



Policy Brief

# THE LAW

on Gender Equality



## EXECUTIVE SUMMARY

The Gender Equality Law review was done with reference to the pressing gender equality issues in Viet Nam today, including the comprehensive independent review of the Law on Gender Equality (GEL). Five policy options and corresponding recommendations discussed in the brief revolve around the following issues:

- Women continue to face barriers to gender equality with men. Key issues of gender inequality to address include violence against women, human trafficking, early or forced marriage, son preference and a different retirement age for women. These issues need to be targeted in national laws, the next national strategy and in information, education and communication (IEC) campaigns that seek to change attitudes and behaviours. Some of them also require definition in the GEL.
- Indirect discrimination, where general rules or policies appear to be neutral but have a negative impact on women, men, girls or boys, needs to be recognized in the GEL. The recognition of this form of discrimination in the GEL will enhance gender-based analysis and gender equality mainstreaming in legislation, public policies and programmes.
- Individuals facing multiple forms of discrimination, especially women and girls with disabilities and those from ethnic minority groups or living in remote regions should be prioritized in legislation, policies and programmes. A gender-based analysis from an intersectional lens will help identify the multiple forms of disadvantage experienced by certain groups and should lead to special measures to advance gender equality, especially in the economic sector.
- Gender equality initiatives need to be integrated into all ministerial plans. Building the gender equality mainstreaming capacity of technical specialists is essential to promote gender equality and meet sustainable development goals.
- The national machinery to advance gender equality needs strengthening. The GEL should define roles of ministries, ensure there is no duplication, provide for a coordination mechanism and consider a complaint system to address violations of gender-based discrimination.

## INTRODUCTION

This policy brief discusses the major issues identified in the independent Review of the Law on Gender Equality (GEL), which was undertaken between 2018 and 2020.<sup>1</sup> The review applied a human rights-based approach to assess the consistency of the GEL and other national laws with 58 sources of international human rights law, especially the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and to assess the effectiveness of the implementation of the GEL. The review was conducted through a desk review of the GEL, national laws and gender equality literature. Interviews were conducted with 32 central level stakeholders and 260 individuals from provincial and local government agencies, civil society organizations, mass social organizations, and also individual rightsholders in five sample provinces: Bac Ninh, Ho Chi Minh City, Gia Lai, Lao Cai and Tra Vinh. To prepare this policy brief, the major findings, conclusions and recommendations of the Review report were analyzed to identify five priority issues to address in the short and medium term.

## CONTEXT

Viet Nam is signatory to a number of international instruments dedicated to gender equality, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Sustainable Development Goals (SDGs). In 2006, Viet Nam promulgated the Law on Gender Equality (GE Law), mandating Government bodies to fulfill gender equality responsibilities and address violations. Ten years after implementation, the Government of Viet Nam (GOV) is considering amendments to the GE Law to ensure continuous improvement of gender equality, including its commitments to eliminate gender-based violence and advance gender equality towards its SDG targets.

While significant progress has been made, more can be done to reduce gender inequality and ensure consistency with international human rights standards. Areas of concern that need to be addressed include the insufficient use of important gender equality concepts within the GE Law, including indirect discrimination, multiple forms of discrimination, harmful practices and prohibited acts. It is

<sup>1</sup> MOLISA, UNFPA, 2020, "Review of 10 Years of implementing the Law on Gender Equality". See the full report @ <https://vietnam.unfpa.org/en/publications/review-ten-years-implementing-law-gender-equality>.

critical that the Government officials fully understand gender equality concepts and inconsistencies between the GE Law and the Law on Laws of 2015 regarding gender equality mainstreaming (GEM), which seems to have led to draft laws being deemed gender neutral without sufficient gender analysis. The state management agency, the Ministry of Labour, Invalids and Social Affairs (MOLISA), should be equipped with sufficient human and financial resources. Without them, there is a risk of compromised coordination and complaint mechanisms, which can hinder the effective implementation of the GEL. In addition, the possibility that some information, education and communication (IEC) activities may reinforce gender stereotypes and traditional roles, and fail to engage specific groups such as men and community leaders should be known. This policy brief will provide recommendations focused on overcoming these areas of concern.

