



Review of
10 YEARS
of implementing the
LAW ON GENDER EQUALITY

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ABBREVIATIONS/ACRONYMS

APHEDA	Australian People for Health, Education and Development Abroad
ASEAN	Association of South East Asian Nations
CCIHP	Centre for Creative Initiatives in Health and Population
CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEPEW	Centre for Education, Promotion and Empowerment of Women
CGFED	Research Centre for Gender, Family and Environment in Development
CRC	Convention on the Rights of the Child
CSA	Committee for Social Affairs of the National Assembly
CSAGA	Centre for Studies and Applied Sciences for Gender, Women and Adolescents
DVPC Law	Domestic Violence Prevention and Control Law
EIT	Enterprise's Income Tax
GBSS	Gender-biased sex selection
GBV	Gender-based violence
GE Law	Law on Gender Equality
GED	Gender Equality Department
GEM	Gender equality mainstreaming
GOV	Government of Viet Nam
GSO	General Statistics Office
HCMC	Ho Chi Minh city
HRBA	Human rights-based approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEC	Information, Education and Communication
ILO	International Labour Organization
iSEE	Institute for Studies of Society, Economy and Environment
ITT	Information Technology Training
LNDs	Legal Normative Documents
MARD	Ministry of Agriculture and Rural Development
MOCST	Ministry of Culture, Sports and Tourism
MOET	Ministry of Education and Training
MOH	Ministry of Health

MOIC	Ministry of Information and Communication
MOJ	Ministry of Justice
MOLISA	Ministry of Labour, Invalids and Social Affairs
MPI	Ministry of Planning and Investment
NA	National Assembly
OEDC	Organization of Economic Cooperation and Development
PC	People's Council
PCom	People's Committee
PIT	Personal Income Tax
SRB	Sex ratio at birth imbalance
TOR	Terms of reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNEG	United Nations Evaluation Group
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
VAT	Value Added Tax
VCCI	Viet Nam Chamber of Commerce and Industry
VFF	Viet Nam Fatherland Front
VWU	Viet Nam Women's Union
WHO	World Health Organization

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EXECUTIVE SUMMARY

Background and rationale for the review

Viet Nam is signatory to numerous international instruments addressing gender equality, women's rights and women's empowerment. In 2006, the country promulgated the Law on Gender Equality which mandates Government bodies to fulfill their responsibilities on gender equality and to ensure that violations are addressed. Targeted policies and measures such as the National Strategy on Gender Equality 2011-2020, the Action Plan on Gender Equality 2011-2015 and 2016-2020 and other legislation delineate the responsibilities for the implementation of the Law.

After 10 years of implementation the Law on Gender Equality, the Government of Viet Nam (GOV) will amend and supplement the Law. The Ministry of Labour-Invalids, and Social Affairs (MOLISA) has been assigned to conduct this task and has requested the United Nations Population Fund (UNFPA) Country Office Viet Nam to technically support an independent review of the Law. UNFPA contracted an international human rights specialist and two national legal experts for this purpose. The review was conducted between June 2018 and June 2019.

The review focused on the assessment of the Law's *consistency* in relation to international human rights standards and other Vietnamese laws and the *effectiveness* of the implementation of the Law efforts by duty bearers since it came into effect from 2007 to 2019. The review focuses on identifying key gaps to inform the revision of the Law and ensure better implementation. Finally, the review provides recommendations for the Law amendment and supplementation.

The review relied on a mixed method approach for data gathering using document review and interviews. A total of 58 sources of international human rights standards including soft laws from the UN, ILO and ASEAN were reviewed as well as more than 50 national legal normative documents. Semi- or structured interviews were conducted at the central level with 32 governmental duty bearers, Hanoi-based civil society organizations working to promote gender equality, and UN agency representatives. Finally, 260 interviews were conducted at the provincial, district and commune level with duty bearers and rightsholders (*women, girls, men and boys*) from five sample locations selected to be geographically and socio-demographically diverse: Ho Chi Minh City, Gia Lai, Bac Ninh, Lao Cai and Tra Vinh.

Key findings

Consistency of the Gender Equality Law with the international human rights standards

The Law is mostly consistent with international human rights standards reviewed, including binding treaties ratified by Viet Nam, intergovernmental agreements and outcome declarations and soft laws. In particular, the Law is consistent with the principle of substantive equality that seeks to ensure women enjoy similar outcomes as men do. The Law contains special measures to promote women's equality that are consistent with CEDAW and other international standards,

including political representation provisions. The Law also considers multiple and intersection forms of discrimination against women in certain situations, namely rural women in impoverished conditions and ethnic minority women. Finally, the Law is consistent with awareness raising (*information, education and communication*) obligations in CEDAW.

Issues to address in the Law or other legislation. The review found the following provisions of the Law not being fully consistent with CEDAW or other treaties: i) while equality in culture is protected, the participation of women could be more explicit in order to address discrimination in traditional cultural practices; ii) family and social life does not appear to be as broad as CEDAW “*all fields of life*”; however, the Law provides a comprehensive list of social life to include a variety of political, social, economic and cultural sectors; iii) some social rights, e.g. education, focus on accessibility but not other dimensions of the right including non-discrimination in availability, adaptability and acceptability¹; iv) women working in family businesses not explicitly protected; v) sexual harassment is not recognized as a form of discrimination; vi) equal rights in terms of nationality are not recognized; vii) multiple and compounded forms of discrimination are only recognized in terms of rural poverty and ethnic minorities; and viii) gender mainstreaming is limited to the legislative process.

Omissions. This revision found some omissions in the Law which limit the progress on gender equality. The Law fails to consider indirect discrimination and gender identity (e.g. *gender is restricted to male and female*). The Law also fails to identify harmful practices as expected in CEDAW and the SDG 5.3. Finally, the Law does not clearly define prohibited acts, including GBV, and sanctions are not applied.

Consistency of the Gender Equality Law with other national laws.

The following groups of laws were analyzed in order to determine their consistency with the Gender Equality Law: i) laws regulating family life, ii) employment and labour, iii) political and public life, iv) health services; v) economic life; vi) education, vii) science, technology, environment, viii) information and communication; and ix) the justice sector. Consistency was assessed in the following categories.

- *Non-discrimination and gender equality provisions.* For the most part laws in the family, education, justice and health sectors include equality and non-discrimination guarantees. Laws in employment sector contain discriminatory provisions, as well as some equality rights provisions. Finally, some gender equality considerations, although limited, are contained in the laws regarding political and economic sectors. There are gaps and inconsistencies in the GE Law and Law on Laws related to gender mainstreaming in legislation.
- *Accommodation of biological or gender differences.* Laws in the following sectors accommodate men and women for biological or gender differences: i) Family:

¹ In describing non-discrimination and equality in social programmes the Committee on Social, Economic and Cultural Rights has used the standards or essential features of social, economic and cultural rights: availability, accessibility, adaptability, acceptability and adequacy. These features are analyzed in General Comments No. 13 (*Right to Education*), 14 (*Right to the Highest Attainable Standard of Health*), 19 (*Right to Social Security*) and 22 (*Right to Sexual and Reproductive Health*). The essential features or standards are defined in Annex A: Glossary of Terms.

presumed best interest of the child - child custody for young children - mothers given preference; ii) labour: workplace accommodations, including facilities for women in the workplace, maternity leave, and recently, paternity leave; and iii) justice: sanctions for administrative violations and criminal offences.

- *Special measures.* The following few laws contain special measures to promote gender equality: i) there are electoral quotas in the Election Law but measures to ensure women's political participation could be enhanced; ii) affirmative measures to ensure health services for women and children are included in laws regulating family life and health laws; iii) special measures are contained in laws regulating labour and employment including flexible work for female mother employees; iv) incentives in the economic sector are provided for businesses hiring women. This review found limited special measures for women and girls in education and in science and technology.
- *Explicit discrimination and stereotypes.* Different age of marriage for women and men are included in the Law on Marriage and Family. Labour sector laws include provisions that are discriminatory, such as different retirement age for men and women, different ages for pension eligibility between men and women, women's access to certain occupations are based on stereotypes rather than bona fide occupational requirements, likewise women are assumed to have limitations due to their menstrual cycle and are provided longer breaks during menstruation.

Effectiveness of the implementation of the Gender Equality Law

The effectiveness of the implementation of the Law includes an analysis of progress made and gaps remaining in the following elements that enable its implementation:

- *Legal and policy framework.* Legal and policy instruments were slow to be developed and enacted, leaving officials assigned with gender equality responsibilities without clear guidance.
- *National strategy on Gender Equality 2011-2020.* The majority of targets have not been achieved (e.g. targets in women in politics and senior management and most targets on equality in family life and elimination of gender-based violence), ten targets have no data or have incomplete data (e.g. all targets in gender equality in culture and information domains, one target on equal participation in education, and some targets in gender equality mainstreaming in legislative development processes); some targets have been achieved (e.g. all health and literacy targets and most targets related to women's participation in the economy), however some targets achieved early have not been able to be sustained over time.
- *State management.* Although a gender equality structure for the implementation of the Law was created, it is limited in terms of human resources, capacity and finance. Officials with gender equality responsibilities were found to misuse gender equality concepts such as gender equality mainstreaming. The review also found overlapping responsibilities among relevant ministries working on gender-based violence and the existence of no formal coordination mechanism at the national or local levels. Moreover,

the review identified that advances in gender equality mainstreaming in the legislative development process are due mainly to the work of the Parliament Committee for Social Affairs (PCSA) rather than the drafting bodies (*except for some drafting bodies*) and that gender-neutral language appears to be used to avoid gender-based analysis. Finally, gender equality mainstreaming was found to be very limited at the local level and insufficient in socio-economic planning processes.

- *Initiatives to advance gender equality.* The review found that there have been advances in the definition of gender indicators to be tracked by the General Statistics Office. Information, education and communication initiatives are the primary activity to increase awareness gender equality, however their effectiveness in changing attitudes and behaviours is not known. Initiatives from non-governmental organizations were found to complement state initiatives and adopt human-rights based approaches.
- *Inspection, handling violation and monitoring.* The review found that the state management agency has undertaken limited inspections and sanctions related to gender equality. A complaint management process on gender discrimination has not been designed. Finally, it was identified that the monitoring and oversight of the implementation of the Law at the local level the People's Council was very limited oversight.

Conclusions

Factors that have supported advancement of gender equality

1. Adoption of a substantive equality approach in law drafting that ensured consistency with international standards and national laws.
2. Organizing duty bearers work around a policy framework, such as the National Strategy.
3. Existing sex-disaggregated data, while apparently limited, allowed for the design of some targeted initiatives to address gender inequality.
4. Some engagement of men and boys in gender equality initiatives.
5. Special measures supporting progress toward gender equality.
6. Political will and the allocation of financial resources are both important to ensure gender equality activities are undertaken.

Factors that limit gender equality

7. Lack of integration in the GE Law of concepts such as indirect discrimination, multiple and intersecting forms of discrimination, all fields of life, and harmful practices. These gaps limit mainstreaming gender equality efforts in legislative proposals.
8. National policies not requiring mainstreaming gender equality in the GE Law, the Law on Laws, the Law on the Organization of the National Assembly, and the Law on the Organization of local government.

9. Lack of guidance for GE budget allocations under the Law on State Budget.
10. Strong gender stereotypes, explicit discrimination and lack of sufficiently ambitious special measures that bring about inconsistencies in national legislation with the GE Law.
11. Ineffective IEC activities that may reinforce gender stereotypes and traditional roles, fail to engage men or do not target community leaders and heads of patrilineal clans.
12. Delays in promulgating a complete legal and policy framework to support the implementation of the GE Law created obstacles for agencies, organizations, and individuals in fulfilling their responsibilities and tasks, because they did not have sufficient legal foundation, as well as concrete procedures for the implementation of the Law.
13. An insufficient legal framework creates gaps in implementation of initiatives.
14. State management of gender equality is restricted due to the use of the Committees for the Advancement of Women to coordinate gender equality activities. This has the effect of limiting gender equality activities to personnel issues rather than substantive issues in technical departments of ministries. limited institutional mechanisms.
15. The lack of clear, strong provisions on gender equality as a principle of operation of the NA and local government.
16. Relevant officials have limited understanding of gender equality concepts or their work is restricted to certain aspects of the GE Law, targets in the National Strategy, or provisions of related laws.
17. Gender equality being perceived as women's advancement which results in GE initiatives being focused on the promotion of women's rights.
18. Limited financial and human resources dedicated to gender equality which have resulted in limited activities at the central and local levels.
19. Special measures (*quotas*) in the field of politics and women in senior management are not producing the expected results.

Key recommendations

Revisions to legislation

Consider revisions to the Law on Gender Equality as follows:

- Expand the scope of the law to consider "*any field*" so that other sectors are included.
- Define gender equality terminology in keeping with CEDAW definitions.
- Recognize and provide for indirect or adverse effect discrimination.
- Define prohibited acts and clarify their sanctions.

- Define harmful acts resulting in gender inequality, including son preference, gender-biased sex selection, sexual harassment, early or forced marriage.
- Increase monetary sanctions for violations of gender equality and consider harmful acts as criminal and quasi criminal.

Consider revisions to other national laws as follows:

- Revise related laws to eliminate gaps as and enhance gender equality as defined in Part 3 and attached Annex G.
- Clarify roles and responsibilities related to gender-based domestic violence against women and gender-biased sex selection, both of which are manifestations of gender inequality.
- Revise the Law on Marriage and Family and the labour sector laws to adjust the age of marriage and the age of retirement to be the same for both women and men.
- Include clear and strong provisions on gender equality in the Law on the Organization of the NA and the Law on the Organization of the Local Government to ensure gender equality mainstreaming occurs.
- Develop policies on special measures for women who face multiple forms of discrimination.
- Revise the Law on the Promulgation of Legal Normative Documents to be consistent with the Law on Gender Equality and ensure gender equality mainstreaming is a requirement of all laws.

State management

- Create with a long-term perspective a ministerial level agency on gender equality or equality rights to ensure gender equality is prioritized in terms of political objectives and financial resources.
- Create gender equality functions within technical departments of each Ministry and local government to ensure gender equality is mainstreamed.
- Convert NCFAW to an inter-agency national committee on gender equality and convert CFAW to a committee for gender equality within central and local agencies.
- Intensify professional development programmes on gender equality to fill knowledge gaps identified.
- Provide clear, detailed guidance on the allocation of financial resources for GE purposes.
- Increase inspection and sanctions in priority areas, such as sex selective abortion and enterprises with discriminatory recruitment practices.
- Create a system to receive and handle complaints of gender-based discrimination.

Gender equality mainstreaming

- Strengthen gender equality mainstreaming in all public policies, laws and programmes by increasing training in relation to gender-based analysis, investing more resources in the process of verification, discussion, and promulgation of draft laws and draft resolutions, and integrating gender equality in budget allocation.

Priority gender equality initiatives

- Conduct in-depth studies on the effectiveness of special measures in the political and economic sectors for the purpose of adjusting them.
- Support evidence-based research to design targeted initiatives to address gender inequality in a local or regional context.
- Review IEC campaigns to ensure messages promote gender equality through a change in attitudes and actions.

Oversight of the Law

- Conduct topic-based missions to assess gender equality issues and hold hearings on urgent topics. Other Committees of the NA should have oversight mission within their jurisdiction.
- People's Council, Standing Body of the People's Council, Commissions of the People's Council should have more oversight missions on GE Law's implementation.

1. INTRODUCTION

1.1 Background and rationale for review

Viet Nam is signatory to numerous international instruments addressing gender equality, women's rights, and women's empowerment, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has adopted the Beijing Platform for Action, the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs), which take gender equality and women empowerment as a separate development goal.

In 2006, Viet Nam promulgated the Law on Gender Equality (or *GE Law*). It mandates Government bodies to fulfill their responsibilities on gender equality and to ensure that violations are addressed. Subsequent guidance documents and implementing decrees delineate the responsibilities of each agency or organization in organizing the implementation of the Law on Gender Equality. This includes targeted policies and measures such as the National Strategy on Gender Equality for the period 2011-2020, the Action Plan on Gender Equality (2011-2015 and 2016-2020), as well as the introduction and/or revision of other legislation of vital importance to the promotion of gender equality and the protection of women's rights and interests².

After 10 years of implementing the Law on Gender Equality, the Government of Viet Nam (GOV) will amend and supplement the Law to continue improving gender equality in Viet Nam. The Ministry of Labour, Invalids, and Social Affairs (MOLISA) has been assigned to conduct this task and has recently completed a report on 10 years implementation of Gender Equality Law 2007-2017. However, in order to provide scientific evidence and a good foundation for the amendment and supplementation of the Law, MOLISA has requested the United Nations Population Fund (UNFPA) Country Office in Viet Nam to technically support an independent review of the Law. UNFPA Viet Nam contracted three consultants, an international human rights specialist with evaluation experience and two national legal experts, to conduct the independent review over a period of 1.5 years from June 2018 - December 2019.

The review applies definitions of key terms (e.g. *gender, gender-based violence, sex, discrimination, empowerment and so on*) that are consistent with United Nations and Government of Viet Nam definitions. A glossary of terms and their sources is included in **Annex A**.

1.2 Specific objectives of the review

The overall objective is to: Review the Gender Equality Law and the implementation of the Law since it has been in effect from 2007, and to provide recommendations for the Law amendment and supplementation. The specific objectives are:

1. Provide an independent review of:

- The appropriateness of the Law with international treaties;
- The appropriateness of the Law with other related Vietnamese laws;

² Viet Nam Gender Briefing Kit (UN Viet Nam, 2016).

- The implementation of the Law since it has come into effect from 2007 to 2019;
2. To identify the gaps that need to be taken into account in the revision of the law as well as the gaps to be addressed to ensure better implementation of the law; and
 3. To provide recommendations for the amendment and supplementation of the law.

The Terms of Reference (*TORs*) note that the review will be used to provide concrete evidence-based information for MOLISA for the purposes of: i) revising the Gender Equality Law as stipulated in the Prime Minister's Decision No. 251/QĐ-TTg dated 13/02/2014 on promulgation of the Government's plan to implement the Constitution of the Socialist Republic of Viet Nam, and ii) to better implement the GE Law. An abbreviated version of the consultant's Terms of Reference (*TOR*) can be found in **Annex B**.

1.3 Users of the review

The primary users of the report will be the Government of Viet Nam, including ministries, the National Assembly (*NA*) and local People's Councils, and the UNFPA. The state management agency - MOLISA, line ministries, Provincial People's Committees and the Viet Nam Fatherland Front (*VFF*) will use the report for the purposes mentioned above. The consultants have conducted data collection and prepared this report with the intended uses and users in mind.

The UNFPA supports the Government of Viet Nam in its efforts to advance gender equality and will also use the results of the review to adjust their support according to the evidence provided and the recommendations made.

Secondary users are expected to include public policymakers, individual officials in government, civil society organizations, researchers, donor agency representatives, UN agencies and other professionals who are expected to find the report useful in their work.

1.4 Methodology

A Technical Proposal describing the approach and methodology for the review was developed and reviewed over a period of several months in 2018. The Technical Proposal included a review matrix with key questions, derived from the specific objectives of the *TORs*, and indicators organized around two internationally recognized evaluation criteria: Relevance and Effectiveness. The review matrix can be found in **Annex C**. This report responds to the review matrix questions from the perspective of the Law on Gender Equality and also the major responsibilities of States Parties in CEDAW, as the key treaty setting out international standards on gender equality.

Data collection involved a mix of methods, including structured or semi-structured interviews³ of individuals and small groups as well as document review.

³ Structured interviews followed predetermined questions in a template prepared by the international consultant for central and provincial level duty bearers, non-governmental organizations, and rightsholders. Semi-structured interviews were held with UN agencies.

Desk review of literature including analysis of primary (*international treaties, national legal normative documents*) and secondary documents (*institutional reports, statistics, publications, and academic articles*) was conducted by the three consultants. Over 55 sources of international human rights standards were reviewed by the international consultant, although not all are cited in the text: 09 treaties, 06 inter-governmental declarations, and over 40 soft law documents⁴. These international standards, along with secondary literature on gender equality in Viet Nam, contributed to the design of the interview protocols.

The national consultant reviewed national laws after preliminary issues had been identified from the review of international human rights standards, secondary literature, and preliminary results of central level interviews. Over 50 national legal normative documents were reviewed by the national consultant to assess consistency with the GE Law. See **Annex D** for the final list of international and national legal documents reviewed.

The consultants conducted interviews with 32 central level governmental duty bearers, Hanoi-based civil society organizations working to promote gender equality, and UN agency representatives. Limitations at the national level during data collection included the lack of availability of officials from the Ministry of Public Security for interviews. One deputy of the National Assembly was interviewed and reports of the National Assembly were reviewed to ensure the gender equality work of the Committee on Social Affairs of the National Assembly, responsible for mainstreaming gender equality in legislation, was considered in the analysis.

Table 1: Central Level Informants

Duty bearers		Civil Society Organizations researching or promoting gender equality		Multilateral Agencies	
MOLISA	1	CEPEW	1	UNFPA	1
MOH	1	CCIHP	1	UNDP	1
MOJ	1	CSAGA	1	UNODC	1
MOET	1	ISEE	1	FAO	1
MOIC	1	CGFED	1	UNESCO	1
Legal Aid	1	VCCI - VWEC	3	UN Women	1
MOI	1			WHO	1
MARD	2			IOM	2
MPI (and GSO)	2				
MOF	1				
VWU	1				
CFAW (former chair)	1				
Member of Parliament	1				
	15		8		9
Total: 32					

⁴ Documents such as general comments or recommendations and concluding observations on States Parties reports that are prepared by a treaty-body, such as CEDAW, form soft law. See section 2 and Annex A.

Over a four-month period, a national consultant collected data in five sample locations, selected to be geographically and socio-demographically diverse: Ho Chi Minh City, Gia Lai, Bac Ninh, Lao Cai, and Tra Vinh. A total of approximately 260 individuals were interviewed at the provincial, district and commune levels. Duty bearers at these levels included officials from People’s Committees; departments of Labour-Invalids and Social Affairs, Culture and Family, Health, Education, Industry and Commerce, Agriculture and Rural Development, and Justice. Officials from Legal Aid, Police and mass organizations (*Women’s Union and Youth Union were interviewed*). Ethical and security considerations were taken into account during interviews, especially those with rightsholders. The names of adults and school children were not recorded, and, in this report, no individuals are identified from any category of informant. See **Annex E** for a list of institutions and organizations interviewed.

Table 2: Number of Duty bearers and Rightsholders interviewed in provinces

Province	Duty bearers			Rightsholders				Informants by province
	Provincial	District/ Commune/ Ward	Duty bearer subtotal	Adults	Children	Organizations	Rights holder subtotal	
Bac Ninh	11	11	22	19	6	2	27	49
HCMC	7	20	27	21	9	1	31	58
Gia Lai	10	9	19	20	10	1	31	50
Lao Cai	13	18	31	14	4	2	20	51
Tra Vinh	11	10	21	21	9	1	31	52
Total	52	68	120	95	38	7	140	260

Limitations of the review

The primary data from interviews is reliable but limited in size. The restricted sample size was due to budget restrictions. Other limitations from the provincial level interviews include inconsistencies among data collection team members in posing questions and recording data, especially in the interviews with adult rightsholders. Also, the gender and age of rightsholders in three of five sample sites were not recorded consistently. It also appears that the consultants responsible for data collection either adjusted the questions slightly or the translation of the questions from English to Vietnamese were inaccurate. As a result of these deficiencies in interviews of rightsholders in the provinces, questions which were not applied consistently or where responses were confusing are not reported in this report.

1.5 Object of the review

In 2003 the National Committee on the Advancement of Women (NCFAW) and the Viet Nam Women’s Union (VWU) proposed the development of a law on gender equality to the National Assembly. The NA included it in the legislative agenda and drafting occurred between 2004 and 2006. According to a NCFAW representative,

the aim was to move beyond a definition of equality based on sex to a focus on define gender and gender equality, as well as the responsibilities of different stakeholders.

The GE Law does not address all areas of potential inequality or discrimination. In article 1 it states: *"This law provides for principles of gender equality in all fields of social and family life"*. In the article 4 (*gender equality goals*) the areas of focus of the Law are quite clear: *"create equal opportunities in socio-economic development and human resources development"* and *"enhance cooperation and mutual assistance between "man" and "woman" in all fields of social and family life"*.

The field of social life in the GE Law refers to the following seven sectors: political and public life; economy; labour; education and training; science and technology; culture, information and sport; and health. Family life relates to equal rights in marriage and the family. In total, therefore, the Law encompasses eight sectors.

Other provisions of the law relate to measures (*i.e. affirmative action or special measures*) to ensure gender equality and the responsibilities of agencies, organizations, families, and individuals in exercising gender equality. Consistent with international standards, measures taken to promote gender equality are not considered to be discriminatory, according to Article 6 (3). The State also commits to eliminate *"backward customs and habits"* that impede the achievement of gender equality (*Article 7 (3)*).

The GE Law identifies stakeholders with positive responsibilities (*duty bearers*) to further the objectives of the GE Law and citizen's responsibilities. These responsibilities are detailed in **Annex F**.

2. Gender Equality Law compared to the international human rights standards

The international consultant reviewed UN, ILO, and ASEAN human rights documents. These documents were organized and summarized according to the three categories of sources of human rights law as explained in the UNFPA publication Framework of Actions for the Follow up to the Programme of Action of the International Conference on Population and Development Beyond 2014. The highest level of human rights law are binding treaties and treaties ratified by Viet Nam were prioritized. The second category of human rights standards reviewed by the international consultant were intergovernmental agreements and outcome declarations (e.g. *the Beijing Declaration*). Finally, the third category of human rights standards is referred to as “soft law”. Documents such as general comments or recommendations and concluding observations on States Parties reports that are prepared by a treaty-body, such as CEDAW, form soft law.

In the analysis of the consistency of the Law on Gender Equality with international standards, the key point of reference is the CEDAW. That treaty requires state parties to: i) promote substantive equality between men and women in political, economic, social, cultural, civil or any other field; ii) prevent and eliminate discrimination against women, including harmful practices, by institutions or individuals through all appropriate measures; iii) establish national mechanisms to implement the treaty; and iv) ensure government, through law, policy or actions, do not discriminate against women.

This section will assess the Law itself and whether it conforms with CEDAW and other international standards. The assessment will be organized according to the first three requirements of States Parties under CEDAW, as set out above. The fourth responsibility related to non-discrimination by the government itself will be examined in the next section on consistency between the Law and other national legal normative documents and also in the section on the progress and obstacles in the implementation of the Law.

2.1 Consistencies between Gender Equality Law and the international standards

2.1.1 Equality between men and women in political, social-economic, family areas

Social and family life. Article 1 of the Law defines the law's scope as “*all fields of social and family life*.” *Social and family life* may limit the scope of the law, contrary to the duty of States Parties to ensure equality in all fields of life (*articles 3 of CEDAW, ICCPR, and ICESCR*); however, the Law appears to expand to other fields in other articles. Article 7 (1) the law goes on to describe equality guarantees in politics, economy, culture, society, and family. Subsequently, in chapter 2, the Law promotes gender equality in the fields of politics (*article 11*), the economy (*article 12*), labour (*article 13*), education and training (*article 14*), science and technology (*article 15*), culture, information and sport (*article 16*), public health (*article 17*), and the family (*article 18*). Still, other articles address gender-based violence and gender-biased sex selection.

Political representation. The provisions of article 11 recognizing equality rights in the field of politics (*political representation*) are consistent with international

standards. Article 11 (1) guarantees that “*Man and woman are equal in participating in state management and social activities*”. This is consistent with article 7 (b) of CEDAW (“*Equal rights to participate in the formulation of government policy and the implementation thereof and to hold public office*”). Article 11 (2) states “*Man and woman are equal in participating in the formulation and implementation of village codes, community regulations, agencies and organizations regulations*”. This provision is also consistent with CEDAW article 7 (b) “...*to participate in the formulation of government policy and the implementation thereof and to hold public office*”.

Substantive equality in socio-economic development and human resources development. Article 4 of the GE Law is consistent with international human rights standards, such as CEDAW, and Sustainable Development Goal 5 (*Achieve gender equality and empower all women and girls*). Article 4 states:

The gender equality goals are to eliminate gender discrimination, to create equal opportunities for man and woman in socio-economic development and human resources development in order to reach *substantive equality* between man and woman, and to establish and enhance cooperation and mutual assistance between man and woman in all fields of social and family life.

The Gender Equality Department (GED) of MOLISA agrees that substantive equality, or equality in results, is the goal of the law. Substantive equality recognizes that men and women are different and in addition, other characteristics that result in disadvantages, such as ethnicity or socio-economic situation, should be considered in policies and programmes for equality in results to be achieved.

Equality rights of ethnic minority men and women and rural women and girls. In article 7 (5) the State prioritizes gender equality activities in remote and mountainous areas of the country, in relation to ethnic minority groups and areas with indices of socio-economic disadvantage. Specific measures related to women workers in rural areas are included in the Law (*and discussed below*).

Intersectional discrimination recognized for women in rural areas. The Law also addresses discrimination by individuals and organizations and the particular circumstances of rural women. In article 7 (5), the Law states that gender equality activities will be implemented in rural areas (*remote and mountainous areas*), in areas where ethnic minority groups reside, and areas of extreme poverty. This is consistent with various international standards, including those in CEDAW article 14 (2), ASEAN Human Rights Declaration article 36, CEDAW General Recommendation 34, and also SDG goal 2.3 of the 2030 Agenda for Sustainable Development.

National Machinery. In 1988 the CEDAW Committee released General Recommendation No. 6 on Effective National Machinery and Publicity. The Committee recommends that States Parties “*establish and/or strengthen effective national machinery, institutions, and procedures, at a high level of Government,*

and with adequate resources, commitment and authority to: (a) Advise on the impact on women on all government policies; (b) Monitor the situation of women comprehensively; (c) Help formulate new policies and effectively carry out strategies and measures to eliminate discrimination”, among other activities to disseminate the Convention and report to the Committee. Article 7 of the GE Law sets out policy priorities for the government while articles 8 and 26 includes specific state management functions related to policy formulation, legal normative documents, and measures aimed at promoting gender equality. Articles 8 and 26 are somewhat repetitive but not contrary to international standards.

2.1.2 Special measures and accommodation of differences

Special temporary measures or measures to promote gender equality are not considered to be discriminatory (*article 6 (3) of the Law*). This is consistent with Article 4 (1) of CEDAW.

The GE Law includes provisions that identify special initiatives to help women reach substantive equality (*similar outcomes*) with men. For example:

- In the field of political participation, in article 11 (5) two provisions allow quotas to be set in relation to women representatives in the National Assembly and women holding management positions in state agencies.
- In the economic field, article 12 (2) introduces measures such as preferential tax treatment for enterprises employing women and access to credit for female workers involved in agriculture, forestry and fishery endeavours.
- In the field of labour, article 13 (3) allows special measures related to the percentage of men and women recruited in a workplace, training for female workers, and special occupational health and safety considerations for women.
- Article 14 (4) allows female officials and public servants to bring their children under three years old to training activities and to be supported by the government.
- Article 14 (5) permits education and training institutions to set targets for male and female students, presumably this allows for the government to set temporary special measures to encourage women or men to study in programmes where a gender is underrepresented.

As mentioned above, these special measures are consistent with international standards, including CEDAW article 4 (1) and the Committee’s General Recommendation 5.

Furthermore, article 6 (4) of the Law confirms that “Policies aimed at protecting and supporting the mother are not considered gender discrimination”. State policies on gender equality include, in Article 7 (2), “To protect and support the mother during pregnancy, giving birth and upbringing her child; to facilitate man and woman in sharing housework”. This accommodation of biological and gender differences is consistent with CEDAW and other international standards that protect women

or require accommodation⁵. The policy statement accommodating mothers, and other statements in article 7 of the Law, need to be reflected in other national legal normative documents to be effectively implemented.

2.1.3 Engagement with non-state actors and the adoption of IEC activities to eliminate discrimination.

Responsibilities and engagement of non-state actors. Article 7 (4) of the GE Law identifies the engagement of "*agencies, organizations, families, and individuals to take part in the gender equality promoting activities*" as a responsibility of the state management agency. International human rights law places the onus on the State Party, as duty bearer, to ensure respect and enjoyment of human rights. The responsibilities of non-state actors are less onerous but are recognized. For the most part, the State Party is required to regulate the conduct of non-state actors (CESCR General Comment No. 16, para. 20); however, the Vienna Declaration calls on non-governmental organizations, along with governmental institutions, "*to intensify their efforts for the protection and promotion of human rights of women and the girl-child*". More active engagement among businesses and labour organizations is expected in terms of the United Nations 'Protect, Respect and Remedy' Framework (Guiding Principles on Business and Human Rights) and in the ILO. For example, ILO Convention 111 on Discrimination in Employment, in article 3 (a) calls on each member "*(a) to seek the co-operation of employers' and workers' organizations and other appropriate bodies*" in promoting non-discrimination policies.

Education and communication on gender equality. The Law, in Article 23 (1) states "*The information, education and communication on gender and gender equality are the important measures to enhance the awareness of gender and gender equality issues*". The same provision goes on to commit the education system, agencies, organizations, and television programmes, among other media, to inform, educate and communicate on gender equality. Encouraging the promotion of gender equality is consistent with various international standards, including CEDAW General Recommendations 3 and 6. In CEDAW Committee General Recommendation No. 3, the Committee "*Urges all States parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women*". Article 23 (2) of the Law states that information, education, and communications on gender and gender equality shall be included in the education syllabus in schools, in activities of agencies, organizations, and community. This is consistent with CEDAW article 10.

2.1.4. Specific rights in different fields identified in CEDAW

Sexual and reproductive health rights. Gender equality in sexual and reproductive health rights is recognized in article 17 (1) and (2), consistent with articles 12 of CEDAW and ICESCR treaties. Article 12 (1) of CEDAW states "*States*

⁵ International standards require that women are not dismissed from employment due to pregnancy (CEDAW art. 11(2)), the government must provide a support system for mothers before and after childbirth (ICESCR article 10), and parents should allocate housework and resources owned by the couple in an even manner (CESCR General Comment No. 16, para 22).

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

Equal rights to participate in cultural, sporting and information activities. The GE law does recognize equal rights of men and women to participate consistent with CEDAW and the ICESCR treaties. Cultural participation could be made more explicit in terms of women's participation in ancestor worship and other traditional practices that have excluded women and perpetuated son preference.

2.2 Inconsistencies between Gender Equality Law and the international standards

2.2.1 Incomplete or inconsistent definitions

Indirect discrimination or adverse effect discrimination not recognized. The definition of discrimination in the Law (*article 5 (5)*) states that "*Gender discrimination indicates the act of restricting, excluding, not recognizing or not appreciating the role and position of man and woman leading to inequality between man and woman in all fields*"⁶. This definition of discrimination addresses direct discrimination but not indirect discrimination.

Indirect discrimination is also referred to as unintentional or adverse effect discrimination in some countries. Article 1 of the CEDAW states "*discrimination against women*" shall mean any distinction, exclusion or restriction made on the basis of sex *which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (emphasis added)*." In General Recommendation 28, the CEDAW Committee emphasizes that "*identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face*". This gap related to indirect discrimination is consistent with findings from interviews with central duty bearers. Neutral provisions of laws are often considered not to require any further analysis to identify possible negative consequences that limit women's equality with men. A comprehensive definition of discrimination requires a corresponding level of analysis of what constitutes discrimination, even when no discrimination is apparent.

Definition of gender restricted to equality between men and women. It is understood that the goal of the law is to address discrimination against women to achieve equality between men and women (*article 5 (3)*). While this is consistent with the text of CEDAW (*article 3*), in some countries, gender equality laws interpret gender more broadly than discrimination between men and women to protect gender identity and gender expression, consistent with the UN Declaration on Sexual Orientation and Gender Identity and more recent Human Rights Council

⁶ The Vietnamese version of the law states "*in the areas of society and family*" rather than "*all fields*".

resolutions. For example, Thailand's *Gender Equality Act, 2015* defines gender discrimination as "any act or omission of the act which causes division, discrimination or limitation of any right and benefit either directly or indirectly without justification due to the fact that the person is male or female **or of a different appearance from his/her own sex by birth**".⁷ Malta, in its *Equality Act for Men and Women*, includes protections based on sex/family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, gender identity, gender expression, and sex characteristics. Other countries have similar comprehensive equality rights legislation covering a range of protected grounds including sex, gender, sexual orientation, gender identity, gender expression, ethnic origin, nationality, and other grounds. There is a comprehensive approach to equality rights legislation taken in Sweden⁸, the United Kingdom⁹, and Canada.

Gender-based violence is not defined and actions not identified. In article 10 (3) of the GE Law gender-based violence is identified but not defined in article 5 (*interpretation of terms*) and no specific actions to address gender-based violence are assigned to duty bearers. Gender-based violence against women includes forced gender-biased sex selection, child marriage, forced marriage, medical procedures performed on women with disabilities without their consent, and criminalization of non-heterosexual sexual orientations¹⁰ and the criminalization of women working in prostitution (*CEDAW Committee General Recommendation 35*). Of course, violence should be sanctioned under administrative and criminal law, however, prevention mechanisms and types of gender-based violence could be included in the GE Law. CEDAW Committee General Recommendations 19 and 35 and the UN Declaration on the Elimination of Violence Against Women, 1993 provide comprehensive definitions of GBV.

Harmful cultural beliefs and traditions not identified. While the law mentions some harmful practices there are no explicit measures to address such practices as gender-based violence and son preference manifested through sex-selective abortion. Article 7 (3) of CEDAW states that the State will "...*apply appropriate measures to eliminate backward customs and habits hindering the implementation of the gender equality goal*". This is consistent with provisions of CEDAW (*articles 2 and 5 (a)*), the Vienna Declaration and Programme of Action (*s. 49, on the elimination of customs and practices that harm the girl child*) and CESCR General Comment 16 (*para. 19*).

Prohibited acts not clearly defined. The prohibitions aren't clearly defined. In article 10 (1) it is not clear how "*acts impeding man and woman from exercising gender equality*" are different from "*all forms of gender discrimination*". As mentioned above, article 1 of CEDAW states that discrimination includes a distinction, exclusion or restriction made on the basis of sex that has the effect of nullifying

⁷ Article 3, *Gender Equality Act*, B.E. 2558 (2015); <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act>

⁸ *Discrimination Act* (2008:567); <https://www.government.se/information-material/2015/09/discrimination-act-2008567/>.

⁹ *Equality Act 2010*; <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

¹⁰ CEDAW General Recommendation 35, considers laws criminalizing being lesbian, bisexual, transgender or intersex as discriminatory against women.

a woman's rights (*in various fields*). And finally, sub-section (4) lists "*Other acts that are strictly prohibited*". This type of vague provision does not advance the reader's understanding of prohibited acts. Admittedly, Decree 55 sets out sanctions for violations for specific acts by individuals but does not address adverse effect discrimination. Article 26 of Decree 55 also states that individuals can lodge complaints, but individuals do not appear to use this article, nor does information and education campaigns explain how to lodge complaints.

2.2.2 Fields of life need to be broader

The Law on Gender Equality is mostly consistent with CEDAW in terms of the promotion of equality but does not cover all fields considered by CEDAW. CEDAW requires States Parties to eliminate gender discrimination "*in all fields of life*". Article 1 of CEDAW seeks to promote equality between men and women in *political, economic, social, cultural, civil or any other field*. Setting aside the issue of the scope of the GE Law and whether it should address "*all forms*" of gender discrimination, the international consultant found that many of the provisions of the Law are consistent with international standards. Below, some types of discrimination and harmful practices that could be more comprehensive are identified.

