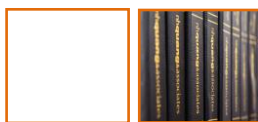


nh**quang**'s research

REPORT

SURVEY ON ASSURANCE OF GENDER EQUALITY IN THE COURT SYSTEM OF VIETNAM AND IN ADJUDICATING ACTIVITIES

2009



SURVEY REPORT ON

**ASSURANCE OF GENDER EQUALITY
IN THE COURT SYSTEM OF VIETNAM**

AND

IN ADJUDICATING ACTIVITIES

ABBREVIATIONS USED

ADB	Asian Development Bank
GE	Gender equality
FV	Family violence
CPC	Criminal Procedure Code
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
SRVN	The Socialist Republic of Vietnam
DANIDA	Danish International Development Agency
VNWU	Vietnam Women's
JOPSO III	Program Of Support To Legal And Judicial Reforms In Vietnam (Phase III)
OECD	Organisation for Economic Cooperation and Development
SIDA	Swedish International Development Cooperation Agency
SPC	The Supreme People's Court
NCAW	The National Committee for the Advancement of Women in Vietnam
UNDP	United Nations Development Program
UNFPA	United Nations Population Fund
UNIFEM	United Nations Development Fund for Women
WORLD BANK	World Bank

INTRODUCTION TO THE PROGRAM OF SUPPORT TO LEGAL AND JUDICIAL REFORMS IN VIETNAM

To build the model of a rule-of-law state “by the people and for the people”, it is necessary not only to perfect the legal system, to reform the social management mechanism, to extend people’s rights to participate in social management, regardless of sex and social status as well as to improve the publicity and transparency of the state apparatus but also to ensure an effective mechanism for law execution in which *the role of courts is the key*¹.

The assistance of DANIDA for the judicial branch of Vietnam aims at creating a legal and institutional environment which could well enable poverty elimination, human right protection, public administration, and gender equality. One among the strategies to realize such objectives is to strengthen people’s capacity to access justice².

The supporting objective of DANIDA in the Program of Support to Legal and Judicial Reforms in Vietnam (Phase III) is *“To ensure that the people could access justice through independent court bodies operated under transparent and accountable method in the process of building a rule-of-law state in Vietnam”*.

To achieve the above objectives, the Program of Support to Legal and Judicial Reforms in Vietnam (Phase III) and the tribunal sector have set out some specific actions, including activities to raise awareness on GE in the court system through enhancing the participation and access of women in proceedings activities. Building up and well implementing a program on GE is the result of such specific actions³.

Fostering GE is one of the crucial goals among development policies of DANIDA. It is not only the current influences on hunger elimination and economic growth but also the matter of human’s right and status. Abolishing the discrimination against women is one of the topics of international conventions and policy agenda and it has directly impacted development strategies of developed and developing countries. Within the scope of judicial sector, promoting GE is to make direct impacts on policies on human resources of relevant institutions as well as on legislative task and judicial administration task. It is possible that the bias to female (and vulnerable groups) still exists in such institutions if the laws are unenforceable⁴.

GE has for long drawn the attention of Vietnamese Government at the policy formulation and legislation levels (please see Part B.II for further information). The SPC has taken various positive actions to implement GE policy of the Government. The Committee for the

¹ Central Resolution III, V, VI (2nd), VII and VIII of the eighth session, Instruments of the 9th National Party Congress, Instruction No. 53 CT/TW dated 21/3/2000 of the Politbureau about “Some pressing tasks of judicial bodies in 2000”, Central Resolution No. 08-NQ-TW dated 02/01/2002 of the Politbureau “Regarding some focal missions of judicial tasks in the coming time”, Central Resolution No. 48-NQ/TW of the Politbureau regarding “Strategy for the Development and Improvement of Vietnam's Legal System to 2010, and Direction for the Period up to 2020” dated 24/05/2005, Central Resolution No. 49-NQ/TW of the Politbureau on “the Judicial Reform Strategy to 2020” dated 02/06/2005, Documents of the 10th National Party Congress; Central Resolution No. 49-NQ/TW of the Politbureau on “the Judicial Reform Strategy to 2020” dated 02/06/2005.

² Documents of the Program of Support to Legal and Judicial Reforms in Vietnam (Phase III), page 13.

³ Documents of the Program of Support to Legal and Judicial Reforms in Vietnam (Phase III), page 46.

⁴ Documents of the Program of Support to Legal and Judicial Reforms in Vietnam (Phase III), page 11.

Advancement of Women of the SPC has been established from supreme to grass-root level. This Committee has also formulated action plans for certain periods such as 2003–2005 Action Plans or 2007-2010 Action Plan in order to execute the National Action Plan for Women.

Therefore, the Program of Support to Legal and Judicial Reforms in Vietnam (Phase III), within its action frame, has decided to assist the promotion activities regarding GE of the SPC. One of them is to carry out a survey on GE within the scope of the court system.

STUDY REPORT ON THE ASSURANCE OF GENDER EQUALITY IN THE COURT SYSTEM OF VIETNAM AND IN ADJUDICATING ACTIVITIES

INTRODUCTION

I. PURPOSE OF THE STUDY

This study aims to identify the relation between the development of Vietnamese courts, including two elements namely independence and adjudication quality of the tribunal system, and the ensuring of GE in Vietnam in order to:

- Help the leading authorities of the SPC and courts at all levels have practical foundation to give decisions which ensure the reliability and accountability in the performance of the Action Plan on gender equality and the Law on Gender Equality in the tribunal sector;
- Facilitate the capacity to ensure equality and justice in adjudication activities and law application of courts;
- Investigate different impacts of the Strategy on Judicial Reforms on gender equality tasks;
- Formulate specific actions for gender equality work in the operation of the tribunal sector to exercise the Law on Gender Equality.

II. SCOPE OF THE STUDY

Targeted at the aforementioned objectives and basing on the advice from various experts and organisations on gender equality, the Research Team has decided to render the performance scope for the study and survey as follows:

- Considering and evaluating professional qualifications of female judges and other staff of the tribunal system nationwide and the needs for development of such personnel;
- Observing the awareness of holders of different positions in tribunal sector on gender equality and impacts of gender equality on the independence of courts and the protection of human rights;
- Reviewing comprehensively the acquirements and shortcomings in legal proceeding provisions in prevention of gender discrimination;
- Examining Action Programs of the tribunal sector on the development of courts with the integration of gender equality and other international cooperation activities in relation to gender equality;
- Collecting opinions of court staff and people on the implications from adjudication results against relevant people in relation to gender equality.

- Recommending orientation and solutions to improve capacity and performance effectiveness to ensure gender equality of the court system.

III. METHODOLOGY OF STUDY

Sex, gender and gender equality seem to be familiar and easy-to-understand terms. In the process of desk review as well as pilot survey in practice for the basis of official survey, the Research Team realizes that in reality, there are various interpretations, even misunderstanding and controversies about the connotation of such terms. The Research Team agrees with the point of view that in different contexts or from time to time, each term may reflect different viewpoints of different ideologies and may be employed to identify the differences of reality⁵. Therefore, the essential thing is to have a common understanding about such terms as grounds for the whole study stated in this report.

Box 1: Fundamental definitions

Sex concerns physical and biological differences that distinguish males from females and could not be changed. There are only some small differences on the role of male and female regarding biological and physiological features on the basis of sex. For example, the pregnancy and offspring delivery and the differences in physiology may be due to sex features.

Gender comprises a range of social differences between men and women such as roles, attitudes, behaviors, and values. Gender roles are known through study process and differ across cultures from time to time. Therefore, gender could be changed. Gender is a term that associates with both men and women. GE focuses on changes for both men and women.

Gender equality means that men and women receive equal social status, but it does not mean that men and women are the same, but their similarities and differences are recognized and respected equally. Women are entitled to experience conditions equivalent to men to promote their potentiality fully, to have opportunity to participate, contribute and receive the same from development activities of the nation in terms of economics, politics, culture, and society⁶.

Gender bias means the partial and negative awareness, attitude and evaluation on characteristics, status, roles and capacity of men or women.

An individual or an organization who has gender sensitivity will find that these dissimilarities will lead to the differences between men and women in the participation and receipt in development process.

An individual or an organization who has gender responsibility will be aware of gender issues, gender differences and their causes, then put forth active measures to resolve and

⁵ *Promoting change: ground for gender integration*, National Committee for Advancement of Women in Vietnam, Southeast Asia Gender Equity Program (SEAGEP), 11/2001, page 6.

⁶ *Guidelines for gender integration in policy planning and execution*, VIE-01-015-01 Project “Gender in public policy”, National Committee for Advancement of Women in Vietnam, page 14; *Toward a Feminist Constitutional Agenda in The Gender of Constitutional Jurisprudence*, Beverley Baines & Ruth Rubio-Marin (chief editor), Cambridge University Press, 2005, page 3; *Promoting changes: ground for gender integration*, National Committee for Advancement of Women in Vietnam, Southeast Asia Gender Equity Program (SEAGEP), 11/2001, page 6.

recover the inequality situation. It should be noted that measures to be performed may or may not have made changes to the causes of gender inequality effectively and sustainably.

An individual or an organization who has changed due to GE objective will clearly understand and find the way to resolve the causes of gender inequality situation by executing strategic and effective measures to alter the unequal power relation between men and women, the result of which is the improvement of women's status and enhancement of GE.

Based on the above definitions, the Research Team has decided to access GE in tribunal sector from cultural perspective including social, political, and legal environment, as well as cultural standards derived from such environment. The environment must be studied from the past to the present, taking into consideration the inheritance, interference and dissemination of cultures and ideology. The Research Team thinks that this way will be more comprehensive than the approach from political perspective to gender and GE. Several current studies on gender and GE in Vietnam, meanwhile, approach the matter under the viewpoint that "women liberation" in patriarchy society is the core of GE issue⁷.

On completion of this Report, the Research Team is very glad to learn that UNFPA in Vietnam has announced an approach from cultural perspective to gender and human rights⁸. Although the Research Team has not deeply understood the "cultural sensitivity approach" of UNFPA, and does not apply such approach either, but we hope that these two approaches under the same cultural perspective will share some similarities.

With a cultural perspective with respect to gender and human rights of the Research Team to approach GE issue, the Report will analyze cultural, conventional and historical factors in Vietnam which may affect the formation of thoughts on "gender" and "GE" of the community in which tribunal sector is a member in Part A. Part A also indicates efforts of the State (political factor) in building current laws and institutions which impact the awareness on GE. Specific survey information about the awareness, activities to enhance the awareness and to ensure GE, and challenges to female judges and female court staff in particular are analyzed in Part B. Part C mentions practical issues on GE in adjudicating activities and expectation of court staff and people for raising awareness on GE and ensuring human rights generally in adjudicating activities. Conclusions and recommendations of the Research Team to the SPC and donors in order to improve the awareness on GE and human rights are suggested in Part D.

This study employs three major methods to collect information including: (a) desk review; (b) field trip survey and in-depth interview; and (c) questionnaire survey.

a. Desk-review

⁷ To get such conclusion, the Research Team has consulted several studies on gender, GE, protection of women's interests, and Vietnamese culture, which have been partially noted in this Report. It is possible to take into reference "The Very Principal Principle of Vietnam's culture" [Vietnamese culture: Finding and Thinking] (*"Nguyên lý Mẹ Của Nền Văn hóa Việt Nam"* [*Văn hóa Việt Nam: Tìm tòi và Suy Ngẫm*]) Tran Quoc Vuong, 2003, page 467-472; *Gender Issue with the process of studying and lecturing the subject of Law on Family and Marriage* (*Vấn đề giới với quá trình nghiên cứu và giảng dạy môn học Luật Hôn nhân và Gia đình*), Nguyen Thi Lan, Jurisprudence Review, Volume 3/2007, page 36-41.

⁸ *Report on World Population status 2008, directing toward the common ground: Culture, Gender and Human Rights* (*Báo cáo Tình trạng Dân số Thế giới 2008, Hướng tới nền tảng chung: Văn hóa, Giới và Quyền Con Người*), UNFPA, 2008, announced in Vietnam on 18/12/2008.

In order to understand clearly the background for the study and the report, the Research Team has thoroughly studied information sources and secondary materials on culture of Vietnam, gender, GE, the development of court system of Vietnam, the reform of adjudicating activities in Vietnam and GE in foreign court systems. The desk review is carried out based on legal database from the Official Gazette, scientific reports of the Government, the SPC and some local courts, Women Unions at the centre and some localities, libraries of some universities, WorldBank, UNDP, DANIDA, SIDA, ADB, OECD, UNIFEM, foreign and domestic newspapers and magazines (see the References attached herein).

Desk review is also aimed to attain comparison analysis so that readers could have a more comprehensive picture on GE in the court system.

b. Field trip survey and in-depth interview

Field trip survey and in-depth interview with various subject groups were carried out within three months (from July to September) in 2008. The Research Team conducted in-depth interviews at courts of different levels (from supreme to district, including 22 courts) and in different provinces representing for Northern, Central and Southern areas; urban and rural areas; delta, mountainous and islandish areas; border and inland areas. Those locations included Hanoi, Quang Ninh, Hai Phong, Lao Cai, Quang Nam, Quang Ngai, Da Nang, Can Tho, Dong Nai and Ba Ria-Vung Tau. The total interviews conducted were 55, including:

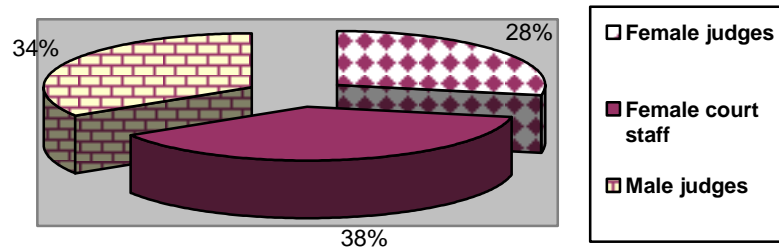
- Interview with 27 judges, 12 court clerks and court staff at all levels;
- Interview with 16 citizens, mainly female who had cases handled by the court.
- Interview with 5 citizens (3 females and 2 males) who never had any cases handled by the court.
- Interview with 2 journalists who specialise in writing investigative reports on family violence, prostitution and cross-border trafficking of women.
- Interview with 12 experienced lawyers in criminal, civil and marriage-family cases.
- Interview with 2 persons who do researches and give lectures on GE.

In-depth interview was divided into two stages. Stage 1 was carried out at the same time where the Research Team built study contents, methods and questionnaire. There were 10 such preliminary interviews. Stage 2 was conducted after questionnaires were completed and sent to localities.

c. Questionnaire survey

2,217 questionnaires were sent to three groups including female judges, female court staff and male judges at courts of different levels. Each group of interviewees received different questionnaires in correspondence with their positions as well as the survey purpose (see the questionnaire attached herein). 1,315 questionnaires were filled in and returned. The proportion of questionnaires sent and collected is 59% with the structure as follows:

Figure 1: Structure of participants to the survey



The proportion of survey questionnaires collected from provincial courts is 65.6% (equivalent to 42 provincial courts), that percentage from district courts is 48.3% (equivalent to 327 courts), in which, the answered questionnaires from rural areas⁹ account for 32.9%, that from mountainous areas hold 28.1% and of urban areas is 33.5%.

In the survey, the ratio of female judges being ethnic minority occupies 11.2%, such number of female court staff is 12.7% and of male judges holds 13%. This partially illustrates that judge profession, a special career, which requires high professional qualification and cultural knowledge, has the diversified participation of various ethnic minorities including both male and female.

Table 1: Ethnic characteristics of participants to the survey

Female judges				Female staff			Male judges		
	Ethnic group	Quantity	Percentage (%)	Ethnic group	Quantity	Percentage (%)	Ethnic group	Quantity	Percentage (%)
1.	Cơ tu	1	0.2	Champa	10	2.7	Miao	3	0.6
2.	Champa	2	0.4	Kinh	322	87.3	Kinh	389	87.0
3.	Giẻ Triêng	1	0.2	Cao Lan	1	0.3	Khme	2	0.4
4.	Yao	1	0.2	Yao	3	0.8	Muong	4	0.9
5.	Chinese	2	0.4	Giáy	3	0.8	Nung	3	0.7
6.	Kinh	443	88.8	Chinese	2	0.5	Tay	20	4.5
7.	Khme	1	0.2	Khme	1	0.3	Thai	10	2.2
8.	Miao	2	0.4	Miao	2	0.5			
9.	Muong	4	0.8	Muong	5	1.4			
10.	Nung	4	0.6	Nung	2	0.5			
11.	Tay	25	3.8	Tay	14	3.8			
12.	Thai	9	1.8	Thai	4	1.1			
	Total	499	100	Total	369	100	Total	447	100

The age range of participants of the survey is also diversified; regarding female judges, the range from 35-45 years old occupies the highest proportion, followed by the age ranging from 45 to 55, and finally is the range between 25 and 35 years old. With regard to female staff, the age between 25 and 35 is the majority. This is the range that the law graduates who

Figure 2: Age structure of female judges participating in the survey

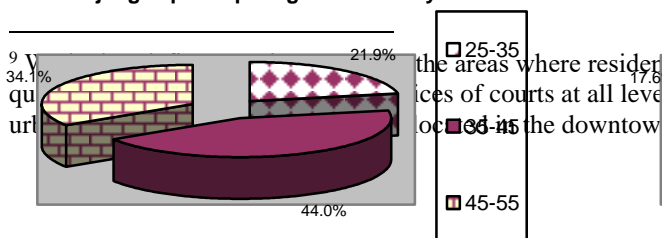
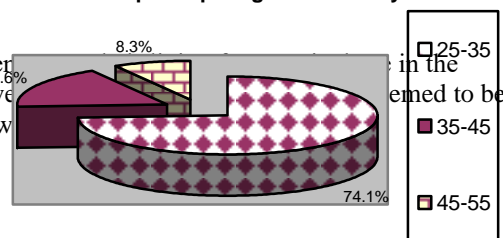


Figure 3: Age structure of female court staff participating in the survey



want to become judges have to pass a working period in the tribunal sector to gain “adjudication experience” of at least 5 years after their university.

Characteristics of marital status of the participants to the survey also draw the attention of the Research Team since such features closely relate to gender characteristics of female. The percentage of women who already got married and have children accounts for majority of the participants. The proportion of single female court staff is higher than that of judges. But this rate is in direct proportion with the age range of female court staff.

Figure 4: Age structure of male judges joining the survey

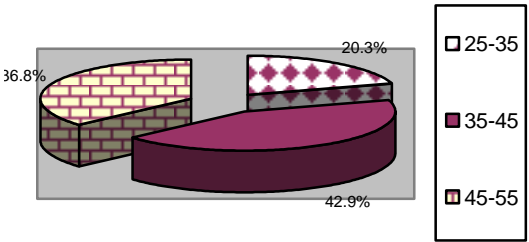


Figure 5: Marital status structure of female judges joining the survey

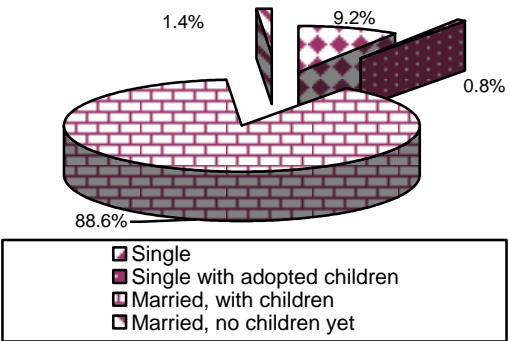
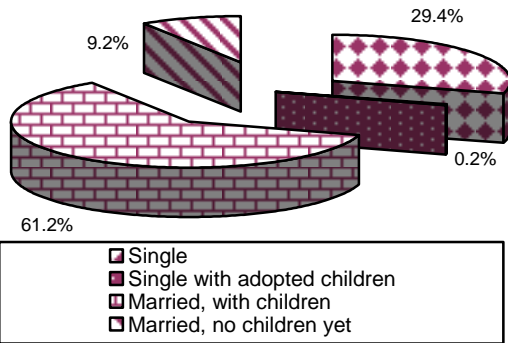


Figure 6: Marital status structure of female court staff joining the survey



PART A

OVERVIEW ON GENDER EQUALITY IN VIETNAM

I. CULTURAL TRADITION AND POLITICAL AND LEGISLATIVE CONTEXT OF VIETNAM BEFORE AUGUST REVOLUTION OF 1945

The contemporary Vietnamese culture has a very complicated structure regarding gender and GE issue. Several viewpoints reckon that the current culture of Vietnam seems to follow paternal authority regime affected by Confucianism. However, some scholars think that it is impossible to define Vietnamese culture as “matriarchy” or “patriarchy” according to western point of view¹⁰. Some historical and cultural researchers believe that Vietnamese women have significant role in their family¹¹. Professor Tran Quoc Vuong even affirmed that “Vietnamese people have the tradition of respecting women”¹².

The introduction of Confucianism into Vietnamese society became profound from XVth century¹³, marked by the influences of Confucianism on the building of institution and legislation of the country of Vietnamese feudal courts in stead of Buddhism’s. When family organisation was established toward paternal authority regime, the roles of Vietnamese women also changed gradually. Under Confucianism spirit, female must depend on male (at a female’s girlhood, she must submit to her father, after marriage, she must submit to her husband, and submit to her son after her husband’s death). As a result, women in Confucianism families lost their status and were treated unequally¹⁴.

However, Confucianism placed deeper influences on the middle and upper strata because only such people could afford their schooling. Meanwhile, common people were not affected by Confucianism heavily. In addition, agricultural production and economic development mode required women to play a certain role in their family, to have more power corresponding to the tasks they assumed¹⁵. Therefore, the equality between male and female in the working class was higher than that of upper classes and occupied a larger

¹⁰ To study culture and clans (*Tìm hiểu Văn hóa và Tộc người*), Tu Chi, 1996, extracted in “The Very Principal Principle of Vietnam’s culture” [Vietnamese culture: Finding and Thinking] (“Nguyên lý Mẹ Của Nền Văn hóa Việt Nam” [*Văn hóa Việt Nam: Tìm tòi và Suy Ngẫm*]), Tran Quoc Vuong, 2003, page 467-472.

¹¹ “The Very Principal Principle of Vietnam’s culture” [Vietnamese culture: Finding and Thinking] (“Nguyên lý Mẹ Của Nền Văn hóa Việt Nam” [*Văn hóa Việt Nam: Tìm tòi và Suy Ngẫm*]), Tran Quoc Vuong, 2003, page 467-472; *Góp phần nghiên cứu Văn hóa và Tộc người*, Trần Từ, 1996, page 327-340.

¹² “The Very Principal Principle of Vietnam’s culture” [Vietnamese culture: Finding and Thinking] (“Nguyên lý Mẹ Của Nền Văn hóa Việt Nam” [*Văn hóa Việt Nam: Tìm tòi và Suy Ngẫm*]), Tran Quoc Vuong, 2003, page 467-472.

¹³ Discussion about Confucianism in Vietnam (*Bàn Về Nho Giáo Ở Việt Nam*), Luong Chi Minh, in ‘Foreign Vietnamese studies researchers write about Vietnam (‘Các nhà Việt Nam học nước ngoài viết về Việt Nam’), Volumn I, The Gioi Publishing House, 2002, page 142; I. Yu, *ibid*, page 35

¹⁴ *Law and Society in Seventeenth and Eighteenth Century Vietnam* [*Luật và xã hội Việt Nam thế kỷ XVII-XVIII*], Insun Yu, Center for Asean studies, Korea University, 1990, page 55-73; *Are Women Still hold up half of heaven in Vietnam? The Gender Wage gap*, Amy Y.C Liu, Asia Pacific Press, 2002, page 5.

¹⁵ *Gender Roles in the Family: Change and Stability in Vietnam*, John Knodel, Vu Manh Loi, Rukmalie Jayakody, và Vu Tuan Huy, 2004, page 1; *Law and Society in Seventeenth and Eighteenth Century Vietnam* [*Luật và xã hội Việt Nam thế kỷ XVII- XVIII*], Insun Yu, Center for Asean studies, Korea University, 1990, page 55-73.

number in the society¹⁶. Such cultural characteristics are different from that of China at the same period¹⁷.

Due to the complexity and inconsistencies of the cultural structure, feudal legislation was not identical regarding the settlement of the relationship between male and female. Besides provisions reflecting the inequality, there were also some provisions revealing the equality between male and female in marital relationship. As such of Le dynasty in 1449, private ownership and property inheritance were promulgated, accordingly “assets of the family will be divided equally to the children, regardless their gender”¹⁸.

A lot of men of lower class wished to show the appearances as those of higher strata. They tried to express themselves as knowledgeable, knowing Confucianism etiquette, having “a good tradition” in their family; therefore, many of them tried to impose Confucianism ideology on women with their own understanding. Consequently, lots of women of such class were also treated unfairly. However, such imposition was not successful at all time. There were many women succeeding and obtaining the control power over their family.

It is also notified that the severity of the political and legislative regime made men avoid sensitive political relations which may cause the loss of interests or appearances of them and their family. As a result, women participated more in the social and political relationship but they were not officially recognised. Because if they made any mistake through their acts or speeches, those would be considered as “common and unremarkable acts of women” but not referred to as such of the family like those done by men. Women themselves had the bias that their status was lower than that of men which restricted their own wish to self-liberate¹⁹.

Ideas on equal rights of the western culture were introduced into Vietnam together with the invasion of the French colonial. Women emancipation campaign of western countries also caused its strong impact to Vietnam in 1930s. Women in urban areas were allowed to go to school, participate in activities of associations and unions, be self-motivated and not only represent for their family but also for themselves²⁰.

Inheritance right in the history of Vietnamese legislation was mainly assigned to male due to the impact of or in application of Chinese legislation, except the time of Hong Duc Code

¹⁶ *Law and Society in Seventeenth and Eighteenth Century Vietnam [Luật và xã hội Việt Nam thế kỷ XVII-XVIII]*, Insun Yu, Center for Asean studies, Korea University, 1990, page 55-73.

¹⁷ It is possible to see the favour for such opinion in: *Law and Society in Seventeenth and Eighteenth Century Vietnam [Luật và xã hội Việt Nam thế kỷ XVII- XVIII]*, Insun Yu, Center for Asean studies, Korea University, 1990, page 55-73; “The Very Principal Principle of Vietnam’s culture” [Vietnamese culture: Finding and Thinking] (*Nguyên lý Mẹ Của Nền Văn hóa Việt Nam [Văn hóa Việt Nam: Tìm tòi và Suy Ngẫm]*), Tran Quoc Vuong, 2003, page 467-472,

¹⁸ *Law and Society in Seventeenth and Eighteenth Century Vietnam [Luật và xã hội Việt Nam thế kỷ XVII-XVIII]*, Insun Yu, Center for Asean studies, Korea University, 1990, page 55-73; History of State and Law of Vietnam Textbook (*Giáo trình Lịch sử Nhà nước Pháp luật Việt Nam*), Hanoi Law University, The People’s Public Security Publishing House, 2007, page 262; Article 375, *Hong Duc Code (Bộ luật Hồng Đức)*.

¹⁹ Viewpoints of some well-known people on the role of women in Vietnamese society in the 1930s (*Quan điểm của một số người có tên tuổi về vị trí của người phụ nữ trong xã hội Việt Nam những năm 1930*), Phan Thi Minh Le, (in “Foreign Vietnamese studies researchers write about Vietnam” (“Các nhà Việt Nam học nước ngoài viết về Việt Nam” (“Các nhà Việt Nam học nước ngoài viết về Việt Nam”)), Volumn I, The Gioi Publishing House, 2002, page 419-431.

²⁰ Viewpoints of some well-known people on the role of women in Vietnamese society in the 1930s (*Quan điểm của một số người có tên tuổi về vị trí của người phụ nữ trong xã hội Việt Nam những năm 1930*), Phan Thi Minh Le, (in “Foreign Vietnamese studies researchers write about Vietnam” (“Các nhà Việt Nam học nước ngoài viết về Việt Nam” (“Các nhà Việt Nam học nước ngoài viết về Việt Nam”)), Volumn I, The Gioi Publishing House, 2002, page 419-431.

which recognised the right of female. Up to French domination period, the inequality in inheritance right still exist, such as in the family, the husband was considered as the head of the family; consequently, the wife had no right to make a will to dispose their own assets if her husband did not agree. In case where the wife died first, the husband became the unique owner of the whole common assets including the wife's. In the contrary, if the husband died first, the wife only had the right to make use of private assets of the husband where there was no inheritor available on both paternal and maternal side of the husband. If the wife remarried, the private assets of the husband must be returned to his family, she was allowed to bring her own assets, and their common assets must be left for their children²¹. In reality, such provisions have still affected the awareness of the community so far though legislation promulgated after August Revolution has recognised the equal inheritance right between male and female.

Before the August Revolution in 1945, there was no historical mark or classic reference on participation of women in adjudicating bodies of Vietnam. History of feudal period recognised the role of women in the process of national liberation, such as Trung Trac, Trung Nhi sisters, Ba Trieu, Bui Thi Xuan, and so on. Under the French domination, though the women were emancipated, there was no female taking part in adjudicating activities of the courts. The women also rarely brought cases directly to the court but this was mainly done by men²².

Subconclusion:

The cultural structure of Vietnam is very complicated. This results in the formation of various viewpoints and thoughts which are very different and even contradictory on the status of women. Such identification has affected legislation across feudal periods. Some legislation recognised the role of women in the society but they were still limited and unequal with men. All of these cultural and legal heritages have influenced the thinking about GE of Vietnamese people presently.

Approaching knowledge on GE should be made not only from political perspective but also from cultural perspective. Various approach perspectives will help judges avoid gender bias in their adjudication and handling of relationships in the internal tribunal sector.

II. EFFORTS OF VIETNAMESE GOVERNMENT REGARDING GENDER EQUALITY AFTER AUGUST REVOLUTION IN 1945

It can be said that since its establishment, together with the objective of “National Liberation”, the Communist Party of Vietnam (Indochina Communist Party previously) in the 1930s clearly stated the objective of “Women Emancipation” and the implementation of

²¹ Civil Law of the North (Dân luật Bắc Kỳ), Articles 113, 321, 346, 360 and Civil Law of the Central (Dân luật Trung Kỳ), Articles 111, 313, 341, 359 (extracted from Vietnamese Civil Law Textbook, Volumn 1, Hanoi Law University, The People's Public Security Publishing House, 2006, page 308).

²² *Changing Gender Relations in Vietnam's Post Doi Moi Era*, Lynellyn D. Long, Le Ngoc Hung, Allison Truitt, Le Thi Phuong Mai, Dang Nguyen Anh, The World Bank, 2000, page 45.

“equality between men and women”²³. Subsequently, across different periods, specific resolutions, policies, and guidelines have been promulgated to facilitate the society “to strive for the execution of equality between men and women”²⁴. The communists expected to suppress the obsolete feudal ideology affected by Confucianism which discriminated men and women. Immediately from the beginning years of establishment, the Communist Party, in the *Resolution (Án nghị quyết)* of the Central Meeting (*Trung ương toàn thể hội nghị*) of Indochina Communist Party (in October 1930)²⁵ on the task of women campaign considered “it is compulsory to make miserable women participate in revolution struggles of workers and peasants. This is the vital thing. If women stand beyond the revolution struggles of workers and peasants, the objective of women emancipation will never be achieved”. Therefore, the Communist Party attached women emancipation to the process of national liberation and class liberation as an unseparated part²⁶. This was shown typically through such ideas as: “Talking about women is taking about a half of the society. If women emancipation is not carried out, a half of mankind is not liberated”²⁷. President Ho Chi Minh called for the whole people to abolish the injustice and unfairness to the women²⁸ and laid down that “husband and wife have equal status in the family”, “married women shall have full capacity in terms of household”²⁹.

Right in the First Constitution of Vietnam democratic republic (1946), the perspective on the equality between men and women as stated in Article 9 “Women shall have equal rights with men in all aspects” marked a significant turning-point of the viewpoint on GE and anti-discrimination between men and women. Such opinion has been kept reflected through subsequent Constitutions and the current Constitution (see analysis hereinunder). This is the solid legal grounds for the implementation of GE rights in Vietnamese society.

Legislation on inheritance of the Revolutionary State defined equality between men and women right at the beginning period of country construction. Decree 97/SL of President Ho Chi Minh dated 22 May 1950 stipulated: “When a widow or a widower and grown-up children are alive, they have the right to ask for the division of assets under the ownership of the dead, upon the payment of common assets”³⁰. The Decree eliminated unequal provisions on gender promulgated in previous legislations regarding the receipt of inheritance. Constitutions 1959, 1980 and 1992 all determined “the State protects inheritance right of the citizens”³¹ regardless they are male or female.

²³ *Political Program 1930 of Vietnamese Communist Party (Cương lĩnh 1930 của Đảng Cộng sản), The Question of Women in Vietnamese Tradition on Trial: 1920-1945*, Marr, David G., 1981, Berkeley: University of California Press, page 190-251; *Labour relations in Vietnam*, Fahay S., In *Vietnam Update 1994*, Department of Political and Change, Australian National University, Canberra, 1994; *Women in Industry: country information—Vietnam*, United Nations Industrial Development Office (UNIDO), Hanoi, 1992;

²⁴ Vietnamese Communist Party (1998): *The Complete works of documents of the Communist Party of Vietnam* Volumn 2, page 12,14; “Gender equality: lengthening the retirement age of female labourers?” (*Bình đẳng giới: kéo dài tuổi nghỉ hưu của lao động nữ?*), Vietnamnet, dated 8/4/2006.

²⁵ Vietnamese Communist Party (1998): *The Complete works of documents of the Communist Party of Vietnam*, Volumn 2, page 12.

²⁶ Vietnamese Communist Party (1998): *The Complete works of documents of the Communist Party of Vietnam*, Volumn 2, page 12,14.

²⁷ Ho Chi Minh (1996): *Complete works*, Volumn 9, National Political Publishing House, Hanoi, page 523

²⁸ Guidelines for gender integration into policy formulation and implementation, Project VIE-01-015-01 “Gender in public policy”, National Committee for the Advancement of Women in Vietnam, page 21.

²⁹ Decree 97/SL of President Ho Chi Minh dated 22/05/1950, Article 5 and Article 6.

³⁰ Decree 97/SL of President Ho Chi Minh dated 22/05/1950, Article 11.

³¹ Constitution 1959, Article 19, Constitution 1980, Article 27 and Constitution 1992, Article 58.

In recent time, policy to women has been more and more strengthened. *“Regarding women, it is necessary to formulate and implement a Development Strategy for Advancement of Women in Vietnam up to 2000, etc. It is especially important to appreciate professional training, job generation, assistance in economic development, living improvement, women and children’s health care. It is also essential to pay attention to Party’s development, training and fostering for female staff; enhancing proportion of female staff in leading bodies of the Party and the State at different levels and different lines”* (extracted from Instruments of the 8th National Party Congress)³². *“Regarding women, it is necessary to well implement legislations and policies on GE, to foster, train profession, to enhance their schooling; to formulate mechanism and policies for women to participate more in leading and managing bodies at different levels and different lines; to take care and protect the health of mothers and children; to facilitate women to well perform maternal functions; to build their family well off, equal, progressive, and happy”* (extracted from Instruments of the 9th National Party Congress)³³.

“For women, it is necessary to enhance their qualifications in all aspects and improve the quality of their material and spiritual lives for implementation of GE, to create conditions for women to well perform the roles of a citizen, a labourer, a mother, and the first teacher of their children; to foster and train them so that women could join more and more social activities, leading and managing bodies at all levels” and *“to take care and protect the health of mothers and children; to supplement and complete policies on labour protection, social insurance, maternity insurance, labour regime for female labourers; to decisively struggle against social evils, violences, injuries and outrages to women dignity”* (extracted from Documents of the 10th National Party Congress)³⁴.

When women are more respected and more equally treated, their status in the society and in their family has been more and more improved. GE in Vietnam is assessed by the UN as a brightpoint in the implementation of Millenium Development Goals³⁵ and become the country which achieves the quickest change in gender gap elimination within the past 20 years in East Asia. Vietnam has been considered as one of the most advanced countries in terms of GE³⁶.

Viewpoints on GE of the Party and the Government are summarised by the main objectives set forth in the National Strategy for Advancement of Women in Vietnam for the period 2001-2010 approved by the Prime Minister in Decision No. 19/2002/QĐ-TT dated 21 January 2002 as follows:

Box 2: Five main objectives in the National Strategy for Advancement of Women in Vietnam for the period of 2001-2010:

- To implement equal rights of women in the area of labour and employment;
- To implement equal rights of women in education - training;
- To implement equal rights of women in health care;

³² Instruments of the 8th National Party Congress, National Political Publishing House, Hanoi, 1996; page125

³³ Instruments of the 9th National Party Congress, National Political Publishing House, Hanoi, 2001; page 126

³⁴ Instruments of the 10th National Party Congress, National Political Publishing House, Hanoi, 2006; page120

³⁵ Nhan Dan newspaper, dated 3/5/2007; “Vietnam Gender Assessment 2006” (“Đánh giá tình hình giới ở Việt Nam”), World Bank, ADB, CIDA and DFID, 2006.

³⁶ “Vietnam Gender Assessment 2006” (“Đánh giá tình hình giới ở Việt Nam”), World Bank, ADB, CIDA and DFID, 2006.

- To enhance the quality and effectiveness of women's performance in the fields of politics, economics, culture, and society to increase the number of women to be introduced and elected to participate in the leadership mechanism of different levels and lines;
- To enhance the capacity of operation for the advancement of women³⁷

In the Comprehensive Strategy on Growth, Hunger erasion and Poverty Alleviation, GE and advancement of women are repeated more specifically in order to produce an action plan for GE and the enhancement of participation role of women in different leadership levels (see Box 3 hereinunder).

Box 3: Encouraging gender justice, enhancing participatory roles of Women in different leadership levels

- To implement Decision No. 19 of the Prime Minister on National Strategy for Advancement of Women in Vietnam upto 2010
- To ensure that the names of both husband and wife appear on land use right certificates by 2005
- To increase number of women in elective State bodies
- To handle the inequality on decision-making power in the family. To enhance the role of women to common assets of the family
- To strengthen the access of women to credit sources, capital from poverty alleviation and hunger erasion program, to facilitate women to fully use social services in a fair and equal manner
- To adopt necessary policies to reduce offence to women and female children due to family violence³⁸

Subconclusion:

Vietnamese Government has made much effort since the national liberty aiming at promotion of gender equality and women's advancement for revolutionary ideals and human rights. Such effort has impacted the formation of new cultural identifications on GE, in which women have day by day played an increasingly active role in the social life and people have day by day gained more proper consideration over social status of women.

The objectives of Vietnamese Government on gender fairness have also aimed at improving the possibility of women to access justice in the society and setting a legal framework for women protection.

³⁷ National Strategy for advancement of women in Vietnam upto 2010 approved by the Prime Minister in Decision No. 19/2002/QĐ-TT dated 21 January, 2002.

³⁸ The Socialist Republic of Vietnam (2003): Comprehensive Poverty Reduction and Growth Strategy, page 175.

III. INSTITUTIONS SPECIALISING IN GENDER EQUALITY ACTIVITIES AND THE ADVANCEMENT OF WOMEN

1. Vietnam Women Union

Vietnam Women Union (VWU) was founded on 20 October 1930 with the purpose “*To unite women with peasant and worker forces to fight against the oppression of imperialism and feudalism to obtain interests and liberation for women*”³⁹. Nowadays, the historical mission against the oppression of imperialism and feudalism has been completed, the current VWU has had new objectives, i.e. “*operation for equality, development of women, protection of lawful and legitimate rights and interests of women*”⁴⁰.

By June 2007, VWU has had 13,628,174 members. Organisational system of VWU consists of 4 levels: central; provincial, cities under central governance (collectively referred to as provincial level); district, town, cities under provincial governance and equivalent (collectively referred to as district level); and commune, ward, township and equivalent (collectively referred to as communal level)⁴¹.

In policy lobbying activities, the Government also promulgated Decree No. 19/2003/ND-CP dated 7/3/2003 *prescribing the responsibility of state agencies for ensuring the participation in the state management work by Vietnam Women Union of various levels* to facilitate Women Union to participate in state management regarding matters in relation to rights and interests of women and children. VWU is a participant to the draft of Law on Gender Equality. Several proposals made by VWU have been recognised such as provision on the percentage of female deputies of the National Assembly, the People’s Council; the policy on social insurance; names of both husband and wife stated in the Certificate of land use right, gender integration in the Comprehensive Strategy for Growth and Poverty Alleviation and Socio-economic Development Plan 2006 - 2010...⁴²

VWU at all levels are evaluated active in mediation, legal consultancy, settlement of petition and request, protection of lawful and legitimate rights and interests of women at courts and in other proceeding bodies⁴³.

