth century.¹⁷⁸ The hierarchical and patrifocal structure of Confucianism became the predominant ideology, and eliminated the indigenous matriarchal social structure of Vietnam.¹⁷⁹ The concept of a ‘*traditional*’ Vietnamese family generally refers to the predominant family form during the era prior to the socialist revolution in the mid-twentieth century; an intergenerational household ideal built on Confucian ideology.¹⁸⁰ The ideal traditional Vietnamese family had many

¹⁷⁴ Compare Danièle Bélanger and Magali Barbieri, ‘Introduction; State, Families, and the Making of Transitions in Vietnam’, (2009), p. 1.

¹⁷⁵ For information on the legal framework of the current family planning policy, see Section 4.4.

¹⁷⁶ See for example Daniel Goodkind, ‘Vietnam’s One-or-Two-Child Policy in Action’ (1995) Vol. 21(1) Population and Development Review 85.

¹⁷⁷ See for example Tu Thi Mai and Tuyet Thi Nham Le, *Women in Vietnam* (Foreign Languages Publishing House 1978), p. 12; Helle Rydström and Lisa Drummond, ‘Introduction’ in Lisa Drummond and Helle Rydström, *Gender Practices in Contemporary Vietnam* (NIAS Press 2004), p. 1.

¹⁷⁸ Mai and Le, 1978, p. 32.

¹⁷⁹ Rydström and Drummond, ‘Introduction’, 2004, p. 2.

¹⁸⁰ Bélanger and Barbieri, ‘Introduction; State, Families, and the Making of Transitions in Vietnam’, 2009, p. 10.

members, and it was considered desirable for a family to have many children.¹⁸¹

In line with the Confucian ideal, the household and the family held, and still hold today, a central role as the fundamental unit of Vietnamese society.¹⁸² Built on the Confucian tradition of hierarchical orders, the traditional Vietnamese family notion was not founded on an egalitarian ground, but on a precondition of hierarchies and power imbalance within the family.¹⁸³ According to the Confucian ideal of the traditional family, every family member occupied a specific role based on kinship, gender, and age; a clearly defined hierarchy governed the interaction between the members of the family.¹⁸⁴

As part of the Confucian influence, Vietnam also adopted a patrilineal tradition, and the continuity of the husband's family line, through his sons.¹⁸⁵ Traditionally after marriage, the bride moved in with her husband's family, and patrilocality and intergenerational households were the norm.¹⁸⁶ Further reinforcing the tradition of patrilocality, was the widespread practice of ancestor worship, which could only be exercised by a son in the parental estate.¹⁸⁷ The ritual responsibilities of a son made the continuity of the patrilineage of utmost importance. In conclusion, these traditions gave sons a special position in the family hierarchy, manifesting the patriarchal structure of the traditional family ideal.¹⁸⁸

According to Confucian ideology, the position of the individual in society is guided by a set of moral obligations, that structures social life according to a hierarchical order with a set of superior and inferior relationships; i.e. sovereign/subject, parent/child, and husband/wife.¹⁸⁹ These were the three

¹⁸¹ Tine Gammeltoft, *Women's Bodies, Women's Worries* (Curzon Press 1999), pp. 79-80. This was further confirmed in the interview with Key Informant 2 (Hanoi Vietnam, 7th of November 2014).

¹⁸² Steven K. Wisenale, 'Family Policy in a Changing Vietnam' (2000) Vol. 31(1) *Journal of Comparative Family Studies* 79, p. 80.

¹⁸³ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 10.

¹⁸⁴ Bussarawan Teerawichitchainan, 'Household Headship in the Red River Delta, Vietnam: The Political Construction of the Family' in Danièle Bélanger and Magali Barbieri (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009), p. 333.

¹⁸⁵ Charles Hirschamn and Minh Huu Nguyen, 'Tradition and Change in the Vietnamese Family Structure in the Red River Delta' (2002) Issue 64 *Journal on Marriage and Family* 1063, p. 1063; Danièle Bélanger, 'Single and Childless Women of Vietnam: Contesting and negotiating female identity?' in Danièle Bélanger and Magali Barbieri (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009), p. 96.

¹⁸⁶ Hirschamn and Nguyen, 2002, p. 1063.

¹⁸⁷ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 29.

¹⁸⁸ Rydström and Drummond, 'Introduction', 2004, p. 2. Compare Christophe Z. Guilmoto, 'Son Preference, Sex Selection, and Kinship in Vietnam' (2012) Vol. 38(1) *Population & Development Review* 31, p. 40.

¹⁸⁹ Rydström and Drummond, 'Introduction', 2004, p. 8; Catherine Scornet, 'State and Family: Reproductive Policies and Practices' in Danièle Bélanger and Magali Barbieri

basic bonds to which the individual must submit. In essence, the three bonds encompass the same principle recognising one inferior and one superior party in any relationship, and the acceptance of authority within, for example, the family implicitly signifies acceptance of political authority.¹⁹⁰

In Vietnam, Confucian ideals effect the relation between women and men, in society in general, and in family in particular.¹⁹¹ The ‘intergenerational contract’ of the traditional Vietnamese family favours sons over daughters. One example is the aforementioned ancestor worship, which can only be performed by sons. Another example is the role of sons as caregivers to their elderly parents. While a son is expected to care for his natal parents, a daughter is expected to move in with her future husband and devote her time to take care of his parents.¹⁹² Traditionally, marriage was considered an agreement between two families, and familial belonging of a daughter was determined by her marital status. An unmarried daughter formed part of her natal family. After marriage, her familial belonging changed and she became part of her husband’s family.¹⁹³ This further amplified the perception of daughters as ‘children of others’, and the preference for a son over a daughter.¹⁹⁴

Although the existence of Confucian ideology in the Vietnamese culture is unquestionable, the extent of the influence is debated. As an example, Bélanger and Barbieri describe depictions of the traditional Vietnamese family as based on Confucian ideals of family and family relations, rather than actual studies of the everyday life of real Vietnamese families.¹⁹⁵ This statement is supported by research indicating that, whereas, the Confucian family ideal historically was strictly implemented amongst the social elite, it was not as rigidly enforced amongst lower classes.¹⁹⁶ Another example is, studies showing a gap between the submissive role of women according to Confucian ideals and the actual status of Vietnamese women during the colonial period. Such studies indicate that the Confucian ideals were not always implemented in the day-to-day life of the traditional Vietnamese family.¹⁹⁷ Another intrinsic problem of any attempt to a generalised

(eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009) p. 70.

¹⁹⁰ Gammeltoft, 1999, p. 75; Scornet, 2009, p. 70.

¹⁹¹ See for example Jayne Werner, *Gender, Household and State in Post-Revolutionary Vietnam* (Routledge 2009), p. 3.

¹⁹² Danièle Bélanger and Katherine Pendakis, ‘Daughters, Work and Families in Globalizing Vietnam’ in Danièle Bélanger and Magali Barbieri (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009), pp. 266-267; Guilmoto, 2012, p. 37.

¹⁹³ Bélanger and Pendakis, 2009, p. 266; Rukmalie Jayakody and Huy Tuan Vu, ‘Family Change in Vietnam’s Red River Delta: From War, To Reunification, To Renovation’ in Danièle Bélanger and Magali Barbieri (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009), p. 206; Guilmoto, 2012, p. 37.

¹⁹⁴ Gammeltoft, 1999, p. 70; Guilmoto, 2012, p. 42.

¹⁹⁵ Bélanger and Barbieri, ‘Introduction; State, Families, and the Making of Transitions in Vietnam’, 2009, p. 10.

¹⁹⁶ *Ibid.*, p. 11.

¹⁹⁷ Goodkind, 1995, pp. 86-87.

depiction of the traditional Vietnamese family, lays in the historical, and still existing, differences between regions within the State territory. For example, the prevalence of uxorilocality and a bilateral kinship system is more common in the South than in the North.¹⁹⁸

3.4.3 The Family and the Socialist Revolution

In 1954, following ten years of war against the French colonial power, the North of Vietnam gained independence, led by a socialist government.¹⁹⁹ The establishment of the Democratic Republic of Vietnam in the North brought about a new socialist institutional environment for the traditional Vietnamese family.²⁰⁰ Under the lead of the Communist Party of Vietnam, the population underwent drastic political reforms affecting the notion of family and the foundations of family life. The promotion of socialism produced by the Communist Party of Vietnam and its mass organisations during this period aimed to not only transform the concept of family, but also in some regards, to replace it as the fundamental unit of society.²⁰¹ The political theory behind the revolutionary reforms had its basis in the State taking over functions previously held by the family, to create a new and better society.²⁰² Political reforms, nearly eliminating private property through nationalisation of production and collectivisation of the agriculture, drastically modified the basis of the family-centred organisation of Vietnamese society.²⁰³ It was also during this era that the first family planning policies were introduced in Vietnam.²⁰⁴

Through the 1959 Law on Marriage and Family, the socialist government of the Democratic Republic of Vietnam laid down the new framework for the ideal Vietnamese family.²⁰⁵ The new Law on Marriage and Family prohibited certain practices, common in Vietnam, which were perceived as 'feudal' and in contradiction to the socialist ideology.²⁰⁶ Examples of such practices prohibited were polygamy, forced marriage, and child marriage.²⁰⁷ The new law set down a matrimonial system based on consensual and monogamous marriages, equality between spouses, and equality between

¹⁹⁸ See for example Guilmoto, 2012, p. 42.

¹⁹⁹ Search: *Vietnam* (Nationalencyklopedin), available at www.ne.se.ludwig.lub.lu.se/uppslagsverk/encyklopedi/l%C3%A5ng/vietnam accessed 3rd of January 2015.

²⁰⁰ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 13.

²⁰¹ Ibid.

²⁰² Lisa Drummond, 'The Modern "Vietnamese Woman": Socialization and Women's Magazines' in Lisa Drummond and Helle Rydström, *Gender Practices in Contemporary Vietnam* (NIAS Press 2004), p. 163; Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 13.

²⁰³ Bélanger and Barbieri, 2009, 'Introduction; State, Families, and the Making of Transitions in Vietnam', p. 13.

²⁰⁴ Goodkind, 1995, pp. 88-89.

²⁰⁵ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, pp. 13-14.

²⁰⁶ Teerawichitchainan, 2009, p. 335.

²⁰⁷ Daniel Goodkind, 'The Vietnamese Double Marriage Squeeze' (1997) Vol. 31(1) *International Migration Review* 108, p. 116.

children. Hence, gender equality was one of the foundations of the 1959 Law on Marriage and Family.²⁰⁸ This law also represented the first example of this type of State regulation of the family in Vietnam, since it regulated issues previously considered as private family matters.²⁰⁹

After establishing the new legal framework regulating the foundations of family life, the socialist government turned its focus to a new aspect of family life: reproduction.²¹⁰ Since the early 1960s, the rapid population growth had alarmed the government and measures were taken to promote awareness of birth control.²¹¹ As of 1963, the government of the North started promoting a two-or-three-child policy.²¹² Through the installation of such policy, the Democratic Republic of Vietnam became one of the first developing countries to promote birth control and small family size.²¹³ This policy, however, was not enforced.²¹⁴ Instead, it consisted mainly in promotion of contraception in some regions of the country, focusing on the use of the Intra-Uterine Device (IUD).²¹⁵ Naturally, the possibilities to promote the two-or-three-child policy were severely hampered by the American War.²¹⁶ Shortly after the reunification of the South and the North in 1976, new efforts were initiated to promote the family planning policy, and the family ideal and family planning policy of the North were extended to cover the whole country.²¹⁷

The promotion of a nuclear Marxist family questioned the existing family order in Vietnam and opened up a dialogue for critique against social hierarchies and inequalities within the family.²¹⁸ The 1964 Vietnamese Constitution acknowledged the equal rights of women and men in all spheres of life.²¹⁹ Through the collectivisation of agriculture and other reforms, the State of Vietnam emerged as a socialist welfare State, establishing alternatives to the function and responsibilities of the family.²²⁰ Defying meagre resources, Vietnam built up a system to offer free education, day-care centres, and nationwide health care.²²¹ Through such reforms, the new socialist order of Vietnamese society altered the role of

²⁰⁸ Wisenale, 2000, p. 80.

²⁰⁹ Scornet, 2009, p. 50.

²¹⁰ Ibid.

²¹¹ Wisenale, 2000, pp. 81-82.

²¹² Goodkind, 1995, pp. 87-89.

²¹³ Scornet, 2009, p. 48.

²¹⁴ Goodkind, 1995, pp. 87-89.

²¹⁵ Ibid., p. 89; Jones and Leete, 2002, p. 119.

²¹⁶ War fought in Vietnam between 1954-1975. Commonly known in the Western world as the Vietnam War, see *Vietnamkriget* (Nationalencyklopedin), available at <www.ne.se.ludwig.lub.lu.se/uppslagsverk/encyklopedi/l%C3%A5ng/vietnamkriget> accessed 3rd of January 2015.

²¹⁷ Goodkind, 1995, p. 89; Scornet, 2009, p. 51.

²¹⁸ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, pp. 13-14 and 18.

²¹⁹ Wisenale, 2000, p. 83.

²²⁰ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 18.

²²¹ Ibid.

women in society.²²² As an example, a big proportion of women in urban areas entered into the wage labour force during this period and the free education system offered education to girls and boys alike.²²³ Women were also encouraged to take part in political activities and to voice their own opinions.²²⁴ Another factor contributing to the process of emancipation of women of this period was armed conflict.²²⁵ During this period, women were encouraged to participate in the war efforts. With the men away in battle, women had to take over duties and responsibilities traditionally performed by men.²²⁶

However, the political reforms concerning gender equality during the early socialist period were never fully accepted or enforced. Due to persistent patriarchal structures in Vietnamese society, many of the new regulations criticizing hierarchal orders and inequalities proved difficult to implement.²²⁷ Whereas family planning policies of fertility reduction have been successful,²²⁸ policies promoting gender equality were never as widely accepted. Although the Vietnamese socialist revolution aspired to create a more equal society, it, as other socialist revolutions, was established by a patriarchal society and patriarchal orders did not cease to exist after the revolution.²²⁹ Despite political efforts to diminish the importance of family and elevate the role of the State, the family remained the most fundamental social affiliation of an individual also after the socialist revolution.²³⁰ The Vietnamese socialism was created on the basis of the pre-existing family and kinship system, and this has in, many regards, impeded the aspired transformation of the notions of family, gender roles and equality between women and men, especially within the realm of the family.²³¹

3.4.4 The Role of the Family and the Introduction of the *Doi Moi* Policies

The *Doi Moi*²³² is the name of a new political agenda adopted in 1986 at the sixth Party Congress of the Vietnamese Communist Party. In 1986, the

²²² Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 19.

²²³ Ibid.

²²⁴ Werner, 2009, p. 31.

²²⁵ First, the colonial war against the French (1946-1954), which ended in the separation of the Vietnamese territory into the South and the North. Second, the American War fought between 1957-1975; see *Vietnamkriget* (Nationalencyklopedin).

²²⁶ Ashley Pettus, *Between Sacrifice and Desire* (Routledge 2003), pp. 42-44.

²²⁷ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 14.

²²⁸ Between the early years of the 1970s until 2002 the fertility rate in Vietnam went down from 5,9 children per woman to 1,9 children per woman, see Scornet, 2009, p. 60.

²²⁹ Bélanger and Barbieri, 'Introduction; State, Families, and the Making of Transitions in Vietnam', 2009, p. 14.

²³⁰ Ibid., p. 16.

²³¹ Ibid., pp. 15-16 and 19.

²³² *Doi Moi* is Vietnamese for 'new path' or 'economic renovation'. In English the term is often translated into 'the renovation'; see for example Mark Sidel, *Law and Society in Vietnam: The Transition From Socialism in Comparative Perspective* (Cambridge

centrally planned economy of Vietnam experienced severe problems, mainly due to an agricultural crisis. To resolve the economic crisis the Vietnamese State adopted *Doi Moi*, which presented a new economic strategy based on ‘market socialism’.²³³ The focus of the adoption of the *Doi Moi* agenda was economic liberalisation and economic growth. Through the reforms, a transition to a national economy based on a market economy system was initiated, and the economic renovation opened up Vietnam to the global market, and the rest of the world.²³⁴ Although Vietnam officially still remains a socialist State governed by the Vietnamese Communist Party, the reconstruction of the economy through the *Doi Moi* reforms has allowed for the private sector to gain a predominant position.²³⁵ The economic renovation brought about major changes to the economic situation of Vietnamese families. Although the reforms have led to an increased economical stratification,²³⁶ the economic achievements have been undeniable. The inflow of foreign capital following the reforms boosted the industrial production and created new job opportunities. Within the first decade of the *Doi Moi* agenda, the standard of living in Vietnam had doubled.²³⁷

The economic renovation has, once again, positioned the household as the basis of economic production, reducing the importance of the State in the everyday life of families.²³⁸ As an example, the *Doi Moi* reforms have led to a drastic downsizing of the public sector, which has resulted in the restoration of the economic and social importance of the family unit. Starting with the initialisation of the economic renovation, the Vietnamese State began to withdraw from its role as main provider of social services, such as health care and education.²³⁹ The main responsibility of functions – which had been held by the State since the socialist revolution – was once again transferred to the family, reinstating the family as the basic unit of society.²⁴⁰ Since the implementation of the *Doi Moi* reforms, the State has continuously transferred functions from the public sector to private institutions, and the costs have simultaneously been transferred from the State to the citizens.²⁴¹ As a result, education and health have become major posts in the household budgets and present a heavy economic burden for

University Press 2008), p. 1; Scornet, Catherine, 2009, p. 47; Werner, 2009, p. 45.

Hereinafter: ‘*Doi Moi*’ or ‘economic renovation’.

²³³ Jayne Werner, ‘Gender, Household, and State: Renovation (*Doi Moi*) as Social Process in Viet Nam’ in Jayne Werner and Danièle Bélanger (eds.), *Gender, Household, State: Doi Moi in Viet Nam* (Cornell Southeast Asia Program Publications 2002), p. 31; Werner, 2009, p. 45.

²³⁴ Jayakody and Vu, 2009, p. 203.

²³⁵ Jayne Werner and Danièle Bélanger, ‘Introduction: Gender and Viet Nam Studies’ in Jayne Werner and Danièle Bélanger (eds.), *Gender, Household, State: Doi Moi in Viet Nam* (Cornell Southeast Asia Program Publications 2002), p. 15.

²³⁶ See for example Gammeltoft, 1999, p. 31.

²³⁷ See for example Werner and Bélanger, ‘Introduction: Gender and Viet Nam Studies’, 2002, p. 24.

²³⁸ Werner, 2009, p. 31.

²³⁹ Drummond, 2004, p. 167.

²⁴⁰ Gammeltoft, 1999, p. 75.

²⁴¹ Waibel and Glück, 2013, p. 346.

many families.²⁴² In conclusion, by the 1990s, the family had assumed a vital role in the development agenda of the *Doi Moi* State.²⁴³

One curious consequence of the liberal *Doi Moi* reforms is the adoption of a new family politics. As a counterweight to the relaxation of the State control in the economic and political spheres, the State control within the ambit of family planning has been strengthened.²⁴⁴ Since the late 1980s, the *Doi Moi* State has set new policies with regard to family planning, and, together with its mass organisations, the Vietnamese State has launched nationwide family planning campaigns promoting small family size and birth control.²⁴⁵ As of 1988, Vietnam has implemented a one-or-two-child policy. As well as promoting small family size, the policy contained specific guidelines on minimum age of parents at first birth and the spacing of births.²⁴⁶ With regards to ethnic minorities special exceptions were made, allowing families belonging to minorities, to have a third child.²⁴⁷ To facilitate the implementation of the policy, free access to contraceptive services and abortion were installed.²⁴⁸ The observance of the family planning policy was also promoted through extensive propaganda campaigns. Poster and billboard campaigns and other communication channels such as radio and TV-programmes remain one of the characteristics of the promotion of the Vietnamese family planning policy to date.²⁴⁹ However, the implementation of the one-or-two-child policy in Vietnam has also been characterized by elements of coercion.²⁵⁰ Research shows prevalence of the imposition of economic disincentives, resembling to fines, and job penalties as a consequence of breaching the recommended family model.²⁵¹ Studies also reveal the power of morality in connection to family size as well as a strong social pressure to comply with the family planning policies. As an example, demographic studies performed in the Red River Delta describe a local implementation of the one-or-two-child policy putting immense social pressure on women with two children to terminate additional pregnancies

²⁴² Gammeltoft, 1999, p. 77; Xavier Oudin, 'Household Strategies and Employment Strategies In A Changing Economy' in Renovation' in Danièle Bélanger and Magali Barbieri (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009), p. 367; Interview with Key Informant 8 (Hanoi, Vietnam, 20th of November 2014).

²⁴³ Werner, 2009, p. 74.

²⁴⁴ Tine Gammeltoft, 'The Politics of Vietnamese Family Planning: Gender and Personhood' in Ing-Britt Trankell and Laura Summers (eds.), *Facets of Power and Its Limitations: Political Culture in Southeast Asia* (Acta Universitatis Upsaliensis 1998), p. 103.

²⁴⁵ Birgitta Hellmark Lindgren, 'The Politics of Vietnamese Family Planning: Ethnography' in Ing-Britt Trankell and Laura Summers (eds.), *Facets of Power and Its Limitations: Political Culture in Southeast Asia* (Acta Universitatis Upsaliensis 1998), p. 82.; Scornet, 2009, pp. 53, 56 and 160.

²⁴⁶ Goodkind, 1995, pp. 89-90.

²⁴⁷ Ibid., p. 90.

²⁴⁸ Ibid.

²⁴⁹ Goodkind, 1995, p. 90-91. The current implementation of the family planning campaigns will be further elaborated upon in Section 5.3.

²⁵⁰ See for example Gammeltoft, 1999, p. 12.

²⁵¹ Goodkind, 1995, pp. 99-103 and 105-106; Hellmark Lindgren, 1998, p. 86.

along with having an IUD inserted.²⁵² Although promoted through nationwide media campaigns, the day-to-day implementation of the one-or-two-child policy has been the responsibility of provincial family planning offices and local family planning officers. As the implementation tends to vary depending on the practical situation of every province, it is difficult to give a universal description of the practical implementation of the family planning policies nationwide. For example, there are indications that during the 1990s, economic disincentives were more rigidly imposed in provinces experiencing over-population such as a number of provinces in the Red River Delta, than in other provinces.²⁵³

The economic growth of the *Doi Moi* State has not benefitted the whole population on an equal basis, and the reforms have had negative effects on gender equality and the position of women in society.²⁵⁴ These negative effects have its causes in both, ideological, and economic reasons, and are visible in both the public and private sphere.²⁵⁵ As an example, the *Doi Moi* agenda has led to the downsizing of the public sector. In this downsizing, more women than men lost their jobs,²⁵⁶ and research shows that since the initiation of *Doi Moi*, there has been a tendency of women leaving the waged working force to return to the household sector.²⁵⁷ Although Vietnam has been successful in working towards gender equality in some regards,²⁵⁸ within the family inequality remains. Scholars have argued that the *Doi Moi* reforms, in many regards, have resulted in a ‘trade-off’ between gender equality and economic efficiency.²⁵⁹ The liberal agenda of *Doi Moi*, consequently, has led to a reassertion of traditional gender roles, often witnessed in post-socialist States.²⁶⁰

Despite – or perhaps precisely because of – the drastic political and social changes experienced by Vietnamese families since the colonial era, many of the features of the traditional family structure still prevail in the modern day Vietnamese family. The Confucian ideology and the patriarchal family order remain the norm. Sons maintain a special position in the kinship system and patrifocal intergenerational households remain a common feature in

²⁵² Goodkind, 1995, p. 91; Gammeltoft, 1998, pp. 105-106; Gammeltoft, 1999, p. 61; Pettus, 2003, p. 86.