All forms of discrimination in any area of life. Discrimination can take many forms in any area of life and the CEDAW Committee, in General Recommendation 28, explains in paragraph 15 that "*The term "discrimination in all its forms" clearly requires the State party to be vigilant in condemning all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging*". In paragraph 4 of the same General Recommendation, the Committee clarifies the fields of discrimination in the text of the Convention but expands the scope by stating "*in any other field*"¹¹. Clear and consistent use of "*fields*" is important to cover all forms of discrimination in all fields.

2.2.3 Protections in specific fields or rights need to be broader

Other or more explicit fields. The CEDAW is more explicit regarding equality in nationality, gender stereotypes in the media, and trafficking and prostitution of women for purposes of sexual exploitation. However, it is important to note that numerous laws of Viet Nam, including the Constitution of 2013 and the Criminal Code, address the fields or sectors recognized in CEDAW.

Gender equality in education focuses on access. The GE Law calls for equal access to education in terms of age and access to occupational and vocational training. While these provisions are consistent with CEDAW article 10 the provisions in the GE Law are narrow. Article 10 of CEDAW requires respect for gender equality and removal of discrimination in all aspects of education, including removal of stereotypes from education curricula, access to scholarships, access to education in rural areas and educational access during pregnancy. The CEDAW Concluding Observations from 2015 on Viet Nam report's included concerns related to

¹¹ Paragraph 4, General Recommendation 28, states: The objective of the Convention is the elimination of all forms of discrimination against women on the basis of sex. It guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, domestic or any other field, irrespective of their marital status, and on a basis of equality with men (*emphasis added*).

education: a lack of monitoring and resources in the education sector, gender stereotypes perpetuated in education materials, girls are segregated in traditional fields of study, and girls from ethnic minorities have limited access to all levels of education¹². The Committee on Economic, Social and Cultural Rights, in its General Comment No. 13 on the Right to Education, provides guidance on the content of the right to receive education according to the criteria of availability, accessibility, acceptability and adaptability.

Equality in Business and Employment. Equality is promoted in the economy (*entrepreneurship*) and in the workplace in articles 12 and 13 respectively; however, there are some omissions. In relation to article 12, women working in family businesses without pay could be included, to be consistent with CEDAW Committee General Recommendation 16. In relation to article 13, sexual harassment in the workplace is not mentioned; however, the Vietnamese Labour Code addresses workplace harassment to a limited extent.

Sexual harassment as a form of discrimination is not recognized. Sexual harassment, especially harassment in the workplace, is not recognized in the GE Law. Article 11 of CEDAW addresses discrimination in the workplace. In its General Recommendation No. 19 on article 11, The Committee states that: *"Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace"*¹³. Sexual harassment is addressed in the Labour Code, although not in significant detail.

Equal rights related to nationality and discrimination faced by migrant women. The GE Law does not recognize equality rights in terms of nationality. In the 2015 Concluding Observations, the CEDAW Committee noted that hundreds of Vietnamese women had lost their nationality who became stateless when attempting to apply for other nationalities. Likewise, the Committee noted with concern the barriers to access social services and justice facing internal women migrants (*who move for work reasons*) and migrants from outside Viet Nam who face exploitation. The Committee notes that women migrants into Viet Nam often work as domestic workers and do not enjoy the same level of protection as Vietnamese workers.

2.2.4 Gender mainstreaming

Gender mainstreaming is referenced only in terms of legal normative documents and not in relation to all government plans, policies and programmes (*although, arguably, if all LNDs have gender equality considerations integrated the resulting government programmes and services should also address gender inequality*).

2.2.5. Multiple forms of discrimination

Intersectional or multiple forms of discrimination. While special measures for members of ethnic minority men and women and poor women in rural areas are introduced, the Law does not explicitly mention multiple forms of discrimination or disadvantage that compound the effects of inequality and discrimination on

¹² Paragraph 26, Concluding Observations on the combined seventh and eighth periodic reports of Viet Nam, 29 July 2015 CEDAW/C/VNM/CO/7-8.

¹³ Paragraph 17, General Recommendation 19.

women from other disadvantaged groups. For example, there is no reference to disabled men, women, boys and girls. Also, special measures focus on women when in some matrilineal cultures, boys may be at a disadvantage related to education (*according to an interview with an education official*). Also, the CEDAW Committee, in General Recommendation 28 on the core obligations in the convention, reminds States Parties that *“Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity”*.

3. CONSISTENCY OF LEGAL NORMINATIVE DOCUMENTS WITH GENDER EQUALITY LAW

This section summarizes legal normative documents in terms of coherence between laws and the GE Law by sectors or groups of laws. Analysis of each sector includes: i) equality and non-discrimination guarantees in law; ii) provisions of laws that accommodate gender differences¹⁴; iii) special measures to promote equality in laws; and iv) discriminatory provisions or provisions inconsistent with the goal of the GE Law¹⁵.

Nine sectors or groups of laws regulating different spheres have been reviewed: i) laws regulating family life, ii) employment and labour, iii) political and public life, iv) health services; v) economic life; vi) education, vii) science, technology, environment, viii) information and communication; and ix) the justice sector. **Annex G** includes a complete analysis of the national legislation compared to the GE Law.

Prior to summarizing the review of national laws, it is important to note that the Constitution of Viet Nam, promulgated in 2013, guarantees gender equality in article 26, stating *“Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality... The State, society and family shall create the conditions for women to develop comprehensively and to advance their role in society... gender discrimination is strictly prohibited”*. The Constitution also recognizes equality in marriage and the family in article 36: *“Marriage must adhere to the principles of voluntariness, progressiveness, monogamy, equality and mutual respect between husband and wife... The State shall protect marriage and the family and protect the interests of mothers and children”*. Marriage between individuals of the same sex is not recognized.

3.1 Equality and non-discrimination guarantees

Various laws have explicit provisions that promote gender equality and protect against gender-based discrimination. Laws regulating family life contain the most detailed provisions related to gender equality and non-discrimination. Laws in justice, education and health sectors include general equality provisions based on sex or gender and specific provisions that advance women’s access to services.

¹⁴ The Law on Gender Equality recognizes the need for special measures to advance equality and also the policy that the State will protect and support the mother “during pregnancy, giving birth and (the) upbringing (of) her child” (article 7 (2)). These accommodations are consistent with CEDAW article 4 (2): “Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory”.

¹⁵ These discriminatory or inconsistent provisions will be identified as gaps and will include legal provisions that explicitly discriminate against women by introducing a distinction, exclusion or restriction based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women. Gender neutral language or balanced use of man and woman are legislative drafting techniques used to communicate legal equality. For example, the neutral word “(natural) person” or “individual” is used to refer to a woman or a man. This gender-neutral language may overlook accommodation or special measures required to respond to women’s circumstances.

Employment and labour laws contain provisions to advance gender equality and protect against gender discrimination. But at the same time, these laws include several stereotypical or discriminatory provisions (*to be discussed below*).

Sectors with very few gender equality provisions include laws regulating economic and political activities. While there are gender equality statements in the Enterprise Law, State Budget Law and the Land Law, many laws in the economic sector include gender-neutral provisions that may result in possible adverse effects on women. The potential adverse impacts of gender-neutral provisions are discussed below in “gaps”.

Laws regulating political life, such as the Election Law, Law on organization of the National Assembly, Law on the Organization of the Government, Law on the Organization of Local Government and the Law on the Promulgation of Legal Normative Documents (*Law on Laws*), include specific responsibilities of political and government institutions to consider and advance gender equality. It is particularly important that the Law on Laws sets out the legal framework for gender mainstreaming in the process of development, discussion, and promulgation of legal normative documents at both national and local levels.

A variety of other laws include provisions recognizing gender equality but without sufficient provisions setting out activities to advance gender equality. Such laws include the Law on Science and Technology, the Law on Environmental Protection, and the Law on Access to Information.

The Law on Forestry includes a number of provisions, such as the rights to consultation in forestry management and access to forestry activities and products. These policy provisions provide policy opportunities to discuss and incorporate gender and social inclusion issues and priorities.

3.2 Accommodation of sex and gender differences

Relatively few laws describe different treatment based on sex due to biological differences or gender differences between men and women. Accommodations based on sex or gender differences are included in family, labour and justice sector laws.

Accommodation related to the family. The Law on Marriage and Family of 2014 is consistent with this protection and support to the mother. Mothers have certain rights and benefits in relation to raising young children after divorce: Article 81 of Law on Marriage and Family of 2014 states that “*A child under 36 months of age shall be directly raised by the mother [after divorce], unless the mother cannot afford to directly look after, care for, raise and educate the child or otherwise agreed by the parents in the interests of the child*”. In some countries, as fathers become increasingly involved in childrearing these types of accommodations favouring mothers have been removed from laws¹⁶.

¹⁶ For example, the Divorce Act of Canada allows either parent to make an application for custody if the parents have not been able to come to their own agreement on custody matters. See: <https://laws.justice.gc.ca/eng/acts/D-3.4/page-4.html#h-173218>

Accommodations in the workplace. The Labor Code of 2012 (*as well as the Code of 2019*) also creates additional obligations for employers in their treatment toward female employees in Article 154 (*Article 136 of the 2019 Labor Code*), including appropriate washrooms for women and childcare services. Article 154 (*and 136*) is consistent with the GE Law and with international standards including CEDAW and ILO Conventions 111 (*Discrimination and Employment*), 120 (*Hygiene in Commerce and Offices*), and 155 (*Occupational Health and Safety*). The Labor Code of 2012, in Article 155 (*Article 137 of the 2019 Labor Code*), has several special provisions that accommodate female employees by offering women employment protection during their pregnancy, maternity leave, and lactation. For example, an employer is not allowed to assign an employee who is seven months pregnant to work at night, work overtime or go on a long work trip. In a remote or mountainous area, this provision applies to women who are six months pregnant. Another example of an accommodation given because of gender difference: women are entitled to six months of maternity leave and is guaranteed to return to her position. The Labour Code of 2109 at Article 139(5) provides that, in accordance with Social Insurance law, male married workers are entitled to paternity leave when their spouses give birth. The Law on Social Insurance provides employed, married fathers with a paid paternity leave entitlement of between 05 to 14 days (*or more in some special cases*). This regime applies only to male employees currently paying social insurance premiums at least for 6 months. The duration of paid paternity leave depends on the type of birth, number of children born and if the child has been adopted. However, the Vietnamese law still does not provide parental leave to the extent other countries provide fathers and mothers.

Accommodation of differences in the justice sector. Differences related to sex (*biological factors*) and gender differences related to childcare of young children are considered in the justice sector. For example, according to the Law on Handling Administrative Violations of 2012, pregnant women and women with children under 36 months of age are identified as individuals who have extenuating circumstances that should be considered in the determination of liability or type of sanctions. Accommodations in the Criminal Code of 2015 as amended in 2017 and the Criminal Procedure Code of 2015 adjust sanctions for pregnant women or women caring for children under 36 months of age. Accommodation for women committing criminal acts against their children in the post-partum period is also considered in the Criminal Code.

3.3 Measures to promote gender equality

Affirmative measures, temporary special measures or measures to promote gender equality¹⁷ that provide preferential treatment, specialized services or incentives to women to support the advancement of women's equality with men are identified in a number of laws.

Electoral quotas. This relates to the Election Law, articles 8 and 9, stating that a *minimum* of 35% of candidates should be women in the final list. The review of laws revealed other special measures to promote the equality of women and girls.

¹⁷CEDAW text refers to “*temporary special measures*” while the Law on Gender Equality refers to “*measures to promote gender equality*”.

Special measures to attend to the health of women and girls in laws regulating family life. Various laws prioritize health services for women and children. The Law on Children, in article 43 (2), states that the Government shall ensure the implementation of measures for carrying periodical examination for pregnant women and children according to age level; and in 43 (3) pregnant women, mothers caring for infants under 36 months, and children (*especially children under 36 months and abused children*) “shall be prioritized in conformity with socio-economic development conditions at each period”. The Law on DVPC provides for victims of DV, including women to have the right to access support services such as medical care. And the Law on Persons with Disabilities, in Article 23, gives priorities in health check-up and treatment to pregnant women with disabilities; and Article 45 provides for a monthly sanitary fee for women who live in social protection establishments with severe disabilities in their reproductive age.

Special measures in health laws. The Law on Medical Examination and Treatment of 2009 and the Law on Health Insurance 2014 provides for specific benefits to women. The Law on Medical Examination and Treatment of 2009 in Article 3 prioritize medical examination and treatment for pregnant women when. According to Article 21 of the Law on Health Insurance 2014, the costs for antenatal and natal care are covered by health insurance. These measures are in conformity with the GE Law by promoting gender equality for women.

Special measures in labour and employment. The Labor Code of 2012 has special provisions, in articles 153 to 160 (*articles 135 to 142 of the Labor Code of 2019*), exclusively applicable to female employees to encourage women’s equality in employment, consistent with article 12 (2) of the GE Law. Some of the special measures include systems of flexible working hours, part-time work or home-based work for female employees to encourage full employment.

The Law on Social Insurance, in various articles, provides for special measures to female employees, such as a maternity regime, including leave period for prenatal check-ups, leave period upon miscarriage, abortion, stillbirth or pathological abortion, leave period for childbirth, and a maternity regime for female employees as surrogate mothers and intended mothers.

Incentives in the economic sector. The Law on Support for Small and Medium Enterprises defines, in article 3, a woman-owned SME as an enterprise with one or more than one woman holding 51% or more of its charter capital and at least one of whom being its manager. According to Article 5 of this Law, in cases where more than one small and medium-sized enterprises are eligible for support, priority shall be given to those owned by women or employing more female workers. The Bidding Law provides that contractors employing 25% and more female workers will enjoy preferential treatment in domestic bidding for the supply of consultancy, non- consultancy, and construction and installment services. According to Article 15 of the Law on Enterprise’s Income Tax 2013, enterprises that carry out manufacturing, construction, and transportation activities and that employ many female workers shall be entitled to business tax reductions equal to the expenses spent for female workers.

Limited special measures to promote women's and girls' education and professional development. The Law on Vocational Education contains some provisions to support women learners who take part in elementary vocational courses and courses of up to three months. Article 22, Law on Science and Technology of 2013 provides that the State should promote the training and employment of female labourers in scientific and technological activities.

No special measures were identified in the justice and information and communication sectors.

3.4 Gaps

3.4.1 Laws with provisions that directly discriminate against women

Few laws explicitly discriminate based on sex or gender. Laws in the economic, education, health, justice, political life, information and communication or "other sectors" (*science and technology, forestry, environment*) do not include provisions that directly discriminate against women.

Discriminatory provisions evident in family sector law. In the family sector, the Law on Marriage and Family sets different age of marriage for men and women, stating men should be 20 years of age and women 18 years of age.

Discriminatory provisions evident in laws in the labour sector In the Labour Code of 2012 and other employment related laws the retirement age is set at 55 years for women and 60 years of age for men. The Labour Code as amended in 2019 by the National Assembly provides for the retirement age of 60 for women and 62 for men. The distinction between men and women would remain.

Similar to the Labour Code of 2012, The Law on Social Insurance in Article 54 and Article 55 provides for different ages of male and female employees as a condition for pension eligibility in a number of cases. In addition, there is a difference in the amount annually added monthly to pensions for male and female employees in Article 56. An age difference provision between husband and wife also exists for his/her relatives to be entitled to a monthly survivor benefit.

3.4.2 Gender stereotypes

Stereotypes related to women's work and abilities. Various provisions of the Labour Code of 2012 (*as amended in 2019*) and other Laws on labour while addressing special measures for women workers perpetuate stereotypes that no longer conform to international standards of gender equality. For instance, Article 153 (5) of the Labour Code of 2012 (*Article 135 (5) of the Labour Code of 2019*) reads: "To develop various forms of training to enable female employees to acquire additional occupational skills that are suitable to their physical and physiological characteristic and their motherhood functions". This measure aimed at protecting women generally because of their sex or gender reflects stereotypical myths about women's suitability, capabilities and appropriate role in society. Article 155 (5) of the Code of 2012 (*Article 137(4) of the 2019 Code*) states "During her menstruation period, a female employee shall be entitled to a 30-minute break in every working day". While this subsection may be construed as protective of women, it might

also constitute an obstacle to the recruitment and employment of women based on myths about work capabilities during women's periods.

3.4.3 Insufficient special measures, potential adverse impact on women, and other gaps

General gap. Laws regulating various sectors do not require the Government to issue sub-law documents (*e.g. implementing decrees*) to deal with gender issues in the sector in a more concrete manner.

Laws regulating the family have limited special measures or gender-based analysis. To advance gender equality from an early age, special measures could be recognized for girls in the Law on Children in relation to access to health (*including sexual and reproductive health*) and education. A gender-neutral perspective in the Law on Persons with Disabilities masks differences based on sex and gender. Very few provisions in the Law are designed to address the barriers women and girls with disabilities face in accessing education and employment opportunities, access to justice, access to sexual and reproductive health services, participation in political and public life, etc. The Law, in article 5, does not provide for social support for women with disabilities, while it does to children and elderly persons with disabilities.

A significant gap in the DVPC Law is that it is formulated in a gender-neutral manner despite the fact the most common type of domestic violence is violence against women committed by their husband or partner. The scope of the Law (*domestic violence of family member against another member*) is inconsistent with international standards of gender equality that focus on gender-based violence against women.

Weak provisions in the labour law. The Labour Code of 2019 does not address in sufficient details forms of gender-based discrimination in workplace, as well as the system for receiving and handling complaints on gender-based discrimination in labour and employment.

Sexual harassment at work is addressed in four articles of the Labour Code of 2012, although not in significant detail. The Labor Code of 2019 with 12 articles regulating sexual harassment has made significant steps forwards in this regard. However, the Labour Code of 2019 still omits some issues, such as: definition of sexual behaviours and workplace; sanctions for power holders who have committed sexual harassment acts at work; procedure for receiving and handling complaints on sexual harassment, etc.

The Labour Code of 2012 and 2019 and related Laws lack provisions addressing equal payment for the same job, as well as for more appropriate gender-friendly environment at the workplace. For comparison, provisions of the Australian law requiring companies to report periodically on gender equality in their workplace to the relevant agency would be an example.

Gaps in health - related laws. Health related laws do not state clearly principles of gender equality. For example, specific groups of women and girls do not benefit

equally from policies on ensuring minimum health. In particular, policies on primary health care do not ensure equal access or outcomes for migrant women and girls. The legal framework pays insufficient attention to communal medical systems in ethnic minority and remote areas that do not have enough capacity, equipment, or staffing to provide primary health care services to local women and girls. Sanctions applicable to employers who fail to make contributions to health insurance for labourers are not strict enough, therefore evasion in health insurance contributions is widespread. This occurs in small and medium enterprises and informal sectors where a great number of female labourers are employed.

Lack of quotas to ensure women's participation in political and government decision-making bodies. The laws related to political and public life, namely the Law on Organization of the National Assembly and the Law on Organization of Local Government, do not have sufficient measures to enhance women's participation in decision-making bodies. For example, women's participation in permanent committees of the National Assembly (*except for the Social Affairs Committee*). Similarly, political representation of women in People's Councils and People's Committees (*and the commissions within both bodies*) has not reached the expected outcome.

Gender based analysis and gender equality mainstreaming in legislative development. There is also disparity between GE Law and the Law on Laws in terms of the requirement for gender equality mainstreaming (*GEM*) in a draft law/ordinance. Under the GE Law, this is the compulsory requirement for all submitted draft laws/ordinances. In the meantime, the Law on Laws of 2015 provides that integration of gender equality into the draft document, its appraisal by the Ministry of Justice, and its review by the Committee of Social Affairs will be conducted if that legislation is *related to gender equality*. However, it is unclear how to define when draft law/ordinance *'is related to gender equality'*. This gap may allow policymakers and drafters to use gender-neutral language and ignore potential adverse gender impacts.

While the Law on Laws does (*in certain cases*) requires the People's Council and the People's Committee to conduct GEM and gender impact assessment of proposed policies in a draft resolution or draft decision, the GE Law does not. There is a significant gap in the policy making process at the national level given that the GE Law only imposes the responsibility of gender mainstreaming into draft LNDs. In terms of other extremely gender sensitive national policies such as socio-economic development plans, national highway, national railway, national airport, national target programmes (*poverty reduction programme, for instance*), etc., there are no requirements of gender equality mainstreaming by relevant Laws, including GE Law, the Law on the Organization and Operation of the National Assembly, the Law on the Organization and Operation of the Government.

Education laws have limited special measures. The Law on Education does not have special measures to promote girls and women in education. For example, there are no provisions setting a target ratio for the number of women in managerial positions in the education sector. Special measures to address

discrimination faced by girls in difficult rural, mountainous remote areas where many poor families are not able or are not willing to invest for daughters in education are not sufficient. Article 85 of Education Law 2019, while provides for special support to various groups, does not include girls in those areas as learners who are eligible to receive governmental this support. Special measures necessary for reducing gender gaps and promoting gender equality in the higher education sector have not been stipulated in Law on Higher Education. In addition, issues of gender equality have not been included in the Education Law as a priority in school curriculum development and training of teachers.

Limited special measures to promote women in science and technology. The Law on Science and Technology does not include specific provisions to provide financial support to female scientists and researchers. Likewise, specific provisions to promote gender equality in science and technology (*e.g. targeted approaches to encourage women and girls in these fields*) or budget allocations for these purposes are not included in the law.

Gender neutral laws could be reassessed to promote gender equality (environmental protection, forestry and land laws). The Law on Environment Protection, Law on Forestry, and the Land Law do not specify necessary policies and targeted approaches that address women and girls' specific interests, vulnerabilities, and needs. The Land Law does not clearly state gender equality as a key principle of land governance. Gender equality mainstreaming is not recognized in all land administration activities including land surveys, titling and registration processes and technologies, fees and charges, land takings, compensation mechanisms and land use planning. Gender impact assessment is not stipulated as a compulsory measure in land use planning or socio-economic development projects.

Economic laws. Related provisions of Economic Laws are not concrete enough regarding gender equality in the economic sector to create a climate that is conducive to gender equality. These Laws do not specify gender equality responsibility of related government bodies. Additionally, the laws regulating economic activities do not require the Government to issue sub-law documents to deal with gender issues in the economic sector in a more concrete manner. Although the Budget Law of 2015 has made some progress in relation to gender budgeting, gender-responsive budgeting and gender impact assessment of taxes and expenditures, these functions are not sufficiently required for the whole budget cycle by the Law¹⁸.

Also, economic laws do not have specific provisions on credit support and support encouraging investment in agriculture, forestry, and fishery sectors for female workers in rural areas. In the meantime, according to Article 12 of the GE Law, female workers in rural areas shall be entitled to enjoy this kind of support. Viet Nam has not enacted legislation to improve women's representation in the leading position in businesses, particularly to introduce a certain percentage of women holding the decision-making positions in a company. Gender-neutral tax

¹⁸ See full analysis of the Budget Law of 2015 in Annex G.

laws may have potential adverse effects on women and comprehensive gender impact assessment is required. Women are much more vulnerable to the effects of tax law due to unpaid domestic work and childcare primarily done by women. Moreover, because women entrepreneurs are more often working in micro, small, and medium enterprises than in large enterprises, the unequal effects of tax laws will fall more heavily on women.

Information and communication sector. Gaps exist in the Media Law and the Law on Access to Information. Unlike the Law on Advertisement, the Media Law does not prohibit the publication or broadcasting of stereotypical and discriminatory information based on gender. Furthermore, the Media Law does not require corrections or apologies for the publication of discriminatory information, and it does not include an obligation to promote gender equality in journalists' activities. The Law on Access to Information neglects ethnic minorities and women in difficult areas, undermining the importance of gender consideration in providing information to citizens. Similarly, the Law lacks a provision requiring state agencies to disclose information relevant to children's age and gender. The Law on Statistics of 2015 should have an additional provision requiring state agencies, especially the Ministry of Planning and Investment (*its General Statistics Office*) to provide gender disaggregated data and information.

Justice sector laws. Despite the fact that the Criminal Code of 2015 as amended in 2017 and the Criminal Procedure Code of 2015 have been amended with more detailed gender sensitive provisions, there appears to be insufficient attention to accommodation for biological (*i.e. pre- natal and post - natal*) and societal (*i.e. women are usually the primary caregivers for children*) needs of women by the criminal justice system beyond the factors considered for sanctions. Investigations, court proceedings, and custody detention must be adjusted to meet the needs of pregnant women and women caring for children under 36 months. It is necessary to have in the Criminal Code more detailed and stronger provisions on gender-based discrimination and gender harmful acts. Additionally, some provisions of the Civil Code of 2015 and the Civil Procedure Code of 2015 may have adverse gender impacts (*See in Annex G for examples of provisions*).

A number of fields/sectors while being gender sensitive have not been addressed by GE Law. As the review of national laws indicated, some sectors contain gender issues, but they are beyond the scope of 8 sectors provided by the GE Law. Specifically, they are laws/codes of the system of civil, criminal, and administrative justice, such as Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Law on Handling administrative violations, Law on Administrative Procedure, Law on Legal Aid, etc. The GE Law does not specify gender equality in sectors of environment, religion, foreign affairs, defense and public security, although they have direct and potential gender impacts. In this regard, the Constitution of 2103 has a more appropriate drafting technique covering all fields/sectors when states that men and women are equal ***in all aspects***.

4. ANALYSIS OF THE IMPLEMENTATION OF THE GENDER EQUALITY LAW

This section will analyze progress and gaps in the implementation of the GE Law. The gap analysis will include weaknesses encountered in the review and also factors that limit the implementation of the Law. Data included in this section is drawn from government reports, secondary literature and interviews from central and local stakeholders. Additional data on gender inequality, based on secondary documents and interviews conducted for this review, can be found in **Annex H**.

4.1 Legislative and policy formulation

As stated in the GE Law in article 25, the Government of Viet Nam has met its responsibility (*article 25*) to issue laws and policies. It has issued various decrees, a directive, a national strategy, and two national programmes to guide the implementation of the GE Law.

The laws and policies adopted provide more details on measures to promote gender equality, administrative violations, budgeting for gender equality and women's advancement, and other issues¹⁹. While the GE Law was promulgated in 2007, the decrees and circulars have not always been enacted in a timely fashion. The National Assembly, through the Committee on Social Affairs, is responsible for oversight of the GE Law as well as ensuring gender equality mainstreaming in legal normative documents (*article 22 of the Law*). At the end of 2019, the CSA found that almost all decrees and circulars implementing the GE Law had been issued²⁰. While some decrees and circulars were implemented two years after the Law was promulgated (e.g. *Decree No 48/2009/NĐ-CP on measures promoting gender equality, Circular No 191/2009/TT-BTC on the management and use of budgets for gender equality and women's advancement, and Decree No 55/2009/NĐ-CP on handling administrative violations*), other LNDs to support the implementation of the Law were enacted several years after the Law. These include Circular No 17/2014/TT-BTP providing on GEM in LNDs and Circular No 36/2018/TT-BTC on the budgeting, management and using budgets for training state cadres and

¹⁹ Some of the legal normative documents include: Decree No 70/2008/NĐ-CP dated 04/06/2008 detailing and implementing some Articles of the GE Law; Decree No 48/2009/NĐ-CP dated 19/05/2009 on measures promoting GE; Decree No 55/2009/NĐ-CP dated 10/06/2009 on handling administrative violations relating to GE; Circular No 17/2014/TT-BTP dated 13/08/2014 on GEM in LNDs; Decree No 191/2009/TT-BTC dated 01/10/2009 on the management and use of budgets for GE and women's advancement; Decision 56/2011, Circular No 07/TT-BKTĐT dated 22/10/2012 providing on the set of national statistical targets on GE; set of statistical targets on GE at provincial, district, and commune levels; Decree No 153/2018/NĐ-CP dated 07/11/2018 adjusting the retirement salary for female workers who get retirement from 2018-2021 and paid social insurance for 20 years; Decree No 39/2018/NĐ-CP dated 11/03/2018 detailing some Articles of the Law on the support to small and medium companies of 2017 (*including provisions on the support for women owned companies and companies employing many women workers*); Circular No 36/2018/TT-BTC dated 30/03/2018 on the budgeting, management and using budgets for training female state cadres and civil servants; and Decision of the Prime - Ministry No 800/QĐ-TTg dated 02/07/2018 adjusting some contents of the National Strategy on GE from 2011 to 2020.

²⁰ CSA, Report No 2375/BC-UBVĐXH14 Verifying the Government's Report on the implementation of national objectives on gender equality for 2108 and first haft of 2019, 10/2019.

civil servants enacted in 2018. This delay has created obstacles for agencies, organizations, and individuals in fulfilling their responsibilities and tasks because they did not have sufficient legal foundation, as well as concrete procedures for the implementation.

To further support the implementation of the Law the government prepared the National Strategy on Gender Equality 2011-2020 (*the National Strategy*). It establishes six objectives related to seven of eight sectors identified in the Law (*in the social and family fields*) and one objective related to state management capacity. The implementation of the strategy and progress against the indicators and targets is assessed below in section 4.2.

Other ministries, such as the Ministries of Finance and Justice have issued circulars related to gender equality, such as financing gender equality and CFAW activities, and integration of gender equality in legal aid and legislative development.

In addition to legal and policy initiatives mentioned above, other projects have been approved that attempt to address gender inequality in certain sectors such as sex ratio at birth imbalance, gender-based violence, women's vocational training and promotion of gender equality in ethnic minority areas. Some of the projects dealing with gender appear to maintain the status quo of women's traditional role as the primary caregiver for children, such as the Project "*Educating 5 million mothers in raising children effectively*". A campaign on child raising with a gender equality perspective would target mothers and fathers and the broader society.

The above decrees, strategies, plans, and directives provided the government and civil society with the policy framework to advance gender equality in Viet Nam.

4.2 Implementing the National Strategy on Gender Equality

4.2.1 Reporting on objectives and targets

The National Strategy forms the major policy instrument to advance gender equality by identifying objectives and targets over a ten-year period. The strategy combines the economic and labour sectors in one objective and omits science and technology from the objectives and targets²¹. In summary, the objectives of the Strategy correspond to: i) political life; ii) economic, labour and employment; iii) human resources, education and training; iv) health care; v) cultural and information; vi) family life; and vii) capacity of state management.

The National Strategy identifies targets for each objective for achievement by either 2015 or 2020. The objectives and targets are limited in number and scope and this, in turn, limits the budget assigned for gender equality initiatives in ministries (*to be discussed below*).

To date the Prime Minister has approved two national action plans (*programmes*) under the National Strategy on Gender Equality, one covering the period of 2011-2015 and another plan (*Decision No. 1696/QĐ-TTg, 2 October 2015*) covering the

²¹ However, the Strategy calls on the Ministry of Science and Technology to undertake "*scientific research on gender equality*".

period 2016-2020. The current programme reaching to 2020 has four specific objectives with integrated targets. The four objectives/targets are focused on awareness raising, training, and knowledge on gender equality for government, political and party officials. This “*internal-to-government*” focus on gender equality is an important capacity-building approach but it is a narrow approach to the implementation of the Law. In 2018, the Prime Minister has enacted Decision No. 800/QĐ-TTg to adjust a number of issues of the National Strategy, including some of its targets.

MOLISA, a state management agency, has issued guiding documents to support the implementation of the National Strategy on Gender Equality. For example, MOLISA prepared the National Programme on Gender Equality from 2011 to 2015, the National Action Programme on Gender Equality from 2016 to 2020, the Project on prevention and response to GBV from 2016 to 2020 with the vision to 2030, the inter-ministerial circular No. 10/2008/TTLT-BLĐTBXH-BNV dated 10/07/2008 and then inter-ministerial circular No. 37/2015/TTLT-BLĐTBXH-BNV on the functions, tasks and organization of provincial, district, and commune state management agencies relating to gender equality; inter-ministerial circular No. 56/2012/TTLT-BTC-BLĐTBXH dated 09/04/2012 on the management and use of budget for the implementation of the National Strategy on Gender Equality for the period of 2011-2015; Circular No. 30/2011/TT-BLĐTBXH dated 26/10/2011 on the set of statistical targets of labour, invalids, and social affairs, etc.

The majority of targets that have not been achieved. A general finding based on the evaluation data (*government reports, interviews, and secondary literature reviewed*) is that the majority of targets have not been achieved. According to official report submitted to the NA, at the end of 2018, of 25 targets set up by the National Strategy on Gender Equality from 2011-2020 (*as amended by the Decision No 800/QĐ-TTg adjusting some contents of the National Assembly on Gender Equality from 2011 to 2020*), 5 targets have not been achieved, 10 targets have no data, or have incomplete data; and some targets that were achieved early have not sustained the same level of progress over time²². At the end of 2019, only 10 Ministries and 50 provinces have issued Action Plans on Gender Equality in compliance with Decision No 800/QĐ-TTg²³. In this context, it will be challenging to reach the objectives and targets of the National Strategy prior to the end of 2020.

As the Global Gender Gap Report indicates, Viet Nam’s gender gap has not improved in recent years. The country was ranked 87 of 153 countries in 2020, 77 of 149 in 2018, 69 of 144 in 2017, and 65 of 144 in 2016²⁴. The Global Gender Gap Report incorporates some of the same indicators as the National Strategy in four areas: economic participation, educational attainment, health and survival, and political empowerment. Compared to 2007 when Viet Nam was 42 of 128, the first

²² CSA, Report No 2375/BC-UBVĐXH14 Verifying the Government’s Report on the implementation of national objectives on gender equality for 2018 and first half of 2019, 10/2019.

²³ CSA, Report No 2375/BC-UBVĐXH14 Verifying the Government’s Report on the implementation of national objectives on gender equality for 2108 and first half of 2019, 10/2019.

²⁴ 2020 report: <http://reports.weforum.org/global-gender-gap-report-2020/dataexplorer/#economy=VNM>; 2018 report: http://www3.weforum.org/docs/WEF_GGGR_2018.pdf

year of Viet Nam's assessment and the year of the GE Law's enactment, Viet Nam has fallen significantly in the rankings.

4.2.2 Women in senior management and in politics.

While the targets have not been met at the national level, the perception of government stakeholders is that this is the area where the most progress toward gender equality has been made.

Interviews conducted with central level ministries confirmed that the recruitment of qualified women for senior management positions is at the forefront of gender equality efforts in ministries. Officials from the Ministry of Home Affairs (MOHA), responsible for collecting data on this target in relation to government ministries, and other ministries were asked the question, *what evidence do you have to demonstrate or prove gender equality has improved?* The responses generally referred to the number or percentage of women occupying senior positions in the party committee of the ministry or within ministry offices. For example, MOCST stated the percentage of women in senior management has increased from 30% to 40%, while MARD found it difficult to reach the target of 40%. MARD achieved 26.8%.

Local duty bearers and adult rights-holders were asked, *do women and girls enjoy more opportunities now compared to 2007 when the Gender Equality law was enacted?* These stakeholders, when their responses are combined, identified advances in women's participation in political positions and senior management in government as the second most important area of progress²⁵. However, when the duty bearers (*provincial and local*) are analyzed separately, they identified women's political participation and representation in senior management as the area of the *most* progress.

Other sources, including the 2020 Global Gender Gap Report, demonstrate the low political participation of women. Notably, 23 provinces did not reach the expected proportion of female candidates in the final list for the Election of 2016; and female candidates fared worse than male candidates in the elections - only 39,2% female candidates won seats compared to 68,4% of male candidates who won seats. Very few provinces have met even particular targets of this objective. The exception is HCM City, where National Strategy targets have been met: 1.a. women in party committees exceed 25% at most levels; and 1.b. women elected to People's Council: 40%; district level: 39.34%; and city level: 43.8%.

On the other hand, People's Councils of Bac Kan, Hai Duong, Phu Yen have had various good initiatives for the enhancement of female Deputies to People's Councils at all levels and for the promotion of gender equality in their operation²⁶. However, it is necessary to note that those initiatives have been implemented with technical and financial support from Australian People for Health, Education and Development Abroad (APHEDA). The People's Councils do not have sufficient

²⁵ The area of most progress for women since the Law was enacted, when answers of duty bearers and rights-holders are combined, is access to jobs and higher paying jobs.

²⁶ Union Aid Abroad - APHEDA's project "Promoting Gender equality and Capacity building for women in politics in Vietnam 2017 - 2021".

resources for such comprehensive initiatives with the state budget allocated to them.

Example: Gender Equality and enhancement of female PC Deputies²⁷

During 2017-2019, People's Councils of Hai Dương, Bac Kan, and Phu Yen have conducted various activities for the promotion of gender equality and enhancement of female Deputies.

Capacity development for women Deputies: Training courses on skills of People's Council members were organized for hundreds of commune women deputies. The training courses focused on skills of consultation in issuing resolutions of PC; discussion, presentation and questioning of deputies, contact with constituents and so on. Two guidelines on skills have been developed and disseminated to women commune Deputies.

Network building: Three clubs for provincial women deputies were established in December 2018 in Bac Kan, Phu Yen and Hai Duong. The clubs met every six months at the same time as the Provincial People's Council sessions. In these meetings, women deputies had chances to exchange ideas with each other in fulfilling their tasks.

Six district coordinating groups of 30 members have been set up, with the role of coordinating and consulting to commune networks of women deputies. The coordination groups usually support the women deputies at commune level by providing documents, training courses, meetings, etc.

Six networks of nearly 600 commune People's Council's women deputies were established. Over two years, 40 quarterly network meetings were organized in 6 targeted districts. The network meetings mainly focused on sharing the challenges and the needs of the commune women deputies.

Gender mainstreaming: Through three one-day workshops, 3 roundtables, numerous meetings, 9 gender indicators have been developed, with 6 of them have been committed to being integrated into Provincial Socio-economic Development Plans of the three provinces. They were indicators of: number of women holds key leadership positions; number of women attend vocational training and get jobs; indicator on employment of rural women labourers; percentage of poor households owned by women escaped from poverty; rate of trained female labourers; percentage of women who get newly created jobs; percentage of women officials trained.

²⁷ Union Aid Abroad - APHEDA's project "Promoting Gender equality and Capacity building for women in politics in Vietnam 2017 - 2021".

4.2.3 Women's economic participation

Targets related to women's participation in the economic sector were mostly met. At least three of four targets were met: New jobs for men and women; % of female entrepreneurs, women receiving vocational training and women seeking preferential credit. Two of six civil society organizations interviewed in Hanoi stated the sector with the most advances in terms of gender equality is related to women-led enterprises (*formally registered*) and increased women employment. When local rights holders were asked about the most significant progress made in gender equality they identified access to more and higher paid jobs for women as the most significant progress in the last 10 years.

However, gaps still remain in relation to women in non-traditional occupations, wage gaps and discrimination in employment due to pregnancy or even potential pregnancy. The 10-year reports from the sample provinces identified the wage gap between men and women as discriminatory due to the concentration of women in low skilled and low paying jobs. In Tra Vinh province, women are often employed in the agricultural sector. In Ho Chi Minh City women make over 500,000 VND less per month than men. The wage gap for sectors of employment is not known as information is not disaggregated by sex. Tra Vinh province reported that some companies engage in discriminatory hiring practices by excluding women with children and women of childbearing age. CEDAW has noted that discrimination in employment due to pregnancy and maternity remains a concern in Viet Nam. In interviews, duty bearers from provincial, district and commune levels identified work or employment and family as the sectors where the most inequality and discrimination exist.

"Because of the profit factor, business enterprises prefer to recruit men because they do not use maternity (paternity) leave. Even in some businesses, women who have had 6 months maternity leave lose their positions and are transferred to other jobs. There are also businesses that create conditions for men to go abroad for training more than women.

Labour Federation representative, HCMC

In addition, there are insufficient indicators related to the economic participation of women facing multiple forms of discrimination. The specific objective identified rural poor women and women of different ethnic minorities; however, there were no indicators referencing the economic participation of ethnic minority women, women with disabilities or other women facing multiple forms of discrimination.