2. Committee for the Advancement of Women

The national apparatus for the advancement of women and GE development in Vietnam consists of the National Committee for Advancement of Women in Vietnam (NCAW)

³⁹ Article 2, *Statutes of Vietnam Women Union (1930)*, latest access on 16/12/2008
<http://hoilhpn.org.vn/NewsDetail.asp?CatId=14&NewsId=248&lang=VN>

⁴⁰ *Instruments of the 10th National Women’s Congress*,
<http://hoilhpn.org.vn/newsdetail.asp?CatId=2&NewsId=5&lang=VN>

⁴¹ *Website of Vietnam Women Union*, latest access on 16/12/2008
<http://hoilhpn.org.vn/newsdetail.asp?CatId=2&NewsId=5&lang=VN>

⁴² *Instruments of the 10th National Women’s Congress*,
<http://hoilhpn.org.vn/newsdetail.asp?CatId=2&NewsId=5&lang=VN>

⁴³ *Vietnamese women solidarity, creatively, equally, develop and promote the reform of the nation*, Report of the Central Committee of Vietnam Women Union session IXth submitted to the 10th National Women’s Congress, <http://hoilhpn.org.vn/NewsDetail.asp?CatId=197&NewsId=7069&lang=VN>; Legal aid for women: *Creating legal fulcrum for women*, Information gate of the Ministry of Justice, http://www.moj.gov.vn/p/tag.idempotent.render.userLayoutRootNode.target.n65.uP?uP_root=me&cmd=item&ID=9071; Legal aid office for women: *Legal fulcrum for difficult women*, Vietnam national legal aid agency, <http://nlaa.gov.vn/detail.asp?CatId=7&ArtId=685>

which was established under Decision No. 72/TTg of the Prime Minister dated 25 February 1993 and was then consolidated under Decision No. 92/TTg dated 11 June 2001. Pursuant to Instruction No. 27 of the Prime Minister in 2004, different lines and levels and Vietnam Women Union have set up their Committee for Advancement of Women (CAW)⁴⁴.

The CAW bears the following missions:

- Advising the formulation of strategies and action plans for the advancement of women, and laws and policies on GE and advancement of women.
- Supervising and speeding up the execution of laws and policies on women.
- Communicating, propagandising and mobilising the implementation of laws, policies, and CEDAW; drafting CEDAW reports.
- Being focal point in international cooperation in relation to GE.

Regarding operation mechanism, the NCAW organizes two meeting sessions per year, issues its own regulations and annual working program. Its members assume the tasks according to pluralism, and the fund for operation is annually financed by the State. Such committees are also established at local level and grassroots level. So far, the committees have been formed in 63 provinces and cities, 45 ministries and lines at central level, including the tribunal sector.

Such operation mechanism of the NCAW is set forth in accordance with the spirit of Beijing Action Plan for National Mechanism Models for the Advancement of Women⁴⁵. Since its establishment, NCAW has contributed much to lobbying and formulating laws in relation to GE, of which one typical activity is taking part in drafting the Law on Gender Equality. Furthermore, NCAW has also popularised knowledge on GE in the society, including training courses on gender, integrating gender, leadership skills, and operation skills for the advancement of women for more than 5,000 turns of participants and carrying out communication campaign nationwide: advertising on mass media, panels, and posters⁴⁶.

NCAW and its committees do not directly participate in the protection for rights and interests of women in proceeding activities.

3. Trade Union

Trade Union system was established at the same time with the Communist Party in 1930s⁴⁷. The Trade Union system are organised from central level (Vietnam General Confederation of Labour), labour confederations of provinces and cities under central governance, and Central Trade Unions of a sector to Trade Unions at superior grass-root level and grass-root Trade Unions in enterprises, units employing labours.

⁴⁴ Directive of the Prime Minister No. 27/2004/CT-TTG dated 15 July, 2004 on intensifying activities for women's advancement in the ministries, the ministerial-level agencies, the Government-attached agencies and the People's Committees of the provinces and centrally-run cities.

⁴⁵ Global Platform for Action (or Beijing Platform for Action), Fourth World Conference on Women, Beijing, China 4-15/9/1995, <http://www.ubphunu-ncfaw.gov.vn/?lang=V&func=newsdt&CatID=106&newsid=889&MN=77>

⁴⁶ National machinery for the advancement of women in Vietnam in International Conference on mechanism of GE's laws implementation, Nguyen Minh Quy, 12/12/2005.

⁴⁷ See History of the Trade Union of Vietnam

<http://www.congdoanvn.org.vn/details.asp?l=1&c=23&c2=23&m=20>

In order to enhance the work of convincing female workers and state officials to execute policies and guidelines of the Party and the State and to take more care about their living, the Trade Union system of all levels under the Vietnam General Confederation of Labour has a department in charge of female work whose functions are to research and advise the Trade Union's leaders in deciding policies for campaigning female workers and state officials, gender-typical problems, the problem of female officials, the advancement of female workers and state official and other policies in relation to female labour.

The department in charge of female work of the Trade Union also has the duty to study and recommend policies for campaigning and educating female workers and state officials to work in accordance with the guidelines and policies given by the Party, the State, and the Vietnam Women Union and to guide and examine implementation of such policies. In senior Trade Unions, the department for female works has the responsibility to cooperate with relevant agencies and units to study, recommend, examine, and supervise the implementation of policies and laws on female workers, officials and the work of caring of mothers and children, the work of population and reproductive health⁴⁸.

In addition to activities of female work organisations in the Trade Union system, Trade Unions of level above grassroots also set up legal advice offices in order to help labourers to access to legislations and protection for their legitimate rights and interests before competent State agencies and the courts⁴⁹.

Sub conclusion:

The Vietnamese Socialist Government has set up various organisations to protect legitimate rights and interests of citizens in general and women in particular since its establishment. In the long history, such organisations have proved their effectiveness in the protection of women's rights and interests, improvement of the awareness on "gender" and "gender equality" and produced positive influences on the possibility of women to access justice.

IV. OVERVIEW OF LEGAL ISSUES IN RELATION TO GENDER EQUALITY.

1. International agreements and commitments.

Vietnam has joined the Convention on the Elimination of Discrimination against Women – CEDAW since 1982. Vietnam has also joined and conducted other international commitments on human right protection including protection over women, which could be summarized as "the right to live, to be free and have their body protected; the right to be recognized as a legal subject at any place; the right to be protected from unreasonable arrest, confinement or persecution; the right of free travel and inhabitation within the inhabited nation's border; the right to go abroad and return to the departure; the right to have a nationality; the right of asset possession; the right to participate meeting peacefully and to form associations; the right of free speech; the right of freedom in thought, belief and

⁴⁸ See organisational structure of Vietnam General Confederation of Labour at <http://www.congdoanvn.org.vn>

⁴⁹ Decision No. 785/QĐ-TLĐ regarding the promulgation of regulation on organisation and operation of legal advice activities of the Trade Union of Vietnam General Confederation of Labour dated 27/05/2004.

religion⁵⁰ disregard of race, gender, language or religion⁵¹, “abolishing discrimination against women”⁵². Vietnam joined the Global Action Programme (Beijing Action Programme) at the forth International Conference on Women in Beijing, China September, 4th to 15th, 1995 and has implemented several actions to implement this Programme⁵³.

All commitments aforementioned have been institutionalized into domestic legal provisions from Constitutions, laws, ordinances, decrees, circulars to guidelines and directive documents. The positive actions of Vietnam to implement the commitments have been highly praised by international community⁵⁴.

2. Legal framework of Vietnam

On institutionalizing the ideals and policies of the Party, the Constitutions, international commitments, and several legal regulations in Vietnam have detailed this issue such as the Civil Code, Labour Code, Law on Housing, Law on Gender Equality, Criminal Code... Gender Equality must be respected not only in choosing and assigning labour, in the right to care about children but also in the right of possessing common properties arising during marriage. The following legal regulations listed are only examples to prove the institutionalization of GE issue and anti-discrimination against women in legal provisions of Vietnam. The reasons for selection of such legal provisions are either their extensive influence scope or their frequent application in adjudicating process.

a. Constitutions

The Constitution is the original code, the political - legal foundation for existence of the political as well as legal system of each country⁵⁵. All Vietnam’s legal documents related to discrimination against women and gender equality must ensure the compliance with the Constitution.

The Constitution of the Socialist Republic of Vietnam 1992, amended and supplemented by Resolution of the National Assembly, the tenth session, September, 25th, 2001 (hereinafter referred to as 1992 Constitution) has stipulated fundamental rights of citizens and especially abolished the discrimination regarding gender in citizens’ basic rights already recognized by

⁵⁰ *Human Dignity and Human Rights*, Jerzy Zajadlo, *An Introduction to the International Protection of Human Rights*, Raija Hanski and Markku Suksi (editor-in-chief), 2000, pages 15-24; *The independence of courts*, To Van Hoa, Labour Publishing House, 2007, pages 55-56;

⁵¹ *Human Dignity and Human Rights*, Jerzy Zajadlo, *An Introduction to the International Protection of Human Rights*, Raija Hanski and Markku Suksi (editor-in-chief), 2000, pages 15-24; *The independence of courts*, To Van Hoa, Labour Publishing House, 2007, pages 55-56; *Principles of voluntary and advanced marriage from gender equality viewpoint* Bui Thi Mung, *Jurisprudence Review* vol 3/2006, pages 59.

⁵² *Declaration of the World Conference on Human Rights in 1968 in Teheran*

⁵³ See *Conclusion comments on Vietnam*, Committee on the Elimination of Discrimination against Women, the 37th meeting (January, 15th to February, 2th); *Implementation of Beijing Platform for Action in Vietnam* by 2000, Committee for Advancement of Women, <http://www.ubphunu-ncfaw.gov.vn/?lang=V&func=newsdt&CatID=83&newsid=881&MN=77>

⁵⁴ *Conclusion comments on Vietnam*, Committee on the Elimination of Discrimination against Women, the 37th meeting (January, 15th to February, 2th), pages 1-2.

⁵⁵ *Law interpretation to ensure the supremacy of Constitution*, Ngo Duc Manh, *Legislative Study Magazine*, vol 11(127) July, 2008, page 6.

laws such as the right to join political activities, civil rights, economic rights, rights to culture, education, society of male and female, including:

“All citizens, both female and male have equal rights in all aspects including politics, economics, culture, social and family life.

All acts of discrimination against women and offending women's dignity are strictly prohibited.

Women and men shall receive equal pay for equal work. Female workers are entitled to maternity benefits. Women who are public employees or salary-earners are entitled to pre- and post-natal paid leave and allowances in accordance with regulations of law.

The State and society facilitate women to improve their knowledge and competence in all aspects and increasingly bring their role into full play in society; ensure the development of maternity hospitals, pediatric wards, kindergartens and other social welfare facilities in order to release women's workload in the family and create favourable conditions for women's production, work, study, medical treatment, rest and discharge of the duties of motherhood”⁵⁶.

In additions, fundamental rights have been specified as follows:

Right to join political activities

Constitutional provisions have shown that Vietnamese women have been playing more and more important role as the contributors and participants in national development process and their legal status has also been raised: *“Citizens, regardless of ethnic origin, gender, social status, belief, religion, educational level, occupation, and term of residence, who are of from full eighteen years old shall have the right to vote and who are of from full twenty one years old shall have the right to nominate themselves as a candidate to the National Assembly and the People’s Councils in accordance with regulations of laws⁵⁷.*

Civil rights

On basis of citizens’ rights regardless of ethnic origin, gender, social status, belief, religion, educational level, and occupation, the Constitution deems to implicitly stipulate the right of women towards free speech⁵⁸, free belief⁵⁹; the right to complaint, and to denounce to competent State agencies about illegal activities of State agencies, economic organizations, social organizations, People’s armed force units or any individual⁶⁰.

The equality in imprescriptible rights regarding one’s body is protected by laws in terms of lives, health, honour and dignity⁶¹. Imprescriptible rights regarding one’s living places, the

⁵⁶ Article 63, 1992 Constitution.

⁵⁷ Article 54, 1992 Constitution

⁵⁸ Article 69, 1992 Constitution

⁵⁹ Article 70, 1992 Constitution.

⁶⁰ Article 74, 1992 Constitution

⁶¹ Article 71, 1992 Constitution

rights to be ensured of safety and confidentiality of mails, telephones, and telegram⁶²; the right of free travel⁶³ and to be protected by the state in terms of family and marriage are also prescribed by regulations of laws⁶⁴.

Economic rights

The rights of women are also expressed in economy fields such as the right to work⁶⁵, to freely do business⁶⁶; to possess assets, to have State protection, to have lawful ownership and inheritance⁶⁷; and to own housing⁶⁸.

Cultural, educational, and social rights

Cultural and social rights of citizens in general and of women in particular are expressed through the right⁶⁹ to enjoy education, the right to do scientific research; the right to have their copyrights or industrial property rights protected by the state⁷⁰; and the right to enjoy health care system⁷¹.

The State, the society, each family and all citizens have the obligation to protect and care about mothers and children and to implement population and family planning programmes⁷².

In order to eliminate all gender prejudice which have existed for a long time, it is the discrimination between male and female in all aspects of social life, between wife and husband, between son and daughter within families

In line with regulations of the Constitution, Codes, and Ordinances promulgated by the National Assembly and the Standing Committee of the National Assembly, there have been several regulations ensuring legal aspect of women's conduction and enjoyment of human rights equally with men's as a citizen and also a citizen of specific traits⁷³.

b. The Civil Code

Pursuant to provisions of the Constitution on discrimination against women and gender equality, the Civil Code 2005 promulgated by the National Assembly including 777 articles divided into 7 parts and 36 chapters has specified the Constitution's regulations aiming at protecting rights and benefits of women, implementing gender equality objective and liberating women. Equality in civil relations is expressed through the right to work, the right to be equal between wife and husband, and especially the inheritance right of individuals.

⁶² Article 71, 1992 Constitution

⁶³ Article 68, 1992 Constitution.

⁶⁴ Article 68, 1992 Constitution

⁶⁵ Article 68, 1992 Constitution

⁶⁶ Article 57, 1992 Constitution

⁶⁷ Article 58, 1992 Constitution

⁶⁸ Article 62, 1992 Constitution

⁶⁹ Article 59, 1992 Constitution

⁷⁰ Article 59, 1992 Constitution

⁷¹ Article 61, 1992 Constitution

⁷² Article 40, 1992 Constitution

⁷³ Vietnamese women newspaper, issue on January, 9th, 2006, "Vietnamese National Assembly with the advancement of Vietnamese women and the role of female deputies in the National Assembly".

The right to work

The Civil Code guarantees the equality and legal safety in civil relations⁷⁴. Everyone has right to work, to be free to choose jobs and occupations regardless of ethnic group, sex, social background, belief, or religion⁷⁵.

The right to be equal between wife and husband

All parties are equal in a civil relation, no one can account on reasons of differences regarding ethnic group, sex, social background, economic situation, belief, religion, educational level, or occupations to have unequal treatment to each other⁷⁶. Wife and husband are equal, have similar rights and obligations in all aspects in family life and civil relation, and build up a wealthy equal, progressive, happy, unshakeable family together⁷⁷.

Inheritance right

All individuals are equal in terms of the right to leave their property to others and the right to receive testate or intestate heritage⁷⁸. Everybody can make their own will to decide their assets to inheritors. Wives and husbands inherit assets of each other, men and women, sons and daughters are inherited equally as stipulated in laws.

The main principles of inheritance right are stipulated in the Civil Code:

- Each individual has the right to create his own will to decide their property to inheritors according to the law, the right to receive testate or intestate heritage⁷⁹. Inheritance means transfer of ownership over properties in forms including: deciding according to the final desire of the testator/testatrix; deciding in accordance with regulations of laws. Testate or intestate inheritors are all protected by the laws for enjoying the heritage left by the person passing by.
- The Principle of respecting the right to decide by will. The principle shows that the right of the property owner to decide by his/her own will must be respected. However, this right is restricted in some cases⁸⁰. The restriction aims to protect legitimate rights of some persons subject to natural inheritance, who are inheritors disregarding contents of the will including non-adult children, father, mother, wives, husbands, disable adult children

Principles and provisions of the Civil Code 2005 have partially changed traditional perceptions of Vietnamese society, which have been always more favourable for men (fathers, husbands, sons, or other male members) to decide and receive heritage than for women (mothers, wives, daughters, or other female members). The equality between men and women depends on not only social prejudice but also attitudes of law-makers in each

⁷⁴ Article 1, 2005 Civil Code

⁷⁵ Article 49, 2005 Civil Code

⁷⁶ Article 5, 2005 Civil Code

⁷⁷ Article 40, 2005 Civil Code

⁷⁸ Article 632, 2005 Civil Code

⁷⁹ Article 632, 2005 Civil Code

⁸⁰ Article 669, 2005 Civil Code

social regime. Legal practices have proved that not all laws recognize and guarantee gender equality regarding inheritance⁸¹.

c. The Criminal Code

The Criminal Code includes 2 main parts of crimes and penalties. These two parts contain progressive contents on gender⁸². It is clearly stipulated in the Criminal Code that: “*all persons committing crimes are equal before law, regardless of men or women, ethnic, belief, religion, social background and status*”⁸³.

Institutionalizing the principle of “being equal before law, regardless of gender”, the Criminal Code also notices the gender differences between male and female, for instance: pregnant women or women having children under 36 months old upon committing crimes or being adjudicated shall not be applied with death penalty⁸⁴, be postponed of imprisonment execution⁸⁵ or be temporarily suspended from imprisonment penalty⁸⁶; pregnant women committing crimes (who are pregnant during crime committing) is a circumstance of mitigation⁸⁷. Any mother heavily affected by backward ideas or falling in especially objective situations kill her newborn children or omitting the newborn children, which leads to the death of the children shall be adjudicated for the crime of “*killing newborn children*”⁸⁸.

In case women have children less than 36 months old or in difficult situation is not recognized as mitigation circumstance in Criminal Code. However in fact, The Supreme People’s Court (SPC) allows judges recognize it as mitigation circumstance but write clearly in sentence⁸⁹.

Regarding cases with female victims, The SPC requires judges to obey correctly common procedure and notice the specific characters of female victims such as: pregnancy⁹⁰. Conducting of purchase women, using physical force or other serious behaviors ban women on joining in political, economic, scientific, cultural, social activities are recognized crime and judged according to Criminal Code⁹¹.

Similar to analyses of Criminal procedures Code following, some of articles have protection women factor in Criminal Code are basing on criteria on “sex” but not on “gender”

⁹². Consequentially, the provisions is not “equality on gender” actually when identify penalty frame. Man is bringing up children under 36 months old without wife does not consider as mitigation circumstance, for example. Men are not considered as the injured

⁸¹ *Innovating teaching content of Inheritance institution in the subject of Civil laws under gender aspect*, LL.M Nguyen Hong Hai, Jurisprudence Review vol 3, 2007, page 16.

⁸² *Vietnamese criminal laws from gender approach*, Nguyen Tuyet Mai, Jurisprudence Review, vol 3, 2007, page 42.

⁸³ *Article 3, 1999 Criminal Code*

⁸⁴ *Article 35, 1999 Criminal Code*

⁸⁵ *Article 61, 1999 Criminal Code*

⁸⁶ *Article 62, 1999 Criminal Code.*

⁸⁷ *Article 46, 1999 Criminal Code*

⁸⁸ *Article 94, 1999 Criminal Code*

⁸⁹ *Benchbook*, the Supreme People’s Court, page 89, 2006.

⁹⁰ *Article 48, 104 and 110, 1999 Criminal Code*

⁹¹ *Article 119 and 130, 1999 Criminal Code*

⁹² See further in Gender issues in Vietnamese Criminal Procedure Laws, Do Thi Phuong, Jurisprudence Review vol 3, 2007, page 72.

objects of sexual crime group, or prostituting themselves, or are purchased like women while in fact, there are a lot of cases happened⁹³.

d. The Labour Code and Ordinance on Cadres and civil servants

The Labour Code has reflected several issues relating to “gender equality”. For instance, the State guarantees women’s right to work equally with men in every aspect; sets policies to encourage employers to facilitate female employees to have regular work, to apply flexible working schedule such as the regime of part-time working in a day or a week or home working⁹⁴ for females. The Labour Code also states that the State shall have priority policies and consider for tax deduction for enterprises that use a great deal of female labourers⁹⁵.

Regarding the issue of women’s pregnancy, giving birth and child caring, the Labour Code contains regulations protecting women who work in enterprises and business establishments such as the provision that employers can not fire or unilaterally terminate employment contract with female employees for reasons of marriage, pregnancy, maternity leave, or raising child of under 12 months old except for cases where the relevant enterprise terminates its operation. During the period of pregnancy, maternity leave, caring for children under 12 months old of a woman, the unilateral termination of such woman’s employment contract will be delayed and the prescription for consideration of her labour discipline treatment will be lengthened⁹⁶.

In addition, the labour age range of women is also reduced and is less than that of men since their psy-physical elements are more limited than men’s. A woman only needs to be enough 55 years old to get monthly retirement pension in case she has had enough time of insurance payment⁹⁷ while a man must be 60 years old .

dd. The Law on Family and Marriage

The Law on Family and Marriage also mentions the equality in respect of both rights and responsibilities between the husband and the wife in a family, that is: *the husband and the wife are equal, have equal rights and responsibilities in all aspects in the family*⁹⁸. Women’s equality rights in the family have been expressed through their determination regarding matters of work, education, ownership over properties and income earned by both husband and wife, even if the income is mainly earned by the husband.

⁹³ Please see: *Vietnamese criminal laws from gender approach*, Nguyen Tuyet Mai, Jurisprudence Review vol 3, 2007, page 42; *No sanction on handling male trafficking crime*, Sport & Culture newspaper updated on September, 10, 2008, <http://www.thethaovanhoa.vn/132N20080910030527652T14/Chua-co-che-tai-xu-ly-toi-mua-ban-nam-gioi.htm>; *Trafficking male abroad*, Cong an Nhan dan newspaper, updated on September, 09, 2007, <http://ca.cand.com.vn/vi-vn/anninhtrattu/dieutra/2007/9/113894.cand>; *Provision on human trafficking crime will be promulgated*, VTC online newspaper, updated on 09 June 2008, <http://www.vtc.vn/phapluat/chinhhsach/182317/index.htm>

⁹⁴ Clause 1, Article 109 Labour Code of the Socialist Republic of Vietnam No. 35/2002/QH10 dated 2 April 2002 providing the amendment and supplementation to a number of articles of Labour Code 1994

⁹⁵ Clause 2, Article 110 Labour Code of the Socialist Republic of Vietnam No. 35/2002/QH10 dated 2 April 2002 providing the amendment and supplementation to a number of articles of Labour Code 1994

⁹⁶ Clause 3, Article 111 Labour Code of the Socialist Republic of Vietnam No. 35/2002/QH10 dated 2 April 2002 providing the amendment and supplementation to a number of articles of Labour Code 1994

⁹⁷ Article 145, Labour Code of the Socialist Republic of Vietnam No.35/2002/QH10 dated 02/04/2002 providing amendment and supplement to some articles of the Labour Code 1994;

⁹⁸ Article 19, Law on Marriage and Family of the 10th National Assembly of the Socialist Republic of Vietnam Session 7, approved on 09/06/2000

The ownership over common properties of a woman in the family is protected. Common properties of husband and wife include properties created by the husband and the wife, income earned from work, production and business activities and other legitimate earnings of husband and wife during the period of marriage⁹⁹. If a property subject to the common ownership of husband and wife needs to be registered with ownership right as provided for by the law, the certificate of ownership must record both the husband's and the wife's name¹⁰⁰.

The Law on Family and Marriage protects women during the time of bringing up children under 12 months old. In this period, a husband does not have right to divorce¹⁰¹ although the child is not his¹⁰². It is argued that this provision does not actually guarantee the "gender equality" because it forces husbands/men to suffer from the consequences caused by the wives/women¹⁰³. However, such argument must exclude the case where the wives/women are pregnant unexpectedly due to rape, for instance...

The Law on Family and Marriage ensures the right to take care of children for women. In principle, children under 3 years old are decided to be directly brought up by mothers, if the parties have no other agreements.¹⁰⁴

e. The Land Law

The rights on land use of women (the right to approach land) are not specified in the Land Law for covering limitations of women in land approach. However, Decree No. 181/2004/ND-CP of the Government dated 29/10/2004 on execution of the Land Law has provided specific guidelines for granting of certificates of land use right containing the name of both husband and wife. According to the Decree, if a household uses agricultural land assigned by the State without collection of land use fee or if the relevant land use right is the common property of the husband and the wife, the certificate of land use right must record both the husband and the wife's name¹⁰⁵.

Although the equal right in using unified common properties of husband and wife has been stated in the Law on Family and Marriage; in practice, there are still cases in which executors of the Land Law do not seriously observe this regulation, which leads to the fact that women's rights are not guaranteed, and cause difficulties for adjudicating activities of courts related to land use right.

g. The Law on Gender Equality

⁹⁹ Clause 1, Article 27, Law on Marriage and Family of the 10th National Assembly of the Socialist Republic of Vietnam, Session 11 on 09/06/2000

¹⁰⁰ Clause 2, Article 27, Law on Marriage and Family of the 10th National Assembly of the Socialist Republic of Vietnam, Session 11 on 09/06/2000

¹⁰¹ Clause 2 Article 85 Law on Marriage and Family of National Assembly of the Socialist Republic of Vietnam the tenth term, session 7, adopted on June, 9, 2000 ("2000 Law on Marriage and Family").

¹⁰² Resolution No. 02/NQ-HDTP of the Judge Council of the SPC dated 23/12/2000.

¹⁰³ Some gender aspects in laws governing marital relations need to be considered when teaching the subject of Law on Marriage and Family, Nguyen Phuong Lan, Jurisprudence Review, vol 3, 2007, page 31.

¹⁰⁴ Clause 2, Article 92, 2000, Law on Marriage and Family

¹⁰⁵ Article 43, Decree No. 181/2004/ND-CP of the Government dated 29/10/2004 on implementation of the Land Law

This law sets out principles of gender equality in all fields of the society and family life, as well as the measures to ensure gender equality, and responsibilities of agencies, organizations, families, and individuals in execution of this law¹⁰⁶.

Taking an example in political field, the Law on Gender Equality puts forth specific regulations in order to remove the gender differentiation in women's participation into management and leading process. Men and women are equal in State management and social activity participation; equal in founding and execution of village charter, communal regulations or rules and regulations of agencies and organizations; equal in standing as a candidate or being introduced to nominate into the National Assembly, the People's Council; equal in self-nominating or being introduced to nominate to executive boards of political, socio-political, professional socio-political, social organizations, and socio-professional organizations; equal in professional standards and age for consideration of promotion or appointment in similar managing or leading posts of agencies and organizations. The law also sets out measures to accelerate gender equality in political field such as guaranteeing appropriate ratio of female delegates in the National Assembly, and female representatives in the people's councils to be in conformity with the national goals of gender equality; guaranteeing appropriate ratio of women in appointment of titles in State agencies to be in conformity with the national goals of gender equality¹⁰⁷.

The Law on Gender Equality has affirmed the role of women in fields of economy, labour, education and training, science and technology, culture, information, physical education, sport; healthcare and in-house gender equality. Through which, the rights and interests of women are ensured to be equal to those of men while they evenly participate in such fields.

The Law on Gender Equality has also determined acts of violating gender equality laws in aspects with women's participation including: obstructing the self-nomination by men or women or obstructing the introduction for their nomination to the National Assembly, People's Council, executive board of political, socio-political, professional socio-political, social, and socio-professional organizations due to gender bias; not implementing or obstructing the appointment of men and women to managing, leading posts or professional titles due to gender bias; putting forth and executing regulations which contains gender differentiation in the communal charter or rules, regulations or rules of agencies and organizations; preventing men and women from establishing enterprises or carrying out business operations due to gender bias; making commercial advertisements obstructive to businessmen or enterprise owner of a certain gender¹⁰⁸. Accordingly, regulations on measures for handling of law violations regarding gender equality are specified as follows: any person who commits acts of violation of the law on gender equality will be treated with disciplinary or administrative sanction or prosecuted for criminal responsibility depending on the nature and the degree of the illegal behaviour; agency, organization or individual committing acts of violating the law on gender equality that causes damage will have to compensate accordingly due to regulations of laws¹⁰⁹.

¹⁰⁶ Article 1, the Law on Gender Equality of the 11th National Assembly, Session 10, No. 73/2006/QH11 dated 29/11/2006

¹⁰⁷ Article 11, the Law on Gender Equality of the 11th National Assembly, Session 10, No. 73/2006/QH11 dated 29/11/2006

¹⁰⁸ Article 40, Law on Gender Equality of the 10th National Assembly, Session 10, No. 73/2006/QH11 dated November, 29, 2006

¹⁰⁹ Article 42., Law on Gender Equality of the 10th National Assembly, Session 10, No. 73/2006/QH11 dated November, 29, 2006

h. The Law on Prevention of Family Violence.

The Law on Prevention of family violence (LPFV) was adopted by the National Assembly on 21 November 2007. The law stipulates the prevention of family violence; protection and support of victims of family violence; responsibility of individuals, families, agencies, organizations for prevention and avoidance of family violence; and handling of violations of the law on prevention of family violence¹¹⁰.

LPFV has fully defined behaviours considered as acts of family violence. Family violence is understood as not only acts of violating one's body but also acts of violating one's spirit in family relations.

To minimize family violence, the LPFV has set forth measures in order to prevent and avoid family violence such as: informing, propagandizing to prevent family violence, mediating conflicts and disputes. The LPFV has given one more competence to courts and local government on deciding measures for prevention of family violence by "restricting contact" between person who conducts family violence actions and the victims¹¹¹ and other responsibilities¹¹².

Responsibilities of individuals, families, State agencies, the Fatherland Front and Women Union on preventing family violence have been identified in details in this law. Similar to the Law on gender equality, this law has shown endeavour of the State of Vietnam in the effort to boost gender equality and protect the interests of women.

i. The Law on Organization of the People's courts and the Ordinance on judges and People's Assessors

To ensure equality for women when participating in procedural process, the Law on organization of the People's courts stipulates that "*courts adjudicate according to the principle that all citizens are equal before law, regardless of men, women, ethnic group, or belief*"¹¹³.

The Party and the State always ensure the equality between men and women in mobilizing their abilities, taking part in and contributing to the country development progress in several sectors of social life such as economy, politics, culture, society. In political field, Vietnamese women are more and more trusted and entrusted with leader positions in State agencies, agencies of the Party, social organizations, and enterprises. Most of the female officers occupying such positions have affirmed their roles and abilities, and their working efficiency has been growing day by day¹¹⁴.

In selecting and appointing judges, the National Assembly works absolutely equally in choosing officials, regardless of gender element, which has been expressed as following: "*Vietnamese citizens being faithful to the Fatherland and Constitution of the Socialist Republic of Vietnam, having good quality, morality, integrity and honesty, having resolute spirit of protection of the socialist legal system, holding bachelor of law degree and having*

¹¹⁰ Article 1, Law on Prevention of Family Violence

¹¹¹ Articles 20 & 21, Law on Prevention of Family Violence .

¹¹² Article 41, Law on Prevention of Family Violence .

¹¹³ Article 8, Law on Organization of the People's Courts No. 33/2002/QH10 of National Assembly of the Socialist Republic of Vietnam dated 2 April 2002 (Law on PCO)

¹¹⁴ Thinking of gender equality, Dr. Nong Quoc Binh, Jurisprudence Review, vol 3, 2008, pages 6, 7.

*been trained with adjudication professional skills, having enough time of practical work in accordance with regulations of law, having capacity in adjudication work and having enough health to ensure the completion of assigned tasks can be selected and appointed to be judges*¹¹⁵”.

Regarding people’s assessors, conditions for electing or nominating candidates do not depend on sex as stipulated in the following regulation *“Vietnamese citizens being faithful to the Fatherland and Constitution of the Socialist of Republic of Vietnam, having good quality and morality, integrity and honesty, having legal knowledge, having resolute spirit of protection of the socialist legal system, and having health to ensure the completion of assigned tasks can be voted or nominated as people’s assessors”*¹¹⁶.

According to the 1992 Constitution, the State of Vietnam has issued a lot of legal documents specifying contents and methodologies for implementation of citizen rights and equality right between men and women¹¹⁷. Among the above-said documents, the Ordinance on Judges and People’s assessors number 02/2002/PL-UBTVQH11 of the Standing Committee of the National Assembly 11th dated 14 October 2002 has clearly stipulated the equality between men and women in provisions of selecting, appointing to judges, voting or nominating of People’s assessors regardless of sex, conditions as following: Vietnamese citizens having faith in fatherland and constitution of Socialist Republic of Vietnam, having good quality and morality, integrity and honesty, having legal knowledge (regarding to people’s assessors), having bachelor of law (regarding to judges)...¹¹⁸

To boost positive improvement in career, the Ordinance on Judges and People’s assessors has set out an operation mechanism for judges, especially for female judges to strive: *“judges of district courts, local military courts having at least 5 years of experience, having capacity of judging cases and handling other issues subject to the jurisdiction of provincial courts, military zone courts can be selected and appointed to be judges of provincial courts”*¹¹⁹.

Regarding conditions to become a judge of the SPC, the Ordinance on Judges and People’s assessors has stipulated that: *“judges of military zone courts having at least 5 year experience, having capacity of judging cases and handling other issues subject to jurisdiction of the SPC or the Central Military Court can be selected and appointed to be judges of the SPC”*¹²⁰.

The above provisions have shown that the applicable Law on organization of the People’s courts and the Law on Judges and People’s assessors have no restriction on the participation of women in the process of selection and appointment of titles in the court system.

k. The Criminal Procedure Code

¹¹⁵ Clause 1, Article 37, Law on Organization of the People’s Courts .

¹¹⁶ Clause 2, Article 37, Law on Organization of the People’s Courts

¹¹⁷ Criminal and criminal procedure laws on women protection in Vietnam, Dr. Do Duc Hong Ha, Jurisprudence Review, vol 3, 2008, page 11.

¹¹⁸ Article 5, Ordinance on Judges and People’s Assessors No. 02/2002/PL-UBTVQH11 of the Standing Committee of the 11th National Assembly, dated 14 October 2002 (“Ordinance on Judges and People’s Assessors”).

¹¹⁹ Article 21, Ordinance on Judges and People’s Assessors

¹²⁰ Article 22, Ordinance on Judges and People’s Assessors

Criminal procedures law is an independent law branch in the legal system, which governs social relations arising in taking legal action, investigation, prosecution and enforcement of criminal judgments. Social relations arising in this area are mainly those between persons performing proceedings and persons participating in proceedings and relations among persons performing proceedings. “Gender” element in criminal procedures is a category expressing roles and social relations between men and women upon participation in procedural relations ¹²¹.

Similar to other provisions, the Criminal Procedure Code (LCP) has expressed the equality between parties participating in procedures. Article 5 of this law stipulates that “*Criminal procedures are conducted according to principle that all citizens are equal before law, regardless of ethnic group, men or women, belief, religion, social background and status. Any one committing a crime shall be treated in accordance with laws*”.

The equality is expressed through every phase of procedures (investigation, prosecution and adjudication), status of participating in procedural activities (prosecutor, protector, involved person, defendant, victim, civil plaintiff, civil respondent, person having related rights and obligations, protector of litigants), and each procedural activities (providing proofs, argument before court...). Courts have to provide equal conditions for persons participating in proceedings to exercise their rights in order to clarify all objective truth of cases.¹²² The CPC has also expressed principles to guarantee human rights such as: the right to defend¹²³, citizens’ imprescriptible right regarding their body¹²⁴, the right to be protected regarding life, health, honour, dignity, assets of citizens¹²⁵, the right to be compensated for damage and have honour and benefits restored for wrongfully judged people¹²⁶, the right to be compensated of people having damage caused by the agencies or persons being competent to perform criminal procedures¹²⁷. The implementation of the two final principles has been provided in details in practice with a resolution of the Standing Committee of the National Assembly¹²⁸.

The Criminal Procedure Code consists of specific provisions for involved persons or defendants being pregnant or bringing up children under 36 months old such as not applying temporary jail measure, but applying other prevention measures¹²⁹. In examining body, “man examines man, woman examines woman and it is a must to have a witness of the same gender¹³⁰”; the examination of marks on a body or experimental investigation are applied similarly¹³¹. In case the sentenced person is a woman, before issuing the decision of judgment execution, the Chief Justice of the first instance court have to check all conditions for not applying death penalty to pregnant women or women bringing up children under 36 months old when committing the crime or being adjudicated. In case the sentenced woman has either of the conditions, the said Chief Justice shall not issue the judgment execution

¹²¹ *Gender issues in Vietnamese Criminal procedure laws*, Do Thi Phuong, Jurisprudence Review, vol 3, 2007, page 70.

¹²² Article 19, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

¹²³ Article 11, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

¹²⁴ Article 7, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

¹²⁵ Article 8, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

¹²⁶ Article 29, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

¹²⁷ Article 29, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003.

¹²⁸ Resolution No. 388/2003/NQ-UBTVQH11 dated 17 March 2003 on damage compensation for those who suffer from miscarriage of justice caused by competent officers in criminal procedural activities

¹²⁹ Clause 2, Article 88, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

¹³⁰ Clause 2, Article 152, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003.

¹³¹ Article 152 and Article 153, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

decision but report to the Chief Justice of the Supreme People's Court to consider turning a death penalty into life imprisonment¹³². It is said that the provisions above are provided by law-makers depending on criteria of "sex", not "gender" when applying humanitarian policies for women. Therefore, these provisions are not really "equal in terms of gender"¹³³.

l. The Civil Procedures Code

The Civil Procedure Code develops provisions in relation to the protection of equal rights and interests of women when they are infringed in relations of marriage, family and labour. The principle of equality in rights and obligations in civil procedures is stated as follow:

"All citizens are equal before law and courts, regardless of ethnic group, men, women, social background, belief, religion, educational level, or occupations. All agencies and organizations are equal without depending on the form of its organization, ownership and other issues".

All involved persons are equal in terms of rights and obligations in civil procedures. The court is responsible to facilitate for them to exercise their rights and obligations¹³⁴.

In case of lack of legal knowledge or being controlled by the husband, the right to take a legal action of a woman is limited, within the scope of its duties and powers, the Women Union has the right to initiate a marriage and family case under circumstances as regulated by the Law on Family and marriage¹³⁵. If a woman cannot herself carry out procedures for initiating a labour case due to the infringement of her interest made by the Employer, the upper agency of the grass-root Trade Union shall have the right to bring the labour case to competent courts under circumstance where it is necessary to legitimate protect rights and interest of the employee community in accordance with regulations of law¹³⁶.

m. Ordinance on procedures for settlement of administrative cases

The Principle that all citizens are equal before law is also shown in the Ordinance on procedures for settlement of administrative cases. Accordingly, the Ordinance on procedures for settlement of administrative cases of the Standing Committee of the National Assembly 11th has stipulated: "All involved persons are equal in terms of rights and obligations in the process of handling administrative cases. Involved persons can authorize a lawyer or other people in writing to represent them in proceedings. They can have their legitimate rights and interests protected by themselves, a lawyer or other people¹³⁷". The provisions have important meanings since it not only provides conditions for all ranks in the society to protect their legitimate rights in administrative disputes and complaints, but also protects women's rights when they are incapable of awareness, proficiency or health to participate in proceedings before administrative agencies in order to claim their rights. In case where

¹³² Clause 1, Article 259, Criminal Procedure Code No. 19/2003/QH11 dated 26 November 2003

¹³³ Gender issues in Vietnamese criminal procedure laws, Do Thi Phuong, Jurisprudence Review, vol 3, 2007, page 72.

¹³⁴ Article 8, Civil Procedure Code of the Socialist Republic of Vietnam No. 24/2004/QH11 dated 5 June 2004 ("2004 Civil Procedure Code").

¹³⁵ Clause 1, Article 162, 2004 Civil Procedure Code

¹³⁶ Clause 2, Article 162, 2004 Civil Procedure Code

¹³⁷ Article 6, Ordinance No. 29/2006/PL-UBTVQH11, dated April, 5, 2006 regarding the amendment and supplementation to a number of articles of the Ordinance on Procedures for Settlement of Administrative Cases

women are unable to participate directly in the handling of case before courts or relevant agencies, they can authorize other people to represent them for protecting their rights.

To ensure sustainable outcomes for the socio-economic development, based on the lessons of experience summarized through assessing results of implementing mid- term goals of the Strategy, the National Committee for Advancement of Vietnamese women has issued the Action Plan for advancement of women in period 2006-2010, which stipulates that “The Supreme People’s Court shall co-ordinate with functional agencies to strengthen the instruction for the task of prevention, timely and strict detection and treatment of all acts of women trafficking, prostitutions intermediation and illegal marriages”¹³⁸.

