

Policy Brief



Ending Gender-Based Violence at Home in Viet Nam

Introduction

This brief proposes measures to strengthen the impact of the Domestic Violence Prevention and Control Law (DVPC Law) in Viet Nam. The findings are based primarily on the joint Ministry of Culture, Sport and Tourism (MoCST) and UNFPA 2016 review of the DVPC Law. The review looked not only at implementation of the law but also at how reflective it is of international norms and standards, and at the lessons learned from the pilot Minimum Intervention Package (MIP) programme¹.

All findings in this brief reflect the international norms and standards committed to by the Government of Viet Nam through its endorsement of the Beijing Platform for Action (PfA), its ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as the Sustainable Development Goals (SDGs) under which UN Member States are urged to realise “zero violence” by 2030.

These international commitments² require governments to ensure that all national domestic violence (DV) laws, policies and programmes are: actively monitored; recognize GBV as the most egregious form of gender-based discrimination; directly address cultural practices and stereotypes that may lead to harmful practices against women; adopt holistic, integrated approaches tackling the root causes of GBV; ensure sufficient

¹ The MIP was piloted in the provinces of Hai Duong and Ben Tre from 2012 to 2016.

² Summary derived from ASEAN 2004, para 4; UN Declaration on the Elimination of Violence against Women (UNDEVAW); UN Human Rights Council “the need to treat all forms of violence against women and girls as a criminal offence, punishable by law...”; Article 4 of the ASEAN Declaration to Eliminate Violence against Women emphasizes support to victims and criminal sanctions and rehabilitation of perpetrators; Article 3 of the ASEAN Declaration on the Elimination of Violence Against Women and Children also calls for states parties to take a holistic and multi-disciplinary approach to protect women’s and children’s rights and punish perpetrators; UNDEVAW, UN Doc A/RES/48/104 (1993), para. 1; CEDAW, art. 16; General Recommendation 21); CEDAW, article 6; CEDAW, article 13; ILO C29; and CRC article 32.

FACTS AND FIGURES FOR VIET NAM

58% of ever-married women have experienced some form of violence in their lifetime.

5% of ever-pregnant women have experienced physical violence.

87% of women who experience physical or sexual violence by their husbands do not seek justice or basic services.

Women whose husbands drink every day are 7 times more likely to suffer violence.

Only 43% of disclosed domestic violence cases come to the attention of the police; and only 12% result in criminal charges, with 1% leading to conviction.

Socio-economic status by itself is not a qualifier for vulnerability to or perpetuation of gender-based violence (GBV). It does, however, impact rates of education; access to services; and legal literacy, among other factors. One key human development indicator which positively impacts both vulnerability to GBV and the likelihood that girls’ escape GBV is attainment of secondary education.

Experiencing domestic violence and witnessing violence against women in the home are the greatest pre-determinants of men’s likelihood to have discriminatory attitudes towards women and girls, and to commit GBV.

GBV and gender-biased sex selection have the same root – patriarchal norms and negative interpretations of masculinity based on physical strength, authority, and dominance.

The cost of domestic violence represents over 3% of Viet Nam’s GDP, with women who have experienced violence earning 35% less than those who have not.

legal remedies prosecuting all forms of GBV³ as a crime – ensuring justice for the victim and full accountability by the perpetrator; and recognise the access to quality essential services for survivors of GBV as a fundamental human right.

DV versus GBV: Why terms matter in law. Often and incorrectly, the terms “domestic violence” (DV), “gender-based violence” (GBV) and “violence against women and girls” (VAWG) are used interchangeably. **DV** refers to all abusive behaviour which occurs in the, domestic sphere, including GBV. **GBV** refers to violence directed against a person because of her or his unfulfilling of the gender roles as defined in a society or culture. The root causes of GBV are the existing gender inequalities in society, entrenched in gender stereotypes, and the resulting power relations between women and men. Men in Viet Nam still, for the most part, dominate these power relations, thus men are often the perpetrators of GBV. While men and boys do experience GBV, **VAWG** is the significantly more prevalent form of GBV, and it is most often manifested as a form of DV.

It is therefore important that DV legislation be grounded in the holistic concept of **GBV** to ensure that the law goes beyond just State provisions to respond to DV, but also includes responses that seek to tackle the unequal power relations between women and men – created and maintained by gender stereotypes – as the basic underlying cause of the violence.

A GBV analysis underlying a DV law recognizes that women can be both victims and perpetrators of VAWG; for example, a mother-in-law could have been abused by her husband, but also now abuses her daughter-in-law as a way of maintaining the patriarchal and familial “order” of the house. A GBV focus in DV legislation also recognizes that men and boys may also be victims of GBV, especially sexual violence. The absence of a gender lens within a DV law may negatively impact the coordination and implementation of such a law, de-linking the process from the broader government mechanisms dealing with gender inequalities⁴.