4.2.4 Gender equality in education

Equality in education. Literacy targets and the target related to women with master's degrees were met by 2014. Table 12 in the Annexes of the 10-year national report²⁸ provides data up until 2014 on the number of women with master degrees (44,223 persons, or 39.7% in 2009; and 98,700 persons, or 43% in 2014). The target was 40% by 2015 and 50% by 2020.

²⁸The national 10-year report on the implementation of the GE Law 171/BC-LĐTBXH.

According to the official publication on the results of General Census of Population and Housing at 01/04/2019, (Table 8.7., page 125), 9.7% of men, and 8.9% of women have university and higher degrees (*masters, doctorate)s*)²⁹. However, this data does not respond precisely to the indicator and target in the National Strategy as there is no data on men and women with master's degrees in the report.

"At work, women are often assigned office jobs that lead to a low wage regime that is not as high as that of men in the same agency. In the family, women must undertake housework, men usually do not share housework with women.

DOLISA representative, Gia Lai province

There were no indicators to track boys' and girls' attendance in primary and secondary schools, at least in the National Strategy. Provinces reviewed identified limited education opportunities for girls and young women as a significant problem reflective of inequality and discrimination in the province.

The indicators do not reflect a change in women and girls' access to all levels of education. The Viet Nam Gender Briefing Kit noted that in 2014, the gender parity index (*GPI*) for primary school was 1.00 indicating no difference in the attendance of girls and boys at primary school. The GPI for lower secondary school was 1.03 and 1.11 for upper secondary school, indicating that there are more females than males at secondary school levels. On the other hand, attendance levels among children aged 6-10 are higher for boys than girls. Boys not attending school at that age is (1.9%) compared to 2.3% than for girls³⁰.

The Gender Briefing Kit reports that the percentage of men holding college and university degrees is higher than that of women: in 2012, 7.5% for men compared to 6.7% for women³¹. And despite the fact there are more women in tertiary education, female and male students continue to be segregated into different fields of

"In education and training women are less likely to participate in the fields such as the army, police, science and technology".

Women's Union commune representative, Tra Vinh Province

study because of the gender bias: men are more likely to specialize engineering, manufacturing, construction, and services, while women specialize more in social sciences, educations, humanities, and the arts³². Women attending vocational training centers are also channeled into courses for traditionally female-dominated low-paying occupations such as tailoring and hairdressing³³.

²⁹ Census data can be found at: <https://vietnam.unfpa.org/en/news/results-population-and-housing-census-2019>.

³⁰ United Nations, Gender Briefing Kit 2016, 2017 p. 39.

³¹ Ibid.

³² Ibid. 39-40.

³³ Ibid. p. 40

MOET acknowledges that education is key to advancing gender equality. Other measures taken by MOET to advance gender equality include a curriculum review (*with UNESCO*) to eliminate gender stereotypes in educational materials at all levels. The ministry also integrates gender equality into its 05 year and 10-year plans. In the 2016-2020 plan, a key indicator is to reduce % of children who don't go to school with efforts focused on regional characteristics. For example, in the central highlands, the ministry seeks to increase boys' school attendance, while girls' attendance is promoted in northern mountainous regions. This specialized (*differentiated*) focus resulted from regional attendance data. The ministry understands that boys' lower school attendance in the central highlands is likely due to matrilineal ethnic groups that prefer daughters to attend school and girls' lower attendance in the northern mountainous region may be due to son preference. This is one of the few examples of a gender responsive approach developed by an agency based on actual data.

In interviews, duty bearers identified limited education opportunities for girls and young women as the third most serious problem reflective of inequality and discrimination in the province. Access to education was recognized by duty bearers and rightsholders in Lao Cai province as an important area of progress in the last 10 years.

The interviews with school children in the provinces revealed a common perception that boys and girls can't play the same games or play together. For example, boys are expected to play soccer, climb trees and carry heavy things while girls are expected to play with dolls and not get involved in dangerous activities. The common perception is that girls are weaker as compared to boys. Contrary to what was expected, when boys and girls were asked about their contributions to the household chores, they all participated in similar chores such as cleaning, washing dishes and clothes, and cooking.

4.2.5 Gender equality in access to and benefit from healthcare services

All health targets appear to have been achieved by 2015. Secondary literature provides similar positive progress in health care access for women and men. A study conducted by the Institute for Social Development Studies (*ISDS*) in 2012 found that the proportion of women with health insurance is slightly higher than that of men (*56.11 percent versus 52.19 percent*)³⁴. The 2014 Multiple Indicator Cluster Survey (*MICS*) reported contraception use of 75.7 percent among women currently married or in a union³⁵.

However, secondary literature raised concerns related to access to mental health services, especially for women victims of gender-based domestic violence. A major factor influencing both the mental and physical health of women and girls is the high prevalence of gender-based violence (*GBV*). In 2010, the Survey Assessment of Vietnamese Youth reported that 4.1% of youth aged 14-25 had considered suicide, and twice as many young women than young men had committed suicide. Suicidal thoughts were more common among urban than rural youth. One-quarter

³⁴ Gender Briefing Kit, p. 48.

³⁵ Ibid.

of the surveyed youth who have ever thought of suicide reported that they had attempted it. The number of suicide attempts by females was considerably higher than that of males (29.3% and 17.5%, respectively). Suicide rates were high among married people who experienced violence. In addition, 41.3% of individuals who were survivors of spousal violence, presumably most if not all females, reported having attempted suicide³⁶.

Sex ratio at birth (SRB) imbalance is another area of concern that requires a multi-disciplinary approach. The CEDAW Committee, in its 2015 Concluding Observations noted with concern the imbalance of the sex ratio at birth arising from a strong preference for male offspring. Son preference in Viet Nam is especially strong in communities adhering to patrilineal traditions, which identify sons as responsible for ancestor worship and care of the elderly parents.

SRB was reported as a significant problem in three of five reports by the provinces considered in this review. During the interviews in five provinces, duty bearers identified sex-selective abortion (*son preference*) as the second most serious problem reflecting inequality (*after gender-based violence*). Duty bearers in Bac Ninh and Lao Cai had the highest rate of affirmative responses in relation to GBV and GBSS as major issues of gender inequality. Men and women rightsholders in the five sample provinces were both asked, *did you or do you want to have a son more than a daughter in your family?* Seven women responded that they would prefer a son more than a daughter (12%) while 47 said no they would not prefer a son, and three did not respond. Three men responded in the affirmative (7.8%) while 30 said no, they would not prefer a son and five did not respond. Although the numbers are low, the majority of the affirmative responses were from rightsholders in Bac Ninh and Lao Cai.

4.2.6 Gender equality in culture, sport and information

Progress in these sectors is not known. The specific objective of the National Strategy addressed cultural and information domains, but the indicators were not tracked and thus the discriminatory or stereotypical information published by different media is not known. However, representatives of two civil society organizations interviewed as part of this review identified the publication of gender stereotypes in mass media as obstacles to gender equality in the country. Only one target from the National Strategy and also established by Decision No 800/QĐ-TTg was met: 100% central and local radio and TV stations have special programming on gender equality³⁷. In the 10-year national report submitted by MOLISA to the government, the MOCST provided information on female athletes.

In addition, the Ministry of Information and Communication has issued action plans on gender equality to guide its work, instructions to strengthen inspections of information, newspapers, publications and internet sites for information that is gender biased. No information on the outcome of the inspections was provided. According to the ministry, based on its instructions, newspapers, televisions, and

³⁶ Ibid. 56-57.

³⁷ CSA, Report No 2375/BC-UBVĐXH14 Verifying the Government's Report on the implementation of national objectives on gender equality for 2108 and first half of 2019, 10/2019.

radios have organized special units on family and social affairs to disseminate information on prevention and control of domestic violence and gender equality. In addition, the ministry directs provincial departments of information and communication to organize training sessions on gender equality or gender mainstreaming for editors or reporters or journalists working for local television and radio stations, or newspapers. The ministry also implements a joint project “*Training to Enhance Communication Capacity for Gender at Central and Provincial Level*” with MOLISA and UNESCO.

4.2.7 Gender equality in family life and gender-based violence

One of five targets was met. The targets address household duties, gender-based domestic violence, and human trafficking. While progress was reported on four of five targets (*household duties was not tracked*), one target related to the percentage of women who have experienced domestic violence receiving counseling was met. Central and provincial duty bearers and rights holders recognize traditional customs and perceptions of the role of women in society and family life as a major source of gender inequality.

It is important to note that the Law prohibits gender-based violence and this is incorporated into the Strategy within the objective related to family life. The inclusion of GBV in the family sector implicitly recognizes the high incidence of gender-based domestic violence against women in Viet Nam. Gender-based violence not part of family life is not clearly defined.

The 2010 study on domestic violence confirmed that intimate partner violence cuts across the country, urban and rural households, all educational and socio-economic levels and ethnic groups. However, women in rural areas and less educated women reported higher rates of violence. It was also found that women who suffered sexual violence as a child or as an adult (*from someone other than their intimate partner*) were more likely to experience violence at the hand of their intimate partner. Of course, children in the household are also affected even if they are not the targets of violence.

The sample provinces and Ho Chi Minh City all report a high incidence of domestic violence in their 10-year reports. During interviews, when duty bearers were asked the close ended question related to the existence of certain problems reflective of inequality and discrimination in the province, they identified gender-based violence, including human trafficking, as the most serious problem. Human trafficking was recognized as a problem in the reports of two sample provinces, Bac Ninh and Lao Cai; while Gia Lai identified prostitution as an issue. According to international human rights soft law (*CEDAW Committee General Recommendations 19 and 35*), human trafficking and forced prostitution are also considered forms of gender-based violence³⁸.

Rightsholders’ responses related to domestic violence were less indicative of gender equality than responses related to access to family income and son preference. Women were asked, *would you go to government authorities if your husband hit you or abused you verbally or emotionally?* Thirty-six (36) women affirmed they would

³⁸ CEDAW General Recommendations 19 and 35.

report to government authorities (63% of female rightsholders), 16 women said they would not, and 5 did not respond. Men were asked, *do you think a man should be punished by authorities for hitting or abusing his wife?* Twenty (20) men agreed (52% of male rightsholders), 8 said no, and 10 men did not respond.

Child marriage (*under 18 years of age*) is considered as gender-based violence due to a lack of consent (*early and forced marriage*). Among the provinces, Lao Cai noted the problem of early marriage among some ethnic minority groups, but the province's 10-year report does not explicitly reference child marriage.

Gender-based violence in families is presumably the responsibility of both MOLISA and MOCST as set out in the Law on Gender Equality and the Domestic Violence Prevention and Control (DVPC) Law. Both ministries have responsibilities related to sanction violations of violence. Article 26 of the Law on Gender Equality of 2006 empowers MOLISA the authority to “*examine, inspect and handle violations, complaints and denunciation against violations of gender equality*”. As the state management agency for area of domestic violence, Article 36 of the Law on Prevention and Control of Domestic Violence of 2007 empowers the Ministry of Culture, Sports and Tourism to (5) Inspect and checking the enforcement of the Law on Domestic Violence Prevention and Control. Also, the Law on Children assigns MOLISA with responsibility for child protection in article 27 and that law includes definitions of child abuse, exploitation, violence, and sexual abuse of children in article 4.

4.2.8 State management capacities related to gender equality

Two of the four indicators (targets) appeared to be tracked, although not consistently. Indicators related to gender equality mainstreaming in LNDs were not fully collected for tracking within this objective of the National Strategy. In 2015, 2018 and the first 6 months of 2019, 100% of gender equality and women's advancement cadres at all levels and in all sectors that have been professionally trained at least once³⁹. Prior to 2015, annual reports did not present precise data in a table against the targets. However, training for women's advancement officials was described in the report text.

While officials did receive training on gender equality, interviews with officials at central level ministries revealed a low degree of understanding of concepts related to gender equality including indirect or adverse effect discrimination, substantive equality, gender equality mainstreaming, gender-based analysis and multiple forms of discrimination. For example, gender equality mainstreaming was used to either reference the incorporation of gender considerations in a cross-cutting manner or specific women's advancement activities. In some provinces, DOLISA and district People's Committee officials stated that there were no issues of discrimination and gender inequality in their jurisdiction when asked (*first question of interview*). Some officials also said there were no problems related to gender-based domestic violence or women in employment. These responses do not correspond to the provincial reports or even some of the subsequent responses of the same officials.

³⁹ CSA, Report No 2375/BC-UBVDXH14 Verifying the Government's Report on the implementation of national objectives on gender equality for 2108 and first half of 2019, 10/2019.

4.3 State management activities

4.3.1 Functions for the implementation of the Law

The Gender Equality Department (GED) within MOLISA is responsible for state management of gender equality affairs. There are 14 staff in GED, some with professional training on gender: including one master in gender and development and others with short term professional development on gender equality. Each staff person is responsible for a different sector to monitor progress (e.g. *information, education and communication*).

According to the Government's report on gender equality, at the end of 2018 or early in 2019, all province had units established to promote gender equality that had been set up within DOLISA, with 62 provinces having combined gender equality and children's affairs responsibilities, while only the Quang Ninh maintains a separate gender equality unit⁴⁰. Interviews conducted at the end of 2018 and in the first months of 2019 in the sample provinces confirmed that professionals were not exclusively assigned responsibilities to promote gender equality.

In the same Government report in 2019, it was stated that human resources dedicated to gender equality affairs are unstable, insufficient in number, bearing other tasks, and having limited knowledge on gender and gender mainstreaming⁴¹.

Provincial reports on 10 years of implementation of the Law also note that low capacity on gender is a challenge to advancing gender equality. Gaps were noted in the assignment of gender equality responsibilities. Review of gender equality activities in provinces indicates that staff assigned to work on gender equality are limited and they only work part-time and balance gender work with other responsibilities; thus, there is low enthusiasm for gender equality work.

On the other hand, Ho Chi Minh City reported the following positive progress:

By the end of 2016, the number of people in charge of gender equality in the whole city was 439 people (113 men, accounting for 25.74%), of which: city level had 04 people (01 male, accounting for 25 %); district level has 48 people (09 male, accounting for 18.75%); ward, commune - town level arranged 01 non-specialized staff in charge of many fields, including child and gender equality work of 320 people (70 men, accounting for 21.87%)⁴².

Gaps in human resources for advancing gender equality among public officials were also identified by the reviewers. For example, gaps in gender equality knowledge and skills were identified, as were limited human resources generally. For example, interviews with CFAW focal points (*either vice chairs or assistants to the chair*) revealed that gender equality and the advancement of women are often conflated. Combining the two issues appears to have narrowed some public officials' understanding of gender equality to the recruitment and

⁴⁰ Government's Report on the implementation of national gender equality objectives in 2018 and the first 6 months of 2019, Hanoi, 10/2019.

⁴¹ Government's Report on the implementation of national gender equality objectives in 2018 and the first 6 months of 2019, Hanoi, 10/2019.

⁴² HCMC Ten Year Report, p. 9.

promotion of women in the public sector. Government officials in MPI and MOF, various CFAW members and provincial representatives acknowledged that skills for the mainstreaming of gender into socio-economic plans are lacking. The leaders and planners do not have sufficient knowledge to undertake a gender-based analysis.

What obstacles exist to achieving full gender equality in the province?

“Policy-makers’ limited knowledge, the limited knowledge of people who implement the law. For example, before the implementation of the law, the Committee on the Advancement of Women had been established. However, sometimes the Committee is in Women’s Union, other times in the Department of Labor, Invalids and Social Affairs. Government officials don’t even know there is a division of gender equality in the department (in DOLISA). This proves that only institutions that work in the field know about their specialization. Some divisions advise on policies to meet target indicators. Even the people’s council of all levels and institutions at the People’s Committee level do not correctly understand them.

Government officials, HCMC

Civil society representatives noted that knowledge of equality rights among government officials is an area that needs to be improved.

“Government officials - their thinking very traditional and stereotypical. We have little data on the level of knowledge of government officials; male officials don’t attend GE workshops; GE is not just about women”.

“Many leaders in government very traditional and stereotypical attitudes regarding men and women”.

Two CSO representatives (separate interviews).

However, one CSO representative recognized that, after the GE Law, in local work, a change in attitude among local leaders was evident. They recognize the importance of working on gender equality and GBV, but need to build more awareness and skills

Ministries, other than MOLISA, do not have specialized gender equality personnel, rather personnel are assigned responsibilities in the CFAW. For example, MOET explained that there aren’t dedicated gender equality personnel, but responsibilities are adjusted (*removed/lowered*) so that individuals can focus more time on gender equality and each department has a gender equality focal point to sit on the CFAW of the ministry. MPI has 10 members on its CFAW committee and one dedicated gender equality focal point. In MOIC there are no full-time staff for tasks of gender equality. In MOIC’s Department of Personnel, the General Director of this Department assumes the vice-chair of MOIC’s CFAW and also takes

care of tasks of gender equality (*as assisted by a part-time official*). In each unit or department of MOIC also has a part-time official in charge of tasks of gender equality. In some ministries, the GE Law related activities appear to be restricted to human resource targets for women, an activity assigned to CFAW.

4.3.2 Financial resources for gender equality

Article 24 of the GE Law describes the source of financial resources for the gender equality activities: the state budget, voluntary contributions, and other sources of “legal income”. Decree 48, in chapter 5, provides few other details except that the state budget will assign annual budget expenditures of agencies and organizations. The Ministry of Finance then prepared a circular in 2009 (*Circular No. 191/2009/TT-BTC dated October 1st, 2009*) that provides guidelines on the management and use of funds for the operation of gender equality initiatives and the operation of the National Committee for the Advancement of Women in Viet Nam (NCFAW).

The 10-year national report states that MOLISA has allocated funds to state management tasks on gender equality since 2008 and that the state budget allocates funds to the National Committee for the Advancement of Women and ministerial and local Committees for the Advancement of Women.

These transfers are very small with some ministries clarifying their budgets for the advancement of women were VND 100 Million (*approximately \$USD 4,200*) and others provided a lower figure of \$USD 2,000. These funds allow the collection of data against the targets in the National Strategy, organization of meetings of the Committee for the Advancement of Women (CFAW), attendance at workshops, and capacity building for female officials. For example, the Ministry of Interior (*or Home Affairs*) approved plans to promote female leaders, build the capacity of female officials with a budget of VND 100,000,000 annually⁴³. Allocating funds to the CFAW within a ministry restricts the funds to advancing women in the ministry but not special measures on gender equality.

MPI explained that provincial budgets can fund more gender equality activities locally. However, interviews with provincial, district and commune officials revealed limited funds compared to the issues of gender equality to address.

⁴³ 2017 decisions in the ministry related to advance women in government included: Decision No. 2415/QĐ-BNV dated 08/08/2017 ratifying the Plan to organize delegations sent for training courses in Singapore specially designed for female leaders in 2017 (*from 18-24/09/2017*); Decision No. 1758/QĐ-BNV dated 17/05/2017 ratifying the Plan and budget for organizing training courses to enhance capacities of female leaders of provincial department level and ministerial department level in 2017 (*3 classes*); and Decision No. 2172/QĐ-BNV dated 30/06/2017 approving the Plan and budget for dissemination and guidance on implementation of Prime Minister’s Decision No. 515/QĐ-TTg dated 31/03/2016 ratifying the Project on implementation of gender equality measures for female cadres, public servants for the period of 2016-2020.



Example: Budget for gender equality activities at the local level

- In the 10-year report the HCMC budget was explained: The total funding of implementing the National Programme targets for gender equality, for city-level women's advancement from 2011 to 2017 is VND 20,618 billion, of which: (i) Central Source is VND 1,125 billion; (ii) City Source is VND 16,916 billion; (iii) Mobilization of gender integration programmes and projects is VND 2,577 billion. In addition, funding for departments, agencies, mass organizations in the city and districts spent on gender equality activities and for the women's advancement was VND 13,234 billion; funds and gifts mobilized from sponsors for activities for the women's advancement in the city and supporting provinces is VND 572 million.
- In Bac Ninh, the DOLISA representative interviewed explained the provincial budget: In the period of 2007-2009, the province provided the budget mainly for activities of the Board for women's progress with 60 million VND/year, which was transferred to the provincial Women's Union. In the period of 2010-2015, the operation expenditure (90 million VND/year) was taken from the regular budget of the provincial Department of Labor, Invalids and Social Affairs for both gender equality and women's advancement. From 2016 up to now, this amount has increased to 170 million VND/year.

In the 10-year national report, the lack of financial resources for gender equality activities is acknowledged: *"Funding sources for gender equality activities have been arranged but at a very "modest" level that is unable to meet the requirements. Moreover, there is no separate budget for gender equality activities, so the budget is still unstable and mainly through targeted programmes/supports and projects. Particularly, some localities did not arrange funds or even did not allocate funds to implement the gender equality work for the Department of Labor, Invalids and Social Affairs. The funds transferred from the Central Government (for gender equality work) were used for other activities"*⁴⁴. The limited financial resources dedicated to gender equality results in relatively few dedicated human resource positions for gender equality and limited gender equality measures.

4.3.3 Consultation and coordination

Consultation with civil society. MOLISA holds an annual gender action partnership meeting with civil society organizations (CSOs) to receive inputs from them. Five of six CSOs interviewed confirmed a collaboration with the government in specific project initiatives while one stated they did not collaborate directly but advocated for change in relation to discriminatory Labour Code provisions.

Coordination mechanism. The Law does not have an official/formal inter-agency coordination mechanism. One central level representative stated, *"There is no official inter-agency committee, but the GED coordinates an informal network on the GE Law; this network meets twice per year, but funding is required from a project for these meetings"*. On the other hand, MOLISA stated that this inter-agency

⁴⁴ Report on Ten Years Implementing the Law on GE, p. 20 (English summary).

coordination is conducted through the National Committee for the Advancement of Women (NCFAW). Some MOLISA officials are the staff of the Office of NCFAW and through this mechanism “*we urge other ministries to promote gender equality*”. The Committee is not named in the Law, however ministerial focal points of the Committee act as the liaison and reporting contact for MOLISA in the implementation of the Law.

Overlaps in responsibilities. As mentioned above, MOCST and MOLISA both have responsibilities related to violence against women and girls. This could lead to gaps in services for victims and survivors of violence. Although MOCST has the responsibility for the state management of gender-based domestic violence, civil society organizations noted that most individual rightsholders recognize MOLISA as responsible.

4.4 Gender equality mainstreaming in legal normative documents

4.4.1 The role of Parliament Committee for Social Affairs

The GE Law places significant emphasis on the mainstreaming of gender equality (or GEM) in legal normative documents. Decrees 48 and 70 also describe processes to include gender equality issues in legal normative documents.

It is ultimately the responsibility of the National Assembly’s Committee for Social Affairs (CSA) to verify the integration of gender equality issues in draft laws, ordinances, and resolutions. The Committee has established the Sub-commission for Gender and Family Affairs led by a Vice-Chair of the Committee. The Committee has its Department for Social Affairs; within this Department, there is a group of civil servants assigned with the tasks related to gender issues. In addition, there exists a group of gender experts supporting the Committee on voluntary principle.

At the beginning of each year, the Committee selects draft laws/ordinances that contain gender issues and includes them into their annual work plan. The Committee conducts reviews of gender mainstreaming through various methods, but the most common method is to engage experts. For some draft laws, the support staff of the Committee will conduct preliminary research on the issue and send it to all members of the Committee for comments before dissemination. For more complex draft laws with a significant number of gender issues such as Labour Code, Civil Code, Law on Marriage and Family, and Election Law, in addition to expert meetings, the Committee has organized workshops with the participation of a wider audience⁴⁵. Opinions collected from expert meetings, workshops, and the official position of the Committee are sent to drafting bodies and other NA Committees responsible for the review of a draft law, as well as all Deputies.

At the beginning of each term of the NA, the CSA also requests other Committees of the NA to appoint members to join review activities on gender mainstreaming. The Committee has closely cooperated with the National Committee for Women’s Advancement (NCFAW), MOLISA, the Ministry of Justice, Viet Nam Women’s Union, and experts in verifying gender mainstreaming. The Committee’s representatives often participate and raise gender issues at review meetings of other NA’s Committees.

⁴⁵ CSA, report on 10-year implementation of GE Law, Hanoi, 2019, p.5

4.4.2 Integration of gender equality in legal normative documents

As a 'gatekeeper' for the NA in the field of gender equality, the review activities of the Committee for Social Affairs have contributed to the integration of gender equality into laws and ordinances. The review reports of the Committee have pointed out gender gaps in draft laws/ordinances, proposed recommendations to address gaps. These opinions and arguments on gender issues have been accepted by the drafting bodies in number of laws/ordinances, for example, in the case of the Constitution of 2013, Election Law of 2015, Law on Statistics of 2016, Law on State Budget of 2015, Law on Support for Small and Medium Enterprises of 2016, Law on the Promulgation of Legal Normative documents (*Law on Laws of 2015*), various laws in the justice sector, and laws on state bodies. In certain cases, when differences existed between the CSA and the drafting body or the committee responsible for the review of a draft law under its subject matter jurisdiction, the CSA submitted separate reports to the Steering Committee of the NA and all NA Members for consideration. This occurred in the case of the Election Law of 2015 and the Law on Statistics of 2016.

After the GE Law came into effect, there have been positive steps forward in mainstreaming gender into LNDs. The number of draft laws/ordinances that met the requirements of GEM has gradually increased. Particularly, according to the CSA, some reports on GEM were high quality, such as those of the Civil Code of 2015, Law on Marriage and Family of 2014⁴⁶. Looking at these reports, it can be said that they have met requirements of gender equality mainstreaming in the Law on Laws of 2015, given that these reports have identified hidden gender impacts in neutral legal provisions.

According to the 10 year report of the CSA, at the end of 2017, of 193 laws and dozens of ordinances and resolutions, the Committee verified gender mainstreaming occurred in 68 laws, 3 ordinances, 5 resolutions, and the Constitution of 2013⁴⁷. The 10-year national report of MOLISA provides statistics on the integration of gender equality in LNDs: of 111 LNDs more than 40 laws and ordinances *related to the issue of gender equality* have been drafted by the agency in charge of the integration of gender equality issues in accordance with the Law. It is important to note that this information does not reflect GEM but rather provides information on the number of gender specific LNDs.

4.4.3 Challenges to mainstreaming gender equality in legislation

The CSA has encountered challenges that reflect gender equality as a lack of priority⁴⁸.

According to the Law on Laws of 2015, documents of a draft law/ordinance must be sent by the Drafting Body to the Committee for Social Affairs for the review of gender equality mainstreaming. However, the Committee rarely received these official documents (*except for cases when the Committee is responsible for general review*). The Committee had to request drafting bodies to provide it with documents.

⁴⁶ CSA, Report on 10-year implementation of GE Law, Hanoi, 2019.

⁴⁷ CSA, Report on 10-year implementation of GE Law, Hanoi, 2019.

⁴⁸ CSA, report on 10-year implementation of GE Law, Hanoi, 2019.

A major challenge has been the arbitrary selection of draft laws or ordinances for the review of gender equality mainstreaming has been based mainly on subjective considerations rather than evidence of gender impact. Government agencies have found it difficult to define which draft laws/ordinances are '*related to gender issues*' and require gender-based analysis as set out in the Law on Laws of 2015. This has resulted in laws being promulgated by the NA without integrating gender considerations even though gender equality issues exist in the subject matter. While advances in mainstreaming gender equality in LNDs improved after the promulgation of the Law on Laws, 2015, the capacity to undertake gender analysis remains weak⁴⁹. According to official sources, gender mainstreaming has not been conducted for a significant number of draft legal normative documents⁵⁰. Many draft LNDs have had reports on gender mainstreaming attached, but the gender impact analysis has not met quality standards⁵¹. A number of reports of drafting bodies stated that draft laws/ordinances were gender neutral and did not have gender sensitive issues. However, during the appraisal by the Ministry of Justice and review by the NA's Committee for Social Affairs, some drafting bodies have recognized that the draft legislative proposals contained gender issues. This was the case in laws such as the Law on the Execution of Criminal Judgements and the Law on the Organization of the Criminal Investigation Agency⁵².

Furthermore, other committees of the NA have paid little attention to gender mainstreaming. A number of draft laws although have been attached with reports on gender mainstreaming by the drafting bodies and reports by the Committee for Social Affairs reviewing gender mainstreaming, but gender issues have not been included into official reports of the Committees who were in charge of draft laws. The response from drafting bodies and other NA's Committees were sometimes inappropriate. In the meantime, the review of gender mainstreaming by the Committee for Social Affairs usually stopped at the first reading of the draft laws, without follow-up activities.

The review of LNDs in section 3 of this report also reveals that ministries have limited capacity to analyze potential gender impacts of neutral provisions of policies and draft laws and to use laws to promote gender equality within a sector. In addition, in most ministries the CFAW representatives interviewed for this review could not explain how the legal department mainstreamed gender equality in the LNDs its ministry is responsible for. This is likely due to the fact there are no targets related to gender in LNDs in the national strategy and thus the ministry, through CFAW, does not report on gender equality mainstreaming in LNDs. A former Deputy Chair of the CSA made a similar observation. Ministry officials noted that few lawyers in legal departments have specialized training on GEM in legal normative documents. The Ministry of Justice, the department responsible

⁴⁹ Official reports of the CSA, MOLISA, MOJ.

⁵⁰ Committee for Social Affairs, Report on 10-year implementation of GEL, Hanoi, 2019; Ministry for Labour-Invalids and Social Affairs, Report on 10-year implementation of GEL, Hanoi, 2019; Department for General Law Development Affairs (*Ministry of Justice*), Gender Mainstreaming in legal normative documents: Results and challenges after 10-year implementation of GEL, Paper for the workshop on 10-year implementation of GEL, organized by MOLISA, Hanoi, 10/2019.

⁵¹ CSA, report on 10-year implementation of GE Law, Hanoi, 2019.

⁵² CSA, report on 10-year implementation of GE Law, Hanoi, 2019.

for the Law on Laws suggested that ministries do not pay full attention to gender equality analysis because of limited budgets and personnel lacking training. Also, the formulation of legislative proposals is often done under tight timelines.

GEM in legal normative documents has received even less attention at the local government level. For example, in 2016, 41 of 63 provinces had no data to report on the number of provincial LNDs that included gender mainstreaming⁵³. Furthermore, in the national end-of-term reports on the organization and operation of People's Councils from 2007 to date, there has not been any data or mention about GEM in the policy making process by the PCs.

4.4.4 Viet Nam Women's Union role in GEM

As a political mass organization with duties similar to government and also as a representative of rightsholders, the Viet Nam Women's Union plays a unique role in promoting gender equality and advancing women's rights and interests. The VWU was one of the champions of the GE Law prior to and during its formulation. The VWU at all levels has implemented many activities to contribute inputs into laws and policies relating to gender equality, and to monitor the implementation of those laws and policies, particularly the Law on GE, Law on Domestic Violence, and the National Strategy on Gender Equality.

According to the interview data for this review, the VWU representatives participated in the preparation of 3 decrees, 2 decisions, 1 circular, and 1 joint circular. Under Article 29 of the Law, VWU states they have advanced 365 policy recommendations, many of which have resulted in legislation or regulations. According to VWU, they have advocated policy changes including: extending maternity leave from 4 months to 6 months; reducing the number of years of contribution to social insurance (*20 years before; now 15 years for women*); and supporting a regulation on support for ethnic minority women when they have more than one child.

4.4.5 GEM in other policy making and planning processes

While GEM in LNDs is important, integrating gender equality in government planning would help the country progress toward its targets⁵⁴. According to MPI the Prime Minister has issued a directive on socio-economic plans. The ministry has prepared a guiding framework for central level agencies and provinces, including gender equality mainstreaming in the five-year and annual plans. In the current official social economic plan, there is only one section on gender equality, it is not mainstreamed in each field.

According to MPI, at present only MOLISA has a separate section on gender equality in their plans; although all 8 fields identified in the Law should integrate gender equality in annual plans of ministries. Interviews with central level agencies revealed limited gender equality mainstreaming within ministry initiatives. There were some exceptions, notably MOET.

⁵³ CSA, Report numbered 860/BC-UBVĐXH14 verifying Report of the Government on the implementation of national gender equality objectives in 2016, Hanoi, 10/2017.

⁵⁴The international consultant observes that gender equality mainstreaming is used primarily in Viet Nam to refer to the integration of gender issues in legislation. In other countries GEM refers to the integration of gender issues in any type of document, programme or activity.

In MOET, the CFAW requests that each member of the committee provides recommendations to achieve gender equality in their specific department's subject matter (*selected departments on the Committee but all departments have to integrate gender equality in their activities*). Every department contributes proposals for annual plans of action to ensure gender equality is integrated. However, in the HCM City 10 year report it states that *"the implementation of gender equality in the education and training sector still has some problems due to the fact that responsible Ministries and Branches have not yet: (i) Guided the regulations on policy for women who care for children under 36 months of age when participating in training and fostering programmes; (ii) Mainstreamed the gender issue into annual programmes and plans of the Ministries and branches, causing difficulties for the implementation process in the locality; (iii) The gender prejudice still exists in textbook of all levels"*⁵⁵.

4.5 Other measures or initiatives to advance gender equality

4.5.1 Statistical Information and reporting on gender equality

There seem to be some advances in gathering gender-based data. Annually, the Government submits to the NA the report on the implementation of national gender equality objectives. The Government has also reported to the CEDAW Committee, with the last report being a combined report (*7th and 8th reports on the implementation of CEDAW in Viet Nam*).

Central level data collection is conducted against the specific objectives/targets of the National Strategy on Gender Equality, as mentioned above. Additionally, according to the 10-year national report ministries have prepared circulars or decisions on statistical targets, some of which are specific to gender equality, and some disaggregate data based on gender. For example, MOLISA has a system of 107 statistical targets among which, five relate to gender equality and 29 are disaggregated based on gender. In addition to the indicators for the National Strategy on Gender Equality and ministry-specific statistics, the General Statistics Office (GSO) began to implement a new set of 78 indicators in 6 sectors⁵⁶ of gender development in 2019. The Law on Statistics of 2015 has included 25 targets from the indicators set out in Decision 56/2011 of the Prime Minister.

Gender-based analysis, required for gender equality mainstreaming in policies and laws, is also facilitated through population and time use surveys. The General Population and Housing Survey of 2019 provides sex disaggregated data on some issues such as the percentage of married persons who are 15 years old and older, the proportion of persons going to school, literacy rate, among other things. The latter survey provides important information on gender-influenced roles of men and women and the time dedicated to household work, childcare and other activities.

On the other hand, official sources have indicated gaps in statistics and reporting⁵⁷. According to the Committee for Social Affairs of the NA, at the end of 2018, there was no data or incomplete data for nearly 10 targets of 7 objectives, which was

⁵⁵ Ten-year report HCMC p. 33.

⁵⁶ The six sectors are: population; labour, employment and access to resources; leadership and management; education and training; health and related services; and GBV and social safety.

⁵⁷ For instance, annual government's reports on the implementation of national GE objectives; MOLISA's 10-year report; CSA's 10-year report.

an obstacle for the full assessment of the National Strategy⁵⁸. This review also reveals that data collection against the targets in the National Strategy has been incomplete. Annual reports on the implementation of the Law did not include consistent information against the objectives and targets of the National Strategy. Measurement of targets set out in the National Strategy was fairly consistent from 2011 to 2015, although somewhat difficult to locate in annual reports of the government to the National Assembly. After 2015, targets were not consistently measured and reported in annual reports of the government to the National Assembly. In some annual reports of the central government data on the specific objectives and targets from the National Strategy on Gender Equality are not included, thus making it difficult to track progress against the objectives and targets. Likewise, partial data (*responding to only some of the targets*) was included in the national 10-year report on implementation of the Law.

The collection of sex disaggregated data across ministry indicators institutional is still limited. The lack of disaggregated data limits indicators that can be used in future National Strategies on Gender Equality and annual reporting to the National Assembly.

Among the five sample provinces in this review, different statistical information was reported. The common topics reported in all 5 sample provinces were: i) women in politics and government and ii) women in employment and vocational training programmes. Four provinces reported statistics on literacy and sex ratio at birth and three provinces reported statistics on gender-based domestic violence.

Other provinces across the country have provided limited information on gender equality in their annual reports. For example, in the Government's 2016 annual report on the implementation of gender equality objectives one province did not submit a report and 11 provinces provided data on only 4 to 6 of 23 required targets. In 2016, only 13 of 63 provinces reported on all 22 targets; other provinces did not report fully or did not manage to collect and analyze data⁵⁹. This review reveals that provincial reports provide very little information on gender mainstreaming in LNDs and other policies of local governments.

4.5.2 Information, education and communication

Information, education and communication (IEC) activities represent the primary measure to advance gender equality. There are significant IEC activities implemented through mass communication methods but the effect of the campaigns on gender equality attitudes and behaviours has not been evaluated. Some of the campaigns appear to reinforce traditional stereotypes and roles of women. The engagement of men in local IEC activities appears to be very limited.

The 10-year national report lists the IEC activities undertaken. As mentioned above, MOIC has encouraged specialized gender sections. *“There are 47 among 67 radio and television stations with special sections and subjects to raise awareness*

⁵⁸ Committee for Social Affairs, Report No 1657/BC-UBVĐXH14 Verifying Report on the Government's Report on the implementation of national gender equality objectives in 2017, Hanoi, 10/2018.

⁵⁹ Government's Reports on the implementation of national gender equality objectives in 2016, 2017.

about gender equality. Some stations develop and broadcast their own programmes on women and gender issues such as “Women and development”, “Women’s world”, “Women and life” among others⁶⁰. The report goes on to say that local stations in Gia Lai, Lai Chau, Dak Nong stations have radio and television programmes in ethnic minority languages in order to promote propaganda on the theme of gender quality to ethnic minorities. Awareness raising activities of MOCST, MPS, Ministry of National Defense, the Youth Union, among others are described.

The Women’s Union has more recently implemented a campaign titled “*Propagate and educate Vietnamese women’s morality and qualities in the period of promoting the industrialization and modernization of the country*”. The 10-year national report explains that this campaign trains women on morality and qualities such as “*Self-confidence-Self-respect-Faithfulness-Resourcefulness*”. The “equality” content of the campaign is not known, although it is interesting to note that messages of morality during industrialization and modernization are directed at women and not men. This campaign and other IEC campaigns, such as the “*good family life and values*”, may reinforce traditional gender roles in the home and community.

When asked what advances had been made in gender equality, civil society representatives noted that propaganda on gender equality had been the most visible activity to promote gender equality. Some representatives suggest that the content perpetuates stereotypical and traditional roles of women with messages such as “*women be good at work and home*”.

No indicators are set for IEC activities and no impact measurement appears to be applied in order to confirm the degree to which attitudes and behaviours change as a result of the IEC campaigns⁶¹. Changing traditional and discriminatory attitudes and behaviours through communication is challenging, although the public health sector has made progress changing behaviours.

Provincial reports on 10 years of implementation of the Law confirm significant communication, information and education activities are undertaken by provincial duty bearers. Duty bearers at the provincial, district and local levels were asked, *what initiatives have been most successful in advancing gender equality?* The majority identified IEC activities as the most successful initiative. The provincial 10-year reports provide extensive examples of the promotion of gender equality through IEC activities.

- Bac Ninh province reported IEC initiatives such as: initiatives to increase women’s participation in politics and government, prevention and control of human trafficking, reproductive and sexual health for women and men, preventing fetal sex selection and gender-based violence.
- HCMC’s 10-year report provided approaches to IEC, including: initiatives to improve gender capacity of media personnel; television shows addressing

⁶⁰ Report on Ten Years of Implementing the Law on Gender Equality, p. 5 (English summary).