²⁵³ Goodkind, 1995, pp. 101-102 and 106.

²⁵⁴ Wisenale, 2000, p. 84.

²⁵⁵ Bélanger, Danièle, ‘Single and Childless Women of Vietnam: Contesting and Negotiating female identity?’, 2009, p. 98; Werner and Bélanger, ‘Introduction: Gender and Viet Nam Studies’, 2002, pp. 15-16.

²⁵⁶ Wisenale, 2000, p. 85; Pettus, 2003, p. 11.

²⁵⁷ Werner and Bélanger, ‘Introduction: Gender and Viet Nam Studies’, 2002, p. 16; Werner, 2002, p. 34.

²⁵⁸ For example Vietnam has high levels of political participation amongst women, and 24,4 per cent of the parliamentary seats are held by women, see *Explanatory Note on the 2013 Human Development Report: Viet Nam* (UNDP), available at <<http://hdr.undp.org/sites/default/files/Country-Profiles/VNM.pdf>> accessed 3rd of January 2015.

²⁵⁹ Wisenale, 2000, p. 84.

²⁶⁰ Werner and Bélanger, ‘Introduction: Gender and Viet Nam Studies’, 2002, p. 16.

Vietnamese society.²⁶¹ While some aspects of the family planning policies adopted since the socialist revolution now have been embraced by the majority of the population, other characteristics, such as gender equality within the family, are yet to be internalised into the Vietnamese family notion. As pointed out by Guilmoto, a transformation of an underlying gender biased kinship system is not as easily achieved through policy reforms, as the reconstruction of a flawed economical system.²⁶²

3.5 Conclusion

To conclude chapter 3, family planning policies can be articulated in various ways. Key for the definition of family planning policy applied in this thesis is the State as the active agent in the formulation and implementation of the policy. This is an important feature for further analysis of State responsibility in relation to the family planning programmes' effects on discrimination against women.

The family planning policies have, in general, proven effective in achieving the goal to slow down population growth. The formulation and implementation, however, have presented, and still presents, a topic for debate. Sources for critique have been overemphasis of the demographic objectives of reducing high fertility, to the detriment of the general health context and the autonomy and freedom of choice of the individual. Since the 1990s, the understanding of family planning as a human right has come to be the dominating rationale for the implementation of family planning policies. Although both demographic, and health objectives remain present in the formulation of the policies, a general characteristic of the evolution of the family planning policies is a transition from a development focus to policies centring on the individual. This can be witnessed in the inclusion of family planning and reproductive health in international human rights law treaties such as the CEDAW. A right to family planning is not the focal point of this thesis. However, it is of relevance for the analysis of the concurrence between the Vietnamese family planning policy and the State obligations under CEDAW. Any State policy must accord with the provisions of the Convention, but the evolution of family planning policies based on a human rights based approach also has other implications. The existence of a right to family planning implies that States are obliged to offer family planning services to the population. In practice, this implies that States are obliged to have a family planning policy of some sort. Although certain aspects of the Vietnamese family planning policy are subject to critique in this thesis, acknowledgment shall be made to the consistent commitment to family planning displayed by Vietnam.

In the Vietnamese context, family planning policies have been present since the 1960s. Throughout the past century, Vietnamese families have continuously faced social and political changes. The traditional notion of family has been challenged and altered, to in resent history once again be

²⁶¹ See for example Guilmoto, 2012, pp. 41-42; Hirschamn and Nguyen, 2002, p. 1064.

²⁶² Guilmoto, 2012, p. 47.

reinforced. Certain characteristics have proven deeply rooted in Vietnamese society, and tend to prevail regardless of the political climate. The strongest of such characteristics is the Confucian ideology, which still plays an essential role in the Vietnamese family life and in the formulation of the Vietnamese family ideal.

The role of the Vietnamese State in the formulation of the notion of family has been another important element in the evolution of the Vietnamese family notion. For generations Vietnamese families have lived in a society with strong State influence within the ambit of family life. During the early days of the Vietnamese communism, the Communist Party of Vietnam employed various reforms to alter the Vietnamese notion of family. In recent days, the introduction of the economic renovation and a new economic situation for the family, has constituted a major change in the everyday life of Vietnamese families. The Vietnamese State has also consequently maintained the implementation of a family planning policy, through which a certain family ideal has been promoted. Consistent for this ideal is the characteristic of small family size.

4 The Vietnamese Legal System

4.1 Introduction

The purpose of this chapter is firstly to give an overview of the Vietnamese legal order and the key features of the national legal system. Secondly, this chapter offers a description of the national legislation with regard to gender equality and the current legislation on family planning.

4.2 Background and Key Features of the Domestic Legal System

Throughout history, the Vietnamese legal system has been subject to influence from a variety of legal cultures; e.g. the Chinese Confucian legal tradition as well as Occidental legal cultures – such as the French and American systems.²⁶³ For the majority of modern history of Vietnam, the State has had more than one legal system. As an example, under the French rule, the territory of Vietnam was divided into three provinces, all of which had separate legal regimes.²⁶⁴ After the liberation war against the French colonial power, the State territory was divided into two separate entities: the North and the South. The Democratic Republic of Vietnam in the North, led by the Communist Party of Vietnam, embarked on a socialist revolution, including a transformation of the existing legal system to adopt a new legal regime based on socialist legal theory.²⁶⁵

In 1976, after the end of the American War, the North and South were reunified under the Socialist Republic of Vietnam.²⁶⁶ Since the reunification, the territory of Vietnam has formed one jurisdiction, with one legal system.²⁶⁷ This legal system is mainly characterised by socialist legal theory, influenced by the legal orders of the Soviet Union and China.²⁶⁸ However, regional differences within the country persist in the implementation of norms relating to family law.²⁶⁹ In the years after the

²⁶³ Sidel, Mark, *Law and Society in Vietnam: The Transition From Socialism in Comparative Perspective* (Cambridge University Press 2008), p. 1.

²⁶⁴ Phuong-Khanh Nguyen, 'How to Conduct Research in Vietnamese Law: Overview of the Legal System of the Socialist Republic of Vietnam' (1999) Vol. 27(3) *International Journal of Legal Information* 307, p. 307.

²⁶⁵ See Preamble to the Vietnamese Constitution as adopted on the 28th of November 2013.

²⁶⁶ *Vietnamkrijet* (Nationalencyklopedin), available at www.ne.se.ludwig.lub.lu.se/uppslagsverk/encyklopedi/l%C3%A5ng/vietnamkrijet accessed 3rd of January 2015.

²⁶⁷ Nguyen, 1999, p. 308.

²⁶⁸ See for example Mark Sidel, *The Constitution of Vietnam: A Contextual Analysis* (Hart Publishing 2009), p. 31.

²⁶⁹ As an example, even if the current Vietnamese legislation stipulates equal inheritance for sons and daughters, this is not uniformly applied throughout the provinces, see *Son Preference in Viet Nam: Ancient Desires, Advancing Technologies*, report from the UNFPA (2011a), pp. 29-31.

reunification, Vietnam struggled to build up a functioning legal system. During the decades of war preceding the reunification, the legal system had been neglected, and for a transition period, there was a shortage of trained Vietnamese legal experts and lawyers.²⁷⁰

Vietnam is a civil law State, with codifications of important fields of law, such as the Civil Code and the Penal Code.²⁷¹ The sources of law are subject to a norm hierarchy with the Constitution as the highest national legal norm, followed by law, ordinance, decrees and circulars.²⁷² According to the current Constitution, amended in November 2013, the State of Vietnam is a socialist rule of law State; see Articles 2(1) and 8 of the Constitution. According to Article 2 of the Constitution, the State power belongs to the people – based on an alliance between the working class, the peasantry and the intelligentsia. The Constitution solely recognises one political Party; the Communist Party of Vietnam, as the loyal representative of the people of Vietnam, see Article 4.

The highest State authority of Vietnam is the National Assembly; see Article 69 of the Constitution. According to Article 70, the powers of the National Assembly comprise of legislative powers, including authority to ratify international treaties, as well as deciding on matters relating to the socio-economic development of the nation and the formulation of the financial and monetary policies of the State. The Head of State is the President, whom is elected by the National Assembly and bestowed with the responsibility to represent Vietnam both in domestic and foreign affair; see Articles 86 and 87 of the Constitution. The Government of Vietnam is, according to Article 94, the highest administrative body and shall exercise the executive State power. Chapter IX of the Constitution outlines the organisation of the local authorities. Under the central authority of the State, the territory of the State is divided into provinces and cities for the purpose of the local State administration. Each local authority is organised in a representative body, ‘People’s Council’, and an executive body, ‘People’s Committee’; see Articles 110-114.

The judicial power under the Constitution of Vietnam is, according to Articles 102 and 104, exercised by the People’s Courts, including the highest judicial body of Vietnam: the Supreme People’s Court. The mandate of the People’s Courts is to safeguard justice, human rights, the socialist regime and the interests of the State, see Article 102 of the Constitution. Official judicial system aside, Vietnam has a long tradition of mediation between parties by local conciliation committees. This tradition lives on, and today still a large number of civil and family disputes are resolved through mediation outside the official judicial system.²⁷³

²⁷⁰ Nguyen, 1999, p. 321.

²⁷¹ Ibid., p. 308.

²⁷² Interview with Key Informant 9 (Hanoi, Vietnam, 24th of November 2014).

²⁷³ Anh Luu, *Vietnam Legal Research*, published on GlobaLex by the Hauser Global Law School Program at NYU School of Law, available at www.nyulawglobal.org/globalex/Vietnam.htm, last accessed 2nd of December 2014.

The 2013 Constitution avows the obligation of the State to abide to the international treaties to which Vietnam is a State Party to, see Article 12. This includes the recognition of the obligation to abide to international norms of human rights law. As a testament to this international commitment, Article 3 of the Constitution recognises the obligations of the State to ‘recognize, respect, protect and guarantee human rights and citizens’ rights’. Human rights and freedoms are also explicitly protected under a separate Chapter of the Constitution. Chapter II stipulates the fundamental rights and obligations of the citizens protected under the Constitution. This Chapter recognises a wide range of political, civil, economic, cultural and social rights, e.g. the right to life (Article 19), bodily integrity and autonomy (Article 20), inviolability of private and family life (Article 21), etc. Article 14(2) of the Constitution prescribes that human rights may only be restricted through law; *and* if deemed necessary due to reasons of national security, social order and safety, social morality, or the well-being of the community.

Since the socialist revolution in the 1950s, Vietnam has been ruled by one Party, the Communist Party of Vietnam. During decades the Party did not recognise the autonomous force of law, and the role of the law within the State governance was marginalised.²⁷⁴ This has resulted in an ambivalence towards the concept of law within Vietnamese society, which is present still today.²⁷⁵ Although great efforts have been made to improve the Vietnamese legal system, a number of fundamental issues remain. A number of Key Informants emphasised problems of enforceability of the law as one of the core issues within the Vietnamese legal system.²⁷⁶ Another major issue is the prevalence of corruption.²⁷⁷ Thirdly, the judicial system, and the independence of the courts, is one of the most fundamental issues within the Vietnamese legal system.²⁷⁸

4.3 Discrimination against Women

From a legislative point of view, Vietnam has a strong protection against discrimination. The legal system of Vietnam contains a number of legal provisions combatting discrimination against women. As an example, equality between the sexes is recognised in the Constitution, which establishes equality before the law under Article 16 and recognises that women and men are equal in all respects under Article 26. Article 26 further stipulates an obligation for the State to ensure gender equality through

²⁷⁴ Sidel, 2008, p. 1.

²⁷⁵ Ibid., p. 1-2.

²⁷⁶ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014); Interview with Key Informant 7 (Hanoi, Vietnam, 17th of November 2014).

²⁷⁷ The Corruption Perception Index 2014 published by Transparency International in which Vietnam is ranked 119 out of 174 of the States examined, available at <www.transparency.org/cpi2014/results> accessed 3rd of January 2015. See also Carlyle A. Thayer, ‘Vietnam in 2013: Domestic Contestation and Foreign Policy Success’ (2014) *Southeast Asian Affairs* 353, pp. 356-357.

²⁷⁸ Sidel, 2009, pp. 161-162.

policymaking. Furthermore, discrimination against women is prohibited under the Law on Domestic Violence Prevention and Control²⁷⁹ and the Marriage and Family Law.²⁸⁰

As a testament to its commitment to the implementation to the CEDAW, the State of Vietnam adopted a Law on Gender Equality²⁸¹ in 2006. According to Article 1, the Law on Gender Equality ‘provides principles of gender equality in *all aspects of social and family life*, measures to guarantee gender equality, and responsibilities of agencies, organizations, families and individuals in exercising gender equality.’²⁸² Subjects of regulation under the Law on Gender Equality are Vietnamese State agencies as well as families and citizens; see Article 2. The Law on Gender Equality recognises the supremacy of international law; Article 3 states that for the case that a treaty, to which the Socialist Republic of Vietnam is Party to, contains a provision that departs from the provisions under the Law on Gender Equality, the provision of the international treaty shall prevail.

Also the Law on Gender Equality makes a distinction between gender and sex. Article 5 defines a number of terms for the implementation of the Law on Gender Equality, amongst the terms defined are ‘sex’ and ‘gender’. Whereas sex is defined as referring to ‘biological characteristics’ of women and men, gender is defined as referring to positions and roles of women and men in social relationships; see Article 5(1) and (2) of the Law on Gender Equality.

Furthermore Article 5(5) defines the understanding of ‘gender discrimination’ as ‘the restriction, exclusion, non-recognition or disregard of the roles and positions of men and women, causing inequality between men and women in various aspects of social and family life.’ The Law on Gender Equality stipulates an obligation for the State and for individuals to take action against gender discrimination, to adopt appropriate measures to ensure gender equality in practice, and to abolish ‘backward customs and habits that impede the achievement of the gender equality goals’, see Article 7.

Article 18 of the Law on Gender Equality is dedicated to gender equality in marriage and within the family. The Article confirms the equality between spouses, including equality between husband and wife in discussing and deciding on appropriate measures of family planning. The Article further stipulates a responsibility of family members to share housework and equality between daughters and sons. As mentioned above, the responsibility of the implementation of the Law on Gender equality resides

²⁷⁹ Law on Domestic Violence Prevention and Control, adopted by the National Assembly 21st of November 2007, No. 02/2007/QH12.

²⁸⁰ Law on Marriage and Family, adopted by the National Assembly 19th of June 2014, No. 52/2014/QH13.

²⁸¹ Law on Gender Equality, adopted by the National Assembly 29th of November 2006, No. 73/2006/QH11. Hereinafter: Law on Gender Equality.

²⁸² Emphasis added.

both with the State and with individuals. Chapter IV-V define a number of responsibilities of the State and its State agents to implement and supervise the observance of the provisions in the Law on Gender Equality, see for example Articles 25-26 and 35. The Law on Gender Equality also establishes responsibilities for individuals, both in the professional, and private sphere. As an example, the law affects the professional duties of health care staff by prohibiting prenatal sex-selection; see Article 40(7)(b) of the Law on Gender Equality.²⁸³ Finally, the Law on Gender Equality also stipulates a responsibility for the family and members of the family to create conditions for gender equality within the family sphere. As an example, Article 41 prohibits unequal treatment of family members based on reasons of gender. The Article furthermore prohibits individuals to ‘[impose] the performance of family work and the taking care of contraceptive measures as though these are the responsibilities of members of one certain gender’, see Article 41(5). Violations of the Law on Gender Equality, will, depending on the nature of the violation, be disciplined, administratively sanctioned or examined for penal liability, see Article 42.

Although the corpus of legislation within the Vietnamese system stipulates a strong protection against gender discrimination, questions have been raised regarding the actual impact and implementation of this legal framework. As an example, the CEDAW Committee has raised concerns regarding the persistence of patriarchal structures in Vietnamese society, manifested through gender stereotypes within the family, including preference for male offspring.²⁸⁴

4.4 The Legal Framework of the Vietnamese Family Planning Policy

4.4.1 General Provisions: Overall Goals

As explained above, the family holds a fundamental position in Vietnamese society. This is further confirmed by the protection afforded to families under the Constitution. As an example, Article 58 of the Constitution establishes an obligation for the State to implement measures in relation to family planning. Secondly, Article 60 regulating ‘*Vietnamese Culture, Mass Media, and the Vietnamese Family*’, stipulates a responsibility for the State and society to:

create an environment to build comfortable, progressive and happy Vietnamese families; to build Vietnamese people who are healthy, cultured, patriotic, and who have a spirit of solidarity, sense of mastery and civic responsibility.

²⁸³ Prenatal sex selection will be further discussed in Section 5.2.2.

²⁸⁴ Concluding Comments from the Committee on the Elimination of Discrimination against Women in relation to the combined 5th and 6th periodic State report of Viet Nam, UN Doc. CEDAW/C/VNM/CO/6, paras. 8-12.

Through these references to family and family life in the 2013 Constitution, the Vietnamese State reaffirms their commitment to the implementation of a family planning policy.

The highest legal document currently detailing the formulation of the Vietnamese family planning policy is the 2003 Population Ordinance.²⁸⁵ According to Article 1(1) of the Population Ordinance, the Ordinance regulates the State management of the size, structure and quality of the population. Article 2 spells out the general principles guiding the implementation of population work, establishing that the voluntariness and equality of each individual and family shall be guaranteed in relation to reproductive health and ‘measures to raise the population quality’, see Article 2(2) of the Population Ordinance. Furthermore, the goal of the population policy is, according to Article 2(3), to harmonise the rights of each individual and family with the interests of society as a whole. The rationale of this provision is that the achievement of such harmony will result in prosperous, equal, happy and sustainable families of small size.

Article 3 of the Population Ordinance clarifies the interpretation of terms utilised in the Ordinance. Terms of relevance defined in this Article are: ‘*family planning*’, ‘*population work*’ and ‘*population services*’. The relevant parts of Article 3 of the Population Ordinance read as follows:

In this Ordinance, the following words and phrases are construed as follows:

[...]

9. Family planning means the State’s and society’s efforts to enable every individual and couple to actively and voluntarily decide on the number of children, the time to have babies and the duration between child births in order to protect their health and raise their children with a sense of responsibility and in conformity with social standards and families living conditions.

10. Population work means the management and organization of implementation of activities affecting the population size, population structure, population distribution and raising population quality.

[...]

13. Population services means activities in service of the population work, including information supply, propagation, education mobilization, guidance and counselling on population [...] provision of measures for reproductive healthcare, family planning, raising the population quality, and other activities as prescribed by law.

²⁸⁵ Population Ordinance, adopted by the National Assembly 9th of January 2003, No. 06/2003/PL-UBTVQH11. Hereinafter: ‘Population Ordinance’ or ‘the Ordinance’.

In the following Article 4 of the Population Ordinance, the rights and obligations of citizens regarding the implementation of the family planning policy are established. The Article provides for both rights and obligations of the individual in relation to family planning. The individual has the right to receive information about, and means to, practice family planning and maintain reproductive health. The obligations of the individual are defined in Article 4(2)(a) Population Ordinance as an obligation to practice family planning in order to ‘build families with few children, which are prosperous, equal, progressive, happy and sustainable’. This includes an obligation to work towards improving the quality of the population, including to respect the interest of the State and society as a whole of limiting the population size, and to raise physical, intellectual and spiritual abilities of the individual and the members of family.

Furthermore, the Population Ordinance strictly prohibits coercion in the implementation of family planning policies and sex-selection of unborn babies, see Article 7. Article 7 Population Ordinance further prohibits propaganda against the policy established in the Ordinance.²⁸⁶

4.4.2 One-or-Two-Child Policy

When adopted in 2003, Article 10 of the Population Ordinance stipulated a right for every individual to decide freely on the number of children and time and spacing of the births.²⁸⁷ Due to an increase in the number of couples having a third child after the adoption of the Population Ordinance, the Ordinance has later been amended. Firstly, in 2003 the Government of Vietnam adopted a decree detailing and guiding the implementation of the Population Ordinance.²⁸⁸ In this governmental decree, the term ‘*family with few children*’ in the Population Ordinance was defined as a family with one or two children, see Article 3(2). The 2003 Decree further stipulates in Article 4 that the objective of the family planning policy is to maintain that each family has no more than two children in order to stabilize the size of the population and raise the quality of the population. The responsibility of individuals for the implementation of the Population Ordinance is defined in Article 6 of the 2003 Decree as an obligation to materialise the objectives of the population, including abiding to the standards of happy families with few children.

In 2008, the wording of Article 10 of the Population Ordinance was amended through an ordinance adopted by the Standing Committee of the

²⁸⁶ Also the disclosure of the sex of the foetus to a pregnant woman is banned through a Ministry of Health Regulation; see *Son Preference in Viet Nam: Ancient Desires, Advancing Technologies*, Report by the UNFPA (2011a), pp. 47-48.

²⁸⁷ See Supplement A.

²⁸⁸ Decree of September 16 2003 Detailing and Guiding the Implementation of a Number of Articles of the Population Ordinance, adopted by the Government 16th September 2003, No. 104/2003/ND-CP. Hereinafter: 2003 Decree.

National Assembly.²⁸⁹ Through the ordinance adopted in 2008, Article 10 was amended to explicitly state that the obligations of individuals and couples under the Population Ordinance include an obligation to have no more than one or two children. Through this amendment the Population Ordinance no longer recognises the right of each individual to freely decide on the number of children, it does, however, maintain the regulation stipulating the right of every individual to freely decide on the time and spacing of births.

The provision in Article 10 of the Population Ordinance was further detailed in 2010 through a decree adopted by the government.²⁹⁰ This decree details the definition of Article 10(2) of the Population Ordinance stipulating special cases when couples will be exempted from the one-or-two-child policy. In total the decree establishes seven exceptions, see Article 2 of the decree. As an example, couples, which have given birth to more than one child, but only one child remains alive, can have one more child without violating the policy. Also couples with two children, but out of which one or both suffer(s) from a malformation or fatal disease are exempted from the rule and may have a third child. Another exception is couples belonging to an ethnic minority with a population of less than 10 000 people or in danger of population decline, in such cases couples may have a third child.

4.4.3 Quality of the Population: Cultured and Happy Families

One of the main objectives of the Population Ordinance, as elaborated on in Article 4 of the 2003 Decree detailing the implementation of the Population Ordinance, is to raise the ‘population quality’. This is, according to Article 20 of the Population Ordinance, a fundamental State policy for the cause of national development. The term ‘*quality*’ in this context refers to an aspiration of the Vietnamese State to raise the overall characteristics of the population, to achieve better standards of physical and mental health, educational level, per capita income, etc., see for example Article 21 of the Population Ordinance. According to Article 22 of the Ordinance, the responsibility to raise population quality resides with the State as well as with the citizens.

One of the aspects of the policy goal to raise the quality of the population is to preserve Vietnamese cultural and spiritual values, see Article 22(2) of the Population Ordinance. Article 24 of the Population Ordinance further elaborates on the preservation of cultural values and the ‘building of prosperous, equal, progressive, happy and sustainable families’. This Article

²⁸⁹ Ordinance of the Standing Committee of the National Assembly pursuant to Resolution No. 27/2008 / QH12 of the Ordinance on Programme Building in 2009 and the additional Ordinance on Programme Building of the XIIth Congress (2007-2011), adopted by the Standing Committee of the National Assembly 27th of December 2008.