To well implement this goal, it is necessary to involve the participation of the Women Union in legislative activities. In particular, the laws needs to regulating the obligations of State agencies to collect opinions from the Vietnam Women Union, offer the Vietnam Women Union to send delegates to take part in building legal documents involving women and children. However, there require other regulations for ensuring strict execution of this provision. For example, it is necessary to stipulate the forms for handling legal normative documents which are promulgated not in strict accordance with stipulated regulations. Certainly, in order to well execution of this right, it is a must that the Vietnam Women Union has to make much effort to improve its capacity ¹³⁹.

Sub-conclusion:

The State of Vietnam has a legal documents system covering several areas which ensures gender equality. However, to ensure the sense of gender equality in application of these provisions, it is required that the persons applying laws have to understand thoroughly all contents of the provisions and have knowledge on gender equality. Misunderstanding or superficial knowledge on gender equality can cause dogmatic and incorrect law application regarding gender.

It should be well aware that although legal provisions play an important role in guaranteeing gender equality, in order that such provisions could be actually applied in practice (in other words, to absorb into life) gender equality must be properly aware of by the mechanism of law execution and application.

In case legal provisions of Vietnam still contain much contradiction, overlapping and gaps, the role of the court system to ensure the implementation of gender equality is extremely important.

¹³⁸ Point 4.2.e, National Plan of Action for the Advancement of Women for the period 2006-2010.

¹³⁹ Gender issues in the subject of administrative laws, LLM Bui Thi Dao, Jurisprudence Review, vol 3, 2007.

PART B

GENDER EQUALITY IN THE COURT SYSTEM OF VIETNAM

I. FEMALE JUDGES IN THE COURT SYSTEM

1. Proportion of judges in the court system

As mentioned above in the GE definition, there has been a pool of researches on women's matters and welfare such as education, health care, and especially the maternity role of women¹⁴¹ but it still lacks such on GE in the court system and GE in adjudicating activities, or in other words, the matter of equal adjudication received by male and female at courts. Justice here must be construed in strict compliance with the laws and the potential as well as differences of each gender. And such justice must be executed by the socio-political system. The adjudication body shall have to apply fully and duly all provisions and requirements of the laws regarding GE¹⁴².

As analyzed in Part A, restrictions left by the history prevented women from schooling and participation into social activities or nation governance. After the August Revolution in 1945, the Revolutionary Authority facilitated women to participate in every aspects of social life, including nation governance and adjudicating at courts. The first Vietnamese woman was appointed to be a judge in 1959 and the second woman was in 1960¹⁴³. This is actually a significant advance of socialist political regime compared to other political regimes.¹⁴⁴

The percentage of female judges of Vietnam is rather high in comparison with that in the world and of the highest percentage among countries listed below.

Table 2: Comparison on the first appointment of female judge in some countries ¹⁴⁰

Country	Year/Decade
Vietnam	1959
Australia	1965
New Zealand	1975
UK	The 1960s
The Netherlands	1947
Poland	1929
Finland	The 1930s
France	1946
Italia	1963

¹⁴⁰ The data is extracted from figures of the Department of Organisation and Personnel of the SPC and Women in the World's Legal Profession, Ulrike Schultz and Gisela Shaw (ed.), HART Publishing, 2003, page xxxiv.

¹⁴¹ Guidelines for gender integration into policy formulation and implementation, Project VIE-01-015-01 "Gender in public policy", National Committee for Advancement of Women in Vietnam, page 25.

¹⁴² See further in Gender Mainstreaming in Legal and Constitutional Affairs, page 2, www.thecommonwealth.org/gender

¹⁴³ Ms. Tran Thi Phuong Duc was appointed as judge in July 1959 at the People's Court of Bac Ninh town. She has ever held such positions as Judge of the SPC, Deputy Chief Justice of the Appellate Court of the SPC in Hanoi. Ms. Ho Thi Xuan Hien was appointed as judge of the People's Court of Quang Binh province in January 1960. She has ever held such positions as Judge of the SPC, Chief Justice of Civil Court of the SPC. Both of them were staff in charge of women's affairs and shifted to assume judge profession.

¹⁴⁴ Please see: Are Women Still hold up half of heaven in Vietnam? The Gender Wage gap, Amy Y.C Liu, Asia Pacific Press, 2002, page 5; The Question of Women in Vietnamese Tradition on Trial: 1920-1945, Marr, David G., 1981, Berkeley: University of California Press, page 190-251; Labour relations in Vietnam, Fahay S., In Vietnam Update 1994, Department of Political and Change, Australian National University, Canberra, 1994; Women in Industry: country information—Vietnam, United Nations Industrial Development Office (UNIDO), Hanoi, 1992

Table 3: Proportion of female judges in the court system of some countries¹⁴⁵

Country (Year of survey)	Proportion of female judges according to court levels	Country (Year of survey)	Proportion of female judges according to court levels
Vietnam (2001)	General proportion: % Supreme Court: 22% Provincial courts: 27% District courts: 35%	The Netherlands (1995)	General proportion: 34% High level courts: 7.4% Middle level courts: 23.3% Low level courts: 45.6%
Australia (1999)	General proportion: Federal court: 8.3% Supreme court: 9.1% High courts: 14.3% District courts: 13.9% Magistrates courts: 16% Family courts: 22.6%	Poland (2000)	General proportion: 63.6% The Highest court: 22% (data of 1997) Court of appeal: 53.1% Regional court: 58.4% District court: 66.2%
New Zealand (1999)	General proportion: 7.9% High court: 14% District court: 16%	Finland (2000)	General proportion: 46%
UK (1999)	General proportion: 11.8% House of Lord: 0% Court of Appeal: 3% High court: 8% Circuit court: 6% District court: 14%	America (2007)	General proportion: 27.4% US Supreme Court: 11.1% Circuit Courts: 25.1% District Courts: 24% State courts: 30.4%
France (2000)	General proportion: 54%		

The percentage of female judges in Vietnam has been gradually increased across terms of judge appointment.

¹⁴⁵ The data is extracted from the statistics of the Department of Organisation and Personnel of the SPC and Women in the World's Legal Profession, Ulrike Schultz and Gisela Shaw (ed.), HART Publishing, 2003, page xxxviii; A Current Glance at Women in the Law 2007, Commission on Women in the Profession, American Bar Association, www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=1207

Table 4: Proportion of female judges in the court system across 3 appointment sessions (1997, 2002 and 2007)¹⁴⁶

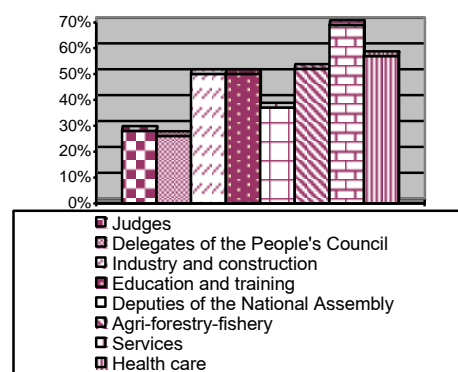
Court level	1997			2002			2007		
	Female-le	Total	%	Female-le	Total	%	Female-le	Total	%
SPC									
Leaders	1	5	20	0	0	0	0	0	0
Departments	2	28	7	6	30	20	11	43	25
Judges	16	80	20	18	98	27	33	114	29
PROVINCIAL LEVEL									
Chief Justice	8	61	13	8	61	13	4	64	6
Vice Chief Justice	10	90	11	10	105	9	21	128	16
Judges	147	820	17	187	915	20	233	997	33
DISTRICT LEVEL									
Chief Justice	64	605	10	65	620	10	107	678	16
Vice Chief Justice	71	605	11	120	650	18	210	878	24
Judges	561	2154	26	657	2411	27	1073	3249	33
ALL LEVELS	880	4448	20	1071	4890	22	1692	6151	28

Currently in Vietnam, the ratio of female judges is higher than that of female deputies of the National Assembly but lower than that in other sectors¹⁴⁷. This is understandable because unlike other common jobs, the occupation of judges and deputies of the National Assembly are special jobs, which require special qualifications and capacities. As a result, persons who assume such tasks must undergo more special and thorough selection procedures.

At present, there is no compulsory percentage of female in structure of judge appointment in the tribunal sector as such in some other sectors¹⁴⁸, but the higher proportion of female judges in the tribunal sector of Vietnam in comparison to that of many other countries may be attributed to causes collected by the Research Team in the in-depth interviews:

- *Political cause*: it is necessary to ensure female factor or a certain percentage of female judges in judge staff. Currently, there is no specific provision on such percentage but it depends on the proposal of the Chief Justice and the Cell of the court where the judge is appointed.
- *Particularity of adjudication task and gender characteristics*: subjects to the influence of the adjudication activities includes both male and female, therefore, the judge staff

Figure 7: Proportion of female in different sectors in 2007



¹⁴⁶ The data is extracted from the statistics of the Department of Organisation and Personnel of the SPC.

¹⁴⁷ The data is extracted from the statistics of the Department of Organisation and Personnel of the SPC, Information Center of the National Assembly Office, Report of the Central Committee of Vietnam Women Union session IXth submitted to the 10th National Women's Congress.

¹⁴⁸ See the requirement on female proportion provided in Resolution No. 11-NQ-TW dated 27/04/2007 of the Politbureau on women's affairs in the period of industrialisation and modernisation of Vietnam.

needs to contain both male and female judges. It is not obligatory in procedural laws that the judge handle the case must have the same gender with involved parties; however, in order to ensure the understanding about gender differences, all of the court leaders and judges interviewed say that female judges are usually assigned to handle cases with female involved parties (see further in subsequent analysis).

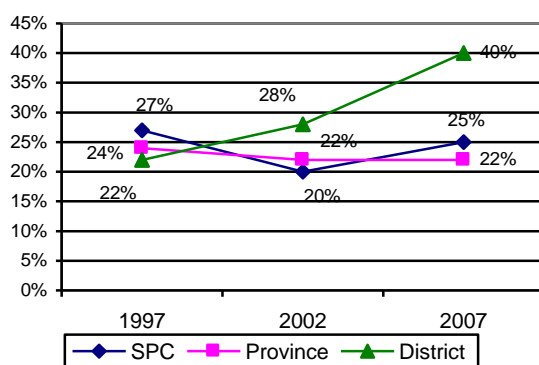
Some judges reckon that women are usually diligent and careful, which are very appropriate for the adjudication task presently. Some persons who are not judges but members of the Judge Selection Council add that female are less influenced by negative practices than male, therefore, this is also a priority for selection of female candidates for judge appointment.

3 out of 8 leaders of local courts participating in the interview think that male and female have their own strengths and weaknesses in adjudication activities, hence, there must be both male and female in the judge structure so that they could assist each other to overcome their shortcomings. One leader has said that in order to build a neutral and just adjudicating mechanism regarding gender, the tribunal sector must have a certain percentage of female's participation in the judge structure.

- *Other cause:* There are few male law graduates returning to their homeland to work. Besides, it takes rather long time for a law graduate to be appointed as judge. Appointment process often requires candidates to experience the period of court clerk with tenacious efforts. Meanwhile, the salary for a court clerk or a judge is rather low in comparison with that of other careers with equal qualifications. Such does not encourage

male law graduates to strive in the period of being a court clerk. Consequently, proportion of female candidates for judge appointment in some local courts is increasing.

Figure 8: Proportion of female leadership in the tribunal sector across 3 terms



in sessions 2002 and 2007, women only participated in the leadership of department level. Meanwhile in 1997, the proportion of women holding leading positions of the SPC accounted for 74% of the total women participating in management work in the SPC.

2. General comments on qualifications of female judges participating in the survey

The survey result reveals that among female judges responding to the questionnaires, the

Women's participation in management within the tribunal sector: in 2007 session, the SPC has no woman participating in the leadership. It is shown in Table 4 that the percentage of women holding leading positions of the SPC and of provincial courts tends to decrease while that of district courts tends to increase. In the SPC,

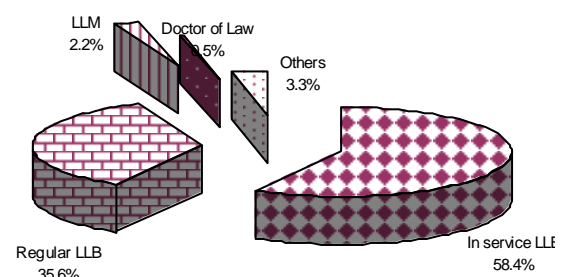
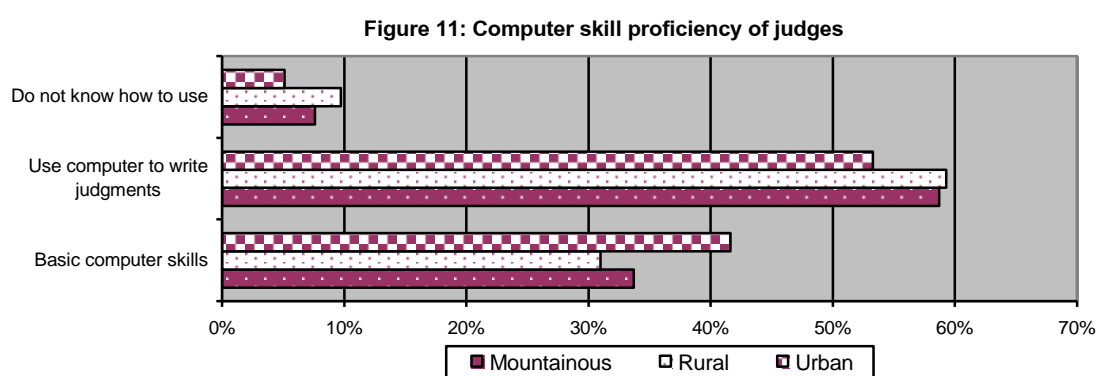


Figure 9: Qualifications of female judges through survey

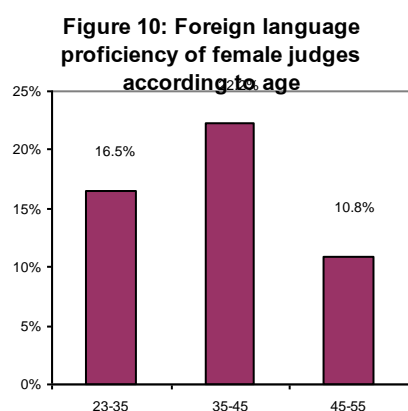
number of judges holding in-service LLB is rather high, i.e. 58.3% (215 persons), the proportion of female judges who have regular LLB follows with 35.5% (131 persons), only 8 female judges have LLM, accounting for 2.2% and there are 2 Doctors of Law, holding 0.5%. Very few female judges have other professional degrees, only taking 3.3% (12 persons).

Limitation of judges in foreign language proficiency is a big problem as mentioned previously in the survey of needs of district courts¹⁴⁹. According to the current survey, only 185 out of 369 female judges (accounting for 50.1%) reply that they know at least one foreign language. In personal interviews with female judges, only one interviewee responds that she is able to read and understand documents in English. Most of other female judges have already learnt foreign language(s) at schools or in universities but they hardly use. Some others teach themselves in order to satisfy the requirement of foreign language proficiency of a public servant.

On basis of court level, there are 30 female judges at provincial courts (holding 53.57% of female judges at provincial level joining the survey) and 137 female judges of district courts (accounting for 58.58% respectively) knowing foreign languages. The percentage of female judges in urban areas knowing foreign languages is considerably more than that in other areas. According to the survey result, 84 judges in urban area (taking 57.93%), 56 judges in rural area (equivalent to 47.86%) and 38 judges in mountainous area (i.e. 38.38%) know



foreign language(s).



It is notable that the percentage of female judges who are married and have children knowing foreign language(s) is rather high, taking 84.53% of female judges who know foreign languages and 148.54% of the female judges with similar family situation. Meanwhile, single judges having foreign language knowledge only take 13.26% of those knowing foreign language and account for 80% of single female judges. The proportion of female married judges but not yet having a child and those who are not married but having adopted children knowing foreign language is the same, each group accounts for 1.1% of female judges who know foreign language and 66.66% of those who have similar situation. Female judges' weakness in foreign

language competence is a challenge for them in self-improving their professional

¹⁴⁹ Report on the survey of needs of district courts nationwide, UNDP, Judicial Publishing House, 2007, page 56, 57.

qualifications through accessing documents in foreign languages when the economy and society more and more integrate to the world.

Regarding computer skills, 128 out of 369 female judges (accounting for 34.7%) have basic computer knowledge, among them, 86.99% are married and have children. In 196 female judges (holding 53.1%) using computer to write judgments, the married with children occupy 91.23%. Only 25 female judges (equivalent to 6.8%) do not have any computer skills and 20 of them are married and mothers. Similarly to survey results on needs of district courts, the Research Team finds that most of the female judges who do not know about computer skills (cannot use computer) are those in rural and mountainous areas even though almost courts in such areas are located at the centre of the districts. Meanwhile the proportion of judges, both male and female in these two areas is rather high.

This will be a challenge to professional development activities of judges and quality improvement of judicial activities in future through activities of informatics application, such as updating the Bench book in CDROMs, disseminating judgments via searchable computer programs and as well as exchanging professional matters by emails, and so on.

The result also reveals that as many as 131 female judges (35.5%) have never participated in any adjudication skill training course held by the Judicial Academy, meanwhile the percentage of those attending is 183 (equivalent to 49.6%). 55 cases (14.9%) do not respond to this question. 177 (48%) female judges have attended professional fostering courses organised by the Legal Professional Training College while 128 (34.7%) have never attended.

Figure 12: Participation of female judges in proceeding skills training organised by the Judicial Academy according to marital status

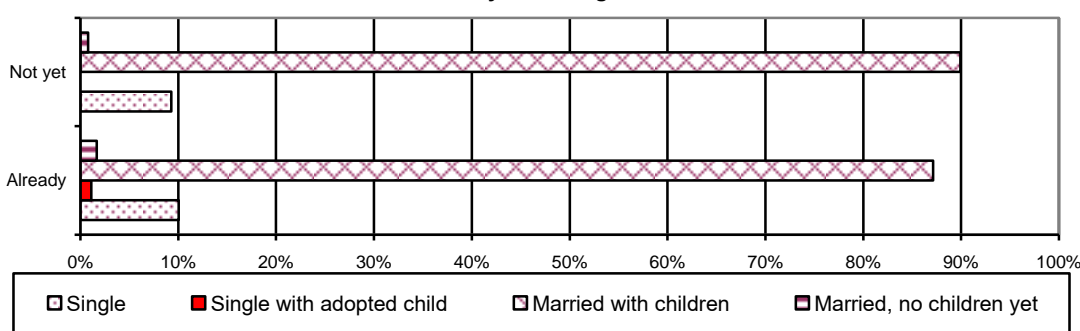
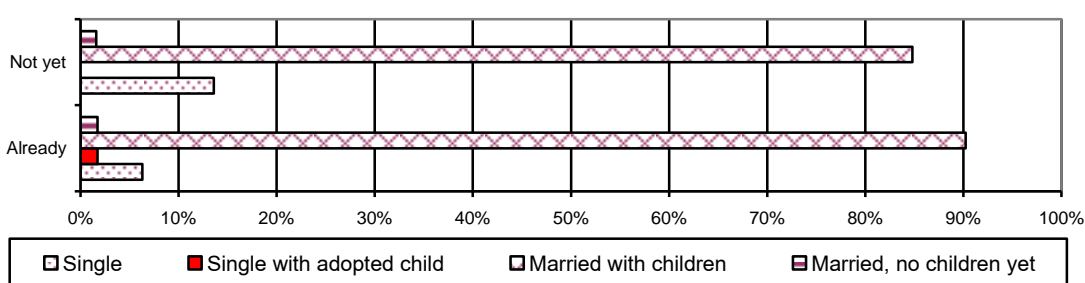


Figure 13: Participation of female judges in professional fostering course organised by the Legal Professional Training College according to marital status



The survey result based on marital status criterion as aforementioned will be very helpful for the tribunal sector to know about marital situation of female judges to ensure gender equality in arranging training and fostering programmes for female judges in appropriation with their family situation.

3. General comments on female judges

During in-depth interviews, all court leaders, judges, court staff, lawyers as well as people say that female judges are currently capable to assume their tasks. Interviewees reckon that in considering the qualification, appropriateness of task of an individual, it must be assessed based on each individual, regardless of their gender. Some respondents even think that female are more hard-working and careful than male, then they are suitable with adjudication tasks. In addition, there are also opinions that female judges are less influenced by “complicated social relationship” which may cause corruption. Meanwhile some raise opinions that the current workload of adjudicating tasks is too heavy for female judges in some courts, therefore, it is necessary to have an appropriate allotment of work according to gender. Furthermore, female often face more difficulty in acquiring social capital than male (which will be mentioned in details subsequently), consequently, female are not suitable for judge career. But such viewpoint is only the minority¹⁵⁰.

Some studies have shown that gender balance in management operation is not only the presence of women and men in decision-making process but also the quality of their participation (i.e. they are actually participated in the process, in which their different opinions and perspectives are mutually respected)¹⁵¹. The rule that “anybody can make a mistake” (no one is perfect) is an illustration that

it is inappropriate for the existence of an adjudication system with male or female only. An adjudicating system should be a *gender harmonisation* model to facilitate male and female to supplement each other in terms of gender capacity. Advantages of women will supplement shortcomings of men and vice versa.

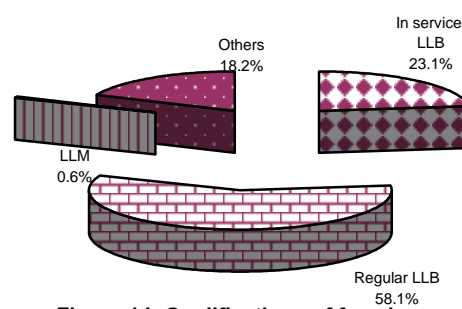


Figure 14: Qualifications of female court staff through survey

Sub conclusion:

- The proportion of female judges of Vietnam in different court levels is rather high in comparison with that of some other countries. This indicates that the State of Vietnam has made endeavors to ensure GE in political and governance activities. Numerous female judges and female court staff have contributed to the protection of GE in adjudication activities and the improvement of the women’s possibilities to access justice.
- Qualifications of female judges have met requirements of legal stipulations regarding judge career. In order to further develop their capacity, female judges also need to supplement their proficiency with foreign languages as well as computer skills to maximise their working performance, take full advantage of the knowledge brought from information source in electronic data such as internet, intranet and promptly obtain information and professional assistance from higher courts.
- The rule that “anybody can make a mistake” (*nhân vô thập toàn*) has proved that it is inappropriate to have an adjudication system with only males or females, An adjudicating

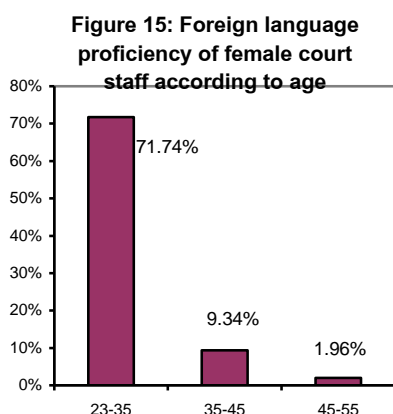
¹⁵⁰ Only 3 out of 27 respondents have such opinions during the survey.

¹⁵¹ Guidelines for gender integration into policy formulation and implementation, Project VIE-01-015-01 “Gender in public policy”, National Committee for Advancement of Women in Vietnam, page 92.

system should be a *gender harmonisation* model to facilitate male and female to supplement each other in terms of gender capacity. Advantages of women will supplement shortcomings of men and vice versa..

II. FEMALE COURT STAFF IN THE COURT SYSTEM

1. General assessment on qualifications of female court staff

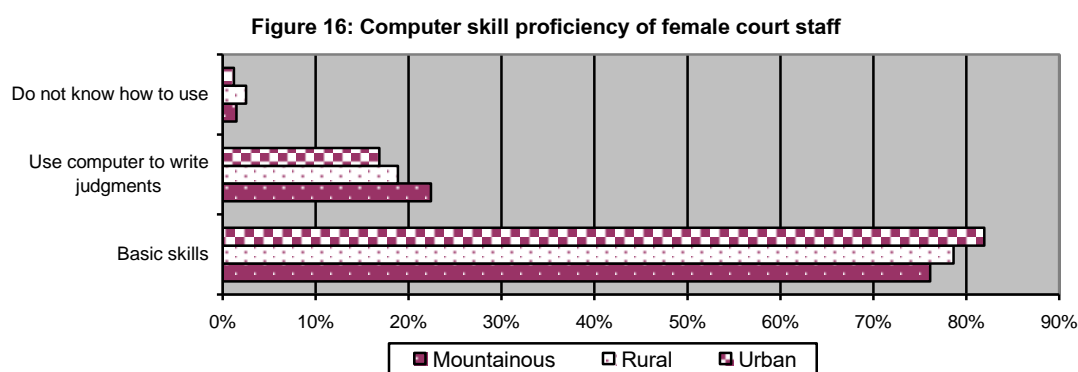


Female court clerks and investigators are the main component of female court staff in the tribunal sector (respectively accounting for 69.7% and 0.6% of female court staff participating in the survey). There are two sources for judge appointment. Female court staff also includes those assuming tasks which are not related to adjudication activities accountants (occupying 11.2%), administrators (holding 14%) and so on.

The age between 25 and 35 takes the largest proportion, equivalent to 74% of the female court staff participating in the survey. Married female court staff makes up the majority of this age range (63.35%), of which those who are mothers account for 51.13%. Single female court staff of this age range occupies 36.65%.

The second largest percentage belongs to the age ranging from 35 to 45, holding 17.6% of female court staff who are participants to the survey and those who are married and have children within such range take 89.15%.

Female court staff from 45 to 55 years old holds the lowest proportion, i.e. 8.3% of the total female court staff participating in the survey. And those who are married and have children within such age range account for 94.87%.



Such figures are very important for making training and fostering programmes for female court staff. As per the above analysis, at the age from 25 to 35, persons have just graduated from university and have just started their work, so they have a lot of motivation to learn and develop their profession. The matter of marriage and maternity at such age range will be a challenge for female court staff to develop their profession. In in-depth interviews, only two opinions agree with the above comment. The remaining female court staff reckons that such

matter is not a challenge. However, upon observing attitudes of respondents, the Research Team realises that some women hesitate to reveal their challenges.

2. General comments on female court staff

The female court staff could satisfy their work requirements is the common comment of various in-depth interviewees. Similarly to the general comments on female judges, respondents of in-depth interviews state that there is no difference between working quality of men and women. All of the court leaders interviewed reckon that they assign the work according to individual capacity and situation rather than sex in order to ensure the appropriateness in the work of their officials.

According to interviewees, court staff is also the source for judgment appointment, and the opportunity to become judges is equal between male and female. Female court staff is more easily selected to be judges than male in current period because they could often satisfy moral conditions and political criteria. Some court leaders state that the Judge Selection Council “even set more priority to appoint female than male” since female seem to expect a stable work more than male.

However, 2 out of 12 court staff admits that gender is also an obstacle for female when they want to become judges. After a time of working at courts (usually from 5 to 6 years), female court staff reach the age of marriage and delivering children (from 27 to 32 years old). Then they shall naturally concentrate on their maternity as normal social practices and a matter of fact of their psycho physiological characteristics. However, besides, they also have to take part in professional skill training courses organised by the Judicial Academy during 1 year. If they live in areas far away from the location of organisation, women must arrange their housework so that they could be able to participate the courses. This is obviously a hindrance for them, and which will be mentioned further herein under.

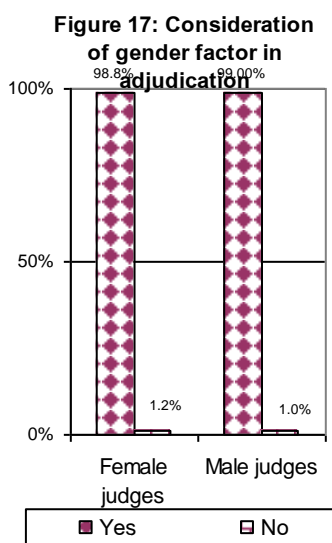
Sub conclusion:

- Female judges' competence could satisfy requirements set out by laws regarding judge occupation. However, to further develop their profession, female judges also need to improve their knowledge of foreign languages and informatics to maximize their working ability, make the best use of the knowledge brought about by information sources from electronic data network such as internet, intranet, and to promptly receive professional information and support from senior courts...
- Professional training and fostering courses for female judges should take into account elements of their age range, marital status and health to ensure GE in training activities

III. GENDER EQUALITY, ACTIVITIES FOR THE ADVANCEMENT OF WOMEN AND CHALLENGES TO WOMEN IN THE TRIBUNAL SECTOR

1. Awareness on GE in the tribunal sector

Via questionnaire survey, it is shown that “gender” factor is taken into consideration by most of the judges in the proceeding (Figure 17).

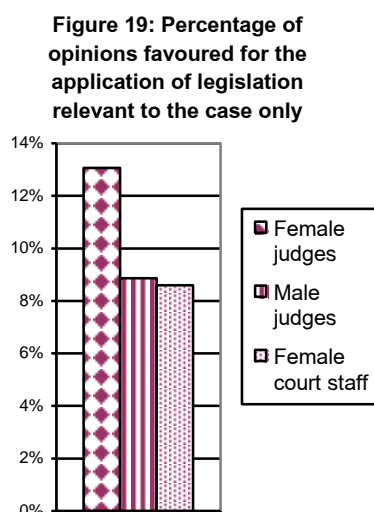


A judge is also a person being born in the same national cultural context with involved parties and defendants of a trial. Therefore, the judge may also have “gender bias” due to the influence from cultural context. But in adjudicating activity, in order to respect the strictness of the laws and to promote awareness on GE, “gender bias” is impossible to exist. Therefore, all speeches and actions of judges should not express gender bias when they assume their tasks.

Under CEDAW, women’s rights shall be protected by the laws on equality basis with men and through the court system. Hence, the court system and judges must be organised and awareness on GE must be improved in order to ensure equality in adjudication.

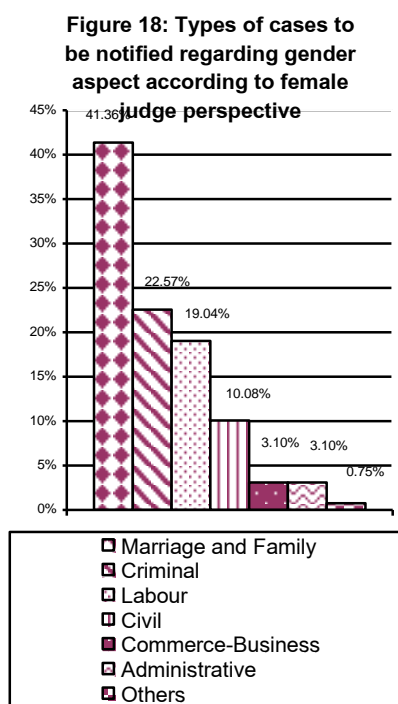
Via in-depth interviews, some female judges in the South think that women commit a crime mostly due to the “pushing” of the situation or “only being accomplice or executors”. Their motivation is not similar to that of men and bears less “vile” nature. Therefore, courts need to treat them with tolerance¹⁵².

GE factor in adjudicating activities does not only include judges’ viewpoint regarding law application into cases but is also expressed via form of communication between judges and female involved parties. The Research Team directly observed 3 sessions for taking testimony and mediation, participated in



2 trials handling criminal cases (a case on prostitution brokerage and a case on drug dealing) at a court in the Central and a court in the North. The Research

Team observed and found that language that the judge used in communicating with female involved parties or female defendant was in a disrespectful manner. The Research Team has also realised that the manner of communication, behaviour and naming at the trial should ensure the procedural relation among subjects (the court acting on behalf of the State with the citizens) and ensure the solemnly at the trial as well as without gender bias.

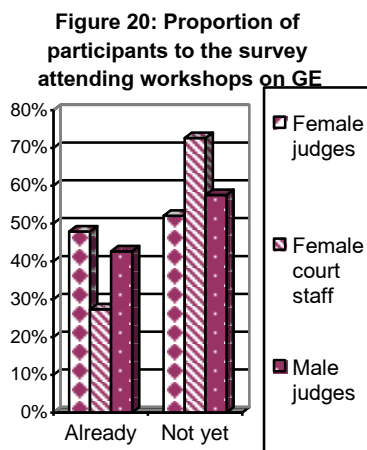


¹⁵² This opinion comes from the two discussions between the Research Team and female judges and female court staff.

Generally assessing the awareness on GE of the tribunal sector, result of the questionnaire survey shows that 81.02% opinions of female judges, 55.71% of female court staff and 75.34% of male judges state that “*GE relates to supporting activities for the advancement of female judges and court staff*”; 60.43% of female judges, 60.72% of female court staff, and 60.62% of male judge think that “*GE relates to anti-discrimination between male and female within the tribunal sector*”.

Answering the question that which cases need to take into notice matters regarding gender aspect, 41.36% opinions of female judges via survey by questionnaire believe that such factor exists in cases of family and marriage; 22.57% opinions of female respondents reckon that the factor is also present in criminal cases; 19.04% say that it appears in labour cases; 10.08% of female judges’ opinions say that it exists in other civil cases; 3.1% of female judges’ opinions think that it is also present in commerce-business cases; 3.1% opinions of female judges add in administrative cases and 0.75 % chooses other options.

The above figures may partly reflect insufficient awareness on concepts of “gender” and “gender equality” of judges and court staff. According to fundamental definitions of such concepts in Box 1, all of the cases mentioned above have problems of “gender” and “GE”. If judges think that GE only exists in some types of cases, it is possible that they will be confused between “gender” and “sex”, and “GE” is considered the same as “sex equality”. Most of the judges directly interviewed could not distinguish the application of GE principles from the application of legal provisions in relation to differences on “sex”, except for judges who are in charge of the tasks for the advancement of women. Such confusion between “gender” and “sex” concept is popular.



To consolidate such comment, The Research Team has collected various opinions of male judges reckoning that currently, female is more prioritised than male, for instance, they have 2 days to be honoured (8/3 and 20/10) while men have no day. Female receive bonus on such anniversaries or expenditure for organising such activities as domestic work art, activities for the advancement of women, etc. while male do not. Female are entitled to have maternity leave and reduce working hours during the period of rearing their child under 12 months old while male are not even though they also have to share housework with their wives. Male judges think that legal policy requires men to join in doing housework to facilitate the development of women but the unfair policy which prioritises women regarding working

hours during their maternity and rearing offspring has discouraged men to support women in such period.

Some judges and female court staff also have similar point of view. They say that there is no discrimination against women in the tribunal sector. Women are even more prioritised than men in several aspects such as relaxing, productive health care ... because legitimate rights and interests of women are clearly protected by laws. In many courts, the percentage of female is lower than that of male, therefore, women are assigned with tasks easier and less complicated than men (see more detailed analysis in the part “*Challenges regarding attitude of male colleagues*”).

However, there are also some opinions that in practice, the discrimination between men and women still exists in work assignment. They think that if women are only assigned with easy and simple cases, it means that they are considered not be able to handle difficult cases (see more detailed analysis in the part “*Challenges regarding attitude of male colleagues*”).

It is stated by some female judges working in courts with large quantity of cases¹⁵³ in the third opinion group that there is no priority for women or any discrimination between men and women in case handling, since the assignment of case settlement must comply with sequential procedures.

In relation to the objective of “eliminating gender bias in communication with citizens and in adjudication”, it is the responsibility of not only court leaders and judges but also court staff.

Through discussion between the Research Team with some judges at courts in the north and the south on the objective of “eliminating gender bias in adjudicating activities”, various opinions are summarised as follows:

- Eliminating gender bias will increase the respect towards courts and the laws;
- Eliminating gender bias will promote the respect towards GE;
- In order to eliminate gender bias, judges should encourage involved parties to respect one another and require them to be polite at the trial;
- Language, behaviour, expression, and behaviour of judges to involved parties, other persons performing and participating in proceedings and their colleagues should be used in a manner without gender bias;
- Judges should require other participants in the proceedings to use language, communication, behaviour and naming in a manner without gender bias;
- Judges and court staff should also avoid showing to female involved parties that “the court protects female more than male” for it may result in the misunderstanding that “the adjudication of the court is unjust” by both male and female;
- If the above could be reached, people will further trust in adjudicating activities of the courts and people’s awareness on GE will be improved.

2. Activities for improving awareness on GE in the tribunal sector

The Research Team has realised that in law training programmes of law schools in Vietnam there is no particular programmes on GE but only integration of GE knowledge into some law subjects, such as History of state and law, Marriage and Family law, Civil laws, Criminal laws. Moreover, the professional skill training programme which all candidates are required to attend before being appointed as judges held by the Judicial Academy contains no subject specialising in GE. GE knowledge is only integrated in lessons of specific legal provisions like the Law on Family and Marriage, Civil Law, Criminal Law... similar to that

¹⁵³ Judges of such courts handle 8-10 cases per month on average.

of law schools. Such training program on GE in basic law training could satisfy basic requirements on legal awareness but may be not really specialised. This may affect the awareness of law students who may become judges or court staff later.

Tribunal sector should formulate a plan to eliminate gender bias in adjudicating activities. This is not the problem of Vietnam only, but of many countries in the world¹⁵⁴. Most female and male judges (24/27) passing in-depth interviews think that they have no gender bias in adjudication. But there are two female judges and one male judge saying that “gender bias” causes deep influences on judges’ thinking.

Female judges usually have to “*shoulder*” a huge number of cases at court as well as a lot of housework. It is remarkable that in the interviews with judges who have such opinions, the Research Team finds that no one this group has ever taken part in any training course or workshop on GE due to such reasons as “*having no time*” or “*being so busy with adjudication*” or “*may study via documents*” or “*we have heard a lot about contents on productive health, now we are too old to be trained*”. Meanwhile, they are willing to attend professional workshops or training courses. Usually, representatives of courts participating in workshops or training courses on GE are court officials or leader who are in charge of domestic art works or work for the advancement of women.

It is noticeable that among female judges who have attended workshops on GE, as much as 54.4% has only attended for the first time. Up to 44.3% has attended some times and 1.3% has attended several times. Meanwhile such percentage of female court staff who has taken part in GE workshop accounts for 65.9% and those who have attended some times occupy 34.1%. On the contrary, 87 male judges have attended this kind of workshop once (equivalent to 49.15%), 89 have participated some times (50.28%). Only one male judge has attended several workshops on this topic.

In 2007, the Committee for the Advancement of Women cooperated with UNIFEM to organise some talks on GE for judges and court staff across 3 regions. Nearly 300 judges and court staff joined such talks. Also in this year, Court Staff School compiled and issued “the Manual for Judges and People’s Assessors on Gender Equality” with the support from UNIFEM and CIDA.

The reasons raised by those who have never participated in any workshop or training course on GE include:

- (i) *They have never heard about any such training course*: this is the opinion of 24.13% female judges, 17.02% female court staff and 17.65% male judges at provincial courts; 33.77% female judges, 34.44% female court staff and 29.69% male judges at district courts;
- (ii) *They have no condition to attend (due to working schedule, housework and health condition, etc.)*: this reason is only given by 6.8% female judges, 6.38% female court staff and 20.59% male judges at provincial courts; 9.74% female judges, 12.22% female court staff and 17.03% male judges at district courts;

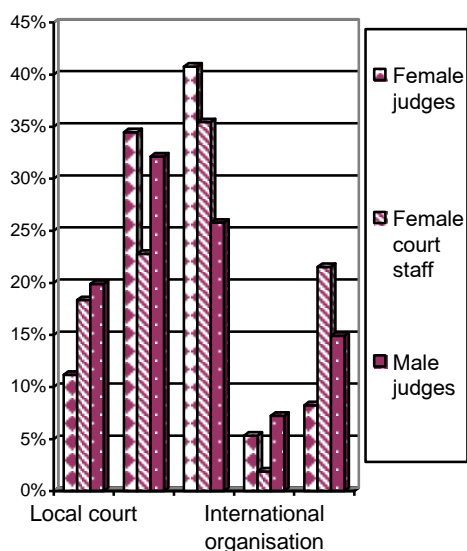
¹⁵⁴ See *Gender Bias, Guidelines For Judicial Officers Avoiding The Appearance Of Bias*, Judicial Council Advisory Committee on Access and Fairness with the assistance of the Orange County Bar Association Gender Equality Committee, 1996.

- (iii) *The court only assigns judges who specialise in handling cases on women and children trafficking, prostitution, family violence and illegal marriage:* such opinion accounts for 13.79% female judges, 6.38% female court staff and 26.47% male judges at provincial courts; 5.1% female judges, 7.4% female court staff and 15.72% male judges at district courts;
- (iv) *The participation belongs to court leaders' responsibility:* 10.34% female judges, 4.25% female court staff and 8.82% male judges at provincial courts; 10.38% female judges, 4.07% female court staff and 3.93% male judges at district courts share this opinion;
- (v) *The participation is assigned according to process by court leaders:* 37.93% female judges, 65.95% female court staff and 23.53% male judges at provincial courts; 37.66% female judges, 29.26% female court staff and 25.76% male judges at district courts have this idea.