⁶¹ Conducting surveys before and after a mass gender equality campaign could provide valuable data on attitudes towards gender equality and specific beliefs that contribute to inequality. In the Europe and Central Asia region, UN Women is experimenting with the Communication for Behavioural Impact method, used primarily by WHO to change health related behaviours, to address violence against women. The Oxfam confederation is also applying and monitoring communication for social and behavioural change.

gender roles in dating, family life, domestic violence, work environment; campaigns customized to target specific professions/sectors and population areas (*details not provided*); and billboards and posters on sex birth ratio imbalance.

In provincial 10-year reports, there is limited information provided on the targeted engagement of men and boys in gender equality initiatives. However, in HCMC there is a Men's Club promoting Gender Equality at the commune/ward level, as part of IEC activities.

The impact of these IEC campaigns should result in attitudinal and behavioural change reflective of gender equality. The interviews with children revealed mixed results in this regard. On the positive side, in their responses, both boys and girls stated they contribute to household chores and the types of chores were the same for boys and girls (*cleaning, sweeping, washing dishes and clothes, and cooking*). However, gender stereotypes related to "*appropriate*" activities for a boy or a girl remain strong. Girls frequently reported that they are not expected to do heavy things or participate in certain sports, such as football, rugby, cycling or climbing mountains. Fewer boys mentioned activities they are told they shouldn't participate in, but dancing and skipping were provided as examples. Boys and girls both acknowledge that boys have more freedom to do what they want.

4.5.3 Civil society gender equality initiatives

Civil society organizations interviewed for this review described gender equality initiatives that focus on research to inform other initiatives, awareness raising and public education, policy advocacy, and capacity building for men and women:

- Field research to understand gender issues and inform policy advocacy and public awareness campaigns.
- Awareness raising and education through mass media or directly targeting affected rights-holders.
- Legal and policy advocacy occurs at national and local levels of government. CSOs reported their contributions to laws or policies related to small and medium enterprises, the state budget law, labour code, and childcare. Some CSOs also engage with international human rights mechanisms such as the CEDAW Committee.
- Capacity building for women and girls includes economic empowerment (*participation of women in businesses and employment*), participation of women in local development, prevention of violence, support groups to escape violence, prevention of sexual abuse and bullying (*for girls*), hotline for lesbians, and support on how to cope with lesbian or gay children.
- Capacity building for men and boys includes conflict resolution at schools, support to families characterized by violence, conflict resolution with wives, how to maintain an equal relationship with women and girls, how to become a father and a husband, prevention of sexual abuse and bullying (*for boys*), gay rights, how to cope with lesbian or gay children.
- Monitoring of law and mass media for gender stereotypes.

4.6 Inspection, handling of violations and monitoring of the law

Chapter V of the Law provides for inspection, handling of violations and monitoring or oversight functions.

4.6.1 Inspection, examination and handling of gender equality violations

The Law, in article 35, assigns inspection to the state management agency. Handling of complaints and violations are detailed in articles 37-42.

Functions on inspection, examination, complaint, and handling of violations related to gender inequality and discrimination are limited. While ministries may undertake inspections related to gender equality the details are not found in their annual or 10-year reports. MOLISA restricts gender discrimination inspections to workplace inspections; however, no information on sanctions for workplace violations was reported.

The only inspections reported were conducted by the Ministry of Health on the topic of gender-biased sex selection. They undertook 499 inspections of 2,289 health units related to sex selection in the period of 2011-2015⁶². Sanctions were recommended in 15 cases where violations were detected. At the local level, inspections are conducted by provincial DOLISA personnel in relation to labour and gender equality. Between 2011 and 2016, nearly 100 examinations on provincial DOLISAs' state management of labour and GE were conducted by MOLISA. Other ministries conduct inspections related to gender equality in their fields.

Decree No. 55/2009/ND-CP on Sanctioning of Administrative Violations of Gender Equality sets out sanctions for violations of gender equality including monetary fines, other types of sanctions (e.g. *loss of a licence*) and corrective remedies, such as a public apology, removal of discriminatory advertisements, annulment of discriminatory rules and so on.

It is important to note that Decree No. 55/2009/ND-CP has inconsistent provisions with the Law on Handling Administrative Violations of 2012, namely the maximum fine for violations and compensation for harm. Some actions have not been clearly defined by Decree 55, such as "*gender bias business activities*" (Article 7), "*gender bias science and technology activities*" (Article 10). At present, there are not effective sanctions in law to address violations of gender equality such as violence by a husband against his wife, delay of birth registration for girl children or forced son selection.

There is very limited information on sanctions applied in cases of violations. The Government's report of 2017 provides no information on the handling of violations, although the same report indicates that violations by employers to female workers occurred widely⁶³. Similarly, two violations of the prohibition on sex-selective

⁶² At page 17 of the combined report (2015 annual and 2011-2015): "Concerning inspection, examination and monitoring of health facilities, ultrasound and abortion services regarding their compliance to the regulation on prohibition of fetal sex selection, so far, 499 sessions have been performed on 2,289 inspected units, of which 15 cases of violations were detected and penalties were proposed for them".

⁶³ Government's Report on the implementation of national gender equality objectives in 2017.

abortions, presumably identified by health authorities, were the only sanctions (*finés*) reported in MOLISA's 10-year report on the implementation of the GE Law. *"In 2017, Nghe An province examined 20 medical facilities in their implementation of the regulations on prohibiting the selection of fetal sex, management and use of contraceptive facilities. 02 wrong establishments were discovered and fined 6,500,000 VND as administrative sanctions"*.

A system to receive and manage complaints of discrimination has not been established under the Law as stipulated in article 37 of the Law. MOLISA does not track complaints of gender-based discrimination. In the absence of a complaint management system established individuals may not be aware they can file a complaint.

4.6.2 Monitoring of the Law

Article 36 of the GE Law assigns the oversight functions of the implementation of the law to the National Assembly, specific committees of the NA, and People's Councils at the local level.

According to Article 13(c), Law on Oversight Activities of the NA and People's Councils of 2015, at an end of year plenary session, the NA discusses the Government's report on the implementation of national objectives on gender equality after its verification by the CSA. The NA may issue a resolution on GE affairs of the Government in that year as necessary. Implementing this provision, at the 4th session of the XIV Legislature, for the first time, the NA discussed the report⁶⁴. Members of the NA have raised a number of opinions on the report's contents, contributing to the oversight of the implementation of gender equality objectives. However, at the fall session of 2019, this report has been sent to individual Members of the NA but has not been discussed at the plenary session.

Data derived from reports of the CSA showed that, from 2007 to date, through 3 terms of XII, XIII, and XIV Legislatures, the CSA has regularly conducted oversight missions on the implementation of GE Law and gender equality objectives. Data, opinions, and recommendations collected in these missions have been consolidated and sent to the NA's Members for the use and to related agencies for the implementation⁶⁵. A number of the Committee's recommendations have been accepted and implemented by agencies.

On the other hand, issues of gender equality have not been incorporated into other oversight activities of the NA and its bodies. Being an intersectional area that covers many ministries and all provinces, gender equality has never been chosen neither by the NA nor the NA Steering Committee for topic-based oversight. The CSA and other Committees of the NA have never conducted a hearing session on gender equality issues. Regarding provincial Delegations of NA's Members, data of the XIII Legislature revealed that only a few Delegations have joined oversight

⁶⁴ Previously, according to the Law on GE, the Government's report on the implementation of GE objectives was sent to the CSA for the review, and to individual Members of the NA for their reference.

⁶⁵ CSA, Reports on the activities and results of the CSA during the XII (2007-2011) and XIII (2011-2016) Terms of the NA; annual reports of the CSA during the XIV Term of the NA (2016-2021).

missions of the CSA, but no Delegation has conducted oversight activities on gender equality issues by themselves.

The NA has the authority to decide many issues of national importance that have enormous gender impact on various groups of the population. They are national policies on national infrastructure; national target programmes; policies on ethnic minorities, religion, education, science and technology; socio-economic development plans, and so on. However, gender equality issues just have been occasionally mentioned in Members' speeches at the NA's sessions. Gender equality issues have not been paid adequate attention by the NA as a whole, as well as by the NA's Committees in the process of drafting, verifying, discussing, and approving those policies.

In article 36 (2) of the Law on Gender Equality, People's Councils are assigned the responsibility to implement the law at the local level. The study of documents and reports of various provincial People's Councils, as well as national end-of-term reports on the operation of People's Councils at all levels, revealed that gender equality issues have been paid little consideration by People's Councils. As mentioned above, from 2007 to date, through 3 terms, national end-of-term reports on the operation of People's Councils have no reference to gender equality issues in their activities. This indicates that People's Councils did not conduct activities relating to GE, or they did very few but were not reported.

After a review of reports and websites, the review found that few People's Councils have conducted oversight missions on the implementation of GE Law and gender equality objectives, such as Bac Kan in 2013 and 2019, Ninh Binh in 2014, Quang Ninh in 2015, Phu Yên in 2019, Ca Mau năm 2017. Some oversight activities have brought positive results, for instance, after the oversight mission in 2019, the People's Council of Bac Kan has disseminated the report No 42/BC-HĐND with recommendations to duty bearers in the province. Implementing these recommendations, the People's Committee of Bac Kan has issued a document to instruct departments and districts to have actions promoting gender equality within their jurisdiction.

It is also important to note that the VWU monitors gender equality generally. In article 30 of the GE Law the VWU is tasked with conducting advocacy ("*social opponency*") of policies and laws concerning gender equality.

5. KEY FINDINGS AND CONCLUSIONS

5.1 Summary of key findings

The main findings of the review are summarized below in two sections that correspond to the two main review criteria of consistency and effectiveness.

5.1.1 Consistency of the Law

5.1.1.1 The Gender Equality Law compared to the International Human Rights Standards

The Law is mostly consistent with international human rights standards. Still, there are some provisions of the Law that are not fully consistent with CEDAW or other international treaties. These are considered as weaknesses, although it must be acknowledged that the issues could be addressed through the GE Law or other legislation. There are also omissions that limit progress on gender equality.



Consistency

- The law is consistent with substantive equality.
- Political representation provisions are consistent with international standards.
- The Law considers multiple and intersecting forms of discrimination against women in certain situations, namely rural women in impoverished conditions and ethnic minority women.
- Special measures to promote women's equality is consistent with CEDAW as these initiatives seek to ensure women enjoy substantive equality (*similar outcomes*) as men do.
- The law is consistent with awareness raising (*information, education, and communication*) obligations in CEDAW.



Issues to address in the Law or other legislation

- While equality in culture is protected, the participation of women could be more explicit in order to address discrimination in traditional cultural practices.
- Family and social life do not appear to be as broad as CEDAW "*all fields of life*". However, the Law provides a comprehensive list of social life to include a variety of political, social, economic and cultural sectors.
- Some social rights, e.g. education, focus on accessibility but not other dimensions of the right including non-discrimination in availability, adaptability and acceptability.
- Women working in family businesses not explicitly protected.
- Sexual harassment is not recognized as a form of discrimination.
- Equal rights in terms of nationality are not recognized.
- Multiple and compounded forms of discrimination are only recognized in terms of rural poverty and ethnic minorities.
- Gender mainstreaming is limited to the legislative process.



Omissions:

- Indirect discrimination is not considered in the Law.
- Gender is restricted to male and female. Gender identity is not addressed.
- Harmful practices are not identified as expected in CEDAW and SDG 5.3.
- Prohibited acts, including GBV, are not clearly defined and sanctions are not applied.

5.1.1.2 The GE Law compared to other National Laws

Non-discrimination and gender equality provisions

- For the most part laws in the family, education, justice, and health sectors include equality and non-discrimination guarantees.
- Laws in the employment sector contain discriminatory provisions, as well as some equality rights provisions.
- Some, although limited, gender equality considerations in laws in the political and economic sectors.

Accommodation of biological or gender differences

Few laws accommodate men and women for biological or gender differences. Some laws in family, labour and justice sectors do provide accommodation:

- Family: The best interest of the child principles is used to decide on child custody for young children, and mothers are given preference for custody of young children following divorce.
- Labour: Gender is considered in workplace accommodations, including facilities for women in the workplace, maternity leave and paternity leave in the Labour Code of 2019.
- Justice: Gender accommodations are considered in sanctions for administrative violations and criminal offences.

Special measures are provided for in only a few laws:

- There are electoral quotas in the Election Law but measures to ensure women's political participation could be enhanced.
- Affirmative measures to ensure health services for women and children are included in law.
- Special measures in the economic are limited to women owned small or medium enterprises and the bidding law provides preferences for employers with a workforce of over 25% women.
- Incentives in the economic sector are provided for businesses hiring women.

- Special measures are limited for women and girls in education and in science and technology.

Explicit discrimination and stereotypes

- Discriminatory differences in law include the different age of marriage for women and men in the Law on Marriage and Family.
- Labour sector laws include provisions that are discriminatory, including: different retirement age for men and women, different ages for pension eligibility between men and women, women's access to certain occupations are based on stereotypes rather than bona fide occupational requirements, likewise women are assumed to have limitations due to their menstrual cycle and are provided longer breaks during menstruation.

GEM in legislative development processes

- Gender neutral language can be used to avoid gender-based analysis in legislative development due to vague wording ("*related to gender*") in the Law on Laws of 2015.
- A number of laws deemed not to be "*related to gender*" actually have gender equality implications (e.g. *Forestry, Land, Information and Communication*) that should be addressed in the legislative development process.

5.1.2 Effectiveness

Legal and policy framework. Legal and policy instruments were slow to be developed and enacted, leaving officials assigned gender equality responsibilities without clear guidance (*as expected in the Vietnamese legal system*).

National Strategy on Gender Equality 2011-2020. The majority of targets have not been achieved. At the end of 2018, five targets had not been achieved, 10 targets had no data, or incomplete data, and some targets that were achieved early have not been sustained over time.

Women in politics and senior management: While the targets have not been met at the national level, the perception of government stakeholders is that this is the area where the most progress toward gender equality has been made. Indeed, this target is the focus of central ministries' gender equality initiatives through CFAW.

Women's participation in the economy: three of four targets related to women's participation in the economic sector were met: New jobs for men and women; % of female entrepreneurs, women receiving vocational training and women seeking preferential credit. Civil society and rights-holders recognize this as the area where most advances have been made.

Equal participation in education. While 2015 targets related to literacy and women with master degrees were met, the indicators demonstrate limited dimensions of the right to education (*availability, accessibility, adaptability, and acceptability from a gender perspective*).

Equal access to and benefits from health care services: All health targets appear to have been achieved by 2015. Concerns remain about mental health services and services for victims of gender-based violence. Likewise, sex ratio at birth imbalance remains an issue that cannot be addressed only through health services.

Gender equality in culture and information domains: Targets related to cultural and information domains not tracked and thus the discriminatory or stereotypical information published by different media is not known. One recently established target was met, namely 100% central and local radio and TV stations have special programming on gender equality.

Equality in family life and the elimination of gender-based violence: One of five targets was met. The target related to the percentage of women who have experienced domestic violence receiving counseling was met. The targets recognize the interconnection between gender-based violence and domestic violence. The overlapping responsibilities in relation to violence against women and girls is noted.

State management: One target was achieved in recent years: 100% of gender equality and women's advancement cadres at all levels and in all sectors that have been professionally trained at least once. Meaningful targets on gender equality mainstreaming in legislative development processes were not consistently tracked.

State management on gender equality

Gender equality structure for implementation of the Law. The review found that a gender equality structure was created but it is limited in terms of human resources, capacity, and finances. The structure may also be contributing to the view that gender equality is the same as women's advancement because the CFAW is used as a mechanism to advance the implementation of the Law.

Knowledge of gender equality. Officials with gender equality responsibilities used the term gender equality mainstreaming to refer to both GEM in legislative proposals but also to refer to gender specific activities in their agency.

Overlapping responsibilities for issues such as gender-based domestic violence and gender-biased sex selection require a clear definition of functions of the relevant ministries and strong coordination mechanisms. There is no formal gender equality coordination mechanism at the national or local levels.

Gender Equality Mainstreaming in the legislative development process. Advances in GEM at the national level are due mainly to the work of the CSA rather than the drafting bodies (*except for some drafting bodies*). The use of gender-neutral language does not ensure gender equality, and in fact, gender neutral language appears to be used to avoid gender-based analysis in legislative development. The interpretation of the requirement of gender analysis (for "*gender related laws*") in the Law on Laws of 2015 has limited GEM in laws that appear to be gender neutral but actually have indirect or unintentional gender impacts. The review found very limited GEM at the local level and insufficient GEM in socio-economic planning processes.

Initiatives to advance gender equality

Statistics. While there was no consistency tracking of indicators related to the National Strategy, there have been advances in the definition of gender indicators to be tracked by the General Statistics Office. Sex disaggregated data and other gender data is essential to a gender-based analysis.

Information, education and communication initiatives to increase awareness of GE. IEC campaigns are a primary activity with wide coverage in communities but their actual effectiveness in changing attitudes and behaviours is not known. Some campaigns reinforce traditional gender roles.

Civil society initiatives. Initiatives from non-governmental organizations, described in interviews for this review, complement state initiatives and adopt a human rights-based approach, including a broader conceptualization of gender to include gender identity.

Inspection, handling violations, monitoring

Inspections and handling violations. The state management agency has undertaken limited inspections. Joint MOLISA - MOH inspections focused on sex selection and the only sanctions reported resulted from these inspections. A complaint management process on gender discrimination has not been designed.

Monitoring and oversight of gender equality implementation. Oversight is primarily conducted by the CSA, although other committees and individual members have the responsibility to oversee the implementation of the Law. Locally, People's Councils have undertaken very limited oversight activities.

5.2 Conclusions

The conclusions below focus on providing analysis of the factors that have advanced gender equality and those that have limited gender equality.

5.2.1 Factors that have supported advancement of gender equality

1. Consistency with international standards and consistency between the Law and other laws occurs when drafters adopted a substantive equality approach that considers the actual situation of men, women, girls and boys and seeks to ensure equality in outcomes.
2. The National Strategy objectives and target, while not fully achieved, did organize the work of duty bearers.
3. Existing sex-disaggregated data, while apparently limited, allowed for the design of some targeted initiatives to address gender inequality. This was the case in the education sector where local initiatives were designed to address obstacles to education for boys and girls.
4. Initiatives undertaken by CSOs and some local governments, such as HCMC, seek to engage men and boys in gender equality initiatives. To reduce gender inequality women, girls, men, and boys need to be actively engaged.

5. Special measures, including political quotas, economic incentives, preferential credit schemes, and leadership training for women support progress toward gender equality in practical terms in the sample provinces.
6. Political will and the allocation of financial resources are both important to ensure gender equality activities are undertaken at all levels of government. These factors were evident in Ho Chi Minh city.

5.2.2 Factors that limit gender equality

7. Inconsistencies or gaps in the GE Law occur when more complex concepts of indirect discrimination, multiple and intersecting forms of discrimination, all fields of life, and harmful practices are not integrated. These gaps, especially the lack of definition of indirect discrimination, limit the gender-based analysis required to mainstream gender equality in legislative proposals. This gap has led to drafters using gender neutral language and ignoring potential adverse gender impacts in a draft law, despite the fact the CSA identified inherent gender issues in there.
8. National policies such as socio-economic development plans and national target programmes (*poverty reduction programmes, for instance*) are not required to ensure gender equality is mainstreamed in the GE Law, the Law on Laws and the Law on the Organization of the National Assembly.
9. The Ministry of Finance has not prepared guidance for gender equality budget allocations under the Law on State Budget of 2015.
10. Inconsistencies in national legislation with the GE Law are the result of gender stereotypes, explicit discrimination or special measures that are not sufficiently ambitious. The field data reveal that gender stereotypes are widespread in society and children have learned stereotypes that limit their activities and opportunities from a young age. The 10-year reports of provinces identify gender inequality due to traditional customs and perceptions of the role of women in society and family life. This issue of patriarchal attitudes and stereotypes related to women's and men's roles causes discriminatory behaviours.
11. The high number of IEC activities do not necessarily challenge prevailing attitudes and behaviours that result in gender inequality. Messages may reinforce gender stereotypes and traditional roles assigned to women and men. Men have not been engaged and it is not clear if IEC activities are targeted toward community leaders and heads of patrilineal clans.
12. The gaps in the GE Law and national legislation translate into an insufficient legal framework for gender equality and limited sectors considered in the National Strategy. Furthermore, delays in promulgating a complete legal and policy framework to support the implementation of the GE Law created obstacles for agencies, organizations, and individuals in fulfilling their responsibilities and tasks, because they did not have sufficient legal foundation, as well as concrete procedures for the implementation.

13. An insufficient legal framework translates into gaps in the implementation of initiatives. For instance, provisions on elections and retirement age have restricted opportunities for the participation and promotion of women in political and public life and in employment. Inequality and discrimination in employment and family life require additional efforts. Workplace inspections, and gender equality initiatives, including targeted IEC activities that challenge traditional and stereotypical gender roles and programmes to address gender-based domestic violence against women and son preference, are required to address the most prevalent issues of inequality.

14. State management of gender equality is restricted due to limited institutional mechanisms. The use of the Committees for the Advancement of Women to coordinate gender equality activities has the effect, in some ministries, of limiting gender equality activities to personnel departments thus reducing the focus of gender equality to human resource issues rather than substantive issues in technical departments of ministries.

15. The lack of clear, strong provisions on gender equality as a principle of operation of the NA and local government has been one of the reasons for inappropriate attitudes and action for gender equality by these bodies.

16. Officials responsible for implementing gender equality often have limited understanding of gender equality concepts, including gender equality mainstreaming, and limit their work to certain aspects of the GE Law, certain targets in the National Strategy, or certain provisions of related laws. This has limited efforts to close gender gaps in the country.

17. Gender equality is considered a task for the VWU and the CFAW and therefore perceived as women's advancement. As a result, a number of gender equality activities have focused on the promotion of women's rights, leaving aside other gender issues affecting men and boys. In fact, the targets in the current National Strategy emphasize the advancement of women; however, targets could be more balanced by considering women and men, girls and boys. Also, due to the focus on women, there are a limited number of men involved in gender equality activities (*70% of state officials that are in charge of gender equality are women*) and limited efforts to address gender discrimination against men and boys in certain sectors.

18. Limited financial and human resources dedicated to gender equality have resulted in limited activities at the central and local levels. Gender equality activities, except IEC campaigns, are low in number and do not respond to the gender equality issues that need to be addressed.

19. Special measures (*quotas*) in the field of politics and women in senior management have not produced the expected results. The actual impact of other special measures, such as economic incentives for business owners, is not known. With regard to women's participation in politics and senior management, NA members have suggested complementary initiatives, such as political and management training and change to retirement age for women in the public

sector, are needed to ensure the special measures achieve the desired results⁶⁶. In particular, the target system (*cơ cấu*)⁶⁷ and the allocation of candidates to ensure one candidate has a higher chance to win were considered as barriers that largely affect women candidates⁶⁸. In addition, statistics revealed that chances for female candidates to win depends on their number and whether they are nominated by central level institutions, or if given voters prefer these candidates⁶⁹.

⁶⁶ General Secretary of the National Assembly, Report numbered 1519/BC-TTKQH summarizing opinions of NA's Deputies at the plenary session of 09/11/2017, discussing the Government's report on the implementation of national gender equality objectives in 2016.

⁶⁷ "*Cơ cấu*" refers to an electoral mechanism, when a candidate shall meet multiple requirements of representation, for example, a female candidate shall be young, from an ethnic minority, representing non-state sector at the same time.

⁶⁸ United Nations Development Programme, Women's Representation in Leadership in Viet Nam, Hanoi, 2012.

⁶⁹ United Nations Development Programme, Women Delegates in the Viet Nam National Assembly: from participation to representation, 2014.

6. RECOMMENDATIONS

The proposed actions presented in this section aim to address those gaps and obstacles identified in the Conclusions above. It is important to note that many of the recommendations are consistent with recommendations set out in the 10-year reports submitted by the provinces (*the five reviewed by the consultants*) and central level duty bearers and civil society organizations.

6.1 Revisions to legislation

6.1.1. Consider revisions to the Law on Gender Equality

- i. Expand the scope of the law to consider “*any field*”. In addition to 8 sectors already provided by the Law. Include other sectors areas such as administration of justice, environment, defense and security, religion, and any other field of life.
- ii. Define terminology in keeping with CEDAW definitions found in the Committees General Recommendations (*define gender, gender identity, direct discrimination, indirect or adverse effect discrimination, gender-based violence, harassment, etc*).
- iii. Recognize and provide for indirect discrimination. The lack of technical knowledge on equality and non-discrimination leads to the misconception that gender-neutral policies, laws, and plans do not discriminate. If all forms of discrimination were included in the law, including indirect or adverse effect discrimination, the regulation of gender-based discrimination would meet international standards and also facilitate greater gender equality mainstreaming in gender-neutral policies and legislation.
- iv. Define prohibited acts and clarify the sanctions for the prohibited acts. Define responsibilities related to complaints of gender-based discrimination. Eliminate overlap in responsibilities of state management in areas as identified in Section 4.
- v. Define harmful acts resulting in gender inequality, including son preference, gender-biased sex selection, sexual harassment, early or forced marriage.
- vi. Ensure the GE Law and Law on Laws are consistent with regard to gender mainstreaming requirements. Impose requirement for gender mainstreaming and gender impact assessment for other national policies and plans at the central level, as well as for LNDs of local government.
- vii. Revise the implementing decrees and circulars on state management bodies related to budget allocations, gender mainstreaming, and handling administrative violations of the GE Law.
- viii. Increase monetary sanctions for violations of gender equality and consider criminal or quasi-criminal for all gender-based discrimination and harmful acts such as sex-selective abortion and forced marriage. This will provide a firm legal foundation for other laws to increase sanctions for gender-based discrimination.

6.1.2 National legislation

Consider revisions to other national laws as follows:

ix. Revise Laws that have gender gaps and obstacles as identified in Section 4 with related Annex, but especially:

- Clarify roles and responsibilities related to gender-based domestic violence against women and gender-biased sex selection, both of which are manifestations of gender inequality.
- Revise the Law on Marriage and Family to adjust the age of marriage to be the same for women and men.
- Review the age of retirement and other age differences between men and women in labour sector laws.
- Review laws to include and/or Increase monetary sanctions for violations of gender equality and consider criminal or administrative sanctions in a more comprehensive manner for all gender-based discrimination and harmful acts in related laws, as well as implementing decrees, such as: Criminal Code, Labour Code, Law on Domestic Violence, Law on Handling Administrative Violations, Decree on Handling Administrative Violations of Gender Equality, etc.

x. Include clear, strong provisions on gender equality as a compulsory principle of gender equality in the Law on the Organization of the NA and the Law on the Organization of Local Government to ensure gender equality mainstreaming occurs in the NA and its Committees, People's Councils and People's Committees.

xi. Develop policies on special measures for women who face multiple forms of discrimination such as female immigrants, disabled women, women in mountainous remote and difficult areas, and ethnic minority women.

xii. Revise the Law on the Promulgation of Legal Normative Documents to be consistent with the Law on Gender Equality. Ensure gender equality mainstreaming is a requirement of all laws, regardless of whether the law is focused on gender.

6.2 State management

Substantive gender equality can be promoted by strengthening government structures for gender equality at both central and local levels through the following actions.

xiii. Create in the future a ministerial level agency on gender equality or equality rights generally to ensure gender equality is prioritized in terms of political objectives and financial resources⁷⁰.

xiv. Create gender equality functions within all technical departments of each Ministry and local government to ensure gender equality is mainstreamed in the technical work of government agencies. This could be achieved by assigning

⁷⁰ In Annex I legislation is analyzed from other countries. Some countries have broader equality rights legislation and others gender specific legislation and mechanisms.



functions to existing personnel or placing gender equality specialists within all technical departments. Alternatively, if resources are limited, assign at least one full-time gender equality specialist with technical understanding of the subject matter to each ministry and each decentralized agency to ensure gender equality is incorporated into the agency's multi-year and annual plans.

xv. In legal departments, assign analysts to support gender-based analysis of policies and laws to support the incorporation of gender issues in all policies and legal normative documents.

xvi. Convert NCFAW to an inter-agency national committee on gender equality and convert CFAW to a committee for gender equality within central and local agencies. This adjustment to the implementation mechanism of the GE Law will ensure gender equality is understood in a broader sense and that measures to advance gender equality support women or men, as the evidence and gender-based analysis on a topic indicates. It is not recommended that gender equality is grouped with children affairs or family affairs as this continues to place gender inequality as problem within the family when it is a whole of government and whole of society problem.

xvii. Intensify professional development programmes on gender equality to fill knowledge gaps identified in this report. Prioritize gender equality training among state management officials at all levels. Such training should include concepts of substantive equality, adverse effect discrimination, intersection or multiple forms of discrimination and skills such as gender-based analysis.

xviii. Increase inspection and sanctions in priority areas, such as: sex-selective abortion (*with the Ministry of Health*), enterprises known to have discriminatory recruitment or employment practices.

xix. Create a system within the MOLISA Inspectorate to receive and handle (*resolve or sanction*) complaints of gender-based discrimination from women or men that will increase the application of all or some provisions of Decree 55. A complaint or case management system should address, to begin, the most serious forms of gender-based discrimination causing harm to individual women or specific groups of women and that are not addressed through complaint mechanisms in other laws, such as: gender-based violence not falling in the scope of the DVPC Law or the Criminal Code, sexual harassment in the workplace, and discriminatory practices in the workplace. Such a system should also have the capacity to initiate investigations and publish recommendations that address systemic widespread discriminatory practices such as: discriminatory messages in the media, discriminatory employment practices, early or forced marriage, and son preference.

xx. Ensure a new National Strategy includes comprehensive data collection against measurable indicators and realistic targets. Link data to sex and gender disaggregated indicators to central level institutions and the General Statistics Office indicators.

xxi. Provide detailed guidance on budget allocations for gender equality so that ministries, departments, sectors and local governments have a basis to protect funds according to the current state budget decentralization.

6.3 Gender equality mainstreaming

xxii. Strengthen gender equality mainstreaming in all public policies, laws, and programs by:

- Increase training to support gender equality mainstreaming, including gender-based analysis, especially in relation to adverse effect discrimination and gender impact assessment. This is extremely important for legal departments of Ministries and for People's Councils and People's Committees.
- Investing more resources to gender mainstreaming in the process of drafting, verification, discussion, and promulgation of draft laws of the NA and draft resolutions of the People's Councils.
- Integrating gender equality when deciding issues of national or local importance, including the analysis of budgeting and budget allocation.
- Including gender equality indicators into annual and 5-year socio-economic development plans of the NA and People's Councils. (*People's Councils could learn lessons from People's Councils of Hai Duong, Bac Kan, Phu Yen in developing gender equality indicators as presented in Section 4*).

6.4 Priority gender equality initiatives

xxiii. Conduct in-depth studies on the effectiveness of special measures in the political and economic sectors for the purpose of adjusting the measures (*e.g. increasing quotas for women's participation and facilitating access to incentives for women owned enterprises and enterprises with significant female employees*).

xxiv. Share good practices related to women's political participation. Apply lessons learned from the People's Councils of Hai Duong, Bac Kan, and Phu Yen in developing networks and strengthening the roles of female Deputies at all levels.

xxv. Support evidence-based research to design targeted initiatives to address gender inequality in a local or regional context. For example, ensure initiatives to address gender-based violence, early or forced marriage, gender-biased sex selection, low school attendance, unemployment among women or other issues, are designed to meet the factors in the local context.

xxvi. Review IEC campaigns to ensure messages promote gender equality through a change in attitudes and actions. Design culturally relevant IEC activities that target influencers (*government officials, media, community leaders, and teachers*) and target groups of rights-holders.

- Eliminate messages that reinforce gender stereotypes, especially those that perpetuate traditional roles of women at home and at work.
- Increase women's awareness of their right to equality and any mechanisms (*complaint systems*) they can access to exercise their rights.

- Engage men and male leaders in IEC activities to encourage shared responsibilities in the home and new attitudes and practices toward family traditions.

6.5 Oversight of the Gender Equality Law

The recommendations below are directed at the National Assembly and People's Councils, given those entities have oversight responsibilities in the current Law on Gender Equality.

xxvii. Conduct topic-based missions to assess gender equality issues and hold hearings on urgent topics. Other Committees of the NA should have oversight missions on gender equality issues within their jurisdiction. Provincial Delegations of NA's Members can choose gender equality issues in their province for the topic-based oversight mission. Ensure the widespread dissemination of the findings on each topic following the mission.

xxviii. Increase oversight missions on GE Law's implementation by the People's Council, Standing Body of People's Council, Commissions of the People's Council. Conduct hearings in the Standing Body of People's Council where local agencies report on their implementation of GE Law.

ANNEX A: GLOSSARY OF TERMS

Acceptability. The facilities and services to meet social rights (*education, health, etc.*) should be relevant to the local context and population, culturally appropriate and respectful, sensitive to gender, age, ethnicity, and other important characteristics of the population, and of good quality (*meeting minimum standards*)⁷¹.

Accessibility. Services or programmes to fulfill social rights should be accessible without discrimination and free from barriers. This includes physical accessibility to the services especially for vulnerable groups, including those in remote areas, persons with disabilities and persons in detention. Education, health and other services must be affordable to all, although primary education must be free for all⁷².

Adaptability. Services or programmes to fulfill social rights should be flexible and able to adapt to the needs of changing societies and respond to the needs of rightsholders within diverse social and cultural settings⁷³.

Availability. Institutions and programmes should be available in sufficient quantity with the country⁷⁴.

Duty bearer. State actors who have obligations in international human rights standards to guarantee the rights of citizens and other individuals in the country. State actors are the duty bearers in international law.

Gender. The socially constructed roles and relationships, personality traits, attitudes, behaviours, values, relative power and influence that society ascribes to the two sexes on a differential basis. Gender is relational and refers not simply to women or men but to the relationship between them⁷⁵.

Gender-based violence. According to the CEDAW Committee, in General Recommendations 19 and 34, gender-based violence is “*violence which is directed against a woman because she is a woman or that affects women disproportionately*”. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence shall be understood to encompass, but not be limited to, the following: a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual exploitation, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation; b) Physical, sexual, and psychological violence occurring within the general community, including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions, and elsewhere; trafficking in women and forced prostitution; c) Physical, sexual, and psychological violence perpetrated or condoned by the State and institutions, wherever it occurs⁷⁶.

⁷¹ Committee on Economic, Social and Cultural Rights, General Comment No. 13 (*Right to Education*), 1999 and General Comment 22 (*Right to Sexual and Reproductive Health*), 2016.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ United Nations Vietnam. 2017. Vietnam Gender Briefing Kit 2016. Ha Noi, p. 7.

⁷⁶ *Ibid.*, p. 8.

Gender discrimination. In the Law on Gender Equality article 5 (5) gender discrimination is described as *“the act of restricting, excluding, not recognizing or not appreciating the role and position of man and woman leading to inequality between man and woman in all fields of social and family life”*. In CEDAW, article 1, discrimination against women *“shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”*.

Gender equality. Gender equality entails the concept that all human beings, both women and men, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles or prejudices. Gender equality means that the different behaviors, aspirations, and needs of women and men are considered, valued and favored equally⁷⁷.

Gender equality activities. These are activities implemented by agencies, organizations, families, and individuals to achieve the gender equality goal⁷⁸.

Gender equity. Fairness and justice in the distribution of responsibilities and benefits between women and men. To ensure fairness, temporary special measures must often be put in place to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field. Equity is a justice-based means-equality is the human rights-based result⁷⁹.

Gender identity. Women’s and men’s gender identity determines how they are perceived and positioned in a society, and how they are expected to think and act along traditional views of masculinities and femininities⁸⁰. Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (*which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means*) and other expressions of gender, including dress, speech and mannerisms⁸¹.

Gender preconception. It is a negative and partial attitude, acknowledgement and assessment of the characteristics, position, role and capacity of man or woman⁸².

Gender roles. A set of prescriptions for action and behaviour assigned to men and women by society according to cultural norms and traditions⁸³.

Human Rights-Based Approach. A conceptual framework for the process of human development that is normatively based on international human-rights

⁷⁷ United Nations Vietnam. 2017. Vietnam Gender Briefing Kit 2016. Ha Noi, p. 7.

⁷⁸ The National Assembly of the Socialist Republic of Vietnam. The Law on Gender Equality. Law No. 73/2006/HQ11. 29 November 2006, p.3.

⁷⁹ United Nations Vietnam. 2017. Vietnam Gender Briefing Kit 2016. Ha Noi, p. 7.

⁸⁰ Ibid.

⁸¹ Yogyakarta Principles, p. 8, http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

⁸² The National Assembly of the Socialist Republic of Vietnam. The Law on Gender Equality. Law No. 73/2006/HQ11. 29 November 2006., p. 2.

⁸³ United Nations Vietnam. 2017. Vietnam Gender Briefing Kit 2016. Ha Noi, p. 7.

standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities that lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress⁸⁴.

Indirect discrimination. Indirect discrimination refers to laws, rules or practices that are not intended to discriminate against a group of individuals but that have a negative impact, resulting in discrimination. This is consistent with article 1 of CEDAW "...the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women".

Intersectional discrimination. Intersectional or multiple forms of discrimination refers to discrimination based on more than one ground of discrimination (e.g. gender, disability, ethnicity) that increases the vulnerability of women and girls.

Mainstreaming gender equality. It is the measure aimed at achieving the goal of gender equality by defining gender issue, forecasting the gender impact of documents, responsibilities and resources to deal with gender issues in the social relations that are adjusted by legal normative documents⁸⁵.

Measure to promote gender equality. It is the measure aimed at ensuring substantial gender equality, set forth by the state authorities in cases there remains considerable imparity between man and woman concerning the positions, roles, conditions, and opportunities for man and woman to bring into play all their capacities and to enjoy the achievement of the development where the application of equal regulations for man and woman cannot remove this imparity. The measure to promote gender equality is to be implemented for a certain period of time and shall end when the gender equality goals have been achieved⁸⁶. CEDAW references "*special temporary measures*".

Rightsholder or rights holder. Individuals who enjoy rights and benefits and who should be able to claim those rights from duty bearers. A human rights-based approach involves dialogue between duty bearers and rightsholders.

Sex. The biological characteristics that define humans as female or male. These sets of biological characteristics are not mutually exclusive, as there are individuals who possess both or who are in transition, but they tend to differentiate humans as males and females⁸⁷.

Soft law. A category of international human rights standards. Documents such as general comments or recommendations and concluding observations on States Parties reports that are prepared by a treaty-body, such as CEDAW, form soft law.

Women's empowerment. The process of gaining access and developing women's capacities with a view to participating actively in shaping one's own life and that of one's community in economic, social and political terms⁸⁸.

⁸⁴ United Nations Population Fund. 2011. *Gender at the Heart of ICPD: The UNPF Strategic Framework on Gender Mainstreaming and Women's Empowerment*. New York. p. 13.

⁸⁵ Ibid.

⁸⁶ The National Assembly of the Socialist Republic of Vietnam. *The Law on Gender Equality*. Law No. 73/2006/HQ11. 29 November 2006, p. 3.

⁸⁷ United Nations Vietnam. 2017. *Vietnam Gender Briefing Kit 2016*. Ha Noi, p. 7.

⁸⁸ Ibid.

ANNEX B: ABBREVIATED TERMS OF REFERENCE (TORS)

1. BACKGROUND

Viet Nam has made great strides in promoting gender equality, largely driven by strong Government commitment. It is a signatory to numerous international instruments addressing gender equality, women's rights, and women's empowerment, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These provide a comprehensive framework for guiding all rights-based actions for gender equality that states must take to eliminate discrimination against women. Viet Nam also adopted the Beijing Platform for Action, which sets a landmark in the global agenda for women's human rights, gender equality, and women's empowerment. The country also adopted the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs) which take gender equality and women empowerment as a separate development goal.