## MAJOR FINDINGS AND POLICY OPTIONS

### *1. Revisions to the Gender Equality Law and other national laws*

#### ***The Gender Equality Law***

Revisions to the GEL should focus on expanding the scope of the GE Law, clearly identifying responsibilities, and defining gender equality concepts, including harmful and prohibited acts. The current scope of the law, defined in Article 1 as “all fields of social and family life”, may limit the scope of the law and create inconsistencies with international standards. The scope of the law should include all fields of life in order to address all potential areas of inequality.

The definition of discrimination should also be expanded, as the current definition does not include indirect discrimination.<sup>2</sup> Overlooking indirect discrimination can lead to limited recognition of the negative consequences of gender-neutral policies and laws. Recognizing the indirect impacts of gender-neutral laws is key to GEM; laws that appear neutral still require gender-based analysis to identify potential adverse effects.

Harmful cultural beliefs and traditions, as well as prohibited acts, need to be clearly defined within the GEL and other national laws. For example, gender-based violence takes numerous forms: it includes not only physical, psychological, sexual and

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<sup>2</sup> MOLISA, UNFPA, 2020, “Review of 10 Years of implementing the Law on Gender Equality”, at 27. 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.

economic violence, but also gender-biased sex selection and forced and/or child marriage, which has to be defined in the Law.<sup>3</sup> The GEL should also identify sexual harassment, particularly harassment in the workplace, as a form of discrimination. In addition, intersectional discrimination<sup>4</sup> should be defined. Explicit measures to address harmful practices, including gender-biased sex selection, and prohibited acts should be identified and specific responsibilities assigned to duty bearers. The overlapping responsibilities for issues such as gender-based and domestic violence, a clear demarcation of duties and responsibilities of the relevant ministries and strong coordination mechanisms. This will reduce confusion among rights holders and improve state management and services.

### ***National laws***

Most national laws include non-discrimination and gender equality provisions. This is especially the case in family, education, justice and health sectors. However, there are laws with limited gender equality provisions in the political and economic sectors. For example, while there are gender equality statements in the Enterprise Law, the 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.

Direct discrimination and stereotypes should be eliminated from all the national laws. For example, the Law on Marriage sets a different age of marriage for men and women. Labour sector laws include provisions that are discriminatory, including: different retirement ages for men and women; and different ages for pension eligibility. The Labour Code adopts stereotypes of women's capacity based on sex in relation to training opportunities and access to certain occupations.

Special measures to promote gender equality 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. There are some special measures (incentives) in the economic sector for women owned small or medium enterprises and employers with a workforce of over 25% women; however, these incentives could be enhanced. The review noted few special measures for women and girls in education and in science and technology.

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<sup>3</sup> Ibid at 28.

<sup>4</sup> 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.

## ***2. National Strategy for GE***

The majority of the targets for the implementation of the National Strategy for Gender Equality 2011 – 2020 were not achieved: 7 were not achieved; 1 had no data; and among the remaining 10 targets, some were achieved but not sustained over the period. Still, the review identified some positive results. Major advances were found in the areas of women's economic participation, gender equality in education, and gender equality in access/benefits from healthcare services. For example, all targets related to literacy and health as well as most targets related to women's economic participation were met.

Gender-based violence is an area of concern that needs to be addressed. Gender-based violence, including domestic violence against women and human trafficking, was identified by duty bearers as the first most serious problem reflecting inequality. The 2019 National Study on Violence against Women shows that 2 in 3 women still experience one or more forms of violence in their life time. However, only one target related to this issue was met in the National Strategy ending in 2020.