Furthermore, some other ideas are also written down as follows:

- (vi) Normally, a court only assigns judges or court staff who are in charge of female work, or work for the advancement of women to join such workshops;
- (vii) In many training courses or workshops in relation to GE or women's matters, only women are invited to participate or the topic is integrated into anniversaries of women such as 8 March (International Women's Day) or 20 October (Vietnamese Women's Day), as a result, women will be those who take part in such programmes many times.

Figure 21: Opinions on organisation unit of workshops on GE of participants



The analysis of the above figures and information collected by the Research Team during the survey has reflected a fact that training courses and workshops on GE are normally considered as “women’s work”, consequently, only women should join. Women train one another about “their status, their differences” without the participation of male judges or male court staff. In some workshops, male leaders of provincial court in charge of the work for the advancement of women only take part in as formalism. In order to attract the participation of men, some courts have organised training courses in integration with collective activities of the entire court staff, such as holding question-answer contest on the Law on Gender Equality attached with festival and music performance.

There is an opinion saying that such way of organisation does not have enough specialised analysis to help judges apply principles on GE as stated in the Law on Gender Equality or in CEDAW. Especially, it lacks *“strategic measures to make concerns and practical experience of both women and men become standing aspect in the formulation, implementation, supervision and evaluation of policies,*

*programmes and projects in all political, economic and social fields, so that women and men could enjoy equally and put an end to inequality"*¹⁵⁵.

Training on GE in the tribunal sector is actually not only to ensure GE within the tribunal sector but also to improve the awareness of judges on “gender” to change it into to “gender sensitivity”, “gender responsibility” and finally, to eliminate “gender bias” for ensuring “GE objective” in the tribunal sector and in adjudicating activities. If such objective could be achieved, the fairness in the equal protection of human rights between men and women by the laws through adjudicating system will be ensured.

2. Other activities for the advancement of women in the tribunal sector

Through in-depth interviews, some women who are in charge of tasks for the advancement of women in the tribunal sector say that in recent years, activities for the advancement of women have gradually been put into discipline. However, this activity remains certain limitations and shortcomings and sometimes, in some places, it has not received proper attention from relevant leaders. Particularly, there are some localities where the committee for the advancement of women is not yet established¹⁵⁶.

As requested in Resolution No. 11 – NQ/TW of the Politburo on “*the task on women in the period of accelerating the national industrialisation and modernisation*” and policies as well as guidelines on GE and the advancement of women of the Party and the State, the tribunal sector also sets the objective of implementing the plans on training and fostering female court staff, arranging them to participate in courses to improve their qualifications, professional skills and political reasoning, and at the same time applying measures to appropriately use the current female court staff; in recruitment, setting priority for female court staff who have regular degrees, especially paying attention to staff in mountainous areas; and leaders of the tribunal sector speed up the propaganda so that female staff will be well aware of their role in the society¹⁵⁷.

Aiming at those objectives, the Chief Justice of the Supreme People’s Court have entrusted leaders of agencies under the Supreme People’s Court, and Chief justice of people’s courts of centrally-run cities or provinces with disseminating and spreading the perspective and policies of the Party and the State about female staff mission in order to improve awareness of officials and cadres under their management about gender equality and women’s progress, bringing about a new change in activities for the advancement of women in the sector¹⁵⁸. The committee for women’s advancement shall be responsible for presiding the cooperation with the Institute of Adjudication Science and related parties to study real situation of gender of the sector, to counsel the leaders in constructing and planning policies for gender equality objective; entrusted the Department of Organisation and Personnel with guiding agencies within the sector to build education and training programme for female officials in order to guarantee a gender-balanced development in the structure of leaders and professional officials in every agency; and entrusted the Council for Awarding and Emulation with introducing the content of activities for the advancement of women into the criteria for annual award in each unit of the sector.

¹⁵⁵ United Nations Economic and Social Council, 1997.

¹⁵⁶ Directive No.191/2003/CT-CA of the Supreme People’s Court on enforcement of activities for the advancement of the Tribunal sector.

¹⁵⁷ Interview with SPC’s Committee for the Advancement of Women

¹⁵⁸ Directive No.191/2003/CT-CA of the Supreme People’s Court on enforcement of activities for the advancement of the Tribunal sector.

In practice, at localities, activities for improving awareness on GE are mainly carried out via the cooperation between Women Union, the committee for women's advancement of local courts and Women Union, local labour federation, club of domestic art work, local jurist association within the similar locality. The majority of female judges and female court staff states in questionnaires that the most active unit in organising workshops on GE is Women Unions and the next is superior courts (the SPC and provincial courts). The number of workshops sponsored by international organisations is still very modest (only 0.5% female judges of the questionnaire survey has participated). However, during in-depth interviews, the Research Team only receives opinions of two female judges in two different local courts that the SPC and superior courts are active in propaganda on GE. The remaining female judges say that they learn about GE from other bodies.

Workshops and training courses on GE held by district courts are few with only 8.75% of female judges of district courts attending such, meanwhile, at provincial level, the percentage is up to 20%. This proportion is in conformity with information collected by the Research Team via field trips that district courts rarely organise workshops or training courses themselves. Explaining for such matter, 2 out of 5 leaders of the SPC, provincial and district courts reckon that the number of judges in each district court is not large (about more than 10 judges at maximum), as a result, it is difficult for a district court to hold a talk on any topic. Hence, superior courts should play the role of organising workshops and training courses.

12 out of 27 female judges and 8 among 12 female court staff in personal interviews and many judges as well as female court staff note their opinions in the questionnaire that they have never heard about talks or workshops on GE or for the advancement of women organised by the court. In this survey, many female judges reckon that the SPC and superior courts need to change and develop activities on propaganda of GE, rather than to fund such programmes without any guideline for enhancing the awareness of and responsibility for GE.

Regarding contents of talks and training courses on GE, a court leader also agrees that the current content is simple, lacks creativeness and has not had scientific analysis on the possibility of "integrating gender" in other training courses and talks; therefore, they could not encourage the participation of judges and court staff.

In order to support court leaders in determining priority missions of the tribunal sector in respect of GE to formulate training programmes on this issue, the Research Team has raised the question in the survey. 61.4% of female judges set the first priority on the mission against women and children trafficking, prostitution, family violence and illegal marriage; 25.1% female judges offer specific action plans to assist female judges/female court staff and only 13.5% of the female judges focus on gender anti-discrimination inside the tribunal sector.

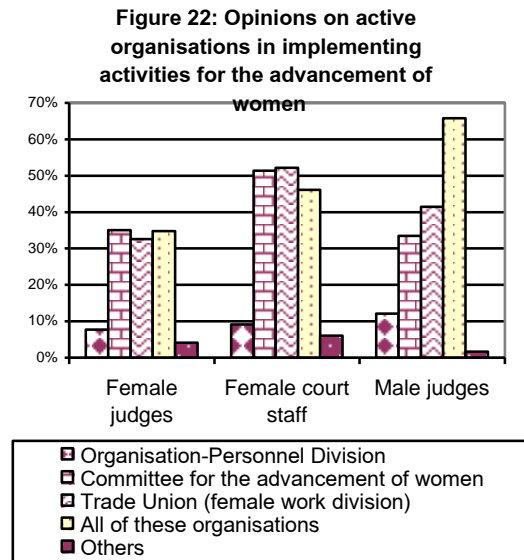
Although the SPC issued Instruction No. 191/2003/CT-CA of the Chief Justice of the SPC on enhancement of activities for the advancement of the tribunal sector, the Instruction has identified the percentage of women's participation in the tribunal sector in general and the percentage of female judges as well as female court staff in leadership of the sector in particular.

a. The Committee for the advancement of women and activities in the court system

Being fully aware of the significance and importance of GE and activities for advancement of women in the tribunal sector, the SPC already established the Committee for the advancement of women of the sector under Decision No. 113-QD/TCCB of the Chief Justice of the SPC dated 11/7/2003 immediately after the establishment of the National Committee for the Advancement of Women of Vietnam by the Government.

From its establishment, the Committee for women's advancement of the tribunal sector was put under the management of a Vice Chief Justice of the Supreme people's Court as the Head and several members being leaders at department level of the Supreme People's Court.

Operation programme of such committee is often diversified thanks to the co-organisation with the Trade Union of the court. The Committee of the SPC has organised some talks on GE, including the programme in cooperation with UNIFEM in 2007. Furthermore, the Committee also compiled and issued the "Manual for Judges and Assessors on GE" in 2007 under the assistance of UNIFEM, CIDA and the Court Staff School.



b. Trade Union

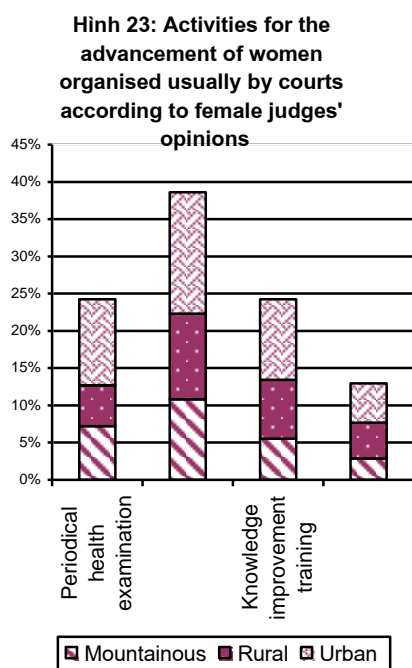
The Trade Union of the SPC is dependent on the Trade Union of Vietnamese Officials. Differently from other sectors, the tribunal sector does not organise Trade Union according to the level of the sector¹⁵⁹. The Trade Unions of courts at provincial and district level are subject to the governance and direction of local labour federation of the same level.

The Trade Union of the SPC consists of 17 Trade Union groups. Each unit of the SPC has one group. The term of the Trade Union Congress of the SPC is 2 years and 6 months. The Standing Committee of the SPC's Trade Union includes 15 members

Each court unit has a trade union. Trade union officials are court staff who do their work and the union task concurrently. The division of domestic art work is established in trade union of provincial and supreme courts.

One of the missions of the Trade Union is associated with activities for the advancement of women via domestic art work activities. Through questionnaire survey (Figure 22) and in-depth interview, the Research Team finds that the role of domestic art work activities of the trade union is well known by respondents of the survey. As their explanation, such activities have been organised long before the activities of the committee for the advancement of women which is newly established.

¹⁵⁹ There are some industries have their own Trade Union such as the transportation industry of Vietnam, education industry, agriculture and rural development industry, industrial industry

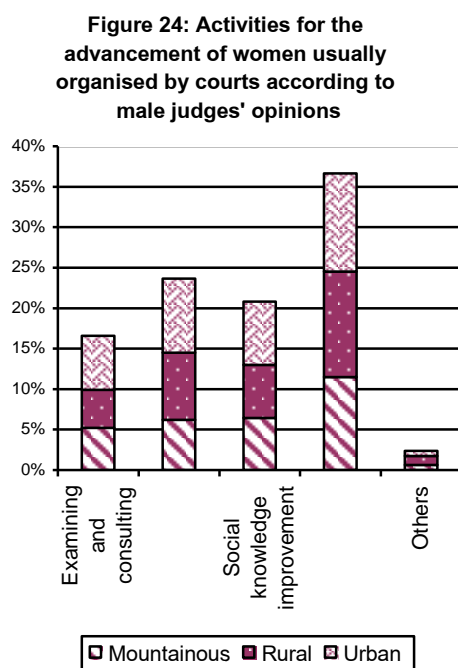


The program of domestic art work activities is evaluated diversified and especially suitable with female such as emulation events, cooking or needlework contests, “healthy mother-obedient child” contest, rewards for women’s excellent children, relaxing and amusement activities, and so on. However, such activities are not alike in different localities surveyed. One programme may be held in one locality but not in others. The frequency also varies from locality to locality. Such activities may be organised very often in this area but only some times in other areas. Many Trade Union organisations at grassroots level of the court system have relationship with local Trade Union organisation, but in some regions, such relation does not exist.

The role of the Trade Union in protecting female labourers in the tribunal sector seems blurred compared to that of other organisations within the tribunal sector and even more blurred than that of enterprises’ Trade Union. In the locality where direct interviews are conducted, judges say that judges and court staff are mainly cadres and civil servants; consequently, they have to obey provisions on cadres and civil servants. The settlement of dispute in labour relation (if any) of the tribunal sector internally must follow administrative procedures. Some judges reckon that the unit who actively protects rights and interests of labourers in the tribunal sector is the grass-root Party’s organisation.

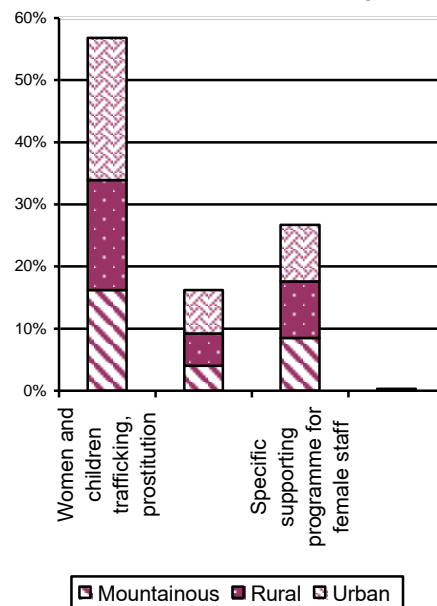
c. Action programmes on GE and for the advancement of women in the tribunal sector

Generally, action programmes on GE and for the advancement of women in the tribunal sector are still poor, not creative, not positive, and carry formality nature as commented by some judges and court staff assuming adjudication and personnel tasks or human resources tasks. At present, such programmes are mainly integrated into anniversaries in relation to women or on national holidays.



Presently, popularly held programmes mostly focus on female domestic work (skillful women festival, cooking contest, “healthy mother-obedient child” contest, etc.) and are usually organised by provincial or district courts of some localities. Some local courts also organise entertainment activities for court staff such as sightseeing or music performances. Many local courts take the opportunity of anniversaries for women such as 8 March or 20 October to integrate the training on productive health care, meaning of the anniversaries, knowledge on GE and for the advancement of women.

Figure 25: Female judges' opinions on priorities of the tribunal sector on GE currently



However, as mentioned hereinabove, many female judges and court staff have expressed via personal interviews or notes in questionnaires that activities on GE and for the advancement of women of courts are mainly formal without actual usefulness. Such programmes are usually held among women without the participation of men to gain better understanding between the two sexes. Even in some courts, in stead of holding programmes, they allot the organisation fund to women and even to men as an additional income.

As the above analysis, unclear understanding on issues of GE and for the advancement of women still remains a situation to be overcome. Such unclear understanding is immediately reflected in the organisation of activities on GE and for the advancement of women of the tribunal sector. If such activities are only confined in some programmes such as health examination, relaxing and amusement, improvement of social knowledge through productive health care, good mother-good children or cooking and needlework, they still heavily bear “sexuality” nature. Hence, such programmes do not attract many participants including both male and female.

Current activities on GE and for the advancement of women in the tribunal sector have also partly influenced the perfection of thinking about GE of judges so that they could consequently change the quality of adjudicating task to bring equal rights and interests for male and female and opportunities for women to access justice. However, the Research Team has not found any action programme organised by the court which directly relates awareness on GE and for the advancement of women with justice in adjudication, or with adjudication quality and the judges’ independence.

d. Expectation of female judges and female court staff towards action programmes on GE and for the advancement of women in the tribunal sector

Regarding the foreseen priority tasks of the tribunal sector in relation to GE, 56.7% female judges set the first priority for the mission to fight against women and children trafficking, prostitution, family violence and illegal marriage. In fact, through in-depth interview, many female judges reckon that such types of cases are increasing in terms of quantity and complexity, especially in Cuu Long river delta and northern border provinces (see Figure 25).

Via in-depth interview, it is commented by several female judges that at present, the tribunal sector has not had any specific programme to support female judges. Programmes which are considered relating to GE are actually those to honour Vietnamese women launched by the State or national anniversaries (8/3 or 20/10). Such programmes rather bear formal nature than aim at changing the awareness of both genders on the role of each gender in the social life and in working.

Sub conclusion

- Proper implementation of GE in the court system will ensure international standards on human rights that Vietnam has participated and committed such as CEDAW. It

will also eliminate the barrier to the comprehensive growth progress in terms of economy and society of a nation. At the same time, the protection by law directly impacts the capacity of full participation of women and men in all aspects of cultural, social, economic and political life. Such matters require strong commitments from the highest state bodies and the SPC. Leaders of the tribunal sector must understand the significance of GE in the promotion of comprehensive development of the sector and the perfection of the whole adjudicating system.

- Tribunal sector should set forth strategies and action plans to enhance awareness on GE and eliminate “gender bias” for judges and court staff of the tribunal sector so that the court system will be an organisation system changed thanks to GE objectives and having gender responsibility.
- Training programs and courses on GE and the advancements of women must be designed towards intensiveness and specificity so that judges could be fully aware that achieving “GE objectives” means obtaining justice in adjudicating activities. These training programs and courses should also take into consideration of integrating elements of the courtroom culture.
- The tribunal sector should set on top priorities the training contents on the mission of fighting against women and children trafficking, prostitution, family violence and illegal marriage, especially for border provinces; the following priority is to offer specific action plans to assist female judges/female court staff and last but not the least it is necessary to focus on avoiding gender discrimination inside the tribunal sector.
- Several male and female judges and court staff have not fully understood the nature of GE and the relation of GE with adjudicating activities, the relation between male and female staff within the sector and specific programs to support women in working. This requires the tribunal sector to establish prioritised programs and missions for GE work and women’s advancement in the tribunal sector.
- Training courses and knowledge fostering courses concerning “gender” should be popularised to the entire judges and court staff, not to the persons who are taking such specific tasks only.
- Tribunal sector must identify the priority, strategies, and plans to strengthen the organisation of the tribunal sector on basis of analysis from gender perspective to ensure the proportion of female participation in the sector so as to reduce the gender inequality within the judge staff

3. Challenges

There have been a lot of challenges for female judges such as work pressure, pressure from the family and society; pressure about the voice or the appearance in order to resolve adjudication work smoothly and so on. Meanwhile, male judges suffer from nothing or only

suffer from less pressure than female ones do. This problem occurs not only in Vietnam but also in many other countries in the world¹⁶⁰.

Figure 26: Comparison on challenge levels to female judges

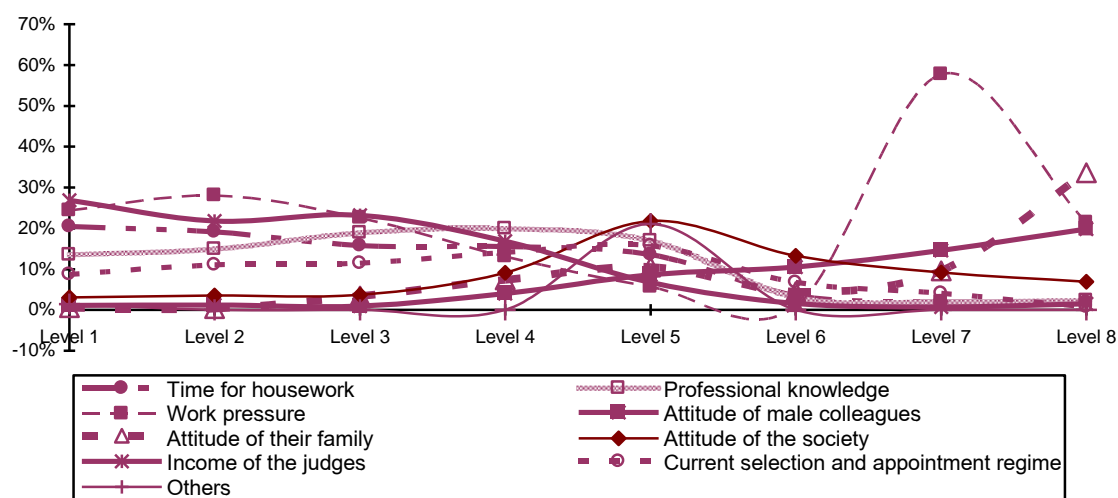


Figure 26 herein under represents the current interrelation on levels of challenges which female judges have to overcome to maintain their occupation. Figure 27 reflects the challenges to female staff in the tribunal sector. In which, level 1 is the biggest challenge and descending to level 8.

Figure 27: Comparison on challenge levels to female court staff

a. Challenge regarding income

Salary scale for judges is equivalent to that of other cadres and public servants. In addition, judges receive responsibility

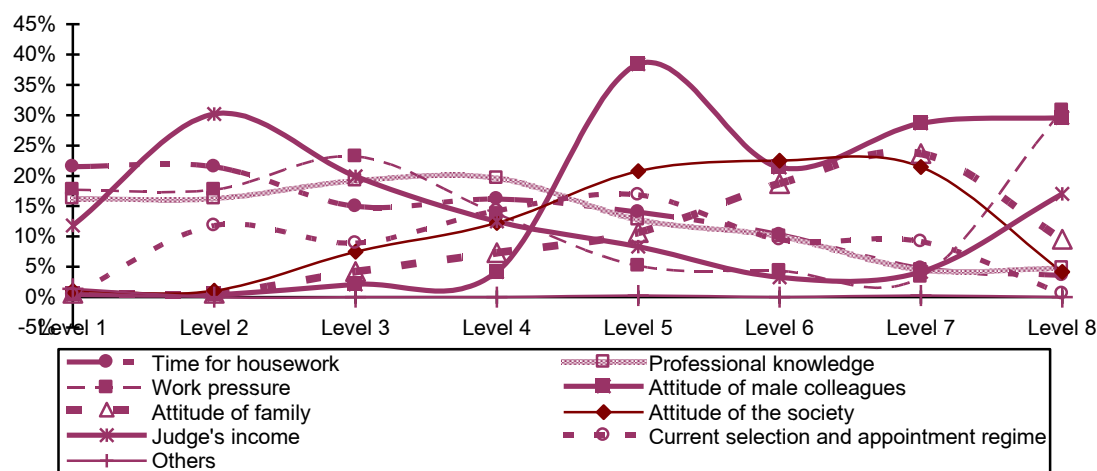
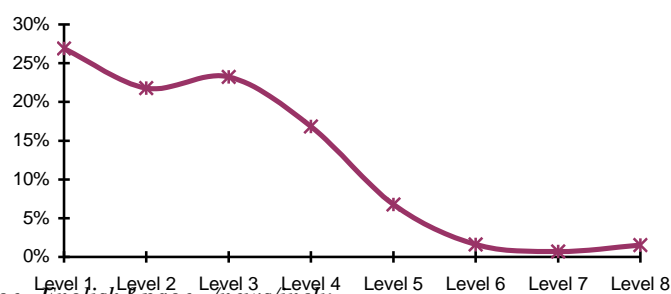


Figure 28: Levels of challenge on income of the judges



¹⁶⁰ Coping with Gender Issues in court, IDB news, <http://www.iadb.org/templates/news/print2.cfm?language=English&page=/news/inclu>

allowance which equals 30% of their current salary plus leadership allowance and overleapt seniority allowance (if any)¹⁶¹. Judges' salary does not depend on their gender or on any economic value brought by the market, but depends absolutely on the salary coefficient applied for both men and women in accordance with the laws (see the following Table 5).

Table 5: Salary coefficient and salary of the tribunal sector's titles ¹⁶²									
<i>Current basic salary level: 540,000 dong</i> ¹⁶³					<i>Unit: 1,000 dong</i>				
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7	Level 8	Level 9
Judges of the SPC, Senior Investigators (A3)	6.20 3348	6.56 3542.4	6.92 3736.8	7.28 3931.2	7.64 4125.6	8.00 4320			
Judges of provincial courts, Major investigators (A2)	4.40 2376	4.74 2559.6	5.08 2743.2	5.42 2926.8	5.76 3110.4	6.10 3294	6.44 3477.6	6.78 3661.2	
Judges of district courts, Investigators, Court clerks (A1)	2.34 1263.6	2.67 1441.8	3.00 1620	3.33 1798.2	3.66 1976.4	3.99 2154.6	4.32 2332.8	4.65 2511	4.98 2689.2

Table 6: Responsibility allowance applied to court staff	
<i>Basis to calculate allowance: Current salary level plus leadership allowance and overleapt seniority allowance (if any)</i> ¹⁶⁴	
Subject	Proportion of responsibility allowance
Chief Justice of the SPC,	20%
Judges of the SPC	20%
Judges of provincial PCs	25%
Judges of district PCs	30%
Court clerks at all level	20%
Senior investigators	15%
Major investigators	20%
Investigators	25%

In addition, judges receive trial commission regime, which is 50,000dong/day for presiding judges and 30,000dong/day for other judges participating in the trial but not presiding and 20,000 dong/day for the court clerks participating in the trial¹⁶⁵.

For example, regarding the case of a judge of the SPC with 9 years of experience, presiding trials in 22 consecutive days in a month, always completing tasks and not getting disciplinary treatment, his income will be as follows:

¹⁶¹ Decision No. 171/2005/QĐ-TTg dated 08/07/2005 of the Prime Minister providing on responsibility-based allowances for judges, court clerks and verifiers, Article 1, point 3.

¹⁶² Resolution No. 730/2004/NQ-UBTVQH11 dated 30/09/2004 on approving the salaries and allowances for positions held by officials of the State, and salaries for public servants of the Juridical Courts and Procuracy organisations.

¹⁶³ Article 1, Decree No. 166/2007/ND-CP dated 16/11/2007 of the Government stipulating the general minimum salary level.

¹⁶⁴ Article 1, Decision No. 171/2005/QĐ-TTg dated 08/7/2005 stipulating responsibility-based allowances for judges, court clerks and verifiers.

¹⁶⁵ Article 1, Decision No. 241/2006/QĐ-TTg dated 25/10/2006 of the Prime Minister providing allowances for court session participants.

- Salary at the 3rd grade: 3,736,800 dong/month
 - Trail commission regime: 1,100,000 dong
 - Responsibility allowance: 747,360 dong
- Gross income/month: 5,584,160 dong equivalent to 328.5 USD**

With respect to judges of provincial courts who have 9 years of experience, preside trial continuously in 22 days in a month, always complete tasks and are not disciplined:

- Salary at the 3rd grade: 2,743,200 dong/month
 - Trail commission regime: 1,100,000 dong
 - Responsibility allowance: 683,550 dong
- Gross income/month: 4,526,750 dong equivalent to 266.3 USD**

With respect to judges of district courts who have 9 years of experience, preside trials continuously in 22 days a month, always complete tasks and are not disciplined:

- Salary at the 3rd grade: 1,620,000 dong/month
 - Trail commission regime: 1,100,000 dong
 - Responsibility allowance: 486,000 dong
- Gross income/month: 3,206,000 dong equivalent to 188.6 USD**

With respect to court clerks of all levels who have 3 years experience, participate trial continuously in 22 days in a month, always complete tasks and are not disciplined:

- Salary at the 1st grade: 1,263,600 dong/month
 - Trail commission regime: 440,000 dong
 - Responsibility allowance: 252,720 dong
- Gross income/month: 1,956,320 dong equivalent to 115.1 USD**

The above mentioned examples are the maximum income that a judge or a court clerk at all levels can receive in a month. In practice, however, there are few judges who can preside and few clerks can participate in such 22 consecutive days in a month¹⁶⁶, especially female judges and female court clerks. Therefore, the actual income of judges and court clerks of all level is lower than the above calculated figures. Furthermore, above calculated incomes are inclusive of contribution amounts such as Social Insurance (5%), Health Insurance (1%) and other social contribution items, which must be subtracted upon payment.

Through questionnaire survey and in-depth interview, it is shown that the highest rate of female judges and female staff considers challenge on income as the highest level. Through group discussion with female judges in a Southern province, they think that though the current salary coefficient disregards sex, it does not mean that gender equality has been achieved. In fact, women at the age of 25 - 35 are often busy with their marriage and birth delivery; therefore, it is more difficult for them to strive to become judges than men or they will be appointed later than men of the same age. Consequently, women's salary level and other allowances will be lower than men of the same age and the same seniority. Therefore, they suggest the SPC study to increase salary level for female personnel within the sector.

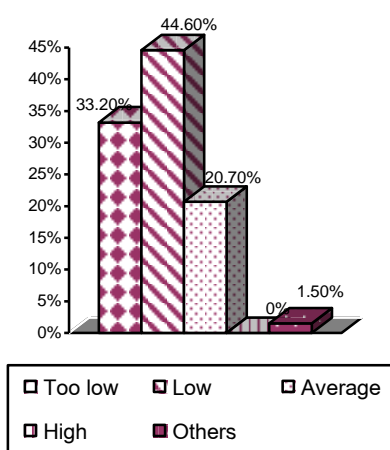
Female judges and female court staff in other courts do not show any objection to the aforementioned opinions in in-depth interviews. Majority of the remaining women reckon

¹⁶⁶ The above mentioned opinions are assembled in the survey process and are set in the Survey Report of Needs of District Courts nationwide, 2007, page 82.

that the appointment of a court staff to be a judge depends on many factors, rather than women's particular situation (due to maternity) only.

Table 7: Opinions of female judges on their income on basis of marital status (%)					Table 8: Opinions of female judges on their income on age basis (%)			
Marital status/ Opinion	Single	Single with adopted child	Married, with children	Married, no children yet	Age/ Opinion	25-35	35-45	45-55
Too low	2	0.6	30	0	Too low	26	45	28
Low	4	0	40	1	Low	25	48	27
Average	2	0.3	18	0.6	Average	7	34	59
High	0	0	0	0	High	0	0	0
Others	0.6	0	1	0	Others	40	20	40

Figure 29: Female judges' opinions on their income



With respect to female judges

As shown in the comparison table on levels of challenges, the challenge on income takes the highest proportion at Level 1, ranks the second at Level 2 and the first again at Level 3 and gradually reduces afterwards. 100% of female judges participating in the survey (369 people) reckon that “judges must be well paid to ensure their family life and quality of case settlement quality”. In fact, there are a lot of opinions saying that low salary of judges will effect the judicial independence and adjudication quality¹⁶⁷.

It is indicated in Figure 29 that no female judge thinks their income high. They all reckon that their current income level is lower than the average income in the society. This is the general comment of all judges participating in in-depth

interviews of this survey and majority of judges in the survey on needs of district courts nationwide in 2006¹⁶⁸.

The number of judges at the age of 35-45 considering that their current income level is too low accounts for the highest proportion (45%) among female judges, following is the age ranging from 45-55 with 28% and finally is the group from 25-35 years old, occupying 26% (see further in Table 8 above).

Women who are married with children already occupy 30% of those who raise opinions that female judges' income is “too low”, and 34% of those having similar family status. Married judges with children considering their income level “low” hold up to 40% of female judges having the same opinion and occupy 45% of women having identical family status. They also occupy majority of those having opinions that judge's income is “medium” (taking up to 18%). And of course, opinions that judges' income is medium only account for 20% of those having the same family status.

Through questionnaires (by writing “other opinions”) and in-depth interviews, some female judges say that salary level of district judges at present is not corresponding to extra work

¹⁶⁷ To see point of views of the Tribunal President of the United States of America John G. Robert, in <http://www.uscourts.gov/judicialcompensation/payfactsheet.html>

¹⁶⁸ The Survey Report of Needs of District Courts Nationwide, 2007, page 82

that they have to assume since jurisdiction of district courts was increased in terms of criminal and civil cases. In practice, district court's judges often have to settle more cases than those in superior courts but their salary level is lower. There are up to 40 opinions of female judges in Questionnaires wishing their current salary level to reach 5 million dong/month to ensure their lives.

With respect to female court staff

The challenge of income with female court staff ranks the forth at Level 1 and the first at Level 2.

If we compare the work and salary level of female court staff with other cadres and civil servants, it is obvious that salary-based salary of tribunal officials is higher (see Figure 30) because they also receive responsibility allowance equivalent to 30% of their applicable salary plus leadership allowance and overleapt seniority allowance (if any)¹⁶⁹. However, the salary level of the staff of the tribunal sector is not as high as that of staff of the procuracy and police sector¹⁷⁰.

Similar to the salary of judges and other cadres and civil servants, salary of court staff is not discriminated regarding sex.

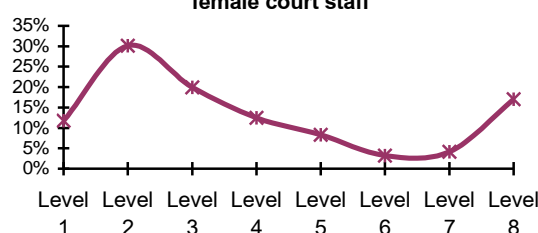
¹⁶⁹ The Decision No.171/2005/QĐ-TTg dated of the Prime Minister stipulating on responsible regime with judges, court clerks and investigators of the tribunal sector, Article 1, Clause 3.

¹⁷⁰ There are 7 court staff raising this opinion.

Box 5: Standards for regular salary scale increase during the time of holding the applicable salary grade of titles in the tribunal sector:

1. After 3 years (full 36 months) of their service which entitles them to the salary grade applicable to the title, they shall be considered for a one-step salary increment;
2. They have completed their annual missions according to the office's regulations;
3. They do not break disciplines under any of the forms including blame, warning, dismissal (*Circular No. 03/2005/TT-BNV of the Ministry of Home Affairs dated 05/1/2005 providing guidelines for implementation of the regime of regular salary scale increment and before-schedule applicable to officials, civil servants and cadres*)

Figure 30: Levels of challenge on income of female court staff



Box 6: The seniority allowance level exceeding frame of the tribunal sector's titles:

After 3 years (36 full months), if they are entitled to the highest salary grade in their salary category or the highest salary grade applicable to their positions, they shall be entitled to the allowance for excessive working years equivalent to 5% of salary level in the highest salary grade in their salary category or the highest salary grade applicable to their positions. From the 4th year on, each year an additional 1% is added for the purpose of allowance computing.

Regarding those either fail to fulfil their annual assignments or are subject to such disciplines as reprimand, warning, displacement, or removal, the working period they must complete before they are entitled to the allowance for overleapt seniority shall be increased by one year (12 full months) for each year of shortcomings or failure.

Decree No. 204/2004/ND-CP of the Government dated 14/12/2004 provided for the salary regime for cadres, public servants, officials, and armed force personnel.

Up to 99.6% of court staff participating in the survey asserts that “*court staff need to be well paid to ensure their family life and quality of adjudicating work as well as other work of the court*”. There are a lot of opinions recorded from in-depth interviews and questionnaires suggesting that higher authorities should take into consideration the salary increase for the tribunal sector's personnel.

Although income level of judicial titles in the tribunal sector is much higher than the average income per capita in Vietnam, it is still not sufficient for them to ensure their family life¹⁷¹. To increase income, previously, some district and provincial courts enabled judges and court staff to organise animal husbandry or receive extra works. In a locality, the district and provincial authority extracts a part of the local budget to support for the tribunal sector's income. Within the research, the Research Team has only found a district court where the Women Union has an assistance model to assist the earning for the officials within the court by organising animal husbandry at the court, actively contacting with the local Women Union to have extra source of works and receiving rice-field, then hiring people to cultivate and harvest. As a matter of fact, currently, courts no longer organise animal husbandry or

¹⁷¹ The average income per capita per month in 2007 is 69,6USD (equivalent to 835US\$/year), “*Vietnamese income can exceed 1,000 USD*”, VnExpress, dated 27/11/2008, <http://www.vnexpress.net/GL/Kinh-doanh/2008/11/3BA08C67/>

receive extra works; therefore, judges have to arrange extra works themselves. In addition, in accordance with current stipulations on cadres and civil servants in general and those in the tribunal sector in particular, judges are not allowed to do any secondary job related to the professional work beyond their working hours such as legal consultancy, thus it is very difficult for them to earn extra income from their occupation like cadres and civil servants in other sectors. As a result, judges or court staff who wants to keep pureness and non - corruption have to depend on other members of their family.

Through in-depth interviews at some courts in rural areas, female judges and female court staff believe that they are depending on their family's income, which causes remarkable influence on their professional development. Several women think that they have to attach their special importance to housework or other work of their family due to that dependence. For this reason, they have no time to teach themselves beyond working hours or participate in long-term training courses or talks in other localities. Some male judges also have similar opinions.

Sub conclusion:

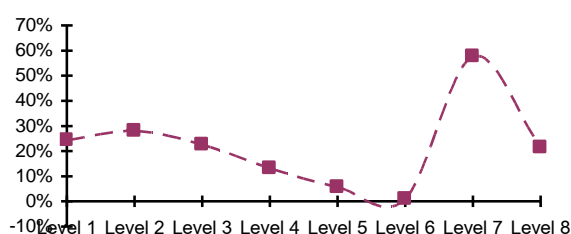
Several theoretical and practical studies, including this survey, have indicated that the salary of court staff has strong relation with adjudication quality, further study of judges and court staff, and corruption prevention. Generally, the survey has shown that the current salary of judges and court staff of both genders is considered low and it could not ensure their life, especially female judges and court staffs having married.

Therefore, in the progress of judicial reform to improve adjudication quality, the tribunal sector and governmental bodies should have plans to increase the salary for judges and court staff, in which the way to increase salary with consideration of GE factor for female judges and court staff of the sector should be studied.

b. Challenge regarding workload

With respect to judges

Figure 31: Levels of challenge on work pressure to female judges



According to the annual summary report on the work of the SPC, the number of cases received by courts has been increasing (Figure 32¹⁷²). Meanwhile, the number of judges is confined by the National Assembly's norms. This matter results in the increasing amount of work for judges. A judge will have to solve an average of 5-6 cases in a month.

However, there are a lot of judges who do not perform adjudicating mission but other management tasks; therefore, such average rate is higher in practice. In accordance with the survey result in Figure ..., the number of female judges subject to handle from 5 cases upward in a month occupies a majority proportion, i.e. 67.90%. In which, the proportion of judges settling from 8-12 cases a month accounts for 19.20% and the number of those receiving more than 12 cases takes 10.60%.

¹⁷² The summary report of missions of the tribunal sector for 2001, 2002, 2003, 2004, 2005, 2006 and 2007.

Comparing the number of cases settled in a month of a Vietnamese judge and one in the United States, we can see that on average, a district judge of the United State handles much more cases than one in Vietnam (33 cases per month)¹⁷³. However, the procedure in Vietnam and that in the United States are different. Vietnam has not yet applied abridged

procedure in settlement of criminal and civil cases. As a result, it takes much more effort to settle a case in Vietnam than in the United States.

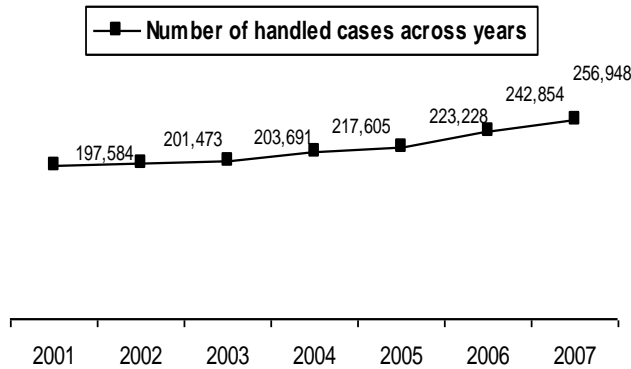
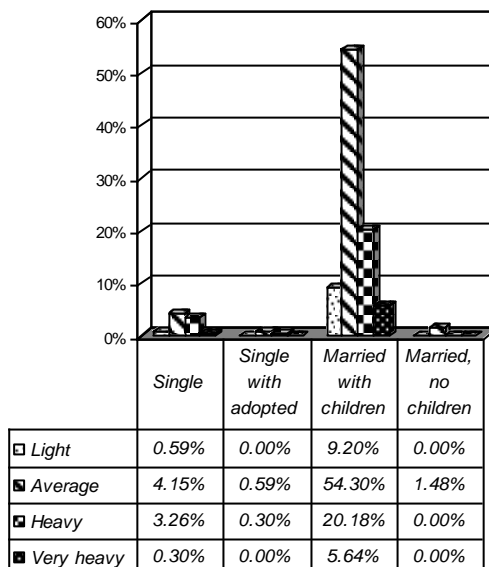


Figure 32: Number of cases handled across years

It can be seen from the figures regarding marital status that the number of cases settled by single female judges seems to be higher than that handled by married ones. The number of unmarried female judges without adopted children who settle over 12 cases in a month occupies 30.79% of those having similar family situation and accounts for 22.22% of those resolving the same number of cases. Meanwhile, they only make up 7.83% of judges taking part in the survey. The proportion of the same subject (single without adopted children) hearing from 8-12 cases occupies 38.46% of female judges with the same situation and holds 16.39% of those solving the similar number of cases. The number of female judges who are married with children occupies the highest percentage in the criteria regarding case quantity because they also take up the highest percentage among people participating this survey, 89.76%. This figures somewhat reflects the consideration of the court regarding “gender” feature in marital status in case assignment.