Besides, Viet Nam has made good progress in developing its legal and policy framework for the promotion of gender equality and women's rights. According to Article 26 of the 2013 Constitution, "*Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality*". The same Article also prohibits gender discrimination. More detailed measures to ensure gender equality are set out under the Law on Gender Equality which was passed in 2006. It mandates Government bodies to fulfill their responsibilities on gender equality and to ensure that violations are addressed. Subsequent guidance documents and implementing decrees delineate the responsibilities of each agency or organization in organizing the implementation of the Law on Gender Equality. This includes targeted policies and measures such as the National Strategy on Gender Equality for the period 2011-2020, the Action Plan on Gender Equality (2011-2015; and 2016-2020), as well as the introduction and/or revision of other legislation of vital importance to the promotion of gender equality and the protection of women's rights and interests⁸⁹.

After 10 years of implementing the Gender Equality Law, many positive changes have been made in supporting gender equality in Viet Nam. However, there are still gaps between the law and reality. In the education sector, serious concerns remain about drop-out rates and vocational opportunities for girls and young women. Access to and quality of education, as well as educational outcomes for girls from ethnic minorities and rural communities, are of particular concern as these girls are often under pressure to stay home and undertake household and caring work. Besides, women continue to face a double burden of unpaid and undervalued care work as well as productive work for the household. Moreover, women domestic workers and migrant girls are at great risk of sexual exploitation and abuse with fewer means to seek redress. The difference in retirement age of men and women not only negatively impacts women's income but also leads to discrimination against women in terms of hiring, promoting and training opportunities resulting in women receiving lower pensions than men. Women remain a minority at all

⁸⁹ Viet Nam Gender Briefing Kit (UN Viet Nam, 2016).

levels of politics. Regarding women's health, equal access to quality services and skilled providers remains an issue, especially for migrant women and women in remote areas. In addition, violence against women (VAW) is highly prevalent in Viet Nam, and survivors face major gaps in access to justice and protective services.

Among the key challenges to implementation of Gender Equality Law are the prevailing patriarchal attitudes and deep-rooted gender stereotypes that privilege men over women. These attitudes and beliefs are held by law and policy makers, media institutions and the general public, and create an enabling environment for practices that discriminate against women and for the acceptance of the status quo.

In this context, the Government of Viet Nam has assigned Ministry of Labour, Invalids, and Social Affairs (MOLISA) - the State Management Agency of implementing Gender Equality Law to amend and supplement the Law as already stipulated in the Prime Minister's Decision No. 251/QĐ-TTg dated 13/02/2014 on promulgation of the Government's plan to implement the Constitution of the Socialist Republic of Viet Nam. To implement this decision, MOLISA has completed the report on 10 years of implementation of Gender Equality Law 2007-2017. In addition, in order to provide scientific evidence and a good foundation for the amendment and supplementation of the Law, MOLISA has requested UNFPA to technically support for conducting an independent review of the Law in a rigorous manner.

In this regard, UNFPA Viet Nam Country Office is seeking an international consultant and a national consultant with expertise on gender, human rights, and law to conduct the review of the 10-year implementation of Gender Equality Law. The international consultant will use the international human rights normative frameworks as the analytical frameworks to identify gaps while the national consultant will focus on gaps within the legislation and its implementation. The review process will be conducted in 2018-2019.

2. OBJECTIVES

The overall objective:

The overall objective of this consultancy is to review the Gender Equality Law and the implementation of the Law since it has come into effect from 2007 to 2017, and to provide recommendations for the Law amendment and supplementation.

3. FINAL PRODUCTS

The final products are:

- A set of data of the review;
- The final review report.

In addition, the international consultant and national consultant are required to provide the following deliverables during the implementation of the assignment:

- A technical proposal that addresses all the requirements of this TORs, including an outline of the report and a detailed work plan;

- Study tools including questionnaires, interview guidance, sampling frame etc.,
- Training manual for data collection including the study methodologies, interview guidance, monitoring and supervision for data collection, and data entry/quality assurance;
- Clean transcripts of interviews ready for analysis (*the collected data will be submitted in an Excel spreadsheet for storage and potential other usages by the UNFPA*);
- A PowerPoint presentation on the preliminary findings of the review;
- Draft and final review reports;
- A PowerPoint presentation on the key findings of the review and recommendations.

All of the above deliverables will be submitted in both English and Vietnamese.

4. INTENDED USES & USERS

4.1 Intended uses:

To provide concrete evidence-based information for MOLISA to:

- revise Gender Equality Law as stipulated in the Prime Minister's Decision No. 251/QĐ-TTg dated 13/02/2014 on promulgation of the Government's plan to implement the Constitution of the Socialist Republic of Viet Nam.
- better implement Gender Equality Law.

4.2 Intended users:

Primary users: MOLISA, relevant line ministries, Provincial People' Committees, Viet Nam Fatherland Front, and UNFPA;

Secondary users: Policy-makers, programmers, professionals, researchers, managers and others from relevant ministries and government agencies, mass media, NGOs, CSOs, donors, UN agencies and interested bodies, who are concerned about gender equality in Viet Nam, would also find information and evidence useful in their specific work.

5. SCOPE AND FOCUS

The review will cover all specific objectives of this consultancy assignment, focus on:

- Reviewing the contents of the Law on Gender Equality to see if it is appropriate with the international treaties and relevant Vietnamese laws.
- Reviewing the implementation of the Gender Equality Law since it has come into effect from 2007 to 2017.
- Identifying the enabling factors and challenges in the implementation of the Law in reality;

- Identifying the gaps to be taken into account in the revision of the Law as well as the gaps to be addressed for better implementation of the Law;
- Providing recommendations for the amendment of the Law.

6. APPROACH AND METHODOLOGY

6.1. Approach:

- The review will be transparent, gender and human rights responsive, inclusive, and participatory, involving a broad range of partners and stakeholders.
- The methodology takes into account the overall objectives, the needs of the users and other stakeholders, and ensures a complete, fair and unbiased assessment.

6.2. Methodology:

A detailed methodology has to be included in the technical proposal submitted by the selected international consultant and national consultant, including the study approach and sample frame.

The research team will identify limitations to the review and ways to mitigate them.

7. QUALITY ASSESSMENT FOR THE FINAL DRAFT OF REPORT

Below are quality assessments that will be used for the final report submitted by the consultants.

1. Structure and clarity of reporting

Does the report clearly describe the research/evaluation, how it was conducted, the findings and their analysis and subsequent recommendations?

Is the structure logical? Is the report comprehensive?

Can the information provided be easily understood?

2. Completeness and concision of the executive summary

Does it read as a stand-alone section, and is a useful resource in its own right?

Is it brief yet sufficiently detailed, presenting the main results of the research/evaluation, and including key elements such as methodology and conclusions and recommendations?

3. Justification of the design and of the methodological approach

Is the methodology used for the research/evaluation clearly described and is the rationale for the methodological choice justified?

Have cross-cutting issues (*vulnerable groups, youth and gender equality*) been paid specific attention (*when relevant*) in the design of the research/evaluation?

Are key processes (*tools used, triangulation, consultation with stakeholders*) discussed in sufficient detail? Are constraints and limitations made explicit (*including limitations applying to interpretations and extrapolations; robustness of data sources, etc.*) and discussed?

4. Reliability of data

Are sources of data clearly stated for both primary and secondary data?

Is it clear why case studies were selected and what purpose they serve?

Are all relevant materials related to case studies, interviews (*list of interviewees, questionnaires*) and other relevant materials annexed to the report?

Are the limitations, and methods to address them, discussed?

What other data gaps are there and how have these been addressed?

5. Validity of the conclusions

Do the conclusions amount to a reasonable judgment of the findings and are their links to evidence made clear?

Are there any limitations and are these made clear?

Do they present an unbiased judgment by the consultants of the intervention or have they been influenced by preconceptions or assumptions that have not been discussed?

6. Usefulness of the recommendations

Is there a logical flow from the conclusions to recommendations?

Are they strategic and clearly presented in a priority order which is consistent with the prioritization of conclusions? Are they useful - sufficiently detailed, targeted and likely to be implemented and lead to further action (*e.g for policy advocacy*)?

How have the recommendations incorporated stakeholders' views and has this affected their impartiality?

7. Meeting needs

Does the report adequately address the information needs and responds to the requirements stated in the ToRs?

ANNEX C: REVIEW MATRIX

Key Questions	Indicators or Factors for Analysis	Sources	Data Collection Method	Comments
<p>Relevance</p> <p>Is the GE Law consistent with international and regional (ASEAN) human rights principles and standards?</p>	<p># and type of articles of the GE Law that are consistent or inconsistent with provisions of human rights principles and standards (binding treaties, inter-governmental agreements and outcomes, and soft law)</p> <p>Type of international standards related to gender equality in social and family life that are absent from the GE Law.</p>	<p>International human rights treaties (<i>ratified by Viet Nam</i>) prohibiting discrimination because of sex and inequality</p> <p>International and ASEAN inter-governmental declarations</p> <p>CEDAW General Recommendations</p> <p>Among others</p> <p>See Annex E</p>	<p>Desk research</p>	<p>It is not clear the TORs if the Government of Viet Nam envisions the Law to exhaustively cover all issues related to gender discrimination (beyond the sectors currently addressed). This will be important to discuss prior to the completion of the review of the content of the law.</p>

Key Questions	Indicators or Factors for Analysis	Sources	Data Collection Method	Comments
Is the GE Law consistent with other related Vietnamese laws?	Identification of provisions of national laws that are consistent or inconsistent with the GE Law	Constitution List of laws in Annex F	Desk research	
Does the GE Law respond to the needs of rights holders (<i>specifically women, girls, men and boys</i>)?	Comparison of the law with the needs identified by rights holders Comparison of the law compared to inequalities identified by civil society organizations, mass social organizations, and academics Comparison of provisions of the law with studies conducted on women and girls' inequality in Viet Nam	Women (<i>rural women, ethnic minority women, victims of GBV and women with disabilities</i>). Girls or organizations working with girls (<i>e.g. schools in the communes</i>) Viet Nam Women's Union The Committee for the Advancement of women in Viet Nam Social agencies/NGOs/CSO who work for women Academics Studies	Interviews (<i>sample population of rights holders</i>) Desk research	

Key Questions	Indicators or Factors for Analysis	Sources	Data Collection Method	Comments
<p>Effectiveness</p> <p>What initiatives have been undertaken since 2007 within the framework of the GE Law in responsible stakeholder institutions?</p>	<p># and type of initiatives by stakeholder institutions</p>	<p>Institutional reports Representatives of stakeholder (<i>duty bearers</i>) institutions.</p>	<p>Document collection. Interview guides.</p>	<p>This description of initiatives is similar to output 2.1 and 2.2 in the law implementation monitoring framework.</p>
<p>To what degree have the initiatives undertaken since 2007 in the responsible institutions supported progress toward the law's objectives?</p>	<p>Degree to which initiatives in the different sectors (<i>domains</i>) are consistent with the objectives of the GE Law (<i>articles 1 and 4</i>)</p> <p>Identification of gaps between assigned responsibilities, actual initiatives, and the objectives of the Law</p> <p>Identification of areas where targets have been achieved</p>	<p>Research centres, women's civil society organizations (CSOs) Institutional reports and official representatives Rights holders</p>	<p>Focus Group discussions Interview guides Qualitative content analysis</p>	<p>The law implementation monitoring framework suggests the following indicator to assess outcome level results (<i>extent of compliance</i>) 3.1.1</p> <p>This review of the GE Law will examine progress toward the law's objectives (<i>Impact 4.1.1</i>) but without substantiating actual impacts of the GE Law on subjects (<i>4.1.2</i>).</p>

Key Questions	Indicators or Factors for Analysis	Sources	Data Collection Method	Comments
<p>What are the factors that constrain or promote the implementation of the GE Law and the achievement of objectives and targets?</p>	<p>Type of constraints on stakeholder institutions and officials</p> <p>Type of factors that facilitate or promote implementation of programmes and the achievement of objectives</p> <p>Identification of factors that constrain or limit progress toward gender equality</p>	<p>Institutional representatives</p> <p>Viet Nam Women's Union</p> <p>The Committee for the Advancement of women in Viet Nam</p> <p>Individual rights holders or CSOs</p> <p>Publications related to political, social, economic context in country</p>	<p>Interview guides</p> <p>Focus Group discussions</p> <p>Publications</p>	

ANNEX D: INTERNATIONAL AND NATIONAL LEGAL DOCUMENTS REVIEWED

International legal documents reviewed

Treaty law

- Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], 1979.
- Convention on the Rights of the Child [CRC], 1989.
- Convention on the Rights of People with Disabilities, 2007.
- ILO Discrimination (*Employment and Occupation*) Convention, 1958. (No. 111)
- ILO Hygiene in Commerce and Offices Convention, 1964 (No. 120)
- ILO Occupational Safety and Health Convention, 1981 (No. 155).
- International Covenant on Civil and Political Rights [ICCPR], 1966.
- International Covenant on Economic, Social and Cultural Rights [ICESCR], 1966.
- Universal Declaration of Human Rights, 1948.

Intergovernmental, regional outcome statements and declarations

- 2030 Agenda for Sustainable Development, 2015.
- ASEAN Human Rights Declaration, 2012.
- Beijing Declaration and Platform for Action, 1995.
- UN Declaration on the Elimination of Violence Against Women, 1993.
- UN Declaration on Sexual Orientation and Gender Identity, 2008.
- Vienna Declaration and Programme of Action, 1993.

Soft law (*committee recommendations, reports*)

- CEDAW Committee, General Recommendations, Numbers 1 to 35.
- CEDAW Committee, Concluding Observations on Viet Nam report, 2011 and 2015.
- Committee on Economic, Social and Cultural Rights, Concluding Observations of Viet Nam, 2014.
- Committee on Economic, Social and Cultural Rights, General Comment No. 13 (*Right to Education*), 1999

- Committee on Economic, Social and Cultural Rights, General Comment 22 (*Right to Sexual and Reproductive Health*), 2016.
- UN Guiding Principles for Business and Human Rights: Implementing the United Nations “*Protect, Respect and Remedy*” Framework, 2011.
- UN Human Rights Council, Universal Periodic Review Working Group, National Report, 2014.
- Yogyakarta Principles, 2006 updated 2017.

Vietnamese national legal normative documents reviewed

Laws	Year
Political sector	
Constitution	2013
Law on the Promulgation of Legal Normative Documents	2015
Law on Election of Deputies to the National Assembly and Deputies to People’s Councils	2015
Law on Organization of the National Assembly	2014
Law on Oversight Activities of the National Assembly and People’s Councils	2015
Law on Organization of the Government	2015
Law on Organization of Local government	2015
Labour and Employment	
Labour Code	2019
Law on Cadres and Civil Servants	2008
Law on Public Employees	2011
Law on Employment	2013
Law on Occupational Safety and Health	2014
Law on Social Insurance	2014
Law on Vietnamese Workers Working Overseas under Contract	2006
Economic sector	
Enterprise Law	2014

Laws	Year
Investment Law	2014
Law on the State Budget	2015
Law on Enterprise's Income Tax	2014
Law on Personal Income Tax	2014
Law on Value Added Tax	2016
Law on Advertising	2012
Law on Support for Small and Medium-sized Enterprises	2017
Law on Land	2013
Science technology and environment sector	
Law on Science and Technology	2013
Law on Environment Protection	2014
Law on Forestry	2017
Training and Education	
Law on Vocational Education	2014
Education Law	2019
Higher Education Law	2018
Health	
Law on Health Insurance	2008
Law on Medical Examination and Treatment	2009
Family	
Law on Marriage and Family	2014
Law on Domestic Violence Prevention and Control	2007
Law on Children	2016
Information Sector	
Law on Access to Information	2016
Media Law	2016

Laws	Year
Legal Rights and Measures for Special Groups	
Civil Code	2015
Civil Procedural Code	2015
Criminal Code	2015, 2017
Criminal Procedural Code	2015
Law on Handling Administrative Violations	2012
Administrative Procedure Law	2015
Law on Legal Aid	2017
Law on Elderly	2009
Law on Persons with Disabilities	2010
Law on Human Trafficking Prevention and Combat	2011
Decrees on guiding the implementation of Gender Equality Law	
Decree number 70/2009/NĐ-CP detailing some provisions of the Law on gender equality	2009
Decree number 48/2009/NĐ-CP on measures promoting gender equality	2009
Decree No 191/2009/TT-BTC on the management and use of budgets for gender equality and women's advancement	2009
Decree number 55/2009/NĐ-CP on handling administrative violations	2009
Decree number 17/2014/TT-BTP providing on gender equality mainstreaming in legal normative documents	2014

ANNEX E: LIST OF INSTITUTIONS AND ORGANIZATIONS INTERVIEWED

Name of Institution, Organization, or Network	Department or Specific Entity
Central Level (Hanoi) Interviews	
Ministry of Health	Department of Population
Ministry of Culture, Sport and Tourism	Department of Family
Ministry of Labour, Social Affairs and Invalids	Gender Equality Department
Ministry of Planning and Investment	Department of Labour, Culture and Social Department
Ministry of Finance	Department of Public Financial Expenditures
Ministry of Health	Maternal and Child Health Department
Ministry of Education	Committee for the Advancement of Women
General Statistics Office	Gender Statistics Office
Ministry of Agriculture and Rural Development	Personnel Department
National Committee for the Advancement of Women	Former leader
National Agency for Legal Aid, Ministry of Justice	
Ministry of Justice	General Affairs for Legislation Department
Ministry of Home Affairs (Interior)	Department of Organization and Personnel
Ministry of Information and Communication	Department of Personnel
Vietnam Women's Union	Legislative Policy Committee
National Assembly	Deputy, formerly of CSA
Vietnam Chamber of Commerce and Investment	Businesswomen's Board
Institute for Studies of Society, Economy and Environment (<i>ISEE</i>)	Gender Justice Programme
Research Centre for Gender, Family and Environment in Development	
Centre for Creative Initiatives in Health and Population (<i>CCIHP</i>)	
Centre for Studies and Applied Sciences for Gender, Women and Adolescents (<i>CSAGA</i>)	

Name of Institution, Organization, or Network	Department or Specific Entity
United Nations agencies	WHO, FAO, UNODC, UNESCO, UN Women
International Organization for Migration	Programme and Project Development and Implementation Unit
Provinces, Districts and Communes or Wards	
Bac Ninh	
Bac Ninh Department of Labor, Invalids and Social Affairs	Director
Bac Ninh Department of Labor, Invalids and Social Affairs	Deputy Director
Provincial People's Committees representatives	
Bac Ninh Association for Sponsoring Orphans and Persons with disabilities	
The Department of Education and Training	Deputy Head of Division of Organisation and Administration
The Department of Agriculture and Rural Development	Specialist, The Division of Organisation and Administration
Bac Ninh Department of Justice	Legal Aid Center
Bac Ninh Department of Health	Deputy Director of the Department
Bac Ninh Farmer's Union	Deputy Head of socio-economic committee
Bac Ninh Police	President of Women's Union of Bac Ninh Police
Bac Ninh Women's Union	Deputy Head of Committee of Policy and Law Organisation
Bac Ninh Provincial Union	Specialist
Bac Ninh Confederation of Labour	Deputy Head of Female Worker's Communication and Education Committee
Phu Lam Commune People's Committee	Culture and Social Staff
Tien Du District Department of Education and Training	Official
Department of Health	
Department of Labor-Invalids and Social Affairs	Vice Head
Tien Du District Farmer Association	
Phu Lam commune health station	Health station staff
Phu Lam Commune People's Committee	Vice Chairperson of Commune People's Committee
Phu Lam Commune People's Committee	Vice Chairperson of Phu Lam Commune People's Committee

Name of Institution, Organization, or Network	Department or Specific Entity
Phu Lam Commune Women's Union	Vice Chairperson
District Women's Union	
Tien Du District Youth Union	
Communist Party Committee-People's Committee of Phu Lam Commune	Secretary of Youth Union of Tien Du District
Individual Adult Rights Holders	16 Females
Individual Adult Rights Holders	03 Males
Children	02 Females
Children	02 Males
Children	02 Gender Unidentified Children
Gia Lai	
Department of Agriculture and Rural Development	Deputy Director
Gia Lai Department of Public Security	Head of the Personnel Organization Office
Department of Education and Training	Deputy Director
Department of Health	Officer
Department of Industry and Trade	Deputy Director
Legal aid center, Office of the Department of Justice	Legal aid provider, Deputy Chief of Office of the Department of Justice
Department of Labor, Invalids and Social Affairs	Deputy Director
Office of Child Protection and Care and Gender Equality	Deputy Head
Gia Lai Farmer's Union	Vice President of the Union
Gia Lai Youth League	Deputy Secretary
Gia Lai Department of Public Security	Head of the Personnel Organization Office
Dak Doa Division of Labor- War Invalids and Social Affairs	Head of Division
Glar Commune Youth Union	Secretary of Youth Union
Dak Doa District Division of Labor	Deputy Head
Division of Education Department	Head of Division
Health Station	05 Staff
Dak Doa District Farmer Association	Vice Chairman of Farmer Association
Dak Doa Women Union	Chairperson
District Youth Union	Deputy Secretary
Farmer Association	Chairperson
Association for Persons with Disabilities	President
Individual Adult Rights Holders	11 Females
Individual Adult Rights Holders	10 Males
Children	04 Males
Children	06 Females

Name of Institution, Organization, or Network	Department or Specific Entity
Ho Chi Minh city	
Ho Chi Minh Department of Education and Training	Official, Division of Politics and Thoughts
Ho Chi Minh Department of Culture	Official of Division of Cultural Lifestyle and Family
District 10 People's Committee, Ho Chi Minh City	Deputy Head of Health Department of District 10
District 10 Economic Department	Vice Head of Economic Department
Hospital District 10	Deputy Head of Planning - General Department
Office of People's Council and People's Committee of District 10	Deputy Chief of Office
People's Committee of District 10, Ho Chi Minh City	Head of District Party Committee Board of Organization
People's Committee of District 10, Ho Chi Minh City	
District 10 People's Committee	
Women's Union of District 10, Ho Chi Minh City	Chairperson of Women's Union of District 10
District 10 Youth Union, Ho Chi Minh City	Standing Member of District Youth Union - Vice Chairperson of District 10 Youth Union
Ho Chi Minh Department of Health	Official, Branch of Population and Family Planning
Ho Chi Minh Legal Aid Center	Official of legal aid
Ho Chi Minh Department of Labor, Invalids and Social Affairs	Division of Child Care and Protection, and Gender Equality (02 employees)
Ho Chi Minh Farmer's Union	Head of Organisation and Inspection Board
Transaction Office	
HCMC Department of Public Security	President of Women's Union of HCMC Department of Public Security
People's Committee of Ward 1, District 10, Ho Chi Minh City	Officer of Culture - Sport Department
People's Committee of Ward 1, District 10, Ho Chi Minh City	Ward judicial officer
People's Committee of Ward 1, District 10, Ho Chi Minh City	Deputy Head of Justice Division
People's Committee of Ward 1, District 10, Ho Chi Minh City	Staff of Labor - Invalids and Social Affairs
People's Committee of Ward 1, District 10, Ho Chi Minh City	Social-Cultural Official
People's Committee of Ward 1, District 10, Ho Chi Minh City	Vice Chairperson of Ward 1 People's Committee

Name of Institution, Organization, or Network	Department or Specific Entity
Police Station of Ward 1, District 10, Ho Chi Minh City	Deputy Chief of Ward Police Station
People's Committee of Ward 1, District 10, Ho Chi Minh City	Office-statistic officer
People's Committee of Ward 1, District 10, Ho Chi Minh City	President of Women's Union, Ward 1, District 10, Ho Chi Minh City
Ward 1 Youth Union, District 10, Ho Chi Minh City	Secretary of Ward 1 Youth Union
Labor Federation District 10	
Individual Adult Rights Holder	11 Females
Individual Adult Rights Holder	10 Males
Children	04 Females
Children	05 Males
Lao Cai	
Lao Cai Department of Agriculture and Rural Development	Deputy Chief of the Department
Lao Cai Department of Health	Deputy Head of Division of Personnel and Organisation
Lao Cai Department of Health	Specialist
Lao Cai Department of Industry and Commerce	Deputy Chief of the Department
The Department of Justice	Head of the Division
Bao Thang District Department of Labor - Invalids and Social Affairs	Officer
Lao Cai Department of Labor, Invalids and Social Affairs	
Lao Cai Department of Labor, Invalids and Social Affairs	Specialist
Lao Cai Legal Aid Center	
Lao Cai Department of Education and Training	Deputy Head of the Division
Lao Cai Provincial Union	Director of School Children
Social Work Group of Lao Cai General Hospital	Specialist
Lao Cai Women's Union	Head of the Propaganda and Training Commission
Xuan Quang Commune People's Committee, Bao Thang District, Lao Cai Province	Chairman of Farmer Association, Xuan Quang Commune
Xuan Quang Commune People's Committee, Bao Thang District, Lao Cai Province	Chairperson of Xuan Quang Commune People's Committee

Name of Institution, Organization, or Network	Department or Specific Entity
Xuan Quang Commune People's Committee, Bao Thang District, Lao Cai Province	02 Policemen of Xuan Quang Commune
Xuan Quang Commune People's Committee, Bao Thang District, Lao Cai Province	Secretary of Youth Union, Xuan Quang Commune
Bao Thang District Culture and Communications Department	Vice Head
Department of Finance - Planning of Bao Thang District	Deputy Head
Bao Thang District Labor - Invalids and Social Affairs Department	Vice Head
Bao Thang District Department of Education and Training	
Farmer Association, Bao Thang District	Official
Home Affairs Department, Bao Thang District	Deputy Head
Bao Thang District Justice Department	Deputy Head
People's Committee, Bao Thang District, Lao Cai Province	Official (<i>working in Labor-War Invalids and Social Affairs</i>)
Bao Thang District Labor Union	
Bao Thang District People's Committee	Vice Chairman of District People's Committee
Office of People's Council, Bao Thang District People's Committee	
Bao Thang District Women Union	
Bao Thang District Youth Union	Secretary
Lao Cai Confederation of Labor	Vice President
Lao Cai Center for Community Service	Director of the Center
Individual Adult Rights Holders	09 Females
Individual Adult Rights Holders	05 Males
Children	02 Females
Children	02 Males
Tra Vinh	
Tra Vinh Department of Labor, Invalids and Social Affairs	Representative of the Committee for Women's Advancement of Tra Vinh province
Tra Vinh Department of Labor, Invalids and Social Affairs	Deputy Director
Tra Vinh Confederation of Labour	Head of Communication, Education and Female Workers Board
Tra Vinh Department of Agriculture and Rural Development	Deputy director of the department

Name of Institution, Organization, or Network	Department or Specific Entity
Tra Vinh Department of Health	
Tra Vinh Department of Industry and Commerce	Vice President
Tra Vinh Department of Justice	Deputy Director of Tra Vinh Department of Justice
Tra Vinh Farmer's Union	Vice President
Tra Vinh General Hospital	
Tra Vinh Department of Justice	Director of Tra Vinh Center of Legal Aid
Tra Vinh Provincial Public Security	President H2N of the Provincial Public Security
Tra Vinh Provincial Union	Head of Movement Board
Tra Vinh Women's Union	
Luong Hoa A Commune People's Committee, Chau Thanh District, Tra Vinh Province	06 Interviewees
Luong Hoa A Commune People's Committee, Chau Thanh District, Tra Vinh Province	Justice - Citizenship
Luong Hoa A Commune People's Committee, Chau Thanh District, Tra Vinh Province	Clerical and Storage Staff
Luong Hoa A Commune People's Committee, Chau Thanh District, Tra Vinh Province	Vice president of Women's Union of Luong Hoa A commune
Chau Thanh District People's Committee, Tra Vinh Province	Professional management of preschool level
Chau Thanh District People's Committee, Tra Vinh Province	02 Interviewees
Agency of organization of internal affairs in Chau Thanh district, Tra Vinh province.	Deputy head of agency
Chau Thanh District Women's Union, Tra Vinh Province	Vice President of Women's Union
Tra Vinh Association of People with Disabilities and Victims of Agent Orange	
Individual Adult Rights Holders	11 Females
Individual Adult Rights Holders	10 Males
Children	04 Females
Children	05 Males

ANNEX F: RESPONSIBILITIES OF DUTY BEARERS AND CITIZENS IN THE LAW ON GENDER EQUALITY

- National Assembly Committee responsible for gender issues and its Standing Committee *"have the authority to stipulate measures to promote gender equality..., have the responsibility to review the implementation of measures to promote gender equality and to decide to end these measures when the gender equality goals have been achieved"*. (Article 19 (2)).
- The National Assembly has the responsibility to examine the mainstreaming of gender equality in draft laws, ordinances and resolutions before submitting to the National Assembly and the National Assembly's Standing Committee for review and adoption (Article 22).
- The government is responsible for promulgating national strategies, policies and target on gender equality; promulgate legal normative documents; direct and conduct the mainstreaming of gender equality; implement the laws; publicize national information; coordinate with the Viet Nam Fatherland Front and the Viet Nam's Women Union; and directing relevant agencies in propagandizing, disseminating and education the law and in raising awareness of gender equality for the people (Article 25).

The state management agency of gender equality (MOLISA) has six major responsibilities (Article 26), including:

- Develop and submit to the Government national strategies, policies, and target programmes on gender equality.
- Develop and submit to the Government guidelines on legal normative documents on gender equality within its competence.
- Participate in assessing the mainstreaming of gender equality in the development of legal normative documents.
- Synthesize and report to the Government on the implementation of the national goals of gender equality.
- Play the key role in coordinating with the ministries, ministerial-level agencies in exercising state management function on gender equality.
- Examine, inspect and handle violations, complaints, and denunciation against violations of gender equality.
- The ministries and ministerial-level agencies are responsible for checking current legal normative documents to amend, supplement, annul or promulgate or to submit to the competent agencies for the same purposes; carrying out research and recommend the competent state agencies to promulgate measures to promote gender equality; and coordinating with state management agencies on gender equality to assess the situation of gender equality, inspect, examine and handle violations of the law on gender equality (Article 27).

- The People's Committee at all levels is responsible for developing a plan to implement the national goals of gender equality in the locality; submit to the people's councils to promulgate the legal normative document on gender equality; implement the law at the local level; inspect, examine and handle violations against the law and organize and conduct the propaganda and education on gender equality and its law for the local people (*Article 28*).
- The responsibilities of the Viet Nam Fatherland Front and its member organizations are to participate in the development of policies and laws and in the state management of gender equality under the law; ensure gender equality in the organizations; participate in the overseeing of the implementation of the law; and propagate and mobilize people, members of associations, members of organizations to exercise gender equality (*Article 29*).
- The responsibilities of the Viet Nam's Women Union are to implement the regulations in Article 29 of the GE Law; conduct activities in supporting women and contributing to the fulfillment of the goals of gender equality; coordinate with relevant agencies and organizations to foster qualified women as candidates to the National Assembly and people's councils and to participate in management and the leading of agencies within the political system; exercise the representative function, protecting the legitimate rights and interests of women and girls under the law; conduct social oppnency against policies and laws concerning gender equality (*Article 30*).
- The responsibility of state agencies, political organizations, and sociopolitical organizations are to ensure that male and female officials, civil servants, and public employees are equal in employment, training, promotion, appointment, and enjoyment of welfare; implement the laws of gender equality within their agencies; ensure participation of personnel in the development of the law and implementation; and facilitate the development of social welfare establishments and support services to reduce the workload of the family (*Article 31*).
- The responsibilities of other agencies and organizations not in Article 31 are to ensure equality between man and women in their participation and benefit enjoyment; propose and participate in the development of policy and law on gender equality related to their agency; propagate knowledge, assign staff for activities, conduct research, provide financial resources for gender equality; set up kindergartens for productive labour and housework; support female workers in training to bring along their children, and create favorable conditions for male workers whose wives give birth (*Article 32*).
- The responsibilities of the family are to create favorable conditions for its members to raise their awareness and participate on gender equality activities; educate members of the family on how to behave accordingly; look after reproductive health and create favorable conditions to women to exercise a safe motherhood; and equally treat and provide opportunities to boys and girls in their study, work and participation in other activities (*Article 33*).

- The responsibilities of the citizens are to improve their knowledge and awareness of gender equality; guide other people to exercise reasonable behaviors on gender equality, criticize and prevent any gender discrimination act; and oversee the implementation and ensure gender equality within community, organizations and agencies among citizens (*Article 34*).
- Monitoring of the implementation of the Law is the responsibility of the National Assembly, the National Assembly's Standing Committee, the Council of Ethnic Minorities, the Committees of the National Assembly, provincial National Assembly delegations and National Assembly members. People's Councils are responsible for oversight of the implementation of the Law at the local level.

ANNEX G: COMPLETE REVIEW OF THE NATIONAL LEGISLATION COMPARED TO THE GENDER EQUALITY LAW

This Annex reviews the coherence between the Gender Equality Law (*GEL*) and a number of national laws regulating 09 sectors/fields, including: i) laws regulating family life, ii) employment and labour, iii) political and public life, iv) health services; v) economic life; vi) education, vii) science, technology, environment, viii) information and communication; and ix) the justice sector.

Each sector has the following structure: i) equality and non-discrimination guarantees in law; ii) provisions of laws that accommodate gender differences; iii) provisions that discriminate against women compared to men; and iv) special measures to promote equality in laws.

I. LAWS IN THE POLITICAL SECTOR

Laws regulating 'political life' are Election Law of 2015, Law on Organization of the National Assembly of 2014, Law on Organization of the Government of 2015, Law on Organization of Local Government of 2015, Law on Promulgation of legal normative documents of 2015 (*Law on laws*).

1. Gender equality and non-discrimination guarantees

1.1. Positive results

The provisions of the above-mentioned Laws are neutral, without direct discriminating provisions between women and men. At the same time, the Laws provide for some direct rules on gender equality between women and men in conformity with the basic principles on gender equality.

According to Article 78, the Law on Organization of the National Assembly of 2014, the Committee for Social Affairs is in charge of different tasks on gender equality, such as: verifying bills and draft ordinances on gender equality, verifying the incorporation of gender equity issues into bills and draft ordinances and resolutions submitted to the National Assembly or its Standing Committee, overseeing the implementation of laws, ordinances, and resolutions on gender equality, submitting draft laws and ordinances on matters of its authority, including those on gender equality.

The Law on Oversight activities of the NA and People's Councils of 2015 specifies that the NA reviews at its plenary session the Government's report on the implementation of gender quality objectives.

The Law on Organization of the Government of 2015 provides in Article 5 that ensuring gender equality is one of the principles of organization and operation of the Government. Article 15(4) of the Law specifies the Government's responsibility to ensure that men and women are vested with equal rights in terms of politics, economy, culture, society and family issues; protect and take care of health of mothers and children; adopt measures to prevent and struggle against violence or humiliation of human dignities of women and children. For tasks and powers of the Government, ministries in directing and implementing gender equality.

The Law on laws in Article 5 (4) states that one of the principles for formulating and promulgating legislative documents is integrating gender equality issues in legal normative documents. Especially, this Law in various Articles imposes requirements to relevant Committees and Members of the National Assembly, central government bodies, local People's Councils and People's Committees to conduct gender impact assessment in the law-making process. According to Article 35 of the Law on laws, central state agencies and organisations, as well as Deputies to the NA who submit proposals of a draft law/ordinance, shall conduct an impact assessment of policies, including gender-related impacts, if any. Various other Articles of this Law require the Ministry of Justice to review the gender mainstreaming in a proposal for a law/ordinance, as well as in a draft law/ordinance/degree/circular. On the part of the NA's Committee for Social Affairs, it is compulsory to conduct the review of gender mainstreaming in a draft law/ordinance. Under this Law, the provincial People's Committee and People's Council must conduct gender impact assessment in a proposal of resolution or in a draft decision.

The GEL does require drafting bodies to conduct gender mainstreaming. The central agencies in charge such as the Ministry of Justice, Ministry of Labour, Invalids, and Social Affairs, the NA Committee for Social Affairs are to assess gender mainstreaming in draft laws/ordinances.

1.2. 'Shortcomings'

Above mentioned provisions are not complete and concrete enough to bring improvements to the positions of women in the National Assembly, Government, and the People's Councils and to deal with gender issues effectively. Particularly, those Laws do not have specific provisions, emphasizing that the electoral process, as well as the organisation and operation of the National Assembly and its Committees, local governments shall comply with the principle of gender equality.

Shortcomings in the electoral process

The principles of gender equality in election and in state bodies' organization are not fully guaranteed in the provisions related to representation of both men and women in elected bodies, candidate selection and nomination, voter registration, arrangement of list of candidates, polling, counting votes and tabulation, election summing up, media coverage, handling violation, responsibilities of related political and state bodies. Moreover, the same is not guaranteed in the body that organizes the elections - the National Election Council (NEC) as well as in the local Election Committees/Boards/Teams. It has been underlined that members of past NEC and sub-national election organizations have been predominately men. Meanwhile, the Election Law of 2015 does not include any regulation regarding gender balance of NEC or sub-national election organizations, which is not in line with the GEL, and the NSGE.

The Election Law does not specifically provide the roles and responsibilities of different agencies and organisations in ensuring gender equality and non-discrimination in the electoral process. Those are the National Election Council and local Election Committees/Boards/Teams; National Assembly Steering

Committee (NASC); Standing Bodies of the People's Councils at all levels; the Viet Nam Fatherland Front; the Viet Nam Women Union.

Shortcomings in organisation and operation of the State 's bodies

The Law on Organization of the National Assembly, Law on Organization of local government lack clear provisions on '*gender*' roles, responsibilities, and tasks of state bodies such as NASC, NA's permanent committees (*except for the Committee of Social Affairs*); local government's bodies; state officials, etc.

For example, the Law on Organization of the National Assembly, the Law on Organization of Local Government do not specify gender equality as one of the principles of the organisation and operation of these bodies. Other Committees of the National Assembly are not required by the Law to participate with the Committee of Social Affairs to review gender issues in draft laws/ordinances/resolutions. Similarly, the Law on Organization of local government does not require People's Councils and their Commissions, People's Committees and their bodies to comply with gender equality principles.

Gender equality considerations are not sufficiently guaranteed in these Laws' provisions on nominating and choosing candidates for different key positions in the National Assembly, central government, and local governments.

Gender in the law and policy-making process

In relation to the law and policy-making process, there are some inconsistencies between GEL and the Law on laws albeit both of them contain provisions on considerations of gender issues during this process. Particularly, there are different implications for the terms '*gender mainstreaming*', '*report on gender mainstreaming*', '*gender impact assessment*' that should be made more consistent in the two laws.

Moreover, there is also disparity between GEL and the Law on laws in terms of the requirement for gender mainstreaming in a draft law/ordinance. Under the GEL, this is the compulsory requirement for all submitted draft laws/ordinances. In the meantime, integration of gender equality into the draft document, its appraisal by the Ministry of Justice, its review by the Committee of Social Affairs will be conducted if that legislation is related to gender equality. However, it is unclear how to define what draft law/ordinance 'is related to gender equality'.

The GEL does not impose the responsibility of gender mainstreaming into neither draft resolutions of the People's Councils nor draft decisions of the People's Committees. The Law on laws of 2015 does not require relevant agencies in the district and commune level local government to conduct a gender impact assessment of proposed draft resolutions of the People's Councils and draft decisions of the People's Committees. This is one of the possible reasons for the insufficient attention to gender issues during the policy making process at these local levels.

2. Accommodation of Gender Differences in Laws

There are no specific provisions accommodating gender differences in these Laws. It is no need for that.