Imbalance in the sex ratio at birth is another area that requires immediate attention. Prenatal sex selection based on son preference was identified by duty bearers as the second most serious problem reflecting inequality. Distorted sex ratio at birth was also reported by duty bearers as a significant problem in three of the five sample provinces.

## ***3. Gender equality mainstreaming (GEM) in legislation, government plans and programmes***

This policy option should include the development of clear and consistent guidelines to ensure the prioritization and effective application of GEM in policies, laws and programmes. While the GEL requires GEM in all draft laws/ordinances, the Law on Laws of 2015 (amended in 2020) only requires GEM in draft documents if related to gender equality.<sup>5</sup> This inconsistency creates gaps as drafting bodies often consider draft laws to be gender neutral and therefore gender-based analysis is not completed. As discussed above, consideration of indirect discrimination is necessary, as neutral provisions of laws, policies or programmes may create negative consequences that are not apparent without further analysis. In addition, while

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<sup>5</sup> Ibid at 39.

the Law on Laws of 2015 (amended in 2020) requires the People's Council and the People's Committee to conduct GEM for proposed policies in draft resolutions or decisions, this is not required by the GE Law.<sup>6</sup> While the GE Law requires GEM in draft legal normative documents, GEM is not required in national policies such as socio-economic development plans. These inconsistencies should be eliminated as they may hinder prioritization of gender issues during policy making processes.

The capacity of ministries to analyze gender impacts of neutral provisions of draft law/ordinances should be improved. The importance of consistent GEM is exemplified by the difficulty government agencies have had in defining which draft law/ordinances are "related to gender," which may create a gap where drafters use gender-neutral language and overlook potential adverse impacts.<sup>7</sup> Gender equality analysis should be prioritized by providing sufficient human and financial resources, as well as adequate training on gender analysis and GEM for all state management officials. Official should also receive training on other concepts related to gender equality including indirect discrimination, substantive equality and intersectional or multiple forms of discrimination.

Including GEM in government plans and programmes, rather than just in legislation, would help Viet Nam reach its gender equality targets and ensure progress is sustainable. For example, according to the Ministry of Public Investment, only the Ministry of Labour, Invalids and Social Affairs (MOLISA) has a separate section on gender equality in their plans.<sup>8</sup> Gender equality should be integrated into the annual plans of all ministries. Creating gender equality functions within technical departments for each Ministry and local government would assist in ensuring consistent GEM in all initiatives.

#### ***4. Urgent issues of discrimination against women***

In addition to clearly defining harmful acts and multiple forms of discrimination in the GEL and other national laws, specific policies and programmes should be implemented to address harmful acts resulting in gender inequality. Urgent issues of discrimination against women include violence against women (especially domestic violence, sexual harassment and early or forced marriage), son preference, and gender-biased sex selection.

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid at 60.

<sup>8</sup> Ibid at 61.



The use of an intersectional lens is necessary to implementing effective policies and programmes. Multiple forms of discrimination need to be considered to address the disadvantages faced by female immigrants, disabled women, women in mountainous, remote and difficult areas, and ethnic minority women. Special measures for all women who face multiple forms of discrimination should be developed or integrated into existing policies and programmes. For example, while the GEL introduces special measures for members of ethnic minorities and poor women in rural areas, other multiple forms of discrimination are not explicitly mentioned.<sup>9</sup> This may lead to the lack of special measures for other disadvantaged groups, such as disabled women and girls.

### ***5. Information, education and communication activities (IEC)***

IEC activities can be a powerful tool for reducing gender inequality, but in order to achieve this objective they must be implemented in a deliberate and gender-sensitive manner. While significant IEC activities have been implemented, some campaigns reinforce negative stereotypes and traditional gender roles for women. During the review some civil society representatives suggested that propaganda on gender equality actually reinforces stereotypes and ideas of the traditional roles of women.<sup>10</sup> Although challenging, IEC campaigns need to be carefully designed and then evaluated to determine the impact on gender equality attitudes. This can be done by setting indicators and applying impact measurement in order to assess the impact of IEC campaigns, and then using the findings to identify potential improvements.