Successes, Lessons & Opportunities

The Government of Viet Nam has taken important steps to ensure formal gender equality through the ratification of CEDAW (1982), the adoption of the Law on Gender Equality (2006) and the Law on Marriage and Family (2000), and enshrining the prohibition of discrimination between women and men in the constitutional reform process (2013). Additionally, some of the measures adopted under these laws are important steps towards *substantive gender equality*, as required by CEDAW. Substantive equality requires States to ensure a lived and breathed equality. Formal equality on the other hand, while formally prohibiting any form of discrimination in the content of the law, also assumes a degree of “sameness” among the groups. For example, formal equality under the law does not necessarily recognize the fact that women and men experience legislation, policies and challenges very differently due to gender roles, societal stereotypes and power relationships. Substantive equality calls on legislators to ensure there is *equal valuing by society of the similarities and differences of men and women, and the roles they play*⁵.

To ensure substantive equality, the Government of Viet Nam must therefore look at “how” and “why” women and men are impacted differently by laws, policies and programmes, and ensure that all future laws - including measures to end GBV – address these differences. To this end, States will often adopt temporary special measures under key laws to ensure substantive equality - and to recognize the differences.

The DVPC Law, which came into effect in 2008, is one of the most proactive measures taken since passage of the Law on Gender Equality to end many forms of GBV in the home.

³ Includes VAW in the home; trafficking, sexual exploitation, sexual harassment, early marriage, sex-selective abortion, forced marriage; inequality in access to household income, assets and inheritance; and all forms of sexual violence, including in marriage.

⁴ Extracted from the UN Country Team Viet Nam, A UN Discussion Paper - From Domestic Violence to Gender-Based Violence - Connecting the dots in Viet Nam, 2014.

⁵ Extracted from the UN Women Training Centre’s “I KNOW Gender” on-line course, 2015.

Viet Nam's legal frameworks protecting women's human rights and supporting gender equality are important. Nonetheless, the Facts and Figures box above illustrates how **pervasive GBV in the home is nationwide. It is rooted in a patriarchal culture that devalues women's and girls' lives, as well as their contributions and roles in society.** The entrenched gender roles within Vietnamese culture often result in female victims of DV being made to feel culpable for acts of violence, with social pressure being placed on them to maintain a happy home and a united family. This public shaming and social judgement, coupled with limited confidence that justice will be served, often result in victims being reluctant to come forward.

Multiple national studies have found that the **limited essential services available to women victims of violence have also negatively impacted** their willingness to come forward. Essential services, as defined globally by the UN, "encompass a core set of services provided by the health care, social service, police and justice sectors. The services must, at a minimum, secure the rights, safety and well-being of any woman or girl who experiences GBV."⁶

The current **DVPC Law's strength** is that it references a broad range of physical, emotional, sexual and economic violence, including forced marriage, forced sex, property damage or destruction, prevention of the exercise of legal rights and obligations, and forced work. **It is the first time such acts within the home have been explicitly prohibited in Viet Nam**, and the awareness about the prevalence of DV, at the local level in particular, has been positively impacted by the adoption of the DVPC Law.

Nonetheless, the DVPC Law's limited interpretation of the concept of **GBV** has resulted in the law excluding many forms of violence prevalent in Viet Nam, including sexual violence aside from intercourse, rape in marriage, incest, and other harmful practices such as child marriage and cyber violence.

The MoCST/UNFPA review found that the primary weaknesses of the DVPC law, and its main areas of divergence from international standards, are in two main areas: a) a limited integration of gender analysis and definition of GBV in the text (as mentioned above); and b) limited avenues for justice for DV victims within the sanctions and responses provided by the law.

At present, the law's justice focus has a strong emphasis on mediation with the end goal of reconciliation and unity of the family, and on the use of monetary sanctions in lieu of sentencing (which often negatively effects the victims, as the funds tend to come from household budgets and not from the direct, personal assets of the perpetrator).