3. Discrimination in Laws

The Election Law contains some provisions that may have implicit impacts on women candidates to run in an election to the NA or People's Council. For example, the target system to build a diverse political representation for women, ethnic minority, youth, non-party members or independents. If one person is selected to meet all targets then it can prove difficult to be elected⁹⁰. A candidate, often a female, is selected to fulfill a number of quotas reflecting age, ethnic background and other criteria in addition to her gender, thus presented her with more challenges to be elected because of discrimination.

In addition, the Law lacks some provisions preventing electoral practices that can impair fair treatment, inclusion, and non-discrimination. For example, anecdotal evidence shows that women candidates are often put in election ridings where they are competing against men with more experience and higher qualifications. Some places have a male director of a department and a female head of division in a unit, so it is obvious that [the woman's] chances (*of being elected*) are much lower. This is not in line with the Constitution (2013) as well as the ICCPR and the CEDAW of which Viet Nam has ratified.

4. Special measures to promote equality

4.1. In the electoral process

Article 8 (3) of the Election Law of 2015 specifies that in the final list of candidates to the National Assembly, at least 35% of the total number shall be women; similarly, according to Article 9 (2) at least 35% of the total number of candidates to a People's Council shall be women.

Despite this and other efforts, the proportion of women elected to the National Assembly (NA) and local Councils is still far from the target of 35%. In the elections for the 12th, 13th, and 14th VNA, roughly just around 25% of the nominated candidates were women. It is currently at 26,8% in the 14th NA, higher than 13th term with 24%; there are no women Deputies in three provinces for the 14th NA (*Quảng Nam, Tây Ninh, Thừa Thiên Huế*)⁹¹. Moreover, female candidates fared worse than male candidates in the elections. For the VNA, more than 60 percent of male candidates won in the elections compared to about 40 percent for female candidates⁹².

One of the reasons for this insufficient representation of women is that the Election Law still lacks provisions on other necessary special measures to promote equality between women and men in the election process, particularly provisions on:

⁹⁰ United Nations Development Programme, *Women Delegates in the Viet Nam National Assembly: from participation to representation*, 2014.

⁹¹ National Election Council, *Report No 695/BC-HĐBCQG on the results of the Election of Deputies to the 14th National Assembly and People's Councils for the term of 2016-2021*, Hanoi, 2016.

⁹² United Nations Development Programme, *Women Delegates in the Viet Nam National Assembly: from participation to representation*, 2014.



- Inserting a minimum percentage of women and men to be elected to the National Assembly as well as to the local people's councils, for example, at least 35% of each gender;
- Inserting a minimum percentage of women and men as members of all election related bodies, for example, at least 35% of either gender;
- Inserting a sufficient number of women on the final election lists at all levels in order to have fair chances of being elected to the stated minimum of 35%, for example, 45 to 50%.

4.2. In the organisation of the state bodies

Overall, there has been a small increase in women's representation as members of the NA's Committees. Moreover, the fact is that fewer women are leaders in the NA Steering Committee and its standing committees. The percentage of women holding Chair and Vice-Chair positions of People's Councils has been low. Particularly, the percentage of women Chairs of People's Councils ranged from 1.56% at the provincial level to 4.09% at the commune level in the term of 2011-2016⁹³. Similarly, the percentage of women Ministers, deputy ministers, directors and deputy directors of departments and units belonging to ministries ranged from just 2% to 19% in the term of 2011-2016⁹⁴.

One of the reasons for this insufficient representation of women holding key positions in the state bodies is that related Laws still lacks provisions on special measures to promote equality between women and men in the nomination and election of leaders, particularly provisions on:

- Inserting number or percentage of a minimum of female and male Chairpersons, Deputy Chairpersons of the NA Committees. Inserting number or percentage of a minimum of male and female full - time Deputies;
- Inserting number or percentage of a minimum of women and men deputy prime ministers, ministers, and head of ministerial-level-agencies; number or percentage of a minimum of women and men deputy-ministers, head of departments in ministries and ministerial-level-agencies;
- Inserting number or percentage of a minimum of women and men holding leading and key positions in local People's Councils, People's Committees, as well as their departments at all levels.

⁹³ Women Delegates in the Viet Nam National Assembly: from participation to representation, United Nations Development Programme, 2014.

⁹⁴ United Nations Development Programme, Women's Representation in Leadership in Vietnam, Hanoi, 2013.

II. LAWS IN THE ECONOMIC SECTOR

Laws regulating the economic sector (*Economic Laws*) include Enterprise Law, Investment Law, Law on Support for Small and Medium Enterprises (SMEs), Land Law, State Budget Law, Tax Laws.

1. Equality and non-discrimination guarantees

1.1. Gender equality achievements in economic laws

Neutral gender wording: Formulation and overall wording of the aforementioned laws are gender neutral and, in general, conform to the Gender Equality Law. For example, the Land Law of 2013 uses neutral wording such as '*persons*', '*land users*', '*citizens*' that imply equal position between men and women in land issues. The positive aspect is that the interpretation and implementation of the laws into practice can be applied for both genders.

Neutral provisions with indirect gender impact: At the same time the Laws contain neutral provisions which indirectly ensure gender equality in economic activities. For instance, the Investment Law draws on the non-discrimination principle when specifying the rights of investors to gain access and use public services in Article 19. Article 8 of the Enterprise Law requires that enterprises have a duty to ensure the rights and benefits of employees and shall not discriminate against employees. A number of articles in the Investment Law, or Law on Enterprise's Income Tax 2013 while providing for cases of preferential investment approval or preferential tax treatment may bring benefits to female workers.

Vietnamese Tax Laws (*Law on Enterprise's Income Tax - EIT, Law on Personal Income Tax - PIT, Law on Value Added Tax - VAT*) have such rules that may indirectly contribute to gender equality⁹⁵. For instance, In the Viet Nam PIT system, each income earner is individually responsible for filing taxes based on their earnings, regardless of marital status or household structure. And this system keeps the tax liabilities of spouses and members of households separate from each other at least to the extent that no one's income is added to any other person's tax return. This avoids the types of lifelong tax biases faced by women in joint tax systems⁹⁶. In addition, the Viet Nam PIT respects the principle of ability to pay tax by applying the lowest PIT rates to low incomes, and applies higher rates to increased amounts of incomes; and by providing tax-exempt allowances for each individual taxpayer⁹⁷. While the poor and women have less ability to pay tax than men because they earn less than men do, this PIT system could mitigate the tax burden for women.

According to the Law on EIT, the special tax rate reductions are granted to new investment projects based on the sector involved, the encouraged location, and the size of the project. Amongst these projects, many operate in sectors or locations that have potential impacts on women.

⁹⁵ UN Women Viet Nam, *Gender equality and tax: issues and recommendations for Viet Nam*, discussion paper, Hanoi, 2016.

⁹⁶ UN Women Viet Nam, *Gender equality and tax: issues and recommendations for Viet Nam*, discussion paper, Hanoi, 2016.

⁹⁷ UN Women Viet Nam, *Gender equality and tax: issues and recommendations for Viet Nam*, discussion paper, Hanoi, 2016.



Under the Viet Nam VAT system, there are 25 categories of goods and services exempt from VAT. Many of these have social objectives and are likely to benefit those with low incomes, including women, such as health insurance and medical services, agricultural inputs, and goods or services sold by individuals with annual revenue of VND 100 million or less. The Law on VAT does provide a reduced VAT rate of 5% for some essentials (*clean water, medicine, residential leases and titles, and agricultural products*). This lower rate does reduce the costs of essential services for women and thus helps their smaller incomes go further. The Law on VAT also provides for the 10% standard exemptions for raw agriculture products, livestock, medical services, education, public transport, and sewer services that may help women.

Direct provisions on gender equality: Moreover, some provisions of Economic Laws directly mention the principle of gender equality. For instance, Article 8 of the Enterprise Law also provides that one of the duties of enterprises is to act in conformity with legal norms on gender equality. Regarding budget and gender, GEL does provide for the allocation of financial resources for gender equality activities. Under the Law on the State Budget 2015, one of the principles for state budget management is that priority shall be given to expenditures for implementation of gender objectives (*Article 8*); gender equality is considered as a basis for making annual state budget estimates (*Article 41*).

The Land Law 2013 ensures formal gender equality between men and women in land use rights. The Clause 4 of Article 98 stresses that the ownership of houses and other land-attached assets are the joint property of husband and wife, and the full name of both husband and wife must be on all official documents, unless husband and wife agree to record the full name of only one person. In case the granted certificate only has the full name of only one person, a new certificate in the full name of both husband and wife may be granted upon request.

1.2. Shortcomings of economic laws from gender equality perspectives

Common shortcomings

Related provisions of Economic Laws are not concrete enough regarding gender equality in the economic sector to create a climate that is conducive to gender equality. These Laws do not specify gender equality responsibility of related state bodies such as the Government, Ministries, and local governments. Particularly, Economic Laws do not require the Government to issue sub-law documents to deal with gender issues in the economic sector in a more concrete manner.

Enterprise Law and Investment Law

Although Article 8 of the Enterprise Law requires that enterprises shall not have discrimination against employees, it does not specify gender-based discrimination.

In addition, Vietnamese laws regulating business activities still lack various legal regulations that have been introduced in many countries with the purpose of promoting gender equality in this sector.

One example is legislation on equal pay for equal work. Iceland has legislation

mandating all organizations with a staff of more than 25 to prove equal pay or face a fine. This is enforced by a certification process every three years that is monitored by an external auditor and supplemented by a public whistleblowing system. France recently passed equal pay legislation requiring companies to evaluate themselves using an index made up of five work equality indicators. The Equality Act 2010 of the UK provides that, organisations with more than 250 employees would be required to report on their gender pay gap on a regular basis. In Australia, from April 2018, businesses that employ over 250 people will be required to publish their gender pay gap and gender bonus information on their own website and on a government website.

Australian Parliament has enacted Workplace Gender Equality Act requiring non-public sector employers with 100 or more employees to submit a report to the Workplace Gender Equality Agency between 1 April and 31 May each year for the preceding 12-month period about gender equality issues. Those reports are available to the public, subject to some exceptions for information that is personal information, information relating to remuneration and information of a kind specified by the Minister. The Agency may review a relevant employer's compliance with this Act by seeking further information from the employer. If a relevant employer fails to comply with this Act, the Agency may name the employer in a report given to the Minister or by electronic or other means (*for example, on the Agency's website or in a newspaper*).

State Budget Law

Regarding the state budget, gender budgeting and gender mainstreaming have not been included into any stage of the budget process as a compulsory requirement by the Law on the State Budget 2015. The Law does not have neither definition of gender budgeting nor provisions on impact assessment of revenue collection (*taxes and fees*); assessment of contribution of expenditure to gender equality; and impact assessment of budget to beneficiaries (*relevant groups including women and men*). There is a lack of criteria for monitoring and evaluation of the implementation of gender objectives in the budget allocation, management, and implementation.

Tax Laws

- Law on EIT: Special tax rates for regulated encouraged sectors may encourage gender inequality in terms of the tax burden. Another problem with these exemptions is that the largest corporations with male predominance enjoy the lowest EIT rates, which may make the economic status of women involved in small businesses more vulnerable⁹⁸.
- Law on PIT: Tax exempt dependent allowances as provided by the Law on PIT may still violate the principle of gender equality even if they are designed to protect the ability to pay⁹⁹. The dependent allowances will be more profitable

⁹⁸ UN Women Viet Nam, *Gender equality and tax: issues and recommendations for Viet Nam, discussion paper, Hanoi, 2016.*

⁹⁹ UN Women Viet Nam, *Gender equality and tax: issues and recommendations for Viet Nam, discussion paper, Hanoi, 2016.*

for the spouse with the higher income. This will then always discriminate against women to the extent that their incomes are not higher than their spouse's incomes. Even if two spouses have exactly equal incomes, one will be able to claim the benefit of the tax allowances for dependents, while the other will be unable to do so. This will then create a comparative disadvantage to paid work for the second earner, even when they start out with equal pre-tax incomes. Depending on the bargaining power between the two spouses, only one may continue in paid work in this situation. Women are much more vulnerable to this effect because unpaid domestic, care, and business work still remains the primary responsibility of women.

- Law on VAT: Because the VAT is a tax on consumption, and because women and those with low or no incomes have less ability to pay for their basic consumption needs, the total tax load from the Viet Nam VAT sits most heavily on women, those living below the poverty level, and, geographically, those living in rural areas. Even the 5% reduction of VAT for essential goods is still regressive at the lowest income levels.

Also, most of the exemptions from the 10% rate provided by the Law on VAT include costly items such as technology and software, capital, land ownership, transportation equipment, and armaments. Thus it is likely that these exemptions produce more VAT reductions for male consumption expenditures and businesses than they do for women, simply because women are less likely to be able to afford to obtain such items.

Especially, the Viet Nam VAT applies automatically to all registered businesses, whether incorporated or unincorporated. While a large number of small businesses are women owned, they are not exempt from collecting the VAT. The gender issues posed by the VAT arise when the costs to women entrepreneurs of enterprise registration and VAT collection are relatively high when compared with more profitable male-led businesses.

Thus, even the inclusion of encouraged sectors in the VAT laws, such as VAT exemptions for agricultural items, may not be enough to equalize the gender effects of the VAT on small businesses. Moreover, because more women entrepreneurs are found in micro, small, and medium enterprises than in large enterprises, these unequal effects will sit more heavily on women.

Land Law

In relation to equal access to land, The Land Law does not clearly state gender equality as a key principle of land governance. Vietnamese laws have not fully considered the gender dimensions yet. This would include ensuring that all land administration activities mainstream gender equality, including land surveys, titling and registration processes and technologies, fees and charges, land takings, compensation mechanisms and land use planning. For example, gender impact assessments have not been stipulated in the Land Law 2013 as a compulsory measure in neither land use planning nor land takings for so-called socio-economic development projects.

2. Accommodation of Gender Differences in Laws

There are no accommodating gender differences provisions in Economic Laws.

3. Discrimination in Laws

There are no provisions in these Laws that discriminate against women or men in economic and business activities.

4. Special Measures to promote gender equality

4.1. Positive results

On the one hand, the Economic Laws provide for some special measures for women in conformity with the basic principles of gender equality and GEL. For example, Law on Support for SMEs 2016 gives in Article 3 an official definition of a woman-owned SME, which has one or more than one woman holding 51% or more of its charter capital and at least one of whom being its manager. According to Article 5 of this Law, in case more than one small and medium sized enterprises are eligible for support, priority shall be given to those owned by women or employing more female workers. Bidding Law 2013 provides that contractors employing 25% and more female workers will enjoy preferential treatment in domestic bidding for the supply of consultancy, non-consultancy, and construction and installment services. According to Article 15 of the Law on Enterprise's Income Tax 2013, enterprises that carry out manufacturing, construction, and transportation activities and that employ many female workers shall be entitled to business tax reductions equal to the expenses spent for female workers.

4.2. Insufficient or ineffective measures

On another hand, these Laws still lack necessary provisions on special measures for women. One example is that the Economic Laws do not have specific provisions on credit support and support encouraging investment in agriculture, forestry, and fishery sectors for female workers in rural areas. In the meantime, according to Article 12 of the GEL, female workers in rural areas shall be entitled to enjoy this kind of support.

Viet Nam has not enacted legislation to improve women's representation in the leading position in businesses, particularly to introduce a certain percentage of women holding the decision-making posts in a company. Vietnamese women have the lowest female-to-male ratio in top management in the region, with one woman to every eight men, compared with 1:5.6 in Malaysia, 1:2.8 in the Philippines and 1:2.2 in Thailand¹⁰⁰. To address this problem, Belgium, France, Italy, the Netherlands, and Norway now have mandatory quotas ranging from 30 to 40 percent female membership in the board, while Austria, Denmark, Finland, Germany, Greece, Slovenia, and Spain have voluntary quotas¹⁰¹. France has had success with a law requiring that women make up 40 percent of the boards of large companies (*firms with 500 employees or more and revenues of about \$550 million and*

¹⁰⁰ Tu Ha and Matthieu Francois, Gender equality: trisector challenge, <https://www.vir.com.vn/gender-equality-trisector-challenge-66386.html>

¹⁰¹ Kevin Campbell and Leszek Bohdanowicz, *Corporate Governance and the Growing Role of Women in the Boardroom*, Farnham, Surrey: Gower, October 2015.

greater) and penalizing those that don't comply. Norway has the same threshold for the percentage of women on executive boards, with one of the repercussions for non-compliance being the dissolution of companies not meeting the quota.

Another way to improve gender equality in investment and business is to create more favourable conditions for women. For instance, including more women on the teams that decide who gets funded, focus on companies that have women in leadership at stages from seed to scale and invest in analytics tools that will help them monitor how they're doing with gender diversity; increasing the value of public contracts awarded to women¹⁰², among other things. However, these measures still have not been introduced into relevant Vietnamese legislation.

From another perspective, there are legal rules in the economic sector that may negatively affect women, although originally, they have been enacted for gender equality purposes. Article 15 of the Law on Enterprise's Income Tax 2013 is a typical example. Under Decree 85/2015-ND-CP detailing this Article, 'employing many female staff' means if the employer has between 10 and 100 women workers who form at least 50% of all employees, between 100 and 1,000 women workers who form at least 30% of total employees, or 1,000 or more women workers¹⁰³. Given employee turnover rates, such precise formulas create the risk of becoming disqualified for these tax incentives unless considerable additional women are employed and under conditions of some job permanence. Also, the Decree does not indicate whether women on gender-related leaves remain in these quotas. Moreover, this definition excludes micro-enterprises with less than 10 women employees - the very types of businesses that are most likely to be owned primarily by women. These kinds of micro-enterprises do not get any benefit from this policy even if all their workers are female. In addition, many businesses find it a burden to employ many female workers. The final concern arising from this policy is that how these tax benefits are to be used, and whether women have to benefit from corporations' increased after-tax profits resulting from these provisions at all.

¹⁰² 79 ways to make the world more gender-equal, Cliffs Notes edition, 27/9/2019,

<https://bossbetty.com/the-docket/79-ways-to-make-the-world-more-gender-equal-cliffs-notes-edition/>

¹⁰³ Decree 85/2015-ND-CP on detailed instruction on implementation on regulation for female employees.

III. LAWS IN THE LABOUR SECTOR

Laws regulating labour include Labour Code of 2012 and of 2019, Social Insurance Law, Employment Law of 2013, Law on Occupational Safety and Health of 2013, Law on Sending Workers to Work Overseas of 2006.

1. Equality and non-discrimination guarantees

The Labour Code of 2012 (*and of 2019*) provides for gender equality and prohibits discrimination based on gender in various provisions. Other Laws regulating labour relations also have provisions on gender equality. The Law on Occupational Safety and Health in Article 12 prohibits practicing gender-based discrimination in occupational safety and health.

Employment Law of 2013 in Article 4 ensures the right to work and freedom of choice for jobs and workplaces, and states equality in employment opportunities and incomes. Article 5 of this Law provides for policies to support employers that have many people with disabilities, women and ethnic minority people. Article 9 prohibits committing discriminatory acts in employment and occupations. Employment Law in various Articles provides support for employment creation, maintenance and expansion, especially for small and medium-sized enterprises, cooperatives, cooperative groups and business households, ethnic minority people who are living in areas with extremely difficult socio-economic conditions, and people with disabilities; workers and small- and medium-sized enterprises, cooperatives, cooperative groups and business households in rural areas. All these policies can bring direct and indirect benefits to both men and women.

However, the Labour Code of 2012 (*as well as the Code of 2019*) does not make sufficient and full reference to the principle of workplace gender equality in a number of other key provisions on: Scope of regulation, subjects of application, interpretation of terminologies, state policy on labour, rights and obligation of the employer, prohibited acts, responsibilities of information disclosure before entering into employment contracts, occupational safety and health, the right of an employee to unilaterally terminate the employment contract, workplace sexual harassment, Issues for dialogue at the workplace, collective bargaining and collective agreements, resolving labour disputes, State management of labour, labour inspection and system of receiving and handling complaints, particularly on gender inequality and gender-based discrimination, wages, personal [paid] leave, leave without pay, working time, etc.

Similarly, the Law on Occupational Safety and Health lacks concrete provisions considering biological differences and needs of both women and men to ensure substantive gender equality. More specifically, there are many gender issues such as: work equipment and tools appropriate for women and men; relevant safety standards taking into account gender differences; special medical examination for both women and men when it is needed; gender integration into capacity development activities; gender consideration in information reporting, inspection, and control of occupational safety and health, among others. The Employment



Law would have more comprehensive gender considerations when regulating labour market information; assessment and grant of certificates of national occupational skills; employment services; unemployment insurance, etc. Law on Sending Workers to Work Overseas of 2006 is a special case because it was enacted before the GEL. Due to this reason, the Law does not take gender considerations into account.

2. Accommodation of Gender Differences in Laws

The Labour Code of 2012 (*and the Code of 2019*) also creates additional obligations for employers in their treatment toward female employees in article 154 (*Article 136 in the Code of 2019*), including appropriate washrooms for women and childcare services. Article 154 (*Article 136 in the Code of 2019*) is consistent with the Law and with international standards including CEDAW and ILO Conventions 111 (*Discrimination and Employment*), 120 (*Hygiene in Commerce and Offices*), and 155 (*Occupational Health and Safety*). The Labour Code, in article 155 (*Article 137 in the Code of 2019*), has several special provisions that accommodate female employees by offering women employment protection during their pregnancy, maternity leave, and lactation periods. For example, an employer is not allowed to assign an employee who is seven months pregnant to work at night, work overtime or go on a long work trip. In a remote or mountainous area, this provision applies to women who are six months pregnant. Another example of an accommodation because of gender difference: women are entitled to six months of maternity leave and is guaranteed to return to her position.

The Law on Occupational Safety and Health in Article 21 requires that, when giving health check-up for employees, female employees shall be provided with obstetric examinations. Article 63 of this Law regulates occupational safety and health for female employees, minor employees, and employees with disabilities.

3. Discrimination in laws

In the Labour Code of 2012 and other employment related laws, the retirement age is set at 55 years for women and 60 years of age for men. The Labour Code as amended in 2019 by the National Assembly provides for the retirement age of 60 for women and 62 for men. The distinction between men and women would remain. In addition, the Labour Code does not address in sufficient details different forms of gender-based discrimination such as unequal treatment of workers due to gender, sexual harassment, etc.

Similar to the Labour Code of 2012, The Law on Social Insurance in Article 54 and Article 55 provides for different ages of male and female employees as a condition for pension eligibility in a number of cases. In addition, there is a difference in the amount annually added to monthly pensions for male and female employees in Article 56. An age difference between husband and wife also needs to exist for their relatives to be entitled to a monthly survivor benefit.

4. Special measures to promote gender equality

4.1. Positive results

The Labour Code of 2012 (*and of 2019*) has special provisions exclusively applicable to female employees to encourage women's equality in employment, consistent with article 12 (2) of the GE Law. In articles 153 to 160 of the Labour Code of 2012 (*Articles 135 to 142 in the Labour Code of 2019*), there are six key policies that protect women's rights and promote gender equality. Article 75 of the Law on Occupational Safety and Health also stipulates that Occupational Safety and Health Council must ensure a certain percentage of female members in accordance with the gender equality principle and the practical situation of the establishment.

4.2. Insufficient or ineffective aspects of special measures

Various provisions of the Labour Code of 2012 (*as amended in 2019*) and other Laws on labour while addressing special measures for women workers perpetuate stereotypes that no longer conform to international standards of gender equality. For instance, Article 153 (5) of the Labour Code of 2012 (*Article 135 (5) Labour Code of 2019*) reads: "*To develop various forms of training to enable female employees to acquire additional occupational skills that are suitable to their physical and physiological characteristic and their motherhood functions*". This measure aimed at protecting women generally because of their sex or gender reflects stereotypical myths about women's suitability, capabilities and appropriate role in society.

Article 155 (5) of the Code of 2012 (*Article 137(4) of the 2019 Code*) states "*During her menstruation period, a female employee shall be entitled to a 30-minute break in every working day*". While this subsection may be construed as protective of women, it might also constitute an obstacle to the recruitment and employment of women based on myths about work capabilities during women's periods.

From another perspective, Clause (4) of Article 154 of the Code of 2012 places a financial burden on employers (*to assist and support in building day care facilities and kindergartens, or in covering a part of the childcare expenses incurred by female employees*). This could constitute an obstacle to the recruitment and employment of women, whereas it is preferable that such expenses shall be tax-deductible or otherwise offset by State reimbursement and capital grants. The costs of family-friendly facilities should not be shouldered by workers.

By this way of regulation, Clause (4) does not reflect the idea that tax exemption is available for the purpose of compensating the costs associated with introducing measures that promote gender equality and shared family responsibilities. If tax relief is available only to enterprises that employ a high proportion of women, it would entrench a perception that only women look after children so would require workplace childcare.

IV. LAWS IN THE EDUCATION SECTOR

Laws regulating the education sector are the Law on Education, Law on Higher Education, and Law on Vocational Education (*Education Laws*).

1. Equality and non-discrimination guarantees

The provisions of the above-mentioned Laws are neutral, without discriminating provisions between women and men such as: '*learning is the right and obligation of every citizen*'; '*All citizens are equal*'; '*conditions for everyone to get access to education*'; among others.

Moreover, the Laws provide for some direct rules in conformity with the basic principles of gender equality. For example, Education Law of 2019 requires educational curriculum to meet gender equality objectives (*Article 8*); all citizens, regardless of their gender, are equal in learning opportunities (*Article 13*); textbooks shall not contain gender bias (*Article 32*); Law on Higher Education 2018 and Law on Vocational Education 2014 state the policy to implement gender equality in higher education and in vocational education (*Article 12 and Article 6 accordingly*).

At the same time, the Laws contain neutral provisions which indirectly ensure gender equality in different forms and levels of education, across regions of the country, and in socialisation (*implying privatisation*) of education.

However, Education Laws' provisions are not intensive and concrete enough regarding gender equality as well as the rights of girls and women in education¹⁰⁴. The principles of gender equality are not fully guaranteed in the provisions related to teachers, training of teachers, curriculum development, students, assessment of students, governance of educational institutions, education quality assessment, State management, budgeting and financing, and other provisions.

More specifically, there are no terms relating to '*genders*' or '*gender equality*' in the core curriculum of ITT, especially explicit modules on gender equality to be compulsory for trainee teachers¹⁰⁵. Although Education Law in Article 8 mentions the gender equality objective in the educational curriculum, it does not further specify gender equality education for children from the early years in Article 31 on the school curriculum. Similarly, gender equality and gender anti-discrimination are not mentioned in those provisions on higher education curriculum.

These Laws do not specify gender equality responsibility of related state bodies such as the Government, Ministry of Education and Training, Ministry of Labour, Invalids, and Social Affairs, and local governments. Particularly, Education Law does not require the Government to issue sub-law documents to deal with gender issues in education in a more concrete manner.

2. Accommodation of gender differences in laws

There are no accommodating gender differences provisions in Education Laws, but they do exist in sub-law documents such as decrees or circulars.

¹⁰⁴ In the meantime, it is evident that England's '*formal gender parity*' in education is the result of educational government policy to improve girls' education. See: Mai, TTD (2015) Promoting Gender Equality in Education in Vietnamese High Schools. Doctoral thesis, Liverpool John Moores University, <http://researchonline.ljmu.ac.uk/id/eprint/4485/> accessed 8/10/2019.

¹⁰⁵ Mai, TTD (2015) Promoting Gender Equality in Education in Vietnamese High Schools. Doctoral thesis, Liverpool John Moores University, <http://researchonline.ljmu.ac.uk/id/eprint/4485/> accessed 8/10/2019.

3. Discrimination in laws

There are no provisions in these laws that discriminate against girls and women, or against boys and men.

4. Special measures to promote gender equality

Law on Vocational Education 2014 contains some provisions to support women learners who take part in elementary vocational courses and courses lasting up to three months.

However, other Education Laws do not have special measures to promote the role and position of girls and women in education where it is needed to do so. There are no provisions in Education Law introducing a target ratio for the number of women in managerial positions in the education sector. The exact number relies on human resources and the level of gender balance for each place. For comparison, some European countries have introduced quotas with the target of 30% women school board members by 2015 and 40% by 2020¹⁰⁶.

Especially, gender discrimination happens more seriously to girls in difficult rural, mountainous remote areas where many poor families are not able or are not willing to invest for daughters in education. The proportion of girls going to school is low, even 10-15% in some locations¹⁰⁷. Meanwhile, Education Laws do not have clear provisions to address this problem. For example, Article 85 of Education Law 2019, while providing for special support to various groups, does not include girls in those areas as learners who are eligible to receive governmental support.

Special measures necessary for reducing gender gaps and promoting gender equality in higher education sector have not been stipulated in Law on Higher Education, such as: support for women lecturers in extremely difficult areas; employment opportunities for female professors in universities and their opportunity to participate in decision-making posts; support for women scientists and technologists to carry out career development, professional training, and career support; a career development for female college students and other useful measures.

¹⁰⁶ Mai, TTD (2015) Promoting Gender Equality in Education in Vietnamese High Schools. Doctoral thesis, Liverpool John Moores University, <http://researchonline.ljmu.ac.uk/id/eprint/4485/> accessed 08/10/2019.

¹⁰⁷ Ministry of Education and Training, Report on gender mainstreaming in to the Draft Amended Education Law, Hanoi, 2018; Ministry of Labour, Invalids, and Social Affairs, Draft Report on 10-year Implementation of the Law on Gender Equality, Hanoi, 12/2018.

V. LAWS IN THE HEALTH SECTOR

Laws regulating the health sector include Law on Medical Examination and Treatment of 2009, Law on Medical Insurance of 2014.

1. Equality and non-discrimination guarantees

In conformity with GEL, the Law on Medical Examination and Treatment of 2009 in Article 3 states that one of the principles for medical practice is to ensure equality, fairness, and non-discrimination for patients. Article 9 stipulates that patients shall enjoy respect in terms of age, gender, ethnics, and belief. According to Article 36, medical practitioners have an obligation to equally treat patients, and not to let personal interests or discrimination affect their professional decisions.

In addition to the Law, a series of policies and programmes on primary healthcare have been enacted, focusing on the health of mothers during pregnancy and childbirth and child rearing for children under five years old. These policies and programmes have helped to narrow the gap in protecting the health of mothers and girls between urban and rural, ethnic minority, and remote areas.

The Law on Health Insurance of 2009, as amended in 2014, requires employers to purchase health insurance for all employees who have three-month and longer labour contract. The Law also contains policies on State support in the form of free health insurance for specific beneficiary groups, including poor people, children under 6 years old, people who are entitled to elderly and disability benefits, people who are above 80 years old, etc.

This Law in Article 13 (*Clause 1a*) provides that, during maternity leave of an employee (*regardless of her/his sex*), a relevant social insurance institution shall pay the monthly premium rate for her/him with maximum amount equal to 6% of the employee's monthly salary at the time right before taking maternity leave. This measure aims at mitigating burdens for pregnant female employees and at the same time reflects an aspect of substantive gender equality when both female and male employees have a right to take maternity leave.

A number of medical technical services provided separately for women or men are covered by health insurance. Thus, both women and men can enjoy equal treatment, benefits, and access to health insurance.

According to Article 13 (*Clause 3*) of the Law on Health Insurance, all family members must participate in health insurance. The compulsory family form of health insurance may increase the number of women's participation compared to the individual voluntary health insurance due to the fact that under the latter, women would not get priority in most cases.

Despite the many achievements, laws and other legal normative documents in the health sector have several shortcomings as viewed from gender equality. These Laws do not state clearly principles of gender equality in various important provisions on policies of the State in the health sector, prohibited acts, responsibilities of

State bodies, rights and duties of patients and medical practitioners, and in other relevant provisions.

Partially due to these laws, specific groups of women and girls do not benefit equally from policies on ensuring minimum health. In particular, policies on primary health care do not ensure equal access or outcomes for migrant women and girls¹⁰⁸. Clause 3, Article 22 of the Law on Health Insurance stipulates that patients who take medical checkups at health care institutions not registered in the health insurance card would not be covered fully by the health insurance fund. In the meantime, it is required by the Law to have a permanent residence for registration of place of health insurance. This provision will have negative effects on migrants, including women, who cannot have medical checkups covered by health insurance due to the lack of permanent residence for registration.

There is also a lack of corresponding provisions on the quality enhancement of health care services for health insurance participants. The legal framework pays insufficient attention to communal medical systems in ethnic minority and remote areas that do not have enough capacity, equipment, or staffing to provide primary health care services to local women and girls.

Sanctions applicable to employers' contribution to health insurance for laborers are not strict enough, therefore evasion in health insurance contributions is widespread¹⁰⁹. This occurs more in small and medium enterprises and informal sectors where a great number of female laborers are employed.

2. Accommodation of gender differences in laws

There are no provisions in these Laws accommodating gender differences.

3. Discrimination in laws

N/A

4. Special measures to promote gender equality

The Law on Medical Examination and Treatment of 2009 and the Law on Health Insurance 2014 provides for specific benefits to women. The Law on Medical Examination and Treatment of 2009 in Article 3 prioritize medical examination and treatment for pregnant women when, according to Article 21 of the Law on Health Insurance 2014, the costs for antenatal care and birthing are covered by health insurance. These measures are in conformity with the Law on GE, promoting gender equality for women.

¹⁰⁸ UN Women Vietnam, Report on Social protection for Women and Girls in Viet Nam, 1st edition, 2015.

¹⁰⁹ UN Women Vietnam, Report on Social protection for Women and Girls in Viet Nam, 1st edition, 2015.

VI. LAWS REGULATING FAMILY LIFE

Laws regulating family sector include the Law on Marriage and Family of 2014, Law on Domestic Violence of 2007, Children Law of 2016, Law on Persons with Disabilities of 2010, Law on Elderly Person of 2009.

1. Equality and non-discrimination guarantees

1.1. Gender equality achievements

(a) Law on Marriage and Family of 2014

- *Equality between Men and Women in the Marriage and Family Regime*

It is important to note that laws in Vietnam do not recognize equal rights or the right to marry for same sex couples. The Law on Marriage and Family, in article 2, confirms fundamental principles in the marriage and family regime, including equality between spouses (*husbands and wives*) in monogamous marriages. This principle is re-stated in articles 4 and 17. Also, in terms of common property, husbands and wives have equal rights and obligations in the matrimonial property regime *“in the creation, possession, use and disposition of their common property without discrimination between housework labor and income-generating labour”* (article 29). Furthermore, in article 34, both spouses should have their names on land ownership or land use right certificates. The Law on Marriage and Family also describes the division of common property in case of divorce in article 59. Importantly, that provision recognizes that *“housework done in the family by a spouse shall be regarded as income-generating labour”*. This recognition of work in the home helps women in the distribution of common property. In article 71 both husband and wife have the “equal obligation and right” to care for and raise their children.

- *Property rights and inheritance*

Article 213 of the Civil Code of 2015 states that *“Multiple ownership between a husband and wife is divisible joint ownership... A husband and wife jointly create and develop their marital property through their efforts and have equal rights to possess, use and dispose of such property... A husband and wife shall discuss, agree on or authorize each other in relation to the possession, use and disposal of the marital property”*.

Article 644 of the Civil Code of 2015 states that *“Where a testator does not grant any of the following persons an inheritance, or grants any such person an inheritance which is less than two-thirds of the share that person would have received if the estate had been distributed according to law, such person shall be entitled to a share of the estate equivalent to two-thirds of the share that he or she would have received if the estate had been distributed in accordance with law: a) Children who are minors, father, mother, wife or husband of the testator; b) Children who are adults but who are incapable of working”*. Article 651 of the Civil Code of 2015 states that *“Heirs at law are categorized in the following order of priority: a) The first level of heirs comprises: spouses, biological parents, adoptive parents, offspring and adopted children of the deceased; b) The second level of heirs comprises: grandparents and siblings of the*

deceased; and biological grandchildren of the deceased; c) The third level of heirs comprises: biological great-grandparents of the deceased, biological uncles and aunts of the deceased and biological nephews and nieces of the deceased... Heirs at the same level shall be entitled to equal shares of the estate... Heirs at a lower level shall be entitled to inherit where there are no heirs at a higher level because such heirs have died, or because they are not entitled to inherit, have been deprived of the right to inherit or have disclaimed the right to inherit”.

- *Surrogacy arrangement:* The Law on Marriage and Family of 2014 officially allows surrogacy for humanitarian purposes. The surrogacy is allowed only when the adequate conditions for both surrogate mothers and intended parents are met. In particular, the law only allows relatives from husband or wife to be surrogate mother. This is considered as a development in the Law on Marriage and Family from a gender equality perspective, as it supports spouses that are unable to have children.

(b) Law on Domestic Violence of 2007

This Law has various provisions directly stipulating gender equality and rights of women, such as:

- *Clause 3, Article 3: One of the principles in preventing and combating domestic violence is to prioritize the protection of lawful rights and interests of children, the aged people with disabilities, and women.*
- *Clause 2, Article 9: Information and communication on domestic violence prevention and control must be suitable to gender.*
- *Article 10: Gender equality is one of the contents of information and communication on domestic violence prevention and control.*
- Article 31, 32: Responsibilities of individuals, families to educate and remind family members to comply with the laws on **gender equity**.
- Article 33, 34: Responsibilities of Fatherland Front and Women Union is to disseminate, educate, encourage members and people to comply with the laws on **gender equity**, to propose to concerned state agencies necessary measures to enforce the laws on **gender equality**.

In addition, a good example of indirect gender consideration is to be found in this Law that includes forced child marriage in its definition of domestic violence, as girls have been found victims in most if not all cases of forced child marriage.

(c) Children Law of 2016

This Law also contains provisions directly or indirectly stipulating gender equality, such as:

- Article 5: Principles for ensuring the exercise of children’s rights and responsibilities: Facilitate children in exercising their rights and responsibilities in an adequate manner; Do not discriminate against children; Ensuring children’s best interests while making decisions relating children; Respect, listen, consider and respond to children’s proposals and expectations;

Consider ideas of children and those of relevant agencies and organizations while establishing policies and laws affecting children.

- Article 6: Prohibited acts: Discrimination against children on the grounds of their personal characters, family background, sex, race, nationality, belief or religion.
- Article 44: The Government shall give priority investment in education for ensuring that all children may get equal opportunities to access to education.

(d) Law on Persons with Disabilities of 2010

Law on Persons with Disabilities of 2010 guarantees to persons with disabilities a right to participate on an equal basis in social activities.

(e) Law on Elderly Persons of 2009

This Law defines the minimum age of elderly persons as being 60 years old for both men and women.

1.2. Shortcomings from gender equality perspectives

Alongside with positive results in ensuring gender equality, Laws regulating family sector have some shortcomings as follows:

(a) Law on Marriage and Family of 2014

Vietnamese law does not consider marriage as a contract. In the meantime, the current regulations of Viet Nam's Marriage and Family Law are unclear on ownership of common and private assets and properties. It mainly refers to land issues while other assets such as securities and shared ownership in the enterprise are not mentioned, making it difficult to resolve any arisen disputes, especially when women are in a disadvantaged position to men.

According to Article 12 (3) and Article 16 (3), in case of the annulment of illegal marriage, the settlement of property relations and obligations and contracts between men and women cohabiting as husband and wife without marriage registration must ensure lawful rights and interests of women and children. This provision does not take into account lawful rights and interests of men who may suffer from that marriage, or who face difficulties, have illnesses, and other pertinent factors to be considered. As such, this provision has an effect of gender discrimination against men.

In Article 29 on general principles of the matrimonial property regime, it is necessary to add a clause ensuring the rights and benefits of children, pregnant wife, the spouse who is nurturing babies, and family members who are titled for support.