²⁹⁰ Decree Detailing the Ordinance Amending Article 10 of the Population Ordinance, adopted by the Government 8th of March 2010, No. 20/2010/ND-CP. The decree was adopted following the proposal of the Minister of Health.

incorporates the principle of gender equality as a measure to raise the quality of the population, as well as establishing an obligation for the family members to support one another in matters in relation to health, including reproductive health and family planning, see Articles 24(1) and (4). However, whilst the Article propagates a progressive family ideal characterised by gender equality, it also calls for the preservation of family traditions, such as multigenerational households. Also the 2003 Decree refers to the cultural values of the family ideal promoted, by reference to raising the population quality by the ‘building up of civilized lifestyle and cultured families’, see Article 28. Hence, the quality aspiration of the Vietnamese family planning policy refers not only to factors such as health standards and educational level, but also to family moral preserving cultural values and living a civilized life.

4.4.4 Upcoming Law on Population

Although the Constitution contains provisions relating to the subject of family planning, these provisions are broadly formulated and need to be detailed through additional legislation. As described above, the legal document of the highest rank currently detailing the formulation and implementation of family planning is the Population Ordinance. However, Vietnam is currently in the drafting process of adopting a new ‘Law on Population’. The final draft of the new Law on Population is scheduled to be presented for adoption before the National Assembly in 2016.²⁹¹ The upcoming law on population is expected to, in large, uphold the current legislation in relation to the family planning policy as stated in the Population Ordinance, including the amendments and decrees detailing the implementation of the provisions of the Ordinance adopted since 2003.²⁹² Even though there seems to be no plan for radical change in the formulation of the family planning policy, there are a number of reasons to why the adoption of a Law on Population is considered necessary.

As stated above, Vietnam recently undertook a legislative reform resulting in the adoption of constitutional amendments. Under the current Constitution, the human rights of the individual may only be restricted through *law*; see Article 14(2) of the Constitution. Therefore, in terms of the hierarchy of norms within the Vietnamese legal system,²⁹³ a regulation of family planning by means of an ordinance may raise questions regarding the constitutionality of such regulation. Hence, one of the underlying reasons for the initiation of a drafting process, to transfer the legal regulation of the family planning policy from an ordinance to a law, was motivated by the 2013 amendments of the Vietnamese Constitution, and the norm hierarchy within the domestic legal system.²⁹⁴

²⁹¹ Interview with Key Informant 9 (Hanoi, Vietnam, 24th of November 2014).

²⁹² Interview with Key Informant 9 (Hanoi, Vietnam, 24th of November 2014).

²⁹³ In which an ordinance is ‘below’ the normative value of law, see Section 4.2.

²⁹⁴ Interview with Key Informant 9 (Hanoi, Vietnam, 24th of November 2014).

The initiation of the drafting process of the coming population law was also motivated by changing circumstances in the Vietnamese population. While the early family planning policies had a clear focus on fertility reduction, the new Law on Population is expected to put more emphasis on the quality of the population, and also adapt the family planning policy to deal with the new situation of an ‘aging population’ in Vietnam. This new approach can be seen as a testament to the transformation of the Vietnamese family planning policy from focusing on fertility reduction to taking a broader and more comprehensive approach to family planning.²⁹⁵ With regards to fertility reduction, the Vietnamese family planning policy has been very effective, and the total fertility rate is now below replacement level.²⁹⁶ In regions still experiencing high fertility rates, efforts will remain to reduce fertility. However, the State is also cautious in the birth rate dropping too low, as also too low fertility levels could pose a serious problem for the development of the country. Although efforts to maintain the fertility at replacement level is expected to remain part of the family planning policy, the focus of the upcoming Law on Population is expected to be the quality of the population. The dedication to the aspiration to raise the quality of the population is, for example, expected to result in more far-reaching commitments in relation to the reproductive health of the whole population. Furthermore, the new law is expected to tighten the currently quite liberal rules on abortion.²⁹⁷

4.5 Conclusion

In conclusion, Vietnam has an elaborate legislative framework to combat discrimination against women. Through the adoption of the Law on Gender Equality, Vietnam has manifested its commitment to the obligations under the CEDAW. The Law on Gender Equality stipulates an ample protection against discrimination within different aspects of the life of the individual, including within the realm of the family. The Law further prescribes responsibilities for the achievement of gender equality for the State, as well as for the individual.

However, the feasibility and implementation possibility of a number of provisions prescribing obligations of the individual can be questioned. Several of the legal provisions proscribe persistence of gender roles within the family, see for example Article 41 of the Law on Gender Equality. Such alterations of deeply rooted social structures are not easily achieved through a ‘simple’ adoption of a legal prohibition, but demands fundamental changes of social orders in Vietnamese society. As expressed by the CEDAW Committee, to achieve *de facto* equality between women and men in Vietnam, the adoption of a Law on Gender Equality is not sufficient. The

²⁹⁵ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

²⁹⁶ According to the statistics of the World Bank, the total fertility level in Vietnam in 2012 was 1,8 children per woman, statistics available at <<http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>> accessed on the 3rd of January 2015.

²⁹⁷ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

prohibition on discrimination against women must also be enforceable within the domestic legal system. It appears, however, that the strict and far-reaching Law on Gender Equality, opted for by the Vietnamese State, has not been accompanied by an equally powerful enforceability mechanism.

The current legal framework of the Vietnamese family planning policy embodies the general development of family planning policies. One example of this in the current family planning policy is the use of the terms ‘quality’ and ‘quality of the population’. Through the incorporation of aspects such as health – including reproductive health – and educational and income levels, the Vietnamese family planning policy has moved from a fertility-focused policy, driven by a demographic rationale, to a more comprehensive policy encompassing considerations pertinent to the health and human rights considerations of the second and third generations of family planning policies. However, the aspirations of improving the quality of the population are not without complication. The promotion of the preservation of cultural and spiritual values addressed in Articles 22 and 24 of the Ordinance are both problematic in relation to reinforcement and preservation of gender stereotypes. This will be further elaborated upon in chapter 5. From a human rights perspective, also the demographically motivated amendments of Article 10 of the Population Ordinance give rise to concerns.

From a legal point of view, the regulation of the Vietnamese family planning policy is characterised by a number of flaws. The legal regulation of the family planning policy is fragmented, and it is, at times, self-contradictory. As the legal provisions are scattered in a number of ordinances and decrees, rendering it difficult to form a coherent overview of the exact content of the legal regulation of the Vietnamese family planning policy. A fragmented regulation and contradictory provisions are, reasonably, problems which will be remedied through the adoption of the new Law on Population. As the law is not yet adopted, any description of the content of the coming law only represents *predictions* regarding its future content. However, based on information collected during interviews with Key Informants 1 and 9, both involved in the drafting process of the new law, it seems as if the content of the coming law will not entail any drastic changes to the content of the current family planning policy. One can only speculate, but it appears that the main rationale behind the legislative initiative is the 2013 constitutional amendments, rendering the constitutionality of the Population Ordinance questionable.

5 The Vietnamese Family Planning Policy: Son Preference and the Policy Implementation

5.1 Introduction

This chapter explores the possible correlation between the prevalence and expressions of son preference in Vietnam, and the implementation of the family planning policy. In order to examine such correlation, one must have an understanding of the phenomenon of son preference, as well as the policy implementation in relation to the family planning policy, opted for by the Vietnamese State. Firstly, the underlying causes and the prevalence of son preference in Vietnam is explored, as well as the current rise of an imbalance in the Sex Ratio at Birth.

Secondly, the policy implementation of the family planning policy through the mobilisation campaigns is examined. To facilitate this examination, the focus will be on the implementation of two specific campaigns: the ‘*Cultured Family Campaign*’ and the ‘*Civilised and Happy Families Campaign*’. Through these two specific examples, an overview of the family ideal and the ideal femininity promoted through the implementation of the family planning policy will be outlined. Lastly, the enforcement of the provisions in the Population Ordinance will be discussed. This overview of the implementation and enforcement of the Vietnamese family planning policy aims to enable an analysis of possible intersections between the prevalence of son preference and the female ideal promoted by the State.

5.2 Son Preference in Vietnam

5.2.1 Background and Underlying Causes

The term ‘*son preference*’ refers to a preference of families to have a son, rather than a daughter. Such preference stems from patrifocal kinship systems and social orders valuing men higher than women.²⁹⁸ Son preference has been a phenomenon present in Vietnamese society for centuries, and the preference for sons remains strong among Vietnamese families, among women as well as men.²⁹⁹ The rationales underlying son preference have their origins in traditional social patterns of society, as well as practical motives still valid in present-day society.

²⁹⁸ *Son Preference in Viet Nam: Ancient Desires, Advancing Technologies*, report from the UNFPA (2011a), p. 23.

²⁹⁹ The existence of son preference in Vietnamese society was recognized by all ten Key Informants. See also Christophe Z. Guilmoto, ‘Son Preference, Sex Selection, and Kinship in Vietnam’ (2012) Vol. 38(1) *Population & Development Review* 31, p. 37.

The influence of the Confucian ideology in Vietnamese society is considered the underlying cause to the cultural patterns of a social hierarchy between the individuals of society, stipulating the superiority of men in relation to women. Son preference is considered an expression of this gendered social hierarchy.³⁰⁰ The special position of the son in the family is evident in relation to, for example, the performance of ancestor worship and the continuance of the family line. According to the findings of research conducted by the UNFPA in 2010, the continuance of the family line is the primary reason for why families want a son. Tradition stipulates that only male offspring can continue the family line.³⁰¹ Family lineage has long been of great importance within the predominant kinship system in Vietnam. A son connects the present with the ancestors who have lived before him and the generations that will come after him; positioning the individual as a crucial 'link' in the communal continuance of the family 'chain'.³⁰² Pham Van Bich describes this kinship system as 'a man is not an independent person, an individual in the full sense of the word, but a member of a given lineage'.³⁰³ Therefore, a son in Vietnam is a not just a son, but a personification of his family lineage at present.³⁰⁴

Since the son continues the family line, only the son can practice the ancestor worship.³⁰⁵ Ancestor worship has a special position within Vietnamese tradition, and it is a predominant belief that the soul does not cease to exist after death. According to the traditional beliefs of Vietnamese families, the souls live on and maintain ties with their descendants. The duties of a son, in relation to his parents, do not end after the death of the parents. The duties merely alter. After the parents' death, the son has a duty to worship his parents and ancestors.³⁰⁶ Through the practice of ancestor worship, the son guarantees the happiness of the souls of his deceased parents in the afterlife.³⁰⁷ Pham Van Bich describes ancestor worship as a construction alleviating fears of death. As parents know what will happen to them, they are confident that their happiness in the afterlife will be ensured through their son.³⁰⁸ In return, the parents' souls are believed to protect their descendants through supernatural support from the dead to the living.³⁰⁹ A soul without descendants, or the souls of parents with children who do not practice ancestor worship, are believed to be eternally doomed to wander like beggars in 'the World of Shadow', since such souls would not receive any homage.³¹⁰ If the parents have a daughter, but not a son, she can

³⁰⁰ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014); Interview with Key Informant 2 (Hanoi, Vietnam 7th of November 2014).

³⁰¹ UNFPA (2011a), p. 23.

³⁰² Ibid.

³⁰³ Bich Van Pham, *The Vietnamese Family in Change* (Curzon Press 1999), p. 220.

³⁰⁴ Ibid.

³⁰⁵ UNFPA (2011a), p. 25.

³⁰⁶ Pham, 1999, p. 220.

³⁰⁷ Ibid. p. 221.

³⁰⁸ Ibid., pp. 220-221.

³⁰⁹ Ibid., p. 221.

³¹⁰ Ibid.

shoulder the duties of the ancestor worship. Daughters practising ancestor worship can be seen throughout the country, but it is more common in the South.³¹¹ However, this remains an exception to the rule, and couples feel great pressure to have a son in order to continue the family lineage and secure the continuation of the ancestor worship.³¹²

The persistence of son preference is not simply the result of old traditions, but is further enhanced by practical socio-economic rationales of present-day Vietnamese society. Within the realm of Vietnamese society, intergenerational households remain a common feature.³¹³ According to the predominant patrilocal kinship system, after marriage the wife moves in with her husband and his family.³¹⁴ One aspect of this household construction of co-residence of generations is the traditional responsibility of the son and the daughter-in-law to care for the elderly parents of the husband. A son is therefore of essential importance for the old-age support of his parents.³¹⁵ According to the tradition, the son is responsible for the care of the elderly parents, including living costs, costs for health care as well as care giving.³¹⁶ This vital function of the son in the family remains an important feature of Vietnamese society today, as approximately 70 per cent of the rural population in Vietnam receive no pension, but are dependent on their children to support them at old age.³¹⁷ Partly due to the duties of a son in relation to his parents, tradition also places the son in a special position with regard to inheritance. Traditionally, a son of the family inherited the family property, and an unequal division of inheritance between sons and daughters is still a common practice in Vietnam.³¹⁸

Other aspects of relevance for the persistence of the social phenomenon of son preference in present-day Vietnam, are factors stemming from one's self-perception and the opinion of others. In Vietnam, the notion of success is closely tied to one's family. In order for a person to be considered 'successful', his or her family shall reflect this success. As the most important asset of a family, a son is a crucial factor for the assessment if a family is considered 'complete', and if a member of the family can be considered 'successful'.³¹⁹ Research describes 'not being able to produce a son' as being perceived as a failure, affecting the social status of both women and men.³²⁰ Closely related to this, are the effects of community norms and family pressure on the persistence of son preference. According to the finding of the UNFPA, childbearing, in both rural and urban areas, is not a private matter in Vietnam. Childbearing is a matter concerning both the family and the community, and research shows the great impact of a

³¹¹ UNFPA (2011a), p. 26.

³¹² *Ibid.*, pp. 24-25.

³¹³ Interview with Key Informant 3 (Hanoi, Vietnam, 7th of November 2014).

³¹⁴ UNFPA (2011a), p. 27.

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

³¹⁷ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

³¹⁸ UNFPA (2011a), pp. 29-30.

³¹⁹ *Ibid.*, p. 31.

³²⁰ *Ibid.*, pp. 34-35.

communal morality governing childbearing and deep concerns of the individual about ‘the things people say’.³²¹ Vietnamese communities are generally close-knit, and it is considered important to purport a positive image of the family and the individual to the rest of the community.³²² The reinforcement of social norms enhancing son preference is transmitted through the interaction between members of the community. Research results show that not having a son can generate degrading remarks and teasing from other members of the community, resulting in public humiliation of the individual and family targeted by the ridicule. Especially men seem to be targeted and affected by this expression of social pressure from the community on families to have a son.³²³

Pressure on a couple to give birth to a son, is also reinforced by other members of the family. Such pressure originates most frequently from the family of the husband, as they see great importance in the birth of a son and the continuance of the family line.³²⁴ Both women and men are affected by the wishes of the family, and feel pressured to produce a son. As an example, men without sons may face differential treatment during holiday celebrations.³²⁵ However, whereas men tend to be more vulnerable to pressure stemming from the community, pressure originating from the family often weighs heavier on women.³²⁶ Within the realm of the Vietnamese family, the value of a woman is closely connected to her reproductive functions. To ensure acceptance as a member in her husband’s family, a woman shall give birth to a son.³²⁷ Inability to fulfil this duty to ensure the continuance of her husband’s family line frequently put women in uneasy situations. Research conducted by the UNFPA reports practices of men taking another ‘wife’ if his wife by marriage cannot give birth to a son.³²⁸ Other consequences faced by women not giving birth to a son, are domestic violence and neglect and harassment by other family members, including from her husband and in-laws.³²⁹

5.2.2 Consequences of Son Preference: Imbalance in the Sex Ratio at Birth

The nuclear family ideal in Vietnam reflects the one-or-two-child policy propagated by the State, ideally composed of a mother, father, one son and one daughter.³³⁰ Today, this ideal seems to have been internalised in the notion of the Vietnamese family. Research findings show that many families today *want* only a few children. A family with only one or two children is considered desirable, since such family will be able to care properly for their

³²¹ UNFPA (2011a), p. 31.

³²² Ibid., pp. 31-32.

³²³ Ibid., p. 36.

³²⁴ Ibid., p. 35.

³²⁵ Interview with Key Informant 8 (Hanoi, Vietnam, 26th of November 2014).

³²⁶ UNFPA (2011a), p. 33.

³²⁷ Ibid., p. 34.

³²⁸ Ibid., pp. 34-35.

³²⁹ Ibid., pp. 35-36.

³³⁰ Ibid., p. 32.

children, as opposed to a family having many children.³³¹ However, as discussed above, the existence of son preference remains strong among Vietnamese families, placing couples in a precarious situation. On the one hand couples wish to limit family size, but on the other hand it is crucial to have at least one son.

Such situation, in which couples find themselves wishing to have a son meanwhile maintaining low fertility, creates what Guilmoto calls a ‘squeeze effect’. With low fertility levels the possibility of couples remaining sonless increases. The result is a desire of couples to ‘intervene’ in the reproductive process to ensure the birth of at least one son.³³² Efforts to enhance the chances of having a son have long been present within Vietnamese society. Such efforts include, for example, traditional medicine, dietary requirements and fortune telling.³³³ However, with access to modern-day technology, Vietnamese couples are presented with new possibilities to affect the sex of their children.

Whereas other countries in the region have reported an imbalance in the Sex Ratio at Birth³³⁴ for more than twenty years, such occurrence is a recent issue in the Vietnamese context.³³⁵ Even though Vietnam shares a number of relevant characteristics with countries experiencing an imbalance in the SRB, research conducted in Vietnam during the late 1990s showed no indications of abnormal SRB levels.³³⁶ Although some researchers made reservations regarding the quality of the data presented in the reports by the Vietnamese General Statistics Office in the late 1990s,³³⁷ there was no clear evidence of an increasing imbalance in the SRB until the first years of the twenty-first century. From 2000, a rising imbalance in the SRB has been reported in Vietnam. This development was indicated by annual surveys on population change and family planning conducted by the national General Statistics Office, and was finally confirmed by the results presented in the Viet Nam National Population and Housing Census 2009. The 2009 Census showed a national average of 110,6 boys per 100 girls born during the period March 2008 to April 2009.³³⁸ This accounts for a rapid change in the SRB level, and the sex imbalance at age 0 in Vietnam continues to rise.³³⁹

³³¹ UNFPA (2011a), p. 32.

³³² Guilmoto, 2012, p. 34.

³³³ Danièle Bélanger, ‘Sex-Selective Abortions: Short-Term and Long-Term Perspectives’ (2002) Vol. 10(19) Reproductive Health Matters 194, p. 194; UNFPA (2011a), p. 41.

³³⁴ ‘Sex Ratio at Birth’ refers to the number of boys born per one hundred girls. The natural levels of the Sex Ratio at Birth is around 104-106 male births per 100 female births; see *Sex Ratio at Birth in Viet Nam: New Evidence on Patterns, Trends and Differentials*, report from the UNFPA (2011b). Hereinafter: ‘SRB’.

³³⁵ Guilmoto, 2012, p. 31.

³³⁶ Bélanger, 2002, p. 194.

³³⁷ Danièle Bélanger, Thi Hai Oanh Khuat, Jianye Liu, Thanh Thuy Le and Viet Thanh Pham, ‘Are Sex Ratios at Birth Increasing in Vietnam?’ (2003) Vol. 58(2) Population (English Edition) 231, p. 243.

³³⁸ UNFPA (2011b), pp. 13 and 17.

³³⁹ *Sex Ratio at Birth, Imbalance in Viet Nam: Evidence from the 2009 Census*, Report from the UNFPA (2010), p. 8; Vietnam State Report to the Committee on the Elimination of Discrimination against Women, Combined 7th and 8th Reports (2013), UN Doc.

A number of Key Informants referred to the rural regions of Vietnam as problematic areas in relation to the prevalence of son preference.³⁴⁰ However, the SRB imbalance is a national phenomenon, present in practically every region of the country, rural as well as urban.³⁴¹ It is a phenomenon in all strata of the Vietnamese population, but there are some factors further elevating the imbalance. Firstly, one factor affecting the SRB level is the birth order. Although there is a documented SRB imbalance also for the first and second births, sex ratio levels are significantly higher in late order births. In 2009, the national SRB levels for first and second births were 110,2 and 109,0 boys born per 100 girls, whereas the levels for third or later births were 115,5 male births per 100 female births. Secondly, also socioeconomic factors tend to affect the likelihood of a couple resorting to prenatal sex selection. As an example, there is a documented correlation between the educational level of the mother and an increase in the SRB level. A higher SRB imbalance is found among children of mothers with a college education or higher, with an SRB level of 113,9 in 2009.³⁴² Finally, there is also a correlation between the economic level of the household and the SRB levels. Data shows that abnormal child sex ratio levels are significantly higher in the richer strata of the Vietnamese population, than in the poorer.³⁴³ Naturally, there are several factors contributing to the correlation between economic power and higher levels of SRB imbalance. The current skewed SRB level in Vietnam could not have been obtained without the intervention of modern methods of prenatal sex selection. Access to such technology, and information about how to employ such methods, are of course a crucial factor contributing to the high child sex ratio level amongst more affluent groups of the population.³⁴⁴ However, throughout the country, the use of ‘science’ to obtain the composition and family size wanted has become routine procedure.³⁴⁵ Such intervention is considered ‘necessary’ and ‘beneficial’, as it enables families to secure the birth of a son without being forced to continue having children until a pregnancy naturally results in a boy.³⁴⁶

The question one might ask oneself in relation to the surfacing of the imbalance in SRB in the Vietnamese context is: why now? As stated above, other countries in the region with similar characteristics, such as prevalence of son preference and low fertility levels, have experienced problems with imbalanced sex ratios for decades before it surfaced in Vietnam. According to the typology adopted by Guilmo there are three preconditions

CEDAW/C/VNM/7-8, para. 12.6; Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

³⁴⁰ For example Interview with Key Informant 7 ((Hanoi, Vietnam, 17th of November); Interview with Key Informant 8 (Hanoi, Vietnam, 20th of November).

³⁴¹ UNFPA (2010), p. 14.

³⁴² *Ibid.*, p. 20.

³⁴³ *Ibid.*, pp. 20-22.

³⁴⁴ *Ibid.*, p. 22.