DIRECTIVES IN SUPPORT OF THE DVPC LAW

Directive No. 16 /CT-TTg Organizing the implementation of the DVPC Law (30/05/08)

Decree No. 08/2009 / ND-CP Detailing and guiding the implementation of some provisions of the DVPC Law (04/02/09)

Decree No. 110/2009/ND-CP Regulations on Sanction of Administrative Violations in Domestic Violence (10/12/09)

Decision No. 1241/QD-TTg National Action Plan on Gender Equality for the Period of 2011-2015 (22/07/11)

Decision No. 629/QD-TTg National Strategy for Development of Vietnamese Families to 2020, with a vision to 2030 (29/05/12)

Decree No. 167/2013/ND-CP (replacing Decree No. 110/2009/ND-CP). Regulations on Sanction of Administrative Violations in Social Security, Order and Safety, Prevention and Fighting of Social Evils, Fire and Domestic Violence (12/11/13)

Decision No. 215 / QD-TTg Approving the national action plan on violence prevention and control by the year 2020 (06/02/14)

Decision No. 21 Multi-sectoral coordination regulation on DVPC (17/05/16)

⁶ UN Global Publication (UN Women, UNFPA, UNDP, WHO, UNODA), Essential Services Package for Women and Girls Subject to Violence Core Elements and Quality Guidelines, Module 1, page 9.

Overall, the DVPC Law's punitive measures do not treat DV as a crime equal to that of violence outside the home – such as street crime – and thus the law sends the overwhelmingly negative messages of a “shared” sense of responsibility on the part of the victim and the perpetrator, and an overall sense that there is a degree of impunity for DV as a whole.

As the evaluation of the DVPC Law found, it is important to adjust legislation and regulations to ensure consistency regarding principles and definitions related to illegal conduct in the DVPC Law, the Law on Gender Equality, the Law on Marriage and Family, the Law on Child Protection, Care and Education, the Law on the Elderly, and the Criminal Code; and to review decrees that specify different administrative sanctions for similar violent conduct and abuse among family members.

Under the DVPC Law, there have been positive advances at the community level in addressing GBV in the home. With UNFPA support, a review of the MIP pilot programme showed success. Focusing on the three components of a) prevention; b) identification, receipt and referral; and c) support and protection, the pilot resulted in increased awareness among families and communities of DV as a crime. The programme also increased awareness – particularly among youth and individuals at the community level – of women's and children's rights under the DVPC Law. It also resulted in increased collection of administrative data, and more victims coming forward to access some of the essential services provided for under the DVPC Law.

Nonetheless, at the heart of both the successes and limitations of the DVPC Law's impact to date is the limited allocation of financial and high-quality human resources to ensure availability of essential services. Furthermore, the review of the DVPC Law found limited awareness and capacity among members of State agencies and among community leaders to address the root causes, consequences and responses to GBV. Also, sectoral protocols and standard operating procedures (SOPs) that are needed to ensure a comprehensive response to GBV in the home were missing in many sectors providing essential services – including health, social services, justice, education and employment. The absence of harmonized coordination of the DVPC Law and the MIP under one State Management Agency (SMA) remains an overarching implementation challenge.

Nationwide, despite important investments in collecting administrative and prevalence data, there is still insufficient data related to GBV that are reliable and internationally comparable, particularly data on GBV outside of the home. In Viet Nam, there is no national mechanism to compile data on GBV collected by different line ministries into a comprehensive statistical database. Furthermore, there is a lack of policy analysis to provide decision makers with important information on how policies work in practice, including their effects on economic, environmental, social and other factors driving GBV.

The Way Forward - Action Areas

Recommendation 1: Revise the DVPC Law to make it more effective, including but not limited to ensuring that other forms of VAWG outside of the family setting are addressed.

Specifically, the DVPC Law should be revised to:

- a) Make clear the law's intent, which is to prevent all forms of DV, and not to have a secondary intent of maintaining family unity;
- b) Incorporate clear definitions of GBV and align the provisions on sexual violence with international standards, or at minimum, with crimes to be prosecuted under the Penal Code (2015). This would include expanding the definitions of VAWG to include those forms of violence outside of the family setting (sexual violence aside from intercourse, rape in marriage, incest, and other harmful practices such as child marriage and cyber violence);
- c) Ensure protective measures allowing for immediate termination of the violence, including an increase in the current duration of No-Contact Orders;
- d) Ensure that the full responsibility for DV rests only with the perpetrator;
- e) Stipulate psycho-social behavior change programmes for the perpetrators of physical violence be instituted as part of – but not in lieu of – sentencing;
- f) Eliminate the use of mediation and reconciliation of families as a mandate of the DVPC Law;
- g) Limit the use of monetary sanctions in lieu of sentencing, and stipulate that any monetary sanctions (as part of sentencing) come from the perpetrator's direct assets and not from the household budget;
- h) Align directives adopted after the DVPC Law, canceling out any contradictory provisions, and harmonizing punitive measures to be in conformity with the Gender Equality Law, the Law on Family, and the revised Penal Code⁷; and
- i) Make explicit who is responsible for delivering which services, establishing clear case management and referral protocols at all levels of government.