Article 59 states that in settling property of husband and wife upon divorce, the lawful rights and interests of the wife, minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves shall be protected. Similarly, to Article 16(3), this provision does not

take into account lawful rights and interests of the man who may suffer from that marriage, or who may face difficulties, have an illness at the moment of divorce while his wife is wealthy and healthy, and other things to consider. As such, this provision has an effect of gender discrimination against men.

(b) Law on Domestic Violence of 2007

Definition of domestic violence by the Law has certain inconsistencies with international standards. While the Vietnamese law covers violence within a family against all other family members, the international gender equality law focuses on gender-based violence against women.

The current framework provided by the Law and sub-law documents are generic in nature and don't clarify the processes to cater to the specific needs of gender-based victims. Specific regulations on special support for victims of violence have not been defined. Particularly, the services by the health sector lack a clear process of reception, screening, support and protection of victims¹¹⁰.

There appears to be an emphasis on the use of reconciliation across the Law on Domestic Violence of 2007. This may divert the focus from recognizing domestic violence as a violation of the human rights of women and is not recommended under international standards¹¹¹. It is recognized that *"women seeking redress through alternative dispute mechanisms, such as mediation, are at enhanced risk of being discriminated against due to the imbalance of power and the absence of judicial safeguards, especially in domestic violence cases, where women often cannot obtain reparation when using mediation channels"*¹¹². Moreover, reconciliation risks to fail because of cultural and social factors in Viet Nam's family life. Previous research in Viet Nam revealed that 77 percent of reconciliation cases did not produce the expected outcome and violence continued¹¹³. When provision for reconciliation is in the law, sufficient safeguards must also be included to ensure that the security and position of the survivor is not adversely affected.

The Law on Domestic Violence of 2007 does not clearly stipulate for counselling mechanisms to cope with the psychological impact of violence on victims. In this Law, counselling is confused with reconciliation which can negate the significance of the counselling mechanisms. The understanding of counselling under the Law is that of reconciliation within the family. Taking into account the fact that women have been the majority of victims of domestic violence, the shortage of counselling in the Law may be detrimental to them.

¹¹⁰ UN Women Vietnam, *The Joint Programme on Essential Services package for women and girls subject to violence in Viet Nam: Baseline Assessment Report 2018*, Hanoi, 2019.

¹¹¹ UN Women Regional Office for Asia and the Pacific, *Domestic Violence Legislation and its Implementation: An analysis for ASEAN countries based on international standards and good practices*, 5th edition, 2013.

¹¹² The Concept Note 'Access to Justice' endorsed by the CEDAW Committee at its 53rd Session for the General Discussion, in UN Women & Institute of Sociology, Ho Chi Minh National Academy of Politics.

¹¹³ UN Women Regional Office for Asia and the Pacific, *Domestic Violence Legislation and its Implementation: An analysis for ASEAN countries based on international standards and good practices*, 5th edition, 2013.



(c) Law on Children of 2016

Article 46 of this Law does not specify that children's information and communications activities shall be gender - neutral and promote equality between girls and boys.

(d) Law on Persons with Disabilities of 2010

This Law still lacks responses addressing the unique aspects of women and girls with disabilities, as well as the unique aspects of men and boys with disabilities, including their access to vital support and recovery services.

(e) Law on Elderly Persons of 2009

This Law does not have any provisions relating to principles of gender equality, although it is necessary to do so in numerous places. In particular, gender issues have not been included into provisions on the rights of elderly persons, prohibited acts to elderly persons, health care for elderly persons, chances for them to participate in public life, etc.

(f) Inconsistence in the terminology and overlap in competencies

There exists inconsistency in the terminology in related Laws and overlap in competencies of related Ministries. The Law on Domestic Violence of 2007 gives to Ministry for Culture, Sport, and Tourism the power to deal with domestic violence acts, while the Law on GE of 2006 provides that Ministry for Labour, Invalids, and Social Affairs has authority on gender-based violence. The Law on Children of 2016 also stipulates that the Ministry for Labour, Invalids, and Social Affairs has the power to deal with violent acts to girls that happened in the family. And, according to the Degree on Population of 2008, the Ministry of Health has similar authority over prenatal sex selection - a kind of gender-based violence.

2. Accommodation of gender differences in laws

The Law on Marriage and Family of 2014: The Law on Marriage and Family of 2014 is consistent with this protection and support to the mother. Mothers are privileged in raising young children after divorce: Article 81 of Law on Marriage and Family of 2014 states that *"A child under 36 months of age shall be directly raised by the mother [after divorce], unless the mother cannot afford to directly look after, care for, raise and educate the child or otherwise agreed by the parents in the interests of the child"*. In some countries, as father's become increasingly involved in childrearing these types of accommodations have been removed from laws.

3. Discrimination in laws

Different age of marriage: Women can marry at a younger age than men. This has been noted as a discriminatory provision by the CEDAW Committee. Article 8 of Law on Marriage and Family of 2014 states that *"A man and a woman wishing to marry each other must satisfy the following conditions: a) The man is full 20 years or older, the woman is full 18 years or older; b) The marriage is voluntarily decided by the man and woman; c) The man and woman do not lose the civil act capacity..."*. In the

joint document on harmful practices (*General Recommendation 31 of the CEDAW Committee/General Comment 18 of the Rights of the Child Committee*) marriage under the 18 years of age is considered to be forced given consent cannot be properly given. At paragraph 22 the Committees note that child or early marriage is associated with higher school dropout rates, high risk pregnancies and higher maternal morbidity, and limited decision-making power if the girl is significantly younger than her spouse. While the Law on Marriage and Family does not permit girls to marry under 18 years of age, it is important to set the same age of marriage for men and women.

Two - child policy: The government's policies that encourage two-child families have led to imbalanced sex ratios at birth with prevalence of boys to girls. This increasing imbalance represents prenatal sex selection - a form of gender-based violence, discrimination against unborn girls.

4. Special measures to promote gender equality

4.1. Positive results

Children Law of 2016: Article 43, Clause 2: The Government shall ensure the implementation of measures for carrying periodical examination for pregnant women and children according to age level.

Clause 3: The provision of consultancy, protection and taking care of health and nutrition of pregnant women, mothers who have to bring up babies below 36 months of age and children, especially children under 36 months of age and abused children shall be prioritized in conformity with socioeconomic development conditions at each period.

The Law on DVPC: Women facing violence have the right to access support services such as medical care.

Article 23, Law on Persons with Disabilities of 2010 gives priorities in health check-up and treatment to pregnant women with disabilities; Article 45 provides for a monthly sanitary fee for women with disabilities in productive age.

4.2. Insufficient or ineffective measures

The Law on DVPC defines domestic violence as: "*Purposeful acts of certain family members that cause or may possibly cause physical, mental or economic injuries to other family members*". Domestic violence thus encompasses various forms of violence perpetrated by a family member against another family member and includes violence against women, men, children, and older people. Accordingly, a significant feature of this Law is that it is formulated in a gender neutral manner which does not conform to international standards¹¹⁴. The UN Model Code recommends the recognition of domestic violence as a "*gender-specific*" form of violence "*directed against women, occurring within the family and within interpersonal relationships*". In reality, the most common type of domestic violence is violence against women committed by their husband or partner.

¹¹⁴ UN Women Regional Office for Asia and the Pacific, *Domestic Violence Legislation and its Implementation: An analysis for ASEAN countries based on international standards and good practices*, 5th edition, 2013.

In some provisions of the Law on Children of 2016, because of more limited access of girls to various services, there is an insufficient emphasis on the need of special care for girls, for example in Article 43: Guarantee of children's healthcare; Article 44: Guarantee of child education.

The Law states the task for providing children advice and assistance in reproductive sexual health care in conformity with their age as regulated by the laws. It would be better and in accordance with gender equality if the word '*and sex*' was added after the word '*their age*'.

The Law on Persons with Disabilities of 2010 is mostly gender neutral and does not specifically refer to women and girls with disabilities when it is needed. In the meantime, taking a "*gender neutral*" perspective, in this case, masks differences in the kinds of exclusion and discrimination people face, as well as the risk and vulnerabilities that people experience because they are male or female¹¹⁵. Very few provisions in the Law are designed to address the barriers women and girls with disabilities face in accessing education and employment opportunities, access to justice, in exercising control over their own bodies and access to family planning and reproductive health services, participation in political and public life. For instance, the Law at Article 5 does not recognize the implementation of social relief policies and support for women with disabilities as priorities of the State's policies, while it does to children and elderly persons with disabilities.

VII. LAWS REGULATING SCIENCE, TECHNOLOGY, ENVIRONMENT, AND INFORMATION AND COMMUNICATION

This part reviews the Law on Science and Technology of 2013, Law on Environment Protection of 2014, Law on Forestry of 2017, Media Law of 2016, Law on Access to Information of 2016.

1. Gender equality and non-discrimination guarantees

1.1. Positive results

(a) Gender in science and technology

Law on Science and Technology of 2013 does not directly provide for gender equality principle, but implicitly implies it in certain provisions. For instance, Article 14 of this Law states equality and publicity in the use of funds for and performance of scientific and technological tasks. Article 20 recognizes the rights of science and technology workers to enjoy freedom of creativity and equality in scientific and technological activities.

(b) Gender and environment

Law on Environment Protection of 2014 in Article 4 outlines principles of environmental protection, which are the responsibilities and obligations of every

¹¹⁵ Kai Spratt, *Literature Review of People with Disabilities and Gender based violence, Written for USAID/Vietnam, 2017.*

agency, organization, family household and individual. According to the Law, amongst other principles, environmental protection must assure the children's right, promote gender equality, ensure the human right of living in a pure environment.

(c) Gender and forestry

Law on Forestry of 2017 in Article 9 prohibits certain acts of discrimination, including gender discrimination when allocating or leasing out forests. Article 10 stipulates that the forest planning shall ensure participation of organizations, households, individuals and communities; ensure publicity, transparency and gender equality. Article 14 also states that forest allocation, lease, repurposing and appropriation shall ensure publicity and transparency with participation of local people (*including women*); no discrimination against religions, beliefs or genders when allocating or leasing out forests.

Additionally, the Law on Forestry of 2017 includes gender-neutral provisions, relating to the right and equal opportunities of both women and men to access production materials in forested lands, the right to be recognized by properties and contributions to forest development, and to be protected in terms of properties and related rights when forests or forest land is recovered in accordance with legal regulations. The Law on Forestry also notes the rights to be informed and to comment on forestry developments such as national forestry planning and provincial planning in forested provinces. In doing so, the Law includes the right to access job opportunities and rights and equal opportunities to access government incentives for trainings, employment support, sustainable poverty reduction, and financial support. These policy provisions provide an opportunistic policy space to discuss and incorporate gender and social inclusion issues and priorities.

(d) Gender and communication and information

The Media Law of 2016 and the Law on Access to Information of 2016 generally uses gender neutral language and calls for equality and non-discrimination in internal operation of press agencies, as well as in their communication to the readers; and in accessing State's information.

Particularly, the Law on Access to Information of 2016 in Article 3 stipulates that all citizens (*regardless of their sex*) are equal and not discriminated in exercising their right of access to information. Article 11 prohibits providing or using information to harm the honor, dignity or reputation of, or to cause property damage to an individual, agency or organization; or to cause gender discrimination.

Additionally, at the same time, Article 3 of the Law on Access to Information provides that the State shall create favorable conditions for persons with disabilities and inhabitants of border, island and mountainous areas and areas with extremely difficult socio-economic conditions to exercise their right of access to information. According to Article 18, For these persons, in addition to the forms prescribed in Clause 1 of this Article, state agencies shall determine forms of disclosure of information suitable to these citizens' capacity and conditions to access information.



The Law on Statistics of 2015 has integrated 25 gender indicators into the National statistical indicator system, including labour and employment, population, educational, health, political, and social indicators.

1.2. Shortcomings of Laws as viewed from gender perspectives

(a) Gender and environment

Gender considerations have not been fully stipulated by relevant Laws in many areas of environmental work such as: chemicals and pollution, waste management, management and safeguarding of water as a natural resource, management and safeguarding of energy sources, climate change, and forest management.

Stronger and more concrete provisions should be included into the Law on Environment Protection of 2014 and the Law on Forestry of 2017 for the enhancement of participation of both men and women in decision making processes at all levels. This includes environmental and forest planning, financing, budgeting, and policy-making at national and local levels.

(b) Gender and communication and information

The Media Law of 2016 does not address gender issues in its related provisions. Particularly, Article 4 on functions, tasks and powers of the press lacks a provision on promoting gender equality. Article 9 does not prohibit publishing and broadcasting information of gender stereotype and gender discrimination as the Law on Advertisement does. It is necessary to include into Article 25 a clause on journalists' obligation to promote gender equality principle in the media activities.

The Law does not impose in Article 42 (*corrections in the press*) a requirement that press agencies who provide gender discriminating information shall publish or broadcast a correction and an apology in its press and notify it to the agency, organization or individual concerned. Inspecting and handling violations against gender equality in the media has not stipulated by the Law as a responsibility of state agencies (*in Article 59*).

Regarding the internal operation of the media industry, Article 27(1)(c) of the Media Law stipulates that for grant of a press card, a person must have worked for at least 2 consecutive years at the press agency that applies for a press card, by the time of consideration for grant of the card, except cases as prescribed by law. However, in this case, for the gender consideration, the Law should specify further that '*parental leave is counted into that consecutive working time period*'. Additionally, there is a lack of a provision for the same age between women and men in appointing head of a press agency, Editor-in-chief and Deputy Editor-in-chief.

Under the Law on Access to Information of 2016, the State shall create favorable conditions for certain number of groups; state agencies shall determine forms of disclosure of information suitable to these citizens' capacity and conditions to access information. However, the Law neglects ethnic minorities and women in difficult areas, undermining the importance of gender consideration in providing information to citizens. Similarly, the Law lacks a provision requiring state agencies

shall determine forms of disclosure of information relevant to children's age and gender.

The Law on Statistics of 2015 should have an additional provision requiring state agencies, especially the Ministry of Planning and Investment (*its General Statistics Office*) to provide gender aggregated data and information.

2. Accommodation of gender differences in laws

There are no provisions in these Laws accommodating gender differences.

3. Discrimination in laws

There are no provisions in these Laws discriminating against men or women.

4. Special measures to promote gender equality

4.1. Positive results

Article 22, Law on Science and Technology of 2013 provides that the State promotes the training and employment of female labourers in scientific and technological activities.

4.2. Insufficient or ineffective aspects of special measures

Article 23, Law on Science and Technology of 2013 provides for incentives to various groups of scientists and researchers but does not refer to women working in the field of science and technology.

Chapter IV of this Law on scientific and technological tasks lacks necessary provisions on their selection and approval, financial assistance to promote the involvement of female scientists and researchers and to support them in conducting scientific and technological works.

Similarly, there is a shortage of some provisions on investment and finance for science and technology for the promotion of gender equality in this field. Particularly, Chapter VI of the Law on Science and Technology of 2013 does not have relevant provisions on gender mainstreaming into the budget estimate, allocation, expenditures for science and technology.

The Law on Environment Protection of 2014 and Law on Forestry of 2017 do not specify necessary policies and targeted approaches that address women and girls' specific interests, vulnerabilities and needs. For instance, relevant special policies for women should be added in Articles on principles of forestry activities; renting forests; forest environmental services; forest takings and transforming of forest use, etc.

VIII. LAWS REGULATING JUSTICE SECTOR

Laws regulating justice include the Civil Code of 2015, Civil Procedure Code of 2015, Criminal Code of 2017, Criminal Procedure Code of 2015, Law on Handling of Administrative Violations of 2012, Administrative Procedure Law of 2015, Law on Legal Aid of 2017, Law on Human Trafficking Prevention and Combat of 2011.

1. Equality and non-discrimination guarantees

1.1. Gender equality achievements

(a) Civil justice

Civil Code of 2015 and Civil Procedure Code of 2015 recognize and ensure a number of human rights for all citizens, regardless of their sex, including: equality before the law, non-discrimination, right to privacy, property rights, freedom of business, right to marriage, right to citizenship, etc. The respect, implementation, and protection of all these rights can promote gender equality. At the same time, the civil justice system deals with transactions that are based on equality, freedom of will, independence of properties, and self-responsibility. These features are sought to be closely related to gender equality. Additionally, the two Codes use gender neutral language such as '*individual*', '*every person*', '*each person*', '*his/her civil rights*', '*husband/wife*', '*father/mother*' that implies equal treatment.

Especially, Civil Code of 2015 and Civil Procedure Code of 2015 contain specific provisions directly mention principles of gender equality. Below are some of them:

- Article 3 of Civil Code of 2015 stipulates that every person shall be equal in civil relations, may not use any reason for unequal treatment to others, and enjoy the same protection policies of law regarding moral rights and economic rights. Similarly, according to Article 8 of Civil Procedure Code of 2015, all agencies, organizations and individuals are equal in the implementation of rights and obligations in civil procedures.
- The Civil Code of 2015 at Article 26 gives to both biological and adopted father and mother the ability to pass on their family name to their children (*as mutually agreed between the parents*), which can be seen as a form of gender equality. This Article also ensures mother's right to her family names when specifies that If the father of such person is undetermined, his/her family name shall be passed from his/her natural mother's.
- Similarly to Article 26, in Article 29, the Civil Code states that where the biological father and mother belong to two different ethnic groups, the ethnicity of the child shall be passed from the father's or mother's as mutually agreed between the parents; if the parents fail to agree, the ethnicity of the child shall be identified in accordance with relevant customary practices; if the customary practices are different, the ethnicity of the child shall be identified in accordance with the customary practice of smaller ethnic minority. If an abandoned child whose natural parents are unidentified is adopted, his/her ethnicity shall be passed from his/her adoptive father or mother as mutually

agreed between the parents. If the child has either an adoptive father or an adoptive mother, his/her ethnicity shall be passed from such person's.

- Notably, the Civil Code of 2015 recognises gender reassignments (*sex change operations*), which has been lauded as a progressive move, reflecting legislators' efforts to keep up with international practices. For instance, According to Article 28(1)(e), a person whose gender identity is re-determined or a transgender person has the right to change the given name. Article 36 stipulates that an individual has the right to re-determine his/her gender identity. Under Article 37, sex reassignment is recognised as a human right.
- Article 39 recognises the right to equality between husband and wife, the right to acknowledge father, mother or child, the right to adopt children and be adopted in marriage relation, parent-children relation and relations between family's members. All children, of the same parents, regardless of their parents' marriage status, have the same rights and obligations to their parents.
- Article 213 provides that a husband and wife jointly create and develop their marital property through their efforts and have equal rights to possess, use and dispose of such property. According to Article 214, the owners of the apartments in an apartment building have equal rights and obligations with respect to the management and use of common areas and equipment. Article 217 states, joint owners have equal rights to exploit and to enjoy the yield and income derived from, the multiple ownership property, unless otherwise agreed. Article 610 stipulates that all-natural persons are equal with respect to rights to bequeath their property to others and to inherit estates under wills or in accordance with law.
- For cases pertaining to marriage and families, or cases involving minor people, the Civil Procedure Code of 2015 provides for the participation of representatives of Vietnam Women's Union.

(b) Criminal justice

Basic legal protections during criminal investigation, prosecution, and adjudication procedures are applied to everyone, regardless of sex, and are generally outlined in neutral language. For instance, the Criminal Code of 2017 in Article 3(1)(b) states that all criminals are equal before the law regardless of **gender**, ethnicity, belief, religion, social class, or social status. The Criminal Procedure Code of 2015 (CPC) specifies in Article 9 all people are subject to the same laws of justice, regardless of race, **gender**, belief, religion, social class and status. All detainees, accused and defendants have the right to counsel of their choice or to self-defence; to have trials conducted in public (*except for special cases*), and to present their evidence before the court. The CPC also replaces all the words 'male' and 'female' by the word 'sex' to cover other persons.

On the other side, certain provisions of the Criminal Code and CPC are more gender sensitive. For example, Criminal Code of 2015 in Article 165 states that a person who, for reason of gender, obstructs another person from participate in activities in terms of politics, economics, labour, education, science and technology, culture, information, sports, healthcare despite the fact that he/she was disciplined



or incurred a civil penalty for the same offence shall be liable to a fine, or face a penalty of up to 2 years' community sentence, or a penalty of 03-24 months' imprisonment.

Criminal Code of 2015 (*as amended in 2017*) provides for various gender related offences, particularly offences infringing body, dignity, honour, and freedom of women and children; human trafficking, especially trafficking in women and children; sex work; offences infringing marriage and family.

The CPC of 2015 has a new chapter on protection of whistleblowers, witnesses, and victims that is expected to encourage people, especially women victims to share information. The CPC in Article 194 specifies cases when body searches and examinations of the body must be conducted by someone of the same sex and before a witness of the same sex. According to Article 203, the inspection of traces across the body of a person must be carried out and witnessed by individuals of the same sex. A doctor of medicine, if necessary, shall be summoned.

(c) Administrative justice

Article 7(1) of the Administrative Procedure Law of 2015 states that in administrative procedures, everyone is equal before law, regardless of his/her nationality, **gender**, belief, religion, social stratum, educational level, occupation and social position.

According to Article 24, Law on Handling of Administrative Violations of 2012, VND 30,000,000 is a maximum fine for violations in the fields of marriage and family; gender equality; domestic violence.

Article 127, Law on Handling of Administrative Violations of 2012 requires that in conducting the search of persons, male persons shall be searched by male persons, female by female and in the presence of witnesses of the same sex.

(d) Legal Aid

In addition to gender neutral language, the Law on Legal Aid of 2017 prohibits legal aid-providing organizations and persons from committing the acts infringing upon the dignity, honour or lawful rights and interests of legal aid beneficiaries; practicing discrimination against legal aid beneficiaries.

According to Article 7 of the Law on Legal Aid of 2017, legal aid beneficiaries are divided into 14 groups (*instead of six groups as prescribed in the 2006 Law*) with four groups defined in or developed from the 2006 Law. Especially, the Law provides for legal aid to people experiencing financial difficulties, such as natural parents, spouses or children of fallen heroes or persons nurturing fallen heroes during their childhood; agent orange victims; the elderly; people with disabilities; victims in criminal cases who are aged between full 16 years and under 18 years; victims of domestic violence cases; victims of human trafficking under the Law on Human Trafficking Prevention and Combat; and HIV-infected people.

Amongst these groups, special gender considerations should be given to victims of domestic violence cases, victims of human trafficking, and HIV-infected

people who have financial difficulties. They are vulnerable people, many of them are women, often unwilling to share their stories of experienced violence and difficulties in accessing to justice.

The above beneficiaries have the right to receive legal aid free of charge, material benefits or other benefits. They may request legal aid by themselves or via their relatives, agencies or persons with proceedings-conducting competence, or via other agencies, organizations and individuals.

1.2. Shortcomings from gender equality perspectives

(a) Civil law

Civil Procedure Code of 2015 in Article 8 does not refer to gender equality when states that ‘All people are equal before law regardless of their ethnics, religions, educational levels, occupations and social levels.’

Civil Code of 2015 in Article 5 allows for the application of customs, and in Article 6 for the application of analogy of law in certain circumstances. This is considered as a positive step in the Vietnamese civil justice system, making the law more flexible and timely responding to the diversified realities of civil transactions. However, these provisions may encounter the risk of arbitrary application, especially to vulnerable groups such as women in a cultural and societal environment with embedded gender stereotypes. Thus, there may appear a need to add specific reference to gender issues, particularly the requirement for gender equality to legal practitioners in applying customs and analogue of law.

As mentioned above, Civil Code of 2015 in Article 26 provides for the right to family and given name. Specifically, if the parents fail to agree on their child’s family name, it shall be determined according to customary practices. However, in reality, according to customs in Vietnam, the child in most (*if not all*) cases will bear the family name of his/her father. This provision thus will cause gender discrimination against mothers.

(b) Criminal law

Criminal Code of 2017 in Article 1 emphasizes that the Criminal Code is meant to protect the equality among ethnic groups, but omits other kinds of equality, including gender equality. In addition, the Criminal Code would provide more specifically on gender discrimination acts.

(c) Legal Aid

As mentioned, the Law on Legal Aid of 2017 has extended categories of legal aid beneficiaries, including those persons who are usually involved in gender inequality issues. However, within these conditions, women whose family/household income is above the property line cannot access services, even if they themselves cannot access the family income. Moreover, due to embedded gender roles, Vietnamese women may experience barriers in accessing household income, especially if they are accused of an offence against another member of the household. This means that women may be at a disadvantage in terms of their

ability to access relevant legal aid, which in turn may have negative consequences for the adjudication of their case, being announced guilty to criminal charges. There is the lack of a provision in the Law on Legal Aid identifying categories of women that are prioritized by legal aid organisations when providing assistance.

2. Accommodation of gender differences in laws

There are numerous provisions accommodating gender differences in the Laws regulating justice sector.

2.1. Accommodation in administrative liability

Gender differences are considered in the Law on Handling Administrative Violations of 2012. Pregnant women are identified in article 9 of that law as individuals who have extenuating circumstances that should be considered in the determination of liability or sanctions. Article 9 (5) identifies pregnant women, among others, “*which restrict their capacity to perceive or to control their acts*”. This appears to provide some relief to women who, due to their pregnancy, may face limitations. For example, if a pregnant woman driving a motorbike causes an accident due to her reduced ability to move, she could be fined but at a lower amount.

With regard to the sanction of detention measures (*reformatories*), article 92 (5) (b) and (c) relieve pregnant women with a medical certificate from a hospital; and mothers or a sole person caring for children under 36 months old (*and certified by commune People’s Committee where that person is resident*) from such detention measures.

Attendance at a compulsory education establishment, in article 94(2) of the said Law states that article 94 (1) will not apply to children (*under 18 years of age*), women over 55 and men over 60; mothers or sole person caring for children under 36 months of age. The distinction between women over 55 years of age and men over 60 years of age appears to relate to retirement age, which is discriminatory. Relieving mothers or caretakers of children under 36 months of age is consistent with the state policies described in the Law on Gender Equality (*to protect the interests of mothers and young children*).

The same article 94 (2), relieves mothers or persons caring for children under 36 months of age from attendance at a compulsory detoxification establishment. This provision is also consistent with the Law on Gender Equality.

According to Article 10 (1)(l), committing an administrative violation against many persons, a child, an aged person, a disabled person or a pregnant woman is considered as an aggravating circumstance.

2.2. Accommodation in criminal liability

The Criminal Code of 2015 (*amended in 2017*) and the Criminal Procedure Code of 2015 contain various provisions accommodating gender differences. Particularly, while the death penalty is considered a violation of the right to life under international human rights law, article 40(3) of the Criminal Code of 2015 provides exceptions to both applying and executing the death penalty sentence, including a pregnant woman or a woman raising a child under 36 months of age. Elderly

persons over 75 years of age are also exempt. This and other similar exceptions are consistent with the Law on Gender Equality.

The sentence for the murder or abandonment of a newborn child by the mother is singled out in article 124, whereas fathers are not provided with a lower sentence in the same situation. A mother who kills her own child, presumably due to postpartum depression or psychosis, will face a penalty of 6 to 36 months imprisonment. A mother who abandons her child within seven days of the infant's birth shall face two years of a community sentence or 3-24 months of imprisonment if the child dies due to the abandonment. Other sentences are also adjusted to consider the situation of pregnant women and women caring for children under 36 months. Under Article 36, community sentence must not be applied to pregnant women, women raising children under 06 months of age.

The Criminal Code specifies mitigating and aggravating factors relating to women when applying sentences. Particularly, according to Article 51, it is considered as a mitigating factor if the offender is a pregnant woman. Article 67 provides that a convicted who is a pregnant woman or having a child under 36 months of age may have the sentence deferred until the child reaches the age of 36 months; or may have the sentence suspended under Article 68. Article 66 gives a woman raising a child under 36 months of age a chance to be granted parole if she serves at least one third of determinate imprisonment or at least 12 years of a life imprisonment sentence commuted to determinate imprisonment.

Under Article 52 of the Code, the crime against a pregnant woman is considered as an aggravating factor. The Code also specifies acts committed to women as aggravating factors in defining sentences for various offences, such as: Murder of a woman with the full knowledge of her pregnancy (*Article 123*); Deliberate infliction of bodily harm upon a woman whose pregnancy is known by the offender (*Article 134*); maltreatment or humiliation to a woman whose pregnancy is known by the offender; Illegal arrest, detention, or imprisonment of a woman whose pregnancy is known by the offender (*Article 157*); hostage taking of a woman whose pregnancy is known by the offender (*Article 301*), etc.

Criminal Procedure Code of 2015 in Article 119 outlines that if suspects or defendants are raising a child less than 36 months of age, detention shall be replaced by other preventive measures, except for some instances.

These provisions are based on biological differences and also differences in the roles of men and women in relation to child rearing, especially infants. They are not contradictory with the Law on Gender Equality.

2.3. Insufficient measures

According to a study conducted before the enactment of Criminal Code of 2017 and CPC of 2015, the criminal justice system of Vietnam is male-focused and male-dominated, although there are some specific provisions for female offenders and prisoners¹¹⁶. Despite the fact that the two Codes have been amended with more

¹¹⁶United Nations Office on Drugs and Crime (UNODC) in Vietnam & UN Women, *Assessment of the Situation of Women in the Criminal Justice System in Vietnam In Support of the Government's*

detailed gender sensitive provisions, there appears to be insufficient in addressing biological (*i.e. pre-natal and post-natal*) and societal (*i.e. women are usually the primary caregivers for children*) needs of women by the criminal justice system. Investigation, court proceedings, custody detention, etc. must be adjusted to meet the needs of pregnant women, women raising children under 36 months.

Some features of pregnant women, women raising children have been also omitted in the Civil Procedure Code of 2015 and Administrative Procedure Law of 2015.

3. Discrimination in laws

There are no provisions have found in these Laws that discriminate against women or men in justice sector.

4. Special measures to promote gender equality

There are no provisions on special measures to promote gender equality in the Laws of justice sector.

ANNEX H: ADDITIONAL DATA ON GENDER INEQUALITY

Secondary Data

Despite the legal framework in Viet Nam, recent reports demonstrate that inequality based on gender, including inequality between men and women, boys and girls continues in some sectors. Major issues seen in the literature reviewed¹¹⁷ focus on the inequality of women compared to men. The four most critical and common issues of inequality relate to gender-based violence, discrimination against women in employment, limited women in party politics and senior government positions, and traditional customs and perceptions of the role of women in society and family life. These four major **issues** are described briefly below.

One of the most serious manifestations of inequality is reflected in various forms of **gender-based violence against women**.

In the Labour Code, article 148 sets a lower age of retirement for women compared to men (*55 years compared to 60 years*). This limits the time women have to contribute to the social insurance scheme and deprives women of the right to work and may result in women being overlooked for promotions as they near 55 years of age. The same law includes a list of occupations from which women are excluded. Both provisions are contrary to international human rights law and will be discussed below in more detail.

Although there has been significant progress, reports and literature note that **women in political and senior management positions** are still low.

In 2015, CEDAW noted the slow increase of women elected in the National Assembly and suggested that Viet Nam increase the number of women in decision-making at all levels. It is important to note that, in the May 2016 elections (*for the 2016-2021 term*), 26.8% of the representatives elected to the National Assembly were women¹¹⁸. Still, this is lower than the target of 35% set in the National Strategy on Gender Equality. At the commune and district levels, women's political representation in People's Councils has increased to 24.62% and 21.71% respectively¹¹⁹. In a gender gap index from 2015, Viet Nam ranked 119th of 145 countries with women in ministerial positions and only 36 of 281 for countries where Vice-minister or equivalent positions were held by women¹²⁰. Four of five sample provinces identify women's political representation and women in senior management as limited.

Finally, CEDAW and other reports, including the reports of all five sample

¹¹⁷ Sources analyzed include: UN documents from the General Assembly, the CEDAW Committee, and the UNFPA; Government of Viet Nam documents; reports on ten years of implementation of the Gender Equality Law from MOLISA and the five provinces used as samples in this review; and other relevant publications.

¹¹⁸ Gender Briefing Kit, p. 74.

¹¹⁹ Ibid, p. 75.

¹²⁰ Ibid, p. 75.



provinces, **note inequality due to traditional customs and perceptions of the role of women in society and family life.** In 2015, the CEDAW Committee noted its concern *“about the persistence of patriarchal attitudes and deep-rooted gender stereotypes regarding the roles and responsibilities of women and men in the family and in society that overemphasize the subordinate and caring roles of women and are reflected in practices such as son preference. It also notes with concern the prevalence of harmful practices such as child marriage in some areas (...) and about the persistence of gender bias and gender stereotypes in the media”*¹²¹. This issue of patriarchal attitudes and stereotypes related to women’s and men’s roles forms the basis of other discriminatory situations mentioned above.

According to the Ho Chi Minh City 10-year report, the city observes tensions as the family and society modernize and adults focus on work and relations outside of the home. This improves women’s (*and the family’s*) economic situation but the role of caregiver, traditionally held by women, is not absorbed by public agencies, leaving a gap in care for children, elderly and individuals with disabilities. The City has promoted shared responsibilities between men and women in the home, among other initiatives.

Among the provincial reports reviewed, certain groups of women were identified as more marginalized in terms of their rights, including the right to free of discrimination. Duty bearers identified rural women, especially ethnic minority women, migrant workers, women human rights defenders, elderly women, women with disabilities, and poor women as marginalized in terms of the full enjoyment of their rights. In three of the sample provinces, single women are also identified as requiring special attention to ensure their rights, including restricted access to loans. Other literature identifies challenges for unmarried women: young unmarried women do not have sufficient access to sexual and reproductive information and migrant workers, increasingly female, are often unmarried or leave their families behind and lack support¹²². According to the 2013 Viet Nam State Party report to CEDAW *“abortion in youth is at an alarming level”*¹²³.

As mentioned above, the government of Viet Nam and external reports on gender inequality in the country address the situation of women compared to men but they rarely mention discrimination because of sexual orientation and gender identity (SOGI). In the stakeholder submissions to the UN for the Universal Periodic Review, one organization noted examples of discrimination based on SOGI, including the denial of medical treatment to gay and transgender individuals¹²⁴. While the Constitution of 2013 broadened the concept of discrimination by moving away from women’s protection to prohibit gender-based discrimination, the Law on Gender Equality and the state management efforts continue to focus

¹²¹ CEDAW/C/VNM/CO/7-8, para. 16.

¹²² Gender Briefing Kit, pages 51, 112, and 116.

¹²³ Ibid at 51. *“nationwide rate of teenage pregnancy in 2014 was 2.8 per cent, compared to 3.16 per cent in 2013. However, this ratio was significantly higher for the Northwest (5.6 per cent), the Central Highlands (5.0 per cent), and the Mekong River Delta (3.9 per cent). The nationwide teenage abortion rate was 2.2 per cent, equal to the 2013 level, with the highest figures reported in the Mekong River Delta and the Southeast”*.

¹²⁴ A/HRC/WG.6/18/VNM/3 General Assembly 4 November 2013 Original: English

on the advancement of women compared to men. The Civil Code was revised in 2015 to include recognition of the right to gender re-determination in cases where medical intervention is required to clearly determine the gender of the person (*article 36*). More analysis of the legal framework is below.

2. Primary Data: Opinions on gender inequality and discrimination

Duty bearers in provinces

For the most part, duty bearers' opinions related to major areas of inequality and discrimination coincides with the secondary literature and provincial reports on 10 years of implementation of the Law. However, the third most frequent response from duty bearers was that no discrimination occurs in the province.

Table 3: Duty Bearers Identify Areas where there is the most gender inequality (open-ended question)

Duty Bearers in Provinces	Work	Family	No discrimination	Political participation
Bac Ninh	4	9	7	2
HCMC	7	7	11	2
Gia Lai	10	6	3	2
Lao Cai	11	14	3	2
Tra Vinh	8	1	3	2
Total	40	37	27	10

When the same duty bearers were asked a closed ended question related to the existence of certain problems reflective of inequality and discrimination in the province, they identified gender-based violence and sex-selective abortion (*son preference*). Duty bearers in Bac Ninh and Lao Cai had the highest rate of affirmative responses in relation to GBV and GBSS as major issues of gender inequality. Limited education and employment opportunities for women (*and girls in the case of education*) were deemed to be less problematic.

Table 4: Duty bearers' responses to four areas of discrimination against women (closed question)

Problem	Gender-based violence, including human trafficking			Sex-selective abortion			Limited employment and business opportunities for women			Limited education opportunities for girls and young women		
	Yes	No	NR ¹²⁵	Yes	No	NR	Yes	No	NR	Yes	No	NR
Response types												
Bac Ninh	12	4	6	15	2	5	6	7	9	6	10	6
HCMC	7	18	2	5	21	1	5	19	3	4	21	2
Gia Lai	6	12	1	8	10	1	1	18	0	0	15	3
Lao Cai	23	6	2	14	8	9	4	17	10	7	14	10
Tra Vinh	9	7	5	3	9	9	6	7	8	7	6	8
Total	57	47	16	45	50	25	22	68	30	24	66	29

¹²⁵NR refers to "no response".

Adult rightsholders opinions on gender equality

Three questions had reliable responses among the 95 adult rightsholders surveyed.

Table 5: Number and gender of adult rightsholders interviewed

Province	Rights holders		
	Adults	Women	Men
Bac Ninh	19	16	3
HCMC	21	11	10
Gia Lai	20	10	10
Lao Cai	14	9	5
Tra Vinh	21	11	10
Total	95	57	38

Table 6: Responses to questions on domestic violence, access to family income and son preference

Problem	Government to punish abusive men's behaviour				Access to family income			Sons preference over daughters		
	Yes	No	NR ^[1]	DK ^[2]	Yes	No	NR	Yes	No	NR
Bac Ninh	11	6	2	0	17	0	2	4	12	3
HCMC	16	2	3	0	19	0	2	0	19	2
Gia Lai	6	7	6	1	15	3	2	1	18	1
Lao Cai	12	2	0	0	14	0	0	3	11	0
Tra Vinh	11	7	3	0	20	1	0	2	17	2
Total	56	24	14	1	85	4	6	10	77	8

The rightsholders interviewed held views that demonstrate gender equality. However, the question with a response rate less favourable to gender equality relates to whether men who perpetrate violence against women (*in the case of domestic violence*) should be punished. The second and third questions demonstrate more favourable responses in terms of gender equality.

In the second question women were asked, *if you are married, do you have access to the family income?* And men were asked, *if you are married, do you share your earnings with your wife?* Fifty (50) women said they did have access to the family income (88%), four said they did not have access and three did not respond. Thirty-

five (35) men (92%) said they shared their earnings with their spouse and three did not respond.

In the third question included in the table above, both women and men were asked, *did you/do you want to have a son more than a daughter in your family?* Seven women responded that they would prefer a son more than a daughter (12%) while 47 said no they would not prefer a son, and three did not respond. Three men responded in the affirmative (7.8%) while 30 said no, they would not prefer a son and five did not respond.

Child rightsholders' responses

The questionnaire applied with children at schools reveals stereotypical beliefs and behaviours related to roles deemed socially acceptable for girls and boys but also equal participation in household chores by boys and girls.

Table 7: Boys and girls' contribution to household chores

Question	Do you help your parents or grandparents with chores at home?											
	Total			Girls			Boys			Unknown		
Response types	Yes	No	NR ^{126[1]}	Yes	No	NR	Yes	No	NR	Yes	No	NR
Bac Ninh	6	0	0	1	0	0	2	0	0	3	0	0
HCMC	9	0	0	4	0	0	5	0	0	0	0	0
Gia Lai	10	0	0	3	0	0	4	0	0	3	0	0
Lao Cai	4	0	0	2	0	0	2	0	0	0	0	0
Tra Vinh	9	0	0	4	0	0	5	0	0	0	0	0
Total	38	0	0	14	0	0	18	0	0	6	0	0

In their responses boys and girls stated they do the same types of household chores, such as such as cleaning, sweeping, washing dishes and clothes, and cooking.