Figure 36: Judges' viewpoint on workload according to marital status



Regarding age, the proportion of female judges at the age of 45-55 settling from 8 cases/month and above (Figure 34) is lower than that of other age ranges.

¹⁷³ The figures are calculated based on the number of handled cases in 2005 (223,228) and the number of judges is confined by the norms provided for by the law in 2 years 2004-2005 (3.262). Meanwhile, in the United States, a judge of district court settles an average of 33 cases per month in 2005 (Judicial Business 2005, Administrative Office of the U.S. Courts, page 19).

Through desk review and in-depth interviews, the Research Team realises that in many courts, cases are assigned based on marital status and labour age even though there is no clear stipulation on case assignment. This is entirely conformed to “gender” characteristics.

Figure 34: Number of cases handled by female judges within a month according to age

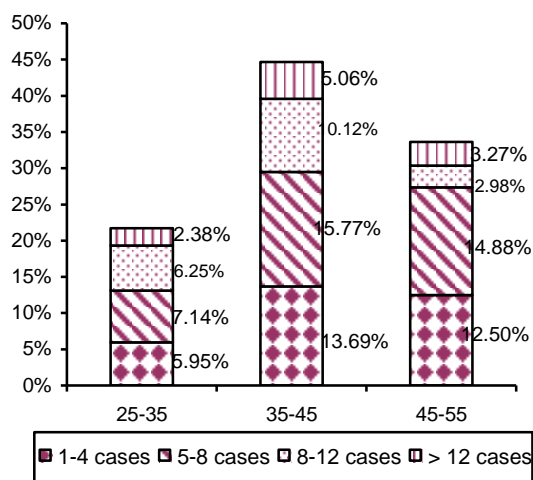
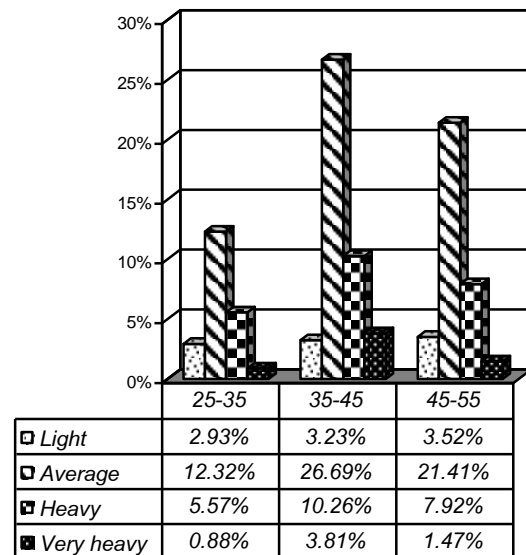


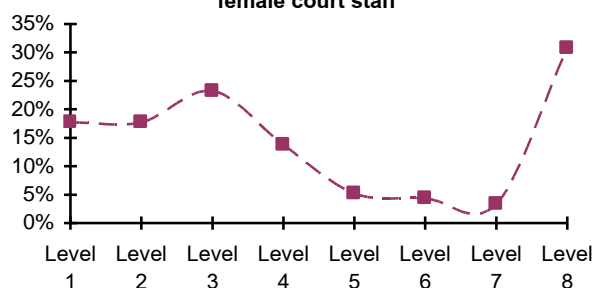
Figure 35: Female judges' viewpoint on workload according to age



However, in order to check the appropriateness of the volume of work with respect to female judges, the Research Team has asked female judges for their opinions regarding the quantity of cases that they are hearing. The results collected are as follows:

In the field survey, the Research Team meets a female judge of a district court who just gave up her job due to work pressure. In the court where she used to work, she had to handle from

Figure 37: Levels of challenge on workload to female court staff



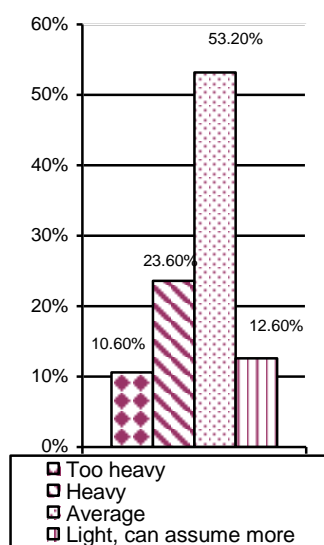
10-12 cases per month on average. Her severance due to work pressure has mentally affected the staff who was striving to become judges in the court.

With respect to female court staff

The majority of female court staff assumes that their current volume of work is “reasonable”. The proportion of female staff considers that they “can take

over extra work” is 2% higher than the proportion of judges reckoning their current works to be “excessive” (see Figure 38).

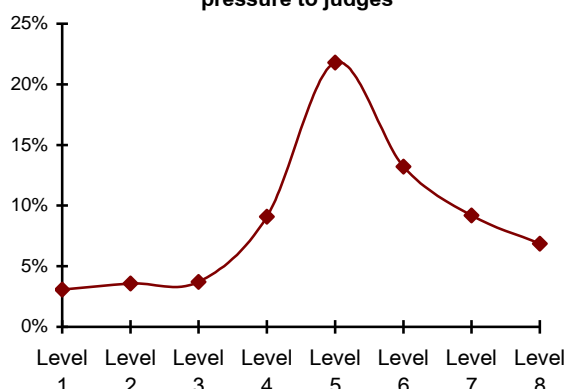
Figure 38: Female court staff's viewpoint on workload



The actual work volume of court staff is directly proportional to volume of cases that judges hear every month. In fact, court staff support judges a lot in work settlement, for example, taking statements of the involved parties, examining validity of evidences, collecting relevant materials and legal documents and executing works of court clerk such as serving documents, writing trial and mediation records, etc.

In courts where judges have to settle from 10 cases and more, the role of court clerks in supporting procedural activities is remarkable. They even have to support judges in composing legal considerations, writing case summary for judges and so on. Several court clerks at appellate courts and cassational review courts even participate in preliminary study of the cases which have been already heard by lower courts. Those

Figure 39: Levels of challenge on social pressure to judges



preliminary studies will help judges settle the cases more promptly and give more professional opinions on the cases.

With respect to work of other court staffs who are

not clerks such as investigators, accountants, cashiers, registrars, etc., their work does not receive much pressure in terms of volume as that of court clerks. They all believe that they could well assume their work.

Sub conclusion:

Judicial workload has a close connection with adjudication quality and the possibility for further study for professional improvement of judges and court staff. Judicial workload is a

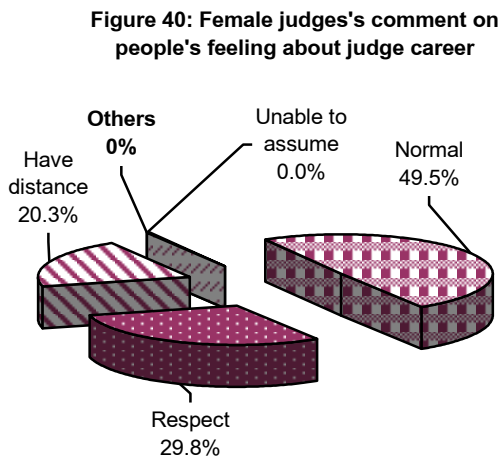
challenge to female judges in several localities where they must both undertake professional tasks and assume housework. The SPC needs to promote reform in the court structure so that first instance cases of district courts could be shared within the region.

c. Social pressure

Social pressure on female judges:

It seems that in any cultural structure, its people all have different perspective on the sex of judges. The majority consider that judge career is not very appropriate to women in terms of work sensitivity, personal sentiment, intermingled relations (social capital), appearance, and voice or work pressure¹⁷⁴. But male judges in Vietnam have contrary opinions, only 0.9% of the total surveyed male judges considers judge career inappropriate for women, meanwhile, up to 51.8% believes that judge career is appropriate to both male and female (see Part of the Attitude of male judges to female colleagues).

The subject that judges often deal with is human with their rights and lawful interests. An inappropriate judgment for involved parties or a death/imprisonment sentence for a criminal shall receive different reactions from related people or the society. Normally, the involved parties and the defendants all wish that the court's judgments shall be advantageous for them. As a result, they are willing to cause "temptation" or "pressure" for judges to seek for an advantageous verdict. Many judges (both male and female) say that during their term of office (5 years), they are not to receive any praise of the society even though all cases

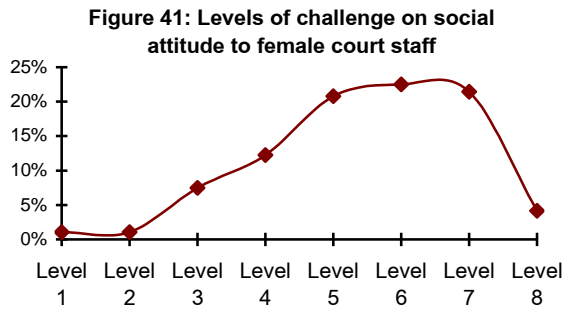


treated by them are handled lawfully, reasonably, and sensibly (it means that they have is no annulled or amended judgment) except the encouraging rewards of the sector. However, if there is a judgment which is handled lawfully and reasonably but only inappropriate in terms of reality (sentiment factor), they may immediately be criticised by the society and may be reviled by the involved parties. In such cases, female judges are those who have to suffer from mental stress or depression because actually they are more sensitive than men¹⁷⁵.

During the survey, the Research Team gathers 7 out of 21 opinions of people considering that judge career should reserve for men, but such opinion is not the majority (accounting for 29%). Those people believe that only men may have good conditions to attend courses for professional knowledge improvement. Whereas, women are restricted in participation of extra activities due to their care to housework and children.

¹⁷⁴ *Women in the World's Legal Profession*, Ulrike Schultz and Gisela Shaw (ed.), HART Publishing, 2003, trang xliv; *Coping with Gender Issues in court*, IDB news, <http://www.iadb.org/templates/news/print2.cfm?language=English&page=/news/inclu>

¹⁷⁵ Above-mentioned opinions have been inferred from in-depth interviews with female judges. All women have had such opinion.



3 out of 12 lawyers interviewed also reckon that female judges normally have lower qualifications than male judges do. Furthermore, such lawyers think that female judges are “hard to work with”. On the contrary, 5 among 12 lawyers think that women do not like “hanging about” and “carousing”; therefore, they have better occupational nature than men¹⁷⁶. The practice has shown that

among judges and court staff that violate moral rules or legislation and are treated with discipline or prosecution, men usually occupy higher proportion than women.

Pressure on female court staff

Female court staff, especially court clerk, face a lot social pressure at court, but such pressure is not heavy. The survey result (Figure 41) indicates that female court staff evaluates social pressure at the lowest levels. There are few of them putting it at Level 1 or 2.

Court clerks and judges together usually have to receive involved parties in civil, economic, marriage and family cases. In many courts, if the judges are busy, court clerks have to take statements of involved parties, preliminarily review the validity of documents and evidences submitted to judges by involved parties to guide them to implementing the stipulations of procedural legislation in a proper manner.

Almost court clerks interviewed wish to become judges afterwards. Similarly to several female judges, some female court clerks also have the feeling that the society, their female colleagues and family reckon the judge career in future to be inappropriate for them. Several female court clerks expect to remain clerks all their life but it is even not simple. Two court clerks confide to the Research Team that if they do not make effort to become judges, they will be considered “backward” or “incapable persons”. However, if they become judges, they will suffer from pressure of work, their family and also the appointment and reappointment process. They reveal that their biggest expectation is the happiness of their own and their family.

Some court clerks at the supreme and provincial level tell they themselves expect to become judges so much but the court of their work do not. The simple reason is that the courts have no more target for recruiting court clerks; therefore, if they, the current clerks, participate in training courses to become judges, the current judges will no longer have skilled and experienced assistants. As a result, they have to work as court clerks longer than those of district court level. Such women think they will have little time of working as judges due to late appointment since they even take retirement earlier than men.

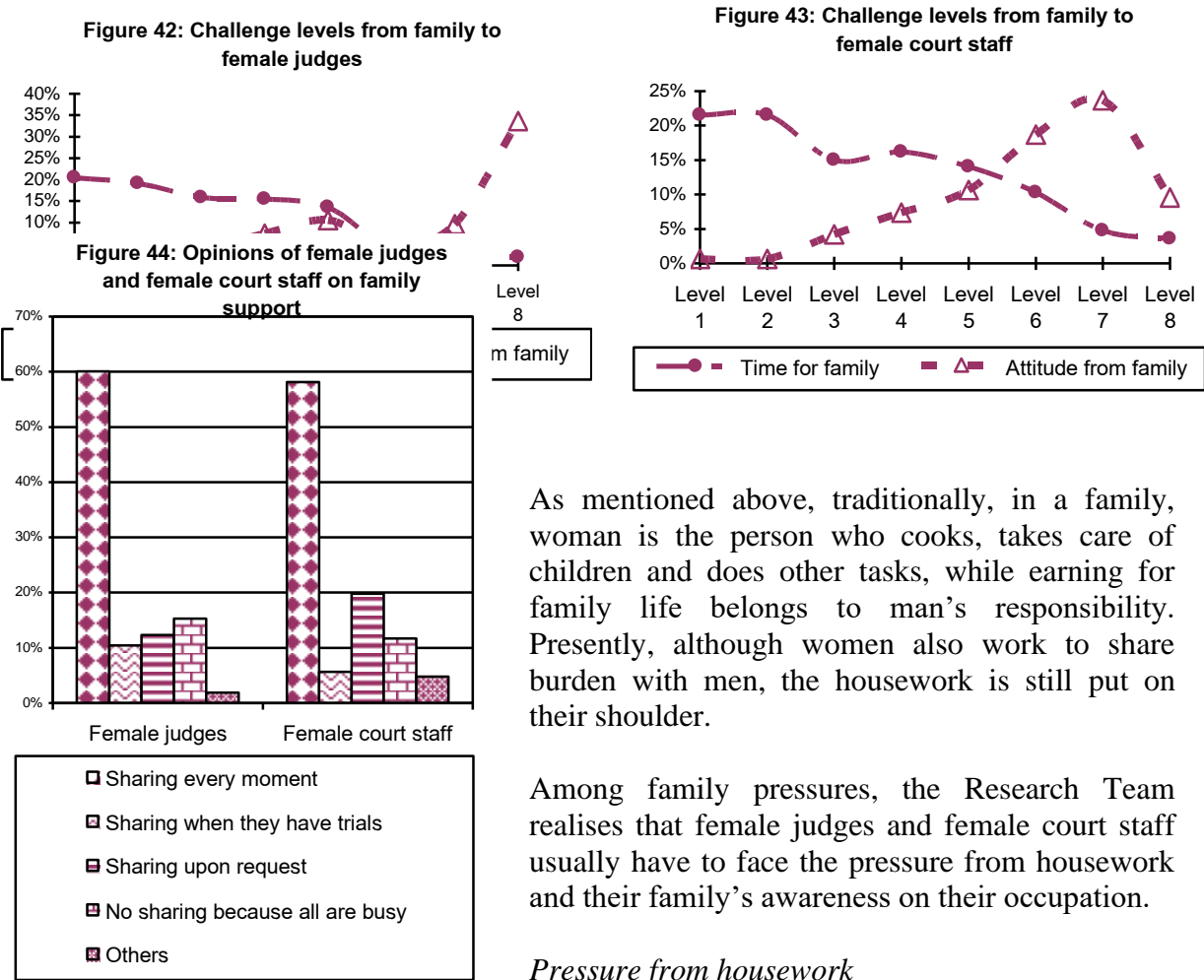
Sub conclusion:

Social pressure is a challenge for female judges and female court staff due to their psychological sensitivity. Such sensitivity helps adjudication task of the courts become

¹⁷⁶ Lawyers who have such opinion are those in Hanoi and Ho Chi Minh City.

more “human affectionate” and juster. However, it is also a challenge for women in assuming adjudicating tasks or pursuing judge career. In order to mitigate such challenge, it requires the attention of the tribunal sector, judicial supplement agencies and propaganda on the mitigation of social pressure on judges.

d. Pressure from families



Results from questionnaires and in-depth interviews show that most of female judges and female court staff say in their families, housework is shared (see Figure 44). However, some admit through in-depth interviews that women in fact do not want to attest that their housework is not shared by their family. According to a female staff, if they affirm so, it is seems their family is not happy. A group of female judges and staff of a court in the South states that housework is “women’s responsibility” or “the happiness, sadness, and desire” of women. If they do not do this task, they will feel “unsatisfactory”.

In fact, housework is the work “without name, without pay” that Vietnamese women have been undertaking till now. To avoid pressure from families about other matters apart from housework, most of women have to try to do all housework.

In addition, taking care of children is women’s duty, according to social prejudice (“whether children/grandchildren are naughty or not is to be blamed for their mothers/grandmothers”) (“*con hư tại mẹ, cháu hư tại bà*”) Therefore, women will spend certain time for

“motherhood” duty instead of career development such as study or promotion¹⁷⁷. This is a disadvantage for women to develop their career.

Some women state that, in the previous centrally-planned economy, the court system or local government organised kindergartens for children aging from some months old in order to help parents keep their mind on their work. Now, from urban to rural areas (including provinces of the survey), most kindergartens do not accept to take care of children with only some months old. Therefore, a lot of women have to leave their job without pay to take care of their children until the kindergartens receive them (about 12 to 14 months old in rural areas and 14-18 months old in urban areas) or until any of their relatives agrees to do that. Taking care of children will reduce opportunities for developing their career, such as time for appointment, time for study to improve professional knowledge.

Through the questionnaire survey, most female judges and female court staff say that their family shares housework with them all the time (see Figure 44). However, female judges and staff in direct interviews state that they are only shared with housework mainly when they have a trial, or when they have a requirement. Two female court staffs and a judge (25-35 years old, single) have their housework regularly supported by their mothers and younger sisters. Women within 45-55 years old usually have their husbands and children to share housework. Women with small children admit that their husbands do help them but not much, and they give their hands only when they are required.

According to a female judge, upon marriage, a woman need to do her housework and take care of the husband’s parents directly and of her own parents indirectly. Moreover, a female judge will also need to positively take part in activities of their family because their status as judge which requires them to be serious and caring. This female judge confirms that housework is a huge pressure for her.

According to a State-level independent study (2004/24) of the Organisation Committee of the Central Party on “*Upgrading leadership abilities of female officials in political system*”, 48.8 % of female staff stated that they have to take further work of “taking care of children and parents” while only 2.3% said that their husbands could take on such task. Similarly, there was 72.6% of wives “doing housework” while 3% of answers were husbands. The remaining female staff assured that in their family, both wife and husband shared the housework¹⁷⁸. That study result, together with the result of this research, can prove that women have much pressure from housework, which restricts their career development. Female judges wishing to upgrade their career will have to do a block of work (including housework and work in office) which is higher than men’s. If they do not get support from their family and relevant agencies, their professional activities will be strongly influenced and it is really difficult for them to be promoted.

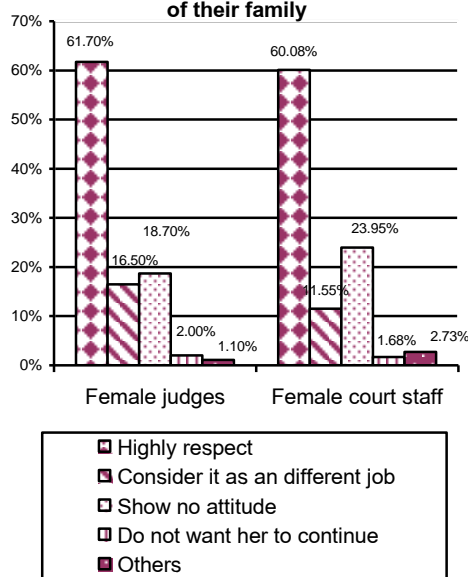
Pressure from family awareness

Commenting on the attitude of families toward their occupation, 59.9% of female judges state that their families “*strongly respect*” their occupation; 18.2% show that families “*do not show any attitude*”; 16% think that their families consider “*judge as an different*

¹⁷⁷ A lot of studies on this issue, see: *A thorny battle in England: career or family (parts 1 & 2)*, Vietimes-Vietnamnet, 16-17/4/2008 (<http://vietimes.vietnamnet.vn/vn/print/khoahocgioitinh/4826/index.viet>)

¹⁷⁸ *Improving leading capacity of female staff in the political system*, Nguyen Duc Hat (Chief Author), National Political Publishing House, 2007, pages 203-204.

Figure 45: Opinions of female judges and female court staff on the attitude of their family



occupation”; only 1.9% indicate that their families do not want them to continue this occupation and 1.1% have other ideas.

As analysed in this study, judge is a “special” job which has more pressure than other jobs. Judges, especially female judges, often wish their families to understand, sympathise and help them in their jobs. Lacking the family’s support, they will face “income pressure” and “professional development pressure” expressed via time for self-study. Frequent adjudication requires them to spend much time on working. Consequently, they do not have enough time for family’s work as other Vietnamese women do.

Results collected from in-depth interviews have revealed that most female judges and staff state that they still pursuit this job thanks to their

family’s support and encouragement.

A female judge admits that the prejudice of “when there is a person working as an official, the whole relatives will be supported” has absorbed deeply in thoughts of her relatives. They require her to “help” them. She thinks this is a huge pressure with female judges, which requires the husband to help the wife to resolve. However, she affirms that she has never “helped” her family or relatives do illegal tasks. Other female judges and staff say that they have never met with any requirement for “help” from relatives and have never “helped anyone illegally” either. Nevertheless, some admit that they sometimes advices their family and relatives about legal matters.

Some male judges and staff also state that women working for courts also have other pressure from family, for instance, family’s impact to their adjudication work and result of their trials. A reason is that, according to the traditional culture in some localities, families and depending on some judges, women have to obey ideas of their husbands, fathers, or mothers (*“In family, obeying fathers; in marriage, obeying husbands”*). Moreover, judges are often dependent on their family in aspect of economy, so it is difficult for them to be “independent”. However, none of female judges and court staff agrees with this idea. They all state that *“it can occur with other women but not me”*.

Sub-conclusion:

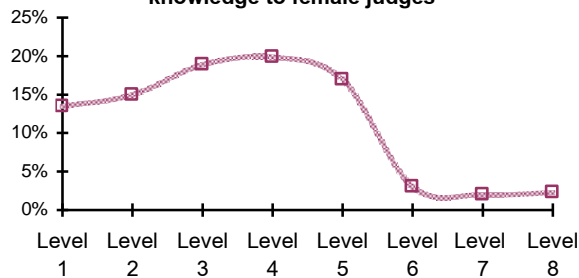
It is undeniable that pressure from families’ awareness and housework are considerable challenges with female judges and court staff in Vietnam where women are always considered to be responsible for housework.

In order for the women of the court system can be partially released from family pressure, the tribunal sector needs to develop plans for supporting women in taking care of and teaching their children.

e. Challenges regarding professional knowledge

As per the above analyses, professional knowledge is the challenge set for not only female but also male judges and court staff.

Figure 46: Challenge on professional knowledge to female judges



In accordance with the requirements provided for in the Law on Organisation of the People's Courts and Ordinance on Judges and People's Assessors as presented above, legal professional qualifications of judges are identified to be university degree, equivalent or higher degree on law major. Judges must "be a bachelor of law"¹⁷⁹, i.e. "have an

university degree majoring in law, granted by a domestic university who has the function on training law at university level; if the university degree majoring in law is granted by a foreign educational institute, it has to be recognised in Vietnam in accordance with regulations of competent state agencies of Vietnam"¹⁸⁰. However, in fact, some judges are still in the situation of "being in debt for criteria" because they only graduate from Legal Professional Training College, however, they are only the minority¹⁸¹.

Through the survey in 9 localities, all female judges reach the requirement of having bachelor of law degree, in some localities; female judges even have Master degree. The number of female judges responding to the questionnaire, who have "other qualifications",

Figure 48: Participation into talks or seminars of female judges according to age

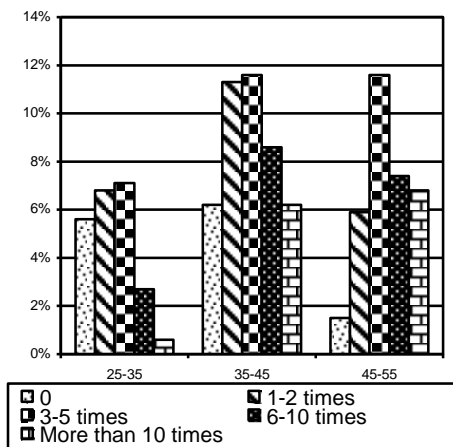
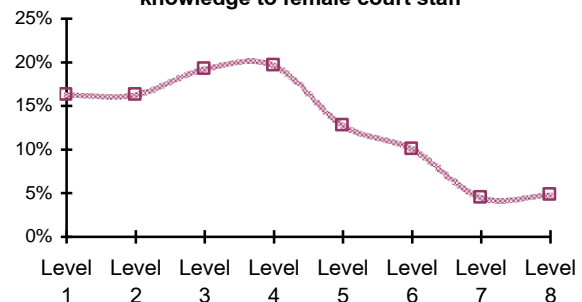


Figure 47: Levels of challenge on professional knowledge to female court staff



accounts only 3.3% (see "General assessment on qualifications of female judges participating in the survey" above)

Social and legal development requires judges to update and develop their social and legal

knowledge to guarantee the quality of adjudication and avoid wrongness. The survey results reveal that 41.7% of female judges have never joined training courses on adjudication skills organised by the Judicial Academy (Most of them had been appointed before the training programme on adjudication skills was held for new judges). The number of female judges who have never joined any professional course held by the School for Judicial Officials amounts to 42%.

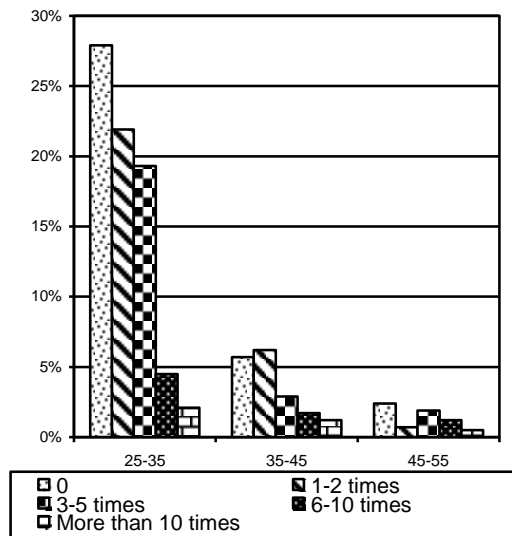
¹⁷⁹ Ordinance on Judges and People's Assessors, Article 5.

¹⁸⁰ Joint Circular No. 01/2003/TTLT-TANDTC-BQP-BNV-UBTWMTTQVN dated 1 April 2003 guiding some articles of Ordinance on Judges and People's Assessors, Article 3.

¹⁸¹ Practice and needs of capacity building of judges of local People's courts, Le Van Minh, Vice- President of the Department of Organisation and Personnel, the Supreme People's Court, a speech in Semi-annual Conference and Legal partners forum "Reforming law and justice: Situations and Orientations", page 27

Up to 13.4% of female judges in the survey has never joined any workshop or seminar on professional knowledge and skills, 24% of them has attended from 1 to 2 times, 30.3% has joined from 3 to 5 times, while 18,7% has participated from 6 to 10 times, and the number of female judges who have taken part in such workshop or seminar in more than 10 times accounts for 13.6% (Figure 48).

Figure 49: Participation into talks or seminars of female judges according to age



Challenges regarding professional knowledge are not remarked at high level by most of female judges. However, referring to the result of response to the question “*during adjudication process, if a newly promulgated legal provision is in contrary to current provisions, what will you do?*”, only 2.7% of female judges states that they would handle cases by themselves while up to 93.3% of them say that they need to ask for opinions of court leaders or senior court, male judges or send an official letter to relevant agencies for guidance, and 4% of female judges find difficulties in answering the

question.

Regarding female court staff, challenges on professional knowledge are considerable with those who are court clerks or inspectors directly related to adjudicating activities.

Through the survey in localities, it is shown that local courts have not had training courses/workshops for court staff who do not directly relate to adjudicating activities such as accountants, administrative staff, organisation (personnel). If yes, such training courses or workshops only focus on skills for court clerks, and most of them relate to laws. Some courses are held for both judges and court staff. Some court clerks reveal that they are not the person who directly decide a case’s result; thus, challenges of professional knowledge is still not high for them, but it is only a condition for them to be appointed to be judges. Interviewed clerks think that professional knowledge is not a considerable challenge to them.

Sub-conclusion:

Challenges regarding professional knowledge are not significant for women in court’s work. Women can perform judges’ work according to similar professional requirements as men. However, female judges and staff need to notice psychological characters and their social and family situations, avoid “absolute satisfaction” after becoming judges so as to try more and more with regard to professional knowledge.

e. Challenges from attitude of male colleagues

Figure 50: Levels of challenges attitude of male judges to female judges

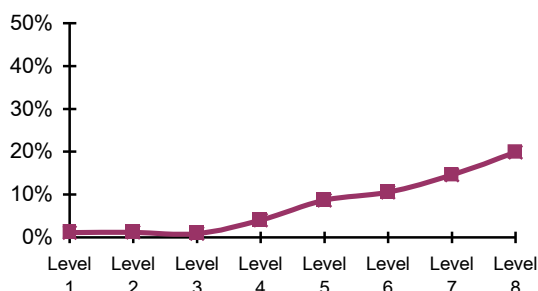
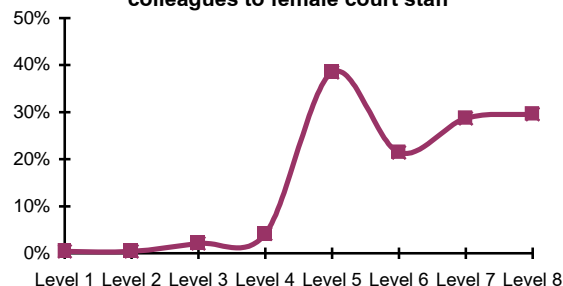


Figure 51: Levels of challenge of male colleagues to female court staff



The attitude of colleagues is an important impact to working environment. If there

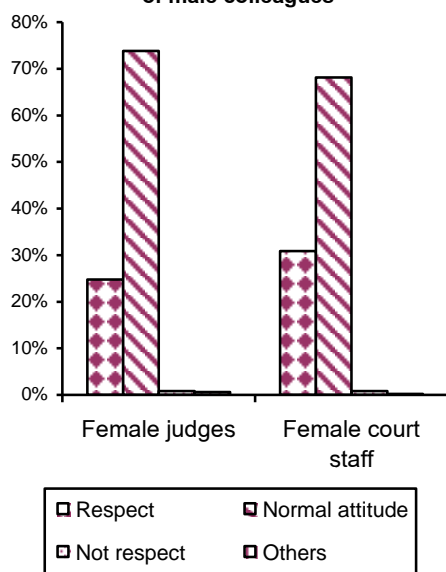
lacks respectation and fairness among colleagues, it will be impossible to create a good working environment. In the relationship between male and female colleagues, women are usually more sensitive than men. Therefore, lack of respectation from male colleagues will form make female's working environment stressful. Such stress will directly affect work quality and the connection between women and their working office.

Through questionnaires and in-depth interviews, most of female judges do not consider attitude of male colleagues as a noticeable challenge. A number of interviewed female colleagues state that male colleagues "respect female colleagues" in work or consider women as "normal" colleagues (Figure 52).

Most male judges and court leaders in interviews admit that "women have certain advantages" in court activities such as endurance in studying documents and case files; being self-control and careful, hard working, good at judicial - administrative activities, suitable for handling cases with requirements for carefulness and cases with female litigants. A male judge even reveals that "a lot of female judges are braver and more independent than male ones in making decision in work".

A few female judges and court staff think that several male colleagues impose their opinions during handling of cases or exchange of professional knowledge. When discussing work issues in meetings, psychology of the major officials are often rather affected by opinions of

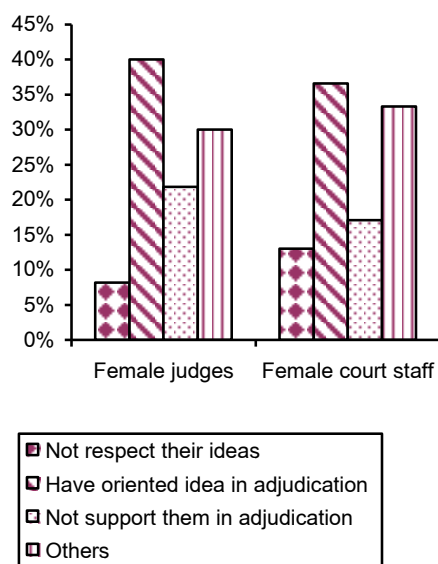
Figure 52: Opinions of female judges and female court staff on the attitude of male colleagues



men than by women. In cases where opinions of female judges dominate in meetings or discussions, not all male judges respect such opinions. Moreover, the lack of respectation between male and female judges is not only found in meetings or case handling, but also in attitudes, behaviours, expressions, or acts without high respectation of male judges towards female colleagues. This issue will cause female judges to feel unconfident in expressing their opinions in future.

A female judge tells that male judges often consider female judges as not having enough health and "experience", consequently, they do not entrust female judges with complex cases. A female judge at a district court has confirmed such opinion by retelling that Chief justice of the court of her service has never assigned female judges within the court with any criminal cases since he thinks they are inappropriate for criminal case

Figure 53: Opinions of female judges and female court staff on the expression of disrespect of male judges



settling. Such opinion is reconfirmed by the representative of the local People's Procuracy at the same level.

Opinions about expressions of "irrespectation" by male judges include "having orientation opinions in adjudicating", which amounts the majority of both female judges and staff, and then, "not supporting in adjudicating" and "not respecting females' opinions". Those having other opinions account for quite a high rate, most of them consider that both men and women have to respect and support each other, not a sole party itself. Some females also think that the "irrespective" attitude includes all the three said forms of expressions.

Most of interviewed female judges and staff state it is impossible to resolve the matter of changing male colleagues' attitude with legal provisions, but it must be done by compulsory training for both genders including male and female about improving awareness on gender equality. Training will bring

about clearer understanding on responsibilities of two genders about gender equality.

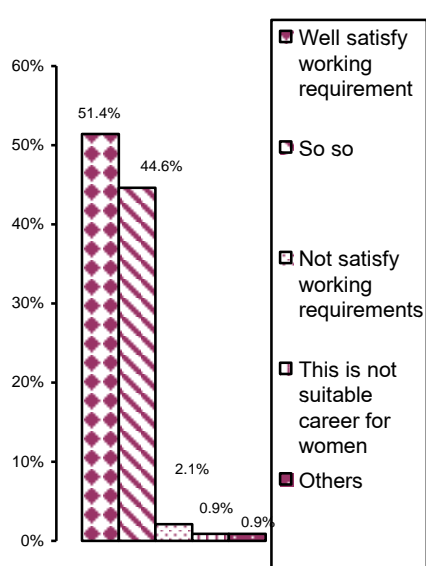
As mentioned in the beginning part on the methodology of the survey, in order to limit impractical answers due to subjective reasons, the Reseach Team realises that upon being

asked about "attitude of male judges" or "evaluation regarding female colleagues", most of the respondents seem to say "goodness". As a matter of fact, the idea on "respecting women" and "gender equality" is not only work issues but also political ones (sensitive), thus, several people do not want to show their real opinions. To reach the results, in interview process, the Reseach Team has to apply the method of raising repeated questions according to different contents. In the question giving the survey result presented in Figure 54, for instance, only 3 female judges choose "not respect" among 355 female judges responding to this question, amounting to 0.8%. However, in the question bringing about the survey result shown in Figure 55, up to 110 female judges answer this question while it has been noted in the questionnaire that only people who answer "not respect" need to answer the question. We think that in case where those questionnaire respondents do not pay attention to such notice, their viewpoint on "respectation" at least shall

not change if in fact it is accurately "respectation". In practical interviews, the Research Team also finds answers to this question mainly "diplomatic".

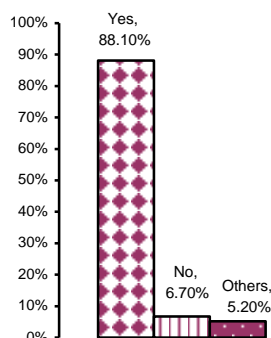
From the interviews, two female judges assume women's nature of being "tolerance", "concessive", "peaceful" or "tender" in solving relations with male colleagues to be a good

Figure 54: Comment of male judges on female judges



element to build union in offices, however, it is also a contributing factor to the “dominant” behaviour by male colleagues to female ones. Thus, they believe that to influence the “respectation” by male colleagues, women themselves have to know “when to step back, when to step forward” and be “persuasiveness” in their arguments.

Figure 55: Opinions of male judges regarding the consideration of female judges' opinions



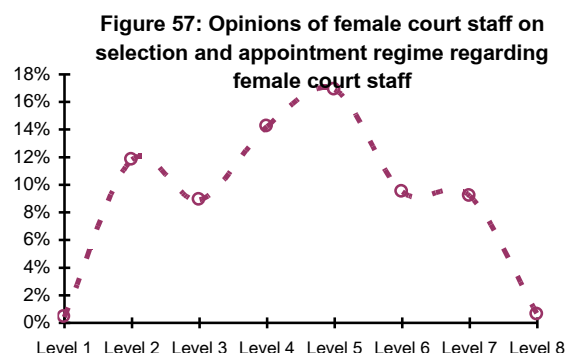
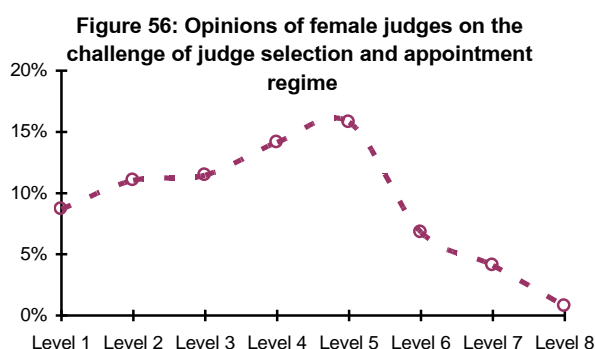
According to all interviewed court leaders, there is no discrimination against gender in professional relations within their court. The assignment of case settlement or discussions about professional topics absolutely depends on individuals' professional knowledge and no gender discrimination is involved. However, those leaders also acknowledge that there is likely discrimination against gender in the sector activities but in other courts, not in theirs.

In addition, the Research Team supposes that women themselves may have complex or unconfident feeling when they answer the questionnaire, which leads to the fact that the answer results are not in line with objective practice. For checking, the Research Team has raised one more question about the most prioritised task of the tribunal sector on gender equality at present. According to final answers 13.5% of female judges and 17% of male ones state that it is “elimination of discrimination within the tribunal sector”. This more strongly supports the conclusion about the existence of gender discrimination in practice in the tribunal sector.

Sub-conclusion:

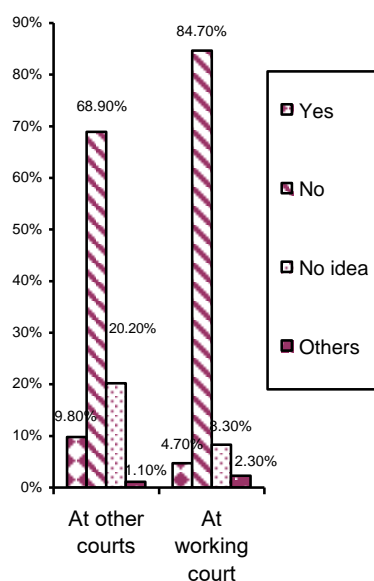
Attitudes of male judges are a challenge of female ones, in other words, attitudes of male colleagues to female ones occur not only in Vietnam, or in the tribunal sector, but also in other countries and other sectors. It significantly affects career development of female judges and court staff in particular, and of female employees in general¹⁸².

g. Challenges regarding selection and appointment of judges



¹⁸² *Women in the World's Legal Profession*, Ulrike Schultz and Gisela Shaw (ed.), HART Publishing, 2003, page XLIV; *Improving the leading capacity of female staff in the political system*, Nguyen Duc Hat (Chief Author), National Political Publishing House, 2007, page 190.

Figure 59: Comments of male judges on gender bias in court staff selection process



skills, political and moral quality, and lifestyle”¹⁸³. Several judges believe that judges are pressed by such “written comment”¹⁸⁴.