Recommendation 2: Provide quality essential services and acquire quality data. This can be done in several ways.

- a) Provision of essential services requires strong coordination of the broad range of government and non-governmental service providers and responsible bodies;
- b) Sufficient and predictable budgetary allocations for essential services is critical, and these allocations must be explicitly stated in the responsible ministries' annual budgets;
- c) Particular investments are needed in safe spaces for victims; in the health sector response; in the justice response; and in providing access to rights-based and gender-aware counseling for victims and perpetrators at the local and national levels;
- d) Within the existing case management protocols, there is a need for standard operating procedures (SOPs) to be adopted by the police; the courts; and agencies in the health sector;
- e) The case management/referral protocol must also include clear administrative data requirements, keeping in mind that only the most important information should be collected,

⁷ Combating VAWG in Viet Nam requires a two-fold use of both the DVPC Law and the Penal Code. The existing Penal Code remains insufficient for its full application to VAWG, however. Firstly, the code's stipulation that a certain percentage of injuries to the person must be visible is a serious limitation in the context of VAWG which goes beyond this. Secondly, while the Penal Code criminalises forced sexual intercourse, no other form of sexual abuse is included for persons over the age of 16. The Penal Code's provisions also place considerable evidentiary burden on the victim to first prove that they have been violated. Marital rape or sexual assault within a relationship is not explicitly prohibited under the Penal Code; instead, forced sex is considered only an administrative violation under the DVPC Law.

and revictimization of individuals through countless retelling of the abuse to multiple State actors should be avoided. Through a harmonized case management protocol under one SMA, only specific information would be collected from each sector engaged with the victim, with data protection measures in place between/among service providers in each case file;

- f) Improved partnerships between State and non-State actors involved in responding to DV must be a priority, with greater recognition of the role NGOs have played and can play;
- g) Essential to the success of the above recommendations is the consolidation of management, budgeting, monitoring and implementation of the DVPC Law and Gender Equality Law into one well-resourced and strongly mandated SMA.

Recommendation 3: Justice must be a key essential service. Ensuring justice for the survivors of GBV is one of the most important prevention measures that the State can take. All essential services are required, but a consistent realization of justice for survivors sends a message to Vietnamese society that there is no impunity for GBV – and only with the consistent and strong application of justice will the DVPC Law be seen as a deterrent to future violence.

It is recommended, therefore, that the following measures be instituted in parallel with the revision of the DVPC Law:

- a) Training of judiciary staff, court officers and the police at all levels on the gender dimensions of DV, as well as on the use of the Penal Code for prosecution of GBV in the home;
- b) Establishment of SOPs for the police and courts on case management of GBV under the revised DVPC Law, including specific SOPs for sexual violence that place the victim's safety and rights in a paramount position;
- c) Ending the use of mediation and reconciliation as a "response" to DV. If mediation and reconciliation provisions are maintained in a revised DVPC Law, then the State must guarantee that full capacities are in place to ensure mediation is seen as a long-term process which has at its core full accountability for the perpetrator of violence;
- d) Revise the existing directives and budgetary allocation around legal aid, ensuring the development of a comprehensive legal aid scheme for victims of DV and all forms of GBV; and
- e) Increase awareness among women, youth and other members of communities about their rights under the DVPC Law and related gender equality legislation.

Recommendation 4: Behaviour change efforts and grassroots responses must go beyond only awareness-raising campaigns. They should also include the following:

- a) Community-based as well as national dialogues focused on the root causes of GBV, including the concepts of masculinity;
- b) Comprehensive, age-appropriate sexuality education;
- c) Allowance for separate dialogues and actions aimed at various target groups, and for the realities of different ethnicities. Target audiences should include young women and men at the rural and urban levels; the elderly; teachers; and community leaders of all types;
- d) Mobilization of champions to end GBV, including men, boys, youth, local and national leaders and authorities, union representatives, and cultural icons;
- e) A focus on integrating a deeper understanding of gender equality and ending GBV, and of development of healthy masculinities, into State-run education programmes; and
- f) Greater accountability: Communities must be encouraged by the SMA of the DVPC Law to understand the principles behind GBV, and an understanding that they as community leaders have the responsibility to end GBV in homes, workplaces and in public spheres.

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UNITED NATIONS POPULATION FUND (UNFPA) IN VIET NAM

Add: The Green One UN House, 304 Kim Ma Street, Ba Dinh District, Ha Noi, Viet Nam.

Tel: 84-24-38500100, Fax: 84-24-37265520

Email: vietnam.office@unfpa.org

Web: <http://vietnam.unfpa.org>

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