³⁴⁵ In this context, it should be highlighted that there is no evidence of the practice of infanticide of girl babies in Vietnam, as reported in other countries in the region, Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

³⁴⁶ UNFPA (2011a), p. 41.

contributing to the occurrence of prenatal sex selection.³⁴⁷ The first factor is the prevalence of son preference, and a ‘need’ to produce a son. The second factor refers to the availability of modern technologies for prenatal sex selection.³⁴⁸ The third and final precondition for prenatal sex selection is the ‘squeeze effect’ discussed above. Such effect is caused by an enhanced probability of couples remaining sonless due to declines in fertility levels.³⁴⁹

With regard to the role of the decline in the total fertility level, as discussed above, Vietnam has experienced a decline in fertility levels over the past four decades, from about six children in 1970 to a national average on replacement level around the year 2000.³⁵⁰ As predicted by Guilмото, the factor of low fertility does tend to affect the SRB imbalance also in Vietnam. This statement is supported by research showing an elevated level of SRB imbalance in regions within Vietnam with low fertility, in comparison to regions with higher fertility rates.³⁵¹ Furthermore, such correlation is supported by research findings indicating a correlation between the ‘squeeze effect’ caused by the one-or-two-child policy, and the prevalence of prenatal sex selection.³⁵²

Secondly, in relation to access to modern methods of prenatal sex selection, abortion has been legal in Vietnam since the 1960s.³⁵³ Vietnam has the highest abortion rates amongst the countries in the region, and an abortion is cheap and easily accessed throughout the country.³⁵⁴ Another crucial factor for the possibility to exercise prenatal sex selection is the availability of health services offering prenatal ultrasound services. Since the introduction of the *Doi Moi* reforms, a private health care sector has emerged in Vietnam. The private health providers have played a key role in the supply of affordable and easy access to ultrasound tests. The widespread use of ultrasound equipment in Vietnam started in the early 2000s, with the import of new technologies such as 3-D scans. According to a survey conducted by the General Statistics Office in 2006, 74 per cent of all pregnant women in Vietnam had an ultrasound test during their pregnancy. Another survey conducted by the General Statistics Office in 2007, showed that an average of 64 per cent of women who had recently become mothers, knew the sex of the baby in advance. Guilмото considers the second factor, of availability to modern technology, as key in the recent spike in SRB levels in Vietnam, since both son preference, and low fertility were present before 2003.³⁵⁵

As established above, the precondition of son preference is present in Vietnamese society. What is interesting in relation to the surfacing of the

³⁴⁷ Guilмото describes the factors as ‘ready-able-squeezed’; see Guilмото, 2012.

³⁴⁸ For example ultrasound technology and a liberal abortion legislation.

³⁴⁹ Guilмото, 2012, p. 34.

³⁵⁰ *Ibid.*

³⁵¹ *Ibid.*, p. 35.

³⁵² UNFPA (2011a), p. 32.

³⁵³ Guilмото, 2012, p. 35.

³⁵⁴ *Compendium of Research on Reproductive Health in Viet Nam*, report from the UNFPA (2012), pp. 53-58.

³⁵⁵ Guilмото, 2012, p. 36.

SRB imbalance is to assess whether the ‘intensity’ of son preference has changed in present-day society. As the predominant reason for a couple to resort to prenatal sex-selection, the assessment of the intensity of son preference is highly relevant. Naturally, such assessment is not easily facilitated. However, research shows that Vietnam, since the initiation of the *Doi Moi*, has experienced a reinvigoration of cultural characteristics underlying the preference for sons. According to Key Informant 2, the current rebirth of Confucian ideals and traditions in Vietnamese society, such as ancestor worship, is likely to cause an elevation in the intensity of son preference in Vietnam.³⁵⁶

5.3 Implementation of the Family Planning Policy and the Ideal Femininity

5.3.1 General Characteristics: Mass Mobilisation

As briefly explained above, the implementation of the Vietnamese family planning policy has changed over time and has not been consistent throughout the country. Whereas economic disincentives were implemented in some provinces, it was not a nationwide occurrence. However, one channel consistently utilised nationwide for the implementation of social reforms, including the family planning policy, is mobilisation campaigns.³⁵⁷ Through such campaigns, the State has propagated, and still propagates, the observance of the family planning policies among the population through various means of communication. As an example, posters and billboards with slogans such as ‘Every happy family has only one or two children’ are present throughout the country.³⁵⁸ Other channels of communications utilised to encourage the population to follow the family planning policy are newspapers, TV programmes and announcement broadcasted through speaker system.³⁵⁹ The campaigns are also implemented through more interactive methods such as house-to-house visits by family planning workers and clubs, e.g. the Club for Women Who Will Not Have a Third Child.³⁶⁰ The mobilisation campaigns aim to instigate a sense of moral responsibility in relation to the observance of the family planning policy.³⁶¹

The implementation of the rights of the individual set out in the current family planning policy under the Population Ordinance³⁶² is, according to

³⁵⁶ Interview with Key Informant 2 (Hanoi, Vietnam, 7th of November 2014).

³⁵⁷ Lisa Drummond, ‘The Modern “Vietnamese Woman”: Socialization and Women’s Magazines’ in Lisa Drummond and Helle Rydström, *Gender Practices in Contemporary Vietnam* (NIAS Press 2004), p. 160.

³⁵⁸ Drummond, 2004, p. 165.

³⁵⁹ Tine Gammeltoft, *Women’s Bodies, Women’s Worries* (Curzon Press 1999), p. 10; Drummond, 2004, p. 160.

³⁶⁰ Drummond, 2004, p. 162.

³⁶¹ *Ibid.*, p. 166.

³⁶² Population Ordinance, adopted by the National Assembly 9th of January 2003, No. 06/2003/PL-UBTVQH11.

Article 5 of the Ordinance, the responsibility of the State and its State agents. As an example, the mass organisation the Fatherland Front is specially assigned to assist the implementation of the Ordinance, see Article 6. Mobilisation campaigns as a method for the implementation of the family planning policy is stipulated under the Population Ordinance. Article 27 of the Population Ordinance prescribes the ‘Socialization of the population work’. This provision establishes an obligation of the State to ‘socialize the population work by mobilizing all agencies, organizations and individuals to actively take part therein’, see Article 27 of the Population Ordinance. According to Article 3 of the 2003 Decree,³⁶³ each State agency is responsible for the implementation of the population work within the scope of its respective field of work. In addition, the 2003 Decree emphasises the implementation of the family planning policy through mobilisation campaigns. Article 5(a) of the 2003 Decree stipulates that for the creation of conditions for individuals and family members to implement the family planning policy, the State agents shall propagate and campaign to provide the population with information on the policy.

The mobilisation campaigns are initiated by the State, and in general formulated and implemented on grass-root level by the mass organisations, e.g. the Fatherland Front, the Women’s Union and the Youth Association. The mass organisations were originally founded for the cause of wartime mobilisation. After the reunification in 1976, the organisations were ‘repurposed’ to fulfil new economic and political duties.³⁶⁴ The work of the mass organisations is built on collective action taken at grass-root level. However, the organisations are overseen by the Communist Party of Vietnam. Hence, the mass organisations are top-down managed and serve as ‘intermediary institutions’ between the State and the citizens.³⁶⁵ Since the 1970s, the work of the mass organisations has gradually turned to focus more on the household and the family, with the aim to support development programmes within their respective field.³⁶⁶ Mobilisation for the cause of family planning has been – and remains – on the agenda of both the Women’s Union and the Fatherland Front. Campaigns promoting family planning are, according to Drummond, possibly, the most widespread out of all the mobilisation campaigns in Vietnam.³⁶⁷ Up until today, the mobilisation efforts have been successful in achieving close to universal awareness about the family planning policy among the Vietnamese population.³⁶⁸

³⁶³ Decree of September 16 2003 Detailing and Guiding the Implementation of a Number of Articles of the Population Ordinance, adopted by the Government on the 16th of September, No. 104/2003/ND-CP.

³⁶⁴ Ashley Pettus, *Between Sacrifice and Desire: National Identity and the Governing of Femininity in Vietnam* (Routledge 2003), p. 108; Drummond, 2004, p. 165.

³⁶⁵ Gabi Waibel and Sarah Glück, ‘More Than 13 Million: Mass Mobilisation and Gender Politics in Vietnam Women’s Union’ (2013) Vol. 21(2) *Gender & Development* 343, pp. 343-344.

³⁶⁶ Jayne Werner, *Gender, Household and State in Post-Revolutionary Vietnam* (Routledge 2009), p. 58.

³⁶⁷ Drummond, 2004, p. 165.

³⁶⁸ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

5.3.2 The Cultured and Happy Family: The Role of the Woman

Two of the major mobilisation campaigns promoting the observance of the family planning policy are the ‘*Cultured Family Campaign*’ and the ‘*Civilised and Happy Families Campaign*’. The Cultured Family Campaign was initiated by the Fatherland Front³⁶⁹ in the 1960’s, and forms part of a broader mobilisation campaign titled the ‘*Civilised Way of Life Campaign*’.³⁷⁰ As a ‘branch’ to the Civilised Way of Life Campaign and the Cultured Family Campaign, the Women’s Union³⁷¹ initiated the movement for ‘Civilised and Happy Families’ in the mid-1990s.³⁷²

To fully understand the implications of these campaigns, one must keep in mind the political and economic context in which the family planning policies have evolved. As elaborated on in chapter 3, in the early days of the socialist revolution in Vietnam, the focus of the State was to diminish the social and economic importance of the family in society. This strategy was adopted in a political climate aspiring towards a reconstruction of society, connecting the individual to the socialist collective, rather than to the family.³⁷³ With the adoption of the *Doi Moi* reforms, the political and economic situation of Vietnam transformed. While the revolutionary socialist State of Vietnam had an interest to minimise the role of the family in the life of the individual; in the political climate of the *Doi Moi* State it was considered essential that the family presented a strong unit, economically as well as socially. The adoption of the *Doi Moi* reforms marked the abandonment of a flawed centrally planned economy. As discussed above, the solution found was an economic renovation based on ‘market socialism’.³⁷⁴ The liberal reforms were implemented as a solution to the economic problems of the State, but created an ‘ideological vacuum’ as a side effect. As described by Werner, following the initiation of the *Doi Moi*, the Vietnamese State initiated a ‘revitalisation’ of the traditional Vietnamese culture, in an attempt to replace the position held by the socialist ideology since the mid-twentieth century, without diminishing the power of the Communist Party of Vietnam.³⁷⁵ The Party consciously strove towards connecting the political goals of development to a strengthening of national tradition and culture. Political efforts for national development explicitly connected the building of productive households to the reinforcement of the traditional family ideal and the domestic talents of

³⁶⁹ For information about the Vietnam Fatherland Front visit: www.matttran.org.vn/ last accessed 4th of January 2015.

³⁷⁰ Drummond, 2004, p. 163; Interview with Key Informant 4 (Hanoi, Vietnam, 12th of November 2014).

³⁷¹ For information about the Vietnam Women’s Union visit: <http://hoilhpn.org.vn/?Lang=EN> last accessed 4th of January.

³⁷² Werner, 2009, p. 59.

³⁷³ Drummond, 2004, p. 163.

³⁷⁴ See Section 3.4.4.

³⁷⁵ Werner, 2009, p. 63. See also Pettus, 2003, pp. 88-89.

women.³⁷⁶ Also Pettus has reflected upon the political implications of the implementation of a liberal economic renovation in Vietnam:

How, for instance, do the surviving communist states use narratives of the nation to mitigate the contradictions between an old form of government and a new form of economy in the transition from socialism and capitalism? Which social groups and human qualities are prized and which are denigrated in the promotion of a national community based on cultural tradition, economic growth and political continuity? In Vietnam, the answers to these questions reside in the particular uses and abuses of the Vietnamese woman as a repository for the perceived losses and a vehicle for the cultural aspirations of national modernity.³⁷⁷

This change in the political climate can also be witnessed in the focus of the work of the mass organisations, and the implementation of the mobilisation campaigns.³⁷⁸ As stated above, it was in this political climate that the State of Vietnam adopted a more extensive family planning policy.³⁷⁹ In order to meet the needs of a changing socioeconomic situation and family planning policy, the characteristics of the Cultured Family Campaign have been continuously altered under the direction of the Communist Party of Vietnam.³⁸⁰ Firstly, family planning has been an aspect of the campaign since the initiation, but has come to gain more attention and is today one of the primary campaign goals.³⁸¹ By promoting the building of harmonious, happy and progressive families with few children, the Cultured Family Campaign reinforces the family ideal with one or two children established in the current family planning policy of Vietnam.³⁸² Concurrently, the goals of the movement for ‘Civilised and Happy Families’ much resemble the ones of the Cultured Family Campaign; the promotion of family planning and the building of happy families.³⁸³

Both the Cultured Family Campaign and the Civilised and Happy Families Campaign are of relevance in relation to the Vietnamese family planning policies’ effects on discrimination against women. Through these campaigns a certain ideal of the family – including the role of the woman as a member of the family – is being promoted by the State and its mass organisations. Both campaigns embody the shift in focus of the Vietnamese State, from focusing on the individual in relation to the socialist collective, to focusing on the family in relation to the socialist collective – and the individual as a member of the family unit.³⁸⁴ Furthermore, the two campaigns also incarnate the transformation of the Vietnamese family planning policy, from focusing on fertility reduction to emphasising the quality of the population.

³⁷⁶ Pettus, 2003, pp. 4-5.

³⁷⁷ *Ibid.*, p. 6.

³⁷⁸ Pettus, 2003, pp. 80 and 82.

³⁷⁹ See Section 3.4.4.

³⁸⁰ Drummond, 2004, p. 163.

³⁸¹ *Ibid.*, pp. 164-165.

³⁸² *Ibid.*, p. 165.

³⁸³ Werner, 2009, p. 59.

³⁸⁴ Drummond, 2004, p. 166-167.

Although small family size remains one of the goals of the campaigns, calls for cultured, happy and harmonious families is now the primary focus.³⁸⁵

In the current political and economic climate, the traditional Vietnamese culture of collectivism and strong family bonds serves as a suitable ideal for the goals of the State.³⁸⁶ According to the findings of research conducted by Drummond, the shift in the focus of contemporary campaigns, has allowed the State to put emphasis on the woman as a family member, focusing on the nurturing and caregiving responsibilities of the woman.³⁸⁷ This female ideal fits readily in with the new demands on the family following the implementation of the *Doi Moi* reforms. As State services are continuously transformed into ‘user-pay services’, the female ideal propagated is once again the nurturing mother – guardian of harmony within the family. The domestic role of the woman is once again reintroduced as the role women are ‘naturally’ destined to fulfil.³⁸⁸ By reproducing the narratives of the Communist Party of Vietnam in revitalising Vietnamese tradition and culture, the Cultured Family Campaign and the Civilised and Happy Families Campaign contribute to the reintroduction of the traditional family roles of the woman, in which reproduction is emphasised over production.³⁸⁹ Through this shift, a neo-traditional Confucian ideal of femininity has re-emerged, subscribing to a female ideal more resembling the pre-revolutionary ideal, than that of the socialist revolution.³⁹⁰

The family role of the woman is an essential component in the reinforcement of the traditional family ideal. This transition in the State discourse on femininity can be witnessed in both the formulation of the family planning policy and the implementation of the mobilisation campaigns.³⁹¹ To start with the articulation of the family planning policy, the transition of the policy from the promotion of the nuclear family to encourage the traditional intergenerational household, presents complications to equality between family members.³⁹² As described by Ngo Thi Ngan Binh, patrilocality and the Confucian traditions of intergenerational households serve to maintain the traditional gender-biased roles between household members.³⁹³ This is further supported by research conducted by the UNFPA. When the wife moves in to live with the husband’s family after marriage, she is placed in a vulnerable position

³⁸⁵ Ann Marie Leshkovich, ‘Standardised Forms of Vietnamese Selfhood: An Ethnographic Genealogy of Documentation’ (2014) Vol. 41(1) *American Ethnologist* 143, p. 153.

³⁸⁶ Drummond, 2004, p. 166-167.

³⁸⁷ *Ibid.*, 160.

³⁸⁸ *Ibid.*, 167.

³⁸⁹ *Ibid.*, p. 176.

³⁹⁰ *Ibid.*, 167.

³⁹¹ Werner, 2009, p. 63.

³⁹² Compare Article 24 of the Population Ordinance and Bélanger and Barbieri, ‘Introduction; State, Families, and the Making of Transitions in Vietnam’ in Danièle Bélanger and Magali Barbieri (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009), p. 13-14.

³⁹³ Ngo Thi Ngan Binh, ‘The Confucian Four Feminine Virtues (*Tu Doc*): The Old Versus the New’ in Lisa Drummond and Helle Rydström, *Gender Practices in Contemporary Vietnam* (NIAS Press 2004), p. 65.

within the household. To be accepted into the new family she needs to prove her worth through hard work and being well-behaved. As discussed above, to have a son is crucial in order for a woman to secure her position within her new family.³⁹⁴

With regard to the family planning campaigns, due to their special connection to the family, women have been the primary target of the implementation of such campaigns.³⁹⁵ The efforts targeting women can, for example, be witnessed in the work of the Women's Union and the implementation of the Civilised and Happy Families Campaign. Firstly, the family unit – rather than the individual – is to a large extent the focus of the work of the Women's Union. Such approach further solidifies the family as the fundamental social affiliation of women.³⁹⁶ The 'happy family paradigm' of the Union propagates the ideal of a prosperous, equal and progressive family unit. 'Progressive', in this context, is understood as a family practising family planning, educating their children, as well as preserving 'cultural habits and customs of Vietnamese families'.³⁹⁷ Small family size, in line with the family planning policy, remains one of the main fields of activity for the promotion of the progressive family.³⁹⁸ By limiting the number of births, a woman can successfully fulfil her role as mother and wife.³⁹⁹ Although the Women's Union consistently works towards the empowerment of women, the work of the Union remains female-centred. In practice, the responsibility to create a happy family unit is conceptualised as the duty of women.⁴⁰⁰ In reiterating the happy family ideal promoted by the Communist Party of Vietnam, the Union reinforces traditional gender roles and fails to address power structures hampering the achievement of gender equality within the family.⁴⁰¹ To give one example, as part of the efforts of the Women's Union against domestic violence, the Union engages in prevention, support of victims and 'reconciliation programmes'. The reconciliation programmes are offered to victims of domestic violence with the aim to 'heal the family happiness'. As the main guarantor of the maintenance of a harmonious, happy family, female victims of domestic violence are put in a situation centring the 'healing' responsibility on the victim, rather than on the perpetrator.⁴⁰²

Another interesting example is the intersection between the Cultured Family Campaign and State efforts to position the family as a 'guardian' against the influence of so-called 'social evils'.⁴⁰³ Out of fear of the moral

³⁹⁴ UNFPA (2011a), p. 33.

³⁹⁵ Pettus, 2003, p. 82; Werner, 2009, p. 59.

³⁹⁶ Pettus, 2003, p. 85.

³⁹⁷ Waibel and Glück, 2013, p. 356.

³⁹⁸ Ibid.

³⁹⁹ Pettus, 2003, p. 85.

⁴⁰⁰ Waibel and Glück, 2013, p. 356.

⁴⁰¹ Pettus, 2003, p. 91; Waibel and Glück, 2013, pp. 356-357.

⁴⁰² Waibel and Glück, 2013, p. 356.

⁴⁰³ Examples of 'social evils' are prostitution, drugs and pornographic videos; see Thu Huong Nguyen-Vo, 'Governing Sex: Medicine and Governmental Intervention in Prostitution' in Jayne Werner and Danièle Bélanger (eds.), *Gender, Household, State: Doi*

consequences of the introduction of the *Doi Moi* reforms, the State adopted a new strategy – embedded in the family planning policies – to strengthen the family as a counterweight to potential negative influences from the West following the market reform.⁴⁰⁴ The Cultured Family presents a good example of the aspiration to strengthen the family unit to resist the social evils and maintain the ‘pure’ Vietnamese culture. Also the efforts to eliminate social evils were focused towards women, due to their special link to the family.⁴⁰⁵ As part of the mobilisation efforts against social evils, publishing houses belonging to the mass organisations and provincial government units published extensive material on the life of a cultured family, e.g. books and manuals about proper gender roles, dating, happy families and sex.⁴⁰⁶ A substantial proportion of this material has been published in the form of ‘sex-education manuals’ targeting women. The manuals are often written by medical professionals and focus on what is considered as ‘normal’ sexual behaviour.⁴⁰⁷ Through such publications, women are educated on ‘the subtleties of companionate marriage and sexual techniques.’⁴⁰⁸ In her research, Nguyen-Vo, argues that this dedication to the sexual education of women, forms part of the efforts of the Communist Party of Vietnam to combat prostitution by targeting the wives of potential sex buyers, and thereby transfer the erotic activities of the marketplace into the realm of the conjugal union.⁴⁰⁹ This campaign is yet another example of the State strategy of policies targeting women with the aim to create social stability through the maintenance of the cultured and happy Vietnamese family.

5.3.3 Enforcement of the Family Planning Policy

Several of the Key Informants described difficulties with law enforcement within the Vietnamese legal system.⁴¹⁰ Enforcement is a problem also in relation to the enforcement of the family planning policy and the Population Ordinance. One such example is inconsistency in implementation. All ten Key Informants described the current family planning policy as a non-coercive policy, merely encouraging families to practice family planning and maintain small family size. However, as the overview of the Vietnamese legislation on the family planning shows, the law does in fact stipulate a maximum number of one to two children per couple under the Population Ordinance; see amendments to Article 10 of the Ordinance. Such regulation inevitably restricts the reproductive autonomy of the individual. One can only assume that what the Key Informants referred to is the situation that – in practice – the one-or-two-child policy is not enforced. The

Moi in Viet Nam (Cornell Southeast Asia Program Publications 2002), p. 129; Werner, 2009, p. 75.

⁴⁰⁴ Pettus, 2003, pp. 88-89; Werner, 2009, p. 75.

⁴⁰⁵ See for example Pettus, 2003, pp. 82 and 88-89; Werner, Jayne, 2009, pp. 46, 63 and 75.

⁴⁰⁶ Nguyen-Vo, 2002, p. 144.

⁴⁰⁷ *Ibid.*, pp. 144-145.

⁴⁰⁸ Leshkovich, 2014, p. 153.

⁴⁰⁹ Nguyen-Vo, 2002, p. 145. See also Pettus, 2003, pp. 99-100.

⁴¹⁰ For example Key Informant 1 and Key Informant 7.

policy has therefore come to be described by scholars as strict in goals, but uneven in implementation.⁴¹¹ It appears the policy is only enforced in relation to Party members. Since members of the Communist Party of Vietnam shall be role models to the general population, actions are taken against Party Members not abiding to the family planning policies. Such actions are initiated within the Party, and consist mainly of job penalties such as fixation of salary level for a defined time period or being passed over for a promotion opportunity. The prevalence and gravity of such measures are hard to assess, as it is administrated within the Party, and not through, for example, administrative sanctions initiated by the local authorities.⁴¹² In relation to the general population, the mobilisation campaigns appear to be the main method applied for the implementation of the family planning policy.⁴¹³

One acutely problematic aspect of the inconsistency in the implementation of the provisions under the Population Ordinance is the enforcement of the prohibition on sex-selective abortions and prenatal sex determination. Both determination of the sex of a foetus, and sex-selective abortions are prohibited under Vietnamese law, see Article 7 of the Population Ordinance. However, in practice these regulations are not enforced.⁴¹⁴ For practical reasons, it is very difficult to detect an abortion for sex-selective purposes, and the enforcement mechanism of this provision is weak.⁴¹⁵ Several of the Key Informants highlighted the activities of the private health care providers in this regard, and the difficulty to supervise the practices in the private institutions.⁴¹⁶ As an example, there is no statistical data available on the number of abortions performed in the private health care sector. Such situation makes it nearly impossible to supervise and enforce the legislation in relation to these institutions.⁴¹⁷ It appears to be the general opinion that money is more attractive to health care staff, than to abide to the regulations prohibiting prenatal sex-determination and sex-selective abortions.⁴¹⁸ However, it is hard to draw any definite conclusions. Due to the decentralisation of the health care sector following the *Doi Moi*, today, the State has no control over the number of clinics offering ultrasonography services, or control over the quality of the ultrasound scanners used.⁴¹⁹

Also the public health care sector is a problematic actor in relation to the prevalence of prenatal sex selection. In relation to the public health care

⁴¹¹ See for example Bélanger, Khuat, Liu, Le and Pham, 2003, p. 233.