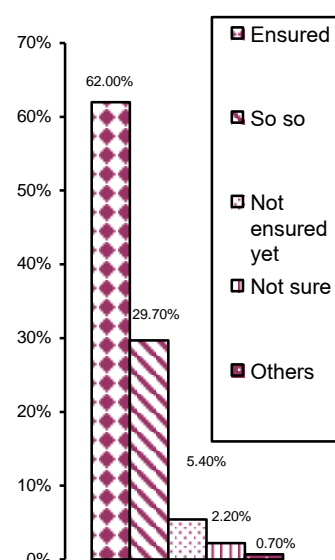
Through in-depth interviews, most women tell that they do not feel pressure on “gender issues” when having to asking “written comment of the court leader”. The majority of male and female judges participating the survey thinks that the procedure and evaluation for appointment of judges satisfies gender equality and there is no discrimination. Those saying that this criterium has not been ensured only accounts for a small proportion (8.1%). Also through in-depth interviews, two female judges state that in general, judge appointment produre is equal for both genders. However, it is impossible to guarantee that some individuals who participate in appointment process do not have gender bias. As for them, because appointment procedure still contains several unclear provisions and some steps are still dependent on subjective opinions of some people; it is easy that gender bias would affect the fairness in appointment. This is the matter of not only Vietnam, but also many other countries all over the world.¹⁸⁵

Two opinions show that the present appointment procedures are prolonged due to wordiness (there is a female judge who had to wait for 2 years to complete all procedures for her

Selection and appointment of judges in Vietnam are governed by clear legal provisions. A law student can pursuit judgeship by spending time after graduation working in the tribunal sector as a court clerk for a long time (5 years minimum) with low income, which request him/her to be patient and persistent to the selected occupation. According to some court leaders and judges, presently, judgeship is suitable for women.

Pursuant to Inter-Circular No. 01/2003/TTLT-TANDTC-BQP-BNV-UBTWMTTQVN of the Supreme People’s Court, the Ministry of National Defence, the Ministry of Home Affairs, the Central Committee of Vietnam Fatherlands Front, candidates for judgeship appointed for the first time or re-appointed need to have the “written comment paper by the leader of the agency” on “working process, professional competence and

Figure 57: Comments of male staff on GE ensurance in judge appointment process



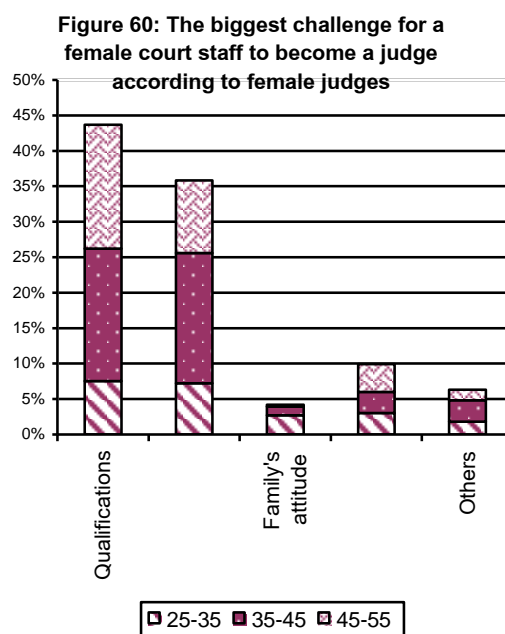
¹⁸³ Joint Circular No. 01/2003/TTLT-TANDTC-BQP-BNV-UBTWMTTQVN of the Supreme People’s Court, the Ministry of National Defence, the Ministry of Home Affairs, the Central Committee of Vietnam Fatherland Front, Section III, Point 5, item e and Point 6, item e.

¹⁸⁴ The said opinions are collected by the Research Team from 2 surveys at the tribunal sector: (1) Survey on needs of district court nationwide, UNDP, 2006 and this survey.

¹⁸⁵ Women in the World’s Legal Profession, Ulrike Schultz and Gisela Shaw (ed.), HART Publishing, 2003, page xlviii

appointment), which causes nervousness to candidates (including both new appointed and re-appointed persons). In the court of these two respondents, complaint letters and process of handling complaint letters in the time of consideration for appointment has created nervousity to the persons to be appointed. Up to 3 judges of this court have had to change their occupation due to pressure of re-appointment.

On the other hand, 15/15 female judges interviewed affirm that discrimination on retirement age in public sector (55 years old for women and 60 years old for men) is also an obstacle for judge appointment and promotion to a management position. Due to this reason, women often miss chances of promotion or professional improvement at an earlier age than men, and this interval is often 5 years. Meanwhile, women and men have the same time of study and graduation from a law university for later work in the tribunal sector. However, women are often appointed slower than men, since after graduation they usually have to get marriage, give birth and then start working (as analysed above). After a certain time of work, both of them study to become judges. However, in case of subsequent appointment to leading positions, female judges will not be appointed if they are from 50 years old, since then they will have only one term left, meanwhile, male judges have 2 terms remained.



All interviewed female judges and staff reckon that the age range from 45 to 60 years old (including 5 years after women are subject to retire at 55 years old) is the healthiest age group where they are most capable of concentrating on work. At this age, women are no longer busy with housework and birth giving. They also quote a study which indicated that the life span of women is higher than men's, and raise the question "why women are required to retire ealier?" (At age of 55 compared to 60 years old for men).

Court leaders agree that "women have certain advantages and women are suitable for judgeship due to such personalities as being hard working, careful, diligent in court activities, good at judicial - administrative activities, and suitable for handling cases with requirements for carefulness or with participation of female litigants". As mentioned above, some male judges even state that "a lot of female judges are braver and more independent than males in deciding judgments".

Two local court leaders share that female candidates for judgeship are more easily approved by the Council of judge selection of their province. The reason is that some members of the Council believe that female staff has less "complex social relations", "less capable of temptation ỏ corruption". Opinions on female judges are "purer", "less corruptive" are agreed by 9 per 12 lawyers.

However, court leaders show that a number of members of Council of Judge selection, who are not officials of the Tribunal sector still have ideology of "male chauvinism" (*Trọng nam*

khinh nữ), or suspect women’s ability (“Whether she could work as a judge or not?”). Several members of the Council of Judge selection in some localities think that women have such personalities such as “lack of activeness and confidence”, determination, and vision, consequently, they can not be appointed as judges.

In a province, the Party Committee of the provincial court even has to agree with the provincial Party Committee on structure of female judges in the tribunal sector in order to guarantee female staff’s opportunities for appointment to become judges.

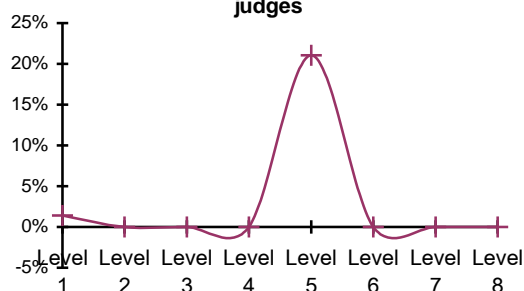
There is still another trouble for court staff at provincial courts or the Supreme Court if they want to be appointed as judges that most of them have to be judges of a district court firstly. A lot of women have met several difficulties in family life when they are appointed as judges but have to work in a district far from home. This is really an obstacle while they cannot move their whole family to the new workplace, and also an obstacle that women have to overcome if they want to be appointed as judges.

Sub-conclusion:

The procedures of appointment still remain unclear provisions, of which several steps still depend on subjective opinions of some individuals, therefore, appointment results can be prejudiced by cultural factor of “Male chauvinism” (*Trọng nam khinh nữ*) or “women are inferior” (*Nữ nhi thường tình*). Consequently, it is not fair for women in judge appointment. To improve this practice, the process of judge appointment should take into notice the elimination of steps or procedures currently affected by subjective decisions.

The appointment of female judges should also consider their family situation when assigning the area for their task performance.

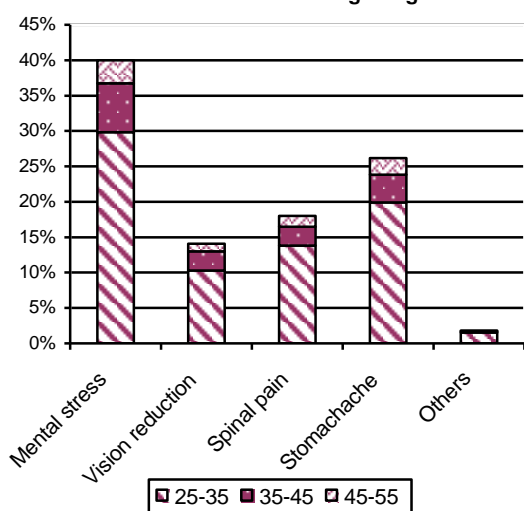
Figure 61: Levels of other challenges to female judges



e. Other challenges

Most of the other challenges to interviewed female judges and court staff in both pilot and official interviews and in questionnaires are similar to the above mentioned ones and the following challenge on occupational diseases and health of women in this sector.

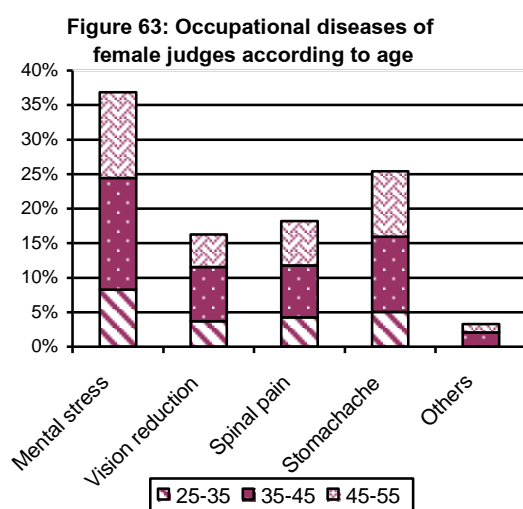
Figure 62: Occupational diseases of female court staff according to age



e.1. Occupational diseases:

So far, the Tribunal sector has not conducted any survey on occupational diseases of staff of the sector in general and of each gender in particular. During building the study outline, the Research Team temporarily considers the general occupational diseases of judges including “stress”, “spinal diseases”, and “gastralgia”.

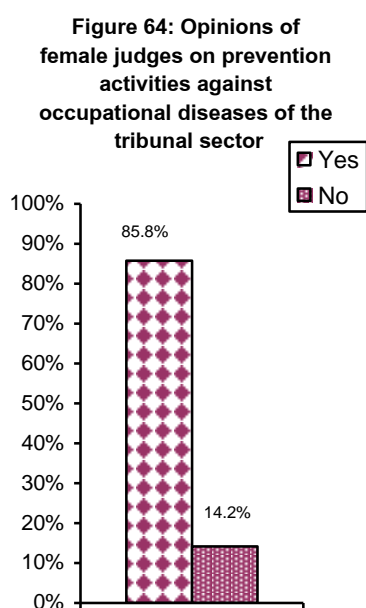
Through questionnaire survey, up to 339 (91.9%) female judges show that they often have stress; and following are those having such diseases as reduction of vision (63.7%), pain in their spine (45.8%), gastralgia (41.7%) and other diseases (8.1%). The proportions of the said diseases in female court staff are similar to female judges' (see Figure 63).



Other diseases named as occupational diseases by female judges and staff include sore throat, cardiovascular disease, blood pressure, haemorrhoids, eye-diseases, joints-diseases. Some women say that women working for the tribunal sector sometimes have more diseases like frigidity or depression.

100% of in-depth interviewed women and 86% of questionnaires interviewed women reveal that their courts have not had any budget or have not organised any examination on occupational diseases for all judges and court staff, including men and women. If judges and court staff want to have their health examined, they usually go to hospital according to social insurance regime like other common people.

Some female judges confirm that other courts have organised health examinations for judges and court staff, but their courts do not. Several court leaders have the regime of occupational disease examination due to the assistance of the local labour agencies or provincial administrative agencies. 100% of the women participating in in-depth interviews desire their courts or directly superior courts to organise examination of occupational diseases and female diseases for them.



Sport and gymnastics movements of surveyed courts are not ebullient, especially with women. None of surveyed courts have gyms for judges and staff. In few courts that have sport movements and outdoor exercise places, the sports have sense of competition such as badminton or tennis, etc. Somel female judges and staff think that such types of sport are not suitable for women and their working time. Because, to practise the sport, players have to spend the time after work hour. However, this is the time where women have to come back home to pick up their children from schools and do housework. Some women wish their courts to have separate exercising places for judges and court staff.

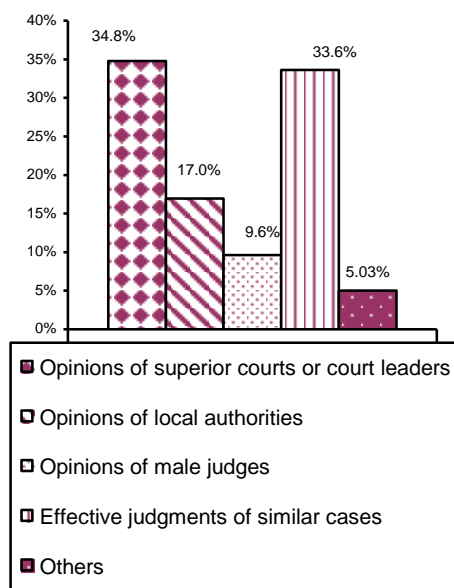
Some judges and court staff, including both men and women, propose that provincial courts or district courts should cooperate to organise programs of health training for judges and court staff. The interviewed people believe that court staff (intellectual workers) should exercise antagonistic sports like badminton, tennis, ping-pong, football...to ensure health as well as reduce work stress.

Sub-conclusion:

The tribunal sector has not had any comprehensive programme on taking care of health of officials in general and of female officials in particular, while health is an essential factor of work in any sector. Whereas, several sectors in the society have had the Institution for research, care and treatment of occupational diseases and labour health, but the Tribunal sector has not. This practice requires the Supreme People's Court to propose a comprehensive programme on caring about the health of officials within this sector to reach better adjudication. Such programme needs to take notice of the task for caring about women's health and reproductive health.

III. GENDER EQUALITY AND WOMEN'S PROGRESS WITH THE INDEPENDENCE AND DEVELOPMENT OF COURTS

Figure 65: Opinions of female judges on factors considered in case handling



The judges' independence has been a Constitutional principle¹⁸⁶. Improving the independence of courts and judges is one among the tasks of the Strategy on Judicial reform to 2020 proposed by the Politbureau¹⁸⁷.

Human rights should be not only protected by the laws of legislative bodies or the policies and actions of executive bodies but also carried out strictly and comprehensively in judicial bodies. "Only an independent and objective court system, acting as a necessary instrument restraining potential misuse of power from the legislative and executive branch, could ensure the effective protection of human rights"¹⁸⁸. We can not deny that the independence of course from the other state power branches including legislative and executive branches is very important in protecting human right. Such two power branches are those with extensive governance scope over all social life. While legal provisions by the legislative

body or policies of the executive body all oblige people to obey, the court's independence shall ensure objective and fair application of such policies or provisions in protecting human rights¹⁸⁹.

"All human beings have the right to be adjudicated fairly and publicly by an independent and objective court with full jurisdiction to decide their rights and obligations or any criminal indictments against them"¹⁹⁰.

¹⁸⁶ Article 130, Constitution 1992 .

¹⁸⁷ Resolution No. 49-NQ-TW dated 02/06/2005 of the Polibureau on "The Strategy on Judicial reform to 2010", II.2.1 and III

¹⁸⁸ Protection of Human Rights by the Judiciary in Romania, Monica Macovei, *Judicial Protection of Human Rights: Myth or Reality?*, Mark Gibney and Stanislaw Frankowski (ed.), 1999, page 6;

¹⁸⁹ Protection of Human Rights by the Judiciary in Romania, Monica Macovei, *Judicial Protection of Human Rights: Myth or Reality?*, Mark Gibney and Stanislaw Frankowski (ed.), 1999, page 6;

¹⁹⁰ Article 10, Global Declaration on Human Rights promulgated by the United Nations General Assembly on 10/12/1948 .

“In order to decide on any criminal accusation against a human being, or on his rights and obligations, all humans have the right to be judged publicly and fairly by an independent and objective court with true jurisdiction which is established by law”¹⁹¹. Several other international treaties have also mentioned the role of courts in protection of human rights in general and women’s rights in particular.

Judges’ independence has long been a constitutional principle and is recognised in every constitutions of Vietnam since its independence¹⁹². The court’s independence shall be threatened by the dependence of an individual judge and vice versa. Therefore, the practice requires that the judges’ independence must be guaranteed. In order to do this, it is necessary to guarantee judges’ career, i.e. their life should be thoroughly ensured, the judge recruitment and promotion should be controlled by the tribunal sector; the disciplinary treatment and supervision over judges, case allocation and transfer of mission should be really objective¹⁹³.

1. Independence of female judges

a. Independence from the superior

4 per 6 court leaders and 10 per 21 judges interviewed say that the situation of “requesting instructions” or “asking for adjudicating direction” from superior courts does not exist in their own courts, but may occur in other courts. They think that if professional qualifications of judges are improved, the situation will no longer exist. 3 out of 27 judges believe that in order to be more independent, the relationship between them and the court leaders should be specified more clearly, without confusion or overlapping administrative relation and professional relation¹⁹⁴. Such judges also say that because judges fear that their judgments may be “corrected” or “cancelled” which will impact their re-appointment, then they often seek for “compliance” in terms of “ways of adjudication” with leader: regarding “adjudicating direction” from court leaders.

There are 2 court leaders commenting that “the reference of opinions from court leaders or superior courts” of female judges is made due to the reason that such judges lack of adjudicating experience, and they are afraid that their judgment may be “cancelled” or “corrected”, consequently, they have to consult opinions. Such court leaders think that their opinions are for reference only. They also recommend the SPC to re-consider the proportion of “cancelled and corrected judgments” currently used as a condition for re-appointment to be conformed to the practice. In courts with a large number of cases handled, if a judge has one or two judgments cancelled (at the rate of 1%), he/she still has chance to advance. Meanwhile, in other courts, a judge may have only one cancelled judgment, but the cancel ratio may be up to 5%, then his/her appointment may be affected.

From the survey result, the proportion of female judges considering the opinions of superior courts or opinions of court leaders besides circumstances of a case and relevant provisions

¹⁹¹ Article 14, *International Convention on political and civil rights*.

¹⁹² Article 69, *Constitution 1946*; Article 100, *Constitution 1959*; Article 131, *Constitution 1980*; Article 130, *Constitution 1992*.

¹⁹³ *Judge institution, some theoretical and practical matters [Chế định thẩm phán, một số vấn đề lý luận và thực tiễn]*, Pham Van Loi (Chief Author), Institute of Legal Science, Judicial Publishing House, 2004, page 22-23; “The independence of courts”, To Van Hoa, Labour Publishing House, 2007, page 82 and 127-129.

¹⁹⁴ There are 3 judges having such viewpoint, including 2 female and one male

of laws when handling cases accounts for the highest percentage (34,8%), meanwhile those who refer precedent cases only ranks the second (33,6%). The reference of opinions from superior courts or court leaders in process of case settling by female judges mainly occurs at district courts where most of cases are received and handled at first instance procedures, accounting for 34,6% of total female judges at district courts taking part in the survey and 27,6% of total female judges joining the survey (see Figure 66).

When the new legislation is inconsistent with the applicable ones, as much as 49,5% of female judges of district courts and 46,5% of female judges of provincial courts must consult opinions of the court leaders or of superior courts.

b. Independence from other bodies

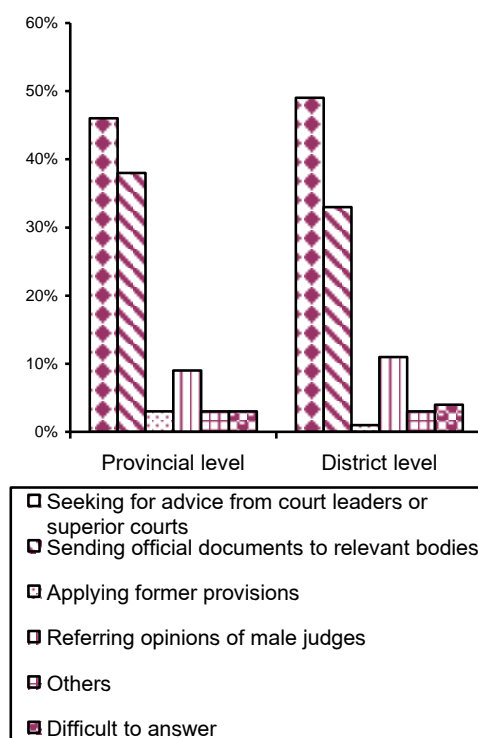
Result of the survey on the needs of district courts conducted by UNDP in 2006 showed that judges considered opinions of local authorities in addition to the consideration of circumstances of the cases and relevant legal norms, taking up to 25.56% of the judges participating in the survey, of which female accounting for 6,74% and male holding 17,79%¹⁹⁵.

In this survey, 32% of female judges says that they have consulted opinions of local authorities in the process of handling cases. Via personal interview and questionnaire, 7 per 31 judges (27 judges in personal interviews and 4 judges filling in questionnaires) identify that the seek for opinions of local authorities mainly occurs in administrative cases or criminal cases where the content of the case has remarkable influence on the security public order within the locality. Regarding administrative cases, the exchange of opinions only occurs when the judges detect that the administrative decisions of the competent persons may be wrong and they persuade such persons to correct their decisions. With respect to criminal cases, the exchange mainly aims at identifying the seriousness and the adjudication needs of the local authorities regarding mobile adjudication. Adjudication needs include the degree of judgment (possible) or the method for holding a mobile trial.

The abovesaid female judges admit that the independence from local authorities has been currently a great effort of the tribunal sector but this is a very difficult task. Since, living in a locality, judges also need to have communications with local authorities. Moreover, several courts at district and provincial level receive the financial support from local authorities for their operation.

Another objective factor which obstructs the entire independence of judges in Vietnam from other bodies is the quality of legal documents. Vietnam is a country following civil law

Figure 68: Opinions of female judges of provincial and district courts when they encounter the inconsistency of legal provisions



¹⁹⁵ Report on the survey of needs of district courts nationwide, UNDP, Judicial Publishing House, 2007.

system, consequently, legal documents play a very important role in adjudication process. However, legal documents in Vietnam are often overlapping, insufficient and unclear, which leads to much difficulty in application of law. The judges (both male and female) participating in the interviews all say that when they encounter inconsistency in legal provisions, they often have to consult the advice of court leaders or the opinions of the body who made such documents regarding its application. The proportion of female judges consulting opinions of relevant bodies in this case ranks the second after the choice of seeking for advice from court leaders. At provincial level, such proportion accounts for 38% and 33% are that of district level.

c. Independence from male judges

As aforementioned in the part on Challenge regarding attitude of male colleagues, female judges face challenge when they wish to be independent from male judges. Few female judges in all courts surveyed think that opinions of male judges usually prevail in professional meetings. The remaining, taking the majority, say that they face no obstacles in delivering their viewpoints to male colleagues.

Some judges (both male and female) also put forward a reality that in professional meetings, some male judges still try to keep their own point of view against the exchange of female colleagues. Meanwhile they are easy to accept opinions from other males. This reality is also recognised by the Research Team during observation of the judges answering questions in group interview.

The Research Team also realises that the feature of female's voice is also an obstacle for them in the debate with male. In discussion, men with the advantage of a strong and resounding voice will be predominant; as a result, the viewpoint of female often does not much impress the listeners.

All of the interviewed male judges say that they always respect the opinions of female judges and female court staff in professional meetings. The attitude of disrespectation to female judges only occurs in other male judges other than themselves.

As mentioned in the part "Challenge regarding attitude of male colleagues", the majority of male judges and court leaders in the interview admit that "women have a certain advantages" in activities of the courts such as the endurance in study documents and case file, ability to keep calm, prudence, industriousness, meticulousity, ability to take over judicial administrative tasks, suitability for handling cases which require diligence and cases with female litigants". Some male judges even think that "many female judges are braver and more independent in decision-making".

Few female judges and female court staff find that some male colleagues show the imposition of their opinions in case settlement or in professional exchange. As the psychological characteristics of the majority, ideas of male colleagues usually predominate in meetings on work exchange. If the ideas of female judges rule in the meetings or debates, they are not always respected by all male judges. In addition, the disrespectation among men and women is revealed not only in discussions or case settlement but also via disrespectful attitude, speeches, behaviours from male judges toward female ones. Such acts have made female feel unconfident to express their ideas in future.

However, the Research Team also realises that among the above opinions, some are objective answers and some are due to women's afraidness when talking about inequality in their relations at the office. Through observing the attitude, voice and ways of expressions of the interviewed, the Research Team finds that "gender bias" still exists in the thinking of both male and female in some courts. We believe it is the "gender bias" itself has impacted the independence of female judges.

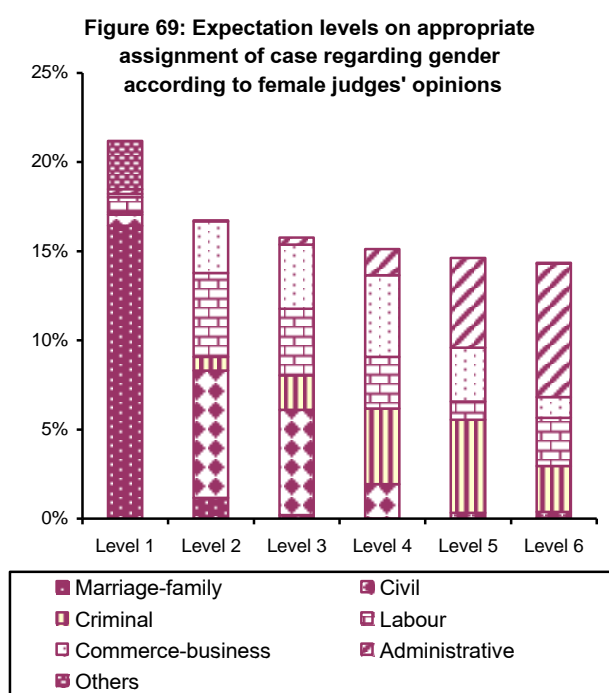
From the interview, 2 judges admit that at their courts, judges often discuss in group about the direction to solve the case. Such discussion is for the purpose of improving the adjudicating quality, avoiding the possibility of "being cancelled" or "being corrected". The application of discussed ideas into the result of case handling will depend on the spirit and experience of the judge. In case where judges lack experiences, they will apply the whole ideas discussed without any change.

Subconclusion:

The independence of judges is a constitutional principle. In order to ensure this "*independence*", legislation and organisation mechanisms of the court system must be built correspondently. The relationship between judges and court leaders, local authorities and among judges also needs to be specifically legalised to exclude all acts of infringing judges' independence.

The independence of judges or courts will bring about an adjudication institution which is "*gender neutral*" and promotes gender understanding and sensitivity of judge staff. Then, the "*equality*" in adjudication will be enhanced and GE in the society will be strengthened.

2. Work assignment with gender quality element



Through in-depth interviews, the Research Team receives a lot of opinions from court leaders reckoning that work assignment assuring gender equality is an objective that they expect to achieve. All the court leaders interviewed say that they always try to arrange female judges or married judges to settle marriage and family cases so that involved parties may obtain the thorough understanding and sympathy from judges.

Male and female judges have different opinions from those of court leaders. Several judges reckon that in order to ensure equality between male and female, case assignment should be done following procedures rather than according to gender (see Figure 67). They think that case assignment according to

procedures shall ensure equality and encourage judges to develop. Several judges think that

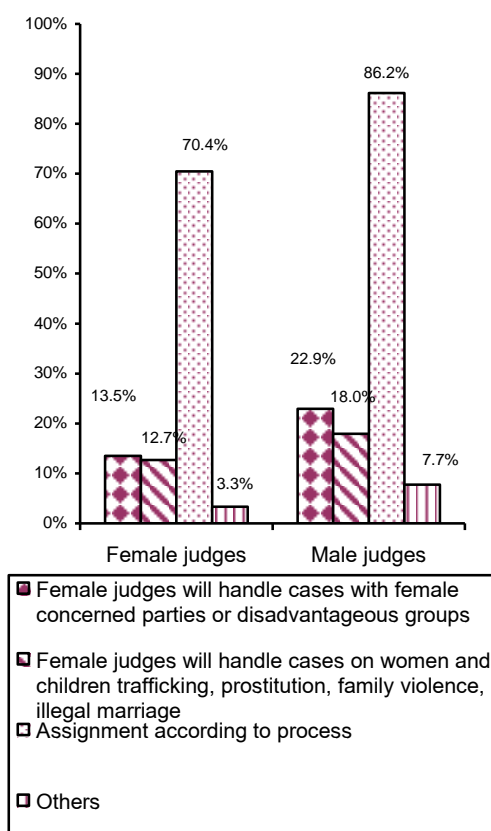
assignment according to gender could not entirely ensure gender equality since case settlement sometimes depends on judges' capacity. But it is to admit that in fact, it is easier for women to understand the connotation of legislation applied to women and they could apply or interpret these stipulations better than men do¹⁹⁶.

The national independent subject (2004/24) of the Central Party Organisation Committee regarding *"Improving leadership capacity of female staff in the political system"* indicated that *"generally, female staff is superior to male staff because of their patience, persuasiveness, carefulness, thrift and high responsibility, making less mistakes"*. *"Women are a very good factor for mediation of political and social conflicts"*¹⁹⁷.

According to opinions of female judges on case assignment, 69.9% of them reckons that case assignment is not necessarily carried out according to gender but should automatically follow the set procedures or according to professional knowledge. 70.2% of male judges shares the same opinion. The viewpoint regarding case assignment following the direction that female judges will settle matters/cases with female litigants or disadvantaged groups is raised by 13.3% of female judges and 19.5% of male judges; proportion of those proposing that female judges will settle cases on women and children trafficking, prostitution, family violence and illegal marriage accounts for 12.5% of female judges and 15.2% of male judges.

The majority of female judges consider that they are appropriate in terms of gender in settling marriage and family cases (accounting for 77.8%) and this proportion is similar to that of male judges's opinions (taking up 80.1%). However, the number of female judges who think that they are appropriate to hear all types of cases (because female and male are the same) holds the second position (12.6%). It is surprising that the number of male judges sharing this opinion also takes the second rank (15.4%). Only 4% of female judges considers that they are appropriate for criminal cases and only 0.2% of male judges agrees with this opinion. There are 3.1% of female judges believing they are appropriate to deal with civil cases and 2% of male judges agrees on the opinion. There is only one female judge (taking 0.3%) assuming that she is appropriate for commerce-business cases and only one male judge (0.2%) has the same opinion. 3 female judges (holding 0.9%) and a similar number of male judges (taking 0.7%) consider themselves conformable to labour cases. Finally, 4 female judges (accounting for 1.2%) affirm that they are suitable for administrative cases, meanwhile only one male judges (holding 0.2%) has the same opinion.

Figure 70: Opinions of judges on case assignment



¹⁹⁶ *Male Strategies in the Face of the Feminisation of a Profession: the Case of the French Judiciary: Anne Boigeol*, in book namely *Women in the World's Legal Profession*, Ulrike Schultz and Gisela Shaw (ed.), HART Publishing, 2003, page 406.

¹⁹⁷ *Improving the leading capacity of female staff in the political system*, Nguyen Duc Hat (Chief Author), National Political Publishing House, 2007, page 159-160.

Through in-depth interviews, female judges think in fact they can hear all types of cases. However, in order to define whether a case is appropriate for male or female, it is suggested to identify whether that case is suitable to personal capacity of judges or not. It has been indicated in a survey according to groups of judges (including both male and female) on the appropriation of gender in settling different types of cases, both male and female judges reckon that they feel “worried” and “anxious” when they have to hear criminal cases with death penalty even though they are fully aware that such criminal deserves to be punished.

Two leaders at two provincial courts share that they avoid assigning criminal cases with death penalty to female judges even though case assignment at their own court is defined to be according to set procedures.

All court leaders admit that “selecting suitable judges to settle corresponding cases is a difficult and complicated task”. If the assignment is absolutely made according to process, it will be difficult to promote professional capacity of each judge as well as “gender” factors. However, if cases are assigned according to subjective will, it requires absolute transparency and scientificness to promote strong points of each person for ensuring adjudicating quality.

President Ho has said that “*we employ remarkable talented person to do great work, little talented person shall be assigned to do minor work; what one is able to do, we will let him do such. Knowing such way of employment talent, we will not have to worry about the shortage of cadres*”¹⁹⁸.

Sub-conclusion:

The assignment of cases to judges being transparent and scientific in terms of gender will improve the quality of case settlement. Opinions saying that women are not appropriate for some types of cases are not proved to have sufficient scientific basis.

3. Professional fostering and skill improvement for female judges and court staff

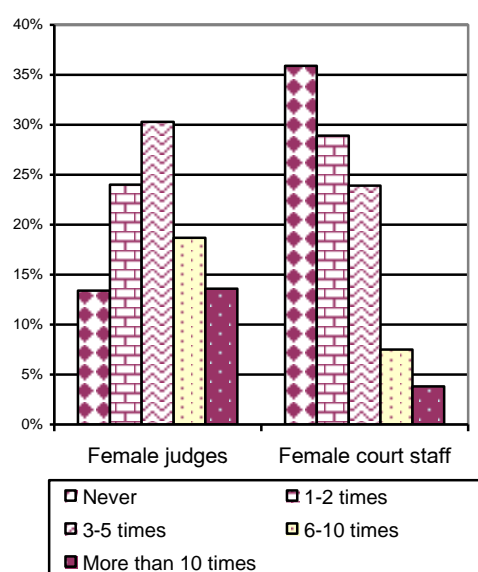
a. Professional knowledge

a.1 Female judges

Although female judges and female court staff do not consider professional challenge as a challenge at high level, in fact, their needs for professional fostering and skill improvement are very high.

As illustrated in Figure 69, the proportion of female judges who have not participated into any professional and skill fostering program occupies 12.43%, the lowest proportion. Meanwhile the number of female court staff who have not taken part in any professional and skill seminars or talks

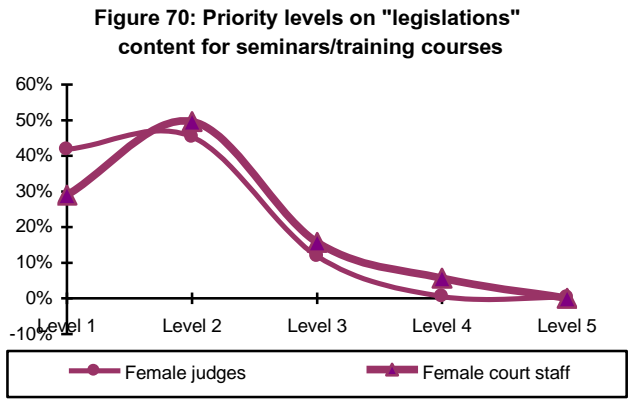
Figure 69: Participation into seminars and talks on legislations and professional skills



¹⁹⁸ Ho Chi Minh: Complete works, Volumn 4, National Political Publishing House, 2002, page 39.

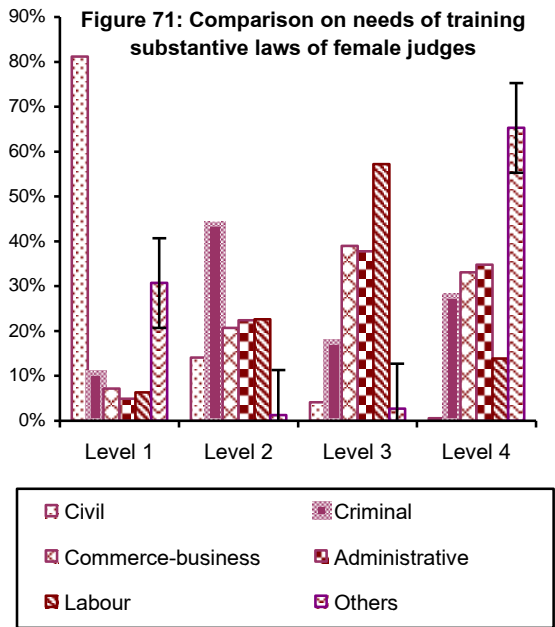
is up to 35.9%, the highest percentage. The ratio of female judges joining in professional fostering activities more than ten times is rather modest, about 13.6%; and that of female court staff is even poorer, only 3.8%.

The percentage of female judges taking part in seminars or talks is not entirely conformed with their age. There is still up to 4% of female judges at the age of 45-55 having not participated into any seminar or talk and about 17.8% among them having joined such activities once or twice. This figure shows us the unequal allotment for participation into professional training or talks among female judges. It also indicates that some courts have



not paid much attention to the organisation of talks or seminars on legislations and skills for their judges. Especially, female judges at district courts have received less attention to their participation into talks or seminars on legislations than those at provincial level. Only 3.7% of female judges at provincial level has not taken part in any talk/seminar while such proportion of those at district courts is as much as 16.3%. On the contrary, 14.8% of female judges at

provincial level attend more than ten times of talks/seminars while those at district courts holds only 13.5%. Participating proportions of female judges at provincial level are always higher than those of female judges at district level.



The percentage of female judges involved in the survey at different courts wishing to be fostered in terms of substantive laws is very high. 41.8% of female judges considers this the first priority (the highest priority), 45% ranks it the second, only 3 persons reckon such content as a minor importance, at Level 3 and 4, occupying 0.9% and 0.8% of the correspondents selecting this content as the third and forth priority respectively.

Female judges in southern provinces wish to receive the guidance from experienced judges of the People's Court of Ho Chi Minh City or the SPC in seminars and training courses on legal knowledge. Meanwhile, those in northern provinces wish the instructors to be judges of the SPC

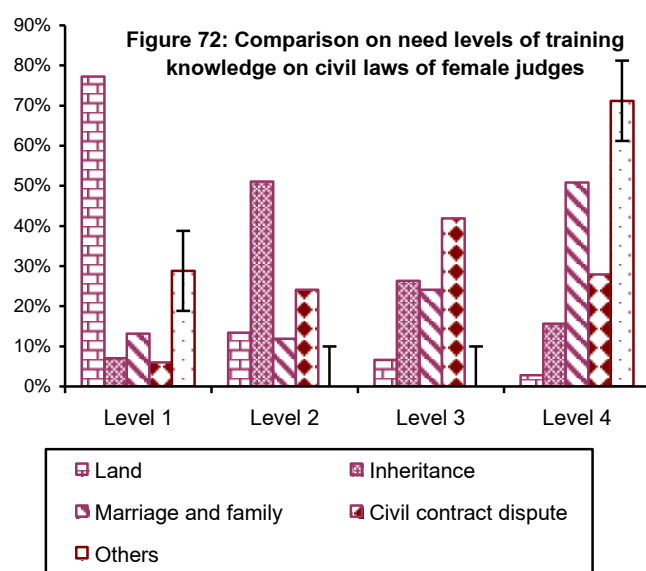
or senior experts who participate in process of drafting legal provisions of ministries.

Regarding priority on specific contents of "legislation knowledge", through questionnaire survey (Figure 71), the majority of female judges shows the expectation to be trained in terms of knowledge on civil laws at the most priority level (Level 1). Other contents hold the second priority (Level 2) because judges propose to be fostered about all contents (civil-criminal-labour-commerce&business) (accounting for 86% among 'other opinions'). The

remaining suggests to be trained when there is any new legislation promulgated and trained about legal knowledge relating to “foreign element”.

Knowledge on criminal laws ranks the third of Level 1 and the first at Level 2. Together with knowledge on “civil” laws, the two contents, namely “civil” and “criminal” laws are still the most expected training content of judges. Knowledge on “labour” and “administration” laws takes the modest positions at Level 1 and Level 2.

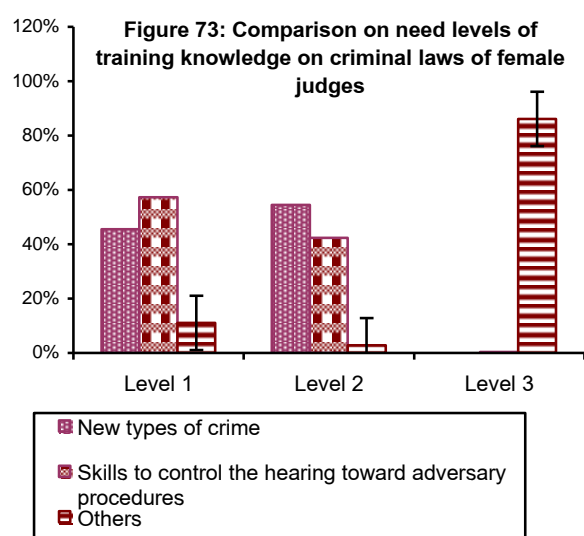
The needs for civil laws training



Through questionnaire survey (see Figure 72), among various contents of civil laws, the need of female judges on training about land laws is biggest, at the level of highest priority (Level 1). The number of female judges having other opinions holds the second in Level 1. Similarly to the part of “other opinions” in the above question, when choosing “other opinions”, female judges all (100%) suggest training all contents at the highest priority level (i.e. land-marriage&family-inheritance-civil contract dispute).