As changing discriminatory beliefs and behaviours can be difficult, targeting specific groups through culturally relevant IEC campaigns would be beneficial.<sup>11</sup> Men, boys and male leaders should be engaged in local IEC activities to shift negative attitudes and promote shared domestic responsibilities. IEC campaigns should target influencers, such as government officials and community leaders, to increase efforts to advance gender equality. In addition, specific IEC campaigns could target women in order to increase women's awareness of their right to equality, and how to implement their rights, such as by providing clear information on how to access complaint systems.

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<sup>9</sup> Ibid at 30.

<sup>10</sup> Ibid at 64.

<sup>11</sup> Ibid at 80.

## ***6. Strengthening state management, including coordination among agencies, complaint reception and resolution, inspection and monitoring***

While committees for the advancement of women have been used to increase women's employment in government, the gender equality coordination mechanism has been established at the national or local levels but it is not functioned effectively. This leads to duplication of efforts and inconsistent implementation of the gender equality. For example, the Ministry of Culture, Sport and Tourism (MOCST) is responsible for domestic violence, and MOLISA for gender-based violence. The GE Law should clearly define the functions of the relevant ministries, particularly between MOCST and MOLISA. In addition, coordination mechanisms should be established to ensure there are no gaps in service.

No system has been established to receive and manage complaints of discrimination. As a result, individuals may not be aware of how to resolve issues of discrimination. A system should be created within the MOLISA Inspectorate to receive and manage complaints. The system should address the most serious forms of gender-based discrimination that are not addressed through other complaint mechanisms. The system should also be given the capacity to undertake investigations and use findings to publish recommendations addressing systemic discriminatory practices.<sup>12</sup> As mentioned above, the establishment of a complaint management system should be accompanied by targeted IEC campaigns, to ensure individual rightsholders are aware of how to access complaint systems.

State management functions on inspection and handling of violations related to gender inequality and discrimination are limited. Often ministries will undertake inspections yet fail to provide details of those inspections in annual or 10-years reports.<sup>13</sup> Without sufficient inspections and details on findings, it becomes difficult to determine where violations are occurring. Information on sanctions applied in cases of violations is also limited. Detailed reports on inspections and sanctions should be completed to identify which actions are effective for handling violations and to identify potential areas of improvement.

Increased monitoring and oversight functions by the National Assembly (NA) and People's Councils would provide valuable insights and recommendations on the

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<sup>12</sup> Ibid at 79.

<sup>13</sup> Ibid at 66.

implementation of the GE Law. While the Committee on Social Affairs (CSA) of the NA has conducted oversight missions on the implementation of the GE Law and sent recommendations to the NA, issues of gender equality should also be incorporated into other oversight activities of the NA.<sup>14</sup> The NA has never selected gender equality for topic-based oversight on gender equality issues. In addition, gender equality issues have not been prioritized in various provincial end-of-term reports of People's Councils.<sup>15</sup> Increased monitoring and oversight functions would also ensure gender equality objectives are considered in decisions of national importance. For example, decisions on socio-economic development plans have a significant gender impact, and gender equality issues should be sufficiently considered in policy making processes.

## RECOMMENDATIONS TO IMPLEMENT THE FIVE POLICY OPTIONS

### *1. Revisions to the GEL and other national laws*

The revision of GEL should be a priority for the Government and the NA in the upcoming term of 2021-2026. Agencies such as MOLISA and the CSA of the NA should play important roles in advocating to include this Law in the NA's legislative agenda. More specifically,

- Change the scope of the GE law from "all fields of social and family life" to "any field". This measure will ensure greater consistency with international standards.
- Provide for indirect discrimination to avoid adverse effects from gender-neutral laws and facilitate more effective gender equality mainstreaming.
- Ensure terminology is clearly defined, including gender, direct discrimination, indirect discrimination, and gender-based violence.
- Clearly define harmful acts resulting in gender inequality, such as gender-biased sex selection and early or forced marriage. Measures being taken to address such practices should also be defined.
- Define prohibited acts, clarify the applicable sanctions, and ensure individual rightsholders understand how to access complaint mechanisms. To facilitate

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<sup>14</sup> Ibid at 67.