⁴¹² Interview with Key Informant 8 (Hanoi, Vietnam, 20th of November 2014). Compare the earlier implementation of the Vietnamese family planning policy described in Section 3.4.

⁴¹³ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

⁴¹⁴ UNFPA (2010), p. 47; Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014); Interview with Key Informant 8 (Hanoi, Vietnam, 20th of November 2014).

⁴¹⁵ UNFPA (2010), p. 47; UNFPA (2011a), p. 45.

⁴¹⁶ This information is further supported by the research conducted by the UNFPA, see UNFPA (2011a), pp. 46-47.

⁴¹⁷ Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

⁴¹⁸ UNFPA (2011a), p. 41; Interview with Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

⁴¹⁹ UNFPA (2011a), p. 46.

sector, statistics exist, but are inadequate as basic data for a feasible evaluation of the prevalence of prenatal sex selection in Vietnam.⁴²⁰ The demand for ultrasound services in Vietnam is very high, and many to-be parents are eager to find out the sex of their future children.⁴²¹ In the competition with private health providers, public institutions have taken action in order to not lose their clientele. One such example is the practice of ‘socialisation’. The public health care sector is run on a tight budget, and often the allocated funds do not allow for the purchase of an ultrasound scanner. To meet the high demand for ultrasound services and compete with the private clinics, public health care workers have developed the system of ‘socialisation’ of ultrasound scanners. ‘*Socialisation*’ in this context refers to a procedure in which State-owned clinics borrow money from their staff to expand their services. In practice this means that a large proportion of the ultrasound scanners utilised in the public health care sectors are ‘socialised’ – i.e. owned by private individuals working at the hospital – and the profits of the ultrasound services are divided between the clinic and the employees who have paid for the purchase of the scanner.⁴²²

5.4 Conclusion

To sum up, the tradition of son preference is deeply rooted in Vietnamese society, and remains a powerful social force in present-day society. The cause of son preference is the predominant gender-biased kinship system in Vietnam, valuing male family members higher than female members. By extension, these social constructions lead to practical implications reinforcing son preference, such as the role of the son in the old-age support of parents. Whereas the presence of son preference is well-established in Vietnamese society, the imbalanced SRB is a newly surfaced expression of gender bias. It is difficult to pinpoint the exact events triggering the currently rising abnormal SRB levels in Vietnam. What can be concluded is that all three preconditions causing a skewed SRB level established by Guilimoto – son preference, low fertility and availability of modern technology for prenatal sex selection – are present, and seem to have simultaneously caused the surfacing of the SRB imbalance in Vietnamese society.

All three preconditions can be connected to the formulation and implementation of the Vietnamese family planning policy. The continuance of the promotion of small family size as part of the Vietnamese family planning policy is in general considered as the driving force behind the decline in the total fertility level in Vietnam since the 1960s. Today, the ideal of small family size seems to have been internalised into the Vietnamese ideal notion of family. The implementation of the *Doi Moi* reforms, and the surfacing of a private health care sector, in combination with the deficits in the enforcement of the legal prohibitions on foetal sex determination and sex-selective abortion, has resulted in a widespread

⁴²⁰ UNFPA (2010), p. 47.

⁴²¹ UNFPA (2011a), pp. 47-48.

⁴²² *Ibid.*, pp. 46-47.

availability of the technology necessary for the performance of prenatal sex selection. The research conducted by the UNFPA describes a health care sector which has given in to the market forces and the public demands of prenatal sex determination. In combination with a weak enforcement mechanism of the ban on sex-selective abortions, this situation has led to devastating consequences. In this regard, the currently rising SRB imbalance in Vietnam speaks its own clear language. There is therefore a clear correlation between the formulation and implementation of the family planning policy and the second and the third preconditions established by Guilimoto.

As the predominant precondition underlying an imbalanced SRB, son preference is the main drive behind the practice of prenatal sex selection. As part of the family planning policy, the State promotes cultured and happy families through mobilisation campaigns, such as the Cultured Family Campaign and the Civilised and Happy Families Campaign. In part, the family ideal promoted through these campaigns promotes equality between the sexes and the aspirations of improvement of the quality of the population set out in the Population Ordinance. However, contrary to this progressive ideal, the campaigns also promote the traditional gender role of the woman. Through the revitalisation of what is labelled as Vietnamese 'tradition' and 'cultural values', the State once again reinforces the gender-biased social structures underlying the prevalence of son preference.

6 Analysis and Concluding Remarks

In conclusion, Vietnamese society is profoundly based on a social order stipulating superiority of men over women. Patriarchal structures have long been present in Vietnamese society, and are in general attributed to the influence of Confucian ideology. This gender-biased hierarchy is evident in all areas of society, but more acutely so within the realm of the family. Even though traditional structures within the family persist, the social and political climate of Vietnam has drastically altered the life of Vietnamese families over the past century. The Vietnamese population has endured war, experienced a socialist revolution, and, most recently, the introduction of the *Doi Moi* reforms. The recent implementation of reforms of ‘market socialism’ has once again redirected Vietnamese society, and the premises for the relationship between State and individual. It is in this political and social climate that the Vietnamese family planning policy has evolved.

Considering the evolution of family planning policies in the global context, the evolution of the Vietnamese family planning has followed the general evolution. It has gone from a policy with a clear focus on fertility reduction, to a policy also considering objectives such as the health of the population – including reproductive health – and the right of the individual to exercise family planning. The family planning policy of today is best described as a merge of the three generations of policies, motivated by all three rationales for the implementation of a family planning policy. Vietnam has been persistent in the implementation of a national family planning policy, and achievements shall be acknowledged. As an example, the rise in the use of contraceptives amongst the population, and the subsequent decline in fertility rates, have contributed to improvements in maternal health as well as the health of the family as a whole. However, with regard to certain aspects of the implementation of the policy, in present and in past, a number of concerns can be raised.

The focus of this thesis is not a rule-of-law based analysis of the regulation of the Vietnamese family planning policy. However, I feel compelled to highlight a number of legislative issues. The family planning policy impacts the very core of the relationship between the State and the individual, and affects the enjoyment of the human rights of the individual. It is therefore of utmost importance that such regulation is implemented in a manner respecting human rights and basic conditions of rule of law. The current legal regulation of the family planning policy is fragmented and contains provisions which are contradictory. As described above, neither the one-or-two-child policy, nor the prohibition on prenatal sex selection is enforced. The implementation of the policy is inconsistent throughout the country, and to a large extent left in the hands of the mass organisations and local authorities to implement the policy at their own discretion. Without taking a stand on the suitability of the provisions contained in the family planning policy, from a rule of law point of view, the regulation is intrinsically

flawed. The drafting process of a Law on Population is therefore much welcome, as such law could not merely remedy the issue of the constitutionality of the regulation, but also address issues such as fragmentation and foreseeability of the law.

In relation to the focal point of discrimination against women underlying this thesis, recent events affecting the formulation and implementation of the family planning policies are problematic in relation to the international obligations of Vietnam under the CEDAW. The specific cultural premises present in Vietnam, calls for caution and reflection with regard to policies such as the family planning policy. As a policy dealing with the roles of family members, in a society where family life tends to be constructed on a gender-biased ground, any policy regulating the relationship between the State and the family needs to consider this precondition. It is precisely this type of considerations, which are called for under the Convention, see for example Articles 2(f) and 5(a).

The implementation of the *Doi Moi* reforms in the late 1980s has altered Vietnamese society profoundly. The reforms have opened up the country to the international community, and have led the country to a rapid development over the past thirty years. However, in relation to the implementation of the family planning policy and the role of women in society, the reforms have also given rise to a number of issues. In a political context where the State sees benefit in the family unit taking over social and economic functions, the power balance between women and men has once again been altered. Paradoxically, along with the implementation of liberal market reforms, family policies based on conservative Vietnamese traditional and cultural 'values' have re-emerged.

This transformation is perhaps most evident in the formulation and the implementation of the current family planning policy. Whereas gender equality still is a topic of priority on the agenda of the State, the State policies have currently adopted an ambivalent nature. Equality between women and men is professed in the Constitution, the Law on Gender Equality and the Population Ordinance, but the implementation of the current family planning purports a profoundly gender-stereotyped image of women. Through the mass mobilisation campaigns, a female ideal deemed 'feudal' in the early days of the socialist revolution, has been revitalised and repackaged as part of the national Vietnamese tradition. In a young nation such as Vietnam, calls for the preservation of the 'national' culture easily find a willing ear amongst the population. In relation to women, unfortunately, such cultural rebirth results in an acute risk for discrimination.

The recent surfacing of expressions of son preference indicates such trend. An imbalanced SRB level is one of the most evident expressions of social structures valuing men higher than women. The intersections between the formulation and implementation of the family planning policies and currently increasing SRB imbalance, is threefold. The State of Vietnam has

for long promoted small family size in a social context where a son is a must. As a consequence of years of implementation of a family planning policy focused on fertility reduction, the Vietnamese State has succeeded in altering the ideal notion regarding family size. It seems, however, that the efforts to promote gender equality within the family have not been as well received. Furthermore, a continuous commitment to the development and improvement of the reproductive health of the population, has introduced new technology for prenatal monitoring into the Vietnamese health care system. Reduction of high fertility levels and investments in the reproductive health of the population present a positive development with regard to a number of human rights of the individual, for example the right to family planning and the right to the highest attainable standard of health. However, in the particular context of Vietnam, due to the persistence of son preference, such development has contributed to an abnormal SRB. With this in mind, which are the State obligations of Vietnam under international human rights law with regard to the family ideal promoted by the State and the prevalence of son preference?

As a State Party to the CEDAW, as well as the UN Covenants, Vietnam has an internationally binding obligation of non-discrimination. The CEDAW sets limits for how State policies may be implemented. Both Articles 2 and 5 CEDAW establish internationally binding State obligations for States Parties to combat gender stereotypes in society as a whole, including within the family. Such international obligations have a number of implications in relation to the formulation and implementation of a family planning policy. In accordance with the State obligations under Article 5 CEDAW, the State has a responsibility to encourage shared family responsibilities; not to reinforce traditional social orders, assigning one gender the task of maintaining harmony within the family and to create happy and cultured families. In my opinion, the nurturing ideal femininity of the *Doi Moi* State resembles more of a construction of gender equity, than gender equality. The family ideal promoted by the State through the Cultured Family Campaign and the Civilised and Happy Families Campaign does not accord with the obligations of Vietnam to eliminate discrimination against women. On the contrary, the campaigns reinforce the gender-biased social structures causing son preference.

As concluded above, there is a correlation between the formulation and implementation of the Vietnamese family planning policy and the prevalence of son preference. The newly surfaced imbalance in the SRB level serves as an example of how the family planning policy has affected the present-day expressions of son preference. In order for Vietnam to fulfil its obligations under Articles 2 and 5 CEDAW, action must be taken to ensure the enforceability of the provisions in the Population Ordinance adopted to protect women from discrimination. This includes enforcement of the legal prohibitions on prenatal sex determination and prenatal sex selection.

The current development of an imbalanced SRB level is also problematic with regard to a number of other provisions under the CEDAW. As an example, the practice of prenatal sex selection contributes to women having (repeat) late-term abortions. Such development is detrimental to the health of women, and does not accord with the State obligations under Article 12 CEDAW. Coercion by other family members in relation to the reproductive autonomy of women, described in the research conducted by the UNFPA, present a threat to the human rights of the individual. In accordance with the *due diligence* obligations of Vietnam under Article 16(e) CEDAW, action must be taken against such practices.

To conclude, the current implementation of the Vietnamese family planning policy does not accord with the State obligations of Vietnam under the CEDAW. The core obligations set out in Articles 1-5 CEDAW stipulate a responsibility of the State to combat gendered social structures and ensure the enforceability of provisions of non-discrimination under the domestic legal system. The current implementation of the family planning policy reinforces gendered structures detrimental to the enjoyment of the human rights of women, and turns a blind eye to the practices of prenatal sex selection performed by a profit driven health care sector. In order to comply with the State obligations under the CEDAW, Vietnam must take action against the practices of prenatal sex selection and refrain from the reproduction of gender-biased stereotype through the mobilisations campaigns.

Supplement A

Selected parts of international treaties, UN General Assembly resolutions and Vietnamese legislation:

International Treaties and Resolutions

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation,

to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work

responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Report of the International Conference on Population and Development, adopted at the International Conference on Population and Development in Cairo (UN Doc. A/CONF.171/13)

7.3. Bearing in mind the above definition, reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights

documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning. As part of their commitment, full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality. Reproductive health eludes many of the world's people because of such factors as: inadequate levels of knowledge about human sexuality and inappropriate or poor-quality reproductive health information and services; the prevalence of high-risk sexual behaviour; discriminatory social practices; negative attitudes towards women and girls; and the limited power many women and girls have over their sexual and reproductive lives. Adolescents are particularly vulnerable because of their lack of information and access to relevant services in most countries. Older women and men have distinct reproductive and sexual health issues which are often inadequately addressed.

Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women in Beijing (UN Doc. A/CONF.177/20)

94. Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition is the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant. In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases.

95. Bearing in mind the above definition, reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing

of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning. As part of their commitment, full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality. Reproductive health eludes many of the world's people because of such factors as: inadequate levels of knowledge about human sexuality and inappropriate or poor-quality reproductive health information and services; the prevalence of high-risk sexual behaviour; discriminatory social practices; negative attitudes towards women and girls; and the limited power many women and girls have over their sexual and reproductive lives. Adolescents are particularly vulnerable because of their lack of information and access to relevant services in most countries. Older women and men have distinct reproductive and sexual health issues which are often inadequately addressed.

96. The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.

259. The Convention on the Rights of the Child recognizes that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or status" (art. 2, para. 1). However, in many countries available indicators show that the girl child is discriminated against from the earliest stages of life, through her childhood and into adulthood. In some areas of the world, men outnumber women by 5 in every 100. The reasons for the discrepancy include, among other things, harmful attitudes and practices, such as female genital mutilation, son preference - which results in female infanticide and prenatal sex selection - early marriage, including child marriage, violence against women, sexual exploitation, sexual abuse, discrimination against girls in food allocation and other practices related to health and well-being. As a result, fewer girls than boys survive into adulthood.

Vietnamese Legislation

2013 Constitution of the Socialist Republic of Vietnam⁴²³

Preamble

Throughout the millennia of their history, the Vietnamese people have worked hard and creatively and fought valiantly to build and safeguard their country, in the course of which the nation's tradition of unity, humanity and of staunch and indomitable struggle has been forged and its cultural heritage built and nurtured.

Since 1930, under the leadership of the Communist Party of Vietnam created and trained by President Ho Chi Minh, the people have undertaken a protracted, arduous and sacrificing struggle for the independence and freedom of the nation and happiness of the people. Upon the success of the August Revolution, on 2nd September 1945, President Ho Chi Minh read the Declaration of Independence, founding the Democratic Republic of Vietnam, now the Socialist Republic of Vietnam. With the will and strength of the entire nation, assisted by friends and people across the world, our People have achieved glorious victories in the struggles for national liberation, unification of the country, defence of the Homeland and performance of international duties, and made great achievements of historical significance in the course of renovation and leading the country to socialism.

Institutionalising the political program for national construction during the transitional period to socialism, inheriting the 1946 Constitution, the 1959 Constitution, the 1980 Constitution and the 1992 Constitution, the Vietnamese People build up, enforce and protect this Constitution for the targets of building a prosperous life for its people, a strong country and an equitable, democratic and civilised society.

Article 1: Description of Socialist Republic of Vietnam

The Socialist Republic of Vietnam is an independent, sovereign and united country, which in its territorial integrity comprises its mainland, off-shore islands, airspace and territorial waters.

Article 2: Description of Socialist Rule of Law and State Power

1. The State of the Socialist Republic of Vietnam is a socialist rule of law State of the People, by the People, for the People.
2. The People are the masters of the Socialist Republic of Vietnam; all State power belongs to the People whose foundation is the alliance between the working class and the peasantry and the intelligentsia.

⁴²³ English translation retrieved from Vietnam Laws Online, database available at <http://www.vietnamlaws.com/>.

3. State power is unity with delegation of power to, and co-ordination and control among State agencies in exercising legislative, executive and judicial rights.

Article 3: Role of the State

The State ensures and fosters the People's rights as masters; recognizes, respects, protects and ensures human rights and citizen's rights; realises the targets of building a prosperous life for its people, a strong country and an equitable, democratic and civilised society where everyone has well-being, freedom and happiness as well as conditions for their all-round development.

Article 4: Role of the Communist Party of Vietnam

1. The Communist Party of Vietnam, the Vanguard of the working class, also the vanguard of the working people and the Vietnamese nation, and loyal representative of the interests of the working class, the working people and the entire nation, which uses Marxism-Leninism and Ho Chi Minh's ideology as its fundamental ideology, is the force assuming leadership of the State and society.
2. The Communist Party of Vietnam is closely attached to the People, serves the People, is subject to the supervision of the People, and is responsible to the People for its decisions.
3. All organisations of the Party and members of the Communist Party of Vietnam operate within the framework of the Constitution and law.

Article 8: Centralized State, and Role of State Agencies and State Officials

1. The State is organised and operates in accordance with the Constitution and with law, manages society via the Constitution and law, and exercises the principle of democratic centralism.
2. All State agencies and State officials and [State]1 employees must respect the People, serve the People with utmost dedication, maintain close ties with the People, listen to the opinions of the People and accept their supervision; and resolutely combat corruption, mis-spending and all manifestations of bureaucracy, arrogance and authoritarianism.

Article 12: Policies of Socialist Republic of Vietnam

The Socialist Republic of Vietnam consistently implements policies of independent external relations, autonomy, peace, friendship, cooperation and development; multi-lateralization and diversification of relations, takes the initiative in active integration and international cooperation on the basis of respect for one another's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, equality and mutual benefit; complies with the United Nations Charter and international treaties of which it is a member; is a friend, reliable partner and responsible member in the international community for the interests of the country and the nation, and contributes to the cause of peace, national independence, democracy and social progress in the world.

Article 14: Human Rights and Citizens' Rights

1. In the Socialist Republic of Vietnam, human rights and citizens' rights in political, civic, economic, cultural and social aspects are recognised, respected, protected and ensured in accordance with the Constitution and law.

2. Human rights and citizens' rights may only be limited in accordance with law in necessary cases for reasons of national defence, national security, social safety and order, social ethics or public health.

Article 15: Citizens' Rights and Obligations

1. The rights of citizens are inseparable from their obligations.

2. Everyone has the obligation to respect others' rights.

3. Citizens are responsible for fulfilling their obligations towards the State and society.

4. The exercise of human rights and citizen's rights must not infringe on the interests of the country, interests of the nation, or legitimate rights and interests of other people.

Article 16: Equality and Non-Discriminatory Treatment

1. Everyone is equal before the law.

2. No one is subject to discriminatory treatment in political, civic, economic, cultural and social life.

Article 17: Vietnamese Citizenship

1. Citizens of the Socialist Republic of Vietnam are persons enjoying Vietnamese nationality.

2. Citizens of Vietnam may not be deported or given up to another State.

3. Vietnamese citizens abroad are protected by the State of the Socialist Republic of Vietnam.

Article 18: Vietnamese Residing Overseas

1. Vietnamese residing abroad [overseas] form an integral part of the Vietnamese population community.

2. The State of the Socialist Republic of Vietnam encourages and creates favourable conditions for Vietnamese residing abroad to preserve the identity of Vietnamese national culture, to keep close contacts with their families and Homeland, and to contribute to the construction of their native land and country.

Article 19: Right to Live

Everyone has the right to live. Human lives are protected by law. No one may be deprived of their life illegally.

Article 20 Right to Physical Inviolability, Right not to be Arrested, and Right to Donate Human Body Organs

1. Everyone has the right to physical inviolability and to have their health, honour and dignity protected by law; not to suffer from torture, violence, coercion, corporal punishment or any other form of treatment which involves physical violation or violation of health, honour and dignity.

2. No one may be arrested without a decision from the People's Court, or a decision or ratification by the People's Inspectorate except in the case he or she is caught in flagrante delicto [conducting a flagrant offence]. Arrest and detention are provided by law.

3. Everyone has the right to donate tissues, human body organs or their body in accordance with law. Medical, pharmaceutical, scientific experiments or any other form of experiment on a person's body must be consented to by the person subject to the experiment.

Article 21: Right to Privacy and Confidentiality of Information

1. Everyone has the right to inviolability of their private life, personal secrets and family secrets; and has the right to protect his or her own honour and reputation. The safety and confidentiality of information on private life, personal secrets and family secrets of citizens are ensured by law.

2. Everyone has the right to confidentiality of correspondence, telephone, telegraph and other forms of private communications. No one may open, control or seize illegally correspondence, telephone, telegraph and other forms of private communications of other people.

Article 22 Right to Legal Residence

1. Citizens have the right to legal residence.

2. Everyone has the right to inviolability of their place of residence. No one is allowed to enter another person's home without the latter's consent.

3. Searches of places of residence are provided by law.

Article 23: Right to Freedom of Movement

Citizens are entitled to freedom of movement and residence inside the country, and to departure for and return from foreign countries. The law regulates the exercise of these rights.

Article 24 Right to Freedom of Belief and Religion

1. Everyone has the right to freedom of belief and religion, and may practise or not practise any religion. All religions are equal before the law.

2. The State respects and protects the right to freedom of belief and religion.

3. No one has the right to infringe on the freedom of faith and religion or to take advantage of faith or religion to violate the law.

Article 25: Right to Freedom of Speech, Freedom of the Press, Right to Access Information, and Right of Assembly, Association and Demonstration

Citizens are entitled to freedom of speech and freedom of the press; they have the right to access of information and the right of assembly, association and demonstration in accordance with law. The law regulates the exercise of these rights.

Article 26: Male and Female Equality

1. Male and female citizens are equal in all respects. The State has policies to ensure gender equality rights and opportunities.

2. The State, society and family create favourable conditions for women to

develop in all respects and bring into full play their role in the society.
3. Gender discrimination is strictly prohibited.

Article 27: Right to Vote and to Stand for Election

Citizens have the right to vote upon reaching the age of eighteen (18) and stand for election to the National Assembly and the People's Councils upon attaining the age of twenty one (21). The law regulates the exercise of these rights.

Article 28 Participation by the Citizens in Managing the State and Society

1. Citizens have the right to take part in managing the State and society, and in debating and making petitions to State agencies on issues of the entire country or of the locality.
2. The State creates favourable conditions for citizens to take part in managing the State and society; is public [publicly open] and transparent in receiving and responding to opinions and petitions of citizens.

Article 29: Voting in Referenda

Citizens have the right to vote upon reaching the age of eighteen (18) where the State organizes a popular referendum.

Article 30 Right to Lodge Complaints and Denunciations

1. Everyone has the right to lodge with any competent agency, organization or individual a complaint or denunciation regarding transgressions of the law by any agency, organization or individual.
2. Competent agencies, organizations and individuals must receive and deal with complaints and denunciations. Victims are entitled to physical and spiritual compensation and to the rehabilitation of their honour as provided by law.
3. Retaliation against authors of complaints or denunciations and misuse of the right to lodge complaints and denunciations with the aim of slandering and harming others are strictly prohibited.