The needs for criminal laws training

Suggestions rendered by the Research Team about contents that female judges have needs for training in criminal laws including “adjudication skills for new types of crime” and



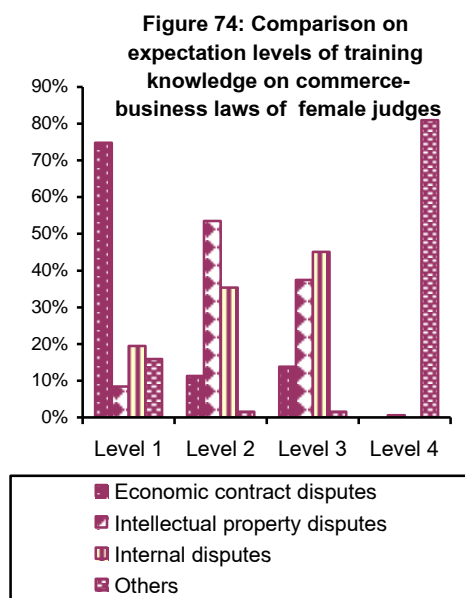
“skills to control the hearing toward adversary procedures” are based on the two pilot interviews of the questionnaire. However, the questionnaire is also open by putting “other opinions” option for judges to write down their opinions, 100% of “other opinions” proposes to be trained about all of the above contents and also the new provisions of criminal laws.

However, via in-depth interview, 67% of judges (both male and female) say that they are in need for studying or being trained on “skill to control the hearing toward adversary procedures”. Explaining this “need”, the interviewees share the common

view that through television, radio, press or information propaganda meetings they learn that “judicial reform” requires trials to ensure “adversary procedures”. But to what degree are adversary procedures allowed by judges has not been thoroughly popularised to them. This suits with the result of the questionnaire survey (see Figure 73).

The needs for commerce-business laws training

Provisions on substantive laws in relation to settlement of “economic contract dispute” is the content of the highest expectation for training by judges (Figure 74) and they also think that such training should be equally divided among geographical criteria (mountainous, rural and urban area) and adjudication jurisdiction criteria (at district, province and supreme levels).



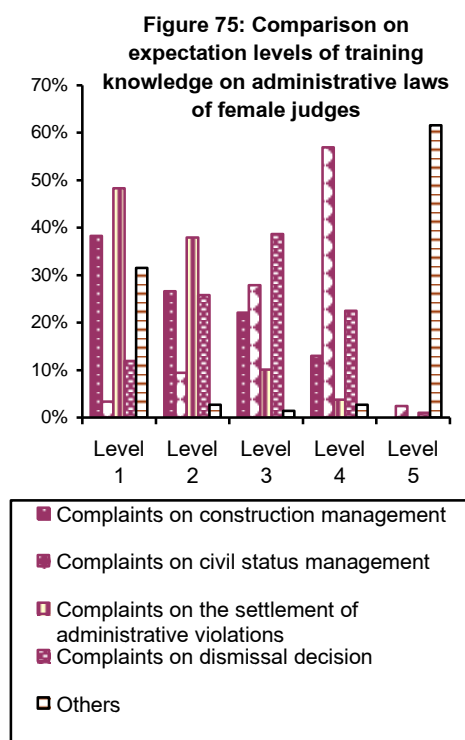
Contents with respect to “settlement of intellectual property disputes” holds the forth position of Level 1, but ranks the first at Level 2 and the second at Level 3. The need for training of such content focuses in urban area (holding 71,2% at Level 2 and 12,4% at Level 3). Female judges having similar needs in rural and mountainous areas account for a small proportion.

Legislations in relation to “internal disputes within an enterprise” is also the content expected to be trained of many female judges, ranking the second at Level 1 and Level 2, and the first at Level 3. Similar to the legislations relating to “intellectual property disputes”, proportion of female judges in urban areas also occupies the majority at Level 1 and 2.

As noted in “Other opinions” option of female judges which holds the majority at Level 4, they expect training courses/talks for all of the above contents (accounting for 95% of such opinions). Only nearly 5% of the opinions adds the training of bankruptcy laws and one opinion (making up 0,3%) even suggests the training of procedures for arresting sea vessels.

The needs for training on administrative and labour laws

One of the contents of administrative legislation evaluated by female judges to be trained/fostered is those in relation to “complaints on construction management”. To



produce the common question in setting up the questionnaire, the Research Team conducted pilot interview with some female judges in Hanoi and Ba Ria-Vung Tau, and those who have ever heard administrative cases in these two localities say that such field is often assigned to male judges since they are experienced in construction. However, female judges believe that their difficulties in solving such cases will be lessened if they are trained relevantly.

Legislations on the issuance of an administrative decision are the option most chosen by judges at Level 1 and Level 2. The Research Team also requests the judges to specify contents of an administrative decision in the field that female judges wish to be trained for clarity. As a result, up

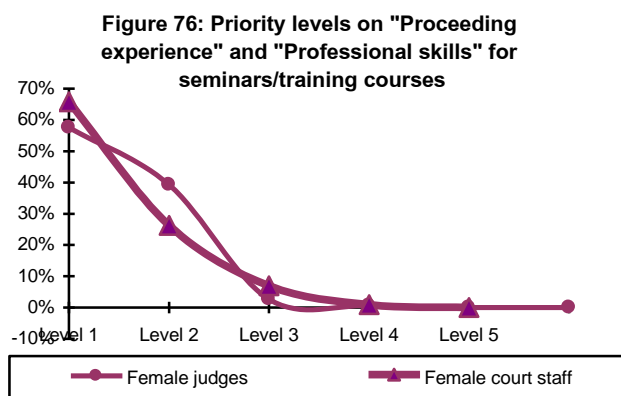
to 37% of female judges expect training on administrative decisions in relation to land.

Finally, like other contents, 22% of female judges suggests holding training courses, talks, and seminars on all contents of administrative laws at all priority levels, among which, such opinion stands the third at Level 1 and the first at Level 5.

a.2 Female court staff

Regarding female court staff, the percentage of those who have not participated into any talks, seminars or training courses on legislations or professional skills is very high. According to some court leaders, there are some reasons for such matter. Firstly, provincial courts organise training courses on professional skills for court staff periodically. In one province, the frequency is once per year, but in others, it may be once per two years. As a result, the proportion of court staff participating in professional fostering is low. Secondly, it is possible that at the time of organisation, some court staff are so busy that they could not involve. And thirdly, several court staff are not court clerks; but the tribunal sector has not held relevant professional skill training courses for them, such as accounting operations, human resources tasks, administrative operations, etc.

The age between 25 and 35 is the range which has the highest proportion of female court staff having not participated in seminars and training courses, accounting for 27.9% of the total asked female court staff and 36.8% of female judges of this range. Meanwhile, female court staff at the age of 35-45 having not taken part in these activities holds 5.7% of the total



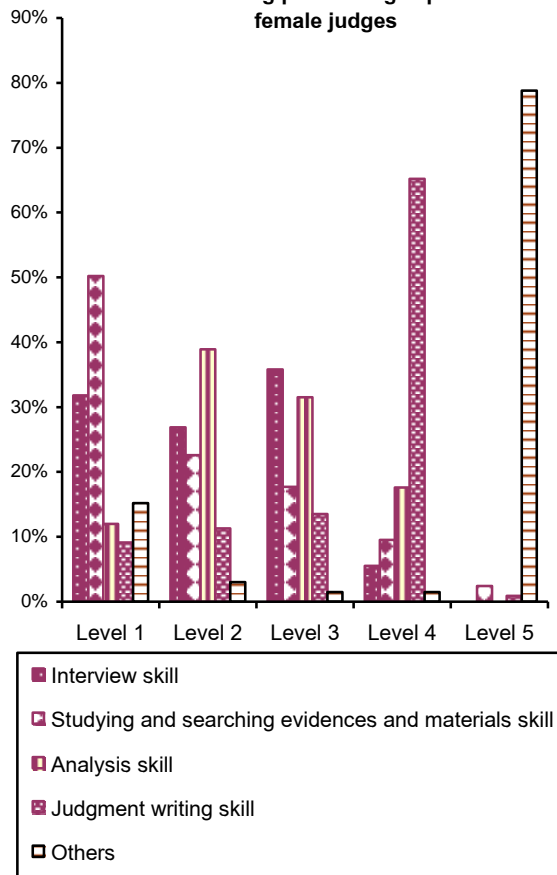
asked female court staff and such occupies 32.4% of female judges at this age range. For the age ranging from 45 and 55, since this range takes only a small percentage of the survey participants, only 2.4% of them answers that they have not participated in any training but this accounts for 35.7% of the female staff correspondents within their age range. These data may support the conclusion that the biggest reason for the little involvement of female court staff in

seminars, talks, and training on professional skills is that the tribunal sector has very few seminars, talks, training on professional skills for them.

b. Knowledge on professional skills and adjudication experience

Figure 77 indicates the needs for seminars and training courses on proceeding skills and experience of judges at the first priority level, holding the majority at this level in comparison with other contents.

Figure 77: Comparison on expectation levels of training proceeding experience of female judges



Surveyed court leaders, from district to supreme levels, all admit that their courts rarely organise seminars or workshops on legislation for judges and court staff. Some reckon that in practice, their courts usually hold professional meetings between court leaders and judges, and sometimes even with the participation of court staff. Those professional meetings are also considered useful by some judges for their professional qualifications and skills development. But others think that such meetings bear administrative nature rather than scientific nature. They wish to have more seminars, talks, and training courses with scientific purpose where participants could freely exchange about their problems. In such programs, it is advisable to have the participation of judges and legal experts from courts so that everybody could discuss and share experience and knowledge with one another.

70.6% (12/17) of judges at district courts and 21% (2/9) of judges at provincial courts involving in direct interviews think that pursuant to current procedural laws, the jurisdiction on handling appellate and cassational review cases is rather great.

Besides, jurisdiction of district courts has been newly increased, as a result, there are still a lot of problems in adjudication of several cases. Hence, district courts really need the guidance from higher courts regarding “adjudicating tasks” or the “experience shared” by judges of higher courts to reduce the amount of “canceled judgments” and “corrected judgments”. Female judges highly appreciate the publication of “Cassational review decisions” and “Bench book” of the SPC. Such materials have been very useful for them about adjudication practices.

Similar to female judges’ opinions on seminars and training on legislations, female judges in Southern provinces also desire seminars and training of adjudicating experience to have the participation and instructions of experienced judges of Ho Chi Minh City People’s Court or the SPC. Whereas, judges in northern provinces want the guidance from judges of the SPC or the People's Court of Hanoi.

To specify prioritized contents for “adjudicating experience”, the questionnaire survey finds that “the skill to study and search for evidences and materials” is set on top priority in Level 1 by female judges and it gradually decreases at the lower levels.

Interview skill is suggested for training by several female judges. The number of female judges wishing for training of this skill ranks the second position at Level 1 and 2. Analysis skill only stands the third at Level 3 and the first at Level 2. Female judges taking part in in-depth interviews reckon that this skill in practice should be trained in law schools or at the

Judicial Academy rather than in short-term training programs or talks. However, there are 2 female judges in the south and 1 female judge in the north adding that the SPC should have training programs specialising in this skill, especially for female judges. They all share that male colleagues think they do not have any discrimination against female colleagues, however, through professional debates, several male judges usually discount female ones as being weak at analyzing the cases.

c. Social knowledge

Social knowledge is very important for judges in adjudicating activities. As already mentioned in this study, the functions of the court are not merely to resolve disputes, protect socialism legislation, protect socialist regime, protect State and citizens' property, but also to contribute to educate citizens about the sense of law, to respect "*the rules of life*"¹⁹⁹.

A Vietnamese saying "*a basket of reasons is not as equal as a little of affection*" implies that Courts' decisions should not only render the accurate consideration of the laws but also contain "*the sentiment and humanity*". Besides, the resolution of the case also requires the judges to have an "inner belief" in the reality of the case. If the "inner belief" is pure and strong, the judges will thoroughly consider evidences and bravely produce reasonable decisions²⁰⁰. President Ho also said at the National Justice Conference 40 years ago that: "*Eventually, the judicial issue, as well as all other issues, at present, is the matter of life and being humankind*"²⁰¹

When products from courts' operation could ensure the national legislation without going against the moral and social rules, they will be admired and respected by the involved parties and well complimented by the society and vice versa²⁰².

*"Social capital" is understood as the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalised relationships of mutual acquaintance and recognition",
Pierre Bourdieu*

In order to satisfy the above requirements of the society, it is required that judges should have "social capital" (social capital-see the Box below)²⁰³. Being rich of "social capital", judges will be able to improve their ethic virtue (such as conscience, responsibility, professional identity and spirit, psychology, etc.), improve the quality of adjudication culture (such as communication style, work behavior manner, language used and so forth) and have relatively general knowledge

¹⁹⁹ *Toolkit of Judges and People's Assessor on Gender Equality*, Legal Professional Training College-UNIFEM-CIDA, Hong Duc Publishing House, 2007, page 18; *Judge institution, some theoretical and practical issues*, Pham Van Loi (Chief Author), Institute of Legal Science, Judicial Publishing House, 2004, page 15.

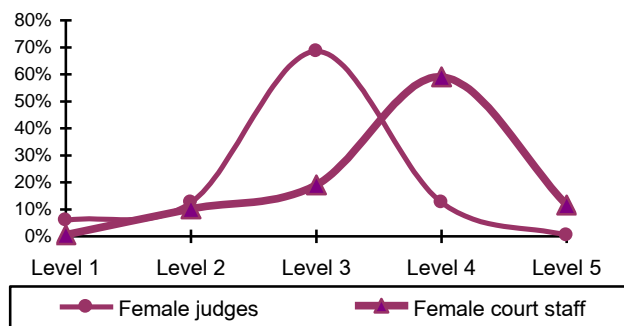
²⁰⁰ "*An old women picking up bull's dung*" case, Ho Chi Minh City Legal Newspaper, 4/11/2008, http://www.phapluattp.vn/tools/printnews.aspx?news_id=202444&thumuc=toa-an

²⁰¹ *Toolkit of Judges and People's Assessor on Gender Equality*, Legal Professional Training College-UNIFEM-CIDA, Hong Duc Publishing House, 2007, page 18.

²⁰² *Judge institution, some theoretical and practical issues*, Pham Van Loi (Chief Author), Institute of Legal Science, Judicial Publishing House, 2004, page 18-20.

²⁰³ *Outline of a Theory of Practice*, Pierre Bourdieu, translated by Richard Nice, Cambridge University Press, 2005. "*Social capital in the creation of human capital*", Coleman J, American Journal of Sociology, 94, S95-S12, 1988; *Bowling Alone: The Collapse and Revival of American Community*, Putnam, Robert, NY: Simon & Schuster, 2000.

Figure 78: Priority levels on "social knowledge" for seminars/training courses



on science and society, including life experience, the "rules of life", human behaviour and a firm "inner belief" during settlement of cases²⁰⁴

Requirements of "social capital" for judges are the request not only from practice but also by laws. It is provided in the Ordinance on Judges and People's Assessors that "*judges must be exemplary in the observance of the Constitution and laws, must live a healthy life and respect the rules of*

the public..."²⁰⁵

Female judges often encounter difficulties in building their own "social capital" for good performance of their role of judges²⁰⁶, which includes forming practical experience in relationships and social matters, and theoretical study in combination with experience sharing.

Generally, women often find difficulty in expanding their 'relationship' with persons of different sex, in addition, the nature of Vietnamese women is "discreet", "limited in terms of external affairs", and timid in social relations"²⁰⁷. Women also face difficulty in penetration into all social activities if they do not fit their jobs, positions or their cultural background. For instance, the participation in clubs, non-political groups sharing similar objectives (fraternity, countryman association, alumnus, etc..) or participation in community activities (including mediation group, blood donation, activities for the poor, etc.). In case it is necessary to learn about "crimes relating to sex", "juvenile crimes", "drug addiction" or "groups of people beyond social margins", and so on, female judges will 'feel more difficult than male ones to refer to such issue with others to find information. It will be even more difficult if female judges want to learn about the practicality of the circumstances or motivation of offences, because it is hard for them to go to bars, massage locations or discos to investigate. Being busy not only at work but also at home, together with limitations from the traditional culture, women have to face much difficulty in the above activities.

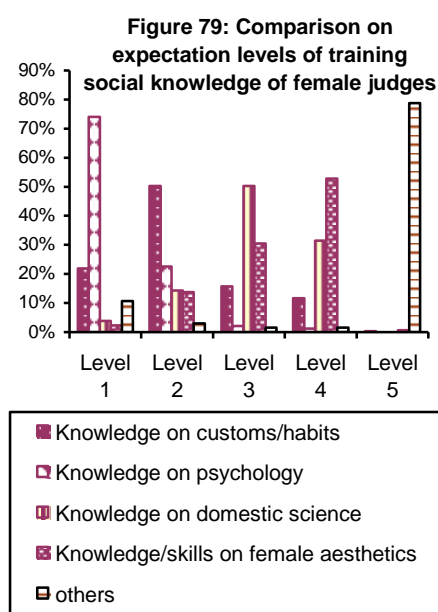
Consequently, in order to have 'social knowledge' (social capital), women must actively participate in talks, workshops, and training courses on social knowledge. These activities will complement them with theoretical and practical knowledge. However, the results gained from the questionnaire survey shows that female judges and female court staff have not fully evaluated the importance of improving "social knowledge" (social capital) for themselves. According to the questionnaire results, not many female judges and female court staff select "social knowledge" as priority at "level 1" and "level 2" for the content of talks, training or fostering programs.

²⁰⁴ *Toolkit of Judges and People's Assessor on Gender Equality*, Legal Professional Training College-UNIFEM-CIDA, Hong Duc Publishing House, 2007, page 18; *Judge institution, some theoretical and practical issues*, Pham Van Loi (Chief Author), Institute of Legal Science, Judicial Publishing House, 2004, page 35-42; *Social capital and development*, Nguyen Ngoc Bich, Tia Sang magazine, 2006, <http://www.tiasang.com.vn/Default.aspx?tabid=87&CategoryID=16&News=1828>

²⁰⁵ Ordinance No. 02/2002/PL-UBTVQH11 on Judges and People's Assessors of people's courts, Article 13.

²⁰⁶ *Women in the World's Legal Profession*, Ulrike Schultz and Gisela Shaw (ed.), HART Publishing, 2003, page xliv.

²⁰⁷ *Improving leading capacity of female staff in the political system*, Nguyen Duc Hat (Chief Editor), National Political Publishing House, 2007, page 179.



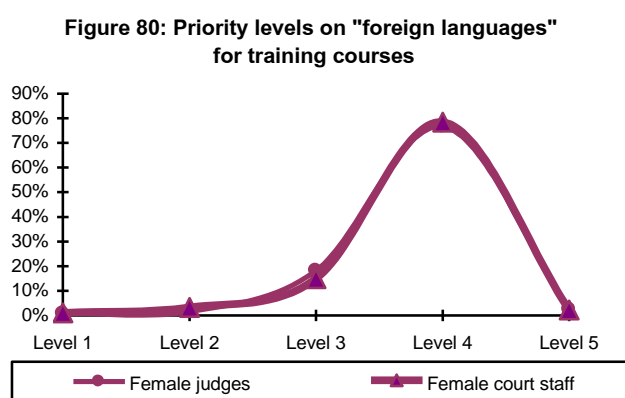
Through direct interview, most of the female judges believe that judges have to improve social knowledge themselves and set aside time and expense of the courts for improving professional knowledge. Especially in the south, female judges think that seminars and training programs on substantive laws and adjudicating experience are currently not so available; consequently, it is difficult for the tribunal sector to organise “social knowledge” fostering programs. Only a female judge in Can Tho says that it will be “great” if the court can give out “social knowledge” fostering programs.

“Knowledge on psychology” is the expectation rated the highest by lots of female judges at Level 1. Via in-depth interviews, 4 female judges state that “psychological sensitivity” is a “gifted” advantage of women. Women need to promote such advantage in

adjudication activities. “Knowledge on customs and habits” has also drawn interests of female judges, which takes the second position at Level 1, the first position at Level 2, and the third one at Level 3 and 4. As analysed above, “knowledge on customs and habits” is very important to help judges understand “public rules”. Knowledge and skills on domestic art work and female aesthetics are also useful for female judges to perfect themselves and improve their personality in order to balance between their work and family. However, in discussion in direct interviews, 3 female judges believe that it is not necessary to train or hold seminars to gain social knowledge, but the courts should provide them with documents, books, and newspapers to read and improve themselves.

During the interviews regarding the venue for organising training and talks, the majority of female judges wish such activities to be held in other provinces or in other localities within the province, (see item “g” below). The main reason thereof is to broaden their relations with colleagues in other courts so as to share experience with each other. This is a notable proposal because training programs or workshops are opportunities female judges to supplement their social experience on relationships and life experience.

d. Foreign languages



So far, Vietnam has signed into several international treaties²⁰⁸. Hence, it is required that legislative, executive and judicial branches have to understand and apply laws in a precise manner. To meet such requirements, judges should be able to understand at least one foreign language. This is one of necessary conditions when State agencies recruit new staff. To become

²⁰⁸ *Idem*

a civil servant, candidates must have ability to use one foreign language (English, French, Russian, Chinese, German or other language according to the relevant work)²⁰⁹. However, the research result stated in the general assessment on knowledge of female judges and female court staff participating in the survey shows that the proportion of female judges and female staff who have never learnt any foreign language still occupies a high proportion. Furthermore, the awareness of female judges and staff on learning foreign languages to improve their working capacity is not high. Only 2 female judges and 4 female staff (equivalent to 0.8%) consider learning foreign languages as the first priority, the majority of female judges (equivalent to 76.7%) and female court staff (equivalent to 77%) put foreign languages at the forth priority. The level of needs for improvement of foreign languages of female judges and staff is relatively the same (see Figure 80).

Statistic results from questionnaires have raised a notable matter for organisation of foreign language study programs for women. While the number of female judges aging from 35 to 45 wishing to learn foreign languages holds the highest proportion (44.2 %), those between 25 and 35 years old sharing the desire occupy the highest percentage (79.1%). This can be partly explained because the rate of the above two correspondent groups answering the questionnaire is the highest.

e. Frequency and duration of organising training courses, seminars, and talks

According to the questionnaire results (Figure 81), most female judges and female court staff choose the answer “when new legislation is promulgated” for the question on frequency of holding training course, seminars and talks. The number of women choosing the frequency of “once every six months” stands at the second position. The selection proportion is distributed quite evenly among interviewees across different localities, ages, and marital status.

Nobody agrees with the frequency of once every three months. There are some homogeneous reasons as follows:

- Work pressure at their courts making it difficult for them if they have to take part in such training so frequently;
- The burden of their relations and housework; and

Figure 81: Frequency of participation in seminars, talks on legislations and professional trainings

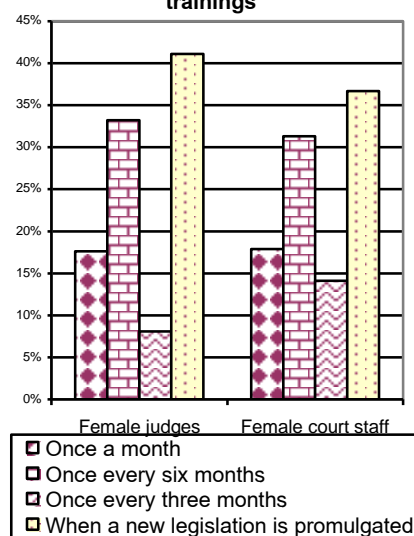
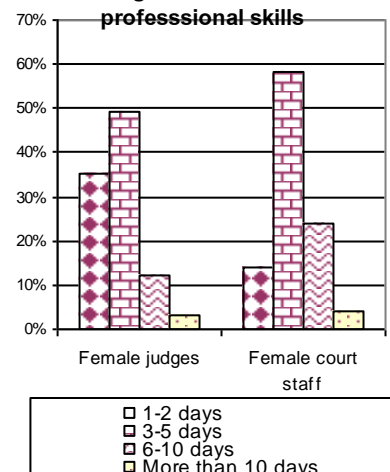


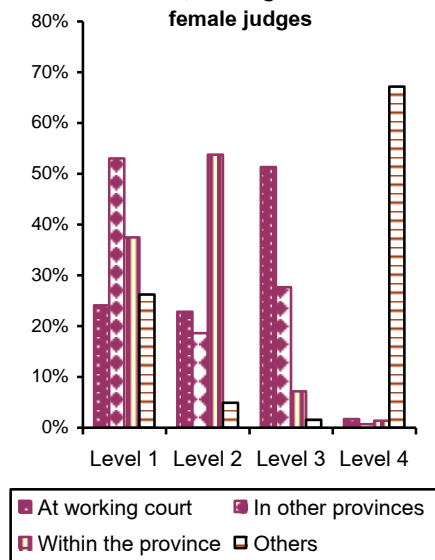
Figure 82: Duration of seminars, talks on legislations and professional skills



²⁰⁹ Circular No. 74/2005/TT-BNV of the Ministry of Home Affairs dated 26/07/2005 guiding a number of articles of Decree No. 115/2003/ND-CP, Decree No.116/2003/ND-CP and Decree No. 117/ND-CP dated 10/10/2003 of the Government on pre official regime, on the recruitment, employment and management of officials and public employees in state non-profit units; on the recruitment, employment and management of officials and public employees in state agencies, Point 3.

- Personal expense if they have to move to other locality. They reveal that their own expenditure is not high since most will be covered by their courts but the expenditure to be spent by their family when they are absent from home is considerable.

Figure 83: Comparison on expectation levels of the venue for talks, training courts of female judges



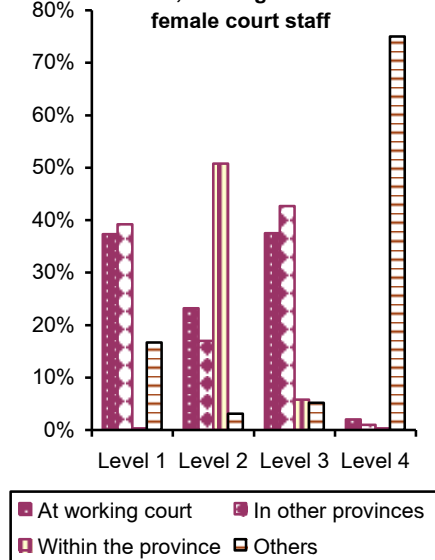
The reasons regarding participation duration are expressed similarly to that regarding frequency through direct interviews. However, most of them choose the duration for workshops and seminars to be from 3 to 5 days; and 2 women say that this duration is suitable especially for those in remote areas. They want to gain much more knowledge in each time of participation to avoid wasting the time arranging their work and traveling time. The option of from 1 to 2 days is mainly chosen by judges in urban areas, and the relevant proportion is 2 times as high as that in rural area and 3 times as high as that in mountainous areas.

The duration of more than 10 days is not much chosen due to reasons similar to those for the frequency of once every three months.

g. Venue for seminars, training programs, and talks

Although many female judges and female court staff wish that talk and training course frequency is not too dense or the duration is not too long as mentioned above, the number of female judges expecting talks and training courses in other provinces or in their province but not at their own courts so that they could concentrate on the study occupies the majority at Level 1 and Level 2. Through direct interviews, female judges and female court staff preferring training courses, seminars, and talks at their own courts reckon that it will help them learn on the spot and save their time. Moreover, women also wish their courts to organise more frequent talks for them to improve their professional skills more easily.

Figure 84: Comparison on expectation levels of the venue for talks, training courses of female court staff



On the other hand, female judges who have got married and had children wishing to have talks and training courses “in other provinces to concentrate on their study” occupy up to 48% (the highest percentage) of those having the same family situation and occupy nearly 92,6% of those having similar expectation. Meanwhile, the number of female court staff having the same family situation and expectation regarding training venue “in other provinces” only accounts for 38% of those with similar situation (stands the second) and occupies 66,2% of total staff having the same expectation. With respect to female judges who got married but have no children, there is no difference in quantity among different expectations, but most of them wish the training to be carried out “at their court” or “in province”, such number accounts for 89,5% in this expectation.

The reason for the fact that women advocate for organising talks and training courses in other localities is to concentrate on study and relax. They share the similar opinion that if they study in their own locality, they still have to assume the responsibility for their tasks at work and at home during studying, as a result, they could not pay entire concentration to the training. In addition, taking part in courses in another locality, they will have opportunities to learn from experience of other judges in other regions. Women in southern area (excluding Ho Chi Minh City) want the training to be carried out in Ho Chi Minh City to learn experience from the judges there meanwhile women in Northern area want to learn in Hanoi. There are also 5 female judges and 2 female court staff suggesting that training should be organised in resorts or sightseeing places where they would have conditions to relax. They trust a reality that work and income pressure have made it impossible for them to travel or have tours by themselves.

6 among 27 female judges and 7 among 12 female court staff (including those participating in direct interviews and questionnaire survey) believe that talks and training courses should be organised according to cluster of courts or regions. As for them, organising based on geographical clusters, including districts and provinces with similar social and cultural structure, will well help the sharing of adjudicating experience. However, a female judge in a southern province assumes that the adjudicating experiences from Ho Chi Minh City or Hanoi could not be applied in her locality all the time. Meanwhile, cases which are properly resolved and praised by the public in localities without developed economy but sharing similar culture nature will be very useful.

h. Other opinions

100% of judges and court staff answering in-depth interviews have a common comment that the fostering of professional knowledge and skills for judges and court staff has not met the demands yet. The programs have not been designed scientifically, training courses or seminars are still passive with one-way method; consequently, they cannot encourage the mutual exchange and learning of experience among participants. Many training and fostering programs do not follow the actual needs, causing waste to the budget.

As revealed by 21 out of 27 judges who involve in in-depth interviews, several local courts do not arrange staff attending professional training courses in accordance with their in-charge professional field. It is really a waste in training. In additions, 3 among 27 judges and 4 among 12 court staff interviewed also trust the actual nature of sending staff to training courts by their courts or other courts as to create conditions for them to relax. 2 out of 27 judges even reckon that several training programs appear to be for “disbursement” purpose.

Sub conclusions:

The improvement of professional qualifications for judges and court staff is a critical task which has been proposed in Resolutions of the Party on judicial reform. In order to realise these Resolutions effectively, the tribunal sector should mention gender and sex differences in developing training courses, seminars, and workshops to advance knowledge for staff of the sector.

The above mentioned survey results show that previously and presently, the knowledge training of female judges and female court staff has not been paid with much attention. The

proportion of female participating regularly in training programs is not high and is distributed unevenly.

The survey result on contents to be fostered and trained shows that the proportion of female judges looking forward to be fostered with knowledge of substantive laws is the highest, the second is proceeding skills and experience, the third is social knowledge and the final is foreign languages.

Knowledge on civil laws is the most highly expected content for training, especially knowledge of the legislation on land and inheritance. Knowledge of criminal laws ranks the second among all expectation with the needs for training about new types of crimes and skills to control hearings toward adversary procedures. Commerce – business law draws concerns thirdly. In this field, laws on economic contracts and intellectual property draw the most attention of judges.

The needs for training skills draw the attention of female judges and female court staff at the second position. Especially, "skills for studying and searching evidences and materials" option is selected as the first priority and "interview skills" option is the second priority.

The need of being fostered with "social knowledge" ranks the third in terms of selection quantity and priority level. Among which, "psychological knowledge" is the option chosen by several correspondents with the highest priority. If female personnel are well trained with this knowledge, adding their advantage of "psychological sensitivity", they could better promote their sex's strong points in adjudicating activities. The tribunal sector also need to conduct activities to support women within the sector to improve their own "social knowledge" to serve people better.

Frequency for talks, training courses, and seminars should only be held once per six month or when a "new legislation" is promulgated. Duration of each training course or seminar should not be too long for women, preferably from 3-5 days or 1-2 days depending on its content.

The best venue, which is chosen the most, is in "other localities" so that participants could concentrate on their study. In choosing locations, it is suggested to consider so that judges from various localities could participate; as a result, social capital of women regarding relations, adjudication and life experiences could be shared and supplemented. Organisation based on geographical areas with similar cultural and social conditions should also be noted. Concurrently, the tribunal sector should also attach training work with creating relaxation opportunities for participants.

4. Working time to well ensure GE

As analysed in the part on Laws on Labour and Ordinance on Cadres and Public Servants, laws on labour have reflected the idea of "GE" in labour relationship and labour employment such as the policies encouraging employers to create good conditions for

female employees to have regular work, apply flexible working schedule such as regime of part-time working in a day or a week, and home working²¹⁰ for females.

The working time as stipulated in Vietnamese laws is eight hours per day²¹¹, five days a week for public sector²¹², and six days a week for other sectors²¹³.

It is not specified in Vietnamese laws that such working time is continuous or flexible to be applied upon discretion. However, the regulation on working hours of state agencies from 7h30 a.m to 4h30 p.m has resulted in the thought that working hours are 8 continuous hours within a day. There is no regulation of the tribunal sector regarding the working hours of the sector. At each local court, the leaders will put forward regulations in relation to working hours of their own.

The tribunal has also determined that *the work of the judges not only is confined in 8 working hours at the office but also includes rest hours when they have to think, to concern to find the truth of each cases to finalise a reasonable judgment*²¹⁴.

In order to attract women to participate in the tribunal sector, in UK, the Government has proposed a flexible working time to facilitate female to assume both adjudicating tasks and children caring²¹⁵.

Currently, in the world, many countries have applied the flexible working time for female in their maternity period and for both parents in the period of taking care of their children²¹⁶.

Via the questionnaire survey, the number of female judges and female court staff who wish to have flexible working time at Level 1 and Level 2 accounts for more than 30% in both the two levels (Figure 85). In reality, all female judges in personal interviews reckon that it will be great if the State and the tribunal sector allow judges in general and female judges in particular to work according to flexible time, but it is necessary to pay attention to the ability to meet adjudicating tasks, professional work and to serve the people.

²¹⁰ Clause 1, Article 109 Labour Code of the Socialist Republic of Vietnam No. 35/2002/QH10 dated 2 April 2002 providing the amendment and supplementation to a number of articles of Labour Code 1994.

²¹¹ Article 68, Labour Code

²¹² Decision...

²¹³ Article 68, Labour Code

²¹⁴ Toolkit of Judges and People's Assessor on Gender Equality, Legal Professional Training College-UNIFEM-CIDA, Hong Duc Publishing House, page 19-20.

²¹⁵ Plans to increase female judges, BBC News, 23/10/2004 http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/uk_news/3738344.stm; Driver to attract female judges, Matthew Tempest, Guardian.co.uk, <http://www.guardian.co.uk/politics/2004/oct/13/constitution.uk>

²¹⁶ Report on Pregnancy, Maternity, Parental and Paternity Rights, Commission's Network of legal experts in the fields of employment, social affairs and equality between men and women (Báo cáo về Các Quyền liên quan trong thời kỳ Thai sản và Chăm sóc Con cái, Mạng lưới của các chuyên gia pháp lý trong lĩnh vực lao động, vấn đề xã hội và bình đẳng giữa nam và nữ), European Commission, 2007, page 11.

Box 7: Confidence of a male judge

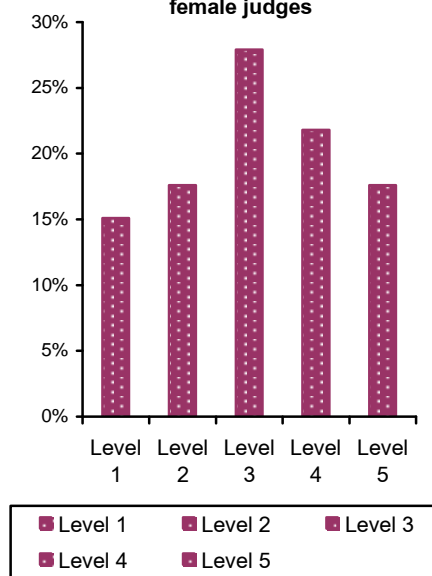
When his wife gave birth, he had to request his court to have annual leave to take care of his wife. In spite of the attention and assistance from court leaders as well as the long preparation time for birth delivery, his annual leave was not sufficient for him to stabilise his housework. The workload of the court is huge and he could not leave more than the allowed leave days, as a result, he had to assume working tasks and housework at the same time. Although his natural mother and his mother-in-law also helped him a lot in housework, he still could not handle all work.

The pressure from housework and adjudicating work affected his psychology of case settlement at court and the time for case settlement. He had to request for assistance from court clerks or his colleagues in several tasks such as taking statements or collecting evidences. He believes that such support was not in contrary with procedural provisions. He could still ensure the quality of case treatment, and the time for case settlement did not violate procedural prescription.

In in-depth interviews, female judges and female court staff fear to mention working time for female only as provided in the Labour Code. They say that if it is really GE, it will be not necessary to put forth provisions on different working time for male and female. Women could assume their work in accordance with the working time currently applied to both gender.

However, the Research Team also poses an additional question that would they like if the tribunal sector allows women who have to take care of their small children to ensure the amount of 40 working hours per week but they do not have to follow the fixed working time so that they are facilitated to care about their children and perform their work more effectively. All of them say “yes”. However, they all affirm that the tribunal sector must carry out a relevant scientific research in order to issue such policy.

Figure 87: Level of expectation on flexible working time of female judges



As aforementioned in the part of “pressure from housework”, 3 women raise their difficulties when they have to leave without pay in some periods to take care about their children. In reality, such women all wish to return after maternity leave as provided for by laws (4 months)²¹⁷ or if possible, the tribunal sector may have a mechanism to allow them to work part-time with corresponding reduction of salary.

Female judges and female court staff at a court reveal that thanks to the sympathy of their court leaders, they could enjoy the flexible working time when their children are small (even in some cases, their children are more than 12 months old). In fact, during their pregnancy, their court leaders avoided assigning cases for them to ensure their health as well as to keep the

legal solemnity through the image of female judges and female court staff. Pregnant women will be assigned with milder tasks. After their birth delivery, women still do not have to settle cases immediately but later, after a period of time.

4 other female judges and female court staff think that their court leaders do not assign cases for female judges who are pregnant either, but such is based on their own request, not in

²¹⁷ Article 114, Labour Code

accordance with any regulation. During the period of taking care about their small children, if female judges wish to have further leave they must gain the approval of court leaders.

All married women with children already say in personal interviews that upon maternity leave in accordance with the laws, they would like to return to work soon. The reasons they give out are “to ensure the income for their family” (those who have to leave without pay are unwilling), “to return to work after a period of maternity leave”, “to update information regarding professional knowledge and social life”, etc. However, all female respondents (including unmarried female) think that mothers should have higher responsibility in taking care of and educating their children. They accept disadvantages in terms of work and income to spend time for their children. This is the matter of not only Vietnamese women but also women in the world²¹⁸.

A leader of a provincial court (which female judges appreciate as “open in terms of working time for female”) says that a flexible time table should be set up for female in the period of their maternity and taking care of small children. The building and application of a flexible time table is entirely in conformity with provisions of labour laws and GE. However, in his court, court leaders have not made up regulations on flexible time table due to various reasons, one of which is that the SPC or the tribunal sector does not either. They agree to allow female judges and female court staff to have leave without pay within their maternity period or to work part-time upon their request. According to him, the application of flexible working schedule in taking care of small children period should be done for both male and female personnel.

Regarding an appropriate working time for female personnel, other court leaders say that they have to consider working time of such personnel, the actual work volume of the court and the requirement for serving the people of the tribunal sector. No court leader thinks that their courts are rigid in terms of working time for female judges and female court staff within the period of their maternity leave and taking care of small children.

Sub-conclusion:

In order to ensure the GE with respect to working time, the tribunal sector should also study and build a flexible working time for female of the sector in their maternity period and for both male and female in period of taking care about their small children. A flexible working timetable will ensure work performance of the judges and court staff, so that it could ensure the lives of personnel in the tribunal sector and create attraction for the work in the sector.

²¹⁸ *Work isn't working (Cuộc chiến gay gắt ở Anh: Sự nghiệp hay gia đình?)*, Bích Nguyệt (Vietimes) translated from New Statesman magazine, an article of Richard Reeves, <http://vietimes.vietnamnet.vn/vn/print/khoahocgioitinh/4826/index.viet>.

PART C

EQUAL ADJUDICATION IN TERMS OF GENDER

A society ensuring the basic economic, social, and legislative rights for every citizen is the society which provides its citizens with the opportunities, safety and powers they need for self-adjustment to their life. For such reasons, the reform of the institution, legislation and market are important issues that every society could carry out to ensure GE. GE should be guaranteed not only by a full and comprehensive legislation system, but also by an adjudication system which thoroughly understands gender issues and brings the ability to access justice to every citizen.

The adjudication system bears the nature of a system which shows the strictness, clarity and clemency of laws, and also the system that citizens access to seek for justice. Equality on “gender” in adjudicating activities means that male and female are heard equitably at court in accordance with potentialities and differences of each gender. Such equality has to be enforced by the socio-political system and adjudicating bodies have to apply stipulations and requirements of the laws with regard to GE in a due and full manner²¹⁹.

