



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 2020.¹ 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

¹ 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.² 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

² 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.³ The GEL should also identify sexual harassment, particularly harassment in the workplace, as a form of discrimination. In addition, intersectional discrimination⁴ 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.

³ Ibid at 28.

⁴ 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.⁵ 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

⁵ 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.⁶ 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.⁷ 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.⁸ 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. Uraent issues of discrimination aaainst women

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