Article 31: Rights of Accused Persons

1. An accused person shall not be considered guilty until proven to be guilty in accordance with the procedures stipulated by law and a guilty verdict has been reached by the Court and has come into effect
2. An accused person must be tried by the court on a timely, fair and public basis within the deadline stipulated by law. Where there is a closed trial in accordance with law, the verdict must be announced publicly.
3. No one is sentenced twice for one crime.
4. People who are arrested, held in custody, detained, made subject of proceedings, investigated, prosecuted or tried are entitled to be defended either by a lawyer or by some other person.
5. People who are arrested, detained, temporarily detained, made subject of proceedings, investigated, prosecuted, judged or subject to judgement enforcement unlawfully are entitled to physical and spiritual compensation and to rehabilitation of their honour. Anyone who breaches the law on

arrest, detention, investigation, prosecution, trial or judgement enforcement causing loss and damage to other people must be dealt with in accordance with law.

Article 32: Right to Ownership of Assets, and Compulsory Requisition of Assets by the State

1. Everyone has the right to ownership of lawful income, savings, residential housing, personal possessions, means of production, and capital contributions in enterprises or in other economic organisations.
2. The right to private ownership and the right to inheritance are protected by law.
3. Where truly necessary for reasons of national defence or security or for the national interest, emergencies or control of natural disasters, the State compulsorily resumes or requisitions assets of individuals or of organisations with compensation at market prices.

Article 33: Right to Conduct Business

Everyone has the right to conduct business freely in the sectors and industries not prohibited by law.

Article 34: Right to Assurance of Social Security

Citizens have the right to assurance of social security.

Article 35: Right to Work, and the Rights of Employees

1. Citizens have the right to work, and selection of occupation, job and workplace.
2. Paid employees are ensured fair and safe working conditions, and are entitled to a salary and rest times.
3. Any act of discriminatory treatment, forced labour or use of workers under the minimum working aged provided by law is strictly prohibited.

Article 36: Marriage and Family

1. Men and women have the right to marry and to divorce. Marriage is on the principle of free consent, progressive orientation, monogamy and equality and mutual respect between husband and wife.
2. The State protects marriage and the family and protects the rights of the mother and children.

Article 37: Children, Young People and Elderly People

1. Children are protected, cared for and educated by the State, the family and society; and are entitled to participate in matters regarding children. Harming, torture, maltreatment, abandonment, abuse, exploitation of labour and other acts in breach of the child's rights are strictly prohibited.
2. The State, society and family create favourable conditions for the studies, work, recreation of young people and for the development of their intellectual faculties and physical fitness; inculcates in young people the national tradition and ethics and the sense of civic responsibility; and encourages them to be in the vanguard of labour creation and defence of the Homeland.

3. Elderly people are respected and taken care of by the State, family and society, and bring into play their role in the cause of construction and defence of the Homeland.

Article 38: Health Protection and Care

1. Everyone has the right to health protection and care; is equal in the use of health care services, and has the obligation to comply with regulations on disease prevention, examination and treatment.
2. Any act which threatens the life and health of other people or the community is strictly prohibited.

Article 39: Education

Education is a right and obligation of citizens.

Article 40: Scientific and Technical Research, and Literary and Artistic Creation

Everyone has the right to undertake scientific and technical research; to engage in literary and artistic creation, and to enjoy the benefits from such activities.

Article 41: Cultural Life

Everyone has the right to enjoy and access cultural values, participate in cultural life, and use cultural facilities.

Article 42: Ethnicity and Selection of Language

Citizens have the right to determine their own ethnicity, use their mother tongue and to freely select their language of communication.

Article 43: Environment

Everyone has the right to live in a healthy environment and has the obligation to protect the environment.

Article 44: Loyalty to the Homeland

Citizens have the obligation to be loyal to the Homeland.

Treason against the Homeland is the gravest crime.

Article 45: Defence of the Homeland and Military Service

1. To defend the Homeland is a sacred duty and noble right of citizens.
2. Citizens are duty-bound to do military service and take part in building a national defence of the entire people.

Article 46: Compliance with Constitution and Law

Citizens are duty-bound to abide by the Constitution and law, to take part in safeguarding national security and social safety and order, and to respect the rules of public life.

Article 47 Obligation to Pay Taxes

Everyone is duty-bound to pay taxes as provided by law.

Article 48: Foreign Nationals Residing in Vietnam

Foreign nationals residing in Vietnam must comply with the Vietnamese Constitution and law, and are entitled to protection of their lives, property and legitimate rights and interests in accordance with Vietnamese law.

Article 49: Asylum for Foreign Nationals

Foreign nationals who are persecuted for taking part in the struggle for freedom and national independence, for socialism, democracy and peace, or for engaging in scientific pursuits may be considered for granting of asylum by the State of the Socialist Republic of Vietnam.

Article 58: Health Care, Health Insurance and Family Planning

1. The State and society invest in and develop the cause of protection and care of the People's health, implement health care insurance for the entire people, and have policies for priority health care for ethnic minority people, and people in mountainous areas, marine islands and regions with specially difficult socio-economic conditions.

2. The State, society and family are responsible for protecting and taking care of the health of mothers and children and for implementing family planning.

Article 60: Vietnamese Culture, Mass Media, and the Vietnamese Family

1. The State and society preserve and develop a progressive Vietnamese culture imbued with national identity and assimilating the quintessence of human culture.

2. The State and society develop culture and arts in order to satisfy the People's diversified and healthy spiritual needs; and develop means of mass media in order to satisfy the People's need for information and to serve the cause of construction and protection of the Homeland.

3. The State and society create an environment to build comfortable, progressive and happy Vietnamese families; to build Vietnamese people who are healthy, cultured, patriotic, and who have a spirit of solidarity, sense of mastery and civic responsibility.

Article 69: Role of National Assembly

The National Assembly is the highest representative body of the people and the highest State authority in the Socialist Republic of Vietnam.

The National Assembly exercises constitutional and legislative powers, decides important matters of the country, and exercises supreme supervision of all State activities.

Article 70: Duties and Powers of National Assembly

The National Assembly has the following duties and powers:

1. To draw up and amend the Constitution; to make and amend laws;
2. To exercise the right to supreme supervision over the observance of the Constitution, laws and resolutions of the National Assembly; to examine working reports by the President, the Standing Committee of the National

Assembly, the Government, the Supreme People's Court, the People's Supreme Inspectorate, the National Election Council, the State Audit Office and other bodies established by the National Assembly.

3. To decide on the objectives, targets, policies and fundamental tasks for national socio-economic development;

4. To decide on national financial and monetary policies; to determine, revise and repeal various kinds of taxes; to decide on the division of revenue and expenditure tasks between the Central budget and local budgets; to decide the prudential limits for national debt, public debt and Government debt; to decide estimates of the State budget and allocations of the Central budget, and to ratify State budget finalisation reports;

5. To decide on State policies on ethnic nationalities and on religion;

6. To determine the organisation and operation of the National Assembly, the President, the Government, the People's Court, the People's Inspectorate, the National Election Council, the State Audit Office, local authorities and other bodies established by the National Assembly;

7. To elect, discharge and remove the President, the Vice-President, the Chairman and Vice-Chairmen of the National Assembly, the members of the Standing Committee of the National Assembly, the Chairman of the Ethnic Council, chairmen of committees of the National Assembly, the Prime Minister of the Government; the Chief Justice of the Supreme People's Court, the Chief Prosecutor of the Supreme People's Procuracy, the State Auditor General, heads of other agencies established by the National Assembly; to ratify proposals on the appointment, discharge and dismissal of Deputy-Prime Ministers, Ministers and other members of the Government, and judges of the Supreme People's Court; to ratify the lists of members of the National Defence and Security Council and the National Election Council. Upon being elected, the President, the Chairman of the National Assembly, the Prime Minister and the Chief Justice of the Supreme People's Court must take an oath of loyalty to the Homeland, the People and the Constitution;

8. To take a vote of confidence on officials elected or approved by the National Assembly;

9. To decide on the institution and abolition of ministries and other ministry-equivalent bodies of the Government; creation, fusion, division of provinces and cities directly under central authority and modification of their administrative boundaries, and institution and dissolution of special administrative economic units; institution and abolition of other agencies in accordance with the Constitution and law;

10. To abrogate legal instruments of the President, the Standing Committee of the National Assembly, the Government, the Prime Minister of the Government, the Supreme People's Court and the Supreme People's Procuracy which are incompatible with the Constitution, laws and resolutions of the National Assembly;

11. To grant general amnesties;

12. To determine ranks in the armed forces, diplomatic service and other State ranks; to determine medals, decorations and honorary State titles;

13. To decide on matters of war and peace; to determine a state of emergency and other special measures aimed at ensuring national defence and national security;

14. To decide on fundamental foreign policies; to ratify decisions on accession to or termination of effectiveness of international treaties relating to war or peace, national sovereignty, membership of the Socialist Republic of Vietnam in important international and regional organizations, and international treaties on human rights, or on basic rights and obligations of the citizens and other international treaties which are inconsistent with laws and resolutions of the National Assembly;

15. To decide on the holding of [popular] referenda.

Article 86: Role of President of the State

The President is the Head of the State, acting on behalf of the Socialist Republic of Vietnam in domestic and foreign affairs.

Article 87: Election of President

The President is elected by the National Assembly from among its deputies.

The President is responsible and reports on his or her work to the National Assembly.

The term of office of the President is co-extensive with that of [each legislature of] the National Assembly. When the term of a legislature of the National Assembly expires, the President remains in office until the new legislature of the National Assembly has elected a new President.

Article 94: Role of the Government

The Government is the highest administrative State body of the Socialist Republic of Vietnam, exercises executive rights, and is the executive body of the National Assembly.

The Government is responsible and reports on its work to the National Assembly, the Standing Committee of the National Assembly and the President of the State.

Article 102: People's Court

1. The People's Court is the judicial body of the Socialist Republic of Vietnam and exercises judicial rights.

2. The People's Court includes the Supreme People's Court and other courts as stipulated by law.

3. The People's Court has the duty to protect justice, protect human rights and citizen's rights, protect the socialist regime, and protect the interest of the State and legitimate rights and interests of organizations and individuals.

Article 104: Supreme People's Court

1. The Supreme People's Court is the highest judicial body of the Socialist Republic of Vietnam

2. The Supreme People's Court supervises the proceedings of other courts,

except for the cases stipulated by law.

3. The Supreme People's Court performs the review of trial practices and ensures consistent application of law in proceedings.

Article 110: Administrative Units

1. The administrative units of the Socialist Republic of Vietnam are delimited as follows: The country is divided into provinces and cities under central authority; Provinces are divided into districts, provincial cities and towns; and cities under central authority are divided into urban districts, suburban districts and towns and equivalent administrative units; Districts are divided into communes, towns and townships; provincial cities are divided into wards and communes; and districts are divided into wards. Special economic - administrative units are established by the National Assembly.

2. The creation [establishment], dissolution, fusion, division or modification of boundaries of administrative units must be subject to obtaining opinions from the People in the locality and must be implemented in accordance with the sequence and procedures specified by law.

Article 111: Local Authorities

1. Local authorities are organised in administrative units of the Socialist Republic of Vietnam.

2. The local authority level comprises People's Councils and People's Committees, organized as appropriate to the characteristics of rural, urban, marine island or special economic - administrative units as stipulated by law.

Article 112: Duties and Powers of Local Authorities

1. Local authorities organise and ensure implementation of the Constitution and of the law within the locality; make decisions on issues relevant to the locality as stipulated by law; and are subject to inspection and supervision by the higher level [superior] State agency.

2. The duties and powers of local authorities are determined based on the allocation of authority between central and local State agencies, and of each level of local authority.

3. Where necessary, local authorities are assigned with the performance of a number of duties of a superior State agency on the condition that they ensure the performance of such.

Article 113: People's Councils

1. People's Councils are the State authorities in respective localities, the representative bodies of the People's will, aspirations and rights as masters in their localities; they are elected by the local population, and are responsible to the latter and to higher State authorities.

2. People's Councils decide local matters as stipulated by law; and supervise compliance with the Constitution and laws in their localities and the implementation of resolutions of People's Councils.

Article 114: People's Committees

1. A People's Committee at the local authority level is elected by the People's Council at the same level, and is the executive body of the local People's Council and State administrative agencies, and is responsible to superior People's Councils and State administrative agencies.
2. People's Committees organize implementation of the Constitution and laws in their localities; organize the implementation of resolutions of People's Councils and implement the duties assigned by superior State agencies.

Law on Gender Equality (No. 73/2006/QH11)

Article 1: Scope of application

This Law provides principles of gender equality in all aspects of social and family life, measures to guarantee gender equality, and responsibilities of agencies, organizations, families and individuals in exercising gender equality.

Article 2: Subjects of regulation

1. Vietnamese state agencies, political organizations, socio-political organizations, socio-political professional organizations, social organizations, socio-professional organizations, economic organizations, non-business units, units of people's armed forces, families and citizens (hereinafter collectively referred to as agencies, organizations, families and individuals).
2. Foreign agencies and organizations and international organizations operating in Vietnamese territory, and foreigners residing in Vietnam.

Article 3: Application of treaties on gender equality

When a treaty to which the Socialist Republic of Vietnam is a contracting party contains provisions other than those of this Law, the provisions of that treaty shall be applied.

Article 4

The goals of gender equality are to eliminate gender-based discrimination, create equal opportunities for men and women in socio-economic development and human resource development, strive to reach genuine equity between men and women, establish and strengthen cooperative and supportive relations between men and women in all aspects of social and family life.

Article 5

In this Law, the terms below are construed as follows:

1. Gender refers to the characteristics, positions and roles of men and women in all social relationships.
2. Sex refers to biological characteristics of men and women.
3. Gender equality means that men and women have equal positions and roles, are offered conditions and opportunities to bring into play their

capabilities for the development of the community and families, and to equally benefit from this development.

4. Gender prejudice is unfair and negative perceptions, attitudes and assessments of the characteristics, positions, roles and capabilities of men or women.

5. Gender discrimination is the restriction, exclusion, non-recognition or disregard of the roles and positions of men and women, causing inequality between men and women in various aspects of social and family life.

6. Measure for promoting gender equality is a measure set forth by a competent state agency to guarantee genuine gender equality in cases where exists a big difference between men and women in terms of position, role, conditions and opportunities to bring into play capabilities and enjoy benefits of development and the application of the same regulations to men and women fails to reduce this difference. A measure for promoting gender equality will be implemented within a given period and end when the gender equality goals are achieved.

7. Integration of gender equality in the process of formulating legal documents is a measure to achieve the gender equality goals by identifying gender issues, forecasting the impacts of legal documents on gender, responsibilities and resources for dealing with gender issues in the social relations governed by these legal documents.

8. Gender equality activities are activities carried out by agencies, organizations, families and individuals to achieve the gender equality goals.

9. Gender development index (GDI) is general data reflecting the real situation of gender equality, which are computed on the basis of average life expectancy, educational level and per capita income of men and women.

Article 6

1. Men and women are equal in all aspects of social and family life.

2. Men and women are not discriminated in terms of gender.

3. The application of measures for promoting gender equality is not regarded as gender-based discrimination.

4. Policies on motherhood protection and support are not regarded as gender-based discrimination.

5. Gender equality issues are ensured to be integrated in the process of law formulation and enforcement.

6. Exercising gender equality is the duty of agencies, organizations, families and individuals.

Article 7

1. To ensure gender equality in all fields of politics, economy, culture, society and family; to support and create conditions for men and women to bring into play their abilities and provide them with equal opportunities to participate in the process of development and benefit from development.

2. To protect and support mothers during pregnancy, delivery and raising of their babies; to create conditions for men and women to share housework.

3. To apply appropriate measures to abolish backward customs and habits that impede the achievement of the gender equality goals.

4. To encourage agencies, organizations, families and individuals to participate in promoting gender equality.
5. To support gender equality activities in deep-lying, remote and ethnic minority areas and areas with extremely difficult socio-economic conditions; to support necessary conditions for increasing the gender development index in sectors, fields and localities with a gender development index lower than the national average level.

Article 18

1. Wife and husband are equal in civil relations and other relations related to marriage and family.
2. Wife and husband have equal rights and duties in owning common property, and are equal in using their common income and deciding on family resources.
3. Wife and husband are equal in discussing and deciding to choose and use appropriate family planning measures; and use their leaves to take care of their sick children in accordance with law.
4. Sons and daughters are equally taken care of, educated and provided with opportunities by their families to learn, work, play, entertain themselves and develop.
5. Female and male family members have the duty to share housework.

Article 25

1. To promulgate national gender equality strategies, policies and goals; annually to report to the National Assembly on the implementation of the national gender equality goals.
2. To submit to the National Assembly and its Standing Committee for promulgation or promulgate according to its competence legal documents on gender equality.
3. To direct and organize the integration of gender equality issues in the process of formulating legal documents according to its competence.
4. To organize the implementation of the law on gender equality; to direct and organize the inspection and examination of the implementation of the law on gender equality.
5. To officially publicize national information on gender equality; to prescribe and direct the application of indicators for gender classification in state statistical data and information.
6. To coordinate with the Vietnam Fatherland Front Central Committee and the Central Vietnam Women's Union and direct concerned agencies in propagating, disseminating and educating about the gender equality law and raising the people's awareness of gender equality.

Article 26

1. To formulate and submit to the Government for promulgation national gender equality strategies, policies and goals.
2. To formulate and submit to the Government for promulgation or promulgate and guide according to their respective competence legal documents on gender equality.

3. To participate in evaluating the integration of gender equality issues in the process of formulating legal documents.
4. To review and report to the Government on the implementation of the national gender equality goals.
5. To assume the prime responsibility for, and coordinate with ministries and ministerial-level agencies in, performing the state management of gender equality.
6. To examine, inspect and handle violations of the law on gender equality, and settling complaints and denunciations related to gender equality.

Article 35

1. The state management agency in charge of gender equality shall perform the function of gender equality inspection.
2. Tasks and powers of gender equality inspection include:

- (a) Inspecting the implementation of the law on gender equality;
- (b) Inspecting the implementation of the national target program on gender equality and measures to guarantee gender equality;
- (c) Settling complaints and denunciations related to gender equality in accordance with this Law and the law on complaints and denunciations;
- (d) Handling violations of the law on gender equality in accordance with the law on handling of administrative violations;
- (e) Proposing measures to ensure implementation of the law on gender equality; proposing amendments and supplements to policies and law on gender equality;
- (f) Performing other tasks and powers in accordance with law.

Article 40

1. Acts of violation of the law on gender equality in politics include:
 - (a) Obstructing on the grounds of gender prejudice men or women in self-nominating as candidates or nominating candidates to the National Assembly or People's Councils, leading bodies of political, socio-political, socio-political professional, social or socio-professional organizations;
 - (b) Failing to appoint, or obstructing the appointment of, men or women to hold managerial or leading posts or professional titles on the grounds of gender prejudice;
 - (c) Imposing and implementing village codes or community conventions or regulations or rules of agencies or organizations that contain gender-based discrimination provisions.
2. Acts of violation of the law on gender equality in economy include:
 - (a) Obstructing men or women in setting up enterprises or conducting business activities on the grounds of gender prejudice;
 - (b) Running commercial advertisements that place at disadvantage enterprise owners or traders of one certain sex.

3. Acts of violation of the law on gender equality in labour include:

- (a) Applying different conditions in the recruitment of male and female labourers to the same job though they have the same qualifications and abilities, unless in the case of application of measures for promoting gender equality;
- (b) Refusing to recruit, or recruit limited numbers of, labourers or dismiss labourers in the gender-based grounds or for their pregnancy, delivery or raising of small children;
- (c) Assigning jobs based on gender discrimination resulting in different incomes or paying different wages to male and female labourers having the same qualifications and capability;
- (d) Failing to implement the provisions of labour law exclusively applicable to female labourers.

4. Acts of violation of the law on gender equality in education and training include:

- (a) Prescribing different training and enrolment ages between men and women;
- (b) Advising or coercing other persons to drop out of school for gender reasons;
- (c) Refusing to recruit qualified persons to training or retraining courses or for their pregnancy, delivery or raising of small children;
- (d) Providing career-oriented education, compiling and disseminating textbooks containing gender discrimination knowledge.

5. Acts of violation of the law on gender equality in science and technology include:

- (a) Obstructing men and women in participating in scientific and technological activities;
- (b) Refusing to admit persons of one certain gender to scientific and technological training courses.

6. Acts of violations of the law on gender equality in culture, information, physical training and sports include:

- (a) Obstructing men and women in composing or criticizing cultural and art works, performing and participating in cultural activities on the grounds of gender prejudice;
- (b) Composing, circulating, authorizing the publication of works under any genre or form to encourage, propagate gender inequality and gender prejudice;
- (c) Spreading thought, conducting by oneself or inciting other people to conduct backward practices and customs of gender discrimination nature under all forms.

7. Acts of violation of the law on gender equality in the field of health include:

- (a) Impeding, inciting or forcing other people not to participate in the activities of health education for gender prejudice reasons;
- (b) Choosing gender for the unborn babies under all forms or inciting and forcing other people to have an abortion because of the unborn baby's gender.

Article 41

1. Impeding members in the family who have all qualifications as provided by law from participating in the determination of assets under common ownership of a family for gender reasons.
2. Not allowing or impeding members in the family from contributing their opinions to the use of common assets of the family, conducting income-generating activities or satisfying other needs of the family for gender prejudice reasons.
3. Unequally treating members in the family for gender reasons.
4. Constraining the schooling of members in the family or forcing members in the family to drop out of school for gender reasons.
5. Imposing the performance of family work and the taking of contraceptive measures as though these are the responsibilities of members of one certain gender.

Article 42

1. Those who commit acts of violation of the law on gender equality shall, depending on the nature and severity of their violations, be disciplined, administratively handled or examined for penal liability.
2. Agencies, organizations or individuals that commit acts of violation of the law on gender equality and cause damage shall pay compensations therefore in accordance with law.

Population Ordinance (No. 06/2003/PL-UBTVQH11)

Population constitutes one of the factors decisive to the sustainable development of the country;

In order to raise the responsibilities of citizens, the State and society in the population work; to protect the rights and legitimate interests of citizens; to enhance and unify the State management over population;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the 10th National Assembly at its 10th session;

Pursuant to Resolution No. 12/2002/QH11 of December 16, 2002 of the 11th National Assembly, its second session, on the Law- and Ordinance-Making Programs of the 11th National Assembly throughout its tenure (2002-2007) and for 2003;

This Ordinance provides for population.

Chapter I

GENERAL PROVISIONS

Article 1: Scope of Regulation and Subjects of Application

1. This Ordinance provides for the population size, population structure, population distribution, population quality, and measures to perform the population work and the State management over population.

2. This Ordinance shall apply to State agencies, political organizations, socio-political organizations, social organizations, socio-professional organizations, economic organizations, people's armed force units and all Vietnamese citizens (hereinafter referred collectively to as agencies, organizations and individuals); foreign organizations operating in the territory of Vietnam and foreigners permanently residing in the territory of Vietnam, unless otherwise prescribed by the international agreements which Vietnam has signed or acceded to.

Article 2: Principles of the Population Work

1. To protect the legitimate rights and interests of agencies, organizations and individuals in the population field in conformity with socio-economic development, the quality of life of individuals, families and the entire society.

2. To guarantee the initiative, voluntariness and equality of each individual and family in birth control, reproductive health care, selection of residential places, and application of measures to raise the population quality.

3. To harmonize the rights and interests of individuals and families with the interests of communities and the whole society; to build families with few children, which are prosperous, equal, progressive, happy and sustainable.