Due to physical features, women may face more disadvantages than men when they participate in dispute settlement at court, especially in procedures requiring verbal presentation, such as voice, gender preconception of involved parties participating in the case or dispute settlement²²⁰. It requires the tribunal sector to have support methods for women participating in procedures.

Vietnam has not established a court system that specialises in hearing issues relating to women and children as other countries yet. For example, at present China has approximately 200 courts established in the judicial system to deal with cases that relate to women’s rights²²¹.

1. Women with the current procedures

16 above 16 inhabitants who have ever had matters at court, 9 out of 12 lawyers and 2 journalists in in-depth interviews reckon that the current procedures are prolix and time consuming. It is the biggest obstacle to women to seek for dispute settlement and justice at court.

2 among 9 inhabitants who have never arrived at court are told that court procedures are prolix. Consequently, they choose “mediation” solution rather than seek for “adjudication at court” solution.

The current Civil Procedure Code has no specific provisions on procedures applied for pregnant involved parties, those who are feeding small children and so on. 12 among 27

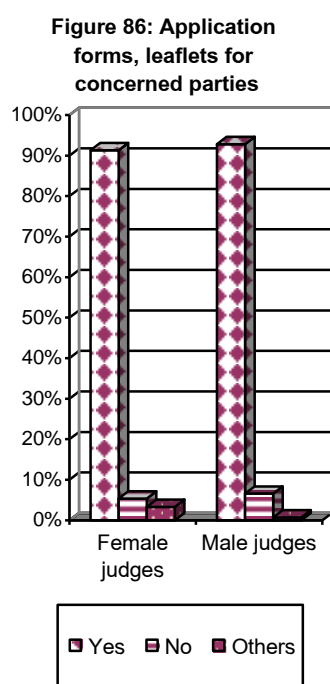
²¹⁹ Please see further *Gender Mainstreaming in Legal and Constitutional Affairs*, page 2, www.thecommonwealth.org/gender

²²⁰ This opinion is gathered in survey and studying material process by the Research Team, please see further *Coping with gender issues in the court*, *Inter-American Development Bank*, 2004 <http://www.iadb.org/NEWS/detail.cfm?lang=en&id=2183>

²²¹ *Gender Equality hits mainstream*, China Daily, 3 March 2005, page 5.

judges experiencing in-depth interviews suggest the SPC and the NCAW pay attention to such issue to ensure GE in procedural activities.

The Research Team also observes that 21 out of 22 courts arrange a reception room to guide people with procedural information, which is easily accessible to the people. Only in the Appellate Court of the SPC in Hanoi, the professional room and the place for posting trial schedules is located in inside yard; therefore, involved parties who have never arrived at court will face difficulty in accessing them. To make the matter worse, those who want to go inside the yard to access such information have to submit their identity card at the standing office outside the entrance and answer some questions about the reason why they come to the court etc.



All local courts (except the courts directly under the SPC) where the Research Team arrived to study have application form for involved parties in order to help them lodge a petition to protect their own legitimate rights and interests. However, the practice of using and applying the application form is much diversified. In some courts, the application form is posted outside the court. In other courts, the application form is updated regularly, while in some courts, it is not updated for a long time, causing the backwardness of the application form compared to the laws. Some courts even sell the application form to involved parties. Only in the People's Court of Ho Chi Minh city, some application forms, suing procedures and some other procedures are posted on the court's website. However, 100% of courts surveyed by the Research Team have no particular procedure or application form for female involved parties and children.

3/27 of judges and 6/12 of court staff think that the courts only need to provide application forms, and the guidance of procedures should be the responsibility of the legal aid center

or the Women Union.

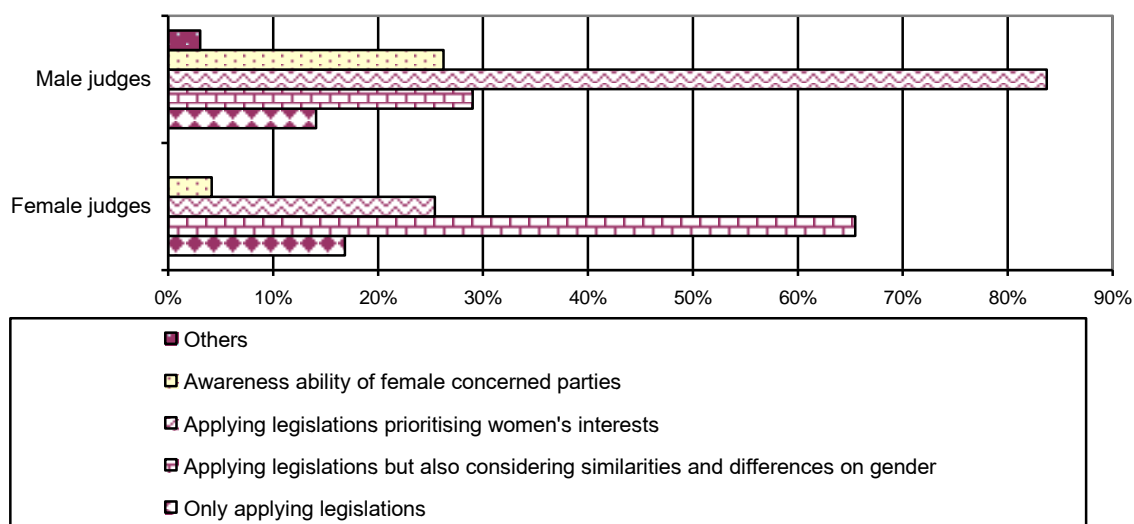
16 per 21 interviewed people say that they expect to receive sympathy as well as guidance on procedure from competent persons and judges when they come to the court. In case there is no one to guide, they still trust in the court's guiding materials rather than those of other agencies. In several surveyed courts, the Research Team finds that many people have been guided on procedure by court staff. According to the Research Team's observation and on-spot interview conducted by the Research Team, several people coming to courts satisfy with such enthusiastic guidance. However, they still expect the courts to deliver free or charged procedural guidance material. This will be "better" for them.

Two journalists specialising in topics about women reckon that when women often feel shy and inferiority complex when they have any petition to come to courts. They try to find information through their friends and relatives or they still have to take care of their family and business affairs at the same time with resolving the matter at courts. Consequently, they could not actively catch the procedures at courts or clearly understand guidance of the courts. If guiding materials are delivered, they could have a look at them at home in their free time. On the other hand, men have more time (since they do not have to do housework); therefore, they can learn about procedures at court more carefully, or learn

about such through their friends and so on. Besides, men are often more active than women in learning information.

As the aforementioned analysis, women have fewer conditions to access information than men do. In addition, women are unconfident; thus they do not want many organisations and people to know about their circumstance. Several women have not used any Legal Aid or lawyer due to the aforementioned reasons²²². Besides, the virtue of practicing thrift also restricts them from seeking for lawyers to protect their lawful rights and interests.

Figure 87: Judge's opinions on gender consideration in adjudication



2. Consideration of GE factor in making decisions about cases

Being asked “Do you find that obvious awareness on GE will help to better ensure human rights and justice in case settlement?”, all judges say “Yes”. However, some people believe that the sole legitimacy and reasonability in handling cases has already ensured “human rights” and “justice”. Such opinion has been affirmed by several female as well as male judges in the questionnaire survey (see Figure 87).

The result of questionnaire survey regarding “judges’ opinion on GE factor in adjudicating activities” shows the differences in the awareness of male and female judges. The majority of male judges (accounting for 83.7%) reckons that they also consider to “*apply provisions setting women’s interests on priority*”, meanwhile the majority of female ones (holding 65.5%) say that they “*apply legislation with consideration of similarities and differences in terms of gender*”. The proportion of male judges appreciating “*awareness capacity of female involved parties*” is also higher than that of female judges. Such difference together with above mentioned survey results can arouse a conclusion that “awareness on GE between male and female judges is equal. It requires the sector to release activities for enhancing awareness on GE to ensure justice in adjudicating activities.

A female judge thinks that it is an obligatory professional skill to carefully consider “gender” factor in adjudicating activities, especially in Family and marriage, and inheritance cases, however, not all judges could understand it is the matter of “gender”. On handling a

²²² Role of legal assistance activities in promoting legal enforcement on gender equality in Vietnam, Ta Thi Minh Ly, the Director of the Legal Aid Department.

case, the judges have to consider carefully all factors such as “legislation”, “situation and awareness of the involved parties”, “customs and culture” and so forth. If legal provisions are imitated dogmatically in civil cases, it is likely that involved parties may feel dissatisfied and they may continue causing contradictions in the future. As a result, the best solution is that judges try to mediate the civil dispute for the parties from the first instance trial.

a. Family and marriage cases:

The Law on Family and marriage ensures the right to divorce for both men and women. However, in some ethnic minority areas, the divorce sometimes is not solved in accordance with the law, but according to the local custom. The Law on Family and marriage also ensures the independence in dividing common properties of husband and wife if the divorce occurs, especially dividing the land use right and house ownership by the provision that all valuable properties must be registered under the name of both husband and wife. It is the important legal ground for courts to release impartial judgments in terms of properties for recent divorce cases. In 2002, courts handled 60.265 cases on family and marriage, in which the number of cases petitioned by women accounted for 44% while 18 % was the percentage of cases posed by both husband and wife²²³.

8/12 lawyers and 3/16 people who have ever had matter at court assume in the interview that courts usually protect women in divorce cases. Women are usually prioritised to unilaterally terminate their marriage while men are not usually accepted. Women are also prioritised in feeding children regardless son or daughter. Meanwhile, in accordance with Vietnamese custom, the son is the person who “maintains the continuity of a family line” and looks after the ancestor worship; therefore, the husband should be judged to bringing up the son. If such factor is not taken into consideration carefully, the contradiction between the two involved parties will be never resolved.

4/12 of lawyers and 13/16 of citizens who have ever had matter at court have contrary opinion. According to them, it is reasonable to set priority for women in settlement of family and marriage cases, since they often have to sacrifice their career for men and accept to stay at home to look after children. If a divorce happens, women are disadvantaged in the ability to earn income and find new happiness, etc. Children breeding is also advisable to be given for women’s decision, because their natural features will help them look after the children better and they also need their children to relieve the loneliness (see the Opinion of an civilian about the women’s situation in divorce).

Box 8: Opinion of an civilian about women’s situation in divorce:

After divorce, women are the most disadvantaged people, they have to breed children alone, assume the tasks of both mother and father, and undertake all works without any comfort or help and a great number of other difficulties and obstacles ahead. Whether they could meet any person who sympathises with their situation or they will live alone forever? Only few women have chance to remarry. Meanwhile, men can marry another woman after divorce without any entanglements. That is why women need children beside them.

²²³ 5&6th Report on the implementation of CEDAW in Vietnam in the period of 2000-2003, page 105

b. Other civil cases

All of the judges who are interviewed in-depth confirm that more and more women have participated in complaints of civil cases at courts. Reason for such phenomenon may be the fact that women are more and more active and play certain role in family; then they participate more and more in contract conclusion, social relationship, and business.

However, judges all share the common thinking that women are still afraid to choose the court for dispute settlement. For long disputes, they usually tend to compromise soon for avoiding “bad reputation”, especially in inheritance cases.

In order to handle civil cases thoroughly, judges think that when they handle a case, they only apply the laws and the circumstances of each involved party (see Box 9: Opinion of a judge on settlement of inheritance disputes).

Box 9: Opinion of a judge on settlement of inheritance disputes

In cases on inheritance division where sons and daughters are both to receive the inheritance without will, in accordance with the laws, the inheritance will be divided equally for both daughters and sons. But in reality, judges often have to apply the laws cleverly for settlement. According to judges, settling any dispute will be not only the rigid application of laws but also the application of habits and good code of conduct to deliver the final solution to the dispute.

As customs, sons usually receive more inheritance than daughters. The reason for such customs is that sons have the responsibility to serve their parents when they become old and worship them later when they die.

Therefore, in settlement of a case before hearing, judges must analyse legislations for involved parties and also the customs in relation to the children’s responsibility. The judge often persuades involved parties to mediate with each other to avoid bringing the case to the trial. He also attests that in mediation the sons may take more inheritance than the daughters, but, in turn, in the future, the sons must bear responsibility to worship their parents as traditional customs of Vietnam. This judge is not sure whether such resolution ensures GE or not but according to his own viewpoint, once the parties have agreed on the mediation, it means that the voluntariness, respect and equality among parties, sons and daughters are ensured.

In case where the mediation fails, the judge must identify the value that a son has had to spend on taking care of his parents when they are still alive (if any). On such basis, the court will determine contribution responsibility of each child to reimburse the son who has served the parents. The court will not divide the value of worshipping responsibility since this is not provided for by laws.

12 out of 12 lawyers think that regarding civil disputes, adjudication of courts is equal, and there is no “gender” discrimination. Lawyers also agree that in inheritance division, the son who bears the responsibility of “worshipping” or “has not had an accommodation yet” will be divided with more inheritance than others. According to them, such division is “equal”. In reality, sons have to self arrange the accommodation when they get married, while daughters will follow their husband and live at the husband’s house.

Only 1 out of 25 people (female) interviewed think that the courts have discrimination regarding “gender” in handling inheritance disputes. The woman does not satisfy with the result of the first instance trial but she does not submit appellate petition either due to afraidness of “bad reputation”.

c. Criminal cases

In in-depth interview, all judges and lawyers believe that “gender” factor draws special attention in criminal cases.

As for judges, upon hearing a criminal case, they often have to consider such factors as “motive for the crime” of female defendants. Via the two group discussions of the Research Team with judges, one in a southern province and one in a northern province, female defendants commit crimes mainly due to the influence of situation, the force of others or due to their lack of knowledge. Only in very few criminal cases are female defendants the head defendants (who organise the crime). Moreover, the hearing of female defendants who are married and have children will often affect the development of their children later. Therefore, judges say that they have considered all factors relating to “gender” when they “estimate the punishment” for female defendants.

However, all judges admit that they have never requested the forensic examination agency (regarding mentality) to appraise the mentality of female defendants if they show no signal of mental illness. They think that such factors impacting psychological characteristics of female defendants as living conditions, being forced and so on could be considered by themselves. 5 among 12 lawyers consenting with such opinions of the judges. At a court in the north, the court leader says that in cases where women are offended, female judges will have more advantages in exchanging with the victims or may understand the level of mental injury of the victims when they handle the cases.

There are 2 out of 12 lawyers protesting against the above viewpoint. They say, when women commit a crime, the judges should request for a “mental” examination of the defendants if they find that their living conditions may affect their psychology and/or motive for the crime. Such lawyers think that because women are “easily moved”, female defendants in such cases should be examined mentally before hearing.

However, all judges and lawyers support the mental appraisal for cases in which victims are women. Such legal experts also admit the real situation of uneven quality of current forensic examination on “mentality” among localities and the improvement needed for several matters.

12 out of 12 lawyers confirm that they always make full use of elements relating to “gender” to request the courts to consider criminal cases which they participate in the defense or interest protecting.

Box 10: Opinions of a citizen

I think it is true when all people are equally treated and enjoy the same rights; all will have to incur equal punishment. However, the tribunal sector should consider particular situations and circumstances in adjudication. Some women may commit serious crimes such as murdering the husband, but their acts only break out suddenly due to temporary

anger, not because of hatred or revenge. Regarding such cases, the legislation should take other factors into consideration to reduce the penalty for them, since when the father dies and the mother is imprisoned, the children will not be brought up and educated, they will be homeless and lonely without relatives. There is a Vietnamese proverb that “when the father dies, children could still have something to eat, but when the mother dies, the children will be hungry and homeless” (“*Cha chết thì ăn cơm với cá, mẹ chết thì liếm lá đầu đường*”). Consequently, those children could be potential crimes in the future. This fact is even more dangerous than the crime due to which the court intends to impose the judgment on their mother. If we take into consideration only the compensation for a death by a death and disregarding the humanitarian factor, the consequences will be unpredictable.

d. Labour cases

2/5 judges who have handled labour disputes attest that they have considered “gender” factor in labour cases where such cases involve female labourers, such as the possibility to look for a new job, labour capability and special provisions for female labourers as stipulated in laws on labour.

Such judges reckon that the current laws on labour relatively protect labourers in general, and female labourers in particular. Only by applying the laws correctly could they protect the rights and interests of female labourers and ensure GE in adjudication.

All lawyers who have ever protected labourers’ rights and interests in labour cases (3 out of 12) also think that the applicable laws have already well protected the rights and interests of female labourers.

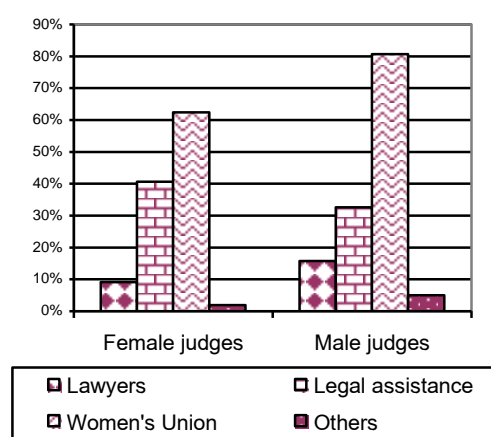
e. Commerce and business cases

7/27 judges who have ever handled commerce and business cases say that GE is not a significant matter in such cases. This proportion is similar to the number of judges responding to the questionnaires (see Figure 18 at page 35). 3 among 27 judges do not respond to this question. One judge reckons that he also takes “gender” factor into consideration when he deals with cases involving females. He has solved some cases where the female involved party is a party to a business contract, the head of a production establishment, or an executive director. In the process of handling those cases, he finds that female are still more “honest” than male in commerce and business. The act of bringing the case to the court is reluctant to them.

g. Administrative cases

Regarding administrative cases, the proportion of female judges reckoning that GE should be considered is not high (see Figure 18 at page 35). 2/27 judges who have heard administrative cases say that they do not focus much on GE in handling cases. As for them, if those cases are resolved in strict accordance with the laws, it also means that equality in adjudication have been ensured. Such judges admit their suffer from pressure when they handle administrative cases. According to them, when any administrative decision or action found to be contrary to the laws, they often contact with the person who makes such decision or action to find out a solution to ensure rights and interests of citizens.

Figure 88: Judges’ opinions on the organisation actively protecting women’s interests and rights in adjudication

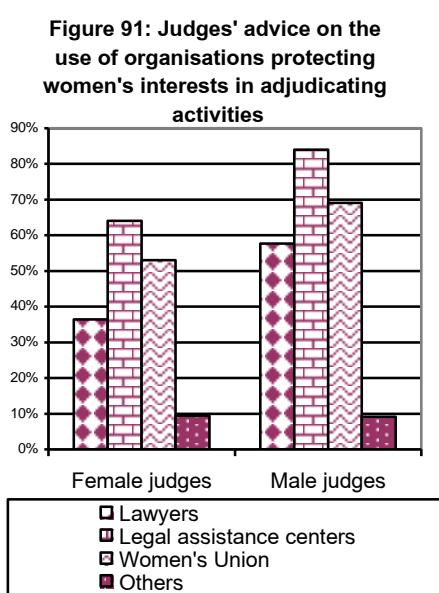


2. Assistance organisations for women in adjudicating activities

The Legal Aid Centre is not the most active unit in protecting women’s rights and interests in adjudicating activities but this is the agency that male and female judges usually advise

female involved parties to employ to protect their rights and interests in adjudication (see Figure 88). According to a report of the Legal Aid Department, more than 30% of cases supported by legal aid institutions at localities are those involving females²²⁴.

The survey result has shown that, grass-roots Women Unions have actively protected women's interests in proceedings activities and they are the agency being most trusted and counted on by women. The network of Women Unions is wide with operation over years; as a result, a lot of women learn about it. The agency also plays a certain role in the political structure in localities; hence, people believe in its sponsoring capacity meanwhile not many people, especially women, know about the existence and operational functions of Legal Aid centres. Therefore, several people have not accessed these agencies when they have to participate in proceedings. Only 2 per 21 in-depth interviewed people have heard about Legal Aid institutions but they do not know clearly how such agencies could support the people.



As accessed by judges, lawyers take a modest position in the active assistance to protect rights and interests of women. But they are most recommended for female litigants by judges, only after Legal Aid Institutions (see Figure 89). From practical surveys, the Research Team does not see any lawyer practicing organisation specialising in protecting interests of women or in family and marriage - related cases. Activities of providing legal aids for the poor, disadvantaged people, and women of bar associations and law offices are dim, except some bar associations coordinating with relevant agencies.

12 over 12 interviewed lawyers are proud of the Legal Aid activities that their law firms provide to women and disadvantaged groups. However, such activities are not held regularly but on case by case basis. For each case, the lawyers decide the fee or assistance methods at their own discretion.

16 among 21 people experiencing in-depth interview say that if they have an issue at court, they will find a lawyer to protect their rights and interests even though they know it is costly for lawyer's participation. The remaining 5 out of 21 people tell that they will ask for the assistance from the Women Union, and 3 among 5 of them have received the consultancy from the Women Union regarding the procedures at courts and had them seek for a lawyer or introduce to a Legal Aid center. However, among the interviewed people, none has used services of a local Legal Aid center. Only 2/21 people know about the name of the Legal Aid center. In courts where the Research Team conducts the survey, none of the courts allow the Bar association or Legal Aid center to have a working office or communication place at a convenient or easily-to-find location at the head quarter of the court. In several courts, contact information of bar association, law firms and Legal Aid centers are gathered in a contact book. The contact book is placed publicly in the reception area of some courts while it is only given out when the people ask court staff at other courts to seek for a lawyer.

²²⁴ Role of legal assistance activities in promoting legal enforcement on gender equality in Vietnam, Ta Thi Minh Ly, the Director of the Legal Aid Department.

21 out of 21 people expect the contact information with Bar Associations, law firms, Legal Aid centers, Women Unions, jurist associations, and so on is put public at open areas at the head offices of courts so that the people may easily access.

Subconclusion:

The SPC should conduct a scientific research on improving the proceeding procedures to ensure GE in proceeding activities; accordingly, women will not have to experience difficulties in their implementation of proceeding procedures and will feel confident to have the courts resolve their matters.

The SPC should set up toolkits or manuals on proceeding procedures for women for each type of cases so that they can themselves ensure their rights and interests, such as the toolkit for guiding procedures to resolve a divorce case, etc.

The SPC should develop toolkits and manuals for judges and court staff on how to avoid gender bias in adjudicating activities. Court personnel should be trained carefully how to apply such toolkits and manuals.

The SPC and local courts should facilitate bar associations, law firms, and Legal Aid centers, etc. to introduce the services of such organisations protecting citizens' rights and interests to involved parties at courts so that involved parties could easily seek for and select the protector for their legitimate rights and interests.

PART D

CONCLUSIONS AND RECOMMENDATIONS

The study of gender and gender equality matter in the tribunal system will improve not only the state's legislation but also the independence and adjudication quality of courts and also bring fairness to the people.

Through the study and survey results as aforementioned, the Research Team draws the following conclusions:

1. The cultural structure of Vietnam is very complicated. This results in the formation of various viewpoints and thoughts which are very different and even contradictory on the status of women. Such identification has affected legislation across feudal periods. There were some legislations recognised role of women in the society but still limited and unequal with men. All these cultural and legal heritages have influenced the thinking about GE of Vietnamese people presently.

Approaching knowledge on GE is made not only from political perspective but also from cultural perspective. Various approach perspectives will help judges avoid gender bias in their adjudication and handling of relationships in the internal tribunal sector.

2. Vietnamese Government has made much effort since national liberty for promotion of gender equality and women's advancement for revolutionary ideals and human rights. Such effort has impacted the formation of new cultural identifications on GE, in which women have day by day played an increasingly active role in the social life.

The objectives of Vietnamese Government on gender fairness also aim at improving the possibility of women to access justice in the society and setting a legal framework on women protection.

3. The Vietnamese Socialist Government has set up various organisations to protect legitimate rights and interests of citizens in general and women in particular since its establishment. In the long history, such organisations have proved their effectiveness in the protection of women's rights and interests, improvement of the awareness on "gender" and "gender equality" and produced positive influences on the possibility of women to access justice.
4. The SRV possesses a system of legal documents on various aspects which ensure the GE. But in order to ensure the GE during application of such documents, the applicants are required to have profound understanding of the contents of provisions as well as knowledge on GE. Any incorrect or incomprehensive understanding on GE may lead to dogmatic and wrong application of law regarding gender.

Although legislation plays an important role in the assurance of GE, but in order to this legislation actually applied (or in other words, penetrated) into the common life, it requires that law enforcement agencies must have proper awareness on GE.

In the context where legislation still contains confusions, overlaps, and gaps, the role of tribunal sector to ensure GE is crucially important.

5. The proportion of female judges of Vietnam in different court levels is rather high in comparison with that of some other countries. This indicates that Vietnam endeavors to ensure GE in political and governance activities. Numerous female judges and female court staff have contributed to the protection of GE in tribunal activities and the improvement of the women's possibilities to access justice.
6. Qualifications of female judges have met requirements legal stipulations regarding judge career. In order to further develop their capacity, female judges also need to supplement their proficiency with foreign languages as well as computer skills to maximise their working performance, take full advantage of the knowledge brought from information source in electronic data such as internet, intranet and promptly obtain the information and the professional assistance from higher courts.
7. The rule of "anybody can make a mistake" (*nhân vô thập toàn*) has proved that an adjudication system with only males or only females working will not be suitable, but the adjudication system requires a module balanced in terms of gender, which is reasonable and conformable since it will facilitate both males and females to supplement each other regarding gender capacity. Strength of women will cover the weakness of men and vice versa.
8. Good implementation of GE in the court system will ensure international standards on human rights that Vietnam has participated and committed such as CEDAW. It will also eliminate the barrier to the comprehensive growth progress of economy and society of a nation. At the same time, the protection in terms of legislation aspect directly impacts the capacity of full participation of women and men in all aspects of cultural, social, economic and political life. Such matters require strong commitments from the highest state bodies and the SPC. Leaders of the tribunal sector must understand the significance of GE in the promotion of comprehensive development of the sector and the perfection of the whole adjudicating system.
9. Tribunal sector should set forth strategies and action plans to enhance awareness on GE and eliminate "gender bias" for judges and court staff of the tribunal sector so that the court system will be an organisation system changed thanks to GE objectives and having gender responsibility.
10. Training programs and courses on GE and the advancements of women must be designed towards intensiveness and specificity so that judges are fully aware that achieving "GE objectives" means obtaining justice in adjudicating activities. These training programs and courses should also notice to integrate factors of the courtroom culture.
11. The tribunal sector should set on top priorities the training contents on the mission against women and children trafficking, prostitution, family violence and illegal marriage, especially for border provinces; and secondly, offer specific action plans to assist female judges/female court staff and thirdly, focus on avoiding gender discrimination inside the tribunal sector.
12. Many male and female judges and court staff have not fully understood the nature of GE and the relation of GE with adjudicating activities, the relation between male and female staff within the sector and specific programs to support female in working. This requires

the tribunal sector to establish prioritised program and mission for GE work and women advancement in the tribunal sector.

13. Training courses and knowledge training courses concerning “gender” should be popularised to the entire judges and court staff, not to the persons who are taking specific tasks only.
14. Tribunal sector must define the priority, strategies, and plans to strengthen the organisation of the tribunal sector on basis of analysis from gender perspective to ensure the participation proportion of female in the sector so as to reduce the gender inequality within the judge staff.
15. Several theoretical and practical studies, including this survey, have indicated that the salary of court staff has strong relation with adjudication quality, further study of judges and court staff, and corruption prevention. Generally, the survey has shown that the current salary of judges and court staff of both genders is considered low and it could not ensure their life, especially female judges and court staffs having married.

Therefore, in the progress of judicial reform to improve adjudication quality, the tribunal sector and governmental bodies should have plans to increase the salary for judges and court staff, in which the way to increase salary with consideration of GE factor for female judges and court staff of the sector should be studied.

16. Judicial workload has a close connection with adjudication quality and further study for professional improvement of judges and court staff. Judicial workload is a challenge to female judges in several localities where they must both undertake professional tasks and assume housework. The SPC needs to promote reform in the court structure so that first instance cases of district courts could be shared within the region.
17. Pressure from the family’s awareness and housework might be significant challenges to female judges and female court staff in Vietnam where the women are always deemed to be responsible for all housework. In order to help women in the tribunal sector to lessen pressure from their families, the tribunal sector needs to have plans to assist women for releasing their house workload, such as developing kindergarten, schools for their children.
18. Professional capacity is not considered as a big challenge for women working in the tribunal sector. Women could undertake judicial tasks with similar professional requirements as those applied to male judges. However, female judges and female court staff also need to pay attention to their own psychological characteristics, their family and social circumstances to avoid the situation of "being happy with what they have" after becoming judges. They must make further effort in their career path.
19. Attitude of male judges is a challenge to female judges, which is similar to the attitude of male court staff to their female colleagues. Such issue exists not only in Vietnam, or in tribunal sector but also in many other countries and other sectors. This challenge impacts remarkably to career development of female judges and female court staff in particular and women in work in general.
20. Appointment procedures still reveal several unclear points, many steps are still dependent on the subjective will of some individuals, and hence, the appointment result

may be affected with gender bias, which may cause unfairness to women in judge appointment. To improve such situation, it is advisable to eliminate or cut down steps and procedures for selection which are affected by subjective decisions in judge appointment procedures.

Family circumstance of female staff should also be taken into consideration when the location for their assignment is allotted.

21. So far, the tribunal sector has not had any sectoral program for caring the health of court staff in general and female staff in particular, meanwhile, health is an essential issue for work in any industry. While several sectors in the society have their own institutes or hospitals for research, care and treatment of occupational diseases and labour health, the tribunal sector does not. The reality requires the SPC to develop a comprehensive health care program for its personnel so that they can obtain better adjudicating performance. Women health care and maternity health care should also be paid much attention in this program.
22. The independence of judges is a constitutional principle. To ensure this "*independence*", legislation and organisation mechanisms of the court system must be built correspondently. The relationship between judges and court leaders, local authorities and among judges needs to be legalised specifically to exclude all acts of infringing the independence of judges.
23. The independence of judges or courts will bring an adjudication institution which is "*gender neutral*" and promotes gender understanding and sensitivity of judge staff. If so, the "*equality*" in adjudication will be enhanced and GE in the society will be strengthened.
24. The case assignment must be transparent and scientific in terms of gender that will improve the quality of case settlement. Opinions that women are not appropriate for some types of cases are not proved to have sufficient scientific basis.
25. The improvement of professional qualifications for judges and court staff is a critical task which has been proposed in Resolutions of the Party on judicial reform. In order to realise these Resolutions effectively, the tribunal sector should mention gender and sex differences in developing training courses, seminars, and workshops to advance knowledge for staff of the sector.
26. Survey results show that female judges and female staff have not been paid much attention in training their knowledge. The proportion of female participating regularly in training programs is not high and is not distributed unevenly.
27. Regarding contents to be fostered and trained, the proportion of female judges looking forward to be fostered with knowledge of substantive laws is the highest, the second is proceeding skills and experience, the third is social knowledge and the final is foreign languages.
 - a. Knowledge on civil laws is the most highly expected content for training, especially knowledge of the legislation on land and inheritance. Knowledge of criminal laws ranks the second of expectation with the needs of training about new types of crimes and skills to control the hearing toward adversary

procedures. Commerce – business draws concerns thirdly. In this field, laws on economic contracts and intellectual property draw the most attention of judges.

- b. Regarding the needs for training proceeding skills and experience, female judges and female court staff pay special attention to "skills for studying and searching evidences and materials", which is selected as the first priority and "interview skills" option is the second priority.
 - c. Regarding the needs of being fostered with "social knowledge", "psychological knowledge" is the option chosen by several correspondents. If female personnel are well trained with this knowledge, adding their advantage of "psychological sensitivity", they could make an advantage of women in adjudicating activities. The tribunal sector also need to conduct activities to support women within the sector to improve their own "social knowledge" to serve people better.
28. Frequency for talks, training courses, and seminars should only be held once per six month or when a "new legislation" is promulgated. Duration of each training course or seminar should not be too long for women, preferably from 3-5 days or 1-2 days depending on its content.
29. The best venue, which is chosen the most, is in "other localities" so that participants could concentrate on their study. In choosing locations, it is suggested to consider so that judges from various localities could participate; as a result, social capital of women regarding relations, adjudication and life experiences could be shared and supplemented. Organisation based on geographical areas with similar cultural and social conditions should also be noted. Concurrently, the tribunal sector should also attach training work with creating relaxation opportunities for participants.
30. To ensure GE during working hours, the tribunal sector also needs to research and build a flexible working time table for women within the sector in pregnancy and maternity leave and for both male and female in the parental period where their babies are small. Flexible working schedule will ensure the productivity of judges and court staff, ensuring the life of those who work in the tribunal sector and creating the occupational attraction for the tribunal sector.
31. The SPC should conduct a scientific research on improving the proceeding procedures to ensure GE in proceeding activities; accordingly, women will not have to experience difficulties in their implementation of proceeding procedures and will feel confident to have the courts resolve their matters.
32. The SPC should set up toolkits or manuals on proceeding procedures for women for each type of cases so that they can themselves ensure their rights and interests, such as the toolkit for guiding procedures to resolve a divorce case, etc.
33. The SPC should develop toolkits and manuals for judges and court staff on how to avoid gender bias in adjudicating activities. Court personnel should be trained carefully how to apply such toolkits and manuals.
34. The SPC and local courts should facilitate bar associations, law firms, Legal Aid centers, etc. to introduce the services of such organisations protecting citizens' rights and

interests to involved parties at courts so that involved parties could easily seek for and select the protector for their legitimate rights and interests.

Based on the above conclusions, this report proposes with the SPC the following matters:

I. LONG TERM OBJECTIVES

1. *Training knowledge for judges and court staff:*

a. Training social and professional knowledge for judges and court staff:

- During the construction of short-term knowledge training programs or courses for judges, the SPC should pay attention to female judges and female court staff who are in need. Training knowledge of substantive laws is on the top priority, then adjudicating skills and foreign languages, computer skills.
- The SPC should consider the training content for each locality to be relevant to characteristics of case types of the locality.
- In developing the training plans, the SPC should take into account the frequency for workshops, training courses, and seminars, which should only be held once per six month or when a "new legislation" is promulgated. Duration of each training course or seminar should not be too long for women, preferably from 3-5 days or 1-2 days depending on its content.
- Lecturers of training programs should be diversified, including legal experts or those who study laws or directly participate in drafting laws and experienced judges.
- Participants in the training programs should be allocated for those who are in needs.
- Training programs for female judges need to take into consideration factors of age, marital status and health to ensure GE in training activities.

b. Training GE knowledge for judges and court staff:

- The training gender and GE knowledge for judges and court staff needs to be paid proper attention. It should be identified that a judge who has deep knowledge on "gender" and GE will eliminate gender bias in adjudication and internal relationship of the tribunal sector, ensuring justice, improving the possibility to access to justice of women and reducing pressure on the attitudes of male colleagues toward female ones.
- It is necessary to build a curriculum and to conduct regular training on GE knowledge with specific characteristics of adjudicating activities scientifically and with courtroom culture.
- Gender knowledge training programs need to be held regularly with actual high quality for both men and women in the tribunal sector, avoiding trite and hollow situation and avoiding the attention of only female judges or other judges who are in charge of cases on women trafficking and prostitution.

- It is advisable to build a frame program and regularly train general social knowledge for female judges and female court staff to enhance their "social knowledge" so that the strength of female could be promoted in adjudicating activities.

2. Activities on GE in the tribunal sector

- Studying and specifying the required minimum proportion of female participation in the tribunal sector to reduce gender inequality situation in the judge staff.
- Studying and promulgating on workload requirements appropriating for women in the sector.
- Proposing measures to support women of the sector in their houseworks to lessen family pressures on female judges and female court staff.
- Studying and reforming processes and procedures for appointing judges toward more transparency and simplicity with shorter time to limit the impact of subjective factors and exclude gender bias;
- Studying extension of the judicial term so that judges could find secure in their judicial job. This issue is not only to ensure the interests of judges and gender equality but also to meet the requirements of the judicial reform under the resolutions of the Party.
- Developing a comprehensive program of health care for all staff of the tribunal sector so that the adjudication performance will be better. The program should also pay attention to women's health care and maternity health.

3. Gender equality with the independence and activities of judges

- The SPC needs to develop legal regulations ensuring the independence of judges to bring about "*gender neutral*" of adjudicating institution. These legislations should clearly identify the relationship between judges and court leaders, local authorities and among judges in order to eliminate all acts of infringing the independence of judges.
- The SPC should issue criteria and procedure for assignment of cases to judges toward transparency and scientificness in terms of gender to improve the quality of case settlement.
- The SPC should set forth regulations on working timetable scientifically and flexibly to facilitate the work of women within the sector during pregnancy, maternity leave and of both male and female in the period where their babies are small.

4. Equal adjudication in terms of gender

- The SPC needs a scientific research on improving proceeding procedures, taking "*gender*" factor into consideration to ensure GE in proceeding activities.

- The SPC should produce toolkits or manuals on court procedures for women for each type of cases so that they can themselves protect their rights and interests, such as the toolkit guiding procedures to resolve a divorce case, etc.
- The SPC should develop toolkits for judges and court staff on how to avoid gender bias in adjudicating activities. Court personnel should be trained carefully how to apply such toolkit.
- The SPC and local courts should facilitate bar associations, law firms, Legal Aid centers, etc. to introduce the services of such organisations protecting citizens' rights and interests to involved parties at courts so that involved parties could easily seek for and select the defenders for their legitimate rights and interests.

II. IMMEDIATE OBJECTIVES AND ACTIVITIES

In the five coming years, the SPC should carry out the following activities:

1. *Training programs for judges and court staff:*

a. Training programs for judges and court staff:

- Setting priority for training of civil laws, especially knowledge of legislation on land and inheritance; next, training of criminal laws knowledge regarding new types of crimes and skills to control hearings toward adversary; and then, focusing on commerce – business field with concentration on the laws on economic contracts and intellectual property.
- Prioritising the training of proceeding skills and experience for female judges and female court staff, especially paying attention to “skills for studying evidences and materials” and “interview skills”.

b. GE training for judges and court staff:

- It is necessary to develop a curriculum and to conduct regular training on GE knowledge with specific characteristics of adjudicating activities scientifically and factors on lawcourt culture should also be noticed to be integrated.
- It is advisable to develop a curriculum and regularly train general social knowledge for female judges and female court staff to enhance their “social knowledge” so that the strength of female could be promoted in adjudicating activities.

2. *Activities on GE in the tribunal sector*

- Making a study on the required minimum proportion of female participation in the tribunal sector to reduce gender inequality situation in the judge staff. Such proportion needs to ensure gender balance and ensure that the adjudication body can be neutral in terms of gender.

- Conducting a study on reforming processes and procedures for appointing judges toward more transparency and simplicity with shorter time to limit the impact of subjective factors and exclude gender bias. This study will serve the task of drafting the new Law on Organisation of the People's Courts.
- Conducting a study on extending the term of judges. This study will serve the task of drafting the new Law on Organisation of the People's Courts.
- Conducting the development of a comprehensive program of health care for all staff of the tribunal sector so that the adjudication performance will be better.

3. Gender equality with the independence and activities of judges:

- Carrying out a scientific research to create the basis for establishing a working timetable scientifically and flexibly to facilitate the work of women within the sector during pregnancy, maternity leave and of both male and female in the period where their babies are small.

4. Fair adjudication regarding gender

- Conducting a scientific research on improving proceeding procedures, taking "gender" factor into consideration to ensure GE in court activities. This research will serve the draft of the new Law on Organisation of the People's Courts and the new legislations on criminal and civil procedures.
- Making toolkits or manuals on court procedures for women for each type of cases so that they can themselves protect their rights and interests, such as the toolkit guiding procedures to resolve a divorce case, etc. Such toolkits should be issued free of charge or sold at a low price.
- Developing toolkits for judges and court staff on how to avoid gender bias in adjudicating activities.
- Conducting a study on the cooperation mechanism between local courts and local bar associations, Legal Aid centers regarding information about services of organisations protecting rights and interests of involved parties at courts.
- The SPC should coordinate with the National Bar Association, local bar associations or the Department of Legal Aid - the Ministry of Justice to develop toolkits to guide court-related citizens to employ lawyers, barristers, and other protectors to protect their legitimate rights and interests.

DANIDA and international organisations can support the SPC in implementation of long-term or immediate objectives as aforesaid. Experiences of other countries will be very useful for the SPC to realise the above objectives.

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- Directive No.191/2003/CT-CA of the Supreme People's Court on enforcement of activities for the advancement of the Tribunal sector.

PART E

ANNEX

Questionnaire and survey figure tables



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