Table 8: Activities deemed inappropriate for boys or girls

Question	Are there activities at home or school you are told you should not do because you are a girl/boy?											
	Total			Girls			Boys			Unknown		
Response types	Yes	No	NR ^{127[1]}	Yes	No	NR	Yes	No	NR	Yes	No	NR
Bac Ninh	5	1	0	1	0	0	2	0	0	2	1	0
HCMC	9	0	0	4	0	0	5	0	0	0	0	0
Gia Lai	4	5	1	1	2	0	1	2	1	2	1	0
Lao Cai	4	0	0	2	0	0	2	0	0	0	0	0
Tra Vinh	3	6	0	1	3	0	2	3	0	0	0	0
Total	25	12	1	9	5	0	12	5	1	4	2	0

¹²⁶ [1] NR refers to "no response".

¹²⁷ [2] DK refers to "doesn't know".

Girls frequently reported that they are not expected to do heavy things or participate in certain sports, such as football, rugby, cycling or climbing mountains. Few boys mentioned activities they are told they shouldn't participate in, but some mentioned dancing and skipping. Boys and girls both acknowledge that boys have more freedom to do what they want.

Table 9: Bullying based on gender

Question	At school are you “bullied” by other students because you are a girl/boy?											
	Total			Girls			Boys			Unknown		
Response types	Yes	No	NR ^{128[1]}	Yes	No	NR	Yes	No	NR	Yes	No	NR
Bac Ninh	3	2	1	1	0	0	1	2	0	1	0	1
HCMC	6	2	1	3	1	0	3	1	1	0	0	0
Gia Lai	3	6	1	0	3	0	2	1	1	1	2	0
Lao Cai	1	3	0	0	2	0	1	1	0	0	0	0
Tra Vinh	4	5	0	1	3	0	3	2	0	0	0	0
Total	17	18	3	5	9	0	10	7	2	2	2	1

Table 10: Teasing based on gender

Question	Is it “okay” to tease another student because they are a boy or girl or because they are different than others?											
	Total			Girls			Boys			Unknown		
Response types	Yes	No	NR ^{129[1]}	Yes	No	NR	Yes	No	NR	Yes	No	NR
Bac Ninh	1	5	0	0	1	0	0	2	0	1	2	0
HCMC	3	6	0	2	2	0	1	4	0	0	0	0
Gia Lai	3	7	0	0	3	0	2	2	0	1	2	0
Lao Cai	1	3	0	1	1	0	0	2	0	0	0	0
Tra Vinh	4	3	2	3	1	0	1	2	2	0	0	0
Total	12	24	2	6	8	0	4	12	2	2	4	0

A higher percentage of boys had a stronger opinion on the appropriateness of teasing based on gender than girls.

^{128[1]} NR refers to “no response”.

^{129[1]} NR refers to “no response”.

ANNEX I: REVIEW OF EQUALITY RIGHTS LAWS FROM OTHER JURISDICTIONS

The search

The search included the databases of Cornell, Observatory and also a Google search. The results get us to some of the countries' national legislative databases, in addition to the UN and HRW databases:

UK - <http://www.legislation.gov.uk>

Sweden - <https://www.government.se/information-material>

Norway - <https://app.uio.no/ub/ujur/oversatte-lover/english.shtml>

Japan (Gender Equality Bureau Cabinet Office) - http://www.gender.go.jp/english_contents/about_danjo/

South Korea - https://elaw.klri.re.kr/eng_service/main.do

The Philippines - <https://www.officialgazette.gov.ph/>

The Gender Equality/Anti-Discrimination Laws

The search resulted in the following relevant Gender Equality and Anti-Discrimination Laws:

- Philippine Republic, Act 9262, Anti-Violence Against Women and Their Children Act of 2004: <https://pcw.gov.ph/law/republic-act-9262> Philippine has comprehensiveness in gender equality law and anti-discrimination law (*Worth noting, but not included in the analysis*).
- Philippine Republic, REPUBLIC ACT NO. 9710, AN ACT PROVIDING FOR THE MAGNA CARTA OF WOMEN: <https://www.officialgazette.gov.ph/2009/08/14/republic-act-no-9710/> Philippine has comprehensiveness in gender equality law and anti-discrimination law.
- South Korea, FRAMEWORK ACT ON GENDER EQUALITY, Act No. 15206, Dec. 12, 2017: https://elaw.klri.re.kr/eng_service/lawView.do?hseq=46356&lang=ENG This law is listed because South Korea is an Asian country of comparative value
- Taiwan, Act of Gender Equality in Employment: <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014> This law is listed because Taiwan is also in Asia, and Taiwan is the front-runner in Asian gender equality/anti-discrimination legislation (*Worth noting, but not included in the analysis*)
- Japan, Basic Act for Gender Equal Society (Act No. 78 of 1999): http://www.gender.go.jp/english_contents/about_danjo/lbp/laws/pdf/laws_01.pdf This law is listed because Japan is an Asian country of comparative value

- Japan, Act on the Prevention of Spousal Violence and the Protection of Victims Act No. 31 of 2001: http://www.gender.go.jp/english_contents/about_danjo/lbp/laws/pdf/dv/sv2.pdf

This law is listed because Japan is an Asian country of comparative value (*Worth noting, but not included in the analysis*)

- Thailand, Gender Equality Act, B.E. 2558 (2015): <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act>

This law is listed because Thailand is an Asian country of comparative value, and also because Thailand has a very unique gender social landscape due to its big transgender population in the tourism industry

- Norway, The Act relating to Gender Equality: <https://www.regjeringen.no/en/dokumenter/the-act-relating-to-gender-equality-the-/id454568/> This law is listed because Norway is a world front runner in gender equality and anti-discrimination legislation.
- Norway, Sexual Orientation Anti-Discrimination Act, <https://app.uio.no/ub/ujur/oversatte-lover/data/lov-20130621-058-eng.pdf> This law is listed because Norway is a world front runner in gender equality and anti-discrimination legislation.
- Sweden, Discrimination Act (2008:567): <https://www.government.se/information-material/2015/09/discrimination-act-2008567/> This law is listed because Sweden is of comparative value to Norway regarding gender equality and anti-discrimination.
- Sweden, Gender Equality Act (1991): https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/jamstalldhetslag-1991433_sfs-1991-433

This law is listed because it was Sweden's past effort in gender equality legislation (*Repealed in 2009*).

- UK, Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>

This law is listed because it's a comprehensive equality legislation

- Malta, EQUALITY FOR MEN AND WOMEN ACT, https://ncpe.gov.mt/en/Documents/Home/Welcome/Chp.456_updated%202015.pdf

This law is listed because it's another European example of gender equality legislation

ANNEX K: THE COMPARATIVE ANALYSIS

1. The Republic of Philippines

Republic Act No. 9710, An Act Providing for The Magna Carta Of Women

<https://www.officialgazette.gov.ph/2009/08/14/republic-act-no-9710/>

- Is the law civil or criminal? (if criminal - do they put gender-based violence prohibition?)
 - Mostly civil, with the exception of “*violence penetrated by the agents of the State*”, which would be considered as “*aggravating offenses*” (see s. 41: *Penalties*).
- Is it single issue or multiple issue?
 - Multiple issues: women focus but multiple protected grounds
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - s. 4 (b): “**Discrimination Against Women**” refers to any gender-based distinction, exclusion, or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

It includes any act or omission, including by law, policy, administrative measure, or practice, that directly or indirectly excludes or restricts women in the recognition and promotion of their rights and their access to and enjoyment of opportunities, benefits, or privileges.

A measure or practice of general application is discrimination against women if it fails to provide for mechanisms to offset or address sex or gender-based disadvantages or limitations of women, as a result of which women are denied or restricted in the recognition and protection of their rights and in their access to and enjoyment of opportunities, benefits, or privileges; or women, more than men, are shown to have suffered the greater adverse effects of those measures or practices.

Provided, finally, that discrimination compounded by or intersecting with other grounds, status, or condition, such as ethnicity, age, poverty, or religion shall be considered discrimination against women under this Act.

- s. 4 (e) “**Substantive Equality**” refers to the full and equal enjoyment of rights and freedoms contemplated under this Act. It encompasses de jure and de facto equality and also equality in outcomes.

- s. 4 (f) "**Gender Equality**" refers to the principle asserting the equality of men and women and their right to enjoy equal conditions realizing their full human potentials to contribute to and benefit from the results of development, and with the State recognizing that all human beings are free and equal in dignity and rights.
- s. 4 (g) "**Gender Equity**" refers to the policies, instruments, programmes, services, and actions that address the disadvantaged position of women in society by providing preferential treatment and affirmative action. Such temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discriminatory but shall in no way entail as a consequence the maintenance of unequal or separate standards. These measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
- s. 4 (h) "**Gender and Development (GAD)**" refers to the development perspective and process that are participatory and empowering, equitable, sustainable, free from violence, respectful of human rights, supportive of self-determination and actualization of human potentials. It seeks to achieve gender equality as a fundamental value that should be reflected in development choices; seeks to transform society's social, economic and political structures and questions the validity of the gender roles they ascribed to women and men; contends that women are active agents of development and not just passive recipients of development assistance; and stresses the need of women to organize themselves and participate in political processes to strengthen their legal rights.
- s. 4 (i) "**Gender Mainstreaming**" refers to the strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated. It is the process of assessing the implications for women and men of any planned action, including legislation, policies, or programmes in all areas and at all levels.
- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)
 - Sex (*women*)
 - Age (*s. 33 Protection of Senior Citizens*)
 - Combination of sex and age (*s. 32 Protection of Girl-Children*)
 - Ethnic origin and disability (*s. 27 Social Protection*)
- What are the protected social areas (*employment, services, etc.*) This doesn't seem to be complete as below family is added; I don't see employment
 - S. 13 Equal Access and Elimination of Discrimination in Education, Scholarships, and Training.

- S. 14 Women in Sports
- S. 15 Women in the Military
- S. 16 Non-discriminatory and Nonderogatory Portrayal of Women in Media and Film
- S. 17 Women's Right to Health
- Other areas?
- What are some special measures/affirmative actions?

- S. 11 Participation and Representation. - The State shall undertake temporary special measures to accelerate the participation and equitable representation of women in all spheres of society particularly in the decision-making and policy-making processes in government and private entities to fully realize their role as agents and beneficiaries of development.

The State shall institute the following affirmative action mechanisms so that women can participate meaningfully in the formulation, implementation, and evaluation of policies, plans, and programmes for national, regional, and local development:

(a) Empowerment within the **Civil service**. - Within the next five (05) years, the number of women in third (3rd) level positions in government shall be incrementally increased to achieve a fifty-fifty (50-50) gender balance;

(b) **Development Councils and Planning Bodies**. - To ensure the participation of women in all levels of development planning and programme implementation, at least forty percent (40%) of membership of all development councils from the regional, provincial, city, municipal and barangay levels shall be composed of women;

(c) Other **Policy and Decision-Making Bodies**. - Women's groups shall also be represented in international, national, and local special and decision-making bodies;

(d) **International Bodies**. - The State shall take all appropriate measures to ensure the opportunity of women, on equal terms with men and without any discrimination, to represent their governments at the international level and to participate in the work of international organizations;

(e) Integration of Women in **Political Parties**. - The State shall provide incentives to political parties with women's agenda. It shall likewise encourage the integration of women in their leadership hierarchy, internal policy-making structures, appointive, and electoral nominating processes; and

(f) **Private sector**. - The State shall take measures to encourage women leadership in the private sector in the form of incentives.

- Do any laws prohibit discrimination in the social area of the family?
 - Yes - s. 19: Equal Rights in **All Matters Relating to Marriage and Family Relations**. - The State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure:
 - (a) the same rights to enter into and leave marriages or common law relationships referred to under the Family Code without prejudice to personal or religious beliefs;
 - (b) the same rights to choose freely a spouse and to enter into marriage only with their free and full consent. The betrothal and the marriage of a child shall have no legal effect;
 - (c) the joint decision on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (d) the same personal rights between spouses or common law spouses including the right to choose freely a profession and an occupation;
 - (e) the same rights for both spouses or common law spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property;
 - (f) the same rights to properties and resources, whether titled or not, and inheritance, whether formal or customary; and
 - (g) women shall have equal rights with men to acquire, change, or retain their nationality. The State shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. Various statutes of other countries concerning dual citizenship that may be enjoyed equally by women and men shall likewise be considered.

Customary laws shall be respected: Provided, however, that they do not discriminate against women.
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - S. 38: **National Commission on the Role of Filipino Women (NCRFW)**.

The National Commission on the Role of Filipino Women (*NCRFW*) shall be renamed as the Philippine Commission on Women (*PCW*), the primary policy-making and coordinating body of the women and gender equality concerns under the Office of the President. The PCW shall be the overall monitoring body and oversight to ensure the implementation of this Act. In doing so, the PCW may direct any government agency and instrumentality, as may be necessary, to report on the implementation of this Act and for

them to immediately respond to the problems brought to their attention in relation to this Act. The PCW shall also lead in ensuring that government agencies are capacitated on the effective implementation of this Act. The chairperson shall likewise report to the President in Cabinet meetings on the implementation of this Act.

To the extent possible, the PCW shall influence the systems, processes, and procedures of the executive, legislative, and judicial branches of government vis-à-vis GAD to ensure the implementation of this Act.

To effectively and efficiently undertake and accomplish its functions, the PCW shall revise its structure and staffing pattern with the assistance of the Department of Budget and Management.

– S. 39: **Commission on Human Rights (CHR).**

The Commission, acting as the Gender and Development Ombud, consistent with its mandate, shall undertake measures such as the following:

(a) Monitor with the PCW and other state agencies, among others, in developing indicators and guidelines to comply with their duties related to the human rights of women, including their right to non-discrimination guaranteed under this Act;

(b) Designate one (1) commissioner and/or its Women's Human Rights Center to be primarily responsible for formulating and implementing programmes and activities related to the promotion and protection of the human rights of women, including the investigations and complaints of discrimination and violations of their rights brought under this Act and related laws and regulations;

(c) Establish guidelines and mechanisms, among others, that will facilitate access of women to legal remedies under this Act and related laws, and enhance the protection and promotion of the rights of women, especially marginalized women;

(d) Assist in the filing of cases against individuals, agencies, institutions, or establishments that violate the provisions of this Act; and

(e) Recommend to the President of the Philippines or the Civil Service Commission any possible administrative action based on noncompliance or failure to implement the provisions of this Act.

• What are the possible sanctions against the person “accused” of discrimination?

– S. 41: Penalties.

Upon finding of the CHR that a department, agency, or instrumentality of government, government-owned and-controlled corporation, or local government unit has violated any provision of this Act and its implementing rules and regulations, the **sanctions under administrative**

law, civil service, or other appropriate laws shall be recommended to the Civil Service Commission and/or the Department of the Interior and Local Government. The person directly responsible for the violation as well as the head of the agency or local chief executive shall be held liable under this Act.

If the violation is committed by a private entity or individual, the person directly responsible for the violation shall be liable to **pay damages**.

Filing a complaint under this Act shall not preclude the offended party from pursuing other remedies available under the law and to invoke any of the provisions of existing laws especially those recently enacted laws protecting women and children, including the Women in Development and Nation Building Act (*Republic Act No. 7192*), the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (*Republic Act No. 7610*), the Anti-Sexual Harassment Act of 1995 (*Republic Act No. 7877*), the Anti-Rape Law of 1997 (*Republic Act No. 8353*), the Rape Victim Assistance and Protection Act of 1998 (*Republic Act No. 8505*), the Anti-Trafficking in Persons Act of 2003 (*Republic Act No. 9208*) and the Anti-Violence Against Women and Their Children Act of 2004 (*Republic Act No. 9262*). If violence has been proven to be perpetrated by agents of the State including, but not limited to, extrajudicial killings, enforced disappearances, torture, and internal displacements, such shall be considered **aggravating offenses** with corresponding penalties depending on the severity of the offenses.

- Are there remedies for “victims” of discrimination?
 - S. 31: Services and Interventions. - WEDC shall be provided with services and interventions as necessary such as, but not limited to, the following:
 - (a) Temporary and protective custody;
 - (b) Medical and dental services;
 - (c) Psychological evaluation;
 - (d) Counseling;
 - (e) Psychiatric evaluation;
 - (f) Legal services;
 - (g) Productivity skills capability building;
 - (h) Livelihood assistance;
 - (i) Job placement;
 - (j) Financial assistance; and
 - (k) Transportation assistance.

2. Republic of Korea

Framework Act On Gender Equality, Act No. 15206, Dec. 12, 2017

https://elaw.klri.re.kr/eng_service/lawView.do?hseq=46356&lang=ENG

- Is the law civil or criminal? (if criminal - do they put gender-based violence prohibition?)
 - Civil
- Is it single issue or multiple issue?
 - Single issue on gender equality
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - Art. 3 (1): The term “**gender equality**” means a state that ensures the equal enjoyment of human rights by women and men and equal participation and treatment in all fields, without any discrimination, prejudice, depreciation, or violence, grounded on gender;
- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)
 - Sex
- What are the protected social areas (*employment, services, etc.*)
 - Art. 21 (*Participation in Policy-Making Processes*)
 - Art. 22 (*Access to Public Positions*)
 - Art. 23 (*Participation in Politics*)
 - Art. 24 (*Participation in Economic Activities*)
 - Art. 25 (*Guarantee of Rights of Maternity and Paternity*)
 - Art. 26 (*Support for Work-Family Balance*)
 - Family
 - others
- Do any laws prohibit discrimination in the social area of the family?
 - Yes - Art. 35: (*Gender-Equal Family*)
 - (1) The State and local governments shall strive to establish democratic and gender-equal family relationships.
 - (2) The State and local governments shall strive to evaluate the economic value of housework on a reasonable basis and reflect it in the statutes, systems or policies.

- Is an institution assigned responsibility to promote equality and respond to complaints?
 - Art. 11: (*Gender Equality Council*)
 - Art. 12: (*Working Committee on Gender Equality, etc.*)
 - Art. 46: (*Establishment, etc., of Korean Institute for Gender Equality Promotion and Education*)
 - Art. 47: (*Establishment, Operation, etc., of Woman Resource Development Center*)
 - Art. 48: (*Revocation, etc., of Designation as Woman Resource Development Center*)
 - Art. 50: (*Establishment and Operation of Women's History Museum*)
- What are the possible sanctions against the person “accused” of discrimination?
 - Not included in the Act
- Are there remedies for “victims” of discrimination?
 - Not included in the Act

3. Japan

Basic Act for Gender Equal Society (Act No. 78 of 1999)

http://www.gender.go.jp/english_contents/about_danjo/lbp/laws/pdf/laws_01.pdf

- Is the law civil or criminal? (*if criminal - do they put gender-based violence prohibition?*)
 - Civil
- Is it single issue or multiple issue?
 - Single issue - gender equality
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - Art. 2 (i) Formation of a **Gender-Equal Society**: forming a society in which both men and women, as equal members of society, are given opportunities to freely participate in activities in any fields of society and thereby equally enjoy political, economic, social and cultural benefits as well as share responsibilities.
- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)
 - Sex

- What are the protected social areas (*employment, services, etc.*)
 - Article 10: Citizens shall endeavor to contribute to the Formation of Gender Equal Society in all areas of society, including **workplaces, schools, local communities and homes**, pursuant to the Basic Principles.
- Do any laws prohibit discrimination in the social area of the family?
 - Yes - Article 6 Formation of Gender Equal Society shall be undertaken with the aim for men and women who are **members of families** to be able to smoothly perform their roles as household members with regard to taking care of children and other family members and other activities in their home lives, through mutual cooperation and with social support, and for them to also be able to engage in activities other than these.
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - Article 21 The **Council for Gender Equality** (*hereinafter referred to as the "Council"*) is hereby established in the Cabinet Office.
 - Article 22 The Council is in charge of the following administrative affairs:
 - (i) dealing with the matters provided in paragraph (3) of Article 13 with regard to the Basic Plan for Gender Equality;
 - (ii) in addition to what is listed in the preceding item, studying and deliberating on basic principles, basic policies and important matters with regard to promotion of the Formation of Gender Equal Society in response to consultations with the Prime Minister or relevant ministers;
 - (iii) studying and deliberating on matters provided in the preceding two items, and, if necessary, stating opinions to the Prime Minister and relevant ministers; and
 - (iv) monitoring the status of implementation of government measures to promote the Formation of Gender Equal Society, and studying the impact of government measures on the Formation of Gender Equal Society, and, if necessary, stating opinions to the Prime Minister and relevant ministers
- What are the possible sanctions against the person "*accused*" of discrimination?
 - Not included in the *Act*
- Are there remedies for "*victims*" of discrimination?
 - Not included in the *Act*

4. Thailand

Gender Equality Act, B.E. 2558 (2015)

<https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act>

- Is the law civil or criminal? (*if criminal - do they put gender-based violence prohibition?*)
 - Both Civil and Criminal (*possible sanctions include both fines and imprisonment*)
 - No gender-based violence prohibition
- Is it single issue or multiple issue?
 - Single issue: gender equality
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - S. 3: “**Unfair gender discrimination**” means any act or omission of the act which causes division, discrimination or limitation of any right and benefit either directly or indirectly without justification due to the fact that the person is male or female or of a different appearance from his/her own sex by birth.
- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)
 - Sex
 - Gender (*presumably both identity and expression, given the unique transgender culture of Thailand*)
- What are the protected social areas (*employment, services, etc.*)
 - “*both public and private sectors and civil societies*” - see duties and powers under committees
- Do any laws prohibit discrimination in the social area of the family?
 - No
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - S. 5. There shall be the “**Gender Equality Promotion Committee**” or “**SorTorPor Committee**”
 - S. 10 The **SorTorPor Committee** has the powers and duties as follows:
 - (1) establishing out policies, measures and action plans for promotion of gender equality in all public and private entities in the central, regional and local areas,



- (2) providing the Cabinet with policy recommendations and proposals for improvement of laws, rules and regulations so as to be in accordance with the objectives of this Act,
 - (3) establishing guidelines to provide assistance, compensation and remedy or relief to the victims of unfair gender discrimination,
 - (4) examining and providing suggestions and advice relating to operations of officials and state agencies on the execution of this Act,
 - (5) promoting studies, research and disseminate knowledge on how to prevent unfair gender discrimination,
 - (6) encouraging data collection on sex differentiation and submit report to the Cabinet on operations in compliance with this Act at least once a year,
 - (7) establishing regulations relating to the supervision and audit of the operations of the Committee on Consideration of Unfair Gender Discrimination and other relevant regulations in order to be in compliance with this Act,
 - (8) doing any act as specified in the law to be the powers and duties of the SorTorPor Committee, or as assigned by the Cabinet.
- 5. 13 There shall be the "**Committee on Consideration of Unfair Gender Discrimination**" with the acronym of "**WorLorPor Committee**" comprising of a chairperson and at least eight other committee members, but not more than ten. They are appointed by the Minister by selecting from qualified persons who are not expert members of the SorTorPor Committee, three of which must be knowledgeable with experience regarding the protection of those who are subject to unfair discrimination or experience in the promotion of gender equality. Also, there shall be one expert for each area such as human right, legislation, social science, psychology and labor affairs.
 - 5. 14 The **WorLorPor Committee** has the following powers and duties:
 1. deciding the case where there are complaints whether there has been unfair gender discrimination as prescribed in Section 18,
 2. establishing temporary measures for protection or mitigation as prescribed in Section 19,
 3. issuing orders in accordance with Section 20,
 4. submitting complaints to the Ombudsman in accordance with Section 21,
 5. going any other acts as prescribed by laws as the powers and duties of the WorLorPor Committee.
 - 5. 16. The **Department** shall be responsible for all administrative and academic functions of the SorTorPor Committee and the WorLorPor Committee and shall have the following powers and duties:

1. receiving complaints on gender discrimination and providing suggestions to the SorTorPor Committee and the WorLorPor Committee or other sub-committees, as the case may be,
2. supporting research and education to prevent unfair gender discrimination through knowledge dissemination,
3. coordinating with various organizations in both public and private sectors and civil societies to prevent unfair gender discrimination at both national and international levels,
4. preparing and submitting reports to the SorTorPor Committee on activities carried out under this Act to further propose to the Cabinet at least once a year,
5. performing other duties and activities prescribed by laws or as assigned by the Cabinet, the SorTorPor Committee and the WorLorPor Committee or other sub-committees.

- What are the possible sanctions against the person “*accused*” of discrimination?

- S. 34. Any person violating the orders of the WorLorPor Committee as prescribed in Section 20 (1) shall be subject to **imprisonment** for not more than six months or a **fine** of not more than twenty thousand baht, or both an imprisonment and a fine.
- S. 35. Any person violating Section 22, paragraph two shall be subject to **imprisonment** of not more than three months or a **fine** of not more than ten thousand baht, or both an imprisonment and a fine.
- S. 36. For all offences according to this Act, if the following competent officers have considered that the alleged persons should not be subject to imprisonment or prosecution, they shall have the power to settle the case as follows:
 1. the Director-General or the person authorized by the Director-General, for offences committed in Bangkok Metropolitan areas,
 2. the provincial governors or the persons authorized by the provincial governors, for offences committed in other provinces.

In case there is an investigation, if a person is found guilty by the investigator for committing offence against this Act, and such person agrees to the settlement, the investigator shall submit the case to the authorized persons as specified in (1) or (2), as the case may be, within seven days from the agreed date for settlement.

Once the alleged person has paid the settled fine within thirty days, the case shall be dismissed according to the provisions of the **Criminal Procedure Code**.

- Are there remedies for “*victims*” of discrimination?

- S. 26: The compensation and remedy for the injured party shall be provided in **cash** or kind as follows:
 1. **compensation** for loss of income during the period of inability to work as usual,
 2. **compensation** for loss of commercial opportunity which can be calculated in term of money,
 3. **compensation** for expenses on medical care including physical and mental rehabilitation,
 4. **compensation** and remedy in other forms or characteristics.
- S. 27. The receipt of compensation and remedy in accordance with Section 26 shall not be deemed a termination of the right entitled to by the injured party to file a lawsuit to demand for damages according to the count of violation against the court jurisdiction, provided that Section 18, paragraph two and paragraph three shall be enforced, *mutatis mutandis*.

5. Norway

The Act relating to Gender Equality (20/04/2007)

<https://www.regjeringen.no/en/dokumenter/the-act-relating-to-gender-equality-the-/id454568/>

- Is the law civil or criminal? (*if criminal-do they put gender-based violence prohibition?*)
 - Civil
- Is it single issue or multiple issue?
 - Single issue: gender equality
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - S. 1 **Equality** shall mean:
 - a) equal status,
 - b) equal opportunities and rights,
 - c) accessibility, and
 - d) accommodation.
 - S. 5 "**Discrimination**" shall mean direct and indirect differential treatment that is not lawful pursuant to section 6 or section 7. "*Direct differential treatment*" shall mean an act or omission that has the purpose or effect that a person is treated worse than others in the same situation, and that is due to gender. "*Indirect differential treatment*" shall mean any apparently

neutral provision, condition, practice, act or omission that results in persons being put in a worse position than others, and that occurs on the basis of gender.

- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)
 - Gender (*Gender is not defined in the Act, but it's presumed to be equated to sex: see section 13 "Gender balance on public committees - When a public body appoints or selects committees, governing boards, councils, boards, delegations, etc., **both genders** shall be represented as follows"*)
 - Pregnancy
- What are the protected social areas (*employment, services, etc.*)
 - S. 13. Gender balance on public committees
 - S. 17. Prohibition against discrimination in employment relationships
- Do any laws prohibit discrimination in the social area of the family?
 - No, explicitly - s. 26: The Ombud and the tribunal shall not enforce the prohibition against discrimination in family life and purely personal relationships.
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - S. 26. Enforcement of this Act

The **Equality and Anti-Discrimination Ombud** and the **Equality and Anti-Discrimination Tribunal** shall enforce and contribute to the implementation of this Act; see the Anti-Discrimination Ombud Act.

- What are the possible sanctions against the person "*accused*" of discrimination?
 - Economic compensation, as listed below in s. 28
- Are there remedies for "*victims*" of discrimination?
 - S. 28. Compensation for non-economic loss and compensation for economic loss

A person who is discriminated against may claim **compensation** for non-economic loss and compensation for economic loss. This shall apply in the case of breaches of the provisions in chapter 2 and sections 17, 18, 20 and 21.

In an employment relationship, liability shall exist irrespective of whether the employer can be blamed for the discrimination. In other sectors of society, liability shall exist if the person who has committed the discriminatory act can be blamed for doing so.

The compensation for economic loss shall cover economic losses resulting

from the discrimination. Compensation for non-economic loss shall be set at an amount that is reasonable in view of the scope and nature of the harm, the relationship between the parties and the circumstances otherwise.

These rules shall not limit the right of persons to claim compensation for non-economic loss and compensation for economic loss under the general principles of the law of damages.

Sexual Orientation Anti-Discrimination Act

<https://app.uio.no/ub/ujur/oversatte-lover/data/lov-20130621-058-eng.pdf>

- Is the law civil or criminal? (*if criminal - do they put gender-based violence prohibition?*)
 - Civil
- Is it single issue or multiple issue?
 - Single issue/focus - sexual orientation, gender identity focus
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - Section 1: **Equality** shall mean:
 - a) equal status,
 - b) equal opportunities and rights,
 - c) accessibility, and
 - d) accommodation.
 - Section 5: "**Discrimination**" shall mean direct and indirect differential treatment that is not lawful pursuant to section 6 or section 7. "*Direct differential treatment*" shall mean an act or omission that has the purpose or effect that a person is treated worse than others in the same situation, and that is due to sexual orientation, gender identity or gender expression. "*Indirect differential treatment*" shall mean any apparently neutral provision, condition, practice, act or omission that results in persons being put in a worse position than others, and that occurs on the basis of sexual orientation, gender identity or gender expression. (*gender identity and gender expression are not defined in the Act*).
- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc*).
 - sexual orientation, gender identity or gender expression.
- What are the protected social areas (*employment, services, etc.*) (*Note the scope is all sectors of society except family and personal relationships, s. 2*)
 - Employment

- Educational institution (*duty to preclude and prevent harassment*)
- Do any laws prohibit discrimination in the social area of the family?
 - No - section 2. Factual scope of this Act. *"This Act shall apply in all sectors of society, with the exception of family life and other purely personal relationships"*.
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - Yes - section 22: Enforcement of this Act

The **Equality and Anti-Discrimination Ombud** and the **Equality and Anti-Discrimination Tribunal** shall enforce and contribute to the implementation of this Act; see the Anti-Discrimination Ombud Act. However, the ombud and the tribunal shall not enforce the rules relating to: a) active equality efforts in chapter 3 and section 19, b) handling of pay information in section 18, second paragraph, or c) compensation for non-economic loss and compensation for economic loss in section 24.

- What are the possible sanctions against the person "*accused*" of discrimination?
 - Economic compensation (*see s. 24*)
- Are there remedies for "*victims*" of discrimination?
 - S. 24: **Compensation** for non-economic loss and compensation for economic loss A person who is discriminated against may claim compensation for non-economic loss and compensation for economic loss. This shall apply in the case of breaches of the provisions in chapter 2 and sections 15 and 16. In an employment relationship, liability shall exist irrespective of whether the employer can be blamed for the discrimination. In other sectors of society, liability shall exist if the person who has committed the discriminatory act can be blamed for doing so.

The compensation for economic loss shall cover economic losses resulting from the discrimination. Compensation for non-economic loss shall be set at an amount that is reasonable in view of the scope and nature of the harm, the relationship between the parties and the circumstances otherwise. These rules shall not limit the right of persons to claim compensation for noneconomic loss and compensation for economic loss under the general principles of the law of damages.

6. Sweden

Discrimination Act (2008:567)

<https://www.government.se/information-material/2015/09/discrimination-act-2008567/>

- Is the law civil or criminal? (*if criminal-do they put gender-based violence prohibition?*)
 - Civil
- Is it single issue or multiple issue?
 - Multi issue: a range of prohibited grounds available to all individuals
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - Chapter 1 Section 4 (1): **Direct discrimination**: that someone is disadvantaged by being treated less favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if this disadvantaging is associated with sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.
 - Chapter 1 Section 4 (2): **Indirect discrimination**: that someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of a certain sex, a certain transgender identity or expression, a certain ethnicity, a certain religion or other belief, a certain disability, a certain sexual orientation or a certain age at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.
 - Chapter 1 Section 4 (6): Instructions to **discriminate**: orders or instructions to discriminate against someone in a manner referred to in points 1-4 that are given to someone who is in a subordinate or dependent position relative to the person who gives the orders or instructions or to someone who has committed herself or himself to performing an assignment for that person.
 - Chapter 1 Section 5 (2): **Transgender** identity or expression: that someone does not identify herself or himself as a woman or a man or expresses by their manner of dressing or in some other way that they belong to another sex.
- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)
 - Sex
 - Age
 - Transgender identity or expression

- Ethnicity
- Religion or other belief
- Sexual orientation
- What are the protected social areas (*employment, services, etc.*)
 - Work life
 - Education
 - Labour market policy activities and employment services not under public contract
 - Starting or running a business and professional recognition
 - Membership of certain organisations
 - Goods, services and housing etc.
 - Health and medical care and social services etc.
 - Social insurance system, unemployment insurance and financial aid for studies
 - National military service and civilian service
- Do any laws prohibit discrimination in the social area of the family?
 - No
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - Chapter 4: Section 1

The **Equality Ombudsman** is to supervise compliance with this Act. The Ombudsman is to try in the first instance to induce those to whom the Act applies to comply with it voluntarily. Provisions on the duties of the Ombudsman are also contained in the Act concerning the Equality Ombudsman (2008:568).

- Chapter 4: Section 7

The **Board against Discrimination** examines applications for financial penalties under Section 5 and appeals against decisions concerning orders for financial penalties under Section 4. In processing these cases, Sections 8-15a are to be applied.
- What are the possible sanctions against the person “*accused*” of discrimination?
 - Economic compensation (*see Chapter 5 below*)
- Are there remedies for “*victims*” of discrimination?



- Chapter 5: Section 1

A natural or legal person who violates the prohibitions of discrimination or reprisals or who fails to fulfil their obligations to investigate and take measures against harassment or sexual harassment under this Act shall pay **compensation** for discrimination for the offence resulting from the infringement. When compensation is decided, particular attention shall be given to the purpose of discouraging such infringements of the Act. The compensation shall be paid to the person who has been offended by the infringement.

An employer who violates Chapter 2, Section 1, first paragraph or Section 18 shall also pay **compensation** for the loss that arises. However, this does not apply to a loss that arises in connection with a decision concerning employment or promotion. Nor does it apply to a loss that arises as a result of discrimination in the form of inadequate accessibility.

If there are special grounds, the compensation can be reduced or set at zero.

- Chapter 5: Section 2

If an employer in activities referred to in Chapter 2, Section 9, 10, 11, 13, 14, 15 or 17 discriminates against someone or subjects someone to reprisals, the **compensation** for discrimination shall be paid by the employer. A person performing work on behalf of another person in circumstances resembling those in an employment relationship shall be equated with an employee.

If an education provider violates Chapter 2, Section 5, 7 or 19 the compensation shall be paid by the entity responsible for the activities.

7. United Kingdom

Equality Act 2010

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

- Is the law civil or criminal? (*if criminal-do they put gender-based violence prohibition?*)
 - Civil
- Is it single issue or multiple issue?
 - Multiple issue: various protected grounds
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - Section 13: **Direct discrimination**
 - (1) A person (A) discriminates against another (B) if, because of a protected

characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (*work*) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex-

(a) (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (*work*).

(8) This section is subject to sections 17(6) and 18(7).

– Section 19: **Indirect discrimination**

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Race
- Religion or belief
- Sex
- Sexual orientation
- What are the protected social areas (*employment, services, etc.*)
 - Services and public functions
 - Premises (*landlord and tenant*)
 - Work
 - Education
 - Associations
- Do any laws prohibit discrimination in the social area of the family?
 - Yes - part 15 Family Property
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - No
- What are the possible sanctions against the person "*accused*" of discrimination?
 - fines
- Are there remedies for "*victims*" of discrimination?
 - Section 119: (*Civil Courts*)
 - (4) An award of damages may include **compensation** for injured feelings (*whether or not it includes compensation on any other basis*).
 - Chapter 3 Employment tribunals Section 124 **Remedies**: general
 - (2) The tribunal may-
 - (a) make a **declaration** as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;
 - (b) order the respondent to pay **compensation** to the complainant;
 - (c) make an **appropriate recommendation**.

- Chapter 3 Employment tribunals Section 126 **Remedies:** occupational pension schemes
 - (2) In addition to anything which may be done by the tribunal under section 124 the tribunal may also by order declare-
 - (a) if the complaint relates to the terms on which persons become members of a scheme, that the complainant has a right to **be admitted to the scheme;**
 - (b) if the complaint relates to the terms on which members of the scheme are treated, that the complainant has a right to **membership** of the scheme without discrimination.
- Chapter 4 Equality of terms section 132 **Remedies** in non-pensions cases
 - (2) If the court or tribunal finds that there has been a breach of the equality clause, it may-
 - (b) order an award by way of **arrears of pay or damages** in relation to the complainant.
- Chapter 4 Equality of terms section 133 **Remedies** in pensions cases
 - (2) If the court or tribunal finds that there has been a breach as referred to in subsection (1)-
 - (b) it must not order arrears of **benefits or damages or any other amount** to be paid to the complainant.
- Chapter 4 Equality of terms section 134 **Remedies** in claims for arrears brought by pensioner members
 - (2) If the court or tribunal finds that there has been a breach referred to in subsection (1), it may-
 - (b) order an award by way of arrears of **benefits or damages or of any other amount** in relation to the complainant.

8. Republic of Malta

Equality For Men And Women Act

https://ncpe.gov.mt/en/Documents/Home/Welcome/Chp.456_updated%202015.pdf

- Is the law civil or criminal? (*if criminal - do they put gender-based violence prohibition?*)
 - Mostly civil, with the exception of sexual harassment (*criminal, gender-based violence prohibition*)
- Is it single issue or multiple issue?
 - Multiple issue: various protected grounds
- Definitions of discrimination (*direct, indirect or adverse effect, compounded or intersectional*), equality (*substantive equality*) and gender
 - Section 2: “**discrimination**” means discrimination based on sex or because of family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, or gender identity, gender expression or sex characteristics and includes the treatment of a person in a less favourable manner than another person is, has been or would be treated on these grounds and “*discriminate*” shall be construed accordingly
- What are the protected grounds (*characteristics*)? (*sex, gender identity, gender expression, ethnic origin, age, etc.*)
 - sex / family responsibilities
 - sexual orientation
 - age
 - religion or belief
 - racial or ethnic origin
 - gender identity
 - gender expression
 - sex characteristics
- What are the protected social areas (*employment, services, etc.*)
 - Employment
 - Banks and financial institutions.
 - Participation of spouses in the activities of a self-employed partner.
 - Education and vocational guidance

- Discriminatory advertisement.
- Do any laws prohibit discrimination in the social area of the family?
 - No
- Is an institution assigned responsibility to promote equality and respond to complaints?
 - Section 11: National Commission for the Promotion of Equality for Men and Women
- What are the possible sanctions against the person “*accused*” of discrimination?
 - Section 9: Imprisonment, fine or a combination of both for sexual harassment
- Are there remedies for “*victims*” of discrimination?
 - Section 19: payment of compensation

^[1] NR refers to “no response”.

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