Article 3: Interpretation of Terms

In this Ordinance, the following words and phrases are construed as follows:

1. Population means an aggregation of people living in a country, a region, a geo-economic area or an administrative unit.

2. Population size means the number of people living in a country, a region, a geo-economic area or an administrative unit at a certain time.

3. Population structure means the total population classified by gender, age, ethnicity, educational level, profession, marital status and other characteristics.

4. Aged population structure means a population where the aged represent a high proportion.

5. Population distribution means the distribution of the total population by region, geo-economic area or administrative unit.

6. Population quality means the reflection of physical, intellectual and spiritual characteristics of the entire population.

7. Migration means the movement of population from one country to another for residence, from one administrative unit to another for residence.

8. Reproductive health means the demonstration of physical, spiritual and social states related to the reproductive activity and function of each person.

9. Family planning means the State's and society's efforts to enable every individual and couple to actively and voluntarily decide on the number of children, the time to have babies and the duration between child births in order to protect their health and raise their children with a sense of responsibility and in conformity with social standards and families living conditions.
10. Population work means the management and organization of implementation of activities affecting the population size, population structure, population distribution and raising the population quality.
11. Human development indexes are general data used for evaluating the level of human development, determined through average life expectancy, educational level and average per capita income.
12. The replacement birth rate means the average birth rate in the whole society, thereby each couple should have two children.
13. Population services means activities in service of the population work, including information supply, propagation, education, mobilization, guidance and counselling on population (hereinafter referred collectively to as propagation and counselling); provision of measures for reproductive healthcare, family planning, raising the population quality, and other activities as prescribed by law.
14. Population registration means the collection and updating of basic population-related information on each inhabitant according to each period of time.
15. The national database on population means a system of information collected through population registration of all inhabitants, and set up on the computerized network.

Article 4: Rights and Obligations of Citizens Regarding the Population Work

1. Citizens shall have the following rights:
 - (a) To be supplied with information on population;
 - (b) To be provided with quality, convenient, safe and secret population services as prescribed by law;
 - (c) To select measures to take care of reproductive health, practice family planning, and raise the population quality;
 - (d) To select appropriate residential places according to law provisions;
2. Citizens shall have the following obligations:
 - (a) To practice family planning; build families with few children, which are prosperous, equal, progressive, happy and sustainable;
 - (b) To take appropriate measures to raise the physical, intellectual and spiritual abilities of their own and of their family members;
 - (c) To respect the interests of the State, society and community in readjusting the population size, population structure, population distribution, and raising the population quality;
 - (d) To abide by the provisions of this Ordinance and other law provisions pertaining to the population work.

Article 5: Responsibilities of the State, Agencies and Organizations in the Population Work

1. The State shall adopt policies and measures to carry out the population work, socialize the population work, ensure favourable conditions for the population work in compatibility with the national socio-economic development.

2. The State shall adopt policies to encourage organizations and individuals to invest in, cooperate on, assist and support the reproductive health care and family planning and population quality improvement programs, give priority to the poor, ethnic minority people as well as areas with exceptionally difficult socio-economic conditions and areas with difficult socio-economic conditions.

3. The State management agencies in charge of population shall have to direct the implementation of the population work, coordinate with Vietnam Fatherland Front and its member organizations in implementing the population work, inspecting and supervising the implementation of the population legislation.

4. Agencies and organizations shall, within the scope of their respective tasks and powers, have to:

- (a) Integrate population elements into the socio-economic development planning, plans and policies;
- (b) Propagate and campaign for the implementation of the population work;
- (c) Provide various population services;
- (d) Organize the implementation of the population legislation within their own agencies and organizations.

Article 6: Responsibilities of Vietnam Fatherland Front and Mass Organizations in the Population Work

Vietnam Fatherland Front and mass organizations shall have to:

1. Contribute comments on the formulation of population policies, plannings and plans, and legal documents on population;

2. Organize the population work in their respective systems;

3. Propagate among their members and mobilize them to implement the population legislation.

4. Supervise the implementation of the population legislation.

Article 7: Prohibited Acts

The following acts are strictly prohibited:

1. Obstructing or forcing the practice of family planning;

2. Selecting the gender of unborn babies in any form;

3. Producing, dealing in, importing and supplying contraceptive devices which are faked, fail to satisfy quality standards, have their use duration expired, or have not yet been permitted for circulation;

4. Illegally migrating and residing;

5. Propagating, disseminating or issuing information contrary to the population policy, fine national ethics, adversely affecting the population work and social life;
6. Human cloning.

Chapter II

POPULATION SIZE, STRUCTURE AND DISTRIBUTION

Section 1

POPULATION SIZE

Article 8: Readjustment of the Population Size

1. The State shall readjust the population size compatible with the socio-economic development, natural resources and environment through socio-economic development, reproductive health care and family planning programs and projects so as to readjust the birth rate and stabilize the population size at a reasonable level.
2. Agencies and organizations shall, within the scope of their respective tasks and powers, be responsible for reproductive health care and family planning programs and projects. The People's Councils and People's Committees at all levels shall be responsible for reproductive health care and family planning programs and projects in their respective localities.

Article 9: Family Planning

1. Family planning constitutes a prime measure to readjust the birthrate, contributing to ensuring a prosperous, equitable, progressive and happy life.
2. Family planning-practicing measures include:
 - (a) Propagating, mobilizing and assisting, ensuring that each individual and couple to apply family planning actively and voluntarily;
 - (b) Providing quality, convenient and safe family planning services directly for people;
 - (c) Offering material and moral incentives, implementing insurance policies so as to create a motive force for pushing up extensive and intensive application of family planning among people.
3. The State shall support and create favourable conditions for the implementation of family planning programs and projects, giving priority to areas with exceptionally difficult socio-economic conditions or with difficult socio-economic conditions, to the poor, persons meeting with difficulties, and minors.

Article 10: Rights and Obligations of Each Couple or Individual in the Practice of Family Planning

1. Each couple or individual shall have the rights to:
 - (a) Decide on the time to have babies, the number of children and the duration between child births suitable to their age, health, study, labouring or working conditions, incomes, and raise their children on the basis of equality;

- (b) Select and apply family planning measures.
2. Each couple and individual shall have the obligations to:
- (a) Use methods of contraception;
 - (b) Protect their health, apply measures to prevent and avoid reproductively infectious diseases as well as sexually transmitted diseases, HIV/AIDS;
 - (c) Fulfil other obligations related to reproductive health care and family planning.

Article 11: Propagating and Counselling on Family Planning

1. The State management agencies in charge of population shall have to work out programs for, and contents of, propagation and counselling on family planning; coordinate with other agencies, organizations and individuals in organizing the propagation and counselling on family planning.
2. Agencies, organizations and individuals shall be entitled to receive information on, participate in propagating and counselling on, the practice of family planning.
3. The information and propagation agencies shall have to propagate and disseminate the legislation on population and family planning. The contents and forms of propagation must be suitable and easily understandable to each target group.

Article 12: Provision of Family Planning Services

1. The State shall encourage organizations and individuals to participate in producing, importing and supplying contraceptive devices and providing family planning services according to law provisions.
2. Organizations and individuals supplying contraceptive devices and providing family planning services shall have to ensure the quality of devices and services using safe and convenient techniques; monitor and remedy side-effects and undesirable incidents (if any) for users.

Section 2

POPULATION STRUCTURE

Article 13: Readjustment of the Population Structure

1. The State shall readjust the population structure in order to ensure a reasonable population structure in terms of gender, age, educational level, profession and other characteristics; protect and create conditions for ethnic minority groups to develop.
2. The population structure shall be readjusted through socio-economic development programs and projects in the whole country and in each locality. The State shall adopt policies while agencies and organizations shall take measures to develop social services suitable to the aged population structure in future.

Article 14: Ensuring a Reasonable Population Structure

1. The State shall adopt necessary policies and measures to prevent the selection of unborn babies' gender so as to ensure gender equilibrium according to natural reproduction law; readjust the birth rate in order to have a reasonable age-gender population structure.
2. The State shall implement socio-economic development, scientific and technical, vocational training and labour employment policies suitable to the gender, age, ethnicity and socio-economic development in each locality.
3. Agencies and organizations responsible for formulating socio-economic development policies and plans shall have to ensure balances in gender, age and production and business lines in each region, each eco-geographical area and each administrative unit.

Article 15: Protection of Ethnic Minority Groups

1. The State shall adopt policies and measures to provide material and spiritual assistance and support for ethnic minority people in areas with exceptionally difficult socio-economic conditions and with difficult socio-economic conditions through socio-economic development, hunger elimination and poverty alleviation programs and projects, satisfy their demands for reproductive health care, family planning, and population quality-raising services.
2. Agencies, organizations and individuals, shall, within the scope of their respective tasks and powers, have to propagate, counsel, guide and help ethnic minority groups in the protection and care of reproductive health, and family planning.

Section 3

POPULATION DISTRIBUTION

Article 16: Rational Population Distribution

1. The State shall effect rational population distribution among different regions, geo-economic areas and administrative units through programs and projects on tapping land and natural resource potentials so as to bring into play the strengths of each locality for socio-economic development and security and defence maintenance.
2. Competent State agencies shall have to work out population distribution planning and plans suitable to different regions, geo-economic areas as well as administrative units, giving priority to investment in areas with exceptionally difficult socio-economic conditions and with difficult socio-economic conditions, where population density remains low, in order to create jobs and good living conditions for attracting labour.

Article 17: Distribution of Rural Population

1. The State shall adopt policies to encourage comprehensive development, economic restructuring, industrialization and modernization in rural areas and in agriculture, narrowing the development gap between different regions so as to reduce the motive force for migration to urban centres.
2. The People's Committees at all levels shall, within the scope of their respective tasks and powers, have to implement programs and projects on lending capital, creating jobs, generating incomes and building new economic zones, as well as sedentarization policies to stabilize the life of

ethnic minority groups, restricting nomadic farming and living as well as spontaneous migration.

Article 18: Distribution of Urban Population

1. The State shall adopt necessary policies and measures to restrict the concentration of population in a few big cities; materialize the urban development planning in combination with building big, medium and small urban centres, creating conditions for rational population distribution.
2. The State shall adopt policies to encourage individuals, organizations, enterprises and employers in urban centres to create dwelling conditions for labourers coming from other localities.
3. The People's Committees at all levels shall, within the scope of their respective tasks and powers, have to manage population, urban centers, and labourers coming from other localities.

Article 19: Domestic and International Migration

1. The State shall create favourable conditions for domestic and international migration in accordance with the Vietnamese law and the laws of the countries where people emigrate to or immigrate from.
2. The People's Committees at all levels shall implement socio-economic development policies to improve people's life with a view to reducing the motive force for spontaneous migration; promptly settle spontaneous migration-related problems according to law provisions.

Chapter III

POPULATION QUALITY

Article 20: Raising of the Population Quality

1. To raise the population quality is the fundamental policy of the State for the cause of national development.
2. The State shall implement policies to raise the population quality physically, intellectually and spiritually in order to increase Vietnam's human development indexes to the world's advanced level, thus meeting the requirements of national industrialization and modernization.

Article 21: Measures to Raise the Population Quality

The measures to raise the population quality include:

1. Ensuring fundamental human rights; the right to all-sided and equal physical, intellectual and spiritual development; supporting to raise basic indicators regarding height, weight and stamina; increasing average life expectancy; educational level as well as average per capita income.
2. Propagating, counselling and helping people to understand, actively and voluntarily take measures to raise the population quality;
3. Diversifying forms of provision of goods and public services, especially in the fields of education and health, with a view to improving the living quality and raising the population quality;
4. Implementing policies and measures to give support to areas with exceptionally difficult socio-economic conditions and with difficult socio-economic conditions, the poor, and persons meeting with difficulties, in order to raise the population quality.

Article 22: Responsibility to Raise the Population Quality

1. The State shall encourage and create favourable conditions for organizations and individuals to apply measures to raise the population quality through programs and projects on socio-economic development, investment in technical infrastructure, building of the social welfare system, and protection of the ecological environment.
2. Agencies, organizations and individuals shall have to perform the work of health protection and physical training, raise the educational, intellectual and economic levels of development, and increase social welfare, preserve cultural and spiritual values, and protect the ecological environment.
3. The State management agencies in charge of population shall have to coordinate with concerned agencies and organizations in designing and implementing the model of raising the population quality in combination with developing sustainable families, and the model of intervening and raising the population quality in communities; supply information, propagate, counsel and help families and individuals to apply measures to raise the population quality.
4. Agencies, organizations and individuals shall be provided with information, guided and assisted in, and voluntarily apply, measures to raise the population quality.

Article 23: Reproduction-Supporting Measures

1. The State shall encourage and create conditions for men and women to have health checks before making marriage registration, have gene tests for people in danger of genetic defects or being affected with toxic chemicals; give counselling on hereditary genes; provide material and spiritual assistance for people with genetic defects, affected with toxic chemicals or infected with HIV/AIDS.
2. The State shall invest and encourage organizations and individuals to invest in building technical and material foundations in service of reproduction-supporting technology in order to assist sterile and sterilized people as well as people with demands therefore according to law provisions.

Article 24: Building of Prosperous, Equal, Progressive, Happy and Sustainable families

1. The State shall adopt policies and measures to eliminate all forms of gender discrimination, discriminatory treatment between boys and girls, ensuring that women and men have the same interests and obligations in building prosperous, equal, progressive, happy and sustainable families.
2. The State shall adopt policies to encourage the preservation of multi-generation families; expand social services suitable to different family patterns, ensuring that every family member can enjoy benefits and fulfil all obligations.
3. Agencies, organizations and individuals shall have the duty to propagate, counsel and assist families to raise their material and spiritual life, and build a prosperous, equal, progressive, happy and stable life.

4. Family members shall have the duty to support one another in applying measures to take care of health, reproductive health, practice family planning, and raise the material and spiritual life for each member.

Article 25: Raising of the population quality for communities

The People's Committees at all levels shall have to direct and organize the application of economic development measures, the provision of social services and assurance of social welfare in order to raise the population quality for communities in their respective localities.

Chapter IV

MEASURES TO IMPLEMENT THE POPULATION WORK

Article 26: Population Development Planning and Plans

1. The State shall incorporate population development planning and plans into the national socio-economic development planning and plans in order to ensure the population size, structure, quality and distribution suitable to the socio-economic development conditions, natural resources and environment.

2. The People's Councils and People's Committees at all levels shall incorporate population development planning and plans into their local socio-economic development planning and plans.

3. Agencies and organizations shall, within the scope of their respective tasks and powers, have to put planned norms for implementation of the population work into their operational, production and business development and/or service provision plans; periodically review and evaluate the implementation thereof.

Article 27: Socialization of the Population Work

The State shall socialize the population work by mobilizing all agencies, organizations and individuals to actively take part therein. Agencies, organizations and individuals taking part in the population work shall enjoy rights and benefits from the population work.

Article 28: Mobilization of Resources for the Population Work

1. The State shall adopt policies and mechanisms to mobilize investment resources for the population work.

2. The population funds shall be set up at the central level and run by the State management agencies in charge of population.

3. The population funds shall be formed from the following sources: supports from the State budget, voluntary contributions from organizations and individuals inside and outside the country.

4. The mobilization and use of the population funds must comply with law provisions.

Article 29: Implementation of the Population Education

1. Population education shall be provided at educational establishments within the national education system.

2. The Ministry of Education and Training shall coordinate with the Committee for Population, Families and Children in directing and

elaborating programs and textbook contents on population suitable to each educational grade and level.

3. Schools and other educational establishments shall have to organize teaching and learning according to the prescribed programs and textbooks.

Article 30: International Cooperation in the Population Field

1. The State shall adopt policies and measures to expand international cooperation in the population field with other countries and international organizations on the basis of equality, respect for independence, sovereignty, mutual benefit and compliance with the law of each country and with international practices.

2. The scope of international cooperation covers:

- (a) Formulating and implementing programs and projects in the population field;
- (b) Participating in international organizations, signing and/or acceding to international agreements in the population field;
- (c) Research into, application of sciences and transfer of modern technologies in the population field;
- (d) Training, fostering, exchanging information and experiences in the population field;

3. The State shall encourage overseas Vietnamese, foreign organizations and individuals to participate in population activities.

4. International organizations and foreign associations engaged in the population work shall be allowed to operate in the territory of Vietnam according to the laws of Vietnam.

Article 31: Enhancing the Capability of the Contingent of Officials Engaged in the Population Work

1. The State shall adopt policies to build, develop, and create conditions for enhancing the capability of, the contingent of officials engaged in the population work at all levels, attaching importance to full-time officials and population collaborators at the grassroots level.

2. The People's Committees at all levels shall have to create favorable conditions for population officials, stabilize the contingent of full-time officials and population collaborators at the grassroots level, suitable to the socio-economic characteristics of each locality.

Article 32: Scientific Research Into Population

1. The State shall encourage and create favourable conditions for scientific research agencies, organizations and individuals to attach importance to research schemes to raise the population quality, especially in areas with exceptionally difficult socio-economic conditions and with difficult socio-economic conditions.

2. The State shall adopt policies to protect, popularize and apply the results of population researches to the socio-economic development programs and use them as a basis for making policies, plans and organizing the implementation of the population work.

3. Scientific research agencies and State management agencies in charge of population shall have to apply scientific and technological advances, raise the quality and efficiency of research schemes on population for application to the country's actual socio-economic life.

Chapter V

STATE MANAGEMENT OVER POPULATION

Article 33: Contents of the State Management Over Population

The contents of the State management over population include:

1. Formulating, organizing and directing the implementation of, strategies, planning, plans and measures to implement the population work;
2. Promulgating legal documents on population and organizing the implementation thereof;
3. Organizing and coordinating the implementation of the population work among State agencies, mass organizations, other organizations, and individuals participating in the population work;
4. Managing and providing professional guidance on the organization of the State management apparatus and officials in charge of population;
5. Organizing and managing the collection, processing, exploitation and archival of information and data on population; the population registration and the national database on population; periodical censuses;
6. Organizing and managing the training and fostering for officials and public employees engaged in the population work;
7. Organizing and managing the scientific research and application and technology transfer in the population field;
8. Organizing, managing and implementing the propagation and popularization of the population legislation among the people and mobilizing them to implement the population legislation;
9. Undertaking international cooperation in the population field;
10. Supervising, inspecting, settling complaints and denunciations, and handling violations of the population legislation.

Article 34: State Management Agencies in Charge of Population

1. The Government shall perform the unified State management over population.
2. The Committee for Population, Families and Children shall be responsible to the Government for performing the State management over population.
3. The ministries and the ministerial-level agencies shall, within the scope of their respective tasks and powers, have to perform the State management over population according to the Government's assignment.
4. The Government shall specify the organizations, functions, tasks and powers of the State management agencies in charge of population and the responsibilities of the ministries and ministerial-level agencies for coordinating with the Committee for Population, Families and Children in performing the State management over population.
5. The People's Committees at all levels shall perform the State management over population in their respective localities according to the Government's assignment.

Article 35: Population Registration and National Database on Population

1. The State shall organize, set up and manage the national database on population nationwide. The national database on population constitutes a national asset.
2. Agencies, organizations and individuals shall be obliged to supply full and accurate basic information on population, and be entitled to use information and data from the national database on population according to law provisions.
3. The setting up, management, exploitation, and supply of information from, the national database on population shall comply with law provisions.
4. The Government shall prescribe the process, procedures and contents for the population registration and national database on population.

Article 36: Complaints and Denunciations

Complaints about and denunciations against violations of the population legislation as well as the settlement thereof shall comply with the law provisions on complaints and denunciations.

Chapter VI

COMMENDATION AND HANDLING OF VIOLATIONS

Article 37

1. Agencies, organizations and individuals that make achievements in the population work shall be commended and/or rewarded according to law provisions.
2. Agencies, organizations and population communities shall apply measures to encourage, commend and/or reward individuals and families that well perform the population work.

Article 38: Handling of Violations

1. Those who violate the provisions of this Ordinance and other law provisions related to the population work shall, depending on the nature and seriousness of their violations, be disciplined, administratively sanctioned or examined for penal liability; if causing any damage, they must pay compensation therefore according to law provisions.
2. Those who abuse their positions and powers to violate the provisions of this Ordinance and other law provisions related to the population work shall, depending on the nature and seriousness of their violations, be disciplined or examined for penal liability; if causing any damage, they must pay compensation therefore according to law provisions.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 39: Effect of the Ordinance

This Ordinance takes effect as from May 1, 2003.

All previous provisions contrary to this Ordinance are hereby annulled.

Article 40: Detailing and Guiding of Implementation

The Government shall detail and guide the implementation of this Ordinance.

Decree Detailing and Guiding the Implementation of a Number of Articles of the Population Ordinance (No. 104/2003/ND-CP)

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the Population Ordinance of January 9, 2003;

At the proposal of the Minister-Chairman of the Committee for Population, Family and Children,

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1: Regulation Scope

This Decree details and guides the implementation of a number of articles of the Population Ordinance regarding the population size, population structure, population quality, measures to realize the population work and organize the implementation of population work.

Article 2: Objects of Application

This Decree applies to the State agencies, political organizations, socio-political organizations, social organizations, socio-professional organizations, economic organizations, people's armed force units and all Vietnamese citizens; foreign organizations operating in Vietnam, foreigners permanently residing in Vietnam (hereinafter referred collectively to as agencies, organizations, individuals), except otherwise provided for by international treaties which the Socialist Republic of Vietnam has signed or acceded to.

Article 3: Interpretation of Terms

In this Decree, the terms and phrases below shall be construed as follows:

1. Foreigners permanently residing in Vietnam mean foreign nationals and Stateless persons, who permanently reside, work and earn their living in Vietnam.
2. The size of family with few children means each couple has one child or two children.
3. Population size regulation means the quantitative change in the population of a country, a region, a geo-economic zone or an administrative unit.

4. Population consultancy means the comments, analysis, guidance for agencies, organizations and individuals to correctly understand the population information so as to implement the population work properly.

Article 4: Objectives of the Population Policy

The objectives of the population policy are to maintain that each couple has one child or two children in order to stabilize the population size, ensure the population structure and rational population distribution, to raise the population quality.

Article 5: Responsibilities of Agencies and Organizations in the Population Work

Agencies and organizations shall, within the scope of their respective tasks and powers, have the responsibilities:

1. To organize the implementation of the legislation on population:
 - (a) Elaborating and organizing the implementation of regulations, charters or other proper forms in accordance with law provisions so as to attain the objectives of the population policy.
 - (b) Organizing the application of measures suitable to their conditions; creating conditions and providing means and funding support for their members to implement the population work.
 - (c) Creating conditions for their members to implement their regulations, charters or other rules; the village codes or conventions of communities on population.
 - (d) Including the population work norms into their routine activity plans.
 - (e) Examining, evaluating, making preliminary and sum-up reviews of the materialization of the objectives of the population policy.
2. To create conditions for individuals, family members to implement the population policy:
 - (a) Providing information on, propagating, campaigning for, and education in, population.
 - (b) Providing diversified, quality, convenient and safe population services directly to people.
3. To incorporate population elements in socio-economic development planning, plans and programs.
4. To socialize the population work.

Article 6: Responsibilities of Individuals, Family Members in Implementing the Population Policy

1. To materialize the objectives of the population policy on the basis of the standards on families with few children, with abundant, equitable, progressive, happy and sustainable life.
2. To create conditions to help individuals attain the objectives of the population policy suitable to their age groups, health conditions, study and

labour conditions, work, income, child raising and education, in line with the socio-economic development programs and plans of localities and the State.