<sup>15</sup> Ibid at 68.

this understanding, responsibilities of state management need to be clearly defined.

- Prioritize the amendment of national laws to:
  - a. Clarify roles and responsibilities of government agencies, particularly MOLISA and MOCST.
  - b. Integrate special measures in laws for women in the economic sector and women who face multiple forms of discrimination such as female immigrants, disabled women, women in mountainous remote and difficult areas, and ethnic minority women.
  - c. Revise laws that discriminate explicitly against women compared to men (age of marriage in the Law on Marriage and Family and labour sector laws that discriminate against women).
  - d. Include the principle of gender equality in the Law on the Organization of the National Assembly 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.

## ***2. GEM in legislation, plans and programmes***

- Ensure the Law on Laws and the GE Law are consistent, requiring gender analysis regardless of whether there is an explicit gender focus in the proposed law.
- Invest more resources in the GEM process for draft laws of the NA and draft resolutions of the People's Councils.
- Increase training on gender equality concepts, including GEM, gender-based analysis, indirect discrimination, substantive equality and multiple forms of discrimination for all state management officials.
- Ensure gender issues are integrated into all ministry initiatives, central and local government plans and programmes and not only legislation.
- Create gender equality functions within all Ministry and local government departments.

## ***3. Measures to address urgent issues of discrimination against women***

- In addition to revising the GE Law and other national laws, policies and programmes should be implemented to address harmful acts resulting in gender inequality.

- Develop policies and programmes 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. This will ensure that no women are left behind.

#### **4. IEC activities**

- All IEC campaigns should be reviewed by a gender specialist to ensure messages do not reinforce negative attitudes and promote the importance of gender equality.
- Campaigns should be developed that target specific groups, including influencers, rights-holders, and men and boys in local IEC activities.
- Indicators should be defined in order to assess the effectiveness of IEC campaigns and identify potential improvements.

#### **5. State management**

- Prepare a new Strategy on Gender Equality that incorporates Viet Nam's commitments to SDG targets and consider prioritizing harmful acts against women, including all forms of gender-based violence against women, and discrimination in the labour sector.
- In addition to clearly defining the functions of relevant ministries, establish a formal gender equality coordination mechanism to ensure no gaps arise in service.
- Establish a complaint management system within the MOLISA Inspectorate and ensure individuals are aware of how to file complaints. The system should address the most serious forms of gender-based discrimination and should have the capacity to undertake investigations and publish recommendations.
- Increase inspections and sanctions in priority areas and ensure detailed reports are completed to identify future priority areas.
- Increase oversight missions on gender equality issues within the NA and People's Councils and ensure gender equality issues are considered in decisions of national importance.

## CONCLUSION

This policy brief has provided five policy options based on an analysis of the major issues identified in the independent Review of the Law on Gender Equality. Areas of concern that must be addressed in amendments to the GEL include the use of gender equality concepts, particularly indirect discrimination, multiple forms of discrimination, harmful practices and prohibited acts. Clear and consistent guidelines on GEL are required to ensure draft policies, laws and programmes are based on thorough gender analysis of actual or potential impacts. The state management agency requires sufficient human and financial resources to ensure the effective implementation of the GEL. Specific policies and programmes that provide special measures for women who face multiple forms of discrimination and address harmful acts resulting in gender inequality should be implemented. In addition, IEC campaigns should be conducted to address negative attitudes and engage specific audiences, including local leaders and rights-holders, especially men and boys. The recommendations provided in this policy brief focused on overcoming these areas of concern in order to reduce gender inequality and ensure consistency with international human rights standards within the framework of achieving SDGs.



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