3. To implement the legislation and policies on population; regulations, charters or other rules of agencies, organizations; conventions, village codes of communities.

Article 7: Information on Population

Population information shall cover the following principal contents:

1. Knowledge about population, reproductive health, family planning, gender equality, hereditary diseases, measures to raise the population quality.
2. Contents and measures of regulating the population size, structure, raising the population quality and distribution of population.
3. Rights and responsibilities of individuals and family members in implementing the population policy.
4. Other population-related contents.

Article 17: Rights and Obligations of Each Couple, Individual in the Implementation of Family Planning

1. The rights and obligations of each couple, individual are inseparable from one another in the implementation of family planning. Each couple, individual shall have the responsibility to exercise their rights and fulfill their obligations towards the State and the society.

2. Each couple and individual shall have the rights:

- (a) To decide on childbirth time, the number of children and the interval between childbirths, which are suitable to the size of families with few children, the socio-economic development objectives and the population policy of the State in each period; suitable to age groups, to the health, study, labour, working, income and child raising and education conditions of the couples and individuals on the basis of equality.
- (b) To select and apply contraceptive measures suitable to economic, health, psychological and other conditions.
- (c) To be provided with information and services on family planning.

3. Each couple and individual shall have the obligations:

- (a) To adopt the size of families with few children- with one child or two children, with abundant, equal, progressive, happy and sustainable life.
- (b) To apply contraceptive measures, to practice family planning.
- (c) To respect the interests of the State, the society and communities and the legitimate interests of agencies and organizations in birth control and population size adjustment.
- (d) To observe the law provisions on population; the regulations, charters or other rules of agencies, organizations; conventions or village codes of communities on population and family planning.

- (e) To fulfil other obligations related to reproductive healthcare, family planning.

Article 18: Forms of Propagating, Campaigning for, Education and Counselling on, Population, Reproductive Health, Family Planning

1. Forms of propagating, campaigning for, education and counselling on, population, reproductive health and family planning shall include:

- (a) Propagating and campaigning on the mass media, Internet.
- (b) Providing direct propagation, mobilization and consultancy.
- (c) Organizing the teaching and learning thereof in educational establishments in the national education system.

2. Agencies, organizations and individuals that are assigned the propagating and counselling tasks shall have the responsibility to regularly propagate, campaign for, educate and counsel on, population, reproductive health and family planning for their members and the entire society.

Ordinance of the Standing Committee of the National Assembly pursuant to Resolution No. 27/2008/QH12 of the Ordinance on Programme Building in 2009 and the additional Ordinance on Programme Building of the XIIth Congress (2007-2011)⁴²⁴

Article 10. Rights and Obligations of Each couple, Individual in the Practice of Population Mobilization and Family Planning, Reproductive Health Care

- 1. Decide on the time to have babies and the duration between child births.
- 2. Give birth to 1 or 2 children, except special cases stipulated by the Government.
- 3. Protect their health, apply measures to prevent and avoid reproductively infectious diseases as well as sexually transmitted diseases, HIV/AIDS and fulfil other obligations related to reproductive health care.

Decree Detailing the Ordinance Amending Article 10 of the Population Ordinance (No. 20/2010/ND-CP)

Article 1: Scope of Regulation

This Decree details the Ordinance Amending Article 10 of the Population Ordinance.

Article 2: Cases in which the Limit of Having One Child or Two Children is Not Violated

- 1. A couple, one or both of whom belongs/belong to an ethnic minority group with a population of under 10,000 or in danger of population decline (the birth rate is lower than or equal to the mortality rate) as officially announced by the Ministry of Planning and Investment, give birth to their third child.

⁴²⁴ Ordinance retrieved from <www.hsph.harvard.edu/population/policies/poppolicy.htm>, accessed 21st of October 2014, translated into English by a translation agency.

2. A couple who have three or more children at their first birth.
3. A couple who already have one natural child and then have two or more children at their second birth.
4. A couple who have only one alive natural child, including a child already adopted by others, at the time of giving birth to their third or subsequent child.
5. A couple with two children one or both whom suffers/suffer a non-hereditary malformation or fatal disease certified by a provincial- or central-level medical assessment council, give birth to their third child.
6. A couple one or both whom already has/have his/her/their natural children have one child or two or more children at the same birth. This provision is not applicable to a remarried couple with two or more common children who are currently alive.
7. An unmarried woman who gives birth to one child or two more children at the same birth.

Supplement B

Interview Guide

National legislation

Could you explain/provide the current legal framework of the family planning policies?

The new Law on Population: Why is there a need for a new law? What will be the main legislative changes?

Implementation of the family planning policies

Could you explain how the family planning policies are being implemented?

What is the Cultured Family campaign and how is it related to the family planning policies?

How is the Cultured Family campaign implemented?

Which image of women is depicted in this campaign?

The family planning policies and gender equality

Which is the status of gender equality in Vietnam?

In what ways have the family planning policies affected gender equality and the lives of women in Vietnam?

Is son preference common in Vietnam? If so, why do you think that is?

Do you think there is a connection between the family planning policies and son preference?

What can be done to achieve equal preference for daughters and sons?

Supplement C

List of Key Informants

Key Informant 1: Public Official, General Department of Population, the Ministry of Public Health.

Key Informant 2: Professor in Sociology and Director, the Institute for Gender and Development.

Key Informant 3: Director, the Institute of Sociology.

Key Informant 4: Employee, Department for Gender Equality Studies, Institute for Family and Gender Studies.

Key Informant 5: Public Official, the Civil Law Division, the Ministry of Justice.

Key Informant 6: Professor, the Faculty of Civil Law, Hanoi Law University.

Key Informant 7: Professor, the Faculty of Social Work, University of Labour and Social Affairs.

Key Informant 8: Professor, the Faculty of Criminal Law, Hanoi Law University.

Key Informant 9: Deputy Director, Department of Law, National Assembly Office.

Key Informant 10: Professor, the Faculty of Civil Law, Hanoi Law University.

Bibliography

United Nation Treaties and Resolutions

United Nation Treaties

Charter of the United Nations, adopted by the United Nations on the 26th of June 1945, San Francisco.

Statute of the International Court of Justice, adopted by the United Nations on the 24th of October 1945, San Francisco.

International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by the United Nations General Assembly on the 16th of December 1966, Resolution 2200A (XXI).

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by the United Nations General Assembly on the 16th of December 1966, Resolution 2200(A).

United Nations Vienna Convention on the Law of Treaties, adopted by the United Nations on the 23rd of May 1969.

Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature by the United Nations General Assembly on the 18th of December 1979, Resolution 34/180.

Resolutions

Universal Declaration of Human Rights, adopted by the United Nation General Assembly on the 10th of December 1948, Resolution 217(A)(III).

Final Act of the International Conference on Human Rights, Tehran 22nd of April to 13th of May 1968, UN Doc. A/CONF.32/41

The World Population Plan of Action, adopted by the World Population Conference Bucharest August 1974.

Report of the International Conference on Population and Development, adopted at the International Conference on Population and Development in Cairo on the 13th of September 1994, UN Doc. A/CONF.171/13.

Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women in Beijing on the 15th of September 1995, UN Doc. A/CONF.177/20.

Vietnamese Legislation

Constitution

2013 Constitution of the Socialist Republic of Vietnam.

Law

Law on Gender Equality, adopted by the National Assembly 29th of November 2006, No. 73/2006/QH11.

Law on Domestic Violence Prevention and Control, adopted by the National Assembly 21st of November 2007, No. 02/2007/QH12.

Law on Marriage and Family, adopted by the National Assembly 19th of June 2014, No. 52/2014/QH13.

Ordinance

Population Ordinance, adopted by the National Assembly 9th of January 2003, No. 06/2003/PL-UBTVQH11.

Ordinance of the Standing Committee of the National Assembly pursuant to Resolution No. 27/2008 / QH12 of the Ordinance on Programme Building in 2009 and the additional Ordinance on Programme Building of the XIIth Congress (2007-2011), adopted by the Standing Committee of the National Assembly 27th of December 2008.

Decree

Decree Detailing and Guiding the Implementation of a Number of Articles of the Population Ordinance, adopted by the Government 16th of September 2003, No. 104/2003/ND-CP.

Decree Detailing the Ordinance Amending Article 10 of the Population Ordinance, adopted by the Government 8th of March 2010, No. 20/2010/ND-CP.

United Nations Documents and Reports

Documents adopted by UN Treaty Bodies

General Recommendation No. 3, adopted in 1987 during the 6th Session of the Committee on the Elimination of Discrimination against Women

General Recommendation No. 19 on Violence against Women, adopted in 1992 during the 11th Session of the Committee on the Elimination of Discrimination against Women.

General Recommendation No. 21 on Equality in Marriage and Family Relations, adopted in 1994 during the 13th Session of the Committee on the Elimination of Discrimination against Women.

General Recommendation No. 22 Amending Article 10 of the Convention, adopted in 1995 during the 14th Session of the Committee on the Elimination of Discrimination against Women.

General Recommendation No. 24 on Article 12: Women and Health adopted in 1999 during the 20th Session of the Committee on the Elimination of Discrimination against Women.

General Recommendation No. 25 on Article 4 paragraph 1 CEDAW on Temporary Special Measures, adopted in 1999 during the 20th Session of the Committee on the Elimination of Discrimination against Women.

General Comment No. 14 on the Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), adopted in 2000 during the 22nd Session of the Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/2000/4.

Concluding Comments from the Committee on the Elimination of Discrimination against Women in relation to the combined 5th and 6th periodic State report of Viet Nam, UN Doc. CEDAW/C/VNM/CO/6.

General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 CEDAW, adopted in 2010 during the 47th Session of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/GC/28.

General Recommendation No. 29 on Article 16 of the CEDAW: Economic Consequences of Marriage, Family Relations and their Dissolution, adopted in 2013 during the 54th Session of the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/GC/29.

Vietnam State Report to the Committee on the Elimination of Discrimination against Women, Combined 7th and 8th Reports (2013), UN Doc. CEDAW/C/VNM/7-8.

UN Reports

Sex Ratio at Birth, Imbalance in Viet Nam: Evidence from the 2009 Census, report from the UNFPA (2010).

Son Preference in Viet Nam: Ancient Desires, Advancing Technologies, report from the UNFPA (2011a).

Sex Ratio at Birth in Viet Nam: New Evidence on Patterns, Trends and Differentials, report from the UNFPA (2011b).

Compendium of Research on Reproductive Health in Viet Nam, report from the UNFPA (2012).

The Millennium Development Goals Report 2014, report from the United Nations (2014).

Literature

Ainetter Brautigam, Christine, 'International Human Rights Law: The Relevance of Gender' in Benedek, Wolfgang, Kisaakye, Esther M. and Oberletiner, Gerd (eds.), *Human Rights of Women: International Instruments and African Experience* (Zed Books Limited 2002).

Bélanger, Danièle, 'Sex-Selective Abortions: Short-Term and Long-Term Perspectives' (2002) Vol. 10(19) *Reproductive Health Matters* 194.

Bélanger, Danièle, Khuat, Thi Hai Oanh, Liu, Jianye, Le, Thanh Thuy and Pham, Viet Thanh 'Are Sex Ratios at Birth Increasing in Vietnam?' (2003) Vol. 58(2) *Population (English Edition)* 231.

Bélanger, Danièle, 'Single and Childless Women of Vietnam: Contesting and Negotiating Female Identity?' in Drummond, Lisa and Rydström, Helle (eds.), *Gender Practices in Contemporary Vietnam* (NIAS Press 2004), p. 97.

Bélnager, Danièle and Barbieri, Magali, 'Introduction; State, Families, and the Making of Transitions in Vietnam' in Bélanger, Danièle and Barbieri, Magali (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009).

Bélanger, Danièle, 'Single and Childless Women of Vietnam: Contesting and negotiating female identity?' in Bélanger, Danièle and Barbieri, Magali (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009).

Bélanger, Danièle and Pendakis, Katherine, 'Daughters, work and families in globalizing Vietnam' in Bélanger, Danièle and Barbieri, Magali (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009).

Binh, Ngo Thi Ngan, 'The Confucian Four Feminine Virtues (*Tu Doc*): The Old Versus the New' in Drummond, Lisa and Rydström, Helle, *Gender Practices in Contemporary Vietnam* (NIAS Press 2004)

Blanc, Ann K. and Tsui, Amy O., 'The Dilemma of past Success: Insiders' Views on the Future of the International Family Planning Movement' (2005) Vol. 36(4) *Studies in Family Planning* 263.

Bogenschneider, Karen and Corbet, Tom, 'Building Enduring Family Policies in the 21st Century: The Past as Prologue' in Coleman, Marilyn and

Ganong, Lawrence H. (eds.), *Handbook of Contemporary Families: Considering the Past, Contemplating the Future* (Sage Publications 2009).

Cook, Rebecca J., 'State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women' in Cook, Rebecca J. (ed.), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994).

Cook, Rebecca J. and Fathalla, Mahmoud F., 'Advancing reproductive rights beyond Cairo and Beijing' in Askin, Kelly D. and Koenig, Dorean M. (eds.), *Women and International Human Rights Law*, Vol. 3 (2001 Transnational Publishers Inc. 2001).

Drummond, Lisa, 'The Modern "Vietnamese Woman": Socialization and Women's Magazines' in Drummond, Lisa and Rydström, Helle, *Gender Practices in Contemporary Vietnam* (NIAS Press 2004).

Freeman, Marsha A., Chinklin, Christine and Rudolf, Beate, *The UN Convention On the Elimination of All Forms of Discrimination Against Women: A Commentary* (Oxford University Press 2012).

Fried, Susana T. and Landsberg-Lewis, Ilana, 'Sexual Rights: From Concept to Strategy' in Askin, Kelly D. and Koenig, Dorean M. (eds.), *Women and International Human Rights Law* Vol. 3, (Transnational Publishers, Inc. 2001).

Gammeltoft, Tine, 'The Politics of Vietnamese Family Planning: Gender and Personhood' in Trankell, Ing-Britt and Summers, Laura (eds.), *Facets of Power and Its Limitations: Political Culture in Southeast Asia* (Acta Universitatis Upsaliensis 1998).

Gammeltoft, Tine, *Women's Bodies, Women's Worries* (Curzon Press 1999).

Goodkind, Daniel, 'Vietnam's One-or-Two-Child Policy in Action' (1995) Vol. 21(1) *Population and Development Review* 85.

Goodkind, Daniel, 'The Vietnamese Double Marriage Squeeze' (1997) Vol. 31(1) *International Migration Review* 108.

Guilmoto, Christophe Z., 'Son Preference, Sex Selection, and Kinship in Vietnam' (2012) Vol. 38(1) *Population & Development Review* 31.

Hellmark Lindgren, Birgitta, 'The Politics of Vietnamese Family Planning: Ethnography' in Trankell, Ing-Britt and Summers, Laura (eds.), *Facets of Power and Its Limitations: Political Culture in Southeast Asia* (Acta Universitatis Upsaliensis 1998).

Hirschamn, Charles and Nguyen, Minh Huu, 'Tradition and Change in the Vietnamese Family Structure in the Red River Delta' (2002) Issue 64 Journal on Marriage and Family 1063.

Hossain, Sara, 'Equality in the Home: Women's Rights and Personal Laws in South Asia' in Cook, Rebecca J. (ed.), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994).

Jayakody, Rukmalie and Vu, Huy Tuan, 'Family Change in Vietnam's Red River Delta: From War, To Reunification, To Renovation' in Bélanger, Danièle and Barbieri, Magali (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009).

Jones, Gavin and Leete, Richard, 'Asia's Family Planning Programs as Low Fertility is Attained' (2002) Vol. 33(1) Studies in Family Planning 114.

Kirilova Eriksson, Maja, 'Abortion and Reproductive Health: Making International Law More Responsive to Women's Needs' in Askin, Kelly D. and Koenig, Doreen M. (eds.), *Women and International Law*, Volume 3 (Transnational Publishers 2001).

Kulin-Olsson, Karin, *Juridikens fundament – med grundläggande juridisk metodlära* (Jure Förlag AB 2011).

Leshkowich, Ann Marie, 'Standardised Forms of Vietnamese Selfhood: An Ethnographic Genealogy of Documentation' (2014) Vol. 41(1) American Ethnologist 143.

Mai, Tu Thi and Le, Tuyet Thi Nham, *Women in Vietnam* (Foreign Languages Publishing House 1978).

McDonald, Peter, 'Gender Equality in Theories of Fertility Transitions' (2000) Vol. 26(3) Population and Development Review 427.

Nguyen, Phuong-Khanh, 'How to Conduct Research in Vietnamese Law: Overview of the Legal System of the Socialist Republic of Vietnam' (1999) Vol. 27(3) International Journal of Legal Information 307.

Nguyen-Vo, Thu Huong, 'Governing Sex: Medicine and Governmental Intervention in Prostitution' in Werner, Jayne and Bélanger, Danièle (eds.), *Gender, Household, State: Doi Moi in Viet Nam* (Cornell Southeast Asia Program Publications 2002).

Nowak, Manfred, 'The Prohibition of Gender-Specific Discrimination Under the International Covenant on Civil and Political Rights' in Benedek, Wolfgang, Kisaakye, Esther M. and Oberletiner, Gerd (eds.), *Human Rights of Women: International Instruments and African Experience* (Zed Books Limited 2002).

Nowak, Manfred, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd Revised Edition (N.P. Engel Publisher 2005).

Oudin, Xavier, 'Household Strategies and Employment Strategies In A Changing Economy' in Renovation' in Bélanger, Danièle and Barbieri, Magali (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009).

Pettus, Ashley, *Between Sacrifice and Desire: National Identity and the Governing of Femininity in Vietnam* (Routledge 2003).

Pham, Bich Van, *The Vietnamese Family in Change* (Curzon Press 1999).

Robila, Mihaela, 'Family Policies Across the Globe: Development, Implementation, and Assessment' in Mihaela Robila (ed.), *Handbook of Family Policies Across the Globe* (Springer Science and Business Media 2014).

Ross, John and Smith, Ellen, 'Trends in National Family Planning Programs, 1999, 2004 and 2009' (2011) Vol. 37(3) *International Perspectives on Sexual and Reproductive Health* 125.

Rydström, Helle and Drummond, Lisa, 'Introduction' in Drummond, Lisa and Rydström, Helle, *Gender Practices in Contemporary Vietnam* (NIAS Press 2004).

Scornet, Catherine, 'State and Family: Reproductive Policies and Practices' in Bélanger, Danièle and Barbieri, Magali (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009).

Seltzer, Judith, *The Origin and Evolution of Family Planning Programs in Developing Countries* (RAND 2002).

Sidel, Mark, *Law and Society in Vietnam: The Transition From Socialism in Comparative Perspective* (Cambridge University Press 2008).

Sidel, Mark, *The Constitution of Vietnam: A Contextual Analysis* (Hart Publishing 2009).

Thayer, Carlyle A., 'Vietnam in 2013: Domestic Contestation and Foreign Policy Success' (2014) *Southeast Asian Affairs* 353.

Teerawichitchainan, Bussarawan, 'Household Headship in the Red River Delta, Vietnam: The Political Construction of the Family' in Bélanger, Danièle and Barbieri, Magali (eds.), *Reconfiguring Families in Contemporary Vietnam* (Stanford University Press 2009).

Tomasevski, Katarina, *Human Rights in Population Policies: A Study for SIDA* (SIDA 1994).

Waibel, Gabi and Glück, Sarah, 'More Than 13 Million: Mass Mobilisation and Gender Politics in Vietnam Women's Union' (2013) Vol. 21(2) *Gender & Development* 343.

Werner, Jayne and Danièle, Bélanger, 'Introduction: Gender and Viet Nam Studies' in Werner, Jayne and Bélanger, Danièle (eds.), *Gender, Household, State: Doi Moi in Viet Nam* (Cornell Southeast Asia Program Publications 2002).

Werner, Jayne, 'Gender, Household, and State: Renovation (*Doi Moi*) as Social Process in Viet Nam' in Werner, Jayne and Bélanger, Danièle (eds.), *Gender, Household, State: Doi Moi in Viet Nam* (Cornell Southeast Asia Program Publications 2002).

Werner Jayne, *Gender, Household and State in Post-Revolutionary Vietnam* (Routledge 2009).

Wisniale, Steven K., 'Family Policy in a Changing Vietnam' (2000) Vol. 31(1) *Journal of Comparative Family Studies* 79.

Interviews

Key Informant 1 (Hanoi, Vietnam, 6th of November 2014).

Key Informant 2 (Hanoi, Vietnam, 7th of November 2014).

Key Informant 3 (Hanoi, Vietnam, 7th of November 2014).

Key Informant 4 (Hanoi, Vietnam, 12th of November 2014).

Key Informant 5 (Hanoi, Vietnam, 13th of November 2014).

Key Informant 6 (Hanoi, Vietnam, 16th of November 2014).

Key Informant 7 (Hanoi, Vietnam, 17th of November 2014).

Key Informant 8 (Hanoi, Vietnam, 20th of November 2014).

Key Informant 9 (Hanoi, Vietnam, 24th of November 2014).

Key Informant 10 (Hanoi, Vietnam, 26th of November 2014).

Online sources

Luu, Anh, *Vietnam Legal Research*, published on GlobalLex by the Hauser Global Law School Program at NYU School of Law, available at <www.nyulawglobal.org/globalex/Vietnam.htm> last accessed 2nd of December 2014.

Conducting Key Informant Interviews, USAID Center for Development Information and Evaluation (1996), available at <http://pdf.usaid.gov/pdf_docs/PNABS541.pdf> last accessed 11th of December 2014.

‘*Det är schysst att vara föräldraledig!*’, available at <www.filmarkivet.se/sv/Film/?movieid=594> accessed 2nd of January 2015.

Official website of the Office of the High Commissioner for Human Rights, available at <www.ohchr.org> last accessed 2nd of January 2015.

Population Policies of the World, available at <www.hsph.harvard.edu/population/policies/poppolicy.htm> last accessed 2nd of January 2015.

Vietnam Laws Online, available at <www.vietnamlaws.com/> last accessed on the 2nd of January 2015.

Official website of the World Health Organisation, available at <www.who.int/topics/millennium_development_goals/about/en/> accessed 2nd of January 2015.

Vietnam (Nationalencyklopedin), available at <www.ne.se.ludwig.lub.lu.se/uppslagsverk/encyklopedi/l%C3%A5ng/vietnam> accessed 3rd of January 2015.

Vietnamkriget (Nationalencyklopedin), available at <www.ne.se.ludwig.lub.lu.se/uppslagsverk/encyklopedi/l%C3%A5ng/vietnamkriget> accessed 3rd of January 2015.

Explanatory Note on the 2013 Human Development Report: Viet Nam (UNDP), available at <<http://hdr.undp.org/sites/default/files/Country-Profiles/VNM.pdf>> accessed 3rd of January 2015.

Corruption Perception Index 2014 published by Transparency International, available at <www.transparency.org/cpi2014/results> accessed 3rd of January 2015.

Total Fertility Rate, the official website of the World Bank, available at <<http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>> accessed on the 3rd of January 2015.

Official website of the Vietnam Women's Union, available at <<http://hoilhpn.org.vn/?Lang=EN>> last accessed 4th of January.

Official website of the Vietnam Fatherland Front, available at <www.mattran.org.vn/> last accessed 4th of